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7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 MICHAEL RAY; BRITNI GEORGIANA; ) CASE NO. **'22CV1442 BEN AHG**  
ROES 1 through 100 inclusive; individually, )  
12 and or behalf of all others similarly situated; ) **CONSERVICE, LLC'S**  
13 Plaintiffs, ) **NOTICE OF REMOVAL**  
14 v. ) **[28 U.S.C. §§ 1332, 1441, AND**  
15 CONSERVICE, LLC, a Utah limited liability ) **1446]**  
company; and DOES 1 through 10,000, )  
16 inclusive; )  
17 Defendants. )  
18 )  
19 )  
20 )

21  
22 **TO THE CLERK OF THE ABOVE-CAPTIONED COURT:**

23 Please take notice that Defendant Conservice, LLC (“**Defendant**”) hereby  
24 removes this action from the Superior Court of the State of California for the  
25 County of San Diego, to the United States District Court for the Southern District  
26 of California, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. Removal is proper  
27 because this Court has subject matter jurisdiction over this action under diversity  
28 jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).

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**I. FACTUAL BACKGROUND**

1. On August 23, 2022, Plaintiffs Michael Ray and Britni Georgianna (“**Plaintiffs**”) filed their Complaint with the San Diego County Superior Court. The Complaint asserts class action claims as to the purported class’ utility bills. Plaintiffs seek an accounting, actual damages, restitution, punitive damages, injunctive relief, pre-judgment interest, as well as costs and attorneys’ fees. *See generally* Complaint.

2. On August 25, 2022, Defendant was served with a copy of the Complaint. Declaration of Craig J. Mariam, ¶ 2. A copy of the Complaint which was served on Defendant is attached as **Exhibit 1** to the Declaration of Craig J. Mariam.

**II. LEGAL ANALYSIS**

**A. Diversity Jurisdiction Exists Under 28 U.S.C. § 1332**

3. Diversity jurisdiction exists in this matter pursuant to 28 U.S.C. § 1332(a)(1), which provides that the district court has original jurisdiction of “all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.” As discussed in more detail below: (1) Plaintiffs’ citizenship is diverse from that of Defendants; and (2) the matter in controversy exceeds \$75,000.00, exclusive of interest and costs.

4. In the Complaint, Plaintiffs allege they are California citizens and that “100% of the putative plaintiffs resided in California at the time their causes of action accrued. . . .” Complaint, ¶¶ 4, 5, and 8. These allegations serve as prima facie evidence that Plaintiffs are California citizens. *See Banga v. Equifax Info. Servs. LLC*, No. 14-cv-03038, 2014 WL 4954677, at \*2 (N.D. Cal. Oct. 2, 2014) (“The notice of removal’s allegation that Banga resides in California, combined with Banga’s own assertions that she is a California resident and that diversity of citizenship exists between the parties, is sufficient to show that Banga is domiciled

1 in California.”); *Bergman v. Bank of Am.*, No. 13-cv-00741-JCS, 2013 WL  
2 5863057, at \*1 n.2 (N.D. Cal. Oct. 23, 2013) (“A party’s residence is prima facie  
3 evidence of domicile.” (internal citations omitted)); *Zavala v. Deutsche Bank Trust*  
4 *Company Americas*, No. C 13-1040 LB, 2013 WL 3474760, at \*3 (N.D. Cal. July  
5 10, 2013) (“[T]he complaint indicates that Zavala resides in California . . . In the  
6 absence of evidence to the contrary, Zavala is a California citizen for diversity  
7 purposes.” (internal citation omitted)).

8 5. For diversity purposes, a corporation is deemed a citizen of its state of  
9 incorporation and the state where it has its principal place of business. 28 U.S.C. §  
10 1332(c)(1). A corporation’s principal place of business is its “nerve center.” See  
11 *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (the principal place of business is  
12 “where a corporation’s officers direct, control, and coordinate the corporation’s  
13 activities”). Except in unusual circumstances, a corporation’s headquarters is its  
14 nerve center. *Id.* At all relevant times Defendant was, and still is, a Utah  
15 corporation with its principal place of business in River Heights, Utah. Decl. of  
16 Julianna Kat, ¶ 3, Exhibit 1. Accordingly, for diversity purposes, Defendant  
17 is a citizen of Utah.

18 6. Based on the citizenship of the parties, complete diversity of  
19 citizenship exists in this case.

20 7. Further, pursuant to 28 U.S.C. § 1446(c)(2)(B), removal is proper  
21 because the amount in controversy exceeds \$75,000. *Gibson v. Chrysler Corp.*,  
22 261 F.3d 927, 933 (9th Cir. 2001) (“A defendant attempting to remove a diversity  
23 case must show by a preponderance of the evidence that the amount-in-controversy  
24 requirement is satisfied”). In determining the amount in controversy, the Court  
25 should consider Plaintiffs’ demand for statutory penalties, punitive damages, actual  
26 damages, injunctive relief, and attorneys’ fees. *Conrad Assocs. v. Hartford Acc. &*  
27 *Indem. Co.*, 994 F. Supp. 1196, 1198 (N.D.Cal. 1998) (“The amount in controversy  
28 includes claims for general and special damages (excluding costs and interests),

1 including attorneys' fees, if recoverable by statute or contract, and punitive  
2 damages, if recoverable as a matter of law.”)

3 8. Although Defendant does not concede liability as to Plaintiffs' claims,  
4 accepting Plaintiffs' allegations as true, the case easily satisfies the amount in  
5 controversy requirement for removal. To wit, Plaintiffs allege two of their  
6 monthly bills total \$1,137.18. Complaint, ¶ 28. Plaintiffs contest all bills they paid  
7 for the four years preceding the filing of the Complaint. Complaint, ¶ 46. Further,  
8 Plaintiff assert there are “more than 10,000 class members” whose monthly bills  
9 are also challenged. Complaint, ¶ 49(a). Thus, Plaintiffs seek reimbursement of  
10 upwards of \$10,000,000.

11 9. In addition, Plaintiffs seek injunctive relief to force Defendants to “to  
12 issue master-metered water bills as required by Civil Code 1954.209 within the  
13 time prescribed by law”, “[r]equiring Defendant to issue disclose [sic] the exact  
14 calculations used to determine pro rata shares of utility charges as required by Civil  
15 Code and Public Utilities Code”, “[r]equiring Defendant to issue any utility or  
16 other related invoices and exact calculations utilized upon request of any California  
17 consumer who is subjected to their billing practices”, and “[t]o declare all alleged  
18 outstanding balances owed by class members that cannot be substantiated by  
19 invoices or by verifiable calculation invalid and prohibit collection thereupon.”  
20 Complaint, Prayer for Relief, ¶ 7.

21 9. In calculating the amount in controversy, the Court properly considers  
22 the value of the injunctive relief Plaintiffs request. *In re Ford Motor Co./Citibank*  
23 (S. Dakota), N.A., 264 F.3d 952, 958 (9th Cir. 2001) (“[W]here the value of a  
24 plaintiff's potential recovery . . . is below the jurisdictional amount, but the  
25 potential cost to the defendant of complying with the injunction exceeds that  
26 amount, it is the latter that represents the amount in controversy for jurisdictional  
27 purposes.”); see also *Walker v. Nutribullet, L.L.C.*, No. 18-cv-00631, 2018 WL  
28 5986985, at \*3 (C.D. Cal. Mar. 22, 2018) (“The value of injunctive relief may be



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1 considered in determining the amount in controversy.”). Based on Plaintiffs’  
2 allegations, the cost for Defendant to implement the actions Plaintiffs seek could  
3 easily exceed \$75,000.

4 10. Moreover, the above figures do not include attorneys’ fees, which  
5 Plaintiffs also seek in this case under Cal. Code Civ. Proc. § 11021.5. Complaint,  
6 Prayer for Relief, ¶ 5. Because the fees Plaintiffs seek are authorized by statute, the  
7 Court should consider and aggregate an estimate of attorneys’ fees to determine the  
8 amount in controversy. *Lowdermilk v. U.S. Bank Nat’l Assoc.*, 479 F.3d 994, 999-  
9 1000 (9th Cir. 2007), overruled on other grounds as recognized by *Rodriguez v.*  
10 *AT&T Mobility Servs. LLC*, 728 F.3d 975 (9th Cir. 2013), (“Where an underlying  
11 statute authorizes an award of attorneys’ fees, either with mandatory or  
12 discretionary language, such fees may be included in the amount in controversy”).

13 11. Although attorneys’ fees cannot be precisely calculated, when viewed  
14 in combination with alleged actual damages requested, and/or the injunctive relief  
15 itself, this matter easily meets the jurisdictional minimum for amount in  
16 controversy.

