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21 *Attorneys for Defendants SmileDirectClub, Inc.,  
22 SmileDirectClub, LLC., and Jeffrey Sulitzer*

23 **UNITED STATES DISTRICT COURT**  
24 **NORTHERN DISTRICT OF CALIFORNIA**  
25 **SAN FRANCISCO/OAKLAND DIVISION**

26 *ARNOLD NAVARRO, on behalf of himself and*  
27 *others similarly situated*

28 Plaintiff,

v.

SMILEDIRECTCLUB, INC.;  
SMILEDIRECTCLUB, LLC;  
JEFFREY SULITZER; DOES 1-10

Defendants.

**C.A. NO.**

**NOTICE OF REMOVAL**

**CLASS ACTION**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants SmileDirectClub, Inc.; SmileDirectClub, LLC; and Dr. Jeffrey Sulitzer (collectively, “Defendants”), by and through their undersigned counsel, hereby removes this action from the Superior Court of California for the County of Alameda to this Court based upon the following:

1 **NATURE OF THE ACTION**

2 1. On or about December 3, 2021, Plaintiff Arnold Navarro (“Navarro”) filed a complaint on  
3 behalf of himself and a putative class alleging negligence, breach of fiduciary duty, fraudulent inducement,  
4 and violations of both the Unfair Competition Law and Consumer Remedies Legal Act (the “Complaint”)  
5 in the Superior Court of California for the County of Alameda.

6 2. The Complaint seeks declaratory relief, rescission of contracts, disgorgement, attorneys’  
7 fees, and punitive damages from Named Defendants SmileDirectClub, Inc.; SmileDirectClub, LLC; and  
8 Dr. Jeffrey Sulitzer. The Complaint also seeks the same relief against ten unnamed Doe Defendants.

9 3. The Complaint is captioned *Arnold Navarro v. SmileDirectClub, Inc.; SmileDirectClub,*  
10 *LLC; Jeffrey Sulitzer; and DOES 1 through 10, inclusive*, Case Number 21CV003537 (the “State Court  
11 Action”). A true and correct copy of the Complaint is attached hereto as **EXHIBIT A**.

12 **THE NOTICE OF REMOVAL IS TIMELY**

13 4. Navarro served his Complaint on SmileDirectClub, Inc. and SmileDirectClub, LLC  
14 (together, “SmileDirect”) on December 27, 2021. That is the date from which the removal statute’s 30-  
15 day deadline begins running. *Quality Loan Service Corp. v. 24702 Pallas Way, Mission Viejo, CA 92691*,  
16 *635 F.3d 1128, 1132–33 (9th Cir. 2011); Robertson v. GMAC Morg., LLC, 640 Fed. App’x 609, 611 n. 3*  
17 *(9th Cir. 2016); Chun v. Uwajimaya, Inc., 2002 WL 575728, at \*\*1 (9th Cir. Apr. 17, 2002).*

18 5. Thus, pursuant to 28 U.S.C. § 1446(b)(1), this Notice of Removal is timely filed with this  
19 Court well within thirty days after receipt by SmileDirect of the Complaint, which makes this case  
20 removable. This Notice of Removal is also timely filed in accordance with 28 U.S.C. § 1446(c)(1) because  
21 it is filed less than one year after commencement of the State Court Action.

22 **BASIS OF REMOVAL**

23 **A. Diversity jurisdiction exists under 28 U.S.C. § 1332(a).**

24 6. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a).

25 ***1) Complete diversity of citizenship exists.***

26 7. As alleged in the Complaint, Plaintiff is a citizen of the State of California. *See Ex. A,*  
27 *Compl. ¶ 4 (“Plaintiff and the Class Members are residents, citizens, and patients of the State of*  
28 *California.”).*

1           8.       SmileDirectClub, Inc. is not a California citizen. SmileDirectClub, Inc. is a Delaware  
2 corporation with its principal place of business in Nashville, Tennessee. It is therefore a citizen of  
3 Delaware and Tennessee.

4           9.       SmileDirectClub, LLC is not a California citizen, either. SmileDirectClub, LLC is a single-  
5 member Delaware limited liability corporation. Its sole member is SDC Financial, LLC, which is also a  
6 Delaware limited liability corporation. SDC Financial, LLC’s principal place of business is Nashville,  
7 Tennessee. Its other members are individuals who are citizens of Michigan, Florida, Illinois, and  
8 Tennessee. SmileDirectClub LLC is therefore a citizen of Michigan, Florida, Illinois, and Tennessee. *See*  
9 *Johnson v. Columbia Properties Anchorage, LP*, 437 F. 3d 894, 899 (9th Cir. 2006) (“an unincorporated  
10 association such as a partnership has the citizenships of all of its members”); *id.* (noting that LLCs are  
11 “treated like partnerships for the purposes of diversity jurisdiction”).

12           10.      Dr. Jeffrey Sulitzer is not a California citizen, either. He is domiciled in, and is thus a  
13 citizen of, Oregon.

14           11.      Therefore, no defendant in this case is a citizen of California, the state of which Navarro is  
15 a citizen. Complete diversity exists.

16                   **2)       *The amount in controversy is satisfied.***

17           12.      The amount in controversy exceeds \$75,000, exclusive of interest and costs. Specifically,  
18 Plaintiff seeks damages from SmileDirect exceeding that amount.

19           13.      The Complaint seeks various types of relief, including injunctive relief, disgorgement of  
20 all sums paid to SmileDirect, attorneys’ fees, damages, and punitive damages. Ex. A, ¶¶ 73, 111 & “Prayer  
21 for Relief” ¶¶ A. through D.

22           14.      With regard to damages, the Complaint does not specifically identify the amount that  
23 Navarro seeks on his own behalf. The Civil Cover Sheet checked a box designating the case as  
24 “Unlimited”—meaning, “Amount demanded exceeds \$25,000.”

25           15.      The Complaint alleges that Navarro “has incurred medical, hospital, psychological and  
26 related expenses” in an unspecified amount, and “will in the future incur medical, hospital, psychological  
27 and related expenses,” also in an unspecified amount. Ex. A ¶¶ 96–97.

1 16. The Complaint also alleges that Navarro “has sustained loss of earnings and loss of earning  
2 capacity” in an unspecified amount. *Id.* ¶ 98.

3 17. But Navarro clarified the amount of damages that he seeks by demanding \$90,000 to  
4 resolve the case on an individual basis. Navarro’s counsel presented that demand as a reasonable estimate  
5 of his claim in a December 7, 2021, email to SmileDirect’s counsel.

6 18. The Ninth Circuit has recognized that a settlement demand, like Navarro’s, is relevant  
7 evidence of the amount in controversy as long as it appears to reflect a reasonable estimate of the plaintiff’s  
8 claim. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (“A settlement letter is relevant evidence  
9 of the amount in controversy if it appears to reflect a reasonable estimate of the plaintiff’s claim.”).  
10 Nothing in the December 7, 2021, email suggests that Navarro believed that his demand was not a  
11 reasonable estimate of his claim, which includes claims for past and future medical, hospital, and  
12 psychological bills; lost earnings; and lost earning capacity—as well as claims for punitive damages and  
13 attorneys’ fees.

14 19. For these reasons, the amount in controversy for Navarro’s individual claim exceeds  
15 \$75,000.

16 **B. Jurisdiction also exists under 28 U.S.C. § 1332(d).**

17 20. Removal is also proper in this case because the Court has original jurisdiction under 28  
18 U.S.C. § 1332(d), the Class Action Fairness Act (“CAFA”). CAFA applies because there is: (1) minimal  
19 diversity of citizenship; (2) a proposed class with at least 100 members; and (3) at least \$5 million in  
20 controversy.

21 ***1) The parties satisfy § 1332(d)’s geographical-diversity requirements.***

22 21. Plaintiff is a citizen of California. Ex. A ¶ 4.

23 22. As stated *supra*, Defendant SmileDirectClub, Inc. is a citizen of Delaware and Tennessee.  
24 *See* 28 U.S.C. § 1332(c)(1). Defendant SmileDirectClub, LLC is a citizen of Tennessee, Michigan,  
25 Florida, and Illinois. *See Johnson*, 437 F. 3d at 899. Defendant Sulitzer is a citizen of Oregon.

26 23. Because Plaintiff and Defendants SmileDirectClub, Inc., SmileDirectClub, LLC, and  
27 Sulitzer are citizens of different states, there is at least minimal diversity among the parties to this case, as  
28 CAFA requires for original jurisdiction in this Court. *See* 28 U.S.C. § 1332(d)(2)(A).

