

MATTHEW J. ADLER (SBN 273147)
matthew.adler@faegredrinker.com
FAEGRE DRINKER BIDDLE & REATH LLP
Four Embarcadero Center, 27th Floor
San Francisco, California 94111
Telephone: +1 415 591 7500
Facsimile: +1 415 591 7510

MICHAEL P. DALY*
michael.daly@faegredrinker.com
ANTOINETTE M. SNODGRASS*
antoinette.snodgrass@faegredrinker.com
FAEGRE DRINKER BIDDLE & REATH LLP
One Logan Square, Suite 2000
Philadelphia, Pennsylvania 19103
Telephone: +1 215 988 2700
Facsimile: +1 215 988 2757

Attorneys for Defendant
BED BATH & BEYOND INC.
*admission *pro hac vice* to be sought

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT TURNIER, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

BED BATH & BEYOND INC., a New
York corporation,

Defendant.

Case No. **'20CV0288 L MSB**

**DEFENDANT BED BATH &
BEYOND INC.'S NOTICE OF
REMOVAL TO FEDERAL
COURT**

[San Diego Cty. Super. Ct., Case No.
37-2020-00002499-CU-BT-CTL]

Complaint Filed: January 15, 2020

NOTICE TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

Defendant Bed Bath & Beyond Inc., by and through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453, hereby removes this action from the Superior Court of California, San Diego County, to the United States District Court for the Southern District of California. In support thereof, Defendant avers as follows.

I.

JURISDICTIONAL STATEMENT

1. The Class Action Fairness Act of 2005 (CAFA), Pub. L. No. 109-2, 119 Stat. 4 (2005) grants federal courts diversity jurisdiction over putative class actions that have: (1) been commenced after February 18, 2005; (2) minimal diversity; (3) 100 or more class members; and (4) an aggregate amount in controversy in excess of \$5,000,000. *See* 28 U.S.C. §§ 1332 note, 1332(d)(2)(A), 1332(d)(5)(B), 1332(d)(2). This action satisfies every applicable jurisdictional prerequisite.¹

A. Commencement

2. CAFA applies to actions that are commenced after its effective date, i.e., after February 18, 2005. *See* 28 U.S.C. § 1332 note.

3. Plaintiff Robert Turnier (“Plaintiff”) commenced this action on January 15, 2020, by filing a Complaint in the Superior Court of California, San Diego County, under the caption *Robert Turnier v. Bed Bath & Beyond Inc.*, No. 37-2020-

¹ Strictly speaking, CAFA’s amount-in-controversy requirement is located in Section 1332, which applies to actions that are filed by plaintiffs, not in Section 1453, which applies to actions that are removed by defendants. Although normally an action is only removable if it could have been filed in federal court originally, Congress can “expressly provid[e]” otherwise. *See* 28 U.S.C. § 1441(a). Here, Section 1453(b) states that an action may be removed so long as it is a “class action.” *See* 28 U.S.C. § 1453(b). Nothing in Section 1453(b) suggests that removed actions must satisfy Section 1332. *Cf.* 14B Charles A. Wright et al., *Federal Practice & Procedure* § 3724 (4th ed. 2009). Indeed, the plain language of Section 1453 suggests otherwise, as it incorporates Section 1332’s definition of “class action” but not its various other requirements. *See* 28 U.S.C. § 1453(a). This is an academic point here, however, as Section 1332(d) is satisfied in any event. *See infra*.

1 00002499-CU-BT-CTL. *See* Compl. (attached as part of Exhibit A).

2 4. Accordingly, this action was commenced after February 18, 2005.

3 **B. Minimal Diversity**

4 5. CAFA requires only minimal diversity, i.e., that “any member of a class
5 of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. §
6 1332(d)(2)(A); *see also Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1020, 1021
7 (9th Cir. 2007) (“[U]nder CAFA, complete diversity is not required; ‘minimal
8 diversity’ suffices.”).

9 6. Defendant is a citizen of New York because it was organized under the
10 laws of New York. *See* Compl. ¶ 3 (“defendant ... is a New York corporation”).

11 7. Defendant is also a citizen of New Jersey because its principal place of
12 business—i.e., its corporate headquarters—is located in Union, New Jersey. *See*
13 *Hertz Corp. v. Friend*, *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010) (“[W]e
14 conclude that the phrase ‘principal place of business’ refers to the place where the
15 corporation’s high level officers direct, control, and coordinate the corporation’s
16 activities,” which will “typically be found at a corporation’s headquarters.”).

17 8. Plaintiff alleges that he is a resident of California. *See* Compl. ¶ 2
18 (“Plaintiff . . . is an individual residing in San Diego County, California.”).

19 9. Plaintiff brings this putative class action on behalf of “[a]ll individuals
20 in California who . . . were enrolled . . . in the BEYOND+ membership program.”
21 *Id.* ¶ 23.

22 10. At least one of those people is surely domiciled in, and thus a citizen of,
23 California. *See Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828 (1989)
24 (discussing residence and domicile).

25 11. Accordingly, there is at least minimal diversity between the defendant
26 (a citizen of New York and New Jersey) and the named and unnamed members of
27 the putative class (all residents of California). *See* 28 U.S.C. § 1332(d)(2)(A).

1 **C. Numerosity**

2 12. CAFA does not apply to class actions “in which . . . the number of
3 members of all proposed plaintiff classes in the aggregate is less than 100.” 28 U.S.C.
4 § 1332(d)(5)(B).

5 13. Plaintiff defines the putative class as “[a]ll individuals in California
6 who, within the applicable limitations period, were enrolled . . . in the BEYOND+
7 membership program.” Compl. ¶ 23

8 14. Plaintiff alleges that the putative class is “so numerous that joinder of
9 all Class Members would be impracticable.” *Id.* ¶ 26.

10 15. In the four years before the filing of this action, substantially more than
11 100 persons enrolled in Defendant’s BEYOND+ membership program and provided
12 California addresses in connection with their enrollment.

13 16. Accordingly, there are more than 100 putative class members. *See* 28
14 U.S.C. § 1332(d)(5)(B).

15 **D. Amount in Controversy**

16 17. CAFA requires that “the matter in controversy exceeds the sum or value
17 of \$5,000,000, exclusive of interest and costs....” 28 U.S.C. § 1332(d)(2).

18 18. “[T]o determine whether the matter in controversy exceeds the sum or
19 value of \$5,000,000,” the “claims of the individual class members shall be
20 aggregated.” *Id.* § 1332(d)(6).

21 19. Plaintiff has asserted four claims: (1) “Violation of the California
22 Automatic Renewal Law,” Bus. & Prof. Code § 17600 et seq.; (2) violation of
23 California’s Consumers Legal Remedies Act (“CLRA”), Civ. Code § 1750 et seq.;
24 (3) violation of California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code §
25 17200 et seq.; and (4) unjust enrichment. *See* Compl. ¶¶ 30–52. Plaintiff has also
26 requested attorneys’ fees and costs. *Id.*, Prayer for Relief ¶¶ 4, 8–9.

27 20. Plaintiff seeks an award of restitution in connection with his first cause
28 of action under the Automatic Renewal Law, *id.*, Prayer for Relief ¶ 1, his third cause

1 of action under the UCL, *id.*, Prayer for Relief ¶ 5, and his fourth cause of action for
 2 unjust enrichment. *Id.*, Prayer for Relief ¶ 7.

3 21. Specifically, Plaintiff claims that he and every member of the putative
 4 class “are entitled to restitution of all amounts that Defendants charged . . . for
 5 BEYOND+ membership during the four years preceding the filing of this Complaint
 6 and continuing until Defendants’ statutory violations cease.” *Id.* ¶ 33; *see also, e.g.,*
 7 *id.* ¶ 48 (seeking restitution of “all amounts paid to Defendants for BEYOND+
 8 membership in the four years preceding the filing of this Complaint and continuing
 9 until Defendants’ acts of unfair competition cease.”); *id.* ¶ 51 (claiming that
 10 “Defendants have received money from Plaintiff and Class members in connection
 11 with Defendants’ conduct in violation of California law. . . . Defendants should be
 12 ordered to restore said funds to Plaintiff and the Class members.”).

13 22. Since the BEYOND+ membership program first began, the annual
 14 membership fee has been at least \$29. *See, e.g.,* Compl. ¶¶ 11–12.

15 23. In the four years before the filing of this action, BEYOND+ members
 16 with California addresses paid more than \$5,000,000 in annual membership fees.²
 17 Thus, the aggregate value of Plaintiff’s request for restitution exceeds \$5,000,000.

18 24. This amount in controversy would also increase to the extent Plaintiff is
 19 able to recover restitution for alleged monetary harm occurring after the date of filing
 20 this Notice of Removal. *See id.* ¶ 33 (claiming Plaintiff and putative class members
 21 “are entitled to restitution of all amounts . . . charged to [their] credit cards, debit
 22 cards, or third-party payment accounts for BEYOND+ membership during the four
 23 years preceding the filing of this Complaint *and continuing until Defendants’*
 24 *statutory violations cease.*”) (emphasis added); *id.* ¶ 48 (same); *see also, e.g., Lao v.*

25
 26 ² Defendant disputes that Plaintiff or anyone else could recover the fee for the
 27 initial term of the BEYOND+ membership (as opposed to the fee for a renewal term).
 28 Defendant reserves the right to argue that any claim for restitution would necessarily
 be limited to fees for renewal terms. For present purposes, however, all membership
 fees are in controversy. *See supra.*

1 *Wickes Furniture Co.*, 455 F. Supp. 2d 1045, 1050 (C.D. Cal. 2006) (including
2 “future damages” in amount in controversy because class period continued from date
3 of filing to date of certification).

4 25. Plaintiff also seek an award of attorneys’ fees and costs, including for
5 the alleged violation of the California’s CLRA. Compl., Prayer for Relief ¶¶ 4, 8–9.
6 Awards of attorneys’ fees and costs may be included in the amount in controversy.
7 *See, e.g., Guglielmo v. McKee Foods Corp.*, 506 F.3d 696, 698 (9th Cir. 2007); *Galt*
8 *G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (“[W]here an underlying
9 statute authorizes an award of attorneys’ fees, either with mandatory or discretionary
10 language, such fees may be included in the amount in controversy.”). A fee award
11 in a certified class action can often amount to twenty-five percent (25%) of a class’
12 recovery, which could increase the amount in controversy by 25% or, put another
13 way, to 125% of the class’ claimed recovery. *See, e.g., Jasso v. Money Mart Exp.,*
14 *Inc.*, No. 11-5500, 2012 WL 699465, at *7 (N.D. Cal. Mar. 1, 2012) (stating that fee
15 award of 25% of class recovery was “not unreasonable”).

16 26. Plaintiff also seeks injunctive relief, the costs of which could be
17 substantial. *See* Compl. ¶ 34 (seeking “an injunction enjoining Defendants from
18 making membership program offers and/or posting charges to a credit card, debit
19 card, or third party payment account without first complying with California law”
20 and reserving the right to seek “other prohibitory or mandatory aspects of injunctive
21 relief”); *id.* ¶ 40 (seeking “an injunction prohibiting Defendants from continuing
22 their unlawful practices in violation of the [CLRA]”); *id.* ¶ 49 (seeking “an
23 injunction enjoining Defendants from committing acts of unfair competition”).

24 27. Although Defendant denies that it has any liability to Plaintiff or anyone
25 else, and denies that the putative class could be properly certified for class treatment,
26 the aggregate amount that has been placed “in controversy” by the Complaint—i.e.,
27 the aggregate value of all damages and fees sought and the costs of complying with
28 all equitable relief sought—exceeds \$5,000,000. *See* 28 U.S.C. § 1332(d)(6) (“In

any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.”).

