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Attorneys for Defendant
 BALBOA CAPITAL CORPORATION, a California Corporation

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ILS PRODUCTS, LLC d/b/a/
 INDUSTRIAL LIGHTING SYSTEMS,
 a Texas Limited Liability Company, on
 behalf of itself and all others similarly
 situated,

Plaintiff,

vs.

BALBOA CAPITAL CORPORATION,
 a California Corporation,

Defendant.

Case No.

**DEFENDANT BALBOA CAPITAL
 CORPORATION'S NOTICE OF
 REMOVAL TO FEDERAL COURT**

28 U.S.C. § 1332(a)
 28 U.S.C. § 1441
 28 U.S.C. § 1446

**[Removal from Superior Court of
 California for the County of Orange,
 Case No.
 30-2019-01050756-CU-BT-CXC]**

Judge: Hon. Randall J. Sherman
 Dept.: CX105

Complaint Filed: February 11, 2019
 Trial Date: Not Set

TO THE CLERK OF COURT FOR THE UNITED STATES DISTRICT
 COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that Defendant in the above-captioned matter,
 Balboa Capital Corporation, ("Balboa") by and through its attorneys, Wilson, Elser,
 Moskowitz, Edelman & Dicker, LLP, and pursuant to 28 U.S.C. §1332, 28 U.S.C. §
 1441, and 28 U.S.C. §1446 hereby removes this case, Orange County Superior Court

1 Case No. 30-2019-01050756-CU-BT-CXC, entitled *ILS Products, LLC, dba*
 2 *Industrial Lighting Systems v. Balboa Capital Corporation* (“State Court Action”),
 3 now pending in the Superior Court of California, County of Orange, to federal court
 4 in the United States District Court for the Central District of California.

5 This Court has original subject matter jurisdiction over Plaintiff’s lawsuit
 6 under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d)(2) and
 7 1453, because minimum diversity exists and the amount in controversy exceeds \$5
 8 million. Accordingly, removal is proper based on the following grounds.

9 I. INTRODUCTION

10 Balboa removes the State Court Action on the basis that federal jurisdiction is
 11 proper in this case based on CAFA, 28 U.S.C. §§1332(d)(2) and 1453. Federal
 12 district courts have original jurisdiction of any civil action in which the amount in
 13 controversy exceeds \$5,000,000. 28 U.S.C. §1332(d)(2). A defendant may remove a
 14 class action from state court to federal court, without regard to whether any
 15 defendant is a citizen of the State in which the action is brought and without the
 16 consent of all defendants. 28 U.S.C. §§ 1453(b) and 1446(a).

17 This is a civil action where the amount in controversy exceeds \$5,000,000 and
 18 minimum diversity exists. Therefore, jurisdiction is appropriate pursuant to 28 U.S.C.
 19 §§1332 and 1453 and as set forth herein.

20 On February 11, 2019, Plaintiff ILS Products, LLC, dba Industrial Lighting
 21 Systems (“Plaintiff”) filed its Complaint against Balboa in the Superior Court of the
 22 State of California, County of Orange. (*See*, Complaint and attached proof of service
 23 documents, attached hereto as **Exhibit A.**) The Complaint asserts eight causes of
 24 action against Balboa for: (1) Tortious Fraud and Intentional Deceit; (2) Actual
 25 Fraud; (3) Negligent Misrepresentation; (4) Violation of Unfair Competition Law;
 26 (5) Breach of Contract; (6) Breach of Good Faith and Fair Dealing; (7) Unjust
 27 Enrichment; and (8) Conversion.

28 ///

II. GROUNDS FOR REMOVAL

A. This Action is Removable Pursuant to the Class Action Fairness Act of 2005

1. Minimum Diversity Exists Under CAFA

To satisfy CAFA's diversity requirement, a party seeking removal need only show that minimal diversity exists. In other words, the removing party must show that one putative class member is a citizen of a different state than that of one defendant. 28 U.S.C. § 1332(d)(2); *see also United Steel, Paper & Forestry, Rubber, Mfg., et al. v. Shell Oil Co.*, 602 F.3d 1087, 1090-91 (9th Cir. 2010).

Plaintiff was and is, at all relevant times hereto and at the time of this removal, a citizen of, domiciled in, and residing in the State of Texas. (*See* Ex. A, ¶ 11.) Balboa is a citizen of the State of California with its principal place of business in Costa Mesa, California. (Ex. A, ¶ 12.) Plaintiff brings this class action against Balboa on behalf of a nationwide putative class. (*Id.* ¶ 30.) Thus, the minimal diversity requirement of CAFA is satisfied because a member of Plaintiff's class is a citizen of a state different from Balboa. *See Davis v. Chase Bank U.S.A.*, 453 F.Supp.2d 1205, 1208 (C.D. Cal. 2006) (minimum diversity exists where named plaintiff and defendant are citizens of different states).

2. The Numerosity Requirement of CAFA is Met

For removal to be proper, Balboa must satisfy the numerosity requirement of 28 U.S.C. § 1332(d)(5)(B), which requires the number of members of all proposed plaintiff classes in the aggregate exceeds 100. In its allegations, Plaintiff alleges a putative class consisting of "at the very least, hundreds of members." Thus, the numerosity requirement under CAFA is satisfied as Plaintiff admits the putative class is far in excess of 100. 28 U.S.C. § 1332(d)(5)(B).

3. The Amount in Controversy Exceeds \$5,000,000

Pursuant to CAFA, the amount in controversy is satisfied when the aggregated claims of the class members exceed the sum of \$5,000,000. 28 U.S.C. § 1332(d)(6).

1 With respect to removal, the determination whether the amount in controversy is
2 satisfied “is not confined to the face of the complaint.” *Valdez v. Allstate Ins. Co.*,
3 372 F.3d 1115, 1117 (9th Cir. 2004). When assessing the amount in controversy
4 under CAFA, the Senate Committee Report accompanying CAFA, S. Rep. No. 109-
5 14, made it clear that 28 U.S.C. § 1332(d) should be interpreted expansively. S. Rep.
6 No. 109-14, at 42 (2005). The Senate Report went further and stated, “if a federal
7 court is uncertain about whether ‘all matters in controversy’ in a purported class
8 action ‘do not in aggregate exceed the sum or value of \$5,000,000,’ the court should
9 err in favor of exercising jurisdiction over the case.” (*Id.*)

10 While the Complaint is silent as to the specific amount of damages sought,
11 Balboa is only required to include a plausible allegation that the amount in
12 controversy exceeds the jurisdictional threshold. *Dart Cherokee Basin Operating*
13 *Co., LLC v. Owens*, 135 S.Ct. 547, 554 (2014) (interpreting the “short and plain
14 statement of the grounds for removal” of 28 U.S.C. 1446(a)); *see also* 28 U.S.C.
15 1446(c)(2)(B). Here, the Complaint does not allege a specific amount of monetary
16 damages sought from Balboa. The allegations, however, are clear that the amount in
17 controversy, in the aggregate, exceeds the amount in controversy requirements under
18 CAFA. Specifically, Plaintiff alleges that “[b]ased upon the relevant class period and
19 the size of Balboa’s leasing business, it is likely to be a least millions of dollars.”
20 (Ex. A, ¶¶ 50, 64, 78, and 108.) For at least this reason, there is a plausible allegation
21 that the amount in controversy requirement is satisfied.

22 Although the four corners of Plaintiff’s Complaint provide the Court plausible
23 allegations that the amount in controversy is met, counsel for Plaintiff admitted as
24 much in a complaint filed on August 1, 2018, in the United States District Court for
25 the Central District of California based on the same questions of law and fact at issue
26 in the current State Court Action. (*See* Request for Judicial Notice (“RJN”), Ex. 1, ¶
27 9.) The August 1, 2018 complaint was filed against Balboa alleging six identical
28 causes of action as the State Court Action including claims that Balboa, “charges

1 payments from its customers disguised as agreed-upon payments and delays the
2 “commencement” of a loan – a deviation from the industry standard practice, and a
3 fact not disclosed to loan applicants.” (*See* RJN, Ex. 1, ¶ 4.) A side by side
4 comparison of the questions of law and fact common to the Class demonstrates the
5 issues in the August 1, 2018 complaint and the State Court Action are substantially,
6 if not, identical. (*Compare* RJF, Ex. 1, ¶ 54 to Ex. A, ¶ 36.) Thus, based on the same
7 set of operative facts set forth in Plaintiff’s State Court Action, counsel for Plaintiff
8 previously asserted before a court of this District that the jurisdictional requirements
9 of CAFA were met and jurisdiction was appropriate in the United States District
10 Court for the Central District of California.

11 **B. This Removal is Timely**

12 This Notice of Removal is timely filed in accordance with 28 U.S.C. §
13 1446(b).

14 **C. Consent to Removal is not Required**

15 Pursuant to 28 U.S.C. § 1453(b) consent of all Defendants is not required for
16 the removal of the action.

17 **D. Venue is Proper**

18 Venue of this removed action is proper pursuant to 28 U.S.C. §§ 1332 and
19 1446(a) because this Court is the United State District Court for the district
20 embracing the place where the removed action was pending – the Superior Court of
21 the State of California, County of Orange.

22 **E. All Pleadings from the State Court Action are Attached**

23 As required by 28 U.S.C. 1446(a), all papers and pleadings known to be on file
24 with the State Court are attached to this notice as **Exhibits A**.

25 **F. Notice to Plaintiff and the State Court Clerk**

26 As required by 28 U.S.C. 1446(d), a copy of this notice is being served today
27 on all parties of record and will be filed with the Clerk of the Superior Court of
28 California, County of Orange.

III. CONCLUSION

For the reasons set forth above, this action is removable to the United States District Court for the Central District of California based on the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d)(2) and 1453, because minimum diversity exists and the amount in controversy exceeds \$5,000,000. More specifically, in a matter previously filed by Plaintiff's counsel against Balboa asserting the same causes of action and arising from substantially identical facts as the State Court Action, the jurisdictional requirements of the Class Action Fairness Act of 2005 were admittedly met.

Dated: March 21, 2019

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**

By: /s/ Michael P. McCloskey, Esq.
Michael P. McCloskey, Esq.
David J. Aveni, Esq.
Marty B. Ready, Esq.
Attorneys for Defendant
BALBOA CAPITAL CORPORATION, a
California Corporation

EXHIBIT “A”

EXHIBIT “A”

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BALBOA CAPITAL CORPORATION, a California Corporation

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ILS PRODUCTS, LLC d/b/a INDUSTRIAL LIGHTING SYSTEMS, a
Texas Limited Liability Company

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

02/11/2019 at 01:44:04 PM

Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

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

The name and address of the court is:

(El nombre y dirección de la corte es): CIVIL COMPLEX CENTER

751 W. Santa Ana Blvd.

Santa Ana, CA 92701

CASE NUMBER:

(Número del Caso):

30-2019-01050756-CU-BT-CXC

Judge Randall J. Sherman

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

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

Deval R. Zaveri, 402 W. Broadway, Suite 1950, San Diego, CA 92101; (619) 831-6988

DATE: 02/11/2019

(Fecha)

Clerk, by

(Secretario)

DAVID H. YAMASAKI, Clerk of the Court

, Deputy

(Adjunto)

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

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

Sarah Loose

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): Balboa Capital Corporation, a California Corporation

under: <input checked="" type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☒ by personal delivery on (date):

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Deval R. Zaveri (CA 213501), James A. Tabb (CA 208188) ZAVERI TABB, APC 402 W. Broadway, Suite 1950 San Diego, CA 92101 TELEPHONE NO: 619.831.6988 FAX NO: 619.239.7800 ATTORNEY FOR (Name): Plaintiff ILS Products, LLC		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of Orange 02/11/2019 at 01:44:04 PM Clerk of the Superior Court By Sarah Loose, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 W. Santa Ana Blvd. MAILING ADDRESS: 751 W. Santa Ana Blvd. CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center Civil Complex Center		
CASE NAME: ILS Products, LLC v. Balboa Capital Corporation		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

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

1. Check one box below for the case type that best describes this case:
- | | | |
|---|--|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input checked="" type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|
2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 8: Fraud, Neg. Misrep., UCL, Breach Contract & CGFFD, U/E, Conversion
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 02/11/2019

Deval R. Zaveri

(TYPE OR PRINT NAME)

Deval Zaveri

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

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

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

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

CASE TYPES AND EXAMPLES

Auto Tort

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

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

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

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

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

Real Property

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

Unlawful Detainer

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

Judicial Review

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

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

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

Enforcement of Judgment

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

Miscellaneous Civil Complaint RICO (27)

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

Miscellaneous Civil Petition

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


REGISTERED AGENT
SOLUTIONS INC
Registered Agent Solutions, Inc.
Corporate Mailing Address

1701 Directors Blvd.

Suite 300

Austin, TX 78744

Phone: (888) 705-RASi (7274)

SERVICE OF PROCESS RECEIPT

2/14/2019

Jacquie Emert

Balboa Capital Corporation

575 Anton Boulevard

12th Floor

Costa Mesa, CA 92626 USA

NOTICE OF CONFIDENTIALITY

This notice and the information it contains are intended to be a confidential communication only to the individual and/or entity to whom it is addressed. If you have received this notice in error, immediately call our SOP Department at (888) 705-7274.

RE: Balboa Capital Corporation

This receipt is to inform you that Registered Agent Solutions, Inc. has received a Service of Process on behalf of the above-referenced entity as your registered agent and is hereby forwarding the attached document(s) for your immediate review. A summary of the service is shown below; however, it is important that you review the attached document(s) in their entirety for complete and detailed information.

For additional information and instruction, contact the document issuer: ZAVERI TABB, APC

SERVICE INFORMATION

Service Date: 2/14/2019
 Service Time: 11:45 AM PST
 Service Method: Process Server

RASi REFERENCE INFORMATION

Service No.: 0099377
 RASi Office: California
 Rec. Int. Id.: JAK

CASE INFORMATION

Case Number: 30-2019-01050756-CU-BT-CXK
 File Date: 02/11/2019
 Jurisdiction: STATE OF CALIFORNIA, SUPERIOR COURT OF ORANGE COUNTY
 Case Title: ILS PRODUCTS, LLC VS. BALBOA CAPITAL CORPORATION

ANSWER / APPEARANCE INFORMATION

30 days (Be sure to review the document(s) for any required response dates)

AGENCY / PLAINTIFF INFORMATION

Firm/Issuing Agent: ZAVERI TABB, APC
 Attorney/Contact: DEVAL ZAVERI
 Location: California
 Telephone No.: 619-831-6987

DOCUMENT(S) RECEIVED & ATTACHED

Complaint
 Summons
 Demand for Jury Trial
 Exhibits included

ADDITIONAL NOTES

Questions or Comments... Should you have any questions or need additional assistance, please contact the SOP Department at (888) 705-7274.

You have been notified of this Service of Process by Insta-SOP Delivery, a secure email transmission. The transmitted documents have also been uploaded to your Compliance account. RASi offers additional methods of notification including Telephone Notification and FedEx Delivery. If you would like to update your account's notification preferences, please log into your Compliance account at www.rasi.com.

Thank you for your continued business!

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name & Address): Telephone No.: _____ Fax No. (Optional): _____ E-Mail Address (Optional): _____ Bar No.: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE JUSTICE CENTER: <input type="checkbox"/> Central - 700 Civic Center Dr. West, Santa Ana, CA 92701-4045 <input type="checkbox"/> Civil Complex Center - 751 W. Santa Ana Blvd., Santa Ana, CA 92701-4512 <input type="checkbox"/> Harbor - Newport Beach Facility - 4601 Jamboree Rd., Newport Beach, CA 92660-2595 <input type="checkbox"/> North - 1275 N. Berkeley Ave., P.O. Box 5000, Fullerton, CA 92838-0500	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION	CASE NUMBER:

Plaintiff(s)/Petitioner(s), _____

and defendant(s)/respondent(s), _____

agree to the following dispute resolution process:

- ☐ Mediation
- ☐ Arbitration (must specify code)
- ☐ Under section 1141.11 of the Code of Civil Procedure
- ☐ Under section 1280 of the Code of Civil Procedure
- ☐ Neutral Case Evaluation

The ADR process must be completed no later than 90 days after the date of this Stipulation or the date the case was referred, whichever is sooner.

☐ I have an *Order on Court Fee Waiver* (FW-003) on file, and the selected ADR Neutral(s) are eligible to provide pro bono services.

☐ The ADR Neutral Selection and Party List is attached to this Stipulation.

We understand that there may be a charge for services provided by neutrals. We understand that participating in an ADR process does not extend the time periods specified in California Rules of Court rule 3.720 et seq.

Date: _____ (SIGNATURE OF PLAINTIFF OR ATTORNEY) _____ (SIGNATURE OF PLAINTIFF OR ATTORNEY)

Date: _____ (SIGNATURE OF DEFENDANT OR ATTORNEY) _____ (SIGNATURE OF DEFENDANT OR ATTORNEY)

ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

**ALTERNATIVE DISPUTE RESOLUTION (ADR)
INFORMATION PACKAGE**

NOTICE TO PLAINTIFF(S) AND/OR CROSS-COMPLAINANT(S):

Rule 3.221(c) of the California Rules of Court requires you to serve a copy of the ADR Information Package along with the complaint and/or cross-complaint.

California Rules of Court – Rule 3.221
Information about Alternative Dispute Resolution (ADR)

(a) Each court shall make available to the plaintiff, at the time of filing of the complaint, an ADR Information Package that includes, at a minimum, all of the following:

(1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes.

(2) Information about the ADR programs available in that court, including citations to any applicable local court rules and directions for contacting any court staff responsible for providing parties with assistance regarding ADR.

(3) Information about the availability of local dispute resolution programs funded under the Dispute Resolutions Program Act (DRPA), in counties that are participating in the DRPA. This information may take the form of a list of the applicable programs or directions for contacting the county's DRPA coordinator.

(4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.

(b) A court may make the ADR Information Package available on its Web site as long as paper copies are also made available in the clerk's office.

(c) The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action along with the cross-complaint.

SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE

ADR Information

Introduction.

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts and others offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. ADR is usually less formal, less expensive, and less time-consuming than a trial. ADR can also give people more opportunity to determine when and how their dispute will be resolved.

BENEFITS OF ADR.

Using ADR may have a variety of benefits, depending on the type of ADR process used and the circumstances of the particular case. Some potential benefits of ADR are summarized below.

Save Time. A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.

Save Money. When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, experts' fees, and other litigation expenses.

Increase Control Over the Process and the Outcome. In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.

Preserve Relationships. ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.

Increase Satisfaction. In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

Improve Attorney-Client Relationships. Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

DISADVANTAGES OF ADR.

ADR may not be suitable for every dispute.

Loss of protections. If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.

Less discovery. There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.

Additional costs. The neutral may charge a fee for his or her services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Effect of delays if the dispute is not resolved. Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

TYPES OF ADR IN CIVIL CASES.

The most commonly used ADR processes are arbitration, mediation, neutral evaluation and settlement conferences.

Arbitration. In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision. *Nonbinding* arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate. Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate. If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Mediation. In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate. Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate. Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Neutral Evaluation. In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is

often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate. Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate. Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences. Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

ADDITIONAL INFORMATION.

In addition to mediation, arbitration, neutral evaluation, and settlement conferences, there are other types of ADR, including conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

To locate a dispute resolution program or neutral in your community:

- Contact the California Department of Consumer Affairs, Consumer Information Center, toll free, 1-800-852-5210
- Contact the Orange County Bar Association at (949) 440-6700
- Look in the telephone directories under "Arbitrators" or "Mediators"

Free mediation services are provided under the Orange County Dispute Resolution Program Act (DRPA). For information regarding DRPA, contact:

- Community Service Programs, Inc. (949) 250-4058
- Orange County Human Relations (714) 480-6572

For information on the Superior Court of California, County of Orange court ordered arbitration program, refer to Local Rule 360.

The Orange County Superior Court offers programs for Civil Mediation and Early Neutral Evaluation (ENE). For the Civil Mediation program, mediators on the Court's panel have agreed to accept a fee of \$300 for up to the first two hours of a mediation session. For the ENE program, members of the Court's panel have agreed to accept a fee of \$300 for up to three hours of an ENE session. Additional information on the Orange County Superior Court Civil Mediation and Early Neutral Evaluation (ENE) programs is available on the Court's website at www.occourts.org.

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Attorneys for Plaintiff and the Proposed Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

ILS PRODUCTS, LLC d/b/a INDUSTRIAL
LIGHTING SYSTEMS, a Texas Limited
Liability Company, on behalf of itself and all
others similarly situated,

Plaintiff,

vs.

BALBOA CAPITAL CORPORATION, a
California Corporation,

Defendant.

Case No. 30-2019-01050756-CU-BT-CXC

CLASS ACTION COMPLAINT

- (1) Tortious Fraud and Intentional Deceit
- (2) Actual Fraud
- (3) Negligent Misrepresentation
- (4) Violation of Unfair Competition Law
- (5) Breach of Contract
- (6) Breach of Good Faith and Fair Dealing
- (7) Unjust Enrichment
- (8) Conversion

JURY TRIAL DEMANDED

Assigned Judge Randall J. Sherman

Dept: CX105

Plaintiff ILS PRODUCTS, LLC d/b/a INDUSTRIAL LIGHTING SYSTEMS ("ILS" or
"Plaintiff"), on behalf of itself and all those similarly situated, alleges the following based on
personal knowledge as to all allegations regarding Plaintiff and on information and belief as to
all other allegations:

NATURE OF THE CASE

1
2 1. This is a civil action seeking monetary damages, restitution, and injunctive relief
3 from and against Defendant BALBOA CAPITAL CORPORATION (“Defendant” or “Balboa”)
4 arising from Balboa’s misconduct in connection with the leasing of commercial equipment.