17 **III. COMPLIANCE WITH STATUTORY REQUIREMENTS**

18 12. In accordance with 28 U.S.C. § 1446(a), a true and correct copy of all  
19 process, pleadings, and orders from the state court action are attached to the  
20 Declaration of Craig J. Mariam as Exhibit 1. Because Defendant was served with  
21 the Complaint on August 25, 2022, its removal is timely because it is within thirty  
22 (30) days of service of the Complaint, as is required by 28 U.S.C. § 1446(b)(1).  
23 No other defendants have been properly joined and served in this action.

24 13. Removal to the present venue is proper under 28 U.S.C. § 1441(a)  
25 because this Court is the United States District Court for the district corresponding  
26 to the place where the state court action is pending. Specifically, Plaintiffs filed  
27 this action in the Superior Court for the State of California, County of San Diego,  
28 (see Exhibit 1 to Mariam Decl.), which is embraced within the Southern District of

1 California. Therefore, this action may be removed to this Court.

2 14. In accordance with 28 U.S.C. § 1446(d), a copy of Defendant’s Notice  
3 of Filing of Notice of Removal is being filed contemporaneously with the Clerk of  
4 the Superior Court for the State of California, County of San Diego. In accordance  
5 with 28 U.S.C. § 1446(d), Defendant is also contemporaneously serving this  
6 Notice of Removal on all adverse parties.

7 **IV. RESERVATION OF RIGHTS**

8 15. Defendant denies the allegations of liability in Plaintiffs’ Complaint  
9 and files this Notice of Removal without waiving any defenses, objections,  
10 exceptions, or obligations that may exist in its favor in either state or federal court.  
11 Defendant also reserves the right to amend or supplement this Notice of Removal.  
12 In this regard, if any questions arise as to the propriety of the removal of the state  
13 court action, Defendant expressly requests the opportunity to present a brief, oral  
14 argument, and any further evidence necessary in support of its position that this  
15 action is removable.


16 WHEREFORE, in accordance with the authorities set forth above,  
17 Defendant Conservice, LLC hereby removes this action from the Superior Court of  
18 the State of California for the County of San Diego to the United States District  
19 Court for the Southern District of California and requests such other and further  
20 relief as the Court deems appropriate and just.

21 Respectfully submitted,

22 Dated: September 23, 2022

**GORDON REES SCULLY  
MANSUKHANI, LLP**

23  
24  
25 By: \_\_\_\_\_

  
Craig J. Mariam  
Scott W. McCaskill  
Attorneys for Defendant  
CONSERVICE, LLC

Gordon Rees Scully Mansukhani, LLP  
101 W. Broadway, Suite 2000  
San Diego, CA 92101

# EXHIBIT 1

# EXHIBIT 1

**SUMMONS  
(CITACION JUDICIAL)**

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

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**08/23/2022 at 05:02:46 PM**

Clerk of the Superior Court  
By Marfil Estrada, Deputy Clerk

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

CONSERVICE, LLC., a Utah Limited Liability Company, and DOES 1 through 10,000, inclusive,

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

MICHAEL RAY; BRITNI GEORGIANNA; ROES 1 through 100 inclusive; individually, and on behalf of 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:  
(El nombre y dirección de la corte es): **San Diego Superior Court**  
330 West Broadway, San Diego, California 92101

CASE NUMBER:  
(Número del Caso):

**37-2022-00034034-CU-BT-CTL**

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):  
**Jimmie Davis Parker, Esq. 7812 Wing Flight Court San Diego, California 92119 619-887-3300**

DATE: **08/24/2022**  
(Fecha)

Clerk, by  
(Secretario)

*M. Estrada*  
M. Estrada

, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**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):
 

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



ATTORNEY OR PARTY WITHOUT AN ATTORNEY (Name, State Bar Number, and Address):  
Jimmie Davis Parker, Esq. (SBN 252023)  
Law Office of Jimmie Davis Parker, APC 7812 Wing Flight Court San Diego, CA 92119  
TELEPHONE NO.: 619-887-3300 FAX NO. (Optional):  
E-MAIL ADDRESS: JDParker@gmail.com  
ATTORNEY FOR (Name): Micheal Ray, Britni Georgianna

FOR COURT USE ONLY

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**08/23/2022 at 05:02:46 PM**  
Clerk of the Superior Court  
By Marfil Estrada, Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO**  
STREET ADDRESS: 330 West Broadway  
MAILING ADDRESS: 330 West Broadway  
CITY AND ZIP CODE: San Diego 92101  
BRANCH NAME: Hall of Justice

CASE NAME:  
Ray, et al. v. Conservice, LLC

**CIVIL CASE COVER SHEET**  
 **U** **d**  **L** **d**  
(Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)  
 **C**  **C**  **D**  
 Counter  Joinder  
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:  
**37-2022-00034034-CU-BT-CTL**  
JUDGE:  
**Judge Keri Katz**  
DEPT.:

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

1. Check box below for the case type that best describes this case:

<b>A T r</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>O r P I P D D (P r l r P r r</b> <b>D r D ) T r</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>N P I P D D (O r ) T r</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>E</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>C r</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 type="checkbox"/> Other contract (37) <b>R P r r</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>U D r</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>J d R</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>Pr C C L</b> <b>(C R C r r )</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>E r J d</b> <input type="checkbox"/> Enforcement of judgment (20) <b>M C C</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>M C P</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.  Large number of separately represented parties
  - b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
  - c.  Substantial amount of documentary evidence
  - d.  Large number of witnesses
  - e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
  - f.  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): Four: Equitable Accounting; Violation of Civil Code 1954.209; Declaratory Relief, UCL
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: Aug 23, 2022  
Jimmie Davis Parker, Esq.

  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

(TYPE OR PRINT NAME)

**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**

CM

**T P** **d O r F Fr P r** If you are filing a first paper (for example, a complaint) in a civil case, you 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 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 **r r** 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.

**T P r R C C** 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.

**T P r C C** 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**

<p><b>A T r</b> 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)</p> <p><b>O r P I P D D (P r I r Pr r D r D ) T r</b> Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability (not asbestos or toxic environmental) (24) Medical Malpractice (45) Medical Malpractice–Physicians &amp; Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD</p> <p><b>N P I P D D (O r) T r</b> Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (not medical or legal) Other Non-PI/PD/WD Tort (35)</p> <p><b>E</b> Wrongful Termination (36) Other Employment (15)</p>	<p><b>C r</b> 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</p> <p><b>R Pr r</b> Collections (e.g., money owed, open book accounts) (09) Collection Case–Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (not provisionally complete) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute</p> <p><b>E m i n e n t D o m a i n / I n v e r s e C o n d e m n a t i o n ( 1 4 ) W r o n g f u l E v i c t i o n ( 3 3 ) O t h e r R e a l P r o p e r t y ( e . g . , q u i e t t i t l e ) ( 2 6 ) W r i t o f P o s s e s s i o n o f R e a l P r o p e r t y M o r t g a g e F o r e c l o s u r e Q u i e t T i t l e O t h e r R e a l P r o p e r t y ( n o t e m i n e n t d o m a i n , l a n d l o r d t e n a n t , o r f o r e c l o s u r e )</b></p> <p><b>U D r</b> Commercial (31) Residential (32) Drugs (38) (if the case involves illegal drugs, check this item otherwise, report as Commercial or Residential)</p> <p><b>J d R</b> 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</p>	<p><b>Pr C C L ) (C R C r R )</b> 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 complete case type listed above) (41)</p> <p><b>E r J d</b> 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</p> <p><b>M C C</b> 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-complete) Other Civil Complaint (non-tort non-complete)</p> <p><b>M C P</b> 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</p>
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15 Attorney for Plaintiffs Michael Ray & Britni Georgianna and all others similarly situated

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MICHAEL RAY; BRITNI GEORGIANNA;  
ROES 1 through 100 inclusive; individually, and  
on behalf of all others similarly situated,

Plaintiffs,

v.

CONSERVICE, LLC., a Utah Limited Liability  
Company, and DOES 1 through 10,000, inclusive,

Defendants.

Case No.:

[Imaged File]

CLASS ACTION

(Plaintiff Class, Cal. Code Civ. Proc., § 382)

**JURY DEMAND**

**CLASS ACTION COMPLAINT SEEKING  
DECLARATIVE RELIEF, DAMAGES,  
INJUNCTIVE RELIEF AND RESTITUTION**

1. Equitable Accounting
2. Violation of Civil Code § 1954.209
3. Declaratory Relief
4. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*)

1 Plaintiffs aver:

2 **JURISDICTION**

3 1. This Court has jurisdiction over the claims for relief asserted herein pursuant to Article  
4 6, Section 10 of the Constitution of the State of California.