1                   **2)       The putative class exceeds 100 members.**

2           24.       Plaintiff seeks to represent a class of individuals who “maintain an address with Defendants  
3 in the State of California, at any time between December 3, 2017 and the present date” who “enrolled to  
4 receive Defendants’ services.” Ex. A. ¶ 20.

5           25.       Plaintiff alleges this putative class includes “approximately 100,000 persons in the State of  
6 California.” Id. ¶ 28.

7           26.       The proposed class is comprised of at least 100 members as required under CAFA for  
8 original jurisdiction in this Court. 28 U.S.C. § 1332(d)(5)(B).

9                   **3)       The putative class action places more than \$5 million in controversy.**

10          27.       27.       When the number of putative class members (“approximately 100,000 persons”) is  
11 multiplied by the undisputed evidence of how much Plaintiff wants to recover, the amount in controversy  
12 in this case exceeds the \$5 million threshold for diversity jurisdiction under CAFA. *See* U.S.C. §  
13 1332(d)(2); *Greene v. Harley-Davidson*, 965 F.3d 767, 772 (9th Cir. 2020) (“To meet CAFA’s amount-  
14 in-controversy requirement, a defendant needs to plausibly show that it is reasonably possible that the  
15 potential liability exceeds \$5 million.”); *see also McPhail v. Deere & Co.*, 529 F.3d 947, 956 (10th Cir.  
16 2008) (“The amount in controversy is not proof of the amount the plaintiff will recover. Rather, it is an  
17 estimate of the amount that will be put at issue in the course of the litigation.”).

18          28.       CAFA “tells the District Court to determine whether it has jurisdiction by adding up the  
19 value of the claim of each person who falls within the definition of [plaintiff’s] proposed class and  
20 determine whether the resulting sum exceeds \$5 million.” *Standard Fire Ins. Co. v. Knowles*, 568 U.S.  
21 588, 592 (2013). This includes all “persons (named or unnamed) who fall within the definition of the  
22 proposed or certified class.” *Id.* (quoting 28 U.S.C. § 1332(d)(1)(D)) (emphasis in original).

23          29.       On behalf of himself and the proposed class, Navarro seeks “disgorgement of all monies  
24 paid by patients to Defendants as restitution.” Ex. A. at Prayer for Relief, ¶ A.

25          30.       SmileDirect provides clear teeth aligners through an innovative telehealth platform. To  
26 become a customer, consumers must initiate the process either by visiting a SmileShop for a free teeth  
27 scan or by purchasing a \$59 at-home impression kit. *See How Much Does Smile Direct Club Cost?*,

1 SMILEDIRECTCLUB, <https://smiledirectclub.com/blog/how-much-does-smiledirectclub-cost/> (last visited  
2 Jan. 6, 2022).

3 31. Customers who are approved for treatment have two payments options. The first, “Single  
4 Pay,” allows customers to make a one-time payment of \$1950. The second, “SmilePay™,” allows  
5 customers to pay a \$250 down payment followed by 24 months of payments “as low as \$89,” resulting in  
6 a total payment of \$2,386. *See id.*

7 32. When customers finish their aligner treatment, they may purchase retainers to prevent teeth  
8 from shifting back to their pre-aligner positions. Defendants charge \$99 per set of retainers, which last  
9 up to 6 months. *See id.*

10 33. Given the number of alleged class members—“approximately 100,000”—the total amount  
11 of restitution sought by the class undoubtedly exceeds the \$5 million threshold. Even if only 2,565 class  
12 members—or 2.565% of the alleged class—purchased aligners at the lowest cost of \$1950, the restitution  
13 amount for those payments would exceed \$5 million. (2,565 x \$1950 = \$5,001,750.) Any class members  
14 utilizing the payment plan would increase the amount in controversy further beyond the \$5 million  
15 threshold.

16 34. Additionally, as stated above, to initiate the treatment process, some potential customers  
17 pay for at-home impression kits, which cost \$59. Even if some class members ultimately decided not to  
18 pursue treatment, they may have purchased an at-home impression kit which would likewise increase the  
19 amount in controversy.

20 35. Finally, of those who pursue treatment with Defendants, many of those customers elect to  
21 purchase retainers, at a cost of \$99, to maintain the effects of their treatment. Any retainer purchases  
22 would increase the amount in controversy further yet.

23 36. Navarro’s claims for punitive damages and attorneys’ fees add even more to the amount  
24 that his Complaint puts in controversy.

25 37. Although Defendants do not concede that Plaintiff or any putative class members are  
26 entitled to damages or restitution, the claimed damages as alleged in the Complaint exceed the \$5 million  
27 threshold for CAFA jurisdiction.

28

1 38. 28 U.S.C. § 1332(d)(4), referred to as the “local controversy exception,” does not bar  
2 removal. Among other things, Plaintiffs’ allegations do not satisfy 28 U.S.C. § 1332(d)(4)(II), because  
3 no Defendant is a California citizen. *See* 28 U.S.C. § 1332(d)(4)(II)(cc) (requiring at least one defendant  
4 to be a citizen of the state in which the action was filed).

5 39. The proposed class as defined by the Complaint, thus, easily satisfies the requirement for  
6 CAFA jurisdiction. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) (a  
7 notice of removal needs to include only a plausible allegation that the amount in controversy exceeds the  
8 jurisdictional threshold and does not need to include evidentiary submissions).

9 40. Although Defendants allege that the amount in controversy exceeds the jurisdictional  
10 threshold and the putative class contains more than 100 members, Defendants do not concede liability for  
11 any conduct that would warrant the imposition of any damages alleged by Plaintiff. Defendants also do  
12 not concede that Navarro may represent any class of California customers over any period. Defendants  
13 reserve all defenses and objections to the claims asserted by Navarro and the putative class.

14 **OTHER REMOVABILITY REQUIREMENTS**

15 41. Defendants have attached to this Notice of Removal copies of all process, pleadings, and  
16 orders served upon them in the State Court Action, consistent with 28 U.S.C. § 1446(a).

17 42. Promptly after the filing of this Notice of Removal, Defendants will provide notice of the  
18 removal to Navarro through his attorney of record in the State Court Action and to the Clerk of the Court  
19 in the State Court Action, as required by 28 U.S.C. § 1446(d).

20 43. Defendants reserve the right to amend and supplement this Notice of Removal.

21 44. Defendants reserve all defenses including, but not limited to, those defenses based on  
22 insufficiency of process, insufficiency of service, lack of personal jurisdiction, and the mandatory  
23 arbitration clause governing Navarro’s agreement with SmileDirect. The filing of this Notice of Removal  
24 is subject to, and does not waive, any such defenses or any other defenses. “When a defendant removes  
25 an action from a state court in which he has been sued, he consents to nothing and ‘waives’ nothing; he is  
26 exercising a privilege unconditionally conferred by statute, and, since the district court to which he must  
27 remove it is fixed by law, he has no choice, without which there can be no ‘waiver.’” *Tokio Marine &*  
28 *Fire Ins. Co. v. Nippon Express U.S.A., Inc.*, 118 F. Supp. 2d 997, 999 (C.D. Cal. 2000) (citations omitted).

1 WHEREFORE, Defendants respectfully request that the United States District for the Northern  
2 District of California assume jurisdiction over this action.

3  
4  
5 Dated: January 6, 2022

Respectfully submitted,

6 /s/ Michael D. Meuti

7 Michael Dominic Meuti (SBN: 227939)  
8 BENESCH, FRIEDLANDER, COPLAN &  
9 ARONOFF LLP  
10 200 Public Square, Suite 2300  
11 Cleveland, OH 44114-2378  
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22 -and-

23 Erin N. Baldwin (*Pro Hac Vice forthcoming*)  
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28 Facsimile: 614.223.9330  
enbaldwin@beneschlaw.com

*Attorneys for Defendants SmileDirectClub, Inc.;  
SmileDirectClub, LLC; and Dr. Jeffrey Sulitzer*



**INDEX OF ATTACHMEN**

1  
2 1. Attached hereto as Exhibit A is a true and correct copy of Plaintiff Arnold Navarro’s  
3 Complaint, including the Summons and Civil Cover Sheet.

4 2. Attached hereto as Exhibit B is a true and correct copy of the state-court notice informing  
5 the Superior Court of California for the County of Alameda that this action has been removed.

6 3. Attached hereto as Exhibit C is a true and correct copy of the Superior Court of California  
7 for the County of Alameda’s Notice of Case Management Conference.