5 2. Small and mid-size businesses often lack the capital resources needed to fund
6 major business expenses, so they rely on banks or financiers such as Balboa to help cover the
7 upfront cost of equipment through loans or equipment leases.

8 3. A typical Balboa equipment lease involves three parties: the lessor (Balboa), the
9 supplier of the equipment, and the lessee (*e.g.*, ILS). Balboa pays the supplier, takes ownership
10 of the equipment, then “leases” the equipment to the lessee for a fixed term requiring monthly or
11 quarterly payments on the lease.

12 4. Balboa frequently sends marketing materials to small and mid-sized businesses
13 with a focus on industries where expensive equipment is often utilized, such as the agriculture,
14 medical, and manufacturing industries. For example, Balboa’s agents can often be found at
15 medical supply conventions pushing Balboa agreements upon medical professionals seeking
16 equipment for their small and mid-sized practices.

17 5. In order to decide whether to lease equipment through Balboa, or take out a loan
18 to purchase the equipment, the prospective lessee/buyer must know upfront the true terms of the
19 lease/loan, and most importantly, the total out-of-pocket cost. When a business owner expresses
20 interest in an equipment lease, Balboa prepares a quote and relays it to the business’s point of
21 contact. Balboa quotes seemingly reasonable payment terms that state a monthly or quarterly
22 dollar payment amount and the number of months or quarters that the payment amount must be
23 made. These terms are stated in a manner made to appear competitive with the many other
24 financing options available. Businesses expect Balboa to honor the deal as discussed and quoted.
25 However, Balboa subsequently extracts extra “rent” beyond the required periodic lease payments,

1 and also charges an inflated "UCC" fee, in order to gain additional revenue and, thus, significantly
2 and unjustly increase the actual cost to the lessee.

3 6. Shortly after the lease is entered, and for no additional consideration or concession
4 whatsoever, Balboa withdraws what it labels as "rent" from its lessee's bank account. Balboa
5 does not count this "rent" toward the required periodic lease payments. Rather, this "rent" covers
6 a manufactured and artificial interim period of time between (a) the date the lessee receives and
7 accepts the equipment (what Balboa refers to as the lease "Commencement Date"), and (b) a later
8 date that Balboa chooses at its own discretion when it will start applying payments toward the
9 agreed-upon monthly or quarterly lease payments (what Balboa refers to as the start of the lease's
10 "Base Term"). Balboa charges the lessee "rent" for this artificial interim period at or around the
11 time of the "Commencement Date," and even automatically deducts the interim period "rent"
12 through Automated Clearing House ("ACH") withdrawals from the lessee's bank account
13 (Balboa has businesses agree to ACH withdrawals upon entering its leases). Moreover, the length
14 of the interim period "rent" typically aligns with the payment interval (e.g., an interim period of
15 approximately 89 days "rent" is assessed for leases with quarterly payment terms), so that the
16 interim period "rent" withdrawal looks like an expected lease payment withdrawal. However, the
17 interim period "rent" is not applied toward the required lease payments. As a result, the lessee
18 unknowingly makes what amounts to an extra payment on the lease based solely on Balboa's
19 unilateral decision to start the "Base Term" later than the "Commencement Date."

20 7. In addition to charging interim period "rent," Balboa also charges a fee that it calls
21 a "UCC" fee, giving the false impression that the fee is required by the Uniform Commercial
22 Code ("U.C.C."), or at least bears some relation to the administrative fee charged by some states
23 with respect to filing a U.C.C. statement for leased equipment. But, in fact, the "UCC" fee is not
24 required to be charged to the lessee, and the amount charged by Balboa is several times higher
25 than the amount (if any) charged by the state. Moreover, the "UCC" fee is redundant of a separate

1 "Documentation Fee" that is charged to the lessee and is more than sufficient to cover any cost
 2 of filing a U.C.C. statement. Balboa lumps this unauthorized and inflated "UCC" fee in with its
 3 first ACH withdrawals from its customers in an effort to disguise it (along with the interim period
 4 "rent" described above).

5 8. These practices by Balboa deviate from standard industry practice and change the
 6 economics of the lease from a competitive method of financing to one that is not. Not
 7 surprisingly, then, the Better Business Bureau ("BBB") and numerous small business websites
 8 are rife with complaints about Balboa's misconduct. For example, the BBB website shows this
 9 complaint from a small business owner dated August 9, 2017:

10 *They [Balboa] are charging us more than what is in the agreement for a*
 11 *lease we have with them. The contract specifies 16 total payments, but they*
 12 *took a full payment and called it a prorated payment retroactively and are*
saying prorated payments do not apply towards the 16 total payments.

13 And another small business owner complaint dated November 30, 2016 states:

14 *We used Balboa Capital for equipment purchase. The sale rep offered a 3-*
 15 *year 12 quarterly payment term loan. The contract was signed by me on*
 16 *9/30/2016 along with a deposit of \$2,930 (the 12th and final quarterly*
 17 *payment). Balboa funded the loan on 10/03/2016. On 10/14/2016, I*
 18 *received an invoice . . . for \$3,018 that consisted: Prorated Rent 10/03/16-*
1/1/17: \$2,930 and UCC: \$79. We were confused by the prorated "rent",
which should have been the 1st quarter payment. Balboa customer service
pointed out the agreement actually started on 01/01/17, and that the 1st
invoice was for "rent" until loan started.

19 And another dated October 27, 2017 states:

20 *We had to pay what Balboa calls "prefund rent" from 5/1/2017 until*
 21 *8/04/2017 which was \$12,737.92. 8/04/2017 was the date all equipment*
 22 *was paid and signed off on. Then we [nevertheless] had to pay what they*
 23 *call "prorated" rent of \$11,082.22 for another 3 months until 11/01/2017*
which they say is the base term and the start of the lease. At the base term
the first payment will be made that will actually count as 1 of the payments
on the lease.

24 [Note that the terms "lease" and "loan" are often used interchangeably by Balboa's agents and its
 25 customers are usually unaware of any legal distinction. The references in the above-quoted

1 complaints to "loan" agreements does not diminish their applicability to Balboa's behavior
2 complained of herein.]

3 9. This sample of complaints from Balboa customers shows that ILS's experience
4 (discussed further below) is not an anomaly but instead is the way Balboa regularly treats its
5 customers.

6 10. Plaintiff brings this class action to end Balboa's deceptive, unlawful, and unfair
7 practices, and to recover monies paid to Balboa that would not otherwise have been paid but for
8 Balboa's malfeasance.

9 PARTIES

10 11. Plaintiff ILS designs and manufactures steel fittings, conduits, and brackets for
11 industrial buildings. ILS is a Texas limited liability company with its principal place of business
12 at 1910 East Tom Green Street, Brenham, Texas 77833.

13 12. Defendant Balboa is a California corporation. Balboa's principal place of business
14 is 575 Anton Boulevard, 12th Floor, Costa Mesa, California 92626. Balboa also has regional
15 offices throughout the Western United States. Balboa currently claims on its website:

16 *Balboa Capital is one of the largest and most respected direct lenders in*
17 *the United States. Since opening our doors, we have provided more than*
\$5 billion in funding to businesses in hundreds of different industries.

18 Balboa can be served via its registered agent for service of process, Registered Agent Solutions,
19 Inc.

20 JURISDICTION AND VENUE

21 13. This class action is brought pursuant to California Code of Civil Procedure § 382
22 (and also California Business & Professions Code § 17203 as to claims under the UCL). The
23 damages and restitution sought by Plaintiff exceed the minimum jurisdictional amount of the
24 Superior Court and will be established according to proof at trial.

25 14. This Court has jurisdiction over this action pursuant to the California Constitution,

1 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
2 given by statute to other courts.

3 15. This Court has jurisdiction over Balboa because it is a California corporation with
4 its principal place of business in California. Jurisdiction is also proper pursuant to the forum
5 selection clause in Balboa's form agreements.

6 16. Venue is proper in this Court because Balboa's principal place of business is
7 located in this County and a substantial part of the wrongful conduct alleged herein took place in
8 this County. Venue is also proper pursuant to the forum selection clause in Balboa's form
9 agreements.

10 **FACTUAL ALLEGATIONS**

11 17. In June 2015, ILS wished to obtain a steel pipe polishing machine for its
12 manufacturing facilities. ILS's president regularly received unsolicited emails from Balboa
13 advertising Balboa's equipment financing services. ILS's president decided to call Balboa for
14 more details.

15 18. Balboa offered to fully finance the purchase of the \$38,000 steel pipe polishing
16 machine and to lease the machine to ILS for three years. The deal called for ILS to make twelve
17 (12) quarterly payments of \$3,539.58 plus taxes to Balboa and pay 1% in "Doc Fees."

18 19. The most important terms of the lease were the total number and amount of
19 quarterly payments. ILS entered the lease on June 9, 2015, because the sum of the quarterly
20 payments plus documentation fee, as expressly quoted by Balboa, was competitive. The lease is
21 attached as Exhibit A. ILS calculated the amount that it would be paying back to Balboa in excess
22 of the principal amount financed and determined that the cost of the lease was acceptable.

23 20. In practice, however, Balboa knew that once the lease was entered it would extract
24 additional monies from ILS, substantially changing the economics of the deal and making it
25 unacceptable.

1 **"Rent" Charges Not Applied To The Lease Payments**

2 21. The ILS/Balboa lease was entered on June 9, 2015. That same day Balboa filed a
3 financing statement in Texas. ILS received the equipment on or about August 10, 2015, which
4 Balboa calls the "Commencement Date." Balboa thereafter made an ACH withdrawal against
5 ILS's bank account in the amount of \$3,533.44 – very nearly the same amount as ILS's quarterly
6 lease payment amount. But, as ILS later learned, this amount was not applied to ILS's quarterly
7 lease payments, but instead was "rent" charged by Balboa for the artificial interim period between
8 what it calls the "Commencement Date" (in August 2015) and the date in November 2015 that
9 Balboa unilaterally and designated as the start of the "Base Term."

10 22. Balboa's practice is to intentionally and unfairly delay the start of the "Base Term"
11 until well after the actual commencement, contrary to accepted industry practice. Once the
12 equipment is paid for by the lessor/lender and received by the lessee, the standard industry
13 practice is to commence the lease and apply payments toward the required lease payments.
14 Balboa, however, delays the start of the "Base Term" beyond what it calls the "Commencement
15 Date" in bad faith so that it can charge interim period "rent" to unjustly pad its bottom line. This
16 adds significantly to the total cost of the lease and adds unjust and unearned profit for Balboa.
17 And even if Balboa ostensibly has discretion to choose the start of the "Base Term," Balboa
18 unfairly abuses that discretion and acts in bad faith to unjustly enrich itself.

19 23. Balboa fails to disclose to its prospective customers that its business practice is to
20 not start the "Base Term" until a period of time after the "Commencement Date" that nearly
21 approximates the lease's payment period. Most leases are paid quarterly, so to maximize its
22 interim period "rent" windfall, Balboa designates a "Base Term" start date that is nearly 90 days
23 from the Commencement Date (*i.e.*, nearly 90 days from the date the lessee receives and accepts
24 the equipment). Balboa undertakes equivalent and likewise unlawful behavior on its leases paid
25 monthly – for example delaying the start of the "Base Term" for 29 days. Balboa delays the start

1 of the "Base Term," then claims it is entitled to "rent" in the interim which it collects at or near
2 the "Commencement Date" (*i.e.*, it collects the interim period "rent" at the start of the interim
3 period). Further, Balboa causes the delays to be at or near 89 days (for quarterly payment leases)
4 or 29 days (for monthly payment leases) so that the interim period "rent" amount is almost the
5 same as the first quarterly/monthly payment that the customer is expecting will be withdrawn
6 from its account. Customers therefore do not catch on because they see an amount deducted from
7 their account that is roughly the same as the agreed-upon periodic lease payment. And if they do
8 notice and question the additional payment (as ILS eventually did), they later learn that Balboa
9 counts this first withdrawal not as one of the agreed-upon quarterly/monthly payments, but as
10 interim period "rent" that does not count toward the number of agreed-upon payments.

11 24. ILS contacted Balboa when it noticed the additional withdrawal. It took several
12 attempts to actually speak to a Balboa representative. This is a common problem for Balboa's
13 customers. Balboa intentionally makes it difficult for its customers to receive information
14 regarding excessive fees and ending leases. Balboa does this to make it more difficult for its
15 customers to identify Balboa's unauthorized rent charges and excessive fees.

16 25. ILS was eventually able to speak with a Balboa representative on the phone. By
17 then, ILS had paid Balboa an initial deposit equivalent to the last quarterly payment upon entering
18 the lease, plus Balboa had withdrawn nine (9) of the twelve (12) agreed-to quarterly payments
19 from ILS's bank account. However, the Balboa representative told ILS that it owed Balboa four
20 (4) more quarterly payments. When ILS replied that Balboa had already withdrawn nine (9)
21 quarterly payments, the Balboa representative stated that Balboa's accounting methods result in
22 ILS having made only eight (8) "actual payments," and that the extra payment was "per the terms
23 of the agreement."

24 26. There is no justification for Balboa's withdrawal of "rent" that essentially amounts
25 to an extra monthly/quarterly payment beyond the agreed-to monthly/quarterly payments.

1 Balboa should immediately return all unauthorized "rent" it collected from ILS and all other
2 customers.

3 **"UCC" Fees**

4 27. Balboa also lumps in junk fees with its initial "rent" withdrawals in an effort to
5 unjustly enrich itself and disguise the true nature of its withdrawals. ILS received an invoice from
6 Balboa showing that Balboa withdrew amounts including \$79.00 for what Balboa identified as
7 "UCC" and \$412.04 for a "Documentation" fee. Upon information and belief, Balboa charges
8 all of its customers a \$79.00 "UCC" fee. However, none of Balboa's form agreements state that
9 it will charge a \$79.00 "UCC" fee. Balboa intentionally labels the \$79.00 withdrawal as "UCC"
10 to lead its customers to believe that the fee is an actual Uniform Commercial Code fee. ILS
11 reasonably believed that the \$79.00 "UCC" fee Balboa withdrew from ILS's bank account was
12 to reimburse Balboa for a filing fee required by the Uniform Commercial Code.

13 28. However, there is no \$79.00 filing fee under the California or Texas Uniform
14 Commercial Code Fee Schedules. On information and belief, Balboa charges a \$79.00 "UCC"
15 fee to all of its customers, regardless of state. Sometimes Balboa files financing statements
16 pursuant to the Uniform Commercial Code, but the fee is not \$79.00. For example, Balboa's ILS
17 filing with the Texas Secretary of State plainly shows a \$5.00 Uniform Commercial Code filing
18 fee. The filing fee is also \$5.00 in California.

19 29. Balboa's addition of a \$79.00 "UCC" fee on top of the \$412.04 "Documentation"
20 fee that it charged ILS is a breach of contract, intentionally deceitful, and otherwise unlawful.
21 Balboa has already more than recouped any administrative costs, including any filing fees under
22 the Uniform Commercial Code, that it may have incurred through its collection of the
23 "Documentation" fee. In fact, there is no basis for Balboa to collect any "Documentation" fee if
24 it also collects fees as compensation for each individual administrative cost. Balboa should be
25 required to refund all amounts it has collected from ILS and the putative class for "UCC" fees.

CLASS ALLEGATIONS

30. Plaintiff brings this class action on behalf of itself and all persons or entities similarly situated. Plaintiff seeks to represent the following Classes:

All United States persons or entities that entered into a lease with Balboa and paid Balboa "rent" for the period of time between the "Commencement Date" of the lease and the start of the lease's "Base Term," in addition to the required periodic lease payments during the applicable statute of limitations periods prior to the filing of this action and running through the trial of this matter (the "Rent Class").

All United States persons or entities that entered into a lease with Balboa and paid Balboa a fee labeled "UCC" during the applicable statute of limitations periods prior to the filing of this action and running through the trial of this matter (the "Fee Class").

31. Plaintiff reserves the right to modify or amend the definitions of the proposed Classes, or add other proposed classes or subclasses, before the Court determines whether certification is appropriate and as the Court may otherwise allow.

32. Excluded from the Classes are Plaintiff's counsel; Balboa, its parents, subsidiaries, affiliates, officers, and directors; any entity in which Balboa has a controlling interest; all customers who make a timely election to be excluded; and all judges assigned to hear any aspect of this litigation, as well as their immediate family members and staff.

33. The proposed Classes meet all requirements for class certification. The members of the Classes are so numerous that joinder is impractical. The Classes consist of, at the very least, hundreds of members and the identity of those persons and entities is within the knowledge of Balboa and can be ascertained by resort to Balboa's records.

34. The claims of the representative Plaintiff are typical of the claims of the Classes. Plaintiff, like all other members, was victimized by Balboa's improper, unfair, illegal, and duplicitous practices. Moreover, Plaintiff, like all other members, has suffered pecuniary harm as a result of Balboa's misconduct. Furthermore, the factual basis of Balboa's misconduct is common to members of the Classes and represents a common thread of conduct resulting in injury

1 to all members of the Classes.

2 35. There are numerous questions of law and fact common to the Classes and those
3 common questions predominate over any questions affecting only individual Class members.

4 36. Among the questions of law and fact common to the Classes are whether Balboa:

5 a. Is entitled to collect interim period "rent" from its lease customers in addition to
6 the required quarterly/monthly lease payments;

7 b. Misleads customers by quoting a total number of payments that do not reflect the
8 true number and amount of payments that Balboa knows will result from its practices;

9 c. Knows the number of payments charged is not what customers agree to;

10 d. Intentionally delays the start of the "Base Term" to maximize its profits; and

11 e. Charges a "UCC" fee that is unauthorized or greater than allowed by the contract.

12 37. Other questions of law and fact common to the Classes include:

13 a. The proper method or methods by which to measure damages; and

14 b. The equitable relief to which the Classes are entitled.

15 38. Plaintiff's claims are typical of the claims of other members of the Classes in that
16 they arise out of the same wrongful policies and practices. Plaintiff has suffered the harm alleged
17 and has no interests antagonistic to the interests of any other member of the Classes.

18 39. Plaintiff is committed to the vigorous prosecution of this action and has retained
19 competent counsel experienced in the prosecution of class actions. Accordingly, Plaintiff is an
20 adequate representative and will fairly and adequately protect the interests of the Classes.

21 40. A class action is superior to other available methods for the fair and efficient
22 adjudication of this controversy. Since the amount of each individual Class member's claim is
23 small relative to the complexity of the litigation, and due to Balboa's financial resources, most
24 Class members could not afford to seek legal redress individually for the claims alleged herein.
25 Therefore, absent a class action, the Class members will be unable to obtain redress for their

1 losses and Balboa's misconduct will have occurred, and continue to occur, without remedy.

2 41. Even if Class members themselves could afford such individual litigation, the
3 court system could not. Individualized litigation would significantly increase the delay and
4 expense to all parties and to the Court. Individualized litigation would also create the potential
5 for inconsistent or contradictory rulings. By contrast, a class action presents far fewer
6 management difficulties, allows claims to be heard which might otherwise go unheard because of
7 the relative expense of bringing individual lawsuits, and provides the benefits of adjudication,
8 economies of scale, and comprehensive supervision by a single court.

9 42. The prosecution of separate actions by individual Class members would create a
10 risk of inconsistent and varying adjudications concerning the subject of this action, which could
11 establish incompatible standards for Balboa.

12 43. Balboa refuses to correct its conduct and such inaction is generally applicable to
13 the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief
14 with respect to the Classes as a whole. Specifically, Balboa continues to knowingly mislead and
15 overcharge the Classes. Class-wide declaratory and/or injunctive relief is appropriate to put an
16 end to these illicit practices.

17 **FIRST CAUSE OF ACTION**

18 **(Tortious Fraud and Intentional Deceit – Cal. Civ. Code § 1709, *et seq.*)**

19 **On Behalf of the Rent Class**

20 44. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
21 in this Cause of Action.

22 45. Balboa presented the terms of its lease agreement to Plaintiff and the Rent Class
23 members knowing the terms under each such agreement were tortiously and intentionally
24 deceitful. Neither the agreements nor any of Balboa's form documents informed Plaintiff or the
25 Rent Class members that Balboa's practice is to delay the start of the "Base Term," and to

1 withdraw interim period "rent" in an amount almost equaling the agreed-to periodic payments, in
2 addition to the number of periodic payments that had been expressly agreed to. This is because
3 Balboa intentionally concealed the true nature of its practices.

4 46. Balboa intentionally did not disclose to Plaintiff and the Rent Class members its
5 intention to withdraw such substantial amounts of monies from Plaintiff and the Rent Class
6 members that would not count toward the total number of agreed-upon payments. Because
7 Balboa failed to disclose the existence of these additional charges, the rent schedules presented
8 by Balboa to Plaintiff and the Rent Class members were false and intentionally deceptive.
9 Balboa's fraud and deceit unilaterally changed the terms of the lease to require payments greater
10 than those agreed to.