28. Because this is a putative class action that was commenced after February 18, 2005 in which there is minimal diversity, more than 100 putative class members, and more than \$5,000,000 in the aggregate in controversy, this Court has original subject matter jurisdiction. *See* 28 U.S.C. § 1332(d)(2)(A).

29. Because this action states a basis for original subject matter jurisdiction under 28 U.S.C. § 1332, it is removable pursuant to 28 U.S.C. § 1441(a).

II.

PROCEDURAL STATEMENT

A. Timeliness

30. Pursuant to 28 U.S.C. 1446(b) and Federal Rule of Civil Procedure 6, this Notice of Removal has been timely filed within thirty (30) days of service because Plaintiff purported to serve the Complaint on Defendant on January 17, 2020.

B. Defendants

31. Pursuant to 28 U.S.C. § 1453(b), a putative class action may be removed “without regard to whether any defendant is a citizen of the State in which the action is brought.” Even so, Defendant is not a citizen of California.

C. Consent

32. Pursuant to 28 U.S.C. § 1453(b), it is not necessary to obtain the consent of all Defendants in order to remove a putative class action. Nevertheless, consent is not relevant here because there is only one named Defendant.

D. Venue

33. Pursuant to 28 U.S.C. § 1441(a), removal to the United States District Court for the Southern District of California is proper because this District embraces the Superior Court of California, San Diego County, where this action is now pending. *See* 28 U.S.C. § 84(a).

E. Attachments

34. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of Plaintiff's Complaint and all other process, pleadings and orders that Plaintiff purportedly served on Defendant as of the date of this Notice of Removal are attached collectively as Exhibit A.

F. Evidence

35. Pursuant to 28 U.S.C. § 1446(a), it is sufficient to provide a "short and plain" allegation of the jurisdictional facts and it is not necessary to attach evidence establishing those allegations. *See Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 84 (2014) ("A statement 'short and plain' need not contain evidentiary submissions.").

G. Notices

36. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly file a copy of this Notice of Removal in the Superior Court of California, San Diego County and give written notice of the removal of this action to counsel for Plaintiff.

H. Defenses

37. By removing this action to this Court, Defendant does not concede that it has any liability, let alone liability of greater than \$5,000,000, to the members of the putative class. *See, e.g., Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 449 (7th Cir. 2005) ("[The defendant] did not have to confess liability in order to show that the controversy exceeds the threshold"). Rather, "[t]he amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of defendant's liability." *Lewis v. Verizon Comm'ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (citing cases); *see also, e.g., Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010) ("[T]he plaintiffs' likelihood of success on the merits is largely irrelevant to the court's jurisdiction because the pertinent question is what is *in controversy* in the case, not how much the plaintiffs are ultimately likely to recover.") (emphasis in original) (quotations omitted); *Heejin Lim v. Helio, LLC*,

1 No. 11-9183, 2012 WL 359304, at *3 (C.D. Cal. Feb. 2, 2012) (“Defendants
 2 effectively would be required to concede liability were the Court to require a stronger
 3 showing”); *Bryan v. Wal-Mart Stores, Inc.*, No. 08-5221, 2009 WL 440485, at
 4 *3 (N.D. Cal. Feb. 23, 2009) (same); *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp.
 5 2d 1199, 1204–05 (E.D. Cal. 2008) (finding that defendant need not “research, state,
 6 and prove the plaintiff’s claims” in order to remove action) (quotations omitted);
 7 *Helm v. Alderwoods Grp., Inc.*, No. 08-1184, 2008 WL 2002511, at *5 (N.D. Cal.
 8 May 7, 2008) (“[D]efendants cannot be expected to try the case themselves for
 9 purposes of establishing jurisdiction, and then admit to the opposing party and to the
 10 Court that a certain number of ... violations did indeed occur.”); *Rippee v. Boston*
 11 *Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005) (focus is on what is “in
 12 controversy,” not what defendant “would owe”); *Muniz v. Pilot Travel Ctrs. LLC*,
 13 No. 07-0325, 2007 WL 1302504, at *2 (E.D. Cal. May 1, 2007) (defendant need not
 14 “prove the plaintiff’s claims for damages” and assuming 100% violation rate when
 15 calculating amount in controversy).

16 38. By removing this action to this Court, Defendant does not waive any
 17 defenses, objections or motions available to them under state or federal law.
 18 Defendant expressly reserves the right to move for judgment in favor of Defendant
 19 pursuant to Rules 12 and 56 of the Federal Rules of Civil Procedure, and to strike or
 20 oppose the certification of a class pursuant to Federal Rule of Civil Procedure 23.

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1 **WHEREFORE**, Defendant respectfully removes this action from the
2 Superior Court of California, San Diego County, to this Court pursuant to 28 U.S.C.
3 §§ 1332, 1441, 1446 and 1453.
4

5 Dated: February 14, 2020

FAEGRE DRINKER BIDDLE &
REATH LLP

6
7 By: /s/ Matthew J. Adler

8 Michael P. Daly*

9 Matthew J. Adler

Antoinette M. Snodgrass*

10 Attorneys for Defendant
11 BED BATH & BEYOND INC.

*admission *pro hac vice* to be sought
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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Four Embarcadero Center, 27th Floor, San Francisco, California 94111. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On February 14, 2020, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**DEFENDANT BED BATH & BEYOND INC.'S NOTICE OF
REMOVAL TO FEDERAL COURT**

in a sealed envelope, postage fully paid, addressed as follows:

James T. Hannink, Esq.
Zach P. Dostart, Esq.
Dostart Hannink & Coveney LLP
4180 La Jolla Village Drive, Ste. 530
La Jolla, CA 92037
Telephone: (858) 623-4200
Facsimile: (858) 623-4299
Attorneys for Plaintiff Robert Turnier

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

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

Executed on February 14, 2020, at San Francisco, California.



Gloria M. Cadena

ACTIVE.121994913.01

Proof of Service

Case No.

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Robert Turnier

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

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

James T. Hannink, Zach P. Dostart, Dostart Hannink & Coveney LLP
4180 La Jolla Village Drive, Suite 350, La Jolla, CA 92037
(858) 623-4200

DEFENDANTS

Bed Bath & Beyond Inc.

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)

Matthew J. Adler, Faegre Drinker Biddle & Reath LLP
Four Embarcadero Center, 27th Floor, San Francisco, CA 94111
(415) 591-7500

'20CV0288 L MSB**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

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

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

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

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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

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

28 U.S.C. Section 1332

Brief description of cause:

Alleged violation of California automatic renewal law

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE February 14, 2020

SIGNATURE OF ATTORNEY OF RECORD /s/ Matthew J. Adler

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE

MAG. JUDGE
American LegalNet, Inc.
www.FormsWorkFlow.com



INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN 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 Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT A

SUM-100

SUMMONS (CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

BED BATH & BEYOND INC., a New York corporation; and DOES 1-50, inclusive

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

01/15/2020 at 11:52:44 AM

Clerk of the Superior Court
By Linda Sheffa, Deputy Clerk

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

ROBERT TURNIER, 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), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

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

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 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, CA 92101

CASE NUMBER: (Número del Caso):

37-2020-00002499-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):

James T. Hannink (131747); Zach P. Dostart (255071); DOSTART HANNINK & COVENEY LLP
4180 La Jolla Village Drive, Suite 530, La Jolla, CA 92037

DATE:
(Fecha) 01/15/2020

Clerk, by
(Secretario)

L. Sheffa
L. Sheffa

, 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).)

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): Bed Bath & Beyond Inc., a New York Corporation
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):
- ☐ by personal delivery on (date)

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James T. Hannink (131747) Zach P. Dostart (255071) DOSTART HANNINK & COVENEY LLP 4180 La Jolla Village Drive, Suite 530, La Jolla, CA 92037 TELEPHONE NO.: (858) 623-4200 FAX NO.: (858) 623-4299 ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 01/15/2020 at 11:52:44 AM Clerk of the Superior Court By Linda Sheffa, Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego 92010 BRANCH NAME: Hall of Justice			
CASE NAME: Turnier v. Bed Bath & Beyond Inc.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: 37-2020-00002499-CU-BT-CTL JUDGE: Judge Richard S. Whitney 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:

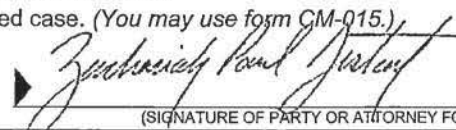
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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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
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
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
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): 1) Violation of ARL; 2) Violation of CLRA; 3) Unfair Competition; and
5. This case ☒ is ☐ is not a class action suit. 4) Unjust Enrichment
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 15, 2020

Zach P. Dostart

(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.

Page 1 of 2

1 JAMES T. HANNINK (131747)
jhannink@sdlaw.com
2 ZACH P. DOSTART (255071)
zdostart@sdlaw.com
3 DOSTART HANNINK & COVENEY LLP
4180 La Jolla Village Drive, Suite 530
4 La Jolla, California 92037-1474
Tel: 858-623-4200
5 Fax: 858-623-4299

6 Attorneys for Plaintiff

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

01/15/2020 at 11:52:44 AM
Clerk of the Superior Court
By Linda Sheffa, Deputy Clerk

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10
11 ROBERT TURNER,
individually and on behalf of all others
12 similarly situated,

13 Plaintiff,

14 vs.

15 BED BATH & BEYOND INC.,
a New York corporation; and
16 DOES 1-50, inclusive,

17 Defendants.
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CASE NO. 37-2020-00002499-CU-BT-CTL

CLASS ACTION

COMPLAINT FOR:

(1) FALSE ADVERTISING - VIOLATION OF
THE CALIFORNIA AUTOMATIC RENEWAL
LAW

[Bus. & Prof. Code, §§ 17600 et seq. & 17535];

(2) VIOLATION OF THE CALIFORNIA
CONSUMERS LEGAL REMEDIES ACT
[Civ. Code, § 1750 et seq.];

(3) UNFAIR COMPETITION
[Bus. & Prof. Code, § 17200 et seq.]; AND

(4) UNJUST ENRICHMENT.

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This class action complaint alleges that defendant Bed Bath & Beyond Inc. (“BB&B”) violates California law in connection with a subscription program operated under the name BEYOND+. Among other things, BB&B enrolls consumers in automatic-renewal or continuous service subscriptions without providing the “clear and conspicuous” disclosures mandated by California law, and posts charges to consumers’ credit or debit cards for purported automatic renewal or continuous service subscriptions without first obtaining the consumers’ affirmative consent to an agreement containing the requisite clear and conspicuous disclosures. This course of conduct violates the California Automatic Renewal Law (Bus. & Prof. Code, § 17600 et seq.) (“ARL”) (which is part of California’s False Advertising Law), the Consumers Legal Remedies Act (Civ. Code, § 1750 et seq.) (“CLRA”), and the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) (“UCL”).

THE PARTIES

2. Plaintiff Robert Turnier (“Turnier”) is an individual residing in San Diego County, California.

3. Plaintiff is informed and believes and thereon alleges that defendant Bed Bath & Beyond Inc. (“BB&B”) is a New York corporation that does business in San Diego County, including the marketing and sale of household merchandise.

4. Plaintiff does not know the names of the defendants sued as DOES 1 through 50 but will amend this complaint when that information becomes known. Plaintiff alleges on information and belief that each of the DOE defendants is affiliated with the named defendant in some respect and is in some manner responsible for the wrongdoing alleged herein, either as a direct participant, or as the principal, agent, successor, alter ego, or co-conspirator of or with one or more of the other defendants. For ease of reference, Plaintiff will refer to the named defendant and the DOE defendants collectively as “Defendants.”

5. Venue is proper in this judicial district because Defendants do business in this judicial district and a material part of the complained of conduct occurred in this judicial district.