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# **Exhibit A**

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

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

**ELECTRONICALLY FILED**  
Superior Court of California  
County of Alameda

12/03/2021

Chad Finke, Executive Officer / Clerk of the Court

By: Xian-xii Bowie Deputy

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

SMILEDIRECTCLUB, INC.; and SMILEDIRECTCLUB, LLC; JEFFREY SULITZER; DOES 1-10,

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

ARNOLD NAVARRO, on behalf of himself and all others similarly situated,

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

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is: **Oakland - René C. Davidson Courthouse**  
(El nombre y dirección de la corte es): **1225 Fallon Street  
Oakland, California 94612**

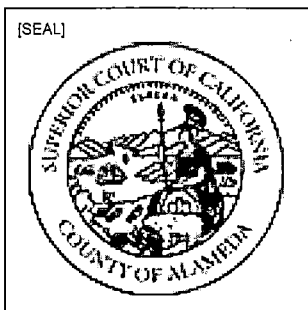
CASE NUMBER: (Número del Caso):  
**21CV003537**

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):

BLAKE J. LINDEMANN; 433 N. Camden Drive, 4th Floor, Beverly Hills, CA 90210; (310) 279-5269; (310) 300-0267

DATE: December 3, 2021 Chad Finke, Executive Officer / Clerk of the Court Clerk, by Xian-xii Bowie, Deputy  
(Fecha) (Secretario) (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)).



**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): **Smiledirectclub, Inc.**  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>LINDEMANN LAW FIRM, APC</b> Blake J. Lindemann, SBN 255747 433 N. Camden Drive, 4th Floor, Beverly Hills, CA 90210 TELEPHONE NO.: (310) 279-5269 FAX NO. (Optional): (310) 300-0267 E-MAIL ADDRESS: blake@lawbl.com ATTORNEY FOR (Name): Plaintiff, Arnold Navarro	FOR COURT USE ONLY  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of Alameda <b>12/03/2021 at 03:56:49 PM</b>  By: Xian-xii Bowie, Deputy Clerk
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA</b> STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: Same as above. CITY AND ZIP CODE: Oakland, California 94612 BRANCH NAME: Oakland - René C. Davidson Courthouse	
CASE NAME: Arnold Navarro v. SmileDirectClub, Inc., et al.	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NUMBER: <div style="text-align: center; font-size: 1.2em;"><b>21CV003537</b></div> JUDGE: DEPT.:	

*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:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <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) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <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 checked="" type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <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)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <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) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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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 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 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): 7

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: December 3, 2021  
 Blake J. Lindemann \_\_\_\_\_  
(TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

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

## 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/DPD/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/DPD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/DPD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/DPD/WD

## Non-PI/DPD/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/DPD/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

F. ADDENDUM TO CIVIL CASE COVER SHEET

<b>Short Title:</b> Arnold Navarro v. DirectSmileClub, Inc., et al.	<b>Case Number:</b>
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**CIVIL CASE COVER SHEET ADDENDUM**

**THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

<input type="checkbox"/> Hayward Hall of Justice (447)	<input type="checkbox"/> Pleasanton, Gale-Schenone Hall of Justice (448)
<input checked="" type="checkbox"/> Oakland, Rene C. Davidson Alameda County Courthouse (446)	

Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G) <b>Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no</b>
Other PI /PD / WD Tort	Asbestos (04)	<input type="checkbox"/> 75 Asbestos (D)
	Product liability (24)	<input type="checkbox"/> 89 Product liability ( <u>not</u> asbestos or toxic tort/environmental) (G)
	Medical malpractice (45)	<input type="checkbox"/> 97 Medical malpractice (G)
	Other PI/PD/WD tort (23)	<input type="checkbox"/> 33 Other PI/PD/WD tort (G)
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07)	<input type="checkbox"/> 79 Bus tort / unfair bus. practice (G)
	Civil rights (08)	<input type="checkbox"/> 80 Civil rights (G)
	Defamation (13)	<input type="checkbox"/> 84 Defamation (G)
	Fraud (16)	<input type="checkbox"/> 24 Fraud (G)
	Intellectual property (19)	<input type="checkbox"/> 87 Intellectual property (G)
	Professional negligence (25)	<input type="checkbox"/> 59 Professional negligence - non-medical (G)
	Other non-PI/PD/WD tort (35)	<input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)
Employment	Wrongful termination (36)	<input type="checkbox"/> 38 Wrongful termination (G)
	Other employment (15)	<input type="checkbox"/> 85 Other employment (G)
		<input type="checkbox"/> 53 Labor comm award confirmation
		<input type="checkbox"/> 54 Notice of appeal - L.C.A.
Contract	Breach contract / Wrnty (06)	<input type="checkbox"/> 04 Breach contract / Wrnty (G)
	Collections (09)	<input type="checkbox"/> 81 Collections (G)
	Insurance coverage (18)	<input type="checkbox"/> 86 Ins. coverage - non-complex (G)
	Other contract (37)	<input checked="" type="checkbox"/> 98 Other contract (G)
Real Property	Eminent domain / Inv Cdm (14)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G)
	Wrongful eviction (33)	<input type="checkbox"/> 17 Wrongful eviction (G)
	Other real property (26)	<input type="checkbox"/> 36 Other real property (G)
Unlawful Detainer	Commercial (31)	<input type="checkbox"/> 94 Unlawful Detainer - commercial
	Residential (32)	<input type="checkbox"/> 47 Unlawful Detainer - residential
	Drugs (38)	<input type="checkbox"/> 21 Unlawful detainer - drugs
		<b>Is the deft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No</b>
Judicial Review	Asset forfeiture (05)	<input type="checkbox"/> 41 Asset forfeiture
	Petition re: arbitration award (11)	<input type="checkbox"/> 62 Pet. re: arbitration award
	Writ of Mandate (02)	<input type="checkbox"/> 49 Writ of mandate
	Other judicial review (39)	<input type="checkbox"/> 64 Other judicial review
		<b>Is this a CEQA action (Publ.Res.Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No</b>
Provisionally Complex	Antitrust / Trade regulation (03)	<input type="checkbox"/> 77 Antitrust / Trade regulation
	Construction defect (10)	<input type="checkbox"/> 82 Construction defect
	Claims involving mass tort (40)	<input type="checkbox"/> 78 Claims involving mass tort
	Securities litigation (28)	<input type="checkbox"/> 91 Securities litigation
	Toxic tort / Environmental (30)	<input type="checkbox"/> 93 Toxic tort / Environmental
	Ins covrg from cmplx case type (41)	<input type="checkbox"/> 95 Ins covrg from complex case type
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment
		<input type="checkbox"/> 08 Confession of judgment
Misc Complaint	RICO (27)	<input type="checkbox"/> 90 RICO (G)
	Partnership / Corp. governance (21)	<input type="checkbox"/> 88 Partnership / Corp. governance (G)
	Other complaint (42)	<input type="checkbox"/> 68 All other complaints (G)
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name
		<input type="checkbox"/> 69 Other petition

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

**12/03/2021 at 03:56:49 PM**

By: Xian-xii Bowie, Deputy Clerk

1 **LINDEMANN LAW FIRM, APC**  
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5  
6 *Attorneys for Plaintiff and the Proposed Class*

7  
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF ALAMEDA**

10  
11 ARNOLD NAVARRO, on behalf of himself  
and all others similarly situated,

12  
13 Plaintiff,

14 v.

15  
16 SMILEDIRECTCLUB, INC.; and  
17 SMILEDIRECTCLUB, LLC; JEFFREY  
SULITZER; DOES 1-10,

18  
19 Defendants.

Case No. **21CV003537**

CLASS ACTION

**COMPLAINT FOR:**

1. **DECLARATORY RELIEF CONCERNING AVOIDANCE OF PATIENT CONTRACTS;**
2. **RESCISSION OF PATIENT CONTRACTS;**
3. **NEGLIGENCE;**
4. **BREACH OF FIDUCIARY DUTY;**
5. **UNFAIR BUSINESS PRACTICES [Cal. B&P Code §§17200, et seq.];**
6. **CONSUMER LEGAL REMEDIES ACT;**
7. **FRAUDULENT INDUCEMENT**

1 Arnold Navarro (“Navarro” or “Plaintiff”), individually and on behalf of all others similarly  
2 situated, and the general public, complains and alleges as follows:

3 **I. NATURE OF ACTION**

4 1. Plaintiff brings this Class Action Complaint for legal and equitable remedies based  
5 on Defendants’ SmileDirectClub, Inc., SmileDirectClub, LLC, Jeffrey Sulitzer, and DOES 1-10  
6 (collectively, “Defendants”) operation of an enterprise engaging in the unauthorized practice of  
7 dentistry. Specifically, Defendants provide dental services to Plaintiff and Class Members without  
8 the care, supervision, oversight and legal necessity of having a licensed dentist involved in every  
9 step of providing medical services.<sup>1</sup>

10 2. Defendants’ California operation is estimated to be a \$100 million-dollar  
11 unauthorized practice of dentistry enterprise, servicing approximately 100,000 California patients.  
12 Negative reviews and complaints have flooded messaging boards, online sites, and other places  
13 concerning the harmful effects of using Defendants’ services and its teledentistry services to  
14 straighten teeth. Eager to “disrupt” modern health care services, Defendants have put the desire for  
15 profit ahead of the health of the general public.