11 47. Balboa knowingly concealed its intention to charge these additional amounts in
12 order to induce Plaintiff and the Rent Class members to enter equipment lease agreements.

13 48. Plaintiff and the Rent Class members justifiably relied on Balboa's representations
14 regarding the rent amounts made in the lease when entering into the equipment lease agreements.
15 Plaintiff and the Rent Class members relied on Balboa's representation as to the total cost of each
16 lease, the payment terms, and the payment schedules. Had Plaintiff and the Rent Class members
17 known that the terms and payment schedules presented by Balboa were inaccurate, Plaintiff and
18 the Rent Class members would not have entered into Balboa's form agreements.

19 49. Any position by Balboa that the extra "rent" charges unilaterally determined and
20 imposed by Balboa were permissible under the provisions in Balboa's form documents is without
21 merit, and such an alleged interpretation is both unwarranted and tortiously and intentionally
22 deceitful.

23 50. Balboa's misrepresentations have caused Plaintiff damages in excess of \$3,000.00.
24 Damages suffered by the other members of the Rent Class will be proven using Balboa's books
25 and records and other Court-approved methods. Based upon the relevant class period and the size

1 of Balboa's leasing business, it is likely to be at least millions of dollars.

2 **On Behalf of the Fee Class**

3 51. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
4 in this Cause of Action.

5 52. Balboa presented the terms of its lease agreement to Plaintiff and the Fee Class
6 members knowing the terms under each such agreement were tortiously and intentionally
7 deceitful. Neither the agreements nor any of Balboa's form documents authorized Balboa to
8 inflate "UCC" fee charges. This is because Balboa intentionally concealed the true nature of these
9 charges.

10 53. Balboa intentionally did not disclose to Plaintiff and the Fee Class members its
11 intention to charge inflated "UCC" fees. Balboa also intentionally identified charges not required
12 by the Uniform Commercial Code as "UCC" fees to disguise the true nature of such charges.
13 Because Balboa failed to disclose the true nature of these charges, and intentionally misidentified
14 the charges as required by the Uniform Commercial Code, the agreements and subsequent
15 invoices presented by Balboa to Plaintiff and the Fee Class members were false. Balboa's fraud
16 unilaterally changed the terms of the lease to require payments greater than those agreed to.

17 54. Balboa knowingly concealed its intentions to charge these additional amounts for
18 its pure profit in order to induce Plaintiff and the Fee Class members to enter into equipment lease
19 agreements.

20 55. Plaintiff and the Fee Class members justifiably relied on Balboa's representations
21 when entering into the equipment lease agreements. Plaintiff and the Fee Class members relied
22 on Balboa's representation as to the total cost of each lease. Had Plaintiff and the Fee Class
23 members known that the terms presented by Balboa for each lease were not accurate and that
24 Balboa would charge more money than it disclosed, Plaintiff and the Fee Class members would
25 not have entered into Balboa's form agreements.

56. Any position by Balboa that the "UCC" fee charges were permissible under the fee provisions in Balboa's form documents is without merit, and such an alleged interpretation is both unwarranted and tortiously and intentionally deceitful.

57. Balboa's misrepresentations have caused Plaintiff damages in excess of \$3,000.00. Damages suffered by the other members of the Fee Class will be proven using Balboa's books and records and other Court-approved methods. Based upon the relevant class period and the size of Balboa's leasing business, it is likely to be at least hundreds of thousands of dollars.

SECOND CAUSE OF ACTION

(Actual Fraud – Cal. Civ. Code § 1572, *et seq.*)

On Behalf of the Rent Class

58. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below) in this Cause of Action.

59. Balboa presented the terms of its agreements to Plaintiff and the Rent Class members knowing the terms under each such agreement were fraudulent. Balboa failed to disclose to Plaintiff and the Rent Class members that Balboa will not start the "Base Term" for a lease agreement for nearly 90 days after the lease's "Commencement Date." Balboa always elects to delay the start of the "Base Term" for nearly 90 days – or 30 days in the case of leases paid monthly – to maximize Balboa's profit as described above. Neither the agreement nor any of Balboa's form documents authorized Balboa to fraudulently delay the start of the "Base Term" to charge additional "rent." This is because Balboa intentionally concealed the true nature of these charges as described above. Balboa also intentionally and misleadingly lumps the charges into initial withdrawals to disguise its fraudulent conduct.

60. Balboa intentionally did not disclose to Plaintiff and the Rent Class members its intention to delay the start of the "Base Term." Because Balboa failed to disclose its intention, the payment schedules presented by Balboa to Plaintiff and the Rent Class members were false.

1 Balboa intentionally delays the start of the "Base Term" of a lease solely to maximize its profit.
2 Balboa's fraud unilaterally changed the terms of the lease to require payments greater than those
3 agreed to.

4 61. Balboa knowingly concealed its intention to delay the start of the "Base Term" of
5 the leases in order to induce Plaintiff and the Rent Class members to enter its equipment lease
6 agreements. Balboa does not disclose that it will delay commencing a lease for approximately
7 three months (or one month for leases requiring monthly payments) despite the fact that it does
8 so as part of its regular business practices.

9 62. As alleged above, Plaintiff and the Rent Class members justifiably relied on
10 Balboa's representations regarding the payment amounts disclosed in the lease when entering into
11 the equipment lease agreements and believed Balboa's initial withdrawals constituted an agreed-
12 to payment. However, Balboa never intended to honor the number of payments disclosed in its
13 agreements with Plaintiff and the Rent Class members and knowingly intended to delay the start
14 of the "Base Term" as alleged above. Had Plaintiff and the Rent Class members known that the
15 terms presented by Balboa for each lease were not accurate and that Balboa would charge more
16 money than it disclosed based on its delayed start of the "Base Term" in order to collect extra
17 "rent," Plaintiff and the Rent Class members would not have entered into Balboa's form
18 agreements.

19 63. Any position by Balboa that the extra "rent" charges unilaterally determined and
20 imposed by Balboa were permissible under the provisions in Balboa's form documents is without
21 merit, and such an alleged interpretation is both unwarranted and fraudulent.

22 64. Balboa's fraudulent scheme has caused Plaintiff damages in excess of \$3,000.
23 Damages suffered by the other Rent Class members will be proven using Balboa's books and
24 records and other Court-approved methods. Based upon the relevant class period and the size of
25 Balboa's leasing business, it is likely to be at least millions of dollars.

On Behalf of the Fee Class

65. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below) in this Cause of Action.

66. Balboa presented the terms of its agreements and labeling of charges on invoices to Plaintiff and the Fee Class members knowing the terms under each such agreement and invoice were fraudulent. Balboa's initial invoices prominently display a charge for "UCC." However, this "UCC" fee is in fact not related to any mandatory fee that Balboa pays for any Uniform Commercial Code statement and is inflated and withdrawn to maximize Balboa's profit as described above. Although Balboa does pay to file Uniform Commercial Code financing statements, the fees are minimal (such as \$5.00 in Texas) and are more than covered by Balboa's documentation fee. Neither the agreement nor any of Balboa's form documents authorized Balboa to charge fees solely for its profit. Balboa intentionally concealed the true nature of these charges. Balboa also intentionally and misleading lumps the charges into initial withdrawals to disguise its fraudulent conduct.

67. Balboa intentionally did not disclose to Plaintiff and the Fee Class members its intent to charge a \$79.00 "UCC" fee upon entering the lease. Because Balboa failed to disclose the existence of these charges and because these charges are at best inflated amounts based on what Balboa actually pays for to file any Uniform Commercial Code statement, the invoices presented by Balboa to Plaintiff and the Fee Class members were false. Balboa's fraud unilaterally changed the terms of the lease to require payments greater than those agreed to.

68. Upon information and belief, Balboa knowingly concealed its intention to charge these additional fees in order to induce Plaintiff and the Fee Class members to enter equipment lease agreements. For example, Balboa does not disclose that it will charge a \$79.00 "UCC" fee despite the fact that it knows its practice is to charge its customers a \$79.00 "UCC" fee.

69. As alleged above, Plaintiff and the Fee Class members justifiably relied on

1 Balboa's representations regarding the fee amounts disclosed in the lease when entering into the
 2 equipment lease agreements. Plaintiff and the Fee Class members also relied on Balboa's
 3 representation in invoices that the \$79.00 "UCC" fee is charged to reimburse Balboa for costs it
 4 incurs pursuant to the Uniform Commercial Code. Had Plaintiff and the Fee Class members
 5 known that the payment terms and schedule presented by Balboa for each lease were not accurate
 6 and that Balboa would charge more money than it disclosed, Plaintiff and the Fee Class members
 7 would not have entered into Balboa's form agreements.

8 70. Any position by Balboa that the \$79.00 "UCC" fees were permissible under the
 9 provisions in Balboa's form documents is without merit; and such an alleged interpretation is both
 10 unwarranted and fraudulent.

11 71. Balboa's fraudulent scheme has caused Plaintiffs damages in excess of \$3,000.00.
 12 Damages suffered by the other Fee Class will be proven using Balboa's books and records and
 13 other Court-approved methods. Based upon the relevant class period and size of Balboa's leasing
 14 business, it is likely to be at least hundreds of thousands of dollars.

15 **THIRD CAUSE OF ACTION**

16 **(Negligent Misrepresentation – Cal. Civ. Code § 1710(2), *et seq.*)**

17 **On Behalf of the Rent Class**

18 72. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
 19 in this Cause of Action.

20 73. Balboa presented to Plaintiff and the Rent Class members agreements based upon
 21 the equipment cost Balboa would be advancing, the dollar amount of each periodic payment, and
 22 the number of periodic payments due. Neither the agreements nor any of Balboa's form
 23 documents authorized Balboa to withdraw "rent" based on delays by Balboa in starting the Base
 24 Term in amounts almost equaling the agreed-to periodic payments, in addition to the number of
 25 periodic payments that had been expressly agreed to.

1 74. Balboa failed to disclose its intention to charge payments resembling agreed-to
2 periodic payments that Balboa did not consider part of the agreed-upon total number of periodic
3 payments contained in the lease. Because Balboa failed to disclose the nature of these charges,
4 the payment terms presented by Balboa to Plaintiff and the Rent Class members were false.
5 Balboa's actions or inaction unilaterally changed the terms of the lease to require payments
6 greater than those agreed to.

7 75. Upon information and belief, Balboa misrepresented its intention to charge these
8 additional payments in order to induce Plaintiff and the Rent Class members to enter equipment
9 lease agreements.

10 76. Plaintiff and the Rent Class members relied on Balboa's representations regarding
11 the rental payment amounts made in the lease when entering into the equipment lease agreements.
12 Had Plaintiff and the Rent Class members known that the terms presented by Balboa for each
13 lease were not accurate and that Balboa would charge more money than it disclosed, Plaintiff and
14 the Rent Class members would not have entered into Balboa's form agreements.

15 77. Any position by Balboa that the extra "rent" charges unilaterally determined and
16 imposed by Balboa were permissible under the provisions in Balboa's form documents is without
17 merit; and such an alleged interpretation is both unwarranted and a misrepresentation.

18 78. Balboa's misrepresentations have caused ILS damages in excess of \$3,000.00.
19 Damages suffered by the other Rent Class members will be proven using Balboa's books and
20 records and other Court-approved methods. Based upon the relevant class period and size of
21 Balboa's leasing business, it is likely to be at least millions of dollars.

22 **On Behalf of the Fee Class**

23 79. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
24 in this Cause of Action.

25 80. Neither Balboa's form agreements nor Balboa's form documents authorized

1 Balboa to charge an inflated \$79.00 "UCC" fee, nor disclosed that Balboa fully intended to
2 withdraw that amount from Plaintiff's bank account upon entering the lease.

3 81. Balboa failed to disclose its intention to charge fees greater than those expressly
4 stated in its agreements. Because Balboa failed to disclose the existence of these fees, the terms
5 presented by Balboa to Plaintiff and the Fee Class members were false. Balboa's actions or
6 inaction unilaterally changed the terms of the lease to require payments greater than those agreed
7 to.

8 82. Upon information and belief, Balboa misrepresented its intention to charge these
9 additional fees in order to induce Plaintiff and the Fee Class members into entering equipment
10 lease agreements.

11 83. Plaintiff and the Fee Class members relied on Balboa's representations regarding
12 the fees disclosed when entering into the equipment lease agreements. Had Plaintiff and the Fee
13 Class members known that the terms presented by Balboa for each lease were not accurate and
14 that Balboa would charge more fees than it disclosed, Plaintiff and the Fee Class members would
15 not have entered into Balboa's form agreements.

16 84. Any position by Balboa that the extra fees were permissible under the provisions
17 in Balboa's form documents is without merit; and such an alleged interpretation is both
18 unwarranted and a misrepresentation.

19 85. Balboa's misrepresentations have caused ILS damages in excess of \$3,000.00.
20 Damages suffered by the other Fee Class members will be proven using Balboa's books and
21 records and other Court-approved methods. Based upon the relevant class period and size of
22 Balboa's leasing business, it is likely to be at least hundreds of thousands of dollars.

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1 **FOURTH CAUSE OF ACTION**

2 (Violations of California Business and Professions Code § 17200, *et seq.*)

3 **On Behalf of the Rent Class**

4 86. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
5 in this Cause of Action.

6 87. Pursuant to Balboa's form agreements, California law governs the parties'
7 relationship.

8 88. California's Unfair Competition Law ("UCL") Business and Professions Code §
9 17200 provides that unfair competition shall mean and include "all unlawful, unfair or fraudulent
10 business practices." Balboa's business acts and practices are unlawful, unfair, and fraudulent and
11 violate the UCL because Balboa's acts impair fair and honest competition. By misrepresenting
12 the terms of its leases, Balboa gained an unfair advantage in the marketplace by disguising the
13 true costs of its leases and misleading customers, including Plaintiff and the Rent Class members.

14 89. Balboa's business practices are unfair under the UCL because it misrepresents the
15 number of payments it intends to charge, withdraws monies in amounts that disguise the excessive
16 charges, and delays the start of the "Base Term" of a lease through its own actions or inaction or
17 as an abuse of discretion in order to maximize its own profit.

18 90. Balboa's business practices are also unlawful because they violate statutes
19 (including Cal. Civ. Code §§ 1572 *et seq.*, 1709 *et seq.*, 3294, and/or 3336) and also constitute
20 breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, unjust
21 enrichment, and conversion.

22 91. Balboa's business practices are also fraudulent for the reasons set forth above.

23 92. Balboa's conduct is immoral, unethical, oppressive, unscrupulous, and
24 substantially injurious to Plaintiff and the Rent Class members.

25 93. Any position by Balboa that the extra "rent" charges unilaterally determined and

1 imposed by Balboa were permissible under the provisions in Balboa's form documents is without
2 merit; and such an alleged interpretation is both unwarranted and a breach of the UCL.

3 94. As a result, Plaintiff and the Rent Class members are entitled to an order, pursuant
4 to California Business and Professions Code § 17203, enjoining such future conduct, and such
5 other orders and judgments that may be necessary to restore to the Rent Class members all ill-
6 gotten monies obtained from them by Balboa as a result of the above-described conduct.

7 **On Behalf of the Fee Class**

8 95. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
9 in this Cause of Action.

10 96. Balboa's business acts and practices are unlawful, unfair, and fraudulent and
11 violate the UCL because Balboa's acts impair fair and honest competition. By misrepresenting
12 the fees it will charge, Balboa gained an unfair advantage in the marketplace by disguising the
13 true costs of its leases and misleading customers, including Plaintiff and the Fee Class members.

14 97. Balboa's business practices are unfair under the UCL because it has
15 misrepresented or not disclosed the fees it intends to charge, it charges fees greater than allowed
16 under its contracts with customers, and it charges "UCC" fees that are neither required by the
17 Uniform Commercial Code nor commensurate with the fees (if any) charged by states for filing
18 a UCC statement.

19 98. Balboa's business practices are also unlawful because they violate statutes
20 (including Cal. Civ. Code §§ 1572 *et seq.*, 1709 *et seq.*, 3294, and/or 3336) and also constitute
21 breach of contract, breach of the implied covenant of good faith and fair dealing, unjust
22 enrichment, and conversion.

23 99. Balboa's business practices are also fraudulent for the reasons set forth above.

24 100. Balboa's conduct is immoral, unethical, oppressive, unscrupulous, and
25 substantially injurious to Plaintiff and the Fee Class members

101. Any position by Balboa that the extra fees were permissible under the provisions in Balboa's form documents is without merit; and such an alleged interpretation is both unwarranted and a breach of the UCL.

102. As a result, Plaintiff and the Fee Class members are entitled to an order, pursuant to California Business and Professions Code § 17203, enjoining such future conduct, and such other orders and judgments that may be necessary to restore to the Fee Class members all ill-gotten monies obtained from them by Balboa as a result of the above-described conduct.

FIFTH CAUSE OF ACTION

(Breach of Contract)

On Behalf of the Rent Class

103. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below) in this Cause of Action.

104. Plaintiff and the Rent Class members entered into agreements with Balboa. These agreements contained payment terms requiring a set number and amount of payments.

105. Plaintiff and the Rent Class members have performed, or substantially performed, their obligations under the respective agreements.

106. Balboa breached its contracts with Plaintiff and the Rent Class members by charging sums greater than allowed under the express terms of the contracts. For example, Balboa charged Plaintiff several thousand dollars in "rent" for the interim period between when the lease was entered and Plaintiff received the equipment and the date Balboa unilaterally chose as the beginning of the "Base Term."

107. Any position by Balboa that the extra "rent" charges unilaterally determined and imposed by Balboa were permissible under the provisions in Balboa's form documents is without merit; and such an alleged interpretation is both unwarranted and a breach of contract.

1 108. Balboa's breach has caused Plaintiff damages in excess of \$3,000. Damages
2 suffered by the other Rent Class members will be proven using Balboa's books and records and
3 other Court-approved methods. Based upon the relevant class period and size of Balboa's leasing
4 business, it is likely to be at least millions of dollars.

5 **On Behalf of the Fee Class**

6 109. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
7 in this Cause of Action.

8 110. Plaintiff and the Fee Class members entered into agreements with Balboa. These
9 agreements do not allow Balboa to charge any undisclosed fees.

10 111. Plaintiff and the Fee Class members have performed, or substantially performed,
11 their obligations under the respective agreements.

12 112. Balboa breached its contracts with Plaintiff and the Fee Class members by
13 charging a "UCC" fee not allowed by the agreement.

14 113. Any position by Balboa that the extra fees were permissible under the provisions
15 in Balboa's form documents is without merit; and such an alleged interpretation is both
16 unwarranted and a breach of contract.

17 114. Balboa's breach has caused Plaintiff damages of at least \$79.00. Damages
18 suffered by the other Fee Class members will be proven using Balboa's books and records and
19 other Court-approved methods. Based upon the relevant class period and size of Balboa's leasing
20 business, it is likely to be at hundreds of thousands of dollars.

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SIXTH CAUSE OF ACTION

(Breach of the Covenant of Good Faith and Fair Dealing)

On Behalf of the Rent Class

115. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below) in this Cause of Action.

116. Under California law, every contract includes a covenant of good faith and fair dealing. Broadly stated, that covenant requires that neither party do anything to deprive the other of the benefits of the agreement. A party violates the covenant if it subjectively lacks belief in the validity of its act or if its conduct is objectively unreasonable.

117. Breach of a specific provision of the contract is not a prerequisite. Were it otherwise, the covenant would have no practical meaning, for any breach thereof would necessarily involve breach of some other term of the contract. Nor is it necessary that the party's conduct be dishonest. Dishonesty presupposes subjective immorality; the covenant of good faith can be breached for objectively unreasonable conduct, regardless of the actor's motive.

118. Balboa has breached the covenant of good faith and fair dealing through its practices as alleged herein, including but not limited to, its unilaterally delaying the start of the "Base Term" and the resulting practice of charging "rent" payments disguised as regular payments that result in a higher number and total amount of payments than quoted and agreed upon.

119. Balboa's delay in the start of the Base Term to increase the number and amount of payments it deducts from customers' bank accounts is not a reasonable use of any discretion it is afforded under its form agreement.

120. Any position by Balboa that the extra "rent" charges unilaterally determined and imposed by Balboa were permissible under the provisions in Balboa's form documents is without

1 merit; and such an alleged interpretation is both unwarranted and in violation of the covenant of
2 good faith and fair dealing.

3 121. Plaintiff and the Rent Class members sustained damages as a result of Balboa's
4 breaches of the covenant of good faith and fair dealing. Moreover, because Balboa's actions were
5 oppressive and malicious (including as reflected in Balboa's admission that it charges "rent" that
6 does not count as an "actual payment," but rather as the result of a scheme not disclosed to
7 customers), Plaintiff and the Rent Class members are entitled to an award of punitive damages.

8 **On Behalf of the Fee Class**

9 122. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
10 in this Cause of Action.

11 123. Balboa has breached the covenant of good faith and fair dealing through its
12 practices as alleged herein, including, but not limited to, its practice of charging fees greater than
13 those allowed by its form agreement. By doing so, Balboa collects additional profit to which it
14 is not entitled and for which it provides no value or service. Balboa's improper withdrawal of
15 fees serves no purpose but to increase its own profit.