SUMMARY OF APPLICABLE LAW

6. In 2009, the California Legislature passed Senate Bill 340, which took effect on December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law. (Bus. & Prof. Code, § 17600 *et seq.* (the California Automatic Renewal Law or “ARL”).) (Unless otherwise stated, all statutory references are to the Business & Professions Code). SB 340 was introduced because:

It has become increasingly common for consumers to complain about unwanted charges on their credit cards for products or services that the consumer did not explicitly request or know they were agreeing to. Consumers report they believed they were making a one-time purchase of a product, only to receive continued shipments of the product and charges on their credit card. These unforeseen charges are often the result of agreements enumerated in the “fine print” on an order or advertisement that the consumer responded to.

(See Exhibit 1 at p. 7.)

7. The Assembly Committee on Judiciary provided the following background for the legislation:

This non-controversial bill, which received a unanimous vote on the Senate floor, seeks to protect consumers from unwittingly consenting to “automatic renewals” of subscription orders or other “continuous service” offers. According to the author and supporters, consumers are often charged for renewal purchases without their consent or knowledge. For example, consumers sometimes find that a magazine subscription renewal appears on a credit card statement even though they never agreed to a renewal.

(See Exhibit 2 at p. 11.)

8. The ARL seeks to ensure that, before there can be a legally-binding automatic renewal or continuous service arrangement, there must first be clear and conspicuous disclosure of certain terms and conditions and affirmative consent by the consumer. To that end, § 17602(a) makes it unlawful for any business making an automatic renewal offer or a continuous service offer to a consumer in California to do any of the following:

a. Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer. For this purpose, “clear and conspicuous” means “in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other

marks, in a manner that clearly calls attention to the language.” (§ 17601(c).) “In the case of an audio disclosure, ‘clear and conspicuous’ ... means in a volume and cadence sufficient to be readily audible and understandable.” (*Ibid.*) The statute defines “automatic renewal offer terms” to mean the “clear and conspicuous” disclosure of the following: (a) that the subscription or purchasing agreement will continue until the consumer cancels; (b) the description of the cancellation policy that applies to the offer; (c) the recurring charges that will be charged to the consumer’s credit or debit card or payment account with a third party as part of the automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known; (d) the length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer; and (e) the minimum purchase obligation, if any. (Bus. & Prof. Code § 17601(b).)

b. Charge the consumer’s credit or debit card or the consumer’s account with a third party for an automatic renewal or continuous service without first obtaining the consumer’s affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms, including the terms of an automatic renewal offer or continuous service offer that is made at a promotional or discounted price for a limited period of time. (Bus. & Prof. Code § 17602(a)(2).)

c. Fail to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. (Bus. & Prof. Code, § 17602(a)(3).) Section 17602(b) requires that the acknowledgment specified in § 17602(a)(3) include a toll-free telephone number, electronic mail address, or another “cost-effective, timely, and easy-to-use” mechanism for cancellation.

9. If a business sends any goods, wares, merchandise, or products to a consumer under a purported automatic renewal or continuous service arrangement without first obtaining the consumer’s affirmative consent to an agreement containing the “clear and conspicuous” disclosures as specified in the ARL, the goods, wares, merchandise, and/or products are deemed to be an unconditional gift to the consumer, who may use or dispose of them without any obligation

1 whatsoever. (Bus. & Prof. Code, § 17603.) Violation of the ARL gives rise to restitution and
 2 injunctive relief under the general remedies provision of the False Advertising Law, Bus. & Prof.,
 3 Code § 17535. (Bus. & Prof. Code, § 17604(a).) As well, violation of the ARL gives rise to
 4 restitution and injunctive relief under the UCL.

5 **FACTS GIVING RISE TO THIS ACTION**

6 10. In or about August 2018, while Plaintiff was in San Diego County, he purchased an
 7 item of merchandise through BB&B's website. Plaintiff paid for that purchase by entering his
 8 credit card information as part of the website check-out process.

9 11. The following year, in or about August 2019, Plaintiff noticed a charge of \$29.00
 10 on his credit card statement, which was posted by BB&B.

11 12. Plaintiff is informed and believes and thereon alleges that the \$29.00 charge that
 12 BB&B posted to his credit card in or about August 2019 was for purported renewal of a
 13 BEYOND+ membership. Plaintiff did not authorize or consent to that charge.

14 13. If Plaintiff had known that Defendants were going to enroll him in an automatically
 15 renewing membership program that would result in subsequent charges, Plaintiff would have
 16 either not purchased the merchandise from BB&B in the first place or would have taken other
 17 steps to avoid becoming enrolled in such a membership program, such that Plaintiff would not
 18 have paid money to Defendants for such program.

19 **BB&B'S DECEPTION OF CONSUMERS**

20 14. When a consumer selects an item to purchase online through the BB&B website,
 21 the website walks the consumer through a purchase sequence.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

15. The first screen ("Screen 1") is a review of the consumer's order. In the "Order Summary" box, the consumer is provided with two different prices: the regular "Order Subtotal" price, and a discounted "BEYOND+ Member Price," as shown below:

16. If the consumer clicks the "Join Now" link next to the BEYOND+ Member Price, he or she is presented with another screen ("Screen 2") that invites the consumer to become a BEYOND+ member. Screen 2 indicates that for \$29.00, BEYOND+ members receive a 20% discount on every purchase for one year, as well as free standard shipping.

Become a BEYOND+ member today

Never Look for a Coupon Again!

You love coupons (hey, who doesn't?). But why wait for one? For just \$29 a year, BEYOND+ members get 20% off their Entire Purchase and free shipping!

Sign Me Up

[Terms and Conditions](#)

BEYOND+

— MEMBERS SAVE MORE —

20% OFF
ENTIRE PURCHASE
EVERY TIME YOU SHOP

FREE
STANDARD
SHIPPING

— ALL YEAR LONG! —

All the Benefits for Just \$29 a Year

17. If the consumer clicks the "Sign Me Up" button on Screen 2, he or she is then presented with a screen for entry of name and contact information ("Screen 3"), as shown below:

Billing Address

First Name

Last Name

Company (Optional)

Country

United States

Street Address

Apt/Suite/Floor (Optional)

City

State

Zip Code

Contact Information

Phone Number, maximum 10

Terms and Conditions

☐ I accept the terms and conditions of the program

Review

☐ BEYOND+ 1 Year Membership

18. From the foregoing, it is evident that there is no clear and conspicuous disclosure of automatic renewal offer terms as required by the ARL.

19. Plaintiff is not the only consumer to be victimized by Defendants in connection with the BEYOND+ membership. There are numerous complaints about BB&B posted on a variety of websites, including but not limited to the Better Business Bureau, Complaints Board,

1 and pissedconsumer.com.¹

2 20. On the Better Business Bureau website, an illustrative complaint about another
3 consumer's experience with Defendants' membership program is as follows:

4 **Complaint Type: Guarantee/Warranty Issues (August 2, 2019).** I was pressed
5 into a one year membership in order to receive a discount for a large one time
6 purchase. I told salesperson I would only agree if it was not the auto renew deal
7 scam most of them use unless you clarify. I was told it would be set up as
8 requested. I refuse to join these scams otherwise. My girlfriend was my witness as
9 she does the same. They lied and just helped themselves to my **** card. Upon
10 requesting they reverse and cancel they said it was impossible.

11 A true and correct printout of that complaint is attached as Exhibit 3.

12 21. On the Complaints Board website, an illustrative complaint about the BB&B
13 membership program is as follows:

14 **Sam1981. Bed Bath & Beyond – one year bed bath and beyond membership**
15 **(June 14, 2018).** I went online to order Bona Hardfloor cleaning liquid, all of
16 sudden I saw an item added to the cart for one year Bed Bath and Beyond
17 Membership. I am not sure how that got added, I did not realize and made the
18 payment thinking that I bought Bona Hardfloor cleaning liquid. After few days, I
19 did not see anything shipment, went back to my account and saw that I purchased
20 one year membership.

21 I called the customer service and they said they will refund the money, but they
22 called after few days and said they can't cancel the membership because I bought a
23 product with that membership. Once you said you cancelled the membership, isn't
24 that your responsibility to remove that from my account. How am I supposed to
25 know that I can't buy anything with my account until you cancel the one year
26 membership.

27 I am really annoyed with this, I don't need the membership and please refund my
28 money.

29 A true and correct printout of that complaint is attached as Exhibit 4.

30

31

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33

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35 ¹ Better Business Bureau reviews are available at
36 <https://www.bbb.org/us/nj/union/profile/linens/bed-bath-beyond-inc-0221-18001225/complaints>
37 (as of January 13, 2020); Complaints Board reviews are available at
38 <https://www.complaintsboard.com/?search=Bed+Bath+%26+Beyond> (as of January 13, 2020);
Pissed Consumer reviews are available at <https://bed-bath-and-beyond.pissedconsumer.com/review.html> (as of January 13, 2020).

39

22. On the Pissed Consumer website, two illustrative consumer complaints about BB&B's membership program are as follows:

Diane D. Bed Bath and Beyond - CREDIT (April 15, 2018). I ordered what I believed was an item online. When I never received it and contacted customer service I was told it was delivered and that it was a \$29.99 membership I purchased.

I asked for a credit back on my card. It took 6 phone calls back and still no refund. I was told in the first call a credit would be put on usually the following day, the second and third calls were the credit has been issued the fourth I was told to read the tiny fine print online it states no refund. The fifth was a supervisor who apologized and said a refund would be issued. The final sixth was Tom who assured me of this credit, apologized and actually gave me a personal contact (or could be made up I never even called at this point)

So I still have no credit.

To go into a store and purchase is no problem, I suggest you never order online.

A true and correct printout of that complaint is attached as Exhibit 5.

Heidi N. Bed Bath and Beyond "club" (March 19, 2018). ordered something online and got rooked into signing up for their CLUB!!! What an fin.....rip off for sure...No refund available, per nancy.... Very Pissed!!!! I will not be a bb&b shopper any longer, so buyer beware!! I guess they are trying to be like amazon with their yearly fee.....

Not happening.. I hope everyone is very cautious when shopping online with this store.

Not very cooperative as far as getting refunded. I really did not need more of their coupons, for sure.

I guess they had to figure out a way to make up for people not shopping their without a coupon. That is for sure.....

A true and correct printout of that complaint is attached as Exhibit 6.

CLASS ACTION ALLEGATIONS

23. Plaintiff brings this lawsuit as a class action under Code of Civil Procedure § 382 on behalf of the following Class: "All individuals in California who, within the applicable limitations period, were enrolled by Defendants in the BEYOND+ membership program. Excluded from the Class are all employees of Defendants, all employees of Plaintiff's counsel, and the judicial officers to whom this case is assigned."

1 24. Ascertainability. The members of the Class may be ascertained by reviewing
2 records in the possession of Defendants and/or third parties, including without limitation
3 Defendants' customer, order, and billing records.

4 25. Common Questions of Fact or Law. There are questions of fact or law that are
5 common to the members of the Class, which predominate over individual issues. Common
6 questions regarding the Class include, without limitation: (1) whether Defendants present all
7 statutorily-mandated automatic renewal or continuous service offer terms, within the meaning of
8 § 17601(b); (2) whether Defendants present automatic renewal or continuous service offer terms
9 in a manner that is "clear and conspicuous," within the meaning of § 17601(c), and in "visual
10 proximity" to a request for consent to the offer (or in the case of an offer conveyed by voice, in
11 temporal proximity to a request for consent to the offer), as required by § 17602; (3) whether
12 Defendants obtain consumers' affirmative consent to an agreement containing clear and
13 conspicuous disclosure of automatic renewal or continuous service offer terms before charging a
14 credit card, debit card, or third-party payment account; (4) whether Defendants provide consumers
15 with an acknowledgment that includes clear and conspicuous disclosure of all statutorily-
16 mandated automatic renewal or continuous service offer terms, the cancellation policy, and
17 information regarding how to cancel in a manner that is capable of being retained by the
18 consumer; (5) Defendants' record-keeping practices; (6) the appropriate remedies for Defendants'
19 conduct; and (7) the appropriate terms of an injunction.