16 **II. VENUE**

17 3. Personal jurisdiction and venue are proper because Plaintiff and the proposed Class  
18 reside in California and maintain addresses with Defendants in the state of California. Defendants  
19 maintain “shops” throughout the State of California, and in this district, including without limitation,  
20 at 2140 South Shore Center, Alameda, California 94501.

21 **III. PARTIES**

22 4. Plaintiff and the Class Members are residents, citizens, and patients of the State of  
23 California. Plaintiff has resided in the State of California at all times relevant to this action, and has  
24 maintained an address with a California address with Defendants. Plaintiff and the Class Members  
25 obtained Defendants’ medical services for personal, family, and household purposes in that they  
26

27 <sup>1</sup> [https://news.bloomberglaw.com/health-law-and-business/smiledirectclub-loses-challenge-to-california-dental-board-](https://news.bloomberglaw.com/health-law-and-business/smiledirectclub-loses-challenge-to-california-dental-board-rules)  
28 [rules](https://news.bloomberglaw.com/health-law-and-business/smiledirectclub-loses-challenge-to-california-dental-board-rules). The Dental Board of California has classified Defendants’ storefronts as illegal dentistry practices.



1 sought to straighten their teeth and improve appearance of their teeth. Plaintiff obtained Defendants'  
2 services on or about May 28, 2020. Plaintiff was harmed by Defendants' conduct, which included  
3 without limitation, making false representations about the quality of services to be performed, and  
4 misleading and violating consumer protection laws of California. Plaintiff has had serious issues  
5 with his bite, the placement of his teeth, and has sustained significant pain and injury based on  
6 Defendants' services.

7         5. Defendant SmileDirectClub, Inc. (referred to in this paragraph as "SDC, Inc.") and  
8 Defendant SmileDirectClub, LLC (referred to in this paragraph as "SDC, LLC") collectively own  
9 and operate a "teledentistry" company that does business online and at over 300 brick-and-mortar  
10 retail locations across the United States. SDC Inc. is a holding company. Its sole material asset is  
11 its equity interest in SDC Financial which, through its direct and indirect subsidiaries, conducts all  
12 of the Company's operations. SDC Financial is a Delaware limited liability company and wholly  
13 owns SDC, LLC, a Tennessee limited liability company. Because SDC Inc. is the managing member  
14 of SDC Financial, SDC Inc. indirectly operates and controls all of the business and affairs of SDC  
15 Financial and its subsidiaries including of SDC Financial's wholly owned subsidiary SDC, LLC.  
16 Thus, both Defendant SDC, Inc. and Defendant SDC, LLC "integrate[] the marketing" for the  
17 "teledentistry platform" that is advertised and made commercially available through Defendants'  
18 "direct-to-consumer model."

19         6. Defendant Jeffrey Sulitzer DDS, is a dentist who represents his office according to  
20 the Board of Dentistry at several addresses, including 1111 Broadway 3<sup>rd</sup> Floor, Oakland, CA  
21 94607, Alameda County. The status of this business license is presently listed as "cancelled."

22         7. Plaintiff is ignorant of the true names and capacities of the Defendants DOES 1  
23 through 10, inclusive, whether individual, corporate, associate, or otherwise, and therefore have  
24 sued them by the foregoing names, which are fictitious. Plaintiff asks that when their true names  
25 and capacities are discovered that this Complaint may be amended by inserting their true names and  
26 capacities in lieu of said fictitious names, together with apt and proper words to charge them. All  
27 references to any named Defendants shall also refer to said Does. When the true names and  
28 capacities are ascertained, Plaintiff will amend this Complaint accordingly. On information and

1 belief, Plaintiff alleges that each of the fictitiously named defendants was responsible in some  
2 manner for the acts and omissions alleged herein and are liable to Plaintiff herein.

3 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

4 8. The Defendants do not conduct an initial exam of Plaintiff and class members'  
5 mouths, gums, roots before a diagnosis and treatment plan is discussed with the patient.

6 9. Defendants practiced dentistry by performing, or offering to perform, orthodontic  
7 diagnosis and the treatment of malposed teeth, which is the practice of dentistry as defined by Code  
8 section 1625, subsection (b).

9 10. Defendants indicated that they would perform orthodontic treatment and construct,  
10 alter, repair, or sell orthodontic appliances, which is the practice of dentistry as defined by Code  
11 section 1625, subsection (c).

12 11. Defendants managed or conducted as manager, proprietor, conductor, lessor, or  
13 otherwise, places where dental procedures were performed, which is the practice of dentistry as  
14 defined by Code section 1625, subsection (e).

15 12. Defendants advertised, fabricated, manufactured and sold orthodontic appliances  
16 directly to consumers when the casts and/or impressions for the work had not been made or taken  
17 by any licensed dentists, and without any written authorization for the work by Defendants or any  
18 other dentist, which is the practice of dentistry as defined by Code section 1626, subsection (e).

19 13. Defendants falsely represented that they wholly owned and entirely controlled the  
20 subject dental offices and mobile dental units of licensed dentists when they did not.

21 14. Defendants falsely represented that smile could be fixed, and mouth could be fixed  
22 without in-patient care and without an initial exam, when that is not legal, nor practical.

23 15. Plaintiff served a pre-suit Consumer Legal Remedies Act ("CLRA") letter via  
24 certified mail on certain Defendants on July 30, 2021.

25 16. Defendants contend that they are under an arbitration agreement with Plaintiff and  
26 the Class Members. Without conceding whether assent was obtained to any such agreement  
27 (Plaintiff has not received adequate and proper evidence of such fact), and expressly reserving the  
28 right to contest assent and to raise other issues as to whether the dispute must proceed in Court as  
an action for public injunctive relief, each of the Defendants, and there California stores, are

1 “clinics” pursuant to Health and Safety Code § 1200 because they provide “dental” services or  
 2 treatment to patients who remain at the various stores less than 24 hours, and they may also provide  
 3 diagnostic or therapeutic services to patients as an incident to care provided at the store facility.

4 17. Because each of the Defendants are “clinics,” they are “Health Care Providers” under  
 5 *California Code of Civil Procedure § 1295(g)(1)*, which defines a “Health Care Provider” to include  
 6 “any clinic...” and the “legal representative” of any health care provider. Dr. Jeffrey Sulitzer who  
 7 at times held a license at more than twelve California stores, was at relevant times, operating a  
 8 clinic.<sup>2</sup>

9 18. As a “Health Care Provider,” the purported form arbitration agreement does not  
 10 comply with *California Code of Civil Procedure § 1295(a), (b), (c), or (d)*. For this reason alone,  
 11 and other reasons to be addressed in an anticipated motion to compel arbitration that Plaintiff expects  
 12 Defendants to file, the dispute must be litigated in Court, and the alleged arbitration agreement is  
 13 wholly unenforceable as it pertains to this dispute.

14 19. In addition, this action only seeks public injunctive relief, and specifically that the  
 15 stores cease from further operations without seeing patients prior to providing services or otherwise  
 16 provide enhanced and improved medical services, and that they provide injunctive restitution in the  
 17 amount of all monies paid by patients, and that they disgorge all monies, for the illegally operated  
 18 dental practice.

### 18 CLASS ALLEGATIONS

19 20. Class Definition. Plaintiff brings this civil class action on behalf of himself  
 20 individually and on behalf of all other similarly situated persons, as a class action pursuant to  
 21 California Code of Civil Procedure § 382. The “Class” which Plaintiffs seek to represent is  
 22 comprised of and defined as follows:

23  
 24 All persons who maintain an address with Defendants in the State of California, at  
 25 any time between December 3, 2017, and the present date, who did not disclaim  
 26 California citizenship, who enrolled to receive Defendants’ services.

26 21. Excluded from the class are Defendants, their officers and directors, members of the

27  
 28 <sup>2</sup> <https://www.cnbc.com/2020/02/19/smiledirectclubs-top-dentist-risks-losing-license-in-california-crackdown.html>.

1 immediate families of the foregoing, legal representatives, heirs, successors, or assigns of the  
2 foregoing, and any entity in which Defendants have a controlling interest.

3 22. Plaintiff reserves the right to modify the definition of the Class (or add one or more  
4 subclasses) after further discovery.