16 124. Balboa's addition of fees subsequent to entering contracts with its customers is not
17 a reasonable use of any discretion it is afforded under its form agreement.

18 125. Any position by Balboa that the extra fees were permissible under the provisions
19 in Balboa's form documents is without merit; and such an alleged interpretation is both
20 unwarranted and in violation of the covenant of good faith and fair dealing.

21 126. Plaintiff and the Fee Class members sustained damages as a result of Balboa's
22 breaches of the covenant of good faith and fair dealing. Moreover, because Balboa's actions were
23 oppressive and malicious (including Balboa's labeling of fees as "UCC" despite not being
24 required Uniform Commercial Code fees, but rather as the result of an undisclosed scheme to
25

1 inflate any such fees and thus designed to dupe customers), Plaintiff and the Fee Class members
2 are entitled to an award of punitive damages.

3 **SIXTH CAUSE OF ACTION**

4 **(Unjust Enrichment)**

5 **On Behalf of the Rent Class**

6 127. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
7 in this Cause of Action.

8 128. As a consequence of Balboa's conduct as described above, including its practice
9 of unilaterally delaying the start of the "Base Term" well beyond the "Commencement Date" of
10 the lease, Balboa has been unjustly enriched, and continues to be so, in obtaining interim period
11 "rent" exceeding the periodic lease payments required by the lease agreement, and should be
12 ordered to restore such additional "rent" to Plaintiff and the Rent Class members.

13 129. Any position by Balboa that the extra "rent" charges were permissible under
14 provisions in Balboa's form documents is without merit; and such an alleged interpretation is both
15 unwarranted and unjustly enriches Balboa.

16 **On Behalf of the Fee Class**

17 130. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
18 in this Cause of Action.

19 131. As a consequence of Balboa's conduct as described above, including its practice
20 of collecting from lessees a "UCC" fee not required by the Uniform Commercial Code nor related
21 to the true fee (if any) charged by any state with respect to the filing of any UCC statement,
22 Balboa has been unjustly enriched, and continues to be so, and should be ordered to restore such
23 "UCC" fees to Plaintiff and the Fee Class members.

24 ////

25 ////

1 132. Any position by Balboa that the extra fees were permissible under the provisions
 2 in Balboa's form documents is without merit; and such an alleged interpretation is both
 3 unwarranted and unjustly enriches Balboa.

4 **EIGHTH CAUSE OF ACTION**

5 **(Conversion – Cal. Civ. Code §§ 3336 and 3294)**

6 **On Behalf of the Rent Class**

7 133. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
 8 in this Cause of Action.

9 134. As a consequence of Balboa's conduct as described above, Balboa withdrew
 10 interim period "rent" from the bank accounts of Plaintiff and the Rent Class members and
 11 converted the funds to its own use and benefit.

12 135. Any position by Balboa that the extra "rent" charges unilaterally determined and
 13 imposed by Balboa were permissible under the provisions in Balboa's form documents is without
 14 merit; and such an alleged interpretation is both unwarranted and results in conversion.

15 136. Plaintiff and the Rent Class members sustained economic damages, including
 16 prejudgment interest, as a result of Balboa's conversion. Moreover, because Balboa's actions
 17 were oppressive and malicious (including as reflected in Balboa's admission that it charges "rent"
 18 that does not count as an "actual payment," but rather as the result of a scheme not disclosed to
 19 customers), Plaintiff and the Rent Class members are entitled to an award of punitive damages.

20 **On Behalf of the Fee Class**

21 137. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
 22 in this Cause of Action.

23 138. As a consequence of Balboa's conduct as described above, Balboa withdrew
 24 "UCC" fees from the bank accounts of Plaintiff and the Fee Class members without authorization
 25 and converted them to its own use and benefit.

1 139. Any position by Balboa that the extra fees were permissible under the provisions
2 in Balboa's form documents is without merit; and such an alleged interpretation is both
3 unwarranted and results in conversion.

4 140. Plaintiff and the Fee Class members sustained economic damages, including
5 prejudgment interest, as a result of Balboa's conversion. Moreover, because Balboa's actions
6 were oppressive and malicious (including Balboa's labeling of inflated fees as "UCC," as part of
7 an undisclosed scheme designed to dupe customers into paying inflated fees), Plaintiff and the
8 Fee Class members are entitled to an award of punitive damages.

9 **PRAYER**

10 Wherefore, Plaintiff, on behalf of itself and the other members of the Classes, requests
11 that the Court award relief against Balboa including as follows:

12 a. An order certifying the Rent Class and the Fee Class and designating Plaintiff ILS
13 PRODUCTS, LLC d/b/a INDUSTRIAL LIGHTING SYSTEMS as the Class Representative and
14 the undersigned counsel as Class Counsel;

15 b. Awarding Plaintiff and the other members of the proposed Classes damages and
16 punitive damages;

17 c. Awarding restitution of all amounts that Balboa improperly obtained from Plaintiff
18 and the other members of the Classes as a result of its unlawful and unfair business practices;

19 d. Awarding declaratory and injunctive relief as permitted by law or equity,
20 including: enjoining Balboa from continuing the unlawful practices as set forth herein, and
21 directing Balboa to identify, with Court supervision, all victims of the misconduct and to
22 compensate the victims with the requisite funds;

23 e. Awarding Plaintiff and the other members of the Classes pre-judgment and post-
24 judgment interest;
25

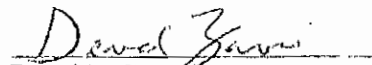
1 f. Awarding attorneys' fees and costs as authorized by statute including Code of
2 Civil Procedure § 1021.5; and

3 g. For such other and further relief as the Court may deem necessary or appropriate.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff, on behalf of itself and the other members of the Classes, hereby demands
6 a trial by jury of all claims so triable.

7 DATED: February 11, 2019

8 
9 Deval R. Zaveri

10 Deval R. Zaveri (CA 213501)
11 James A. Tabb (CA 208188)
12 **ZAVERI TABB, APC**
13 402 W. Broadway, Suite 1950
14 San Diego, California 92101
15 Tel: (619) 831-6987
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17 dev@zaveritabb.com
18 jimmy@zaveritabb.com

19 Matthew C. Klase (CA 221276)
20 **WEBB, KLAS & LEMOND, LLC**
21 1900 The Exchange, S.E., Suite 480
22 Atlanta, Georgia 30339
23 Tel: (770) 444-0998
24 Fax: (770) 217-9950
25 Matt@WebbLLC.com

EXHIBIT “A”

BALBOA

Lease Agreement (Page 1 of 2)

Lease Number: 219589-000

Lessee Information

Business Name: ILS PRODUCTS, LLC DBA Industrial Lighting Systems		Business Address: 17315 HOUSTON DR Cypress, TX 77433	Equipment Location Address: (if different than billing address of Lessee)
Business Phone: [REDACTED]	Business Fax ID#: [REDACTED]		

Lease Terms and Conditions

Quarterly Rent (plus applicable taxes): \$3,539.58	Base Term in QUARTERS: 12	Required Deposit: \$3,539.58	Doc Fees: 1%
Security Deposit: 1 payment(s)			

Equipment Supplier Information / Equipment Description: SEE EXHIBIT "A"

The undersigned agrees that this lease reflects the agreement of the parties, including all terms of the second page of this agreement. Balboa Capital Corporation is not affiliated with the supplier of any of the Equipment and is not responsible for any promises made by any supplier, vendor, or other person who is not an officer of Balboa Capital Corporation.

Signature: [Signature]

Name: Andrew Grant

Title: Managing Member

Date: 06/09/15

ACKNOWLEDGED BY: BALBOA CAPITAL CORPORATION

By: [Signature]

Vice President

Date: [REDACTED]

Lease Guaranty

For purposes of this Guaranty, Lease shall mean the Lease set forth above and on the second page of the Lease Agreement. I/M/WE shall mean the person making the guaranty and if married, his or her marital community. YOU/YOUR shall mean the Lessor. I agree that I have an interest in the Lessee, economic or otherwise, and that you would not enter into this Lease without this guaranty. I unconditionally guaranty that Lessee will fully and promptly pay all its Obligations under the Lease when they are due and will perform all its other Obligations under the Lease even if you modify or renew the Lease. The Lease guaranty will be jointly and severally responsible. You do not have to notify me if the Lessee is in default under the Lease. You may obtain any information from credit reporting agencies you deem necessary to enforce this guaranty. If the Lessee defaults, I will immediately pay all Obligations due under the Lease. I agree that I will not be released or discharged if you: (i) fail to perfect a security interest in or any property which secures the Obligations (Collateral); (ii) fail to protect the Collateral; or (iii) abandon or release the Collateral. I agree that you do not have to proceed first against the Lessee or any Collateral. I hereby waive notice of acceptance of this guaranty and of all other notices or demands of any kind which I may be entitled to. I will reimburse you for all expenses you incur in enforcing your rights against the Lessee or me, including, without limitation, attorneys' fees and costs. I acknowledge that I have read and understand the Lease and this Guaranty. This is an irrevocable, continuing guaranty and binds my heirs, administrators and representatives. I CONSENT TO THE JURISDICTION OF THE COURTS OF ORANGE COUNTY, CALIFORNIA AND/OR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION, AT YOUR SOLE OPTION, FOR THE DETERMINATION OF ALL DISPUTES RELATED TO THE LEASE OR THIS GUARANTY. I agree that this guaranty shall be governed by the laws of the State of California. YOU WAIVE TRIAL BY JURY.

Signature: [Signature]

Name: Andrew Grant

Home Phone: [REDACTED]

Date: 06/09/15

1. LEASE. You agree to lease from us and we agree to lease to you, the equipment listed above or on any schedule to this Lease (Equipment). You unconditionally promise to pay us the sum of all the rental and other payments indicated above or on any schedule (Rent). You authorize us to insert in this lease any serial numbers and other identification data about the Equipment, as well as any other omitted factual matters. All Rent and other payments under this Lease or any other agreement with us (collectively Obligation or Obligations) are payable in U.S. dollars and may be adjusted upward or downward no more than ten percent (10%) to reflect actual usage. We may from time to time, in our sole discretion, accept a photocopy or electronically transmitted facsimile copy of this Lease, any Schedules to this Lease, or other Lease documents as the binding and effective record of such agreement(s) whether or not an ink signed counterpart thereof is also received by us from you, provided, however, that no such agreement(s) shall be binding upon us until and unless they are signed by us in any signature line where we are to sign as indicated on the Lease, Schedule or other agreement. Any such photocopy or electronically transmitted facsimile received by us shall, when executed by us, constitute an original document for the purpose of establishing the provision, thereof and shall be legally admissible under the best or original evidence rule and binding on the parties. **2. TERM OF LEASE.** This Lease shall become effective upon acceptance by us by signing and dating this Lease. The base term ("Base Term") of such Lease shall commence at the Lessee's discretion to begin on any day occurring in the quarter following the Commencement Date and terminate upon the expiration of the number of quarters specified above. A month portion of the agreed-upon average of the Rent based on a thirty charge of one-twelfth (1/12) of the Rent from the date the Equipment has been delivered and accepted by you ("Commencement Date") to beginning of the Base Term shall be payable at the Commencement Date. Following the Commencement Date, Rent and other Obligation payments are due on the same day of each quarter as the first Rent payment, payable to a location to be designated in writing. **YOUR OBLIGATION TO PAY RENT TO US IS UNCONDITIONAL AND NOT SUBJECT TO ANY REDUCTION, SET-OFF, DEFENSE, OR COUNTERCLAIM AND MAY NOT BE CANCELLED FOR ANY REASON WHATSOEVER.** "Your offer is an irrevocable offer to enter this Lease. In the event that you sign this Lease, but the Lease is not commenced, the advance payments, documentation fee and security deposit may be retained by us to compensate for our documentation, processing, and other expenses." We have the right, but not the obligation, to electronically withdraw funds from your bank account to pay for any unpaid Rent, taxes, fees, charges and assessments. **3. PAYMENT OF LEASE OBLIGATIONS:** Payment of the Lease Obligations shall be made by electronically withdrawing funds from the bank account on which your deposit check was drawn. You authorize us to debit from this account on which your deposit check was drawn, on or after the 1st day of each month, for scheduled Lease Payments or other amounts due and owing at the time under the Lease. You acknowledge that, if we assign the Lease to a third party, the assignee is authorized to debit the account on which your deposit check was drawn. If you would prefer to authorize us to debit another account, fill in the blanks provided below along with a copy of a voided check from the specified account.

Account Number: [REDACTED]

ABA/Routing Number: [REDACTED]

Financial Institution Name: [REDACTED]

Initials: [Signature]

4. NO WARRANTIES; NO AGENCY; WE ARE LEASING THE EQUIPMENT TO YOU AS-IS. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR ORDINARY USE. You understand and agree that we are independent from the vendor, manufacturer and/or supplier (collectively "Supplier(s)") of the Equipment and that neither the Supplier nor any other person is our agent, nor are they authorized to waive or change any term or condition of this Lease. You agree that no representation, guaranty or warranty by the Supplier or other person is binding on us, so long as you are not in default under any terms of this Lease, we transfer to you any warranties made by us, as the owner of the Equipment, by the Supplier. You agree that any breach by the Supplier

will not relieve or excuse your obligation to us. Regardless of cause you will not assert any claim whatsoever against us for any direct, consequential, special or indirect damages. If you have entered into a maintenance agreement for the Equipment and the cost of the maintenance agreement is included in the Rent, you acknowledge that we are not responsible for any service, repairs, or maintenance of the Equipment, and that we are not a party to the maintenance agreement. If you have a dispute regarding maintenance or service then you will nevertheless continue to pay all Obligations as they become due. **5. UCC-ARTICLE 2A** (whenever the term Article 2A is used herein, it is understood to include equivalent provisions of California Commercial Code Division 10 when California law is applicable; You agree that this Lease is a "Finance Lease" under Article 2A of the Uniform Commercial Code as adopted

by the State of California. You acknowledge that we do not select, manufacture or supply the Equipment, but as your request we have purchased the Equipment for lease to you, and this lease is solely on your own judgment, you have selected the Supplier and the Equipment that you are leasing from us. You agree that you have approved any purchase or supply contract with the Supplier before signing this Lease. You may have rights under the supply or purchase contract, and you may consult the Supplier for a description of those rights or any warranties. To the extent permitted by applicable law, YOU WAIVE ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON YOU UNDER UCC §§ 2A-303 AND 2A-508 THROUGH 2A-522, INCLUDING WITHOUT LIMITATION, THE RIGHT TO REPUDIATE THE LEASE AND REJECT THE EQUIPMENT; REVOKE ACCEPTANCE OF THE LEASE; OR RECOVER DAMAGES FROM US FOR ANY BREACH OF WARRANTY.

6. DELIVERY OF EQUIPMENT: You request that we arrange delivery to you at your expense. We may at our discretion confirm by telephone that you have accepted the Equipment and this telephone verification of your acceptance of the Equipment shall have the same effect as a signed Delivery and Acceptance Certificate.

7. ASSIGNMENT: You may not sell, transfer, assign or sublease the Equipment without our prior written approval. We may sell, or assign or transfer this Lease without notifying you, and you agree that if we do, the new Lessor will have the same rights and benefits that we now have, and will not have to perform any of our obligations. You agree that the rights of the new Lessor will not be subject to any claims, defenses or setoffs that you may have against us.

8. OWNERSHIP, RIGHTS AND QUIET ENJOYMENT: You agree that we are the owner of and have title to the Equipment or in the case of software, the assignment or the right to the assignment of the software and/or its license(s). You agree, at your expense, to protect and defend our title and other rights to the Equipment. You shall have the right to quiet use and enjoyment of the Equipment for the term of this Lease, provided you are not in default. We also have the right, at reasonable times, to inspect the Equipment at your expense.

9. CARE, USE AND LOCATION; LOSS OF EQUIPMENT: You are responsible for installing and keeping the Equipment in good working order and repair. You will keep and use the Equipment only at your address shown on the Lease, only for business or commercial purposes and in compliance with all applicable laws, ordinances or regulations. You will not make any alterations to the Equipment without our prior written consent, nor will you permanently attach the Equipment to any real estate. You are responsible for protecting the Equipment from damage, and from any other kind of loss while you have the Equipment or while it is being delivered to you. In the event the Equipment is lost, stolen or damaged then you shall have the option within one week of such event to: (a) repair or replace the Equipment or (b) pay to us the unpaid balance of the remaining Rent under this Lease and our residual interest in the Equipment, discounted to present value at the rate of five percent (5%) plus any other obligations.

10. TAXES AND FEES: You agree to pay when due all taxes (including personal property tax, fines and penalties) and fees relating to this Agreement or the Equipment. If we pay any of the above for you, you agree to reimburse us and to pay us a processing fee for each payment we make on your behalf. In addition, you also agree to pay us any filing fees prescribed by the Uniform Commercial Code or other law and reimburse us for all costs and expenses involved in documenting and servicing this transaction. You further agree to pay us an origination fee on or before the date the first payment is due and a termination fee. You also acknowledge that in addition to the lease payments, we may assess and you may be required to pay additional taxes and/or fees including an invoice fee. Such fees may not only cover our costs they may also include a profit.

11. INDEMNITY: We are not responsible for any injuries or losses to you or any other person or property caused by the installation, operation, maintenance or use of the Equipment. You agree to reimburse us for and defend us against any claims for such losses or injuries, including, without limitation, those arising out of the negligence, tort or strict liability claims. This indemnity shall continue even after the term of this Lease has expired.

12. INSURANCE: Lessee agrees to maintain, at Lessee's expense, "Special Form" property insurance protecting the Equipment for its full replacement value, naming Lessor as a loss payee on a "Lender's Loss Payable" endorsement; and public liability insurance, in amounts acceptable to Lessor, naming Lessor as an additional insured (together "Required Insurance"). Lessee must provide Lessor satisfactory written evidence of Required Insurance within thirty (30) days of the commencement date of this Lease or at any subsequent written request. If Lessee does not do so, Lessor may obtain insurance from an insurer of Lessor's choosing in such forms and amounts as Lessor selects ("Lessor Insurance"). Lessor Insurance covers the Equipment and Lessor only and not Lessee. Lessee shall pay Lessor periodic charges for Lessor Insurance ("Insurance Charges") that include: a premium that may be higher than if Lessee maintained Required Insurance separately; a finance charge of up to the implicit rate of the Lease on any premium advances made by Lessor to Lessee's agents; and billing and processing fees, each of which may generate a profit to Lessor and Lessor's agents. If Lessee fails to pay billed Insurance Charges within 30 days of their due date, Lessor may pay them by applying funds paid under the Lease or debiting Lessee's account under any previously authorized automatic payment. Lessee agrees to arbitrate any dispute with Lessor or Lessor's agents regarding Lease Insurance or Insurance Charges under the rules of the American Arbitration Association in Los Angeles, California; provided however, such agreement does not authorize a class action arbitration. At Lessor's election, in lieu of obtaining or continuing Lease Insurance, Lessor may require Lessee to pay a monthly additional fee up to 2% of the Equipment Cost. This fee is not calculated with reference to additional risk and constitutes additional profit for Lessor, but represents the basis on which Lessor is willing to forego from exercising remedies and continue this Agreement without Required Insurance. Lessee will receive no insurance coverage and will not be released from any obligations. Lessor is not selling insurance, Lessor will ensure charging the additional fee or billing for Lease Insurance 30 days after Lessee provides satisfactory proof of Required Insurance and compliance with this section.

13. DEFAULT AND REMEDIES: If you (A) do not pay any Obligation when due; (B) break any of your agreements, representations or covenants under this Lease, including without limitation closing of the account from which Lease Payments are drawn or any other interference with electronic funds withdrawal as provided in Section 3; (C) any guarantor enters (voluntarily or involuntarily) into a bankruptcy proceeding; (D) are a corporation and more than 30% of the issued and outstanding voting capital stock is transferred to or acquired by any person or entity that is not an owner as of the date of this Lease; (E) you change your name, state of incorporation, chief executive officer and/or place of residence without providing us with 30 days prior written notice of such change, you will be in default. In the event of a default by you, we can require that you return the Equipment to us and pay to us the remaining balance of all of the Rent due under this Lease, discounted to present value at five percent (5%), together with any other amounts due under this Lease. We can also require that you pay to us our residual interest in the Equipment. Interest shall accrue on all obligations due to us from the start of default until paid at the rate of eighteen percent (18%) per annum, but only to the extent permitted by

law. We shall also be entitled to recover from you all damages caused by that default. We can also use any of the remedies available to us under the UCC or any other law, including repossession of the Equipment or other Collateral. You agree to reimburse us for all charges, costs, expenses and attorney's fees that we have to pay to enforce this Lease or collect the Obligations under this Lease and in any lawsuit or other legal proceeding when we bring to default. You also agree that in the event of a dispute related to or arising out of this Lease, the Lessor in such dispute shall be entitled to recover its reasonable attorney's fees and costs. If we have to take possession of the Equipment, you agree to pay the cost of repossession, storage, shipping, repacking and selling the Equipment. You agree that we are entitled to abandon the Equipment if we reasonably believe it to be in our best interests.