20 26. Numerosity. The Class is so numerous that joinder of all Class members would be
21 impracticable. Plaintiff is informed and believes and thereon alleges that the Class consists of at
22 least 100 members.

23 27. Typicality and Adequacy. Plaintiff's claims are typical of the claims of the Class
24 members. Plaintiff alleges on information and belief that Defendants enrolled Plaintiff and Class
25 members in automatic renewal or continuous service programs without disclosing all terms
26 required by law, and without presenting such terms in the requisite "clear and conspicuous"
27 manner; charged Class members' credit cards, debit cards, or third-party accounts without first
28 obtaining Class members' affirmative consent to an agreement containing clear and conspicuous

disclosure of all automatic renewal offer terms in the manner required by California law; and failed to provide the requisite acknowledgment with the required disclosures and information. Plaintiff has no interests that are adverse to those of the other Class members. Plaintiff will fairly and adequately protect the interests of the Class members.

28. Superiority. A class action is superior to other methods for resolving this controversy. Because the amount of restitution to which the Class member may be entitled is low in comparison to the expense and burden of individual litigation, it would be impracticable for Class members to redress the wrongs done to them without a class action forum. Furthermore, on information and belief, Class members do not know that their legal rights have been violated. Class certification would also conserve judicial resources and avoid the possibility of inconsistent judgments.

29. Defendants Have Acted on Grounds Generally Applicable to the Class. Defendants have acted on grounds that are generally applicable to the Class, thereby making appropriate final injunctive relief and/or declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

False Advertising - Violation of the California Automatic Renewal Law

(Bus. & Prof. Code, § 17600 et seq.)

30. Plaintiff incorporates the previous allegations as though set forth herein.

31. Plaintiff is informed and believe and thereon allege that, during the applicable statute of limitations period, Defendants have enrolled consumers, including Plaintiff and Class members, in automatic renewal programs and/or continuous service programs and have (a) failed to present the automatic renewal or continuous service offer in a clear and conspicuous manner before the subscription or purchasing agreeing is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer; (b) charged the consumer's credit or debit card or the consumer's third-party payment account for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to an agreement containing clear and conspicuous disclosure of the automatic renewal or continuous service offer terms; (c) failed to provide an acknowledgment that includes clear and

1 conspicuous disclosure of all automatic renewal or continuous service offer terms, the cancellation
2 policy, and information regarding how to cancel.

3 32. Plaintiff has suffered injury in fact and lost money as a result of Defendants'
4 violations of the ARL.

5 33. Pursuant to Bus. & Prof. Code §§ 17603 and 17535, Plaintiff and Class members
6 are entitled to restitution of all amounts that Defendants charged to Plaintiff's and Class members'
7 credit cards, debit cards, or third-party payment accounts for BEYOND+ membership during the
8 four years preceding the filing of this Complaint and continuing until Defendants' statutory
9 violations cease.

10 34. Unless enjoined and restrained by this Court, Defendants will continue to commit
11 the violations alleged herein. Pursuant to § 17535, Plaintiff and the Class members are entitled to
12 an injunction enjoining Defendants from making membership program offers and/or posting
13 charges to a credit card, debit card, or third party payment account without first complying with
14 California law. Plaintiff reserves the right to seek other prohibitory or mandatory aspects of
15 injunctive relief, whether on behalf of Plaintiff, the Class, and/or for the benefit of the general
16 public of the State of California.

17 **SECOND CAUSE OF ACTION**

18 Violation of the California Consumers Legal Remedies Act

19 (Civ. Code, § 1750 et seq.)

20 35. Plaintiff incorporates the allegations of paragraphs 1-28 as though set forth herein.

21 36. Plaintiff and the Class members are "consumers" within the meaning of Civil Code
22 § 1761(d) in that the goods and/or services sought or acquired were for personal, family, or
23 household purposes.

24 37. Defendants' merchandise and membership program are "goods" or "services"
25 within the meaning of Civil Code § 1761, subdivisions (a) and (b).

26 38. The purchases and payments by Plaintiff and Class members are "transactions"
27 within the meaning of Civil Code § 1761(e).

39. Defendants have violated Civil Code § 1770, subdivisions (a)(5), (a)(9), (a)(13), (a)(14), and (a)(17), by representing that Defendants' goods and services have certain characteristics that they do not have; advertising goods and services with the intent not to sell them as advertised; making false and misleading statements of fact concerning the reasons for, existence of and amounts of price reductions; representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law; and by representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

40. On behalf of himself, all Class members, and the general public of the State of California, Plaintiff seeks an injunction prohibiting Defendants from continuing their unlawful practices in violation of the Consumers Legal Remedies Act, as described above.

THIRD CAUSE OF ACTION

Violation of the California Unfair Competition Law

(Bus. & Prof. Code, § 17200 et seq.)

41. Plaintiff incorporates the previous allegations as though fully set forth herein.

42. The California Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 *et seq.*, defines unfair competition as including "any unlawful, unfair or fraudulent business act or practice."

43. In the course of conducting business within the applicable limitations period, Defendants committed "unlawful," "unfair," and/or "fraudulent" business practices by, *inter alia* and without limitation: (a) failing to present the terms of automatic renewal or continuous service offers in a clear and conspicuous manner before a purchasing agreement is fulfilled and in visual proximity (or in the case of an offer conveyed by voice, in temporal proximity), to a request for consent to the offer, in violation of Bus. & Prof. Code § 17602(a)(1); (b) charging the consumer's credit card, debit card, or third-party payment account for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to an agreement containing clear and conspicuous disclosures of automatic renewal offer terms or continuous service offer

1 terms, in violation of Bus. & Prof. Code § 17602(a)(2); (c) failing to provide an acknowledgment
2 that includes clear and conspicuous disclosure of automatic renewal or continuous service offer
3 terms, cancellation policy, and information regarding how to cancel in a manner that is capable of
4 being retained by the consumer, in violation of Bus. & Prof. Code § 17602(a)(3); (d) representing
5 that Defendants' goods and services have certain characteristics that they do not, in violation of
6 Civil Code § 1770(a)(5); (e) advertising goods and services with the intent not to sell them as
7 advertised, in violation of Civil Code § 1770(a)(9); (f) making false and misleading statements of
8 fact concerning the reasons for, existence of and amounts of price reductions, in violation of Civil
9 Code § 1770(a)(13); (g) representing that a transaction confers or involves rights, remedies, or
10 obligations that it does not have or involve, or that are prohibited by law, in violation of Civil
11 Code § 1770 (a)(14); and (h) representing that the consumer will receive a rebate, discount, or
12 other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent
13 to the consummation of the transaction, in violation of Civil Code § 1770(a)(17). Plaintiff
14 reserves the right to allege other violations of law that constitute unlawful or unfair business acts
15 or practices.

16 44. Defendants' acts and omissions as alleged herein violate obligations imposed by
17 statute, are substantially injurious to consumers, offend public policy, and are immoral, unethical,
18 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits
19 attributable to such conduct.

20 45. There were reasonably available alternatives to further Defendants' legitimate
21 business interests, other than the conduct described herein.

22 46. Defendants' acts, omissions, nondisclosures, and statements as alleged herein were
23 and are false, misleading, and/or likely to deceive the consuming public.

24 47. Plaintiff has suffered injury in fact and lost money as a result of Defendants' acts of
25 unfair competition.

26 48. Pursuant to § 17203, Plaintiff and the Class members are entitled to restitution of
27 all amounts paid to Defendants for BEYOND+ membership in the four years preceding the filing
28 of this Complaint and continuing until Defendants' acts of unfair competition cease.

49. Unless enjoined and restrained by this Court, Defendants will continue to commit the violations alleged herein. Pursuant to § 17203, Plaintiff and the Class members are entitled to an injunction enjoining Defendants from committing acts of unfair competition alleged above. Plaintiff reserves the right to seek other prohibitory or mandatory aspects of injunctive relief, whether on behalf of Plaintiff, the Class, and/or for the benefit of the general public of the State of California.

FOURTH CAUSE OF ACTION

Unjust Enrichment

50. Plaintiff incorporates the previous allegations as though fully set forth herein.

51. Defendants have received money from Plaintiff and Class members in connection with Defendants' conduct in violation of California law. Defendants would be unjustly enriched if they were permitted to retain those funds, and Defendants should be ordered to restore said funds to Plaintiff and the Class members.

52. Plaintiff alleges this unjust enrichment claim in the alternative to relief provided under any legal claim alleged herein.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

On the First Cause of Action:

1. For restitution;
2. For injunctive relief, including a public injunction for the benefit of the People of the State of California;

On the Second Cause of Action:

3. For injunctive relief, including a public injunction for the benefit of the People of the State of California;

4. For reasonable attorneys' fees, pursuant to Civil Code § 1780(e);

On the Third Cause of Action:

5. For restitution;

1 6. For injunctive relief, including a public injunction for the benefit of the People of
2 the State of California;

3 On the Fourth Cause of Action:

4 7. For restitution;

5 On All Causes of Action:

6 8. For reasonable attorneys' fees, pursuant to Code of Civil Procedure § 1021.5;

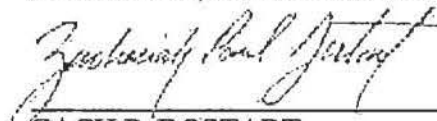
7 9. For costs of suit;

8 10. For pre-judgment interest; and

9 11. For such other relief as the Court may deem just and proper.

10 Dated: January 15, 2020

DOSTART HANNINK & COVENEY LLP



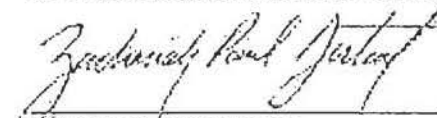
ZACH P. DOSTART
Attorneys for Plaintiff

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a trial by jury of all claims and causes of action so triable.

17 Dated: January 15, 2020

DOSTART HANNINK & COVENEY LLP



ZACH P. DOSTART
Attorneys for Plaintiff

905624.2

Exhibit 1

SENATE JUDICIARY COMMITTEE
Senator Ellen M. Corbett, Chair
2009-2010 Regular Session

SB 340
Senator Yee
As Amended April 2, 2009
Hearing Date: April 14, 2009
Business and Professions Code
ADM:jd

SUBJECT

Advertising: Automatic Renewal Purchases

DESCRIPTION

This bill would require, in any automatic renewal offer, a business to clearly and conspicuously state the automatic renewal offer terms and obtain the customer's affirmative consent to those terms before fulfilling any subscription or purchasing agreement on an automatic renewal basis. This bill would also require all marketing materials to clearly and conspicuously display a toll-free telephone number, if available, telephone number, postal address, or electronic mechanism the customer could use for cancellation.

This bill would require the order form to clearly and conspicuously disclose that the customer is agreeing to an automatic renewal subscription or purchasing agreement.

This bill would impose similar requirements for any automatic renewal offer made over the telephone or on an Internet Web page.

(This analysis reflects author's amendments to be offered in committee.)

BACKGROUND

Current consumer protection statutes do not address automatic renewal clauses or provisions in subscriptions or purchasing agreements. Senate Bill 340 is intended to close this gap in the law.

When some businesses began using automatic renewals for subscriptions and purchase agreements for products and services, consumer complaints began to surface regarding those automatic renewals. Consumers complained that they were unaware of and had

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not requested the automatic renewals until they either received a bill or a charge on their credit card.