5 23. Plaintiff and all Class members have been impacted and harmed by the acts of  
6 Defendants or their affiliates, agents, or subsidiaries acting on their behalf.

7 24. This Class Action Complaint seeks public injunctive relief and restitution in that  
8 Defendants market through e-mails, that one can avoid the need for providing aligners. Further,  
9 they denote a dollar sign next to Invisalign, and that conversely, there would be no corollary cost  
10 with respect to Defendants' products and services.

11 25. Defendants or any affiliates, subsidiaries, or agents of Defendants have acted on  
12 grounds generally applicable to the Class, thereby making final injunctive relief and corresponding  
13 declaratory relief with respect to the Class as a whole appropriate. Moreover, on information and  
14 belief, Plaintiff alleges that the violations complained of herein are substantially likely to continue  
15 in the future if an injunction is not entered.

16 26. This action may properly be brought and maintained as a class action pursuant to  
17 California Code of Civil Procedure 382 as a restitution class, or in the alternative, as an injunctive  
18 relief class. This class action satisfies the numerosity, typicality, adequacy, commonality,  
19 predominance, and superiority requirements.

20 27. On application by Plaintiff's counsel for class certification, Plaintiff may also seek  
21 certification of subclasses in the interests of manageability, justice, or judicial economy.

22 28. Numerosity. The number of persons within the California-only Class is substantial,  
23 believed to amount to approximately 100,000 persons in the State of California. It is, therefore,  
24 impractical to join each member of the Class as a named plaintiff. Further, the size and relatively  
25 modest value of the claims of the individual members of the Class renders joinder impractical.  
26 Accordingly, utilization of the class action mechanism is the most economically feasible means of  
27 determining and adjudicating the merits of this litigation.

28 29. Typicality. Plaintiff received medical treatment and services from Plaintiff on or

1 about May 28, 2020, and at other times. Consequently, the claims of Plaintiff are typical of the  
2 claims of the members of the Class, and Plaintiff's interests are consistent with and not antagonistic  
3 to those of the other Class members he seeks to represent. Plaintiff and all members of the Class  
4 have been impacted by, and face continuing harm arising out of, Defendants' providing the  
5 unauthorized practice of dentistry services as alleged herein.

6 30. Adequacy. As the proposed Class representative, Plaintiff has no interests adverse to  
7 or which conflict with the interests of the absent members of the Class, and he is able to fairly and  
8 adequately represent and protect the interests of such a Class. Plaintiff has raised viable claims and  
9 equitable claims of the type reasonably expected to be raised by members of the Class and will  
10 vigorously pursue these claims. If necessary, as the litigation (including discovery) progresses,  
11 Plaintiff may seek leave to amend this Class Action Complaint to modify the Class definition set  
12 forth above, add additional Class representatives, or assert additional claims. Plaintiff's counsel is  
13 experienced in handling class action claims and committed to prosecuting this action.

14 31. Commonality and Predominance. There are well-defined common questions of fact  
15 and law that exist as to all members of the Class and predominate over any questions affecting only  
16 individual members of the Class. These common legal and factual questions, which do not vary  
17 from Class member to Class member and may be determined without reference to the individual  
18 circumstances of any Class member, include (but are not limited to) the following:

- 19 a) Whether Defendants or affiliates, subsidiaries, or agents of Defendants, provided  
20 services or products that qualify as medical services;
- 21 b) Whether Defendants or affiliates, subsidiaries, or agents of Defendants, provided  
22 services or products that qualify as dentistry services;
- 23 c) Whether Defendants or affiliates, subsidiaries, or agents of Defendants, provided  
24 services and products that may only be performed by dentists licensed by the  
25 California Board of Dentistry;
- 26 d) Whether Defendants or any affiliates, subsidiaries, or agents of Defendants should  
27 be enjoined from engaging in such conduct in the future;
- 28 e) Whether Defendants or any affiliates, subsidiaries, or agents induced consumers into

1 using dental services and represented or implied, the level of care was the same as if  
2 a licensed dentist was involved the entire time;

3 f) Whether Defendants violated the California Consumers Legal Remedies Act, Cal.  
4 Civ. Code § 1750 *et seq.*, by misrepresenting the nature of their services and products  
5 provided.

6 32. Superiority. A class action is superior to other available methods for the fair and  
7 efficient adjudication of this controversy because the prosecution of individual litigation on behalf  
8 of each Class member is impracticable. Even if every member of the Class could afford to pursue  
9 individual litigation, the court system could not; multiple trials of the same factual issues would  
10 magnify the delay and expense to all parties and the court system. Individualized litigation would  
11 also present the potential for varying, inconsistent or contradictory judgments. By contrast, the  
12 maintenance of this action as a class action, with respect to some or all of the issues presented herein,  
13 presents few management difficulties, conserves the resources of the parties and the court system  
14 and protects the rights of each member of the Class. Plaintiff anticipates no difficulty in the  
15 management of this action as a class action. Class wide relief is essential to compel compliance with  
16 only services performed by a licensed dentist, and thus protect consumers' privacy. The interests of  
17 Class members in individually controlling the prosecution of separate claims is small because the  
18 restitution recoverable in an individual action for violation of an action such as this, are relatively  
19 small. Class members can be readily located and notified of this class action by reference to  
20 Defendants' records and, if necessary, the records of Defendants' affiliates, agents, or subsidiaries.

21 33. Additionally, the prosecution of separate actions by individual Class members would  
22 create a risk of multiple adjudications with respect to them that would, as a practical matter, be  
23 dispositive of the interests of other members of the Class who are not parties to such adjudications,  
24 thereby substantially impairing or impeding the ability of such nonparty Class members to protect  
25 their interests. The prosecution of individual actions by Class members could also establish  
26 inconsistent results and/or establish incompatible standards of conduct for Defendants.

27 **CAUSES OF ACTION**

28 **FIRST CAUSE OF ACTION**

**(Declaratory Relief Concerning Avoidance of Patient Contracts)**

1  
2 34. Plaintiff realleges and incorporates herein by reference all of the allegations set forth  
3 in the preceding paragraphs as though fully set forth herein.

4 35. In their agreement with plaintiff and patients of the proposed class (“Patient  
5 Contracts”), Defendants committed to providing certain medical services. A copy of Mr. Navarro’s  
6 agreement is appended hereto.

7 36. Specifically, as part of the contractual services provided, the Defendants do not  
8 conduct an initial exam of Plaintiff and class members’ mouths, gums, roots before a diagnosis and  
9 treatment plan is discussed with the patient. Independently, the Defendants practiced dentistry under  
10 the patient contracts by performing, or offering to perform, orthodontic diagnosis and the treatment  
11 of malposed teeth, which is the practice of dentistry as defined by Code section 1625, subsection  
12 (b).

13 37. As part of the contractual services provided, Defendants represent that they can  
14 perform orthodontic treatment and construct, alter, repair, or sell orthodontic appliances, which is  
15 the practice of dentistry as defined by Code section 1625, subsection (c).

16 38. As part of the contractual services provided, Defendants managed or conducted as  
17 manager, proprietor, conductor, lessor, or otherwise, places where dental procedures were  
18 performed, which is the practice of dentistry as defined by Code section 1625, subsection (e).

19 39. As part of the contractual services provided, Defendants advertised, fabricated,  
20 manufactured and sold orthodontic appliances directly to consumers when the casts and/or  
21 impressions for the work had not been made or taken by any licensed dentist and without any written  
22 authorization for the work by Sulitzer or any other dentist, which is the practice of dentistry as  
23 defined by Code section 1626, subsection (e).

24 40. An actual case or controversy exists over whether the Patient Contracts are illegal  
25 contracts, void, unenforceable, void against public policy, and unenforceable because the Patient  
26 Contracts contemplating providing services and products that require a license, and no licensed  
27 dentist actually rendered care.

28 41. California has a strong interest in protecting patients from unlicensed medical care.

1           42.     Accordingly, Plaintiff and the Class seek a declaratory judgment finding that the  
2 Patient Contracts are avoidable, void, illegal, unenforceable, and unconscionable in accordance with  
3 the above facts and law.  
4

5   **SECOND CAUSE OF ACTION**

6   **(Rescission of Patient Contracts)**

7           43.     Plaintiff realleges and incorporates herein by reference all of the allegations set forth  
8 in the preceding paragraphs as though fully set forth herein.

9           44.     *California Civil Code Section 1689(b)(5)* provides that a contract may be rescinded  
10 “[i]f the unlawful contract is unlawful for [causes which do not appear in its terms or conditions, and  
11 the parties are not equally at fault.”