14. OTHER RIGHTS: This is of the essence in this Lease. You agree that any delay or failure by us to enforce our rights under this Lease or any other agreements shall not prevent us from enforcing any rights at a later time. Both parties intend this Lease to be a valid and legal document, and agree that if any part is determined to be unenforceable, all other parts will remain in full force and effect. You also grant us a security interest in the equipment and any proceeds of, accessions and attachments to the Equipment as security for your Obligations. You agree that we may file financing statements or other related filings in our name or in the name of any agent designated by us. You hereby authorize us, or our assigns, to file a financing statement without your signature, in form or content and from time to time as we deem proper, listing you as Lessor or Lender.

15. LESSOR REPRESENTATIONS AND WARRANTIES: You hereby represent and warrant that at the time you sign this Lease you are and shall remain a business entity duly organized, validly existing, and in good standing under the laws of the state of organization, that your exact legal name, state of incorporation, location of your chief executive office and/or your place of residence as applicable, have been correctly identified to us. You further represent and warrant that at the time you sign this Lease the person executing this Lease or any related document on behalf of you or any related guarantor shall be authorized to take such action and bind you and the guarantor to the Lease, and that the execution, delivery and performance of this Lease is duly authorized by your organizational documents and, if necessary, resolutions of your directors and/or shareholders, partners, or managers and/or members.

16. RETURN OF EQUIPMENT; RENEWAL: If no default exists or has occurred under this Lease, you may, at the end of the original or any renewal term, purchase all (but not less than all) of the Equipment. At least 180 days but no more than 270 days prior to the end of the original term, you must give us written notice, via certified mail, that you will purchase the Equipment for its fair market value, which we shall determine in our reasonable judgment, or that you will return the equipment to us. If you do not give us such written notice or if you do not purchase or deliver the equipment in accordance with the terms and conditions of this Lease, then this Lease shall automatically renew for a 12 month term, and thereafter renew for successive 6 month terms until you deliver the Equipment to us. During such renewals, the Rent shall be the highest monthly rate set forth in this Lease. We may cancel the renewal by sending you written notice 90 days prior to such renewal term. This end of term option may become null and void at our discretion if any Event of Default occurs or continues at any time during the original term of the Lease. Upon payment of end of term option price plus any applicable taxes, and if no default exists, we shall transfer our interest in the Equipment to you "AS-IS, WHERE IS" without any representation or warranty whatsoever and this Lease will terminate. Provided you have given the required notice, and are not then in default, you shall return the Equipment, freight and insurance prepaid to us in good repair, condition, and working order, ordinary wear and tear excepted, in a manner and to a location designated by us. Until the end of term option price is actually paid, you will be responsible to continue to pay rent at the monthly rate set forth in this Lease.

17. LATE CHARGE; FEES: If any part of any Obligation is not made by you within three (3) days of its due date, you agree to pay us the greater of eighteen percent (18%) of each such late payment or \$25 (to the extent permitted by law). If two payments are not made by you within three (3) days of their due dates, you agree to increase your payment by eighteen percent (18%). Any deposit will not bear interest and may be commingled by us with other funds. We may apply the deposit to any of your obligations or to any loss or damage that we suffer as a result of your default. If so applied, you will, on demand, restore the deposit to its full amount. On your payment of all obligations, provided that you are not otherwise in default, we will return the balance of the deposit to you or apply it to your final non payment as you direct.

18. ENTIRE AGREEMENT; CHANGES: This Lease contains the entire agreement between you and us, and it may not be altered, amended, modified, terminated or otherwise changed except in writing and signed by both you and us. A limiting endorsement on a check or other form or payment will not be effective to modify the obligations or any of the other terms and conditions of this Lease, and we may apply any payment received without being bound by such limiting endorsements.

19. COMPLIANCE; NOTICES: In the event you fail to comply with any terms of this Lease, we can, but we do not have to, take any action necessary to effect your compliance. If we are required to pay any amount to obtain your compliance, the amount we pay plus all of our expenses in causing your compliance, shall become additional Obligations. This Lease is for the benefit of and is binding upon you and your personal representatives, successors and assigns.

20. CHOICE OF LAW; JURISDICTION: YOU AND WE AGREE THAT THIS LEASE SHALL BE BINDING WHEN ACCEPTED IN WRITING BY US AT OUR OFFICES AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA. YOU AND WE EACH CONSENT TO THE JURISDICTION OF THE COURTS OF ORANGE COUNTY, CALIFORNIA AND/OR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION FOR THE DETERMINATION OF ALL DISPUTES ARISING UNDER THIS LEASE. YOU WAIVE TRIAL BY JURY IN ANY ACTION BETWEEN US.

21. REPRESENTATIONS AND COVENANT OF LESSOR: You represent that all financial and other information furnished to us was, at the time of delivery, true and correct. During the term of this Lease, you shall provide us with such interim or annual financial statements and filed tax returns as we request.

22. COUNTERPARTS: If this document was sent electronically, you hereby warrant that this document has not been altered in any way. Any alteration or revision to any part of this or any attached documents will make all such alterations or revisions non-binding and void. Only one counterpart of the Lease and of each Schedule or Addenda shall bear our ink signed signature and shall be marked "Original". To the extent that any Lease, Schedule or Addenda constitute control paper for that term is defined by the Uniform Commercial Code, a security interest may only be created in the Lease, Schedule, or Addenda that bears our ink signed signature and is marked "Original".

Lease Number: 219589-000

Initials

S-12A

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

BALBOA CAPITAL CORPORATION, a California Corporation

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ILS PRODUCTS, LLC d/b/a INDUSTRIAL LIGHTING SYSTEMS, a
Texas Limited Liability Company

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

02/11/2019 at 01:44:04 PM

Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

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

The name and address of the court is:

(El nombre y dirección de la corte es): CIVIL COMPLEX CENTER

751 W. Santa Ana Blvd.

Santa Ana, CA 92701

CASE NUMBER:

(Número del Caso):

30-2019-01050756-CU-BT-CXC

Judge Randall J. Sherman

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

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

Deval R. Zaveri, 402 W. Broadway, Suite 1950, San Diego, CA 92101; (619) 831-6988

DATE: 02/11/2019

(Fecha)

Clerk, by

(Secretario)

DAVID H. YAMASAKI, Clerk of the Court

, Deputy

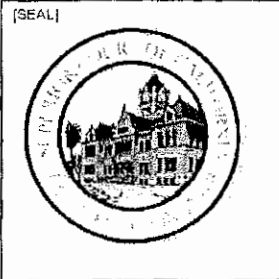
(Adjunto)

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

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

Sarah Loose

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): Balboa Capital Corporation, a California Corporation

under: <input checked="" type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☒ by personal delivery on (date):

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Deval R. Zaveri (CA 213501), James A. Tabb (CA 208188) ZAVERI TABB, APC 402 W. Broadway, Suite 1950 San Diego, CA 92101 TELEPHONE NO: 619.831.6988 FAX NO: 619.239.7800 ATTORNEY FOR (Name): Plaintiff ILS Products, LLC		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of Orange 02/11/2019 at 01:44:04 PM Clerk of the Superior Court By Sarah Loose, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 W. Santa Ana Blvd. MAILING ADDRESS: 751 W. Santa Ana Blvd. CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center Civil Complex Center		
CASE NAME: ILS Products, LLC v. Balboa Capital Corporation		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
		CASE NUMBER: 30-2019-01050756-CU-BT-CXC JUDGE: Judge Randall J. Sherman DEPT: Cx105

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

1. Check one box below for the case type that best describes this case:
- | | | |
|---|--|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input checked="" type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|
2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 8: Fraud, Neg. Misrep., UCL, Breach Contract & CGFFD, U/E, Conversion
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 02/11/2019

Deval R. Zaveri

(TYPE OR PRINT NAME)

Deval Zaveri

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

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

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

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

CASE TYPES AND EXAMPLES

Auto Tort

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

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

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

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

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

Real Property

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

Unlawful Detainer

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

Judicial Review

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

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

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

Enforcement of Judgment

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

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

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



REGISTERED AGENT
SOLUTIONS INC

Registered Agent Solutions, Inc.

Corporate Mailing Address

1701 Directors Blvd.

Suite 300

Austin, TX 78744

Phone: (888) 705-RASi (7274)

SERVICE OF PROCESS RECEIPT

2/14/2019

Jacquie Emert

Balboa Capital Corporation

575 Anton Boulevard

12th Floor

Costa Mesa, CA 92626 USA

NOTICE OF CONFIDENTIALITY

This notice and the information it contains are intended to be a confidential communication only to the individual and/or entity to whom it is addressed. If you have received this notice in error, immediately call our SOP Department at (888) 705-7274.

RE: Balboa Capital Corporation

This receipt is to inform you that Registered Agent Solutions, Inc. has received a Service of Process on behalf of the above-referenced entity as your registered agent and is hereby forwarding the attached document(s) for your immediate review. A summary of the service is shown below; however, it is important that you review the attached document(s) in their entirety for complete and detailed information.

For additional information and instruction, contact the document issuer: ZAVERI TABB, APC

SERVICE INFORMATION

Service Date: 2/14/2019
Service Time: 11:45 AM PST
Service Method: Process Server

RASi REFERENCE INFORMATION

Service No.: 0099377
RASi Office: California
Rec. Int. Id.: JAK

CASE INFORMATION

Case Number: 30-2019-01050756-CU-BT-CXK
File Date: 02/11/2019
Jurisdiction: STATE OF CALIFORNIA, SUPERIOR COURT OF ORANGE COUNTY
Case Title: ILS PRODUCTS, LLC VS. BALBOA CAPITAL CORPORATION

ANSWER / APPEARANCE INFORMATION

30 days
(Be sure to review the document(s) for any required response dates)

AGENCY / PLAINTIFF INFORMATION

Firm/Issuing Agent: ZAVERI TABB, APC
Attorney/Contact: DEVAL ZAVERI
Location: California
Telephone No.: 619-831-6987

DOCUMENT(S) RECEIVED & ATTACHED

Complaint
Summons
Demand for Jury Trial
Exhibits included

ADDITIONAL NOTES

Questions or Comments... Should you have any questions or need additional assistance, please contact the SOP Department at (888) 705-7274.

You have been notified of this Service of Process by Insta-SOP Delivery, a secure email transmission. The transmitted documents have also been uploaded to your Compliance account. RASi offers additional methods of notification including Telephone Notification and FedEx Delivery. If you would like to update your account's notification preferences, please log into your Compliance account at www.rasi.com.

Thank you for your continued business!

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name & Address): Telephone No.: _____ Fax No. (Optional): _____ E-Mail Address (Optional): _____ Bar No.: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE JUSTICE CENTER: <input type="checkbox"/> Central - 700 Civic Center Dr. West, Santa Ana, CA 92701-4045 <input type="checkbox"/> Civil Complex Center - 751 W. Santa Ana Blvd., Santa Ana, CA 92701-4512 <input type="checkbox"/> Harbor - Newport Beach Facility - 4601 Jamboree Rd., Newport Beach, CA 92660-2595 <input type="checkbox"/> North - 1275 N. Berkeley Ave., P.O. Box 5000, Fullerton, CA 92838-0500	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION	CASE NUMBER:

Plaintiff(s)/Petitioner(s), _____

and defendant(s)/respondent(s), _____

agree to the following dispute resolution process:

- ☐ Mediation
- ☐ Arbitration (must specify code)
- ☐ Under section 1141.11 of the Code of Civil Procedure
- ☐ Under section 1280 of the Code of Civil Procedure
- ☐ Neutral Case Evaluation

The ADR process must be completed no later than 90 days after the date of this Stipulation or the date the case was referred, whichever is sooner.

- ☐ I have an *Order on Court Fee Waiver* (FW-003) on file, and the selected ADR Neutral(s) are eligible to provide pro bono services.
- ☐ The ADR Neutral Selection and Party List is attached to this Stipulation.

We understand that there may be a charge for services provided by neutrals. We understand that participating in an ADR process does not extend the time periods specified in California Rules of Court rule 3.720 et seq.

Date: _____ (SIGNATURE OF PLAINTIFF OR ATTORNEY) _____ (SIGNATURE OF PLAINTIFF OR ATTORNEY)

Date: _____ (SIGNATURE OF DEFENDANT OR ATTORNEY) _____ (SIGNATURE OF DEFENDANT OR ATTORNEY)

ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

**ALTERNATIVE DISPUTE RESOLUTION (ADR)
INFORMATION PACKAGE**

NOTICE TO PLAINTIFF(S) AND/OR CROSS-COMPLAINANT(S):

Rule 3.221(c) of the California Rules of Court requires you to serve a copy of the ADR Information Package along with the complaint and/or cross-complaint.

California Rules of Court – Rule 3.221
Information about Alternative Dispute Resolution (ADR)

(a) Each court shall make available to the plaintiff, at the time of filing of the complaint, an ADR Information Package that includes, at a minimum, all of the following:

- (1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes.
 - (2) Information about the ADR programs available in that court, including citations to any applicable local court rules and directions for contacting any court staff responsible for providing parties with assistance regarding ADR.
 - (3) Information about the availability of local dispute resolution programs funded under the Dispute Resolutions Program Act (DRPA), in counties that are participating in the DRPA. This information may take the form of a list of the applicable programs or directions for contacting the county's DRPA coordinator.
 - (4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.
- (b) A court may make the ADR Information Package available on its Web site as long as paper copies are also made available in the clerk's office.
- (c) The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action along with the cross-complaint.

SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE

ADR Information

Introduction.

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts and others offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. ADR is usually less formal, less expensive, and less time-consuming than a trial. ADR can also give people more opportunity to determine when and how their dispute will be resolved.

BENEFITS OF ADR.

Using ADR may have a variety of benefits, depending on the type of ADR process used and the circumstances of the particular case. Some potential benefits of ADR are summarized below.

Save Time. A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.

Save Money. When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, experts' fees, and other litigation expenses.

Increase Control Over the Process and the Outcome. In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.

Preserve Relationships. ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.

Increase Satisfaction. In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

Improve Attorney-Client Relationships. Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

DISADVANTAGES OF ADR.

ADR may not be suitable for every dispute.

Loss of protections. If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.

Less discovery. There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.

Additional costs. The neutral may charge a fee for his or her services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Effect of delays if the dispute is not resolved. Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

TYPES OF ADR IN CIVIL CASES.

The most commonly used ADR processes are arbitration, mediation, neutral evaluation and settlement conferences.

Arbitration. In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision. *Nonbinding* arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate. Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate. If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Mediation. In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate. Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate. Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Neutral Evaluation. In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is

often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate. Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate. Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences. Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

ADDITIONAL INFORMATION.

In addition to mediation, arbitration, neutral evaluation, and settlement conferences, there are other types of ADR, including conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

To locate a dispute resolution program or neutral in your community:

- Contact the California Department of Consumer Affairs, Consumer Information Center, toll free, 1-800-852-5210
- Contact the Orange County Bar Association at (949) 440-6700
- Look in the telephone directories under "Arbitrators" or "Mediators"

Free mediation services are provided under the Orange County Dispute Resolution Program Act (DRPA). For information regarding DRPA, contact:

- Community Service Programs, Inc. (949) 250-4058
- Orange County Human Relations (714) 480-6572

For information on the Superior Court of California, County of Orange court ordered arbitration program, refer to Local Rule 360.

The Orange County Superior Court offers programs for Civil Mediation and Early Neutral Evaluation (ENE). For the Civil Mediation program, mediators on the Court's panel have agreed to accept a fee of \$300 for up to the first two hours of a mediation session. For the ENE program, members of the Court's panel have agreed to accept a fee of \$300 for up to three hours of an ENE session. Additional information on the Orange County Superior Court Civil Mediation and Early Neutral Evaluation (ENE) programs is available on the Court's website at www.occourts.org.

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Attorneys for Plaintiff and the Proposed Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

ILS PRODUCTS, LLC d/b/a INDUSTRIAL
LIGHTING SYSTEMS, a Texas Limited
Liability Company, on behalf of itself and all
others similarly situated,

Plaintiff,

vs.

BALBOA CAPITAL CORPORATION, a
California Corporation,

Defendant.

Case No. 30-2019-01050756-CU-BT-CXC

CLASS ACTION COMPLAINT

- (1) Tortious Fraud and Intentional Deceit
- (2) Actual Fraud
- (3) Negligent Misrepresentation
- (4) Violation of Unfair Competition Law
- (5) Breach of Contract
- (6) Breach of Good Faith and Fair Dealing
- (7) Unjust Enrichment
- (8) Conversion

JURY TRIAL DEMANDED

Assigned Judge Randall J. Sherman

Dept: CX105

Plaintiff ILS PRODUCTS, LLC d/b/a INDUSTRIAL LIGHTING SYSTEMS ("ILS" or
"Plaintiff"), on behalf of itself and all those similarly situated, alleges the following based on
personal knowledge as to all allegations regarding Plaintiff and on information and belief as to
all other allegations:

NATURE OF THE CASE

1
2 1. This is a civil action seeking monetary damages, restitution, and injunctive relief
3 from and against Defendant BALBOA CAPITAL CORPORATION (“Defendant” or “Balboa”)
4 arising from Balboa’s misconduct in connection with the leasing of commercial equipment.

5 2. Small and mid-size businesses often lack the capital resources needed to fund
6 major business expenses, so they rely on banks or financiers such as Balboa to help cover the
7 upfront cost of equipment through loans or equipment leases.

8 3. A typical Balboa equipment lease involves three parties: the lessor (Balboa), the
9 supplier of the equipment, and the lessee (*e.g.*, ILS). Balboa pays the supplier, takes ownership
10 of the equipment, then “leases” the equipment to the lessee for a fixed term requiring monthly or
11 quarterly payments on the lease.

12 4. Balboa frequently sends marketing materials to small and mid-sized businesses
13 with a focus on industries where expensive equipment is often utilized, such as the agriculture,
14 medical, and manufacturing industries. For example, Balboa’s agents can often be found at
15 medical supply conventions pushing Balboa agreements upon medical professionals seeking
16 equipment for their small and mid-sized practices.

17 5. In order to decide whether to lease equipment through Balboa, or take out a loan
18 to purchase the equipment, the prospective lessee/buyer must know upfront the true terms of the
19 lease/loan, and most importantly, the total out-of-pocket cost. When a business owner expresses
20 interest in an equipment lease, Balboa prepares a quote and relays it to the business’s point of
21 contact. Balboa quotes seemingly reasonable payment terms that state a monthly or quarterly
22 dollar payment amount and the number of months or quarters that the payment amount must be
23 made. These terms are stated in a manner made to appear competitive with the many other
24 financing options available. Businesses expect Balboa to honor the deal as discussed and quoted.
25 However, Balboa subsequently extracts extra “rent” beyond the required periodic lease payments,

1 and also charges an inflated "UCC" fee, in order to gain additional revenue and, thus, significantly
2 and unjustly increase the actual cost to the lessee.

3 6. Shortly after the lease is entered, and for no additional consideration or concession
4 whatsoever, Balboa withdraws what it labels as "rent" from its lessee's bank account. Balboa
5 does not count this "rent" toward the required periodic lease payments. Rather, this "rent" covers
6 a manufactured and artificial interim period of time between (a) the date the lessee receives and
7 accepts the equipment (what Balboa refers to as the lease "Commencement Date"), and (b) a later
8 date that Balboa chooses at its own discretion when it will start applying payments toward the
9 agreed-upon monthly or quarterly lease payments (what Balboa refers to as the start of the lease's
10 "Base Term"). Balboa charges the lessee "rent" for this artificial interim period at or around the
11 time of the "Commencement Date," and even automatically deducts the interim period "rent"
12 through Automated Clearing House ("ACH") withdrawals from the lessee's bank account
13 (Balboa has businesses agree to ACH withdrawals upon entering its leases). Moreover, the length
14 of the interim period "rent" typically aligns with the payment interval (e.g., an interim period of
15 approximately 89 days "rent" is assessed for leases with quarterly payment terms), so that the
16 interim period "rent" withdrawal looks like an expected lease payment withdrawal. However, the
17 interim period "rent" is not applied toward the required lease payments. As a result, the lessee
18 unknowingly makes what amounts to an extra payment on the lease based solely on Balboa's
19 unilateral decision to start the "Base Term" later than the "Commencement Date."

20 7. In addition to charging interim period "rent," Balboa also charges a fee that it calls
21 a "UCC" fee, giving the false impression that the fee is required by the Uniform Commercial
22 Code ("U.C.C."), or at least bears some relation to the administrative fee charged by some states
23 with respect to filing a U.C.C. statement for leased equipment. But, in fact, the "UCC" fee is not
24 required to be charged to the lessee, and the amount charged by Balboa is several times higher
25 than the amount (if any) charged by the state. Moreover, the "UCC" fee is redundant of a separate

1 "Documentation Fee" that is charged to the lessee and is more than sufficient to cover any cost
 2 of filing a U.C.C. statement. Balboa lumps this unauthorized and inflated "UCC" fee in with its
 3 first ACH withdrawals from its customers in an effort to disguise it (along with the interim period
 4 "rent" described above).

5 8. These practices by Balboa deviate from standard industry practice and change the
 6 economics of the lease from a competitive method of financing to one that is not. Not
 7 surprisingly, then, the Better Business Bureau ("BBB") and numerous small business websites
 8 are rife with complaints about Balboa's misconduct. For example, the BBB website shows this
 9 complaint from a small business owner dated August 9, 2017:

10 *They [Balboa] are charging us more than what is in the agreement for a*
 11 *lease we have with them. The contract specifies 16 total payments, but they*
 12 *took a full payment and called it a prorated payment retroactively and are*
saying prorated payments do not apply towards the 16 total payments.