An example of this problem is illustrated by the Time, Inc. (Time) case. After receiving numerous consumer complaints, the Attorneys General of 23 states, including California, launched an investigation into Time's automatic renewal subscription offers. In 2006, the investigation resulted in a settlement agreement between the Attorneys General and Time that includes a number of reforms to automatic renewals that Time sends to their customers. Those reforms include, among others, expanded disclosure requirements and customers' affirmative consent to automatic renewals. (See Comment 2 for details.)

CHANGES TO EXISTING LAW

Existing law, the Unfair Competition Law (UCL), provides that unfair competition means and includes any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising, and any act prohibited by the False Advertising Act (FAA). (Bus. & Prof. Code Sec. 17200 et seq.)

Existing law, the FAA, includes the following:

- prohibits any person with the intent, directly or indirectly, to dispose of real or personal property, to perform services, or to make or disseminate or cause to be made or disseminated to the public any statement concerning that real or personal property that is untrue or misleading and known or should be known to be untrue or misleading; and
- prohibits any person from making or disseminating any untrue or misleading statement as part of a plan or scheme with the intent not to sell that personal property or those services at the stated or advertised price. (Bus. & Prof. Code Sec. 17500.)

Existing law provides that any violation of the FAA is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine of \$2,500, or by both. (Bus. & Prof. Secs. 17500, 17534.)

Existing law provides that any person who violates any provision of the FAA is liable for a civil penalty not to exceed \$2,500 for each violation that must be assessed and recovered in a civil action by the Attorney General or by any district attorney, county counsel, or city attorney. (Bus. & Prof. Code Sec. 17536.)

Existing law provides that a person who has suffered injury in fact and has lost money or property as a result of unfair competition may bring a civil action for relief. (Bus. & Prof. Code Sec. 17204.)

Existing law provides for injunctive relief, restitution, disgorgement, and civil penalties. (Bus. & Prof. Code Secs. 17203, 17206.)



This bill would require all printed marketing materials containing an offer with an automatic renewal term to comply with the following: the customer's agreement to the automatic renewal offer must be obtained in accordance with either (1) or (2) below so that the customer is given the opportunity to expressly consent to the offer:

1. All automatic renewal offer terms must appear on the order form in immediate proximity to the area on the form where the customer selects the subscription or purchasing agreement billing terms or where the subscription or purchasing agreement billing terms are described; the order form must clearly and conspicuously disclose that the customer is agreeing to an automatic renewal subscription or purchasing agreement; and the automatic renewal offer terms must appear on materials that can be retained by the customer.
2. Both of the following:
 - a. on the front of the order form, the marketing materials must (i) refer to the subscription or purchasing agreement using the term "automatic renewal" or "continuous renewal," (ii) clearly and conspicuously state that the customer is agreeing to the automatic renewal, and (iii) specify where the full terms of the automatic renewal offer may be found; and
 - b. the marketing materials must clearly and conspicuously state the automatic renewal offer terms presented together preceded by a title identifying them specifically as the "Automatic Renewal Terms," "Automatic Renewal Conditions," "Automatic Renewal Obligations," or "Continuous Renewal Service Terms," or other similar description.

This bill would require all marketing materials that offer an automatic renewal, when viewed as a whole, to clearly and conspicuously disclose the material terms of the automatic renewal offer and must not misrepresent the material terms of the offer.

This bill would require an automatic renewal to clearly and conspicuously describe the cancellation policy and how to cancel, including, but not limited to, a toll-free telephone number, if available, telephone number, postal address, or electronic mechanism on the Internet Web page or on the publication page of the printed materials.

This bill would require, in any automatic renewal offer made over the telephone, a business to clearly and conspicuously state the automatic renewal terms prior to obtaining a customer's consent and payment information. The business must obtain a clear affirmative statement from the customer agreeing to the automatic renewal offer terms and must send a written acknowledgement that contains the toll-free number, if available, telephone number, postal address, or electronic mechanism for cancellation.

This bill would require, in any automatic renewal offer made on an Internet Web page, the business to clearly and conspicuously disclose the automatic renewal offer terms prior to the button or icon on which the customer must click to submit the order. In any automatic renewal offer made on an Internet Web page where the automatic renewal terms do not appear immediately above the submit button, the customer must be required to affirmatively consent to the automatic renewal offer terms. The automatic

renewal terms must be preceded by a title identifying them as the "Automatic Renewal Terms," "Automatic Renewal Conditions," "Automatic Renewal Obligations," "Continuous Renewal Service Terms," or other similar description.

This bill would require, in any automatic renewal offer, a business to clearly and conspicuously state the automatic renewal offer terms and obtain the customer's affirmative consent to those terms before fulfilling any subscription or purchasing agreement on an automatic renewal basis and all marketing materials that offer an automatic renewal subscription or purchasing agreement must clearly and conspicuously display the cancellation policy and how to cancel.

This bill would provide that no business may represent that a product is "free" if the cost of the product is incorporated in the price of the accompanying item purchased under automatic renewal conditions.

This bill would provide that a violation of the bill's provisions would not be a crime, but all applicable civil remedies would be available.

This bill would define key terms, including "automatic renewal" and "automatic renewal terms." (See Comment 4.)

COMMENT

1. Stated need for the bill

The author writes:

It has become increasingly common for consumers to complain about unwanted charges on their credit cards for products or services that the consumer did not explicitly request or know they were agreeing to. Consumers report they believed they were making a one-time purchase of a product, only to receive continued shipments of the product and charges on their credit card. These unforeseen charges are often the result of agreements enumerated in the "fine print" on an order or advertisement that the consumer responded to. The onus falls on the consumer to end these product shipments and stop the unwanted charges to their credit card.

A widespread instance of these violations resulted in the 2006 Time, Inc. case, in which Time settled a multi-state investigation into its automatic renewal offers and solicitations. The states launched their probe after receiving complaints from consumers that Time was billing them or charging their credit cards for unwanted magazine subscriptions. The states' investigation found that these mail solicitations misled some consumers into paying for unwanted or unordered subscriptions.

2. Time's Assurance of Voluntary Compliance or Discontinuance (Assurance) with Attorneys General; SB 340 modeled after the Assurance

The Attorneys General of 23 states (States), including California, investigated Time's automatic renewal subscription offers. Time publishes over 150 magazines worldwide, including Time, People, Sports Illustrated, This Old House, Entertainment Weekly, Fortune, and Popular Science. Time required customers to notify it if they did not want a subscription renewal; otherwise Time charged customers' credit cards or billed customers. The automatic renewal terms replaced "the industry's prior practice of offering limited-term subscriptions that were renewed at the Customer's affirmative election." The States investigated:

[W]hether the [automatic renewal] terms were clearly and adequately disclosed; whether the Customer was given an opportunity to expressly consent to the offer; whether the Customer was likely to believe the purchase was for a limited-term subscription, rather than an automatically renewed subscription; whether Customers were subsequently informed of the activation of an Automatic Renewal, and, if so, the manner in which they were so informed; the manner by which Customers were billed or charged; and how Time sought to collect payments for charges resulting from an Automatic Renewal. (Matters Investigated set forth in the Assurance.)

As a result of the investigation, in 2006, the States reached a settlement agreement – the Assurance – with Time. In the Assurance, Time agreed to:

- provide clear and conspicuous disclosures to consumers concerning all the material terms for automatic subscription renewals and, for the next five years, provide consumers the option to affirmatively choose an automatic renewal option and Time will send those consumers who have chosen an automatic subscription renewal written reminders, including information on the right and procedure to cancel;
- honor all requests to cancel subscriptions as soon as reasonably possible and to provide refunds to consumers charged for magazines they did not order;
- stop mailing solicitations to consumers for subscriptions that resemble bills, invoices, or statements of amounts due; and
- not submit unpaid accounts of automatic renewal customers for third party collection.

Time also agreed to refund to customers up to \$4.3 million, which included up to \$828,463 to 20,238 eligible California consumers, approximately \$41 per consumer. Senate Bill 340 is modeled in large part after the Assurance.

3. Remedies available under the bill

Senate Bill 340 would provide that a violation of its provisions would not be a crime, but all applicable civil remedies would be available.



Under the FAA, any person who violates any provision of the FAA is liable for a civil penalty not to exceed \$2,500 for each violation that must be assessed and recovered in a civil action by the Attorney General or by any district attorney, county counsel, or city attorney. Under the UCL, a private party may bring a civil action for injunctive relief and/or for restitution of profits that the defendant unfairly obtained from that party. However, the party must have suffered injury in fact and lost money or property.

4. Key terms defined

This bill would define the following key terms:

- a. "Automatic renewal" would mean a plan or agreement in which a subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term.
- b. "Automatic renewal offer terms" would mean the following clear and conspicuous disclosure:
 - that the subscription or purchasing agreement will continue unless the customer notifies the business to stop;
 - that the customer has the right to cancel;
 - that the customer will be billed, credit card charged, or other appropriate description of the payment method depending on the method described to the customer, or chosen by the customer on the front of the order form, and that the bill, charge, or other payment method will take place before the start of each new automatic renewal term;
 - the length of the automatic renewal term or that the renewal is continuous, unless the length of the term is chosen by the customer;
 - that the price paid by the customer for future automatic renewal terms may change; and
 - the minimum purchase obligation, if any.
- c. "Clear and conspicuous" or "clearly and conspicuously" would mean a statement or communication, written or oral, presented in a font, size color, location, and contrast against the background in which it appears, compared to the other matter which is presented, so that it is readily understandable, noticeable, and readable.
- d. "Marketing materials" would include any offer, solicitation, script, product description, publication, or other promotional materials, renewal notice, purchase order device, fulfillment material, or any agreement for the sale or trial viewing of products that are delivered by mail, in person, television or radio broadcast, e-mail, Internet, Internet Web page, or telephone device, or appearing in any newspaper or magazine or on any insert thereto, or Internet link or pop-up window.

5. Recording of telephone automatic renewal offers

Assembly Bill 88 (Corbett, Ch. 77, Stats. 2003) incorporated into state law a rule adopted by the Federal Trade Commission intended to protect consumers from "abusive" telemarketing practices. The rule requires, among other things, that telemarketers make



and maintain an audio recording of all telephone solicitations. (Telemarketing Sales Rule, 16 C.F.R. Part 310, 310.4(a)(6)(i), and 310.5(a)(5), effective March 31, 2009.)

The author may want to consider requiring that telephone automatic renewal offers be audio recorded and that the recording be maintained.

6. Author's amendments

On page 3, line 17, insert:

(c) "Continuous renewal" means a plan or arrangement in which a subscription or purchasing agreement is continuously renewed until the customer cancels the renewal.

On page 3, line 19, delete (c) and insert (d).

On page 3, line 34, delete (d) and insert (e).

On page 3, line 36, delete (e) and insert (f).

On page 4, line 4, insert (f).

On page 4, line 5, insert:

(g) All automatic renewal provisions in this article shall apply to continuous renewals.

Support: California Public Interest Research Group; Consumer Federation of California; American Federation of State, County and Municipal Employees; California Alliance for Consumer Protection

Opposition: None Known

HISTORY

Source: Author

Related Pending Legislation: None Known

Prior Legislation: None Known

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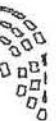


Exhibit 2

Date of Hearing: June 30, 2009

ASSEMBLY COMMITTEE ON JUDICIARY

Mike Feuer, Chair

SB 340 (Yee) – As Amended: June 24, 2009

PROPOSED CONSENT (As Proposed to be Amended)

SENATE VOTE: 37-0

SUBJECT: AUTOMATIC RENEWAL AND CONTINUOUS SERVICE OFFERS

KEY ISSUE: SHOULD A BUSINESS THAT MARKETS A PRODUCT WITH AN "AUTOMATIC RENEWAL OFFER" BE REQUIRED TO CLEARLY AND CONSPICUOUSLY DISCLOSE RENEWAL TERMS AND CANCELLATION POLICIES, AND TO OBTAIN THE CUSTOMER'S AFFIRMATIVE CONSENT TO AN AUTOMATIC RENEWAL?