12          45.     *California Civil Code Section 1689(b)(6)* provides that a contract may be rescinded  
13 “[i]f the public interest will be prejudiced by permitting the contract to stand.”

14          46.     The Corporate Practice of Medicine Doctrine (the “CPOM Doctrine”) applies in  
15 California.

16          47.     California’s anti-fee splitting ban is rooted in *Business and Professions Code Section*  
17 *650(a)*. The statute prohibits physicians and other licensed professionals from offering or receiving  
18 rebates, refunds, commissions or other consideration, as compensation or inducement for the referral  
19 of patients, clients or customers to any person. Here, several dentists including Mr. Sulitzer, and  
20 other DOE dentists, received rebates refunds and other consideration as compensation for  
21 inducement of referral of patients to Defendants business, and such consideration was not  
22 commensurate with the value of the services furnished by Mr. Sulitzer and the DOE defendants, nor  
23 the fair rental value of any premises or equipment eased or provided.

24          48.     At least 51% of the shareholders of a corporation providing medical services, must  
25 be medical professionals licensed to deliver the primary category of medical services provided by  
26 the professional corporation. *Moscone-Knox Professional Corporation Act*, CA Corps Code §  
27 13401.5.  
28



1           49. In their agreement with plaintiff and patients of the proposed class, Defendants  
2 agreed to provide certain medical services. A copy of Mr. Navarro's agreement is appended hereto.

3           50. Specifically, as part of the contractual services provided, the Defendants do not  
4 conduct an initial exam of Plaintiff and class members' mouths, gums, roots before a diagnosis and  
5 treatment plan is discussed with the patient. Independently, the Defendants practiced dentistry under  
6 the patient contracts by performing, or offering to perform, orthodontic diagnosis and the treatment  
7 of malposed teeth, which is the practice of dentistry as defined by Code section 1625, subsection  
8 (b).

9           51. As part of the contractual services provided, Defendants advise that they can perform  
10 orthodontic treatment and construct, alter, repair, or sell orthodontic appliances, which is the practice  
11 of dentistry as defined by Code section 1625, subsection (c).

12           52. As part of the contractual services provided, Defendants managed or conducted as  
13 manager, proprietor, conductor, lessor, or otherwise, places where dental procedures were  
14 performed, which is the practice of dentistry as defined by Code section 1625, subsection (e).

15           53. As part of the contractual services provided, Defendants advertised, fabricated,  
16 manufactured and sold orthodontic appliances directly to consumers when the casts and/or  
17 impressions for the work had not been made or taken by any licensed dentist and without any written  
18 authorization for the work by Sulitzer or any other dentist, which is the practice of dentistry as  
19 defined by Code section 1626, subsection (e).

20           54. Based on the foregoing, the Patient Contracts are unlawful for causes which do not  
21 appear in the terms or conditions of the contract. Specifically, the Patient Contracts concern the  
22 unauthorized practice of dentistry which is an unlawful cause that does not appear in the terms and  
23 conditions.

24           55. Plaintiff and the Class are not equally at fault.

25           56. Alternatively, and based on the foregoing, the public interest will be prejudiced by  
26 permitting the Patient Contracts to stand.

27           57. The public interest will be prejudiced by permitting the Patient Contracts to stand  
28 because the public has an interest in obtaining quality medical treatment by licensed professionals.

1 In addition, the public interest will be prejudiced by permitting contracts involving unlicensed  
2 dentistry clinics to stand.

3 58. Alternatively, the Patient Contracts would prejudice the public, and are void, because  
4 the contracting party is not properly licensed and incorporated under California Law as a  
5 “professional” corporation, as it must, and 51% of the Defendants’ corporations are not owned by  
6 professionals licensed in California.

7 59. Alternatively, the public interest would be prejudiced because Defendants and their  
8 clinics, have violated *Business and Professions Code Section 650(a)*.

9 60. As a result of the foregoing, the patient contracts must be rescinded, and Plaintiff and  
10 the Class are entitled to injunctive relief in the form of correction of the foregoing violations,  
11 restitution in the form of all monies paid by Plaintiff and the Class Members to the Defendants,  
12 interest, costs, disgorgement, and attorney’s fees.

13 **THIRD CAUSE OF ACTION**

14 **(Negligence)**

15 61. Plaintiff realleges and incorporates herein by reference all of the allegations set forth  
16 in the preceding paragraphs as though fully set forth herein.

17 62. Based on the unauthorized practice of dentistry, Defendants were negligent in  
18 rendering care to the Plaintiff and the Class Members.

19 63. Specifically, the Defendants do not conduct an initial exam of Plaintiff and class  
20 members’ mouths, gums, roots before a diagnosis and treatment plan is discussed with the patient,  
21 which is negligent.

22 64. Independently, the Defendants practiced dentistry by performing, or offering to  
23 perform, orthodontic diagnosis and the treatment of malposed teeth, which is the practice of  
24 dentistry as defined by Code section 1625, subsection (b). Providing such services without a license  
25 falls below the standard of care, and renders Defendants liable on a strict liability basis. Defendants  
26 owed a duty to Plaintiff and the Class members because it undertook to provide medical services to  
27 Plaintiff and Class members.

28 65. The Defendants advise that they can perform orthodontic treatment and construct,

1 alter, repair, or sell orthodontic appliances, which is the practice of dentistry as defined by Code  
2 section 1625, subsection (c). Providing such services or rendering advice pertaining to such  
3 services, without a license, falls below the standard of care, and renders Defendants liable on a strict  
4 liability basis.

5 66. The Defendants managed or conducted as manager, proprietor, conductor, lessor, or  
6 otherwise, places where dental procedures were performed, which is the practice of dentistry as  
7 defined by Code section 1625, subsection (e). Providing such services or rendering advice  
8 pertaining to such services, without a license, falls below the standard of care, and renders  
9 Defendants liable on a strict liability basis.

10 67. The Defendants advertised, fabricated, manufactured and sold orthodontic  
11 appliances directly to consumers when the casts and/or impressions for the work had not been made  
12 or taken by any licensed dentist and without any written authorization for the work by Sulitzer or  
13 any other dentist, which is the practice of dentistry as defined by Code section 1626, subsection (e).  
14 Providing such services or rendering advice pertaining to such services, without a license, falls  
15 below the standard of care, and renders Defendants liable on a strict liability basis.

16 68. The unlicensed work caused Plaintiff and the Class members to pay monies for  
17 services, and they were harmed by the unlicensed work and damages they sustained.

18 **FOURTH CAUSE OF ACTION**

19 **(Breach of Fiduciary Duty)**

20 69. Plaintiff realleges and incorporates herein by reference all of the allegations set forth  
21 in the preceding paragraphs as though fully set forth herein.

22 70. A relationship of special trust and confidence existed between Defendants, on the  
23 one hand, and Plaintiff and the proposed class members, on the other hand, by virtue of the  
24 Defendants' professed special skill, knowledge, and expertise, the relationship of mutual  
25 confidence, and the established course of dealing between them.

26 71. As a result of this special relationship of trust and confidence existing between  
27 Defendants and Plaintiff and the proposed class members, defendants owed to plaintiff and the  
28 proposed class members a fiduciary duty of loyalty, utmost good faith, competence, and diligence.

1 72. Because of their actions and omissions alleged here, including but not limited to the  
2 unauthorized practice of dentistry, Defendants breached their fiduciary duties to Plaintiff and the  
3 proposed class members, and failed to competently and diligently carry out his responsibilities.

4 73. As a direct and proximate result of defendants' breach of fiduciary duties, plaintiff  
5 and the proposed class members have been damaged as described here, and are entitled to recover  
6 damages, as well as a disgorgement of monies retained by defendants.

7 **FIFTH CAUSE OF ACTION**

8 **(Unfair Business Practices [Cal. B&P Code §§17200, *et seq.*])**

9 74. Plaintiff realleges and incorporates herein by reference all of the allegations set forth  
10 in the preceding paragraphs as though fully set forth herein.

11 75. Defendants' acts and omissions alleged here violate the California Unfair  
12 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* Section 17200 prohibits unfair  
13 competition by engaging in, among other things, any unlawful or unfair business acts or practices.

14 76. California Business & Profession Code §2052(a) prohibits the practice of medicine  
15 without a valid license.

16 77. Defendants committed acts of unfair competition, as defined by the Unfair  
17 Competition Law, by, among other things, engaging in the acts and omissions alleged in the  
18 Complaint. Also, defendants committed such acts and omissions with the intent and objective of  
19 deceiving consumers and putting profits ahead of patient care.

20 78. Defendants do not conduct an initial exam of Claimant and class members' mouths,  
21 gums, roots before a diagnosis and treatment plan is discussed with the patient.