13 And another small business owner complaint dated November 30, 2016 states:

14 *We used Balboa Capital for equipment purchase. The sale rep offered a 3-*
 15 *year 12 quarterly payment term loan. The contract was signed by me on*
 16 *9/30/2016 along with a deposit of \$2,930 (the 12th and final quarterly*
 17 *payment). Balboa funded the loan on 10/03/2016. On 10/14/2016, I*
 18 *received an invoice . . . for \$3,018 that consisted: Prorated Rent 10/03/16-*
1/1/17: \$2,930 and UCC: \$79. We were confused by the prorated "rent",
which should have been the 1st quarter payment. Balboa customer service
pointed out the agreement actually started on 01/01/17, and that the 1st
invoice was for "rent" until loan started.

19 And another dated October 27, 2017 states:

20 *We had to pay what Balboa calls "prefund rent" from 5/1/2017 until*
 21 *8/04/2017 which was \$12,737.92. 8/04/2017 was the date all equipment*
 22 *was paid and signed off on. Then we [nevertheless] had to pay what they*
 23 *call "prorated" rent of \$11,082.22 for another 3 months until 11/01/2017*
which they say is the base term and the start of the lease. At the base term
the first payment will be made that will actually count as 1 of the payments
on the lease.

24 [Note that the terms "lease" and "loan" are often used interchangeably by Balboa's agents and its
 25 customers are usually unaware of any legal distinction. The references in the above-quoted

1 complaints to "loan" agreements does not diminish their applicability to Balboa's behavior
2 complained of herein.]

3 9. This sample of complaints from Balboa customers shows that ILS's experience
4 (discussed further below) is not an anomaly but instead is the way Balboa regularly treats its
5 customers.

6 10. Plaintiff brings this class action to end Balboa's deceptive, unlawful, and unfair
7 practices, and to recover monies paid to Balboa that would not otherwise have been paid but for
8 Balboa's malfeasance.

9 PARTIES

10 11. Plaintiff ILS designs and manufactures steel fittings, conduits, and brackets for
11 industrial buildings. ILS is a Texas limited liability company with its principal place of business
12 at 1910 East Tom Green Street, Brenham, Texas 77833.

13 12. Defendant Balboa is a California corporation. Balboa's principal place of business
14 is 575 Anton Boulevard, 12th Floor, Costa Mesa, California 92626. Balboa also has regional
15 offices throughout the Western United States. Balboa currently claims on its website:

16 *Balboa Capital is one of the largest and most respected direct lenders in*
17 *the United States. Since opening our doors, we have provided more than*
\$5 billion in funding to businesses in hundreds of different industries.

18 Balboa can be served via its registered agent for service of process, Registered Agent Solutions,
19 Inc.

20 JURISDICTION AND VENUE

21 13. This class action is brought pursuant to California Code of Civil Procedure § 382
22 (and also California Business & Professions Code § 17203 as to claims under the UCL). The
23 damages and restitution sought by Plaintiff exceed the minimum jurisdictional amount of the
24 Superior Court and will be established according to proof at trial.

25 14. This Court has jurisdiction over this action pursuant to the California Constitution,

1 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
2 given by statute to other courts.

3 15. This Court has jurisdiction over Balboa because it is a California corporation with
4 its principal place of business in California. Jurisdiction is also proper pursuant to the forum
5 selection clause in Balboa's form agreements.

6 16. Venue is proper in this Court because Balboa's principal place of business is
7 located in this County and a substantial part of the wrongful conduct alleged herein took place in
8 this County. Venue is also proper pursuant to the forum selection clause in Balboa's form
9 agreements.

10 **FACTUAL ALLEGATIONS**

11 17. In June 2015, ILS wished to obtain a steel pipe polishing machine for its
12 manufacturing facilities. ILS's president regularly received unsolicited emails from Balboa
13 advertising Balboa's equipment financing services. ILS's president decided to call Balboa for
14 more details.

15 18. Balboa offered to fully finance the purchase of the \$38,000 steel pipe polishing
16 machine and to lease the machine to ILS for three years. The deal called for ILS to make twelve
17 (12) quarterly payments of \$3,539.58 plus taxes to Balboa and pay 1% in "Doc Fees."

18 19. The most important terms of the lease were the total number and amount of
19 quarterly payments. ILS entered the lease on June 9, 2015, because the sum of the quarterly
20 payments plus documentation fee, as expressly quoted by Balboa, was competitive. The lease is
21 attached as Exhibit A. ILS calculated the amount that it would be paying back to Balboa in excess
22 of the principal amount financed and determined that the cost of the lease was acceptable.

23 20. In practice, however, Balboa knew that once the lease was entered it would extract
24 additional monies from ILS, substantially changing the economics of the deal and making it
25 unacceptable.

1 **"Rent" Charges Not Applied To The Lease Payments**

2 21. The ILS/Balboa lease was entered on June 9, 2015. That same day Balboa filed a
3 financing statement in Texas. ILS received the equipment on or about August 10, 2015, which
4 Balboa calls the "Commencement Date." Balboa thereafter made an ACH withdrawal against
5 ILS's bank account in the amount of \$3,533.44 – very nearly the same amount as ILS's quarterly
6 lease payment amount. But, as ILS later learned, this amount was not applied to ILS's quarterly
7 lease payments, but instead was "rent" charged by Balboa for the artificial interim period between
8 what it calls the "Commencement Date" (in August 2015) and the date in November 2015 that
9 Balboa unilaterally and designated as the start of the "Base Term."

10 22. Balboa's practice is to intentionally and unfairly delay the start of the "Base Term"
11 until well after the actual commencement, contrary to accepted industry practice. Once the
12 equipment is paid for by the lessor/lender and received by the lessee, the standard industry
13 practice is to commence the lease and apply payments toward the required lease payments.
14 Balboa, however, delays the start of the "Base Term" beyond what it calls the "Commencement
15 Date" in bad faith so that it can charge interim period "rent" to unjustly pad its bottom line. This
16 adds significantly to the total cost of the lease and adds unjust and unearned profit for Balboa.
17 And even if Balboa ostensibly has discretion to choose the start of the "Base Term," Balboa
18 unfairly abuses that discretion and acts in bad faith to unjustly enrich itself.

19 23. Balboa fails to disclose to its prospective customers that its business practice is to
20 not start the "Base Term" until a period of time after the "Commencement Date" that nearly
21 approximates the lease's payment period. Most leases are paid quarterly, so to maximize its
22 interim period "rent" windfall, Balboa designates a "Base Term" start date that is nearly 90 days
23 from the Commencement Date (*i.e.*, nearly 90 days from the date the lessee receives and accepts
24 the equipment). Balboa undertakes equivalent and likewise unlawful behavior on its leases paid
25 monthly – for example delaying the start of the "Base Term" for 29 days. Balboa delays the start

1 of the "Base Term," then claims it is entitled to "rent" in the interim which it collects at or near
2 the "Commencement Date" (*i.e.*, it collects the interim period "rent" at the start of the interim
3 period). Further, Balboa causes the delays to be at or near 89 days (for quarterly payment leases)
4 or 29 days (for monthly payment leases) so that the interim period "rent" amount is almost the
5 same as the first quarterly/monthly payment that the customer is expecting will be withdrawn
6 from its account. Customers therefore do not catch on because they see an amount deducted from
7 their account that is roughly the same as the agreed-upon periodic lease payment. And if they do
8 notice and question the additional payment (as ILS eventually did), they later learn that Balboa
9 counts this first withdrawal not as one of the agreed-upon quarterly/monthly payments, but as
10 interim period "rent" that does not count toward the number of agreed-upon payments.

11 24. ILS contacted Balboa when it noticed the additional withdrawal. It took several
12 attempts to actually speak to a Balboa representative. This is a common problem for Balboa's
13 customers. Balboa intentionally makes it difficult for its customers to receive information
14 regarding excessive fees and ending leases. Balboa does this to make it more difficult for its
15 customers to identify Balboa's unauthorized rent charges and excessive fees.

16 25. ILS was eventually able to speak with a Balboa representative on the phone. By
17 then, ILS had paid Balboa an initial deposit equivalent to the last quarterly payment upon entering
18 the lease, plus Balboa had withdrawn nine (9) of the twelve (12) agreed-to quarterly payments
19 from ILS's bank account. However, the Balboa representative told ILS that it owed Balboa four
20 (4) more quarterly payments. When ILS replied that Balboa had already withdrawn nine (9)
21 quarterly payments, the Balboa representative stated that Balboa's accounting methods result in
22 ILS having made only eight (8) "actual payments," and that the extra payment was "per the terms
23 of the agreement."

24 26. There is no justification for Balboa's withdrawal of "rent" that essentially amounts
25 to an extra monthly/quarterly payment beyond the agreed-to monthly/quarterly payments.

1 Balboa should immediately return all unauthorized "rent" it collected from ILS and all other
2 customers.

3 **"UCC" Fees**

4 27. Balboa also lumps in junk fees with its initial "rent" withdrawals in an effort to
5 unjustly enrich itself and disguise the true nature of its withdrawals. ILS received an invoice from
6 Balboa showing that Balboa withdrew amounts including \$79.00 for what Balboa identified as
7 "UCC" and \$412.04 for a "Documentation" fee. Upon information and belief, Balboa charges
8 all of its customers a \$79.00 "UCC" fee. However, none of Balboa's form agreements state that
9 it will charge a \$79.00 "UCC" fee. Balboa intentionally labels the \$79.00 withdrawal as "UCC"
10 to lead its customers to believe that the fee is an actual Uniform Commercial Code fee. ILS
11 reasonably believed that the \$79.00 "UCC" fee Balboa withdrew from ILS's bank account was
12 to reimburse Balboa for a filing fee required by the Uniform Commercial Code.

13 28. However, there is no \$79.00 filing fee under the California or Texas Uniform
14 Commercial Code Fee Schedules. On information and belief, Balboa charges a \$79.00 "UCC"
15 fee to all of its customers, regardless of state. Sometimes Balboa files financing statements
16 pursuant to the Uniform Commercial Code, but the fee is not \$79.00. For example, Balboa's ILS
17 filing with the Texas Secretary of State plainly shows a \$5.00 Uniform Commercial Code filing
18 fee. The filing fee is also \$5.00 in California.

19 29. Balboa's addition of a \$79.00 "UCC" fee on top of the \$412.04 "Documentation"
20 fee that it charged ILS is a breach of contract, intentionally deceitful, and otherwise unlawful.
21 Balboa has already more than recouped any administrative costs, including any filing fees under
22 the Uniform Commercial Code, that it may have incurred through its collection of the
23 "Documentation" fee. In fact, there is no basis for Balboa to collect any "Documentation" fee if
24 it also collects fees as compensation for each individual administrative cost. Balboa should be
25 required to refund all amounts it has collected from ILS and the putative class for "UCC" fees.

CLASS ALLEGATIONS

30. Plaintiff brings this class action on behalf of itself and all persons or entities similarly situated. Plaintiff seeks to represent the following Classes:

All United States persons or entities that entered into a lease with Balboa and paid Balboa "rent" for the period of time between the "Commencement Date" of the lease and the start of the lease's "Base Term," in addition to the required periodic lease payments during the applicable statute of limitations periods prior to the filing of this action and running through the trial of this matter (the "Rent Class").

All United States persons or entities that entered into a lease with Balboa and paid Balboa a fee labeled "UCC" during the applicable statute of limitations periods prior to the filing of this action and running through the trial of this matter (the "Fee Class").

31. Plaintiff reserves the right to modify or amend the definitions of the proposed Classes, or add other proposed classes or subclasses, before the Court determines whether certification is appropriate and as the Court may otherwise allow.

32. Excluded from the Classes are Plaintiff's counsel; Balboa, its parents, subsidiaries, affiliates, officers, and directors; any entity in which Balboa has a controlling interest; all customers who make a timely election to be excluded; and all judges assigned to hear any aspect of this litigation, as well as their immediate family members and staff.

33. The proposed Classes meet all requirements for class certification. The members of the Classes are so numerous that joinder is impractical. The Classes consist of, at the very least, hundreds of members and the identity of those persons and entities is within the knowledge of Balboa and can be ascertained by resort to Balboa's records.

34. The claims of the representative Plaintiff are typical of the claims of the Classes. Plaintiff, like all other members, was victimized by Balboa's improper, unfair, illegal, and duplicitous practices. Moreover, Plaintiff, like all other members, has suffered pecuniary harm as a result of Balboa's misconduct. Furthermore, the factual basis of Balboa's misconduct is common to members of the Classes and represents a common thread of conduct resulting in injury

1 to all members of the Classes.

2 35. There are numerous questions of law and fact common to the Classes and those
3 common questions predominate over any questions affecting only individual Class members.

4 36. Among the questions of law and fact common to the Classes are whether Balboa:

5 a. Is entitled to collect interim period "rent" from its lease customers in addition to
6 the required quarterly/monthly lease payments;

7 b. Misleads customers by quoting a total number of payments that do not reflect the
8 true number and amount of payments that Balboa knows will result from its practices;

9 c. Knows the number of payments charged is not what customers agree to;

10 d. Intentionally delays the start of the "Base Term" to maximize its profits; and

11 e. Charges a "UCC" fee that is unauthorized or greater than allowed by the contract.

12 37. Other questions of law and fact common to the Classes include:

13 a. The proper method or methods by which to measure damages; and

14 b. The equitable relief to which the Classes are entitled.

15 38. Plaintiff's claims are typical of the claims of other members of the Classes in that
16 they arise out of the same wrongful policies and practices. Plaintiff has suffered the harm alleged
17 and has no interests antagonistic to the interests of any other member of the Classes.

18 39. Plaintiff is committed to the vigorous prosecution of this action and has retained
19 competent counsel experienced in the prosecution of class actions. Accordingly, Plaintiff is an
20 adequate representative and will fairly and adequately protect the interests of the Classes.

21 40. A class action is superior to other available methods for the fair and efficient
22 adjudication of this controversy. Since the amount of each individual Class member's claim is
23 small relative to the complexity of the litigation, and due to Balboa's financial resources, most
24 Class members could not afford to seek legal redress individually for the claims alleged herein.
25 Therefore, absent a class action, the Class members will be unable to obtain redress for their

1 losses and Balboa's misconduct will have occurred, and continue to occur, without remedy.

2 41. Even if Class members themselves could afford such individual litigation, the
3 court system could not. Individualized litigation would significantly increase the delay and
4 expense to all parties and to the Court. Individualized litigation would also create the potential
5 for inconsistent or contradictory rulings. By contrast, a class action presents far fewer
6 management difficulties, allows claims to be heard which might otherwise go unheard because of
7 the relative expense of bringing individual lawsuits, and provides the benefits of adjudication,
8 economies of scale, and comprehensive supervision by a single court.

9 42. The prosecution of separate actions by individual Class members would create a
10 risk of inconsistent and varying adjudications concerning the subject of this action, which could
11 establish incompatible standards for Balboa.

12 43. Balboa refuses to correct its conduct and such inaction is generally applicable to
13 the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief
14 with respect to the Classes as a whole. Specifically, Balboa continues to knowingly mislead and
15 overcharge the Classes. Class-wide declaratory and/or injunctive relief is appropriate to put an
16 end to these illicit practices.

17 **FIRST CAUSE OF ACTION**

18 **(Tortious Fraud and Intentional Deceit – Cal. Civ. Code § 1709, *et seq.*)**

19 **On Behalf of the Rent Class**

20 44. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
21 in this Cause of Action.

22 45. Balboa presented the terms of its lease agreement to Plaintiff and the Rent Class
23 members knowing the terms under each such agreement were tortiously and intentionally
24 deceitful. Neither the agreements nor any of Balboa's form documents informed Plaintiff or the
25 Rent Class members that Balboa's practice is to delay the start of the "Base Term," and to

1 withdraw interim period "rent" in an amount almost equaling the agreed-to periodic payments, in
2 addition to the number of periodic payments that had been expressly agreed to. This is because
3 Balboa intentionally concealed the true nature of its practices.

4 46. Balboa intentionally did not disclose to Plaintiff and the Rent Class members its
5 intention to withdraw such substantial amounts of monies from Plaintiff and the Rent Class
6 members that would not count toward the total number of agreed-upon payments. Because
7 Balboa failed to disclose the existence of these additional charges, the rent schedules presented
8 by Balboa to Plaintiff and the Rent Class members were false and intentionally deceptive.
9 Balboa's fraud and deceit unilaterally changed the terms of the lease to require payments greater
10 than those agreed to.

11 47. Balboa knowingly concealed its intention to charge these additional amounts in
12 order to induce Plaintiff and the Rent Class members to enter equipment lease agreements.

13 48. Plaintiff and the Rent Class members justifiably relied on Balboa's representations
14 regarding the rent amounts made in the lease when entering into the equipment lease agreements.
15 Plaintiff and the Rent Class members relied on Balboa's representation as to the total cost of each
16 lease, the payment terms, and the payment schedules. Had Plaintiff and the Rent Class members
17 known that the terms and payment schedules presented by Balboa were inaccurate, Plaintiff and
18 the Rent Class members would not have entered into Balboa's form agreements.

19 49. Any position by Balboa that the extra "rent" charges unilaterally determined and
20 imposed by Balboa were permissible under the provisions in Balboa's form documents is without
21 merit, and such an alleged interpretation is both unwarranted and tortiously and intentionally
22 deceitful.

23 50. Balboa's misrepresentations have caused Plaintiff damages in excess of \$3,000.00.
24 Damages suffered by the other members of the Rent Class will be proven using Balboa's books
25 and records and other Court-approved methods. Based upon the relevant class period and the size

1 of Balboa's leasing business, it is likely to be at least millions of dollars.

2 **On Behalf of the Fee Class**

3 51. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
4 in this Cause of Action.

5 52. Balboa presented the terms of its lease agreement to Plaintiff and the Fee Class
6 members knowing the terms under each such agreement were tortiously and intentionally
7 deceitful. Neither the agreements nor any of Balboa's form documents authorized Balboa to
8 inflate "UCC" fee charges. This is because Balboa intentionally concealed the true nature of these
9 charges.

10 53. Balboa intentionally did not disclose to Plaintiff and the Fee Class members its
11 intention to charge inflated "UCC" fees. Balboa also intentionally identified charges not required
12 by the Uniform Commercial Code as "UCC" fees to disguise the true nature of such charges.
13 Because Balboa failed to disclose the true nature of these charges, and intentionally misidentified
14 the charges as required by the Uniform Commercial Code, the agreements and subsequent
15 invoices presented by Balboa to Plaintiff and the Fee Class members were false. Balboa's fraud
16 unilaterally changed the terms of the lease to require payments greater than those agreed to.

17 54. Balboa knowingly concealed its intentions to charge these additional amounts for
18 its pure profit in order to induce Plaintiff and the Fee Class members to enter into equipment lease
19 agreements.

20 55. Plaintiff and the Fee Class members justifiably relied on Balboa's representations
21 when entering into the equipment lease agreements. Plaintiff and the Fee Class members relied
22 on Balboa's representation as to the total cost of each lease. Had Plaintiff and the Fee Class
23 members known that the terms presented by Balboa for each lease were not accurate and that
24 Balboa would charge more money than it disclosed, Plaintiff and the Fee Class members would
25 not have entered into Balboa's form agreements.

56. Any position by Balboa that the "UCC" fee charges were permissible under the fee provisions in Balboa's form documents is without merit, and such an alleged interpretation is both unwarranted and tortiously and intentionally deceitful.

57. Balboa's misrepresentations have caused Plaintiff damages in excess of \$3,000.00. Damages suffered by the other members of the Fee Class will be proven using Balboa's books and records and other Court-approved methods. Based upon the relevant class period and the size of Balboa's leasing business, it is likely to be at least hundreds of thousands of dollars.

SECOND CAUSE OF ACTION

(Actual Fraud – Cal. Civ. Code § 1572, *et seq.*)

On Behalf of the Rent Class

58. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below) in this Cause of Action.

59. Balboa presented the terms of its agreements to Plaintiff and the Rent Class members knowing the terms under each such agreement were fraudulent. Balboa failed to disclose to Plaintiff and the Rent Class members that Balboa will not start the "Base Term" for a lease agreement for nearly 90 days after the lease's "Commencement Date." Balboa always elects to delay the start of the "Base Term" for nearly 90 days – or 30 days in the case of leases paid monthly – to maximize Balboa's profit as described above. Neither the agreement nor any of Balboa's form documents authorized Balboa to fraudulently delay the start of the "Base Term" to charge additional "rent." This is because Balboa intentionally concealed the true nature of these charges as described above. Balboa also intentionally and misleadingly lumps the charges into initial withdrawals to disguise its fraudulent conduct.

60. Balboa intentionally did not disclose to Plaintiff and the Rent Class members its intention to delay the start of the "Base Term." Because Balboa failed to disclose its intention, the payment schedules presented by Balboa to Plaintiff and the Rent Class members were false.

1 Balboa intentionally delays the start of the "Base Term" of a lease solely to maximize its profit.
2 Balboa's fraud unilaterally changed the terms of the lease to require payments greater than those
3 agreed to.

