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11 *Attorneys for Defendant Charles Schwab & Co., Inc.*

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

15 ROBERT WRIGHT, on behalf of himself and
16 all others similarly situated,

17 Plaintiff,

18 v.

19 CHARLES SCHWAB & CO., INC.,

20 Defendant.

Case No. 3:20-cv-05281

**DEFENDANT CHARLES SCHWAB
& CO., INC.'S NOTICE OF
REMOVAL**

[Removed from San Francisco Superior Court
Case No. CGC-20-585092]

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1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that Charles Schwab & Co., Inc. (“Schwab”), the only named
4 defendant in the above-titled action, hereby removes this action pursuant to 28 U.S.C. §§ 1332,
5 1441, 1446, and 1453 from the Superior Court of the State of California for the County of San
6 Francisco to the United States District Court for the Northern District of California. Removal is
7 proper because this is a putative class action “brought in a State court of which the district courts
8 of the United States have original jurisdiction.” 28 U.S.C. §§ 1441(a) & 1453(b). Specifically,
9 removal of this action is appropriate because the action satisfies the prerequisites for removal
10 jurisdiction under the Class Action Fairness Act (“CAFA”). 28 U.S.C. § 1332(d). Under CAFA,
11 original jurisdiction over this action exists based on diversity of citizenship where Plaintiff’s
12 alleged class exceeds 100 members with aggregate damages exceeding \$5 million dollars, and
13 minimal diversity has been established. Here, minimal diversity exists because Schwab is a
14 citizen of California and the putative class includes citizens of other states who placed investment
15 trades through Schwab’s online brokerage system. This Notice of Removal is timely because it
16 has been filed within thirty days of the date Defendant was served with the summons and
17 complaint. *See* 28 U.S.C. § 1446(b).

18 **I. BACKGROUND**

19 **A. Timeliness of Removal**

20 1. On June 23, 2020, Plaintiff Robert Wright (“Plaintiff”) commenced this action by
21 filing a Summons and Class Action Complaint in the Superior Court for the State of California
22 for the County of San Francisco captioned Robert Wright, on behalf himself and all others
23 similarly situated vs. Charles Schwab & Co., Inc., No. CGC-20-585092. A true and correct copy
24 of the Complaint is attached hereto as Exhibit A. Schwab was served with a copy of the
25 Complaint by process server on July 2, 2020. A true and correct copy of the Proof of Service is
26 attached hereto as Exhibit B.

27 2. This Notice of Removal is timely because it is filed within thirty days of the July
28 2, 2020 service of the Summons and Complaint. *See* 28 U.S.C. § 1446(b).

1 **B. Plaintiff's Putative Nationwide Class Action Complaint**

2 3. Plaintiff contends that an alleged malfunction of Schwab's online brokerage
3 system incorrectly processes certain types of trades, causing Plaintiff and class members to
4 acquire investments they did not order. (Compl. ¶ 1.) Plaintiff brings claims under California's
5 Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.* (Count I), as well as
6 a Negligence claim (Count II) and an Unjust Enrichment claim (Count III) on behalf of himself
7 and a putative class comprised of "[a]ll Schwab brokerage account clients who placed an order to
8 close a short trading position, but the order was not executed as made." (Compl. ¶ 34.)

9 4. Plaintiff seeks, *inter alia*, an order enjoining the allegedly misleading business
10 practices (Compl. ¶ 42) and "restitution" and disgorgement of "all profits, benefits, and other
11 compensation obtained by Schwab from its wrongful conduct." (Compl. ¶ 64.) Plaintiff alleges
12 that "Schwab's system malfunction" caused him to personally suffer "a loss that exceeded
13 \$10,000." (Compl. ¶ 27.) Plaintiff also alleges that the putative nationwide class "contains
14 thousands of members." (Compl. ¶ 36.)

15 **II. CAFA JURISDICTION**

16 5. Federal diversity jurisdiction exists over this removed action under the Class
17 Action Fairness Act, 28 U.S.C. § 1332(d). Section 1332(d) provides that the United States
18 District Courts have original jurisdiction over any class action: (1) involving a plaintiff class of
19 100 or more members; (2) in which the matter in controversy exceeds (in the aggregate) the sum
20 or value of \$5,000,000, exclusive of interest and costs; and (3) where at least one member of the
21 plaintiff class is a citizen of a State different from any defendants. *See* 28 U.S.C. § 1332(d)(2)(A)
22 & 5(B).

23 **A. The Class Consists of More than 100 Members**

24 6. Plaintiff's complaint purports to be filed on behalf of a class comprised of "[a]ll
25 Schwab brokerage account clients who placed an order to close a short trading position, but the
26 order was not executed as made." (Compl. ¶ 34.) Specifically, Plaintiff alleges that "the proposed
27 Class contains thousands of members." (Compl. ¶ 36.)

28 7. Schwab denies that any class exists here or that any alleged class could be certified

1 pursuant to Rule 23. Nevertheless, Plaintiff’s allegations, as set forth in the Complaint, are
2 sufficient to meet CAFA’s requirement that the putative class at issue consist of at least 100
3 members. *Moffett v. Recording Radio Film Connection, Inc.*, 2019 WL 3230976, at *3 (C.D. Cal.
4 July 18, 2019) (“As far as the size of the class, the complaint explicitly alleges that ‘[t]he Class
5 consists of thousands of persons.’ Compl. ¶ 64. The Notice of Removal plausibly interprets this
6 statement as alleging that the putative class consists of at least 2,000 members.”).

7 **B. The Amount in Controversy Exceeds \$5 Million**

8 8. Under CAFA, the amount in controversy requirement is satisfied if the claims of
9 the putative class exceed, in the aggregate, \$5 million, exclusive of interest and costs. 28 U.S.C.
10 § 1332(d)(6). Although Schwab disputes that it is liable for any alleged damages supposedly
11 suffered by Plaintiff or other putative class members, the requirement is satisfied if Plaintiff’s
12 claims on behalf of himself and the putative nationwide class would, if successful, exceed \$5
13 million. *See Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (“In
14 measuring the amount in controversy, a court must assume that the allegations of the complaint
15 are true and that a jury will return a verdict for the plaintiff on all claims made in the complaint.
16 The ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s complaint, not what
17 a defendant will actually owe.” (citations omitted)).

18 9. Here, Plaintiff alleges that he experienced losses “that exceeded \$10,000” and that
19 he experienced the same defect “twice in one week.” (Compl. ¶¶ 27, 31.) Plaintiff further alleges
20 that there are “thousands of members” in his proposed class who have experienced similar
21 malfunctions and that his claims are “typical of the claims of the members of the Class.” (*Id.* ¶¶
22 34, 36.)

23 10. Accepting Plaintiff’s allegations as true for purposes