22 79. Defendants practiced dentistry by performing, or offering to perform, orthodontic  
23 diagnosis and the treatment of malposed teeth, which is the practice of dentistry as defined by Code  
24 section 1625, subsection (b).

25 80. Defendants indicated that it would perform orthodontic treatment and construct,  
26 alter, repair, or sell orthodontic appliances, which is the practice of dentistry as defined by Code  
27 section 1625, subsection (c).

28



1 omissions alleged here, plaintiff and the proposed class members have been injured, and are entitled  
2 to injunctive relief.

3 **SEVENTH CAUSE OF ACTION**

4 **(Fraudulent Inducement)**

5 87. Plaintiff realleges and incorporates herein by reference all of the allegations set forth  
6 in the preceding paragraphs as though fully set forth herein.

7 88. Defendants falsely represented to the Class that a licensed dentist wholly owned and  
8 entirely controlled the subject dental offices and mobile dental units when he did not.

9 89. Defendants performed or otherwise permitted orthodontic treatment on persons who  
10 were not his patient of record and/or allowed the construction of orthodontic appliances without any  
11 written authorization for the work by Defendant or any dentist working under him.

12 90. Defendants falsely represented that smile could be corrected or fixed, and that class  
13 members' teeth could be fixed and straightened without in-patient care and without an initial exam.

14 91. When Defendants made these representations, they had no reasonable ground for  
15 believing them to be true.

16 92. Defendants made such material misrepresentations with the intention of inducing  
17 Plaintiff to undergo unnecessary dental surgeries and other radical and invasive dental treatment, all  
18 to Plaintiff's detriment.

19 93. Plaintiff, was ignorant of the falsity of Defendants' representations perceived and  
20 made on or about the time of treatment of May 2020, and believed them to be true. In justifiable  
21 reliance on these representations, Plaintiff was induced to undergo treatment, all of which Plaintiff  
22 would not have agreed to had he known the actual facts.

23 94. As a proximate result of the misrepresentations made by Defendants, Plaintiff has  
24 sustained injury to his health, strength and activity, all of which injuries have caused, and continue  
25 to cause, Plaintiff great mental, physical and nervous pain and suffering.

26 95. As a further proximate result of the misrepresentations made by Defendants, Plaintiff  
27 has sustained, and will continue to sustain, serious and permanent physical and emotional injuries,  
28 all to Plaintiff's general damage in an amount according to proof.

1           96. As a further proximate result of the misrepresentations made by Defendants, Plaintiff  
2 has incurred medical, hospital, psychological and related expenses in an amount according to proof.

3           97. As a further proximate result of the misrepresentations made by Defendants, Plaintiff  
4 will in the future incur medical, hospital, psychological and related expenses, the exact nature and  
5 extent of which are currently unknown to Plaintiff.

6           98. As a further proximate result of the misrepresentations made by Defendant, and each  
7 of them, Plaintiff has sustained loss of earnings and loss of earning capacity, the exact nature and  
8 extent of which are currently unknown to Plaintiff.

9           99. Defendant Sulitzer is subject to disciplinary action for unprofessional conduct under  
10 Code section 1680, subdivision (w), in that he used fraud in the procurement of permits issued  
11 pursuant to the Dental Practice Act, Code sections 1600, *et seq.*

12           100. Specifically, when applying for FNPs for various dental offices located throughout  
13 California, Mr. Sulitzer represented under penalty of perjury that he wholly owned and entirely  
14 controlled the subject offices. These representations were false. The subject dental offices were in  
15 fact owned and controlled, either entirely or in part, by the Smile Direct entities.

16           101. Further, when applying for AOPs for the various dental offices located throughout  
17 California, Defendant Sulitzer represented under penalty of perjury that:

18           i He accepted legal responsibility and liability for dental services rendered in the  
19 offices;

20           ii The offices were in compliance with section 1658.1 and all other applicable State  
21 and Federal laws, including that the offices were in compliance with the supervision requirements  
22 of the Dental Practice Act; and,

23           iii In the offices there was visibly posted in an area likely to be seen by all patients using  
24 the facility a sign with Sulitzer's name, mailing address, telephone number, and dental license  
25 number.

26           102. Sulitzer's representations were false. The true facts were that Sulitzer did not accept  
27 legal responsibility and liability for dental services rendered in the dental offices. Instead, patients  
28 presenting at the offices were requested to execute informed consent forms in which it was stated:

1 “I release [the Company] from liability for any claims by me or any third party in connection with  
2 my participation or use of the invisible aligner treatment,” tending to deceive patients into believing  
3 that they have no legal recourse for the aligner treatment that Sulitzer was supposedly to render.

4 103. Further, the San Francisco Office, Oakland Office, and L.A. Office were not in  
5 compliance with section 1658.1 and all other applicable state and federal laws as Sulitzer had  
6 affirmatively represented because:

7 i As alleged in greater detail below in paragraph 57, the offices failed to comply with  
8 the supervision requirements of the Dental Practice Act in that dental assistants were permitted to  
9 take without direct supervision health histories and intraoral 3D scan impressions of patients’  
10 dentition for the purpose of orthodontic diagnosis and treatment planning, including for the  
11 fabrication and manufacture of orthodontic aligners, in violation of Code section 1750.1,  
12 subsections (b)(3) and (b)(8); and/or,

13 ii Sulitzer failed to post in the dental offices any:

14 a) Signage as required by section 1658.1, subsection (c);

15 b) Notice of Licensure as required by title 16, CCR section 1065;

16 c) Copy of title 16, CCR section 1005 (pertaining to minimum standards for infection  
17 control) as required by title 16, CCR section 1005, subsection (b)(3); and/or,

18 d) Dental auxiliary duties as required by title 16, CCR section 1068.

19 104. As alleged above, Defendants made a number of representations concerning their  
20 business, including that this was a way for normal people to obtain incredible financial success.

21 105. Defendants’ representations described above were false. However, despite knowing  
22 of the falsity of their representations, Defendants concealed, and/or failed to disclose material and  
23 contrary facts set forth above.

24 106. Defendants had a duty to disclose this information to their patients because: it is  
25 material information that would reflect the fraudulent nature of the business, and Defendants knew  
26 the information was not reasonably discoverable by their patients; Defendants made affirmative  
27 representations that were contrary and misleading without the disclosure of this information; and/or  
28 Defendants actively concealed this information from their patients, the government and the public.



1 107. Defendants concealed and failed to disclose these material facts with the intent to  
2 deceive Plaintiff and the Class, including but not limited to risks of engaging in dental practices  
3 without conducting an initial exam.

4 108. Defendants' concealments and non-disclosure of material facts as set forth above  
5 were made with the intent to induce Plaintiffs and the Class to seek services.

6 109. Plaintiff and the Class, at the time these failures to disclose and suppressions of facts  
7 occurred, and at the time Plaintiff and the Class sought services, were ignorant of the existence of  
8 the facts that Defendants suppressed and failed to disclose. If Plaintiff and the Class had known of  
9 Defendants' concealments and failures to disclose material facts, they would not have taken the  
10 actions they did, including but not limited to seeking dental services from Defendants.

11 110. Plaintiff and the Class' reliance was justified and reasonable as they had no basis to  
12 doubt the original representations made to them, nor did they have reason to believe they were being  
13 misled or material facts were being concealed from them.

14 111. As a direct and proximate result of the above, Plaintiff and the Class have suffered  
15 damages in an amount to be proven at trial.

16 112. Defendants undertook the aforesaid illegal acts intentionally or with conscious  
17 disregard of the rights of Plaintiff and the Class, and did so with fraud, oppression, and/or malice.  
18 This despicable conduct subjected Plaintiffs and the Class to cruel and unjust hardship so as to  
19 justify an award of punitive damages in an amount sufficient to deter such wrongful conduct in the  
20 future. Therefore, Plaintiff and the Class are also entitled to punitive damages against Defendants  
21 in an amount to be determined at trial. Plaintiff reallege all allegations as if fully set forth herein,  
22 and incorporate previous allegations by reference.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff Arnold Navarro prays for relief and judgment in favor of himself  
25 and the Class as follows:

26 A. Injunctive relief sufficient to ensure Defendants refrain from violating the above  
27 statutes and disgorgement of all monies paid by patients to Defendants as restitution during the Class  
28 Period;

1           B.     An Order certifying this action to be a proper class action, establishing an appropriate  
2 Class and any Subclass(es) the Court deems appropriate, finding that Plaintiff is proper  
3 representative of the Class, and appointing the attorneys representing Plaintiff as counsel for the  
4 Class; and

5           C.     An award of attorneys' fees, interest, and costs to Plaintiff's counsel, payable from  
6 any class-wide damages recovered by the Class.