4 61. Balboa knowingly concealed its intention to delay the start of the "Base Term" of
5 the leases in order to induce Plaintiff and the Rent Class members to enter its equipment lease
6 agreements. Balboa does not disclose that it will delay commencing a lease for approximately
7 three months (or one month for leases requiring monthly payments) despite the fact that it does
8 so as part of its regular business practices.

9 62. As alleged above, Plaintiff and the Rent Class members justifiably relied on
10 Balboa's representations regarding the payment amounts disclosed in the lease when entering into
11 the equipment lease agreements and believed Balboa's initial withdrawals constituted an agreed-
12 to payment. However, Balboa never intended to honor the number of payments disclosed in its
13 agreements with Plaintiff and the Rent Class members and knowingly intended to delay the start
14 of the "Base Term" as alleged above. Had Plaintiff and the Rent Class members known that the
15 terms presented by Balboa for each lease were not accurate and that Balboa would charge more
16 money than it disclosed based on its delayed start of the "Base Term" in order to collect extra
17 "rent," Plaintiff and the Rent Class members would not have entered into Balboa's form
18 agreements.

19 63. Any position by Balboa that the extra "rent" charges unilaterally determined and
20 imposed by Balboa were permissible under the provisions in Balboa's form documents is without
21 merit, and such an alleged interpretation is both unwarranted and fraudulent.

22 64. Balboa's fraudulent scheme has caused Plaintiff damages in excess of \$3,000.
23 Damages suffered by the other Rent Class members will be proven using Balboa's books and
24 records and other Court-approved methods. Based upon the relevant class period and the size of
25 Balboa's leasing business, it is likely to be at least millions of dollars.

On Behalf of the Fee Class

65. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below) in this Cause of Action.

66. Balboa presented the terms of its agreements and labeling of charges on invoices to Plaintiff and the Fee Class members knowing the terms under each such agreement and invoice were fraudulent. Balboa's initial invoices prominently display a charge for "UCC." However, this "UCC" fee is in fact not related to any mandatory fee that Balboa pays for any Uniform Commercial Code statement and is inflated and withdrawn to maximize Balboa's profit as described above. Although Balboa does pay to file Uniform Commercial Code financing statements, the fees are minimal (such as \$5.00 in Texas) and are more than covered by Balboa's documentation fee. Neither the agreement nor any of Balboa's form documents authorized Balboa to charge fees solely for its profit. Balboa intentionally concealed the true nature of these charges. Balboa also intentionally and misleading lumps the charges into initial withdrawals to disguise its fraudulent conduct.

67. Balboa intentionally did not disclose to Plaintiff and the Fee Class members its intent to charge a \$79.00 "UCC" fee upon entering the lease. Because Balboa failed to disclose the existence of these charges and because these charges are at best inflated amounts based on what Balboa actually pays for to file any Uniform Commercial Code statement, the invoices presented by Balboa to Plaintiff and the Fee Class members were false. Balboa's fraud unilaterally changed the terms of the lease to require payments greater than those agreed to.

68. Upon information and belief, Balboa knowingly concealed its intention to charge these additional fees in order to induce Plaintiff and the Fee Class members to enter equipment lease agreements. For example, Balboa does not disclose that it will charge a \$79.00 "UCC" fee despite the fact that it knows its practice is to charge its customers a \$79.00 "UCC" fee.

69. As alleged above, Plaintiff and the Fee Class members justifiably relied on

1 Balboa's representations regarding the fee amounts disclosed in the lease when entering into the
 2 equipment lease agreements. Plaintiff and the Fee Class members also relied on Balboa's
 3 representation in invoices that the \$79.00 "UCC" fee is charged to reimburse Balboa for costs it
 4 incurs pursuant to the Uniform Commercial Code. Had Plaintiff and the Fee Class members
 5 known that the payment terms and schedule presented by Balboa for each lease were not accurate
 6 and that Balboa would charge more money than it disclosed, Plaintiff and the Fee Class members
 7 would not have entered into Balboa's form agreements.

8 70. Any position by Balboa that the \$79.00 "UCC" fees were permissible under the
 9 provisions in Balboa's form documents is without merit; and such an alleged interpretation is both
 10 unwarranted and fraudulent.

11 71. Balboa's fraudulent scheme has caused Plaintiffs damages in excess of \$3,000.00.
 12 Damages suffered by the other Fee Class will be proven using Balboa's books and records and
 13 other Court-approved methods. Based upon the relevant class period and size of Balboa's leasing
 14 business, it is likely to be at least hundreds of thousands of dollars.

15 **THIRD CAUSE OF ACTION**

16 **(Negligent Misrepresentation – Cal. Civ. Code § 1710(2), *et seq.*)**

17 **On Behalf of the Rent Class**

18 72. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
 19 in this Cause of Action.

20 73. Balboa presented to Plaintiff and the Rent Class members agreements based upon
 21 the equipment cost Balboa would be advancing, the dollar amount of each periodic payment, and
 22 the number of periodic payments due. Neither the agreements nor any of Balboa's form
 23 documents authorized Balboa to withdraw "rent" based on delays by Balboa in starting the Base
 24 Term in amounts almost equaling the agreed-to periodic payments, in addition to the number of
 25 periodic payments that had been expressly agreed to.

1 74. Balboa failed to disclose its intention to charge payments resembling agreed-to
2 periodic payments that Balboa did not consider part of the agreed-upon total number of periodic
3 payments contained in the lease. Because Balboa failed to disclose the nature of these charges,
4 the payment terms presented by Balboa to Plaintiff and the Rent Class members were false.
5 Balboa's actions or inaction unilaterally changed the terms of the lease to require payments
6 greater than those agreed to.

7 75. Upon information and belief, Balboa misrepresented its intention to charge these
8 additional payments in order to induce Plaintiff and the Rent Class members to enter equipment
9 lease agreements.

10 76. Plaintiff and the Rent Class members relied on Balboa's representations regarding
11 the rental payment amounts made in the lease when entering into the equipment lease agreements.
12 Had Plaintiff and the Rent Class members known that the terms presented by Balboa for each
13 lease were not accurate and that Balboa would charge more money than it disclosed, Plaintiff and
14 the Rent Class members would not have entered into Balboa's form agreements.

15 77. Any position by Balboa that the extra "rent" charges unilaterally determined and
16 imposed by Balboa were permissible under the provisions in Balboa's form documents is without
17 merit; and such an alleged interpretation is both unwarranted and a misrepresentation.

18 78. Balboa's misrepresentations have caused ILS damages in excess of \$3,000.00.
19 Damages suffered by the other Rent Class members will be proven using Balboa's books and
20 records and other Court-approved methods. Based upon the relevant class period and size of
21 Balboa's leasing business, it is likely to be at least millions of dollars.

22 **On Behalf of the Fee Class**

23 79. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
24 in this Cause of Action.

25 80. Neither Balboa's form agreements nor Balboa's form documents authorized

1 Balboa to charge an inflated \$79.00 "UCC" fee, nor disclosed that Balboa fully intended to
2 withdraw that amount from Plaintiff's bank account upon entering the lease.

3 81. Balboa failed to disclose its intention to charge fees greater than those expressly
4 stated in its agreements. Because Balboa failed to disclose the existence of these fees, the terms
5 presented by Balboa to Plaintiff and the Fee Class members were false. Balboa's actions or
6 inaction unilaterally changed the terms of the lease to require payments greater than those agreed
7 to.

8 82. Upon information and belief, Balboa misrepresented its intention to charge these
9 additional fees in order to induce Plaintiff and the Fee Class members into entering equipment
10 lease agreements.

11 83. Plaintiff and the Fee Class members relied on Balboa's representations regarding
12 the fees disclosed when entering into the equipment lease agreements. Had Plaintiff and the Fee
13 Class members known that the terms presented by Balboa for each lease were not accurate and
14 that Balboa would charge more fees than it disclosed, Plaintiff and the Fee Class members would
15 not have entered into Balboa's form agreements.

16 84. Any position by Balboa that the extra fees were permissible under the provisions
17 in Balboa's form documents is without merit; and such an alleged interpretation is both
18 unwarranted and a misrepresentation.

19 85. Balboa's misrepresentations have caused ILS damages in excess of \$3,000.00.
20 Damages suffered by the other Fee Class members will be proven using Balboa's books and
21 records and other Court-approved methods. Based upon the relevant class period and size of
22 Balboa's leasing business, it is likely to be at least hundreds of thousands of dollars.

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1 **FOURTH CAUSE OF ACTION**

2 (Violations of California Business and Professions Code § 17200, *et seq.*)

3 **On Behalf of the Rent Class**

4 86. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
5 in this Cause of Action.

6 87. Pursuant to Balboa's form agreements, California law governs the parties'
7 relationship.

8 88. California's Unfair Competition Law ("UCL") Business and Professions Code §
9 17200 provides that unfair competition shall mean and include "all unlawful, unfair or fraudulent
10 business practices." Balboa's business acts and practices are unlawful, unfair, and fraudulent and
11 violate the UCL because Balboa's acts impair fair and honest competition. By misrepresenting
12 the terms of its leases, Balboa gained an unfair advantage in the marketplace by disguising the
13 true costs of its leases and misleading customers, including Plaintiff and the Rent Class members.

14 89. Balboa's business practices are unfair under the UCL because it misrepresents the
15 number of payments it intends to charge, withdraws monies in amounts that disguise the excessive
16 charges, and delays the start of the "Base Term" of a lease through its own actions or inaction or
17 as an abuse of discretion in order to maximize its own profit.

18 90. Balboa's business practices are also unlawful because they violate statutes
19 (including Cal. Civ. Code §§ 1572 *et seq.*, 1709 *et seq.*, 3294, and/or 3336) and also constitute
20 breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, unjust
21 enrichment, and conversion.

22 91. Balboa's business practices are also fraudulent for the reasons set forth above.

23 92. Balboa's conduct is immoral, unethical, oppressive, unscrupulous, and
24 substantially injurious to Plaintiff and the Rent Class members.

25 93. Any position by Balboa that the extra "rent" charges unilaterally determined and

1 imposed by Balboa were permissible under the provisions in Balboa's form documents is without
2 merit; and such an alleged interpretation is both unwarranted and a breach of the UCL.

3 94. As a result, Plaintiff and the Rent Class members are entitled to an order, pursuant
4 to California Business and Professions Code § 17203, enjoining such future conduct, and such
5 other orders and judgments that may be necessary to restore to the Rent Class members all ill-
6 gotten monies obtained from them by Balboa as a result of the above-described conduct.

7 **On Behalf of the Fee Class**

8 95. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
9 in this Cause of Action.

10 96. Balboa's business acts and practices are unlawful, unfair, and fraudulent and
11 violate the UCL because Balboa's acts impair fair and honest competition. By misrepresenting
12 the fees it will charge, Balboa gained an unfair advantage in the marketplace by disguising the
13 true costs of its leases and misleading customers, including Plaintiff and the Fee Class members.

14 97. Balboa's business practices are unfair under the UCL because it has
15 misrepresented or not disclosed the fees it intends to charge, it charges fees greater than allowed
16 under its contracts with customers, and it charges "UCC" fees that are neither required by the
17 Uniform Commercial Code nor commensurate with the fees (if any) charged by states for filing
18 a UCC statement.

19 98. Balboa's business practices are also unlawful because they violate statutes
20 (including Cal. Civ. Code §§ 1572 *et seq.*, 1709 *et seq.*, 3294, and/or 3336) and also constitute
21 breach of contract, breach of the implied covenant of good faith and fair dealing, unjust
22 enrichment, and conversion.

23 99. Balboa's business practices are also fraudulent for the reasons set forth above.

24 100. Balboa's conduct is immoral, unethical, oppressive, unscrupulous, and
25 substantially injurious to Plaintiff and the Fee Class members

1 101. Any position by Balboa that the extra fees were permissible under the provisions
2 in Balboa's form documents is without merit; and such an alleged interpretation is both
3 unwarranted and a breach of the UCL.

4 102. As a result, Plaintiff and the Fee Class members are entitled to an order, pursuant
5 to California Business and Professions Code § 17203, enjoining such future conduct, and such
6 other orders and judgments that may be necessary to restore to the Fee Class members all ill-
7 gotten monies obtained from them by Balboa as a result of the above-described conduct.

8 **FIFTH CAUSE OF ACTION**

9 **(Breach of Contract)**

10 **On Behalf of the Rent Class**

11 103. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
12 in this Cause of Action.

13 104. Plaintiff and the Rent Class members entered into agreements with Balboa. These
14 agreements contained payment terms requiring a set number and amount of payments.

15 105. Plaintiff and the Rent Class members have performed, or substantially performed,
16 their obligations under the respective agreements.

17 106. Balboa breached its contracts with Plaintiff and the Rent Class members by
18 charging sums greater than allowed under the express terms of the contracts. For example, Balboa
19 charged Plaintiff several thousand dollars in "rent" for the interim period between when the lease
20 was entered and Plaintiff received the equipment and the date Balboa unilaterally chose as the
21 beginning of the "Base Term."

22 107. Any position by Balboa that the extra "rent" charges unilaterally determined and
23 imposed by Balboa were permissible under the provisions in Balboa's form documents is without
24 merit; and such an alleged interpretation is both unwarranted and a breach of contract.
25

108. Balboa's breach has caused Plaintiff damages in excess of \$3,000. Damages suffered by the other Rent Class members will be proven using Balboa's books and records and other Court-approved methods. Based upon the relevant class period and size of Balboa's leasing business, it is likely to be at least millions of dollars.

On Behalf of the Fee Class

109. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below) in this Cause of Action.

110. Plaintiff and the Fee Class members entered into agreements with Balboa. These agreements do not allow Balboa to charge any undisclosed fees.

111. Plaintiff and the Fee Class members have performed, or substantially performed, their obligations under the respective agreements.

112. Balboa breached its contracts with Plaintiff and the Fee Class members by charging a "UCC" fee not allowed by the agreement.

113. Any position by Balboa that the extra fees were permissible under the provisions in Balboa's form documents is without merit; and such an alleged interpretation is both unwarranted and a breach of contract.

114. Balboa's breach has caused Plaintiff damages of at least \$79.00. Damages suffered by the other Fee Class members will be proven using Balboa's books and records and other Court-approved methods. Based upon the relevant class period and size of Balboa's leasing business, it is likely to be at hundreds of thousands of dollars.

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1 SIXTH CAUSE OF ACTION

2 (Breach of the Covenant of Good Faith and Fair Dealing)

3 On Behalf of the Rent Class

4 115. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
5 in this Cause of Action.

6 116. Under California law, every contract includes a covenant of good faith and fair
7 dealing. Broadly stated, that covenant requires that neither party do anything to deprive the other
8 of the benefits of the agreement. A party violates the covenant if it subjectively lacks belief in
9 the validity of its act or if its conduct is objectively unreasonable.

10 117. Breach of a specific provision of the contract is not a prerequisite. Were it
11 otherwise, the covenant would have no practical meaning, for any breach thereof would
12 necessarily involve breach of some other term of the contract. Nor is it necessary that the party's
13 conduct be dishonest. Dishonesty presupposes subjective immorality; the covenant of good faith
14 can be breached for objectively unreasonable conduct, regardless of the actor's motive.

15 118. Balboa has breached the covenant of good faith and fair dealing through its
16 practices as alleged herein, including but not limited to, its unilaterally delaying the start of the
17 "Base Term" and the resulting practice of charging "rent" payments disguised as regular
18 payments that result in a higher number and total amount of payments than quoted and agreed
19 upon.

20 119. Balboa's delay in the start of the Base Term to increase the number and amount of
21 payments it deducts from customers' bank accounts is not a reasonable use of any discretion it is
22 afforded under its form agreement.

23 120. Any position by Balboa that the extra "rent" charges unilaterally determined and
24 imposed by Balboa were permissible under the provisions in Balboa's form documents is without
25

1 merit; and such an alleged interpretation is both unwarranted and in violation of the covenant of
2 good faith and fair dealing.

3 121. Plaintiff and the Rent Class members sustained damages as a result of Balboa's
4 breaches of the covenant of good faith and fair dealing. Moreover, because Balboa's actions were
5 oppressive and malicious (including as reflected in Balboa's admission that it charges "rent" that
6 does not count as an "actual payment," but rather as the result of a scheme not disclosed to
7 customers), Plaintiff and the Rent Class members are entitled to an award of punitive damages.

8 **On Behalf of the Fee Class**

9 122. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
10 in this Cause of Action.

11 123. Balboa has breached the covenant of good faith and fair dealing through its
12 practices as alleged herein, including, but not limited to, its practice of charging fees greater than
13 those allowed by its form agreement. By doing so, Balboa collects additional profit to which it
14 is not entitled and for which it provides no value or service. Balboa's improper withdrawal of
15 fees serves no purpose but to increase its own profit.

16 124. Balboa's addition of fees subsequent to entering contracts with its customers is not
17 a reasonable use of any discretion it is afforded under its form agreement.

18 125. Any position by Balboa that the extra fees were permissible under the provisions
19 in Balboa's form documents is without merit; and such an alleged interpretation is both
20 unwarranted and in violation of the covenant of good faith and fair dealing.

21 126. Plaintiff and the Fee Class members sustained damages as a result of Balboa's
22 breaches of the covenant of good faith and fair dealing. Moreover, because Balboa's actions were
23 oppressive and malicious (including Balboa's labeling of fees as "UCC" despite not being
24 required Uniform Commercial Code fees, but rather as the result of an undisclosed scheme to
25

1 inflate any such fees and thus designed to dupe customers), Plaintiff and the Fee Class members
2 are entitled to an award of punitive damages.

3 **SIXTH CAUSE OF ACTION**

4 **(Unjust Enrichment)**

5 **On Behalf of the Rent Class**

6 127. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
7 in this Cause of Action.

8 128. As a consequence of Balboa's conduct as described above, including its practice
9 of unilaterally delaying the start of the "Base Term" well beyond the "Commencement Date" of
10 the lease, Balboa has been unjustly enriched, and continues to be so, in obtaining interim period
11 "rent" exceeding the periodic lease payments required by the lease agreement, and should be
12 ordered to restore such additional "rent" to Plaintiff and the Rent Class members.

13 129. Any position by Balboa that the extra "rent" charges were permissible under
14 provisions in Balboa's form documents is without merit; and such an alleged interpretation is both
15 unwarranted and unjustly enriches Balboa.

16 **On Behalf of the Fee Class**

17 130. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
18 in this Cause of Action.

19 131. As a consequence of Balboa's conduct as described above, including its practice
20 of collecting from lessees a "UCC" fee not required by the Uniform Commercial Code nor related
21 to the true fee (if any) charged by any state with respect to the filing of any UCC statement,
22 Balboa has been unjustly enriched, and continues to be so, and should be ordered to restore such
23 "UCC" fees to Plaintiff and the Fee Class members.

24 ////

25 ////

1 132. Any position by Balboa that the extra fees were permissible under the provisions
2 in Balboa's form documents is without merit; and such an alleged interpretation is both
3 unwarranted and unjustly enriches Balboa.

4 **EIGHTH CAUSE OF ACTION**

5 **(Conversion – Cal. Civ. Code §§ 3336 and 3294)**

6 **On Behalf of the Rent Class**

7 133. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
8 in this Cause of Action.

9 134. As a consequence of Balboa's conduct as described above, Balboa withdrew
10 interim period "rent" from the bank accounts of Plaintiff and the Rent Class members and
11 converted the funds to its own use and benefit.

12 135. Any position by Balboa that the extra "rent" charges unilaterally determined and
13 imposed by Balboa were permissible under the provisions in Balboa's form documents is without
14 merit; and such an alleged interpretation is both unwarranted and results in conversion.

15 136. Plaintiff and the Rent Class members sustained economic damages, including
16 prejudgment interest, as a result of Balboa's conversion. Moreover, because Balboa's actions
17 were oppressive and malicious (including as reflected in Balboa's admission that it charges "rent"
18 that does not count as an "actual payment," but rather as the result of a scheme not disclosed to
19 customers), Plaintiff and the Rent Class members are entitled to an award of punitive damages.

20 **On Behalf of the Fee Class**

21 137. Plaintiff hereby incorporates all paragraphs of this Complaint (above and below)
22 in this Cause of Action.

23 138. As a consequence of Balboa's conduct as described above, Balboa withdrew
24 "UCC" fees from the bank accounts of Plaintiff and the Fee Class members without authorization
25 and converted them to its own use and benefit.

139. Any position by Balboa that the extra fees were permissible under the provisions in Balboa's form documents is without merit; and such an alleged interpretation is both unwarranted and results in conversion.

140. Plaintiff and the Fee Class members sustained economic damages, including prejudgment interest, as a result of Balboa's conversion. Moreover, because Balboa's actions were oppressive and malicious (including Balboa's labeling of inflated fees as "UCC," as part of an undisclosed scheme designed to dupe customers into paying inflated fees), Plaintiff and the Fee Class members are entitled to an award of punitive damages.