5 **VENUE**

6 2. Venue of this civil action is properly fixed in San Diego County, California, pursuant  
7 to Sections 395 and 395.5 of the California Code of Civil Procedure.

8 **CERTAIN AVERMENTS UPON INFORMATION AND BELIEF**

9 3. The averments of fact which are contained within certain Paragraphs of this Complaint  
10 are made upon information and belief which may be grounded in whole or in part upon matters  
11 discovered through investigation conducted by the undersigned counsel.

12 **PARTIES**

13 4. Plaintiff MICHAEL RAY is an individual, a resident of San Diego County and a  
14 citizen of the State of California.

15 5. Plaintiff BRITNI GEORGIANNA is an individual, a resident of San Diego County  
16 and a citizen of the State of California.

17 6. Plaintiffs ROES 1 through 100 are tenants or former tenants at a California multi-  
18 dwelling residential building and mobilehome parks under contract with Defendant CONSERVICE,  
19 LLC (“CONSERVICE”) for utility billing services, who, though not yet identified, are similarly  
20 situated to the above-named Plaintiff, and who may serve as additional class representatives. The  
21 true names of Plaintiffs ROES 1through 100 will be added to this Complaint when their identities  
22 become known. Hereinafter Plaintiff MICHAEL RAY and BRITNI GEORGIANNA, and  
23 unidentified Plaintiffs ROES 1-100 shall be collectively called “Plaintiffs”.

24 7. Defendant CONSERVICE, LLC is a self-described Utility Management Provider for  
25 over 5.2 million locations in North America. Of the many utility-related services CONSERVICE  
26 provides is what they refer to as “Expense Management.” As part of CONSERVICE’s expense  
27 management service, CONSERVICE acting as an agent for their clients, frequently multi-dwelling  
28 residential properties in the State of California, collects and processes utility bills from master-

1 metered landlords, then bills individual tenants their *pro rata* share ostensibly by applying a formula  
2 to the individual tenants of these buildings.

3 8. Upon information and belief, 100% of the putative plaintiffs resided in California at  
4 the time their causes of action accrued, more than two-thirds of putative plaintiffs continue to reside  
5 in California, all injuries complained of herein occurred within California, and all principals of  
6 CONSERVICE's agency to bill tenants in the State of California own property in the State of  
7 California which is subject of the instant suit.

8 9. Plaintiff is informed and believe and thereupon aver that DOES 1 through 10,000 are  
9 other natural persons, corporations, limited-liability companies, general partnerships, limited  
10 partnerships, limited-liability partnerships, trusts, unincorporated associations, and/or other entities of  
11 any kind or character who have incurred liability to Plaintiff (and/or to one or more members of the  
12 Plaintiff Class) in relation to the transactions and/or occurrences that are the subject of this  
13 Complaint, or who have any interest in the subject of this Complaint. Specifically, DOES 1 through  
14 10,000 are property owners who have hired CONSERVICE to perform Utility Management Services  
15 and are directly, jointly and severally liable for the claims asserted herein. CONSERVICE is an  
16 agent of these DOE defendants who is liable for their actions herein described as agents for these  
17 various property owners.

18 10. Except as may be described here, Plaintiff is yet uninformed of the true names,  
19 capacities and nature and extent of participation in the course of conduct alleged here of the persons  
20 sued as DOES 1 through 10,000 inclusive, and Plaintiff is as yet uninformed of the nature and extent  
21 of any interest that the persons sued as DOES 1 through 10,000 inclusive may have in the subject of  
22 the Complaint. Plaintiff therefore sues these defendants by fictitious names. Plaintiff will amend this  
23 Complaint to allege the true names and capacities of the DOE defendants when ascertained.

24 11. Upon information and belief, each of the Defendants named here, including DOES 1-  
25 10,000 and their alter-egos, are joint-tortfeasors, in joint-enterprise, co-conspirators, and acting within  
26 the scope of their agency and within their actual and apparent authority to conduct themselves in the  
27 manner herein complained.

28 12. Upon information and belief, each of the Defendants named here, including DOES 1-

1 10,000 and their alter-egos, acted as an owner, principal, agent, employer, employee, joint-employer,  
2 joint-venturer, franchisor, franchisee, shareholder, director, member, co-conspirator, shell, conduit,  
3 master, or partner of each other, and at all times were acting within the scope and course and in  
4 pursuance of his, her or its agency, employment, joint-employment, joint-venture, franchise,  
5 partnership, common and joint-enterprise, or actual or apparent authority in concert with each other.

6 13. Upon information and belief, each of the Defendants named here, including DOES 1 -  
7 10,000 and their alter-egos, are individually, jointly and severally liable to Plaintiff and Plaintiff class  
8 because each Defendant directly or indirectly, or through an agent or employee, actually, proximately  
9 and vicariously caused injury to Plaintiffs as described here.

10 14. Upon information and belief, the acts and omissions of each Defendant named here,  
11 including DOES 1 – 10,000 and their alter-egos, contributed to the acts and omissions of each other  
12 Defendant in proximately causing the complaints, injuries, and damages alleged. Defendants  
13 approved of, condoned, and/or otherwise ratified each of the acts or omissions complained of herein.  
14 And Defendants aided and abetted the acts and omissions of each other Defendant, including DOES 1  
15 -10,000 and their alter-egos, in proximately causing the complaints, injuries, and damages alleged.

16 **GENERAL ALLEGATIONS**

17 15. Succinctly put, CONSERVICE bills individual tenants at apartment complexes for  
18 their *pro rata* share of master-metered utilities and other property-wide charges, such as, pest control  
19 and trash. California law requires utilities to be billed to tenants *pro rata* without any upcharges.  
20 California law also requires provision of master-metered water bills upon request from any tenant  
21 along with figures and formulas used to determine their *pro rata* share. California law is similar with  
22 respect to power bills. Further, equity affords tenants the right to review any other master-metered or  
23 property-wide invoices and the exact formulas used to calculate their billed *pro rata* share.  
24 CONSERVICE’s uniform policy is to refuse to provide the individual tenants with the master-meter  
25 and other property-wide invoices when there is a request for them. CONSERVICE also  
26 systematically and uniformly refuses to provide the exact underlying calculations they use to assess  
27 each individual tenants’ charges. CONSERVICE’s refusal to produce this information violates the  
28 law (see, e.g., Civil Code section 1954.209(b)(1)). Additionally, tenants have a common law right of

1 accounting to review the underlying basis of any charges levied by their landlords (*see, e.g., McClain*  
2 *v. Octagon Plaza, LLC* (2008) 159 Cal.App.4th 784). CONSERVICE has no valid basis in law to  
3 refuse to produce this information and, upon information and belief, the refusal to provide the  
4 underlying information only serves the purpose of obscuring illegal upcharging of utility and other  
5 property-wide obligations levied against individual tenants. CONSERVICE’s refusal to produce this  
6 information even following demand from legal counsel has necessitated this action to declare  
7 CONSERVICE’s uniform policy unlawful and unfair; further, to ensure statutory compliance and an  
8 equitable accounting to determine whether CONSERVICE’s illegal policy is merely misguided or  
9 exists to obscure the unlawful upcharging of California tenants.

10 16. CONSERVICE contracts with property owners (landlords) including numerous  
11 apartment complexes and mobilehome parks throughout the state of California to administer utility  
12 billing (e.g., electricity, water, gas, water heating, pest control, trash, sewer, etc.) for their clients. As  
13 part of this service, CONSERVICE, collects and reviews all utility bills, aggregates them, then  
14 subsequently issues monthly invoices, and collect monies from their respective clients’ tenants  
15 ostensibly pursuant to statutorily mandated *pro rata* formulas. The billed tenant has no direct  
16 contractual relationship with CONSERVICE. CONSERVICE is a “billing agent” for their clients as  
17 defined in Civil Code section 1954.202(a). The billed tenant has a contractual relationship, in the  
18 form of a residential lease, with the principals and clients of CONSERVICE, typically large property  
19 owners, developers and managers including Greystar and Essex Property Trust.