7           D.     An award of punitive damages.

8

9           DATED: December 3, 2021

Respectfully submitted,

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11

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*Attorneys for Plaintiff and the Proposed Class*

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**DEMAND FOR JURY**

Plaintiff requests a trial by jury on all issues so triable.

DATED: December 3, 2021

Respectfully submitted,



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*Attorneys for Plaintiff and the Proposed Class*

# **Exhibit B**

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11 Cleveland, OH 44114-2378  
12 Telephone: 216.363.4500  
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14 mmeuti@beneschlaw.com

15 *Attorneys for Defendants SmileDirectClub, Inc.,  
16 SmileDirectClub, LLC., and Jeffrey Sulitzer*

17 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **FOR THE COUNTY OF ALAMEDA**

19 ARNOLD NAVARRO, *on behalf of himself and*  
20 *others similarly situated*

21 Plaintiff,

22 v.

23 SMILEDIRECTCLUB, INC.;  
24 SMILEDIRECTCLUB, LLC;  
25 JEFFREY SULITZER; DOES 1–10

26 Defendants.

CASE NO: 21CV003537

NOTICE OF FILING NOTICE OF  
REMOVAL

27 **NOTICE OF FILING NOTICE OF REMOVAL**

28 PLEASE TAKE NOTICE that Defendants, SmileDirectClub, Inc., SmileDirectClub, LLC, and Jeffrey Sulitzer, have removed this case to the United States District Court for the Northern District of California, San Francisco/Oakland Division. A copy of the Notice of Removal filed in the federal court is attached as Exhibit A.

1 This case is therefore now removed to the United States District Court for the Northern District of  
2 California pursuant to 28 U.S.C. § 1446(d), and all further proceedings in this Court are stayed unless and  
3 until the case is remanded.  
4

5  
6 Dated: January 6, 2022

Respectfully submitted,

8 /s/ Michael D. Meuti

9 Michael Dominic Meuti (SBN: 227939)  
10 BENESCH, FRIEDLANDER, COPLAN &  
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25 *Attorneys for Defendants SmileDirectClub, Inc.;*  
26 *SmileDirectClub, LLC; and Dr. Jeffrey Sulitzer*  
27  
28

# **Exhibit C**

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</b>	Reserved for Clerk's File Stamp  <b>FILED</b> Superior Court of California County of Alameda 12/03/2021 Clad Fluke, Executive Officer / Clerk of the Court By: <u>X. Bowie</u> Deputy X. Bowie
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	
PLAINTIFF: Arnold Navarro	
DEFENDANT: SmileDirectClub, Inc. et al	
<b>NOTICE OF CASE MANAGEMENT CONFERENCE</b>	CASE NUMBER: 21CV003537

TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:

You are ordered to serve all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (Cal. Rules of Court, 3.110(b)).

Give notice of this conference to all other parties and file proof of service.

Your Case Management Conference has been scheduled on:

Date: 04/04/2022	Time: 8:30 AM	Dept.: 21
Location: Rene C. Davidson Courthouse Administration Building, 1221 Oak Street, Oakland, CA 94612		

TO DEFENDANT(S)/ATTORNEY(S) FOR DEFENDANT(S) OF RECORD:

The setting of the Case Management Conference does not exempt the defendant from filing a responsive pleading as required by law, you must respond as stated on the summons.

TO ALL PARTIES who have appeared before the date of the conference must:

Pursuant to California Rules of Court, 3.725, a completed Case Management Statement (Judicial Council form CM-110) must be filed and served at least 15 calendar days before the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record.


**Meet and confer**, in person or by telephone as required by Cal. Rules of Court, rule 3.724.

**Post jury fees** as required by Code of Civil Procedure section 631.

If you do not follow the orders above, the court may issue an order to show cause why you should not be sanctioned under Cal. Rules of Court, rule 2.30. Sanctions may include monetary sanctions, striking pleadings or dismissal of the action.

The judge may place a Tentative Case Management Order in your case's on-line register of actions before the conference. This order may establish a discovery schedule, set a trial date or refer the case to Alternate Dispute Resolution, such as mediation or arbitration. Check the court's eCourt Public Portal for each assigned department's procedures regarding tentative case management orders at <https://eportal.alameda.courts.ca.gov>.



<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	<b>FILED</b> Superior Court of California County of Alameda 12/03/2021
PLAINTIFF/PETITIONER: Arnold Navarro	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy
DEFENDANT/RESPONDENT: SmileDirectClub, Inc. et al	X. Bowie
<b>CERTIFICATE OF MAILING</b>	CASE NUMBER: 21CV003537

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Management Conference upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 12/06/2021

Chad Finke, Executive Officer / Clerk of the Court

By:

Chad Finke, Executive Officer / Clerk of the Court



X. Bowie, Deputy Clerk

**CERTIFICATE OF MAILING**



## Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

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The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

**QUESTIONS?** Call (510) 891-6055. Email [adrprogram@alameda.courts.ca.gov](mailto:adrprogram@alameda.courts.ca.gov)  
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

### What Are The Advantages Of Using ADR?

- **Faster** – Litigation can take years to complete but ADR usually takes weeks or months.
- **Cheaper** – Parties can save on attorneys' fees and litigation costs.
- **More control and flexibility** – Parties choose the ADR process appropriate for their case.
- **Cooperative and less stressful** – In mediation, parties cooperate to find a mutually agreeable resolution.
- **Preserve Relationships** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

### What Is The Disadvantage Of Using ADR?

- **You may go to court anyway** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

### What ADR Options Are Available?

- **Mediation** – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
  - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (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 is effective when the parties want someone other than themselves to decide the outcome.
  - **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
  - **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

### **Mediation Service Programs In Alameda County**

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

#### **SEEDS Community Resolution Center**

2530 San Pablo Avenue, Suite A, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: [www.seedsrc.org](http://www.seedsrc.org)

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – Services that Encourage Effective Dialogue and Solution-making.

#### **Center for Community Dispute Settlement**

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: [www.trivalleymediation.com](http://www.trivalleymediation.com)

CCDS provides services in the Tri-Valley area for all of Alameda County.

#### *For Victim/Offender Restorative Justice Services*

#### **Catholic Charities of the East Bay: Oakland**

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: [www.cceb.org](http://www.cceb.org)

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

ALA ADR-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY  STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
<b>STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS</b>	CASE NUMBER: _____

**INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.**

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 1225 Fallon Street, Oakland, CA 94612.

1. Date complaint filed: \_\_\_\_\_ An **Initial Case Management Conference** is scheduled for:

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Department: \_\_\_\_\_

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (*check one*):


- Court mediation       Judicial arbitration  
 Private mediation       Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:


- No party to the case has requested a complex civil litigation determination hearing;
- All parties have been served and intend to submit to the jurisdiction of the court;
- All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- Case management statements are submitted with this stipulation;
- All parties will attend ADR conferences; and,
- The court will not allow more than 90 days to complete ADR.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF PLAINTIFF)

Date:

\_\_\_\_\_  \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR PLAINTIFF)

ALA ADR-001

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER.:
--	---------------

Date:

\_\_\_\_\_ ▶ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF DEFENDANT)

Date:

\_\_\_\_\_ ▶ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR DEFENDANT)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Arnold Navaro

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

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

Blake J. Lindemann, Esq. 433 N. Camden Drive, 4th Floor; Beverly Hills, CA 90210

DEFENDANTS

SmileDirectClub, Inc.; SmileDirectClub, LLC; Jeffrey Sulitzer; DOES 1-10

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

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

Attorneys (If Known)

Krista Enns (CA 206430) Michael D. Meuti (CA 227939) Benesch, Friedlander, Coplan & Aronoff, LLP; 100 Pine St., Ste 3100, San Francisco, CA 94111

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

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant X 4 Diversity (Indicate Citizenship of Parties in Item III)

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes options like 'Citizen of This State', 'Citizen of Another State', 'Citizen or Subject of a Foreign Country', 'Incorporated or Principal Place of Business In This State', etc.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes specific codes like 110 Insurance, 310 Airplane, 625 Drug Related Seizure, etc.

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

- 1 Original Proceeding X 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): California Bus. & Prof. Code 17200 & Consumer Legal Remedies Act, plus common-law claims

Brief description of cause: Alleged unfair business practices

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 90,000.00

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 01/06/2022

SIGNATURE OF ATTORNEY OF RECORD

s/Michael D. Meuti

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

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

- I. a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
  - c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [SmileDirectClub Operates Illegal Dentistry Practice in California, Class Action Alleges](#)

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