PRAYER

Wherefore, Plaintiff, on behalf of itself and the other members of the Classes, requests that the Court award relief against Balboa including as follows:

a. An order certifying the Rent Class and the Fee Class and designating Plaintiff ILS PRODUCTS, LLC d/b/a INDUSTRIAL LIGHTING SYSTEMS as the Class Representative and the undersigned counsel as Class Counsel;

b. Awarding Plaintiff and the other members of the proposed Classes damages and punitive damages;

c. Awarding restitution of all amounts that Balboa improperly obtained from Plaintiff and the other members of the Classes as a result of its unlawful and unfair business practices;

d. Awarding declaratory and injunctive relief as permitted by law or equity, including: enjoining Balboa from continuing the unlawful practices as set forth herein, and directing Balboa to identify, with Court supervision, all victims of the misconduct and to compensate the victims with the requisite funds;

e. Awarding Plaintiff and the other members of the Classes pre-judgment and post-judgment interest;

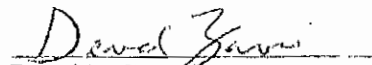
1 f. Awarding attorneys' fees and costs as authorized by statute including Code of
2 Civil Procedure § 1021.5; and

3 g. For such other and further relief as the Court may deem necessary or appropriate.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff, on behalf of itself and the other members of the Classes, hereby demands
6 a trial by jury of all claims so triable.

7 DATED: February 11, 2019

8 
9 Deval R. Zaveri

10 Deval R. Zaveri (CA 213501)
11 James A. Tabb (CA 208188)
12 **ZAVERI TABB, APC**
13 402 W. Broadway, Suite 1950
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22 Atlanta, Georgia 30339
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24 Fax: (770) 217-9950
25 Matt@WebbLLC.com

EXHIBIT “A”

BALBOA

Lease Agreement (Page 1 of 2)

Lease Number: 219589-000

Lessee Information

Business Name: ILS PRODUCTS, LLC DBA Industrial Lighting Systems		Business Address: 17315 HOUSTON DR Cypress, TX 77433	Equipment Location Address: (if different than billing address of Lessee)
Business Phone: [REDACTED]	Business Fax ID#: [REDACTED]		

Lease Terms and Conditions

Quarterly Rent (plus applicable taxes): \$3,539.58	Base Term in QUARTERS: 12	Required Deposit: \$3,539.58	Doc Fees: 1%
Security Deposit: 1 payment(s)			

Equipment Supplier Information / Equipment Description: SEE EXHIBIT "A"

The undersigned agrees that this lease reflects the agreement of the parties, including all terms of the second page of this agreement. Balboa Capital Corporation is not affiliated with the supplier of any of the Equipment and is not responsible for any promises made by any supplier, vendor, or other person who is not an officer of Balboa Capital Corporation.

Signature: 

Name: Andrew Grant

Title: Managing Member

Date: 06/09/15

ACKNOWLEDGED BY: BALBOA CAPITAL CORPORATION

By: _____

Vice President

Date: _____

Lease Guaranty

For purposes of this Guaranty, Lease shall mean the Lease set forth above and on the second page of the Lease Agreement. I/ME/WE shall mean the person making the guaranty and if married, his or her marital community. YOU/YOUR shall mean the Lessor. I agree that I have an interest in the Lessee, economic or otherwise, and that you would not enter into this Lease without this guaranty. I unconditionally guaranty that Lessee will fully and promptly pay all its Obligations under the Lease when they are due and will perform all its other Obligations under the Lease even if you modify or renew the Lease. The Lease guaranty will be jointly and severally responsible. You do not have to notify me if the Lessee is in default under the Lease. You may obtain any information from credit reporting agencies you deem necessary to enforce this guaranty. If the Lessee defaults, I will immediately pay all Obligations due under the Lease. I agree that I will not be released or discharged if you: (i) fail to perfect a security interest in or any property which secures the Obligations (Collateral); (ii) fail to protect the Collateral; or (iii) abandon or release the Collateral. I agree that you do not have to proceed first against the Lessee or any Collateral. I hereby waive notice of acceptance of this guaranty and of all other notices or demands of any kind which I may be entitled to. I will reimburse you for all expenses you incur in enforcing your rights against the Lessee or me, including, without limitation, attorneys' fees and costs. I acknowledge that I have read and understand the Lease and this Guaranty. This is an irrevocable, continuing guaranty and binds my heirs, administrators and representatives. I CONSENT TO THE JURISDICTION OF THE COURTS OF ORANGE COUNTY, CALIFORNIA AND/OR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION, AT YOUR SOLE OPTION, FOR THE DETERMINATION OF ALL DISPUTES RELATED TO THE LEASE OR THIS GUARANTY. I agree that this guaranty shall be governed by the laws of the State of California. YOU WAIVE TRIAL BY JURY.

Signature: 

Name: Andrew Grant

Home Phone: [REDACTED]

Date: 06/09/15

1. LEASE. You agree to lease from us and we agree to lease to you, the equipment listed above or on any schedule to this Lease (Equipment). You unconditionally promise to pay us the sum of all the rental and other payments indicated above or on any schedule (Rent). You authorize us to insert in this lease any serial numbers and other identification data about the Equipment, as well as any other certified factual matters. All Rent and other payments under this Lease or any other agreement with us (collectively Obligation or Obligations) are payable in U.S. dollars and may be adjusted upward or downward no more than ten percent (10%) to reflect actual usage. We may from time to time, in our sole discretion, accept a photocopy or electronically transmitted facsimile copy of this Lease, any Schedules to this Lease, or other Lease documents as the binding and effective record of such agreement(s) whether or not an ink signed counterpart thereof is also received by us from you, provided, however, that no such agreement(s) shall be binding upon us until and unless they are signed by us in any signature line where we are to sign as indicated on the Lease, Schedule or other agreement. Any such photocopy or electronically transmitted facsimile received by us shall, when executed by us, constitute an original document for the purpose of establishing the provision, thereof and shall be legally admissible under the best or original evidence rule and binding on the parties. **2. TERM OF LEASE.** This Lease shall become effective upon acceptance by us by signing and dating this Lease. The base term ("Base Term") of such Lease shall commence at the Lessee's discretion to begin on any day occurring in the quarter following the Commencement Date and terminate upon the expiration of the number of quarters specified above. A month portion of the agreed-upon average of the Rent based on a thirty charge of one-twelfth (1/12) of the Rent from the date the Equipment has been delivered and accepted by you ("Commencement Date") to beginning of the Base Term shall be payable at the Commencement Date. Following the Commencement Date, Rent and other Obligation payments are due on the same day of each quarter as the first Rent payment, payable to a location to be designated in writing. **YOUR OBLIGATION TO PAY RENT TO US IS UNCONDITIONAL AND NOT SUBJECT TO ANY REDUCTION, SET-OFF, DEFENSE, OR COUNTERCLAIM AND MAY NOT BE CANCELLED FOR ANY REASON WHATSOEVER.** "Your offer is an irrevocable offer to enter this Lease. In the event that you sign this Lease, but the Lease is not commenced, the advance payments, documentation fee and security deposit may be retained by us to compensate for our documentation, processing, and other expenses." We have the right, but not the obligation, to electronically withdraw funds from your bank account to pay for any unpaid Rent, fees, fees, charges and assessments. **3. PAYMENT OF LEASE OBLIGATIONS:** Payment of the Lease Obligations shall be made by electronically withdrawing funds from the bank account on which your deposit check was drawn. You authorize us to debit from this account on which your deposit check was drawn, on or after the 1st day of each month, for scheduled Lease Payments or other amounts due and owing at the time under the Lease. You acknowledge that, if we assign the Lease to a third party, the assignee is authorized to debit the account on which your deposit check was drawn. If you would prefer to authorize us to debit another account, fill in the blanks provided below along with a copy of a voided check from the specified account.

Account Number: _____

ABA/Routing Number: _____

Financial Institution Name: _____

Initials: 

4. NO WARRANTIES; NO AGENCY; WE ARE LEASING THE EQUIPMENT TO YOU AS-IS. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR ORDINARY USE. You understand and agree that we are independent from the vendor, manufacturer and/or supplier (collectively "Supplier(s)") of the Equipment and that neither the Supplier nor any other person is our agent, nor are they authorized to waive or change any term or condition of this Lease. You agree that no representation, guaranty or warranty by the Supplier or other person is binding on us, so long as you are not in default under any terms of this Lease, we transfer to you any warranties made by us, as the owner of the Equipment, by the Supplier. You agree that any breach by the Supplier

will not relieve or excuse your obligation to us. Regardless of cause you will not assert any claim whatsoever against us for any direct, consequential, special or indirect damages. If you have entered into a maintenance agreement for the Equipment and the cost of the maintenance agreement is included in the Rent, you acknowledge that we are not responsible for any service, repairs, or maintenance of the Equipment, and that we are not a party to the maintenance agreement. If you have a dispute regarding maintenance or service then you will nevertheless continue to pay all Obligations as they become due. **5. UCC-ARTICLE 2A** (whenever the term Article 2A is used herein, it is understood to include equivalent provisions of California Commercial Code Division 10 when California law is applicable; You agree that this Lease is a "Finance Lease" under Article 2A of the California Commercial Code as adopted

by the State of California. You acknowledge that we did not select, manufacture or supply the Equipment, but as your request we have purchased the Equipment for lease to you, and this based solely on your own judgment, you have selected the Supplier and the Equipment that you are leasing from us. You agree that you have approved any purchase or supply contract with the Supplier before signing this Lease. You may have rights under the supply or purchase contract, and you may consult the Supplier for a description of those rights or any warranties. To the extent permitted by applicable law, YOU WAIVE ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON YOU UNDER C.C.S. 2A-303 AND 2A-508 THROUGH 2A-522, INCLUDING WITHOUT LIMITATION, THE RIGHT TO REPUDIATE THE LEASE AND REJECT THE EQUIPMENT; REVOKE ACCEPTANCE OF THE LEASE; OR RECOVER DAMAGES FROM US FOR ANY BREACH OF WARRANTY.

6. DELIVERY OF EQUIPMENT: You request that we arrange delivery to you at your expense. We may at our discretion confirm by telephone that you have accepted the Equipment and this telephone verification of your acceptance of the Equipment shall have the same effect as a signed Delivery and Acceptance Certificate.

7. ASSIGNMENT: You may not sell, transfer, assign or sublease the Equipment without our prior written approval. We may sell, or assign, or transfer this Lease without notifying you, and you agree that if we do, the new Lessor will have the same rights and benefits that we now have, and will not have to perform any of our obligations. You agree that the rights of the new Lessor will not be subject to any claims, defenses or setoffs that you may have against us.

8. OWNERSHIP, RIGHTS AND QUIET ENJOYMENT: You agree that we are the owner of and have title to the Equipment or in the case of software, the assignment or the right to the assignment of the software and/or its licenses. You agree, at your expense, to protect and defend our title and other rights to the Equipment. You shall have the right to quiet use and enjoyment of the Equipment for the term of this Lease, provided you are not in default. We also have the right, at reasonable times, to inspect the Equipment at your expense.

9. CARE, USE AND LOCATION; LOSS OF EQUIPMENT: You are responsible for installing and keeping the Equipment in good working order and repair. You will keep and use the Equipment only at your address shown on the Lease, only for business or commercial purposes and in compliance with all applicable laws, ordinances or regulations. You will not make any alterations to the Equipment without our prior written consent, nor will you permanently attach the Equipment to any real estate. You are responsible for protecting the Equipment from damage, and from any other kind of loss while you have the Equipment or while it is being delivered to you. In the event the Equipment is lost, stolen or damaged then you shall have the option within one week of such event to: (a) repair or replace the Equipment or (b) pay to us the unpaid balance of the remaining Rent under this Lease and our residual interest in the Equipment, discounted to present value at the rate of five percent (5%) plus any other obligations.

10. TAXES AND FEES: You agree to pay when due all taxes (including personal property tax, fines and penalties) and fees relating to this Agreement or the Equipment. If we pay any of the above for you, you agree to reimburse us and to pay us a processing fee for each payment we make on your behalf. In addition, you also agree to pay us any filing fees prescribed by the Uniform Commercial Code or other law and reimburse us for all costs and expenses involved in documenting and servicing this transaction. You further agree to pay us an origination fee on or before the date the first payment is due and a termination fee. You also acknowledge that in addition to the lease payments, we may assess and you may be required to pay additional taxes and/or fees including an invoice fee. Such fees may not only cover our costs they may also include a profit.

11. INDEMNITY: We are not responsible for any injuries or losses to you or any other person or property caused by the installation, operation, maintenance or use of the Equipment. You agree to reimburse us for and defend us against any claims for such losses or injuries, including, without limitation, those arising out of the negligence, tort or strict liability claims. This indemnity shall continue even after the term of this Lease has expired.

12. INSURANCE: Lessee agrees to maintain, at Lessee's expense, "Special Form" property insurance protecting the Equipment for its full replacement value, naming Lessor as a loss payee on a "Lender's Loss Payable" endorsement; and public liability insurance, in amounts acceptable to Lessor, naming Lessor as an additional insured (together "Required Insurance"). Lessee must provide Lessor satisfactory written evidence of Required Insurance within thirty (30) days of the commencement date of this Lease or at any subsequent written request. If Lessee does not do so, Lessor may obtain insurance from an insurer of Lessor's choosing in such form and amounts as Lessor selects ("Lessor Insurance"). Lessor Insurance covers the Equipment and Lessor only and not Lessee. Lessee shall pay Lessor periodic charges for Lessor Insurance ("Insurance Charges") that include: a premium that may be higher than if Lessee maintained Required Insurance separately; a finance charge of up to the implicit rate of the Lease on any premium advances made by Lessor to Lessee's agents; and billing and processing fees, each of which may generate a profit to Lessor and Lessor's agents. If Lessee fails to pay billed Insurance Charges within 30 days of their due date, Lessor may pay them by applying funds paid under the Lease or debiting Lessee's account under any previously authorized automatic payment. Lessee agrees to arbitrate any dispute with Lessor or Lessor's agents regarding Lease Insurance or Insurance Charges under the rules of the American Arbitration Association in Los Angeles, California; provided however, such agreement does not authorize a class action arbitration. At Lessor's election, in lieu of obtaining or continuing Lease Insurance, Lessor may require Lessee to pay a monthly additional fee up to 2% of the Equipment Cost. This fee is not calculated with reference to additional risk and constitutes additional profit for Lessor, but represents the basis on which Lessor is willing to forego from exercising remedies and continue this Agreement without Required Insurance. Lessee will receive no insurance coverage and will not be released from any obligations. Lessor is not selling insurance, Lessor will ensure charging the additional fee or billing for Lease Insurance 30 days after Lessee provides satisfactory proof of Required Insurance and compliance with this section.

13. DEFAULT AND REMEDIES: If you (A) do not pay any Obligation when due; (B) break any of your agreements, representations or covenants under this Lease, including without limitation closing of the account from which Lease Payments are drawn or any other interference with electronic funds withdrawal as provided in Section 3; (C) any guarantor enters (voluntarily or involuntarily) into a bankruptcy proceeding; (D) are a corporation and more than 30% of the issued and outstanding voting capital stock is transferred to or acquired by any person or entity that is not an owner as of the date of this Lease; (E) you change your name, state of incorporation, chief executive officer and/or place of residence without providing us with 30 days prior written notice of such change, you will be in default. In the event of a default by you, we can require that you return the Equipment to us and pay to us the remaining balance of all of the Rent due under this Lease, discounted to present value at five percent (5%), together with any other amounts due under this Lease. We can also require that you pay to us our residual interest in the Equipment. Interest shall accrue on all obligations due to us from the start of default until paid at the rate of eighteen percent (18%) per annum, but only to the extent permitted by

law. We shall also be entitled to recover from you all damages caused by that default. We can also use any of the remedies available to us under the UCC or any other law, including repossession of the Equipment or other Collateral. You agree to reimburse us, for all charges, costs, expenses and attorney's fees that we have to pay to enforce this Lease or collect the Obligations under this Lease and in any lawsuit or other legal proceeding when we bring to default. You also agree that in the event of a dispute related to or arising out of this Lease, the Lessor in such dispute shall be entitled to recover its reasonable attorney's fees and costs. If we have to take possession of the Equipment, you agree to pay the cost of repossession, storage, shipping, repairing and selling the Equipment. You agree that we are entitled to abandon the Equipment if we reasonably believe it to be in our best interests.

14. OTHER RIGHTS: This is of the essence in this Lease. You agree that any delay or failure by us to enforce our rights under this Lease or any other agreements shall not prevent us from enforcing any rights at a later time. Both parties intend this Lease to be a valid and legal document, and agree that if any part is determined to be unenforceable, all other parts will remain in full force and effect. You also grant us a security interest in the Equipment and any proceeds of, accessions and attachments to the Equipment as security for your Obligations. You agree that we may file financing statements or other related filings in our name or in the name of any agent designated by us. You hereby authorize us, or our assigns, to file a financing statement without your signature, in form or content and from time to time as we deem proper, listing you as Lessee or Lessor.

15. LESSOR REPRESENTATIONS AND WARRANTIES: You hereby represent and warrant that at the time you sign this Lease you are, and shall remain a business entity duly organized, validly existing, and in good standing under the laws of the state of organization, that your exact legal name, state of incorporation, location of your chief executive office and/or your place of residence as applicable, have been correctly identified to us. You further represent and warrant that at the time you sign this Lease the person executing this Lease or any related document on behalf of you or any related guarantor shall be authorized to take such action and bind you and the guarantor to the Lease, and that the execution, delivery and performance of this Lease is duly authorized by your organizational documents and, if necessary, resolutions of your directors and/or shareholders, partners, or managers and/or members.

16. RETURN OF EQUIPMENT; RENEWAL: If no default exists or has occurred under this Lease, you may, at the end of the original or any renewal term, purchase all (but not less than all) of the Equipment. At least 180 days but no more than 270 days prior to the end of the original term, you must give us written notice, via certified mail, that you will purchase the Equipment for its fair market value, which we shall determine in our reasonable judgment, or that you will return the equipment to us. If you do not give us such written notice or if you do not purchase or deliver the equipment in accordance with the terms and conditions of this Lease, then this Lease shall automatically renew for a 12 month term, and thereafter renew for successive 6 month terms until you deliver the Equipment to us. During such renewals, the Rent shall be the highest monthly rate set forth in this Lease. We may cancel the renewal by sending you written notice 90 days prior to such renewal term. This end of term option may become null and void at our discretion if any Event of Default occurs or continues at any time during the original term of the Lease. Upon payment of end of term option price plus any applicable taxes, and if no default exists, we shall transfer our interest in the Equipment to you "AS-IS, WHERE IS" without any representation or warranty whatsoever and this Lease will terminate. Provided you have given the required notice, and are not then in default, you shall return the Equipment, freight and insurance prepaid to us in good repair, condition, and working order, ordinary wear and tear excepted, in a manner and to a location designated by us. Until the end of term option price is actually paid, you will be responsible to continue to pay rent at the monthly rate set forth in this Lease.

17. LATE CHARGE; FEES: If any part of any Obligation is not made by you within three (3) days of its due date, you agree to pay us the greater of eighteen percent (18%) of each such late payment or \$25 (to the extent permitted by law). If two payments are not made by you within three (3) days of their due dates, you agree to increase your payment by eighteen percent (18%). Any deposit will not bear interest and may be commingled by us with other funds. We may apply the deposit to any of your obligations or to any loss or damage that we suffer as a result of your default. If so applied, you will, on demand, restore the deposit to its full amount. On your payment of all obligations, provided that you are not otherwise in default, we will return the balance of the deposit to you or apply it to your final non payment as you direct.

18. ENTIRE AGREEMENT; CHANGES: This Lease contains the entire agreement between you and us, and it may not be altered, amended, modified, terminated or otherwise changed except in writing and signed by both you and us. A limiting endorsement on a check or other form or payment will not be effective to modify the obligations or any of the other terms and conditions of this Lease, and we may apply any payment received without being bound by such limiting endorsements.

19. COMPLIANCE; NOTICES: In the event you fail to comply with any terms of this Lease, we can, but we do not have to, take any action necessary to effect your compliance. If we are required to pay any amount to obtain your compliance, the amount we pay plus all of our expenses in causing your compliance, shall become additional Obligations. This Lease is for the benefit of and is binding upon you and your personal representatives, successors and assigns.

20. CHOICE OF LAW; JURISDICTION: YOU AND WE AGREE THAT THIS LEASE SHALL BE BINDING WHEN ACCEPTED IN WRITING BY US AT OUR OFFICES AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA. YOU AND WE EACH CONSENT TO THE JURISDICTION OF THE COURTS OF ORANGE COUNTY, CALIFORNIA AND/OR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION FOR THE DETERMINATION OF ALL DISPUTES ARISING UNDER THIS LEASE. YOU WAIVE TRIAL BY JURY IN ANY ACTION BETWEEN US.

21. REPRESENTATIONS AND COVENANT OF LESSOR: You represent that all financial and other information furnished to us was, at the time of delivery, true and correct. During the term of this Lease, you shall provide us with such interim or annual financial statements and filed tax returns as we request.

22. COUNTERPARTS: If this document was sent electronically, you hereby warrant that this document has not been altered in any way. Any alteration or revision to any part of this or any attached documents will make all such alterations or revisions non-binding and void. Only one counterpart of the Lease and of each Schedule or Addenda shall bear our ink signed signature and shall be marked "Original". To the extent that any Lease, Schedule or Addenda constitute control paper for that term is defined by the Uniform Commercial Code, a secondarily interest may only be created in the Lease, Schedule, or Addenda that bears our ink signed signature and is marked "Original".

Lease Number: 219589-000

Initials

S-12A

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Balboa Capital Corporation Overcharges Customers in Violation of Lease Agreements](#)