20 17. When a tenant contests a bill, or merely asks for clarification on the amounts of or  
21 basis for their bill, CONSERVICE uniformly and systematically refuses to provide a transparent  
22 accounting of the basis for their bill. For example, if a customer requests to see the underlying utility  
23 provider’s master-metered or property-wide invoice from which CONSERVICE claims is the basis  
24 for the consumer’s bill, CONSERVICE refuses to produce the bill frequently citing “contractual,”  
25 “confidentiality” or “privacy” concerns. Furthermore, if a consumer requests the exact calculations  
26 for how CONSERVICE arrived at the amount claimed owed for any given service, CONSERVICE  
27 will only point to vague disclosures on their bills such as: “Service provider issues bill, property  
28 management pays a portion to cover common area usage. Remaining amount is paid by residents

1 using a formula based on the number of occupants and the unit's square footage.” The disclosures on  
2 CONSERVICE’s invoices uniformly fail to describe the exact formula and figures used to calculate  
3 the amounts claimed owed. Even if a consumer hires a lawyer and a demand is made for calculations  
4 and basis of contested bills, CONSERVICE uniformly, and systematically, refuses to provide the  
5 basis of and calculations for the utility bills they present and charge to consumers.

6 18. Landlords and their billing agents are governed by California law that mandates that  
7 sub-metered tenants cannot be charged any more than if they were directly billed by utility provider  
8 and that they must be credited for any rebates the master-metered customer received. California law  
9 further dictates that landlords and their billing agents act transparently with respect to their billing  
10 practices including but not limited to provision within seven days of demand the most recent water  
11 master-metered bill for water related charges and that power bills are issued in general accordance  
12 with form and content of the master-metered bills. CONSERVICE in affirmative violation of the law  
13 uniformly and systematically refuses to provide a transparent accounting of the charges levied against  
14 the tenants.

15 **STATUTORY FRAMEWORK**

16 19. Public Utilities Code section 739.5(a) provides in pertinent part: “whenever gas or  
17 electric service, or both, is provided by a master-meter customer to users who are tenants of a  
18 mobilehome park, apartment building, or similar residential complex, the master-meter customer  
19 shall charge each user of the service at the same rate that would be applicable if the user were  
20 receiving gas or electricity, or both, directly from the gas or electrical corporation.”

21 20. Public Utilities Code section 739.5(b) provides: “Every master-meter customer of a  
22 gas or electrical corporation subject to subdivision (a) who, on or after January 1, 1978, receives any  
23 rebate from the corporation shall distribute to, or credit to the account of, each current user served by  
24 the master-meter customer that portion of the rebate which the amount of gas or electricity, or both,  
25 consumed by the user during the last billing period bears to the total amount furnished by the  
26 corporation to the master-meter customer during that period.”

27 21. Public Utilities Code section 739.5(e) provides in pertinent part: “Every master-meter  
28 customer shall provide an itemized billing of charges for electricity or gas, or both, to each individual



1 user generally in accordance with the form and content of bills of the load-serving entity or gas  
2 corporation to its residential customers, including, but not limited to, the opening and closing  
3 readings for the meter, and the identification of all rates and quantities attributable to each block in  
4 the applicable rate structure.”

5 22. Public Utilities Code section 12821.5(b) provides in pertinent part: “Every master-  
6 meter customer shall provide an itemized billing of charges for light, heat, and power to each  
7 individual user generally in accordance with the form and content of bills of the district to its  
8 residential customers, including, but not limited to, the opening and closing readings for the meter,  
9 and the identification of all rates and quantities under the applicable rate structure. The master-meter  
10 customer shall charge each user of the service at a rate which does not exceed the rate which would  
11 be applicable if the user were receiving residential light, heat, or power directly from the district.”

12 23. Civil Code section 1954.209 provides: The landlord shall maintain and make available  
13 in writing, at the tenant’s written or electronic request, within seven days after the request, the  
14 following:

15 (a) The date the submeter was last inspected, tested, and verified, and the date by  
16 which it shall be reinspected, tested, and verified under law, if available. If this information is  
17 not available, the landlord shall disclose that the information is not available.

18 (b) The data used to calculate the tenant’s bill, as follows:

19 (1) The most recent water bill for the property’s master water meter showing  
20 the recurring fixed charge for water service billed to the property by the water  
21 purveyor, and the usage charges for the property, including any tiered amounts.

22 (2) Any other bills for water service, as defined in subdivision (h) of Section  
23 1954.202, for the property.

24 (3) The number of dwelling units in the property used in the last billing period  
25 to calculate the tenant’s water service charges.

26 (4) If not shown on the bill for the property, the per unit charges for volumetric  
27 water usage, including any tiered amounts.

28 (5) The formula used to calculate the charge for the tenant’s volumetric water

1 usage.

2 (c) The location of the submeter.

3 24. Civil Code section 1954.202(h) defines “Water service” as “any charges, whether  
4 presented for payment on local water purveyor bills, tax bills, or bills from other entities, related to  
5 water treatment, distribution, or usage, including, but not limited to, water, sewer, stormwater, and  
6 flood control.”

7 25. Civil Code section 1954.206 provides:

8 (a) Submeters shall be read within three days of the same point in each billing  
9 cycle.

10 (b) Payments shall be due at the same point in each billing cycle. A tenant  
11 may agree in writing to receive a bill electronically. A tenant may rescind  
12 authorization for electronic delivery of bills at any time. The landlord shall have 30  
13 days to comply with any change in how a tenant requests to receive a bill. A tenant  
14 shall not be required to pay a bill electronically.

15 (c) A bill shall include and separately set forth the following information:

16 (1) The submeter reading for the beginning date and ending date of the  
17 billing cycle, the dates read, and the indicated consumption as determined by  
18 subtracting the amount of the beginning date submeter reading from the  
19 amount of the ending date submeter reading. If the unit of measure is in  
20 something other than gallons, the indicated consumption shall be expressed in  
21 gallons.

22 (2) The amounts charged pursuant to subdivision (a) of Section  
23 1954.205.

24 (3) The rate or rates charged for the volumetric charge per unit of  
25 measure.

26 (4) The amount, if any, due from the previous month’s bill.

27 (5) The amount, if any, due from bills prior to the previous month’s  
28 bill.

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(6) The late fee, if any, imposed on amounts specified in paragraph (4) or (5).

(7) The total amount due for the billing period.

(8) The due date for the payment.

(9) If a late fee is charged by the landlord, a statement of when the late fees would apply.

(10) The procedure to contact the landlord or billing agent with questions or concerns regarding the bill. Upon request of the tenant, the landlord or billing agent shall respond in writing to any questions or disputes from the tenant. If a billing agent is used, the name of the billing agent shall be disclosed. The tenant shall be provided a mailing address, email address, and telephone number, which shall be either a toll-free or a local number, and the time of regular telephone hours for contact regarding billing inquiries.

(11) A statement that the landlord or billing agent is not the water purveyor that includes the name of the local water purveyor providing the water service to the master meter.

(12) A mailing address, an email address, and a toll-free telephone number or a local telephone number for the tenant to use to contact the landlord, or an agent of the landlord, to report any leaks, drips, water fixtures that do not shut off properly, including, but not limited to, a toilet, or other problems with the water system, including, but not limited to, problems with water-saving devices.

26. Civil Code section 1954.205 provides:

(a) As part of the regular bill for water service, a landlord shall only bill a tenant for the following water service:

(1) A charge for volumetric usage, which may be calculated in any the following ways:

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(A) The amount shall be calculated by first determining the proportion of the tenant’s usage, as shown by the submeter, to the total usage as shown by the water purveyor’s billing. The dollar amount billed to the tenant for usage shall be in that same proportion to the dollar amount for usage shown by the water purveyor’s billing.

(B) If the water purveyor charges for volumetric usage based on a tiered rate schedule, the landlord may calculate the charge for a tenant’s volumetric usage as described in subparagraph (A) or the landlord may instead divide each tier’s volume evenly among the number of dwelling units, and the rate applicable to each block shall be applied to the consumption recorded for each dwelling unit.

(C) If the water purveyor charges the property rates on a per-dwelling unit basis, the tenants may be charged at those exact per unit rates.

(2) Any recurring fixed charge for water service billed to the property by the water purveyors that, at the landlord’s discretion, shall be calculated by either of the following:

(A) The tenant’s proportion of the total fixed charges charged to the property. The tenant’s proportion shall be based on the percentage of the tenant’s volumetric water use in relation to the total volumetric water use of the entire property, as shown on the property’s water bill during that period.

(B) Dividing the total fixed charges charged to the property equally among the total number of residential units and nonresidential units at the property.

(3) A billing, administrative, or other fee for the landlord’s and billing agent’s costs, which shall be the lesser of an amount not to exceed four dollars and seventy-five cents (\$4.75), as adjusted pursuant to this paragraph or 25 percent of the amount billed pursuant to paragraph (1). Beginning January 1, 2018, the maximum fee authorized by this paragraph may be adjusted each calendar year by the landlord, no

1 higher than a commensurate increase in the Consumer Price Index based on a  
2 California fiscal year average for the previous fiscal year, for all urban consumers, as  
3 determined by the Department of Finance.