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

SYNOPSIS

This non-controversial bill, which received a unanimous vote on the Senate floor, seeks to protect consumers from unwittingly consenting to "automatic renewals" of subscription orders or other "continuous service" offers. According to the author and supporters, consumers are often charged for renewal purchases without their consent or knowledge. For example, consumers sometimes find that a magazine subscription renewal appears on a credit card statement even though they never agreed to a renewal. Indeed, this problem led 23 state attorneys general to launch an investigation of Time, Inc., in response to claims that the company used deceptive practices in signing up customers for automatic subscription renewals. As part of a settlement of this dispute, Time agreed to institute new practices so that customers are fully aware of and affirmatively consent to automatic renewals. This bill, following the lead of the Times' settlement, would require that renewal terms and cancellation policies be clearly and conspicuously presented to the consumer, whether the offer is made on printed material or through a telephone solicitation. In addition, the bill would require that the consumer make some affirmative acknowledgement before an order with an automatic renewal can be completed. Finally, the bill specifies that violation of the bill's provisions do not constitute a crime. The author has worked closely with affected business interests and has made several amendments that appear to address all stakeholders' concerns. There is no registered opposition to the bill.

SUMMARY: Requires any business making an "automatic renewal" or "continuous service" offer to clearly and conspicuously, as defined, disclose terms of the offer and obtain the consumer's affirmative consent to the offer. Specifically, this bill:

- 1) Makes it unlawful for any business making an automatic renewal offer or a continuous service offer to a consumer to do any of the following:

- a) Fail to present the offer terms in a clear and conspicuous manner, as defined, before the subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer.
 - b) Charge the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or continuous service offer without first obtaining the consumer's affirmative consent.
 - c) Fail to provide automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. If the offer includes a free trial, the business shall disclose how to cancel and allow the consumer to cancel before the consumer pays for the goods or services.
- 2) Requires a business making automatic renewal or continuous service offers to provide a toll-free telephone number, electronic mail address, a postal address if the seller directly bills the customer, or another cost-effective, timely, and easy-to-use mechanism for cancellation that shall be described in the written acknowledgment.
 - 3) Specifies that in the case of a material change in the terms of an automatic renewal or continuous service offer that has been accepted by the consumer, the business shall provide the consumer with a clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer.
 - 4) Specifies that the requirements of this bill shall only apply to the completion of the initial order for the automatic renewal or continuous service, except as provided.
 - 5) Provides that in any case in which a business sends any goods, wares, merchandise, or products to a consumer, under a continuous service or automatic renewal, without first obtaining the consumer's affirmative consent, in the manner required by this bill, then the goods, wares, merchandise, or products shall be deemed an unconditional gift to the consumer, and the business shall bear any shipping or other related costs.
 - 6) Provides that violation of the provisions of this bill shall not be a crime, but that all civil remedies that apply to a violation may be employed. Specifies, however, that if a business complies with the provisions of this bill in good faith, it shall not be subject to civil remedies.
 - 7) Exempts from the provisions of this bill any service provided by certain businesses or entities, including those regulated by the California Public Utilities Commission, the Federal Communication Commission, or the Federal Energy Regulatory Commission.

EXISTING LAW:

- 1) Provides, under the Unfair Competition Law (UCL), that unfair competition includes any unlawful, unfair, or fraudulent business act or practice, including any unfair, deceptive, or untrue advertising, or any act prohibited by the False Advertising Act (FAA). (Business & Professions Code Section 17200 *et seq.*)
- 2) Prohibits any person with the intent, directly or indirectly, to sell any goods or services by making or disseminating statements that the person knows, or should know, to be untrue or misleading, and prohibits any person from making or disseminating any untrue or misleading

statement as part of a plan or scheme to sell goods or services at other than the stated or advertised price. (Business & Professions Code section 17500.)

- 3) Provides that any violation of the FAA is a misdemeanor. (Business & Professions Code sections 17500, 17534.)
- 4) Provides that any person who violates any provision of the FAA is liable for a civil penalty not to exceed \$2,500 for each violation that must be assessed and recovered in a civil action by the Attorney General or by any district attorney, county counsel, or city attorney. (Business & Professions Code section 17536.)
- 5) Provides that a person who has suffered injury in fact and has lost money or property as a result of unfair competition may bring a civil action for relief. (Business & Professions Code section 17204.)
- 6) Provides for injunctive relief, restitution, disgorgement, and civil penalties for FAA violations. (Business & Professions Code sections 17203, 17206.)

COMMENTS: This non-controversial bill is a response to reported consumer complaints that certain businesses, especially those offering magazine subscriptions or other potentially continuous services, lure customers into signing up for "automatic renewals" without the consumer's full knowledge or consent. This bill seeks to address this problem by requiring clear disclosures and affirmative acts of customer consent. The author states:

It has become increasingly common for consumers to complain about unwanted charges on their credit cards for products or services that the consumer did not explicitly request or know they were agreeing to. Consumers report they believed they were making a one-time purchase of a product, only to receive continued shipments of the product and charges on their credit card. These unforeseen charges are often the result of agreements enumerated in the 'fine print' on an order or advertisement that the consumer responded to. The onus falls on the consumer to end these product shipments and stop the unwanted charges to their credit card.

As noted in the author's background material, this bill was prompted in part by an investigation brought by the attorneys general of 23 states, including California, against Time, Inc. The investigations found that subscribers to several magazines published by Time, Inc. were discovering that their subscriptions were automatically renewed even though the customers claimed that they had never knowingly consented to the renewals. In 2006, the investigation resulted in a settlement agreement between the Attorneys General and Time that requires Time to more clearly disclose renewal terms and ensure that the consumer take some affirmative step to acknowledge consent or rejection of the automatic renewal offer. According to the author, the specific disclosure and consent requirements in this measure are modeled after, though not identical to, those set forth in the Time settlement.

ARGUMENTS IN SUPPORT: According to the California Public Interest Research Group (CALPIRG), "this bill will help ensure that consumers only get into an ongoing subscription if they want to." According to the Consumer Federation of California, this measure will curb deceptive marketing practices that are used to sell everything from magazine subscriptions to "free trial" offers that lock consumers into an ongoing purchase agreement. Supporters generally



contend that this is a straightforward measure reflecting the basic premise that consumers deserve to know the terms and conditions to which they are agreeing.

Author's Technical Amendments: The author wishes to take the following technical and clarifying amendments:

- On page 4 after line 9 insert:

(e) "Consumer" means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.

- On page 4 line 32 and on page line 16 change "customer" to "consumer"

PRIOR LEGISLATION: AB 88 (Chapter 77, Stats. of 2003) provides that a contract for a good or service that is made in connection with a telephone solicitation is unlawful if the telemarketer is in violation of a recent Federal Trade Commission (FTC) rule requiring that the seller obtain specified information and express consent directly from the consumer and, under certain circumstances, maintain a recording of the call. (This present bill would similarly require that automatic renewal offers made over the telephone comply with federal telephonic marketing regulations.)

REGISTERED SUPPORT/OPPOSITION:

Support:

California Alliance for Consumer Protection
California Public Interest Research Group (CALPIRG)
Consumer Federation of California

Opposition:

None on file

Analysis Prepared by: Thomas Clark / JUD. / (916) 319-2334

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Exhibit 3

Complaint Type: Guarantee/Warranty Issues **Status:** Answered (3)




08/02/2019

I was pressed into a one-year membership in order to receive a discount for a large one time purchase. I told salesperson I would only agree if it was not the auto renew deal scam most of them use unless you clarify. I was told it would be set up as requested. I refuse to join these scams otherwise. My girlfriend was my witness as she does the same. They lied and just helped themselves to my **** card. Upon requesting they reverse and cancel they said it was impossible.

Exhibit 4

Bed Bath & Beyond — one year bed bath and beyond membership



 Sam1981 · Jun 14, 2018

Hello,

I went online to order Bona Hardfloor cleaning liquid, all of sudden I saw an item added to the cart for one year Bed Bath and Beyond Membership. I am not sure how that got added, I did not realize and made the payment thinking that I bought Bona Hardfloor cleaning liquid. After few days, I did not see anything shipment, went back to my account and saw that I purchased one year membership.

I called the customer service and they said they will refund the money, but they called after few days and said they can't cancel the membership because I bought a product with that membership. Once you said you cancelled the membership, isn't that your responsibility to remove that from my account. How am I supposed to know that I can't buy anything with my account until you cancel the one year membership.

I am really annoyed with this, I don't need the membership and please refund my money.

Thanks
Sampath

Exhibit 5

Bed Bath and Beyond - CREDIT

Apr 15, 2018

1.3 Details

2 comments

I ordered what I believed was an item online. When I never received it and contacted customer service I was told it was delivered and that it was a \$29.99 membership I purchased.

Related: Defective product and would not help. - Bed Bath and Beyond

I asked for a credit back on my card. It took 6 phone calls back and still no refund. I was told in the first call a credit would be put on usually the following day, the second and third calls were the credit has been issued the fourth I was told to read the tiny fine print online it states no refund. The fifth was a supervisor who apologized and said a refund would be issued. The final sixth was Tom who assured me of this credit, apologized and actually gave me a personal contact (or could be made up I never even called at this point)

So I still have no credit.

To go into a store and purchase is no problem, I suggest you never order online. Diane

Product or Service Mentioned: Bed Bath And Beyond Customer Care.

Reason of review: Poor customer service.

Monetary Loss: \$2995.

Preferred solution: Full refund.

Exhibit 6

Bed Bath and Beyond "club"

Mar 19, 2018

1.0 Details

0 comments

ordered something online and got rooked into signing up for their CLUB!!! What an fin.....

Related: WORST CUSTOMER SERVICE - WORST ONLINE SHOPPING EXPERIENCE - Bed Bath and Beyond

rip off for sure...No refund available, per nancy.... Very Pissed!!!! I will not be a bb&b shopper any longer, so buyer beware!! I guess they are trying to be like amazon with their yearly fee.....

Not happening.. I hope everyone is very cautious when shopping online with this store.

Not very cooperative as far as getting refunded. I really did not need more of their coupons, for sure.

I guess they had to figure out a way to make up for people not shopping their without a coupon. That is for sure.....

Product or Service Mentioned: Bed Bath And Beyond Customer Care.

Reason of review: bed bath & beyond club.

Monetary Loss: \$29.

Preferred solution: Full refund.

Bed Bath and Beyond Cons: Nancy was very rude.

1 JAMES T. HANNINK (131747)
jhannink@sdlaw.com
2 ZACH P. DOSTART (255071)
zdostart@sdlaw.com
3 DOSTART HANNINK & COVENEY LLP
4180 La Jolla Village Drive, Suite 530
4 La Jolla, California 92037-1474
Tel: 858-623-4200
5 Fax: 858-623-4299

6 Attorneys for Plaintiff

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

01/15/2020 at 11:52:44 AM

Clerk of the Superior Court
By Linda Sheffa, Deputy Clerk

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10
11 ROBERT TURNIER,
individually and on behalf of all others
12 similarly situated,

13 Plaintiff,

14 vs.

15 BED BATH & BEYOND INC.,
a New York corporation; and
16 DOES 1-50, inclusive,

17 Defendants.

CASE NO. 37-2020-00002499-CU-BT-CTL

**DECLARATION OF ROBERT TURNIER
PURSUANT TO CALIFORNIA CIVIL
CODE SECTION 1780(d)**

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1 I, Robert Turnier, declare as follows:

2 1. I submit this declaration pursuant to Section 1780(d) of the Cal. Civ. Code.