4 (4) A late charge as assessed pursuant to Section 1954.213.

5 (b) If a submeter reading for the beginning or end of a billing period is,  
6 in good faith, not available, the landlord shall bill the tenant according to  
7 Section 1954.212.

8 (c) This section does not prohibit a landlord or the landlord’s billing  
9 agent from including any other lawful charges, including, but not limited to,  
10 rent, on the same bill.

11 27. CONSERVICE is mandated by California law to only take a small monthly fee of  
12 approximately \$5 to ensure that their landlord clients are billing tenant utilities per code, in that, the  
13 utility billing is (a) transparent (i.e., “generally in accordance with form and content of master-meter  
14 bills,”) (b) calculated *pro rata*, and (c) without upcharge. CONSERVICE systematically and  
15 uniformly refuses to provide consumers with the master-metered or property-wide invoices (nor the  
16 exact *pro rata* calculations employed) upon request in violation of California law.

17 **NAMED PLAINTIFFS DISPUTE THEIR BILLS**

18 28. Plaintiff MICHAEL RAY is a former tenant of an apartment complex doing business  
19 as Point Bonita generally described as 250 Bonita Glen Drive, Chula Vista, CA 91910. The property  
20 is owed by R R E BONITA GLEN HOLDINGS LLC and is managed by Greystar Worldwide, LLC  
21 dba Greystar Real Estate Partners. Mr. RAY resided as a single occupant in a small unit and was  
22 charged \$502.99 in September 2021 and \$634.29 in in October 2021 for electricity. Believing that  
23 these charges were obviously incorrect, Mr. RAY first contacted Greystar to investigate and dispute  
24 the charges. Greystar informed Mr. RAY to directly contact CONSERVICE with any questions.  
25 When Mr. RAY contacted CONSERVICE, he requested the electric bill from San Diego Gas &  
26 Electric and a detailed description of how his charges were calculated. CONSERVICE refused to  
27 provide the requested electric bill citing “confidentiality.” Mr. RAY became suspicious that he was  
28 overpaying for all charges levied by CONSERVICE based upon their refusal to provide the

1 underlying bills for electricity.

2 29. Mr. RAY was billed by CONSERVICE from April 2021 to August 2022 for the  
3 following items: DWR Bond Charge, Electric Commodity, Electric Distribution, Water Heating, Pest  
4 Control, Sewer, Rent, State Regulatory Fee Tax, Trash, Utility Tax, Water and Service Fee.

5 30. Mr. RAY's CONSERVICE invoices purports that each of the above-described charges  
6 levied are calculated either using sub-metered readings or via an ambiguously described formula:

- 7 a. DWR Bond Charge: "Electric Generation (DWR). Your submeter is read each month  
8 and you are billed according to exact electricity use in your apartment at the current  
9 rate charged by San Diego Gas & Electric. You are charged \$.00652 per kWh. Please  
10 see the last page of the bill for the electric breakdown."
- 11 b. Electric Commodity: "Electric Commodity. You are billed based on the amount of  
12 electricity used in your unit. Your sub-meter reads in kWh units. You are charged  
13 \$.20102 per kWh. Please see the last page of the bill for the electric breakdown.
- 14 c. Electric Distribution: Electric Distribution. You are billed based on the amount of  
15 electricity used in your unit. Your sub-meter reads in kWh units. You are charged  
16 \$.18798 per kWh. Please see the last page of the bill for the electric breakdown."
- 17 d. Water Heating: "Water heating service is provided by San Diego Gas & Electric.  
18 Service provider issues bill, property management pays a portion to cover common  
19 area usage. Remaining amount is paid by residents using a formula based on the  
20 number of occupants and the unit's square footage."
- 21 e. Pest Control: "Your charges are based on a flat rate per unit for your pest control  
22 service."
- 23 f. Rent: "Your rent charges have been included with your utility bill as a courtesy. Your  
24 lease with the management will still serve as the control document for all applicable  
25 rent charges."
- 26 g. Sewer: "Sewer service is provided by City of Chula Vista CA. Service provider issues  
27 bill, property management pays a portion to cover common area usage. Remaining  
28 amount is paid by residents using a formula based on the number of occupants and the



1 unit's square footage.”

2 h. State Regulatory Fee Tax: “State Surcharge Tax & Regulatory Fee. You are billed  
3 based on the amount of electricity used in your unit. Your sub-meter reads in kWh  
4 units. You are charged \$.0016 per kWh. Please see the last page of the bill for the  
5 electric breakdown.”

6 i. Trash: “Trash service is provided by Republic Services #509. Service provider issues  
7 bill, amount is allocated to residents using a formula based on the number of  
8 occupants and the unit's square footage.”

9 j. Utility Tax: “Electric Utility Tax. Your submeter is read each month and you are  
10 billed according to exact electricity use in your apartment at the current rate charged  
11 by San Diego Gas & Electric. You are charged \$.0025 per kWh. Please see the last  
12 page of the bill for the electric breakdown.

13 k. Water: “Water service is provided by Sweetwater Authority. Service provider issues  
14 bill, property management pays a portion to cover common area usage. Remaining  
15 amount is paid by residents using a formula based on the number of occupants and the  
16 unit's square footage.”

17 31. Plaintiff BRITNI GEORGIANNA is a resident of an apartment complex doing  
18 business as Alpine Villages, generally located at 34 Calle Conejo, Alpine, California 91901 from  
19 about November 2021 to Present. The property is owed in partnership by ESSEX J M S  
20 ACQUISITION and ESSEX PROPERTY TRUST INC. The property is managed by ESSEX  
21 PROPERTY TRUST, INC. Ms. GEORGIANNA resided as a double occupant in a small unit and  
22 based upon conversations with other residents, suspected that she was being overcharged for trash  
23 and utilities. When Ms. GEORGIANNA inquired to ESSEX PROPERTY TRUST, INC., she was  
24 instructed to contact CONSERVICE. In order to verify that she was being charged correctly, Ms.  
25 GEORGIANNA requested that CONSERVICE provide the underlying utilities bills and calculations  
26 for her individual bill. CONSERVICE refused stating: “As those bills are used for the entire  
27 apartment community, and not just your account specifically I would be unable to provide the  
28 provider bills.” CONSERVICE also refused to provide the exact calculations for how her *pro rata*

1 share of utilities was being calculated.

2 32. CONSERVICE invoiced Ms. GEORGIANNA monthly for Sewer, Trash, Water and  
3 Service Fee.

4 33. Ms. GEORGIANNA's CONSERVICE invoices purports that each of the above-  
5 described charges levied are calculated via an ambiguously described formula:

6 a. Sewer: "Sewer service is provided by San Diego County Treasurer - Tax Collector.  
7 Service provider issues bill, amount is allocated equally by number of units."

8 b. Trash: "Trash service is provided by Republic Services #529 and Paramount Waste  
9 Reduction. Service provider issues bill, amount is allocated equally by number of  
10 units."

11 c. Water: "Water service is provided by Padre Dam Municipal Water District. Service  
12 provider issues bill, property management pays a portion to cover common area usage.  
13 Remaining amount is allocated to residents using a formula based on the unit's square  
14 footage."

15 34. Plaintiffs' CONSERVICE invoices further states: "This bill is not from your local  
16 utility provider or from any other provider. Your charges are calculated using the service provider  
17 bills issued most recently."

18 35. Plaintiffs' CONSERVICE invoices further states: "Conservice is a service provider  
19 contracted to prepare monthly statements and provide conservation resources."

20 36. In early 2022, Plaintiffs contacted counsel to investigate the charges and counsel  
21 issued a request for the underlying bills and calculations for all of the above charges for the duration  
22 of Plaintiffs' entire respective tenancies. Counsel proffered: "Notwithstanding there is no discernable  
23 privacy interest to protect with respect to the provision of provider bills to my clients (nor the exact  
24 calculations performed to determine the charges), whatever protectable interest you contend exist  
25 sufficient to deny provision of the underling information to consumers seeking to verify the amounts  
26 they are billed, can be effectively mitigated by redacting protectable information while still allowing  
27 the consumers to verify the methodology and calculations that you contend substantiate the amounts  
28 that they are charged." CONSERVICE provided more detailed calculations purportedly evidencing

1 how the amounts were calculated however still refused to provide the underlying master-metered or  
2 property-wide bills stating: “We have a contractual obligation to maintain our client’s confidential  
3 information and are not authorized to disclose their records to third parties. Additionally, California  
4 utility billing regulations do not require disclosure of provider utility bills to tenants upon request.”