3 2. Defendants have done and are doing business in San Diego County, including the
4 marketing and sale of domestics merchandise and home furnishings. All of my dealings with
5 defendants occurred while I was in San Diego County.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing
7 is true and correct. Executed on January 14, 2020, at San Diego, California.

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10 _____
11 ROBERT TURNIER
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7068	
PLAINTIFF(S) / PETITIONER(S): Robert Turnier	
DEFENDANT(S) / RESPONDENT(S): Bed Bath & Beyond Inc	
TURNIER VS BED BATH & BEYOND INC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2020-00002499-CU-BT-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Richard S. Whitney

Department: C-68

COMPLAINT/PETITION FILED: 01/15/2020

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	11/06/2020	10:00 am	C-68	Richard S. Whitney

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE 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 AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

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.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2020-00002499-CU-BT-CTL

CASE TITLE: Turnier vs Bed Bath & Beyond Inc [E-FILE]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central PLAINTIFF(S): Robert Turnier DEFENDANT(S): Bed Bath & Beyond Inc SHORT TITLE: TURNIER VS BED BATH & BEYOND INC [E-FILE]	FOR COURT USE ONLY
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2020-00002499-CU-BT-CTL

Judge: Richard S. Whitney

Department: C-68

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 01/15/2020

JUDGE OF THE SUPERIOR COURT

ELECTRONIC FILING REQUIREMENTS OF THE
SAN DIEGO SUPERIOR COURT – CIVIL DIVISION

These requirements are issued pursuant to California Rules of Court ("CRC", rules 2.250 et seq., Code of Civil Procedure § 1010.6, and 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.

Effective November 1, 2013, documents that are determined to be unacceptable for eFiling by the Court due to eFiling system restrictions or for failure to comply with these requirements will be rejected subject to being allowed to be filed nunc pro tunc to the original submittal date upon ex-parte application to the court and upon good cause shown.

It is the duty of the plaintiff (and cross-complainant) to serve a copy of 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, and Electronic Filing Requirements of the San Diego Superior Court with the complaint (and cross-complaint).

PERMISSIVE eFILING

Effective March 4, 2013, documents may be filed electronically in non-mandated civil cases in the Central Division where either: (1) the case is first initiated on or after March 4, 2013; or (2) the case has been imaged by the court and it displays as imaged on the case title in the Court's Register of Actions. Documents may be filed electronically in non-mandated civil cases in the North County Division where either: (1) the case is first

initiated on or after June 30, 2014; or (2) the case has been imaged by the court and it displays as imaged on the case title in the Court's Register of Actions.

MANDATORY eFILING

The case types that shall be subject to mandatory eFiling are: civil class actions, consolidated and coordinated actions where all cases involved are imaged cases, and actions that are provisionally complex under CRC 3.40 – 3.403 (as set forth in the Civil Case Cover Sheet, Judicial Council form CM-010 – including Construction Defect actions). "Complex cases" included in mandatory eFiling include Antitrust/Trade Regulation, Mass Tort, Environmental/Toxic Tort, and Securities Litigation cases, as well as insurance coverage claims arising from these case types.

Effective June 2, 2014 Construction Defect and other cases, previously electronically filed through File&Serve Xpress (fka LexisNexis File&Serve), must be electronically filed through the court's Electronic Filing and Service Provider, One Legal. Documents electronically filed in Construction Defect and other cases prior to June 2, 2014 will be maintained in the File&Serve Xpress system and can be viewed via a File&Serve Xpress subscription or on the Court's internal CD/JCCP Document viewer kiosk located in the Civil Business Office, Room 225 of the Hall of Justice (2nd floor).

For cases of the type subject to mandatory eFiling that are initiated on or after March 4, 2013, all documents must be filed electronically, subject to the exceptions set forth below. All documents electronically filed in a mandatory eFile Construction Defect/JCCP case must be electronically served on all parties in the case pursuant to CRC 2.251(c).

The court will maintain and make available an official electronic service list in Construction Defect/JCCP cases through One Legal. This is the service list the court

will use to serve documents on the parties. (See CRC 2.251(d).) It is the responsibility of the parties to provide One Legal their correct contact information for the service list in each eFiled case in which they are involved. New parties who file and/or enter a case must provide One Legal with their electronic service address for that case within 7 days of the filing of or their joining the case. All parties must notify One Legal of any changes to that address, within 7 days of the change, should a change occur during the pendency of the action. (See CRC 2.251(f)(1).) Failure to keep the official list updated may result in the court being unable to provide notice to a non-complying party of upcoming hearings, orders, and other proceedings.

All documents must be filed electronically in cases designated for mandatory eFiling, subject to the exceptions set forth below.

A party may request to be excused from mandatory electronic filing and/or service requirements. This request must be in writing and may be made by ex-parte application to the judge or department to whom the case is assigned. The clerk will not accept or file any documents in paper form that are required to be filed electronically, absent a court order allowing the filing.

Self-represented litigants are not required to eFile or electronically serve documents in a mandatory eFile case; however, they may eFile and electronically serve documents if they choose to do so and/or are otherwise ordered to eFile and/or electronically serve documents by the court.

REQUIREMENTS FOR ALL eFILERS eFile documents can only be filed through the court's Electronic Filing and Service Provider (the "Provider"). See www.onelegal.com.

eFilers must comply with CRC 2.250 – 2.261. Also, all documents electronically filed must be in a text searchable format, i.e., OCR. The court is unable to accept documents that do not comply with these requirements, or documents that include but are not limited to: digitized signatures, fillable forms, or a negative image.

eFilers are required to enter all parties listed on the document being filed, if the party is not already a part of the case. (If the filer is submitting a new complaint, ALL parties must be entered.) If all parties are not entered, the transaction will be rejected.

Documents that contain exhibits must be bookmarked, as set forth on the Provider's site. Documents not so bookmarked are subject to rejection. Moving papers with exhibits that are not bookmarked may be rejected and/or not considered. (See CRC 3.1110(f).)

Exhibits to be considered via a Notice of Lodgment shall not be attached to the electronically filed Notice of Lodgment; instead, the submitting party must provide the assigned department with hard copies of the exhibits with a copy of the Notice of Lodgment that includes the eFiling Transaction ID # noted in the upper right hand corner and hard copies of the exhibits.

Exhibits to declarations that are real objects, i.e. construction materials, core samples, etc. or other documents, i.e. plans, manuals, etc., which otherwise may not be comprehensibly viewed in an electronic format must be lodged and will not be filed.

All documents must be uploaded as individual documents within the same transaction, unless filing a Motion. [Example: A Request to Waive Court Fees must be uploaded separately from the document to which it applies, i.e. complaint, answer or other

responsive pleading, motion, etc...]. If filing a notice of motion, all documents can be scanned and uploaded as one document under a filing that most closely captures the type of motion. All filings and exhibits within these filings must be bookmarked.

Unless otherwise required by law, per CRC 1.20(b) only the last four digits of a social security or financial account number may be reflected in court case filings. Exclusion or redaction is the responsibility of the filer, not the clerk, CRC 1.20(b)(3). Failure to comply with this requirement may result in monetary sanctions, CRC 2.30(b).

Proposed filings, such as proposed court orders and amended complaints, should be submitted as an exhibit and then re-submitted as a separate and new eFiling transaction after the Court has ruled on the matter to which the proposed document applies. See also CRC 3.1312.

Any document filed electronically shall be considered as filed with the Clerk of the Superior Court when it is first transmitted to the vendor and the transmission is completed, except that any document filed on a day that the court is not open for business, or after 11:59:59 p.m. (Pacific Time) on a day the court is open for business, shall be deemed to have been filed on the next court day.

Electronically filed documents must be correctly named and/or categorized by Document Type. The lead document must also be designated appropriately, as the lead document determines how the transaction will be prioritized in the work queue. Failure to correctly name the document and/or designate the lead document appropriately may result in a detrimental delay in processing of the transaction.

Please be advised that you must schedule a motion hearing date directly with the Independent Calendar Department. A motion filed without an appointment, even when a conformed copy of the filing is provided by the court, is not scheduled and the hearing will not occur.

If a hearing is set within 2 court days of the time documents are electronically filed, litigant(s) must provide hard copies of the documents to the court. Transaction ID numbers must be noted on the documents to the extent it is feasible to do so. Hard copies for Ex Parte hearings must be delivered directly to the department on or before 12 Noon the court day immediately preceding the hearing date.

An original of all documents filed electronically, including original signatures, shall be maintained by the party filing the document, pursuant to CRC 2.257.

DOCUMENTS INELIGIBLE FOR ELECTRONIC FILING

The following documents are **not eligible for eFiling** in cases subject to either mandatory or permissive filing, and shall be filed in paper form:

- Safe at Home Name Change Petitions
- Civil Harassment TRO / RO
- Workplace Violence TRO / RO
- Elder Abuse TRO / RO
- Stand alone exhibits
- Transitional Housing Program Misconduct TRO / RO
- School Violence Prevention TRO / RO
- Out-of-State Commission Subpoena
- Undertaking / Surety Bonds
- Request for Payment of Trust Funds
- Notice of Appeal of Labor Commissioner

- Abstracts
- Warrants
- Settlement Conference Briefs (to be lodged)
- Confidential documents lodged conditionally under seal
- Interpleader actions pursuant to CC §2924j

The following documents **may be filed in paper form**, unless the court expressly directs otherwise:

- Documents filed under seal or provisionally under seal pursuant to CRC 2.551 (although the motion to file under seal itself must be electronically filed)

DOCUMENTS DISPLAYED ON THE PUBLIC-FACING REGISTER OF ACTIONS

Any documents submitted for eFiling (and accepted) will be filed and displayed on the San Diego Superior Court's public-facing Register of Actions with the exception of the following documents:

- CASp Inspection Report
- Confidential Cover Sheet False Claims Action
- Confidential Statement of Debtor's Social Security Number
- Financial Statement
- Request for Accommodations by Persons with Disabilities and Court's Response
- Defendant/Respondent Information for Order Appointing Attorney Under Service Members Civil Relief Act
- Request to Waive Court Fees
- Request to Waive Additional Court Fees

Documents not included in the list above, that are intended to be kept confidential, should NOT be eFiled with the court.

F I L E D
Clerk of the Superior Court

DEC 31 2019

By: A. HUSTED, Deputy

**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

**IN RE PROCEDURES REGARDING
ELECTRONICALLY IMAGED COURT
RECORDS, ELECTRONIC FILING, AND
ACCESS TO ELECTRONIC COURT
RECORDS IN CIVIL AND PROBATE
CASES**

**GENERAL ORDER OF THE
PRESIDING DEPARTMENT**

ORDER NO. 010120-22

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. ELECTRONIC FILING AND IMAGING PROGRAM

On August 1, 2011, the San Diego Superior Court ("court") began an Electronic Filing and Imaging Pilot Program (the "Program" or "Imaged Program") designed to reduce paper filings and storage, facilitate electronic access to civil court files, and allow remote electronic filing ("E-File" or "E-Filing") of papers in civil cases. The ultimate goal of the Program is to create a paperless or electronic file in all civil cases, as well as in other case categories. The Program has since been expanded to other divisions as well as to probate cases.

The Program is being implemented in phases:

Phase One: The court began scanning all papers in newly filed cases in designated divisions and departments. The imaged documents are stored in an electronic court file that can be viewed in the Business Offices and are accessible remotely through the Register of Actions on the court's website as set forth below. Imaged Program cases that are reassigned or transferred to

1 a department outside of the Program may be removed from the Program and converted to a paper
2 filing system.

3 Phase Two: E-Filing access was implemented to allow E-Filing by counsel and parties
4 through the court's E-File Service Provider in designated case types.