5 37. As such, a demand for an accounting was made and refused by CONSERVICE and a  
6 dispute over the rights, responsibilities and obligations of the parties is ripe.

7 38. Specifically, CONSERVICE systematically refuses to provide an accounting to  
8 consumers necessary to verify the amounts claimed owed and refuses to provide transparency as to  
9 how the amounts are calculated, even though Civil Code section 1954.209(b)(1) mandates provision  
10 of the master-metered water bill upon request along with the underlying calculations on how their  
11 charges were determined including number of units, applicable rate and volume of water consumed;  
12 further, the statutory framework of the Public Utilities Code requires provision of energy related bills  
13 in accordance with form and content of the master-metered landlords calculated *pro rata* without  
14 upcharge.

15 39. As to the water related charges, statute mandates provision of the master-metered  
16 water bill upon request and CONSERVICE uniform policy is in systematic violation of the code.

17 40. As to all other charges, (“non-water related charges”) since there is no adequate  
18 remedy at law in order to verify “non-water related charges” levied by CONSERVICE against  
19 consumers, and the transactions are complex, the class of consumers subjected to CONSERVICE’s  
20 patently non-verifiable, non-transparent billing practices are entitled to an equitable accounting to  
21 verify the amounts they have been billed including verifying that the statutorily mandated *pro rata*  
22 billing calculations have been performed correctly and without upcharge, specifically by providing  
23 the underlying master-metered or property-wide invoices for services. CONSERVICE’s systematic  
24 and uniform refusal to produce this information is without sufficient legal justification and  
25 necessitates the equitable power of the Court to remedy.

26 41. The equitable accounting shall entail provision of all underlying master-metered or  
27 property-wide bills and invoices that form the basis of all “non-water related charges” and shall  
28 include the exact calculations used to determine each individual consumer’s *pro rata* responsibility.

1           42. CONSERVICE’s refusal to provide the underlying bills in violation of law with  
 2 respect to water related charges and without sufficient legal justification for non-water related  
 3 charges coupled with the statutory requirements that tenant utility charges must be true to their  
 4 respective share of the actual utility bills, allows CONSERVICE to escape scrutiny of their billing  
 5 practices without judicial intervention and necessitates declaratory relief that the underlying  
 6 calculations and invoices are subject to consumer review and verification upon request. Even  
 7 following good faith dispute, CONSERVICE demands that consumers take their word that they are  
 8 complying with the law and that they are not required to provide the information that establishes that  
 9 they are, however statute and equity provides that consumers are entitled to verify that they are billed  
 10 as required by code as specifically provided in the Civil Code and other California authority.

11           43. There are over one thousand “one star” reviews on CONSERVICE available on Yelp<sup>1</sup>  
 12 and the Better Business Bureau<sup>2</sup> with many consumers complaining about being overcharged and the  
 13 lack of transparency with respect to CONSERVICE’s billing practices. Upon information and belief,  
 14 the only rationale CONSERVICE has for uniformly and systematically violating the law with respect  
 15 to provision of underlying master-meter utility bills is to obscure other violations of law, namely  
 16 upcharging on utilities.

17   **CLASS ACTION ALLEGATIONS**

18           44. Plaintiff re-alleges and incorporates by reference the allegations of all preceding  
 19 paragraphs.

20           45. Plaintiff brings this action as a class action pursuant to California Civil Code of  
 21 Procedure § 382 on behalf of himself and all other similarly situated persons in the Classes, which are  
 22 composed of and defined as follows, excepting only individuals against whom or in whose favor a  
 23 final judgment has already been rendered with respect to the defendant:

24           46. The Relevant Time Period for the action is the prior four years from the date of filing

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25 <sup>1</sup> <https://www.yelp.com/biz/conservice-the-utility-experts-river-heights> (last accessed on Aug 23,  
 26 2022)

27 <sup>2</sup> [https://www.bbb.org/us/ut/river-heights/profile/billing-services/conservice-utility-management-](https://www.bbb.org/us/ut/river-heights/profile/billing-services/conservice-utility-management-billing-1166-22011873)  
 28 [billing-1166-22011873](https://www.bbb.org/us/ut/river-heights/profile/billing-services/conservice-utility-management-billing-1166-22011873) (last accessed on Aug 23, 2022)

1 pursuant to Code of Civil Procedure section 343.

2           47.     **Water Service Class:** All former and current tenants of multi-dwelling residential  
3 buildings and motorhome parks in California that were invoiced for water service by CONSERVICE  
4 and requested CONSERVICE to provide the master-metered water bill and/or calculations  
5 substantiating the charges during the Relevant Time Period.

6           48.     **Non-water Service Class:** All former and current tenants of multi-dwelling  
7 residential buildings and motorhome parks in California that were invoiced for any utility or  
8 property-wide services other than water by CONSERVICE and requested CONSERVICE to provide  
9 the underlying master-metered or property-wide bill and/or calculations substantiating the charges  
10 during the Relevant Time Period.

11           49. The Court should permit this action to be maintained as a class action pursuant to  
12 California Code of Civil Procedure § 382 because:

13           a.     **Numerosity:** The class and all subclasses are so numerous that the individual joinder  
14 of all members is impracticable. Plaintiffs are informed and believe that there are  
15 more than 10,000 class members in total and a sufficiently numerous amount in the  
16 proposed class.

17           b.     **Common Questions Predominate:** Common questions of law and fact exist as to all  
18 members of the class and each subclass that predominate over any questions that affect  
19 only individual members. These common questions of law and fact include:

- 20                   1. Whether CONSERVICE's systematic refusal to provide master-meter  
21                   water bills seven days following request from tenant violates Civil  
22                   Code section 1954.209(b)(1).
- 23                   2. Whether CONSERVICE's systematic refusal to provide the exact  
24                   calculations for water service fees (i.e., refusing to provide number of  
25                   units sub-metered and rates per unit) violate Civil Code section  
26                   1954.209(b)(3), and (4).
- 27                   3. Whether California consumers subjected to CONSERVICE billing  
28                   practices are entitled to an equitable accounting and provision of the

1 underlying records and calculations consistent with *McClain v.*  
2 *Octagon Plaza, LLC* (2008) 159 Cal.App.4th 784 and other California  
3 authority.

4 4. Whether CONSERVICE has any legal justification to prevent  
5 disclosure of underlying bills and calculations they purport to use to  
6 justify the amounts they charge California consumers.

7 5. Whether CONSERVICE accurately bills California consumers without  
8 upcharge as required under the Public Utilities Code and Civil Code.

9 6. Whether CONSERVICE's invoices for energy services is in general  
10 accordance with form and content with the master-metered bills as  
11 required under the Public Utilities Code.

12 7. Whether CONSERVICE violates the law and fails to provide mater-  
13 metered bills in order to obscure additional violations of law, namely,  
14 upcharging consumers for utilities.

15 8. Whether CONSERVICE should be required to develop a legally  
16 compliant uniform policy with respect to provision of underlying utility  
17 bills to consumers upon request.

18 9. The appropriate measure of class-wide legal and/or equitable relief.

19 c. **Typicality:** Plaintiff's claims are typical of those of the Plaintiff. Plaintiff and all  
20 Plaintiff Class members sustained injuries and damages arising from Defendant's  
21 common course of conduct, and those injuries and damages were caused directly by the  
22 Defendant's wrongful conduct in violation of law as alleged.

23 d. **Adequacy of Representation:** Plaintiff will fairly and adequately protect the interest  
24 of the members of the Plaintiff Class. Plaintiff has no interests adverse to the interests of  
25 absent class members. Plaintiff has retained counsel adequate to prosecute the case for the  
26 entire class.

27 e. **Superiority:** A class action is superior to other available means for the fair and  
28 efficient adjudication of this controversy since individual joinder of all members of the



1 class is impracticable; class action treatment will permit a large number of similarly  
2 situated persons to prosecute their common claims in a single forum simultaneously,  
3 efficiently, and without the unnecessary duplication of effort and expense that numerous  
4 individual actions would engender. Furthermore, because Defendant is expected to  
5 contend that any individual’s damages may be relatively small, the expense and burden of  
6 individual litigation make it difficult or impossible for individual class members to redress  
7 the wrongs done to them, while an important public interest will be served by addressing  
8 the matter as a class action. The cost to the judicial system of individual adjudication  
9 would be substantial and present the potential for inconsistent or contradictory judgments.  
10 In addition, individual actions give Defendants too many opportunities to take advantage  
11 of unrepresented tenants at a summary proceeding without access to substantial discovery,  
12 as discovery is not available in small claims court.

13 50. Plaintiff is unaware of any difficulties that are likely to be encountered in the  
14 management of this action that would preclude its maintenance as a class action.

15 **FIRST CLAIM FOR RELIEF**  
16 **Equitable Accounting**

17 51. Plaintiffs re-allege and incorporate by reference the allegations of all preceding  
18 paragraphs.

19 52. Plaintiffs are in a contractual relationship (residential lease) with the principals of  
20 CONSERVICE.

21 53. At all relevant times, CONSERVICE acts as an agent within the scope of their agency,  
22 specifically as a “billing agent” as defined in Civil Code section 1954.202(a).

23 54. CONSERVICE issues monthly invoices to Plaintiffs and Plaintiff Classes for utility  
24 services including but not limited to trash, power, and water.

25 55. A complicated accounting relationship exists between CONSERVICE and Plaintiffs  
26 and the Plaintiff Classes.

27 56. Plaintiffs and Plaintiff Classes dispute the amounts paid and/or claimed owed by  
28 CONSERVICE for utility services.

1 57. Plaintiffs and Plaintiff Classes demanded invoices and other information  
2 substantiating the amounts charged by CONSERVICE in order to calculate amounts owed to  
3 Plaintiffs and Plaintiff Classes.

4 58. CONSERVICE has refused to produce the requested information.

5 59. The amount owed by CONSERVICE to the Plaintiffs and Plaintiff classes is unknown  
6 and cannot be ascertained without an accounting.

7 60. The means of determining the amounts owed to Plaintiffs and Plaintiff classes are in  
8 the exclusive knowledge of CONSERVICE.

9 61. The only legal remedy to resolve the dispute with respect to “non water related  
10 charges” is an equitable accounting for provision of the underlying invoices and exact calculations  
11 used by CONSERVICE to charge Plaintiffs and the Plaintiff classes.

12 **SECOND CLAIM FOR RELIEF**  
13 **Violation of Civil Code § 1954.209**

14 62. Plaintiff re-alleges and incorporates by reference the allegations of all preceding  
15 paragraphs.

16 63. Plaintiffs are in a contractual relationship (residential lease) with the principals of  
17 CONSERVICE.

18 64. CONSERVICE acts as an agent within the scope of their agency, specifically as a  
19 “billing agent” as defined in Civil Code section 1954.202(a).

20 65. CONSERVICE issues monthly invoices to Plaintiffs and Plaintiff Classes for utility  
21 services including but not limited to power and water.

22 66. Demand was made to CONSERVICE by Plaintiffs and the Water Service Class for the  
23 master-metered invoice and/or provision of the calculations used to levy charges against Plaintiffs  
24 and the Water Service Class.

25 67. CONSERVICE refused to provide the master-metered invoices and/or provision of the  
26 calculations used to levy charges against Plaintiffs and the Water Service Class.

27 68. CONSERVICE is required under Civil Code section 1954.209(b)(1) to provide the  
28 most recent water bill for the master-metered property within seven days of demand.

1 69. CONSERVICE is required under Civil Code section 1954.209(b)(3) and (4) to provide  
2 information used in calculating the amounts claimed owed including the number of dwelling units in  
3 the property and the per unit charges for water usage.

4 70. CONSERVICE is in systematic and uniform violation of Civil Code section 1954.209.

5 71. Plaintiffs and the Water Service Class have suffered damages as a result of  
6 CONSERVICE’s failure to adhere to the law.

7  
8 **THIRD CLAIM FOR RELIEF**  
9 **Declaratory Relief**  
10 **(Code Civ. Proc § 1060)**

11 72. Plaintiffs re-allege and incorporate by reference the allegations of all preceding  
12 paragraphs.

13 73. Plaintiffs are in a contractual relationship (residential lease) with the principals of  
14 CONSERVICE.

15 74. CONSERVICE acts as an agent within the scope of their agency, specifically as a  
16 “billing agent” as defined in Civil Code section 1954.202(a).

17 75. CONSERVICE issues monthly invoices to Plaintiffs and Plaintiff Classes for utility  
18 services including but not limited to trash, power, and water.

19 76. An actual controversy has arisen and now exists between Plaintiffs and Plaintiff  
20 Classes on one hand, and CONSERVICE on the other, in that Plaintiffs and the Plaintiff Classes  
21 contend they are entitled to the underlying invoices and exact calculations that CONSERVICE  
22 purports to use to calculate and administer their utility bills. CONSERVICE disputes that Plaintiffs  
23 and the Plaintiff Classes have the right to the requested information citing contractual, privacy and  
24 confidentiality concerns. CONSERVICE affirmatively represents to Plaintiffs and the Plaintiff  
25 Classes that it is possession of the information sought.

26 77. Plaintiffs and the Plaintiff Classes request a judicial determination of their right to the  
27 underlying invoices and exact calculations purportedly used to charge them for utilities.

28 78. A judicial declaration is necessary and appropriate at this time under the  
circumstances in order that Plaintiffs and the Plaintiff Classes may ascertain their rights to the

1 information sought from CONSERVICE and determine if CONSERVICE’s systematic refusal to  
2 provide the information is to obscure other violations of law, namely, upcharging utilities in violation  
3 of the Public Utilities Code.

4  
5 **FOURTH CLAIM FOR RELIEF**  
6 **Restitution and Injunctive Relief as a Remedy for Unfair Competition**  
7 **(California Business and Professions Code §§ 17200, *et seq.*)**

8 79. Plaintiff re-alleges and incorporates by reference the allegations of all preceding  
9 paragraphs.

10 80. Pursuant to §17200 of the California Business and Professions Code, “any unlawful,  
11 unfair or fraudulent business act or practice” constitutes “unfair competition.”

12 81. The violations of the California Civil Code and other wrongdoing alleged herein  
13 constitute unlawful, unfair and/or fraudulent business acts and practices, and therefore “unfair  
14 competition,” for the purposes of § 17200 of the California Business and Professions Code. Among  
15 other violations, Defendants’ refusal to provide the underlying invoices and exact calculations used to  
16 charge sub-metered consumers their *pro rata* share of utilities.

17 82. Plaintiffs have each suffered financial injury in fact and have each lost money and/or  
18 property as a result of such unfair competition.

19 83. The facts set forth establish that the Plaintiffs and members of the Plaintiff Classes are  
20 entitled to judgment over and against Defendant, awarding restitution to them of all monies acquired  
21 by means of the described unfair competition, including any overcharged utility payments.

22 84. Plaintiffs and the Plaintiff Classes are further entitled to declaratory and injunctive  
23 relief determining the rights and obligations in dispute among the Parties and an order mandating  
24 Defendants adhere to the mandates of law with respect to their utility billing and accounting  
25 practices.

26 85. Specifically, an injunction should issue that mandates CONSERVICE create a legally  
27 compliant policy with respect to provision of underlying master-metered water bills. And, further, an  
28 injunction should issue that mandates CONSERVICE create a legally compliant policy with respect

1 to provision of all other underlying utility bills consistent with *McClain v. Octagon Plaza, LLC*  
2 (2008) 159 Cal.App.4th 784 and other California authority.

3  
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, on behalf of themselves and other members of Plaintiff Classes, pray:

- 6 1. For an equitable accounting requiring provision of all underlying invoices and exact  
7 calculations used to assess charges against Plaintiffs and the Plaintiff Classes.
- 8 2. For actual damages sustained by Plaintiffs and the Plaintiff Classes, including but not limited  
9 to, any amounts paid to Defendant over and above the *pro rata* share of exact charges for  
10 utilities as provided in the Civil Code and Public Utilities Code.
- 11 3. For restitution for violation of Business and Professions Code §§ 17200 *et seq.*;
- 12 4. For pre-judgment interest;
- 13 5. For attorney’s fees and expenses recoverable under law including pursuant to Code of Civil  
14 Procedure section 1021.5;
- 15 6. For costs, including class action notice and administration expenses;
- 16 7. For injunctive relief against Defendant’s conduct, including an injunction:
  - 17 a. Requiring Defendant to issue master-metered water bills as required by Civil Code §  
18 1954.209 within the time prescribed by law.
  - 19 b. Requiring Defendant to issue disclose the exact calculations used to determine pro rata  
20 shares of utility charges as required by Civil Code and Public Utilities Code.
  - 21 c. Requiring Defendant to issue any utility or other related invoices and exact  
22 calculations utilized upon request of any California consumer who is subjected to their  
23 billing practices.
  - 24 d. To declare all alleged outstanding balances owed by class members that cannot be  
25 substantiated by invoices or by verifiable calculation invalid and prohibit collection  
26 thereupon.
- 27 8. For declaratory relief, declaring that Plaintiffs and Plaintiff classes are entitled to the  
28 underlying invoices and exact calculations used by Defendant to invoice California  
consumers.