5 Phase Three: On October 2, 2017, the Imaged Program expanded to small claims cases.
6 All new small claims cases filed on or after October 2, 2017, are imaged and the documents are
7 being stored in an electronic court file that is available for viewing in all of the court's Business
8 Offices.

9 2. THE ELECTRONIC COURT FILE IN IMAGED CASES IS THE OFFICIAL COURT
10 RECORD

11 Pursuant to Government Code section 68150 and California Rules of Court ("CRC"), rule
12 2.504, the electronic court file in Imaged Program cases is certified as the official record of the
13 court. The paper filings that are imaged and stored electronically will be physically stored by the
14 court for 30 days after filing, after which time they will be shredded and recycled, except for
15 original wills and bonds in probate cases, which will be physically retained by the court for the
16 period required by law. During this 30-day period, these documents will not be stored in a manner
17 that will allow a party or its attorney to access them, and access will only be granted by order of
18 the court upon a showing of good cause.

19 3. CIVIL AND PROBATE CASES INCLUDED IN THE PROGRAM

20 The following cases have been or will be imaged and stored in an electronic court file, and
21 are considered Imaged Program cases:

- 22 a. Civil cases initiated after a particular department or division began
23 participating in the imaging program;
- 24 b. Civil class actions, construction defect cases, JCCP cases, consolidated and
25 coordinated actions where all cases involved are imaged cases, and actions that are
26 provisionally complex under CRC, rule 3.40-3.403 (as set forth in the Civil Case
27 Cover Sheet). "Complex cases" include antitrust/trade regulation, mass tort,
28

1 environmental/toxic tort, and securities litigation cases, as well as insurance
2 coverage claims arising from these case types;

3 c. Probate cases filed on or after March 1, 2012 and all probate cases initiated
4 prior to March 1, 2012 in which the Court has notified the parties that the case has
5 been back scanned;

6 d. All new civil and probate cases; and,

7 e. All small claims cases filed on or after October 2, 2017.

8 4. MANDATORY AND PERMISSIVE ELECTRONIC FILING

9 Mandatory electronic filing through the court E-File Service Provider One Legal is
10 required for all case types listed in paragraph 3.b. above, including construction defect and other
11 cases previously filed through File&Serve Xpress (fka LexisNexis File&Serve). Further
12 information can be found on the court's website, at www.sdcourt.ca.gov.

13 Electronic filing is encouraged in all other imaged cases.

14 5. GENERAL E-FILING REQUIREMENTS

15 Documents can only be electronically filed through the court's electronic service provider
16 One Legal (the "Provider"). E-file Provider information is available on the court's website.

17 All E-filers shall comply with CRC, rules 2.250-2.261 and California Code of Civil
18 Procedure ("CCP") § 1010.6. All documents E-filed with the court must be in a text searchable
19 format, i.e., OCR. The court is unable to accept documents that do not comply with these
20 requirements, or documents that include but are not limited to: digitized signatures, fillable forms,
21 or a negative image. E-filers are required to comply with the provisions of the E-Filing
22 Requirements Documents, located on the Court's website at www.sdcourt.ca.gov. Civil E-Filing
23 Requirements can be found on the Civil Division's E-Filing page; Probate E-Filing Requirements
24 can be found on the Probate Division's E-Filing page.

25 The receipt and filing of documents submitted electronically is governed by CCP 1010.6
26 and CRC, rule 2.259. The Court's filing deadline is 11:59:59 p.m. (Pacific Time) on court days.
27 The electronic transmission of a document to the Court can take time, so waiting until shortly
28 before the deadline to electronically transmit a filing is not advised, as it could be received by the

1 court after 11:59:59 p.m. and deemed filed the next court day. Per CRC, rule 2.259(a)(4), the **filer**
2 is responsible for verifying that the court received and filed any document submitted electronically.
3 Please see One Legal's website for filing instructions. To the extent any San Diego Superior Court
4 Local Rules set forth a different time deadline for filing electronic documents, the applicable
5 portions of the Local Rules are no longer valid.

6 Additional and more specific information on electronic filing can be found on the court's
7 website at www.sdcourt.ca.gov.

8 **6. FILING AND SERVICE REQUIREMENTS IN IMAGED CASES**

9 a. Service of Notice: All parties filing new actions assigned to the imaging
10 program shall serve on all parties a copy of the "Notice of Assignment to Imaging
11 Department" with the complaint, cross-complaint, petition, claim, or other case
12 initiating pleading. A copy of this notice will be provided to the filing party by the
13 court clerk when case originating filings are processed.

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

18 c. Original Documents: Original underlying documents, other than wills and
19 bonds in probate cases, that are relevant to a case should not be attached as exhibits
20 to filed documents or filed in any other manner, as these documents will be imaged
21 and the paper filings destroyed in accordance with this Order (except for those
22 documents set forth in paragraph 6.d. below). Any original document, other than a
23 will or bond in a probate case, that is included in a **filed** document in a case within
24 the Program will be imaged and destroyed in accordance with this Order. Original
25 documents may be **lodged** with the court, as necessary, under the procedures set
26 forth in paragraphs 6.g. and 6.h. below.

27 d. Proposed Orders: Proposed orders should only be submitted with initial
28 pleadings for an ex parte hearing, and should not be submitted for a law and motion

1 hearing until after the hearing is completed.

2 e. Exhibits: Any exhibits attached to a pleading presented for filing must have
3 the exhibit tabs located at the bottom of the respective documents, in accordance
4 with California Rules of Court, rule 3.1110(f), and each exhibit must be preceded
5 by a cover page that contains solely the word "Exhibit" and the exhibit's identifying
6 number or letter.

7 f. Confidential Documents: Any documents classified or considered
8 confidential pursuant to statute, rule of court or local rule shall be filed with the
9 court and will be imaged and destroyed in accordance with this order. Access to
10 the imaged confidential document(s) shall be as set forth in paragraph 7.d. below.

11 g. Civil Cases other than Probate:

12 (1) Lodged Documents:

13 The Notice of Lodgment itself must be filed with the court. In accordance
14 with California Rules of Court, rule 3.1302(b), the documents submitted
15 with the notice must be lodged and not filed. The lodged documents will
16 not be imaged, will not be part of the official court file, and will be
17 returned in the manner requested or recycled if no manner of return is
18 specified.

19 (2) Documents in Support of Judgments:

20 Applications for entry of a judgment that include an instrument, contract,
21 or written obligation will have the relevant document(s) cancelled and
22 merged if the judgment is entered, in accordance with California Rules of
23 Court, rule 3.1806, after which the document will then be imaged and
24 maintained in the electronic court record. The submitted document(s) will
25 then be returned to the proffering party for safe-keeping. Parties must
26 provide a suitable method of return along with the submitted document(s).
27 If no method of return is included, the document(s) will be shredded and
28 recycled.

1 h. Probate Cases:

2 (1) Lodged Documents:

3 (a) The Notice of Lodgment itself must be filed with the court. In
4 accordance with California Rules of Court, rule 3.1302(b) and San
5 Diego Superior Court Rule 4.3.2 (F), the documents submitted with
6 the notice must be lodged and not filed. The lodged documents will
7 not be imaged, will not be part of the official court file, and will be
8 returned in the manner requested or recycled if no manner of return
9 is specified.

10 (b) A party filing a motion or other paperwork that refers to a trust
11 or will document that was previously lodged with the petition must
12 separately lodge the trust or will with these later-filed papers, in
13 accordance with the procedures in paragraph 6.h.(1)(a) above.

14 (c) In support of an accounting of assets as required by Probate
15 Code section 2620 or an interim accounting required by San Diego
16 Superior Court Rule 4.15.2, the originals of account statements,
17 closing escrow statements, and bill statements for a residential or
18 long-term care facility shall be lodged with the court, in accordance
19 with the procedures in paragraph 6.h.(1)(a) above. The lodged
20 documents will not be imaged, will not be part of the official court
21 file, and will be returned in the manner requested after the court's
22 determination of the accounting has become final.

23 (2) Inclusion of Petition's ROA Number on All Pleadings:

24 Parties are ordered to comply with San Diego Superior Court Rule
25 4.3.1(B) and include the Petition's Register of Action (ROA) number
26 directly below the case number on all subsequently filed pleadings related
27 to that Petition.
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1 7. ENHANCED ELECTRONIC ACCESS TO OFFICIAL COURT FILE AND COURT
2 DOCUMENTS

3 a. Access in Clerk's Business Offices: Public kiosks providing free access to
4 the official electronic record of the court files for cases being handled under the
5 Program are available in the below Business Offices:

- 6 • Hall of Justice Civil Business Office, located at 330 West Broadway,
7 San Diego, California 92101;
- 8 • East County Family Business Office, located at 250 E. Main Street, El
9 Cajon, California, 92020;
- 10 • South County Family Business Office, located at 500 Third Avenue,
11 Chula Vista, California, 91910;
- 12 • Central Courthouse, Probate Business Office, located at 1100 Union
13 Street, San Diego, California, 92101; and
- 14 • North County Civil Business Office, located at 325 S. Melrose Drive,
15 Vista, California, 92081.

16 The public may access these files and view all public portions of the files
17 just as they currently can in the paper court files. If there are people waiting to use
18 the kiosks, a time limit of 20 minutes will be imposed. Additional time will be
19 permitted after waiting in line to use one of the kiosks again. Any changes to this
20 policy will be made by the Presiding Judge of the court and the new policy will be
21 posted in the applicable Business Offices.

22 b. Notice Regarding Electronic Access: In accordance with California Rules of
23 Court, rule 2.504(d), the public accessing court records electronically, are advised
24 the Manager of Central Court Civil and Family Operations, Summer Travis, is the
25 court staff member who may be contacted about the requirements for accessing the
26 court's records electronically in all divisions of the court supporting imaging and
27 E-filing.
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1 c. Copyright and other proprietary rights may apply to information in a case file,
2 absent express grant of additional rights by the holder of the copyright or other
3 proprietary right. In this regard, you are advised:

4 (1) Use of such information in a case file is permissible only to the extent
5 permitted by law or court order; and

6 (2) Any use inconsistent with proprietary rights is prohibited.

7 d. Access to Confidential Documents: Court documents classified or considered
8 confidential pursuant to statute or rule of court shall remain confidential and may
9 not be released except to the extent necessary to comply with the law.

10 e. The electronic records of cases within the Program available for viewing in
11 the Business Offices are the official records of the court. There is no charge for
12 accessing or viewing court files in the Business Offices. Copies of any documents
13 in an electronic court file may be obtained by paying the copy fees of \$0.50 per
14 page (Govt. Code § 70627(a)). Certified copies may be obtained by payment of a
15 \$25.00 fee (Govt. Code § 70626(a)(4)). Additional instructions about obtaining
16 printed copies of records from the electronic court file will be provided at the kiosk
17 locations in the applicable Business Offices.

18 f. Any person who willfully destroys or alters any court record maintained in
19 electronic form is subject to the penalties imposed by Government Code section
20 6201.

21 g. No person shall photograph or otherwise record any digital images of
22 documents displayed on the kiosk screens in the Business Offices.

23 h. Remote Electronic Access of Program Cases: Court documents from records
24 of cases within the Program are available in electronic format for viewing and
25 printing remotely to the extent permitted by California Law and/or California Rules

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1 of Court, rule 2.503(b), by visiting the court's website at www.sdcourt.ca.gov and
2 paying the required fees.

3 This Order shall expire on December 31, 2020, unless otherwise ordered by this court.

4 IT IS SO ORDERED.

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6 Dated: December 31, 2019

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HON. LORNA A. ALKSNE
PRESIDING JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Case Claims Bed Bath & Beyond Customers Automatically Charged for Beyond+ Membership Renewal](#)