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- 9. For all other appropriate declaratory and equitable relief;
- 10. Any other relief that this Court deems just.

DATED: August 23, 2022

LAW OFFICE OF JIMMIE DAVIS PARKER, APC



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JIMMIE DAVIS PARKER, ESQ.  
7812 WING FLIGHT COURT  
San Diego, California 92119  
Telephone: 619-887-3300  
Email: jdparker@gmail.com

Attorney for Plaintiffs



**JURY DEMAND**

1  
2 Plaintiffs and ROES 1 through 100, individually and on behalf of the other members of the  
3 Plaintiff Classes, hereby demand trial by jury of all issues triable by a jury, pursuant to applicable  
4 law, including, but not necessarily limited to Article I, ¶16 of the California Constitution, and/or ¶592  
5 of the California Code of Civil Procedure.  
6

7 DATED: August 23, 2022

LAW OFFICE OF JIMMIE DAVIS PARKER, APC

8  
9 

10 \_\_\_\_\_  
JIMMIE DAVIS PARKER, ESQ.

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12 San Diego, California 92119  
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15 Attorney for Plaintiffs  
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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS:	330 W Broadway
MAILING ADDRESS:	330 W Broadway
CITY AND ZIP CODE:	San Diego, CA 92101-3827
DIVISION:	Central
TELEPHONE NUMBER:	(619) 450-7074
PLAINTIFF(S) / PETITIONER(S):	Michael Ray et.al.
DEFENDANT(S) / RESPONDENT(S):	Conservice LLC
RAY VS CONSERVICE LLC [EFILE]	
<b>NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE (CIVIL)</b>	CASE NUMBER: 37-2022-00034034-CU-BT-CTL

**CASE ASSIGNED FOR ALL PURPOSES TO:**

Judge: Keri Katz

Department: C-74

**COMPLAINT/PETITION FILED:** 08/23/2022

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	01/27/2023	09:30 am	C-74	Keri Katz

**Due to the COVID-19 pandemic, all Case Management Conferences (CMCs) are being conducted virtually unless there is a court order stating otherwise.** Prior to the hearing date, visit the “virtual hearings” page for the most current instructions on how to appear for the applicable case-type/department on the court’s website at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov).

A Case Management Statement (JC Form #CM-110) must be completed by counsel for all parties and by all self-represented litigants and timely filed with the court at least 15 days prior to the initial CMC. (San Diego Superior Court (SDSC) Local Rules, rule 2.1.9; Cal. Rules of Court, rule 3.725).

All counsel of record and self-represented litigants must appear at the CMC, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of Alternative Dispute Resolution (ADR) options.

It is the duty of each plaintiff (and cross-complainant) to serve a copy of this Notice of Case Assignment and Case Management Conference (SDSC Form #CIV-721) with the complaint (and cross-complaint), the Alternative Dispute Resolution (ADR) Information Form (SDSC Form # CIV-730), a Stipulation to Use Alternative Dispute Resolution (ADR) (SDSC Form # CIV-359), and other documents on all parties to the action as set out in SDSC Local Rules, rule 2.1.5.

**TIME FOR SERVICE AND RESPONSE:** The following rules apply to civil cases except for collections cases under California Rules of Court, rule 3.740(a), unlawful detainer actions, proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law (Cal. Rules of Court, rule 3.110; SDSC Local Rules, rule 2.1.5):

- **Service:** The complaint must be served on all named defendants, and proof of service filed with the court within 60 days after filing the complaint. An amended complaint adding a defendant must be served on the added defendant and proof of service filed within 30 days after filing of the amended complaint. A cross-complaint against a party who has appeared in the action must be accompanied by proof of service on that party at the time it is filed. If it adds a new party, the cross-complaint must be served on all parties and proof of service on the new party must be filed within 30 days of the filing of the cross-complaint.
- **Defendant’s appearance:** Unless a special appearance is made, each defendant served must generally appear (as defined in Code of Civ. Proc. § 1014) within 30 days of service of the complaint/cross-complaint.
- **Extensions:** The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint (SDSC Local Rules, rule 2.1.6). If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed.

**JURY FEES:** In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

**COURT REPORTERS:** Official Court Reporters are not normally available in civil matters, but may be requested in certain situations no later than 10 days before the hearing date. See SDSC Local Rules, rule 1.2.3 and Policy Regarding Normal Availability and Unavailability of Official Court Reporters (SDSC Form #ADM-317) for further information.

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** The court discourages any unnecessary delay in civil actions; therefore, continuances are discouraged and timely resolution of all actions, including submitting to any form of ADR is encouraged. The court encourages and expects the parties to consider using ADR options prior to the CMC. The use of ADR will be discussed at the CMC. Prior to the CMC, parties stipulating to the ADR process may file the Stipulation to Use Alternative Dispute Resolution (SDSC Form #CIV-359).

## **NOTICE OF E-FILING REQUIREMENTS AND IMAGED DOCUMENTS**

Effective April 15, 2021, e-filing is required for attorneys in represented cases in all limited and unlimited civil cases, pursuant to the San Diego Superior Court General Order: In Re Procedures Regarding Electronically Imaged Court Records, Electronic Filing and Access to Electronic Court Records in Civil and Probate Cases. Additionally, you are encouraged to review CIV-409 for a listing of documents that are not eligible for e-filing. E-filing is also encouraged, but not mandated, for self-represented litigants, unless otherwise ordered by the court. All e-filers are required to comply with the e-filing requirements set forth in Electronic Filing Requirements (Civil) (SDSC Form #CIV-409) and Cal. Rules of Court, rules 2.250-2.261.

All Civil cases are assigned to departments that are part of the court's "Imaging Program." This means that original documents filed with the court will be imaged, held for 30 days, and then destroyed, with the exception of those original documents the court is statutorily required to maintain. The electronic copy of the filed document(s) will be the official court record, pursuant to Government Code § 68150. Thus, original documents should not be attached to pleadings filed with the San Diego Superior Court, unless it is a document for which the law requires an original be filed. Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant, or petitioner to serve a copy of this Notice of Case Assignment and Case Management Conference (Civil) (SDSC Form #CIV-721) with the complaint, cross-complaint, or petition on all parties to the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words "IMAGED FILE" in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and may be found on the court's website at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov).

# EXHIBIT 2

# EXHIBIT 2

1 Craig J. Mariam (SBN 225280)  
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2 Scott W. McCaskill (SBN 305032)  
smccaskill@grsm.com  
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7  
8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 MICHAEL RAY; BRITNI GEORGIANA; ) CASE NO. 37-2022-00034034-CU-BT-  
ROES 1 through 100 inclusive; individually, ) CTL  
11 and or behalf of all others similarly situated; )

12 Plaintiffs, ) *CLASS ACTION*

13 v. )

14 CONSERVICE, LLC, a Utah limited liability ) **CONSERVICE, LLC’S NOTICE OF**  
company; and DOES 1 through 10,000, ) **REMOVAL OF ACTION UNDER 228**  
15 inclusive; ) **U.S.C. §§ 1332, 1441, AND 1446**

16 Defendants. ) Complaint Filed: August 23, 2022  
Judge: Hon. Keri Katz  
17 ) Dept.: C-74  
18 )  
19 )  
20 )

21 **TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY**  
22 **OF SAN DIEGO:**

23 **PLEASE TAKE NOTICE** that a Notice of Removal of this action was filed in the  
24 United States District Court for the Southern District of California on September 23, 2022  
25 effectuating the removal of this action.

26 A copy of the Notice of Removal and its attendant documentation, has been filed in the  
27 United States District Court for the Southern District of California, and Notice to the Adverse  
28 Parties given per 28 U.S.C. section 1446(d). Such notice, without the referenced attachments,

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1 is attached hereto as Exhibit 1.

2 Defendant request accordingly this Court vacate all dates on calendar and stay this  
3 matter unless and until it is remanded from Federal Court.

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Respectfully submitted,

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Dated: September 23, 2022

**GORDON REES SCULLY MANSUKHANI,  
LLP**

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By: \_\_\_\_\_

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Craig J. Mariam  
Scott W. McCaskill  
Attorneys for Defendant  
CONSERVICE, LLC

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Conservice Illegally Withholds from Calif. Renters How Utilities Bills Are Calculated](#)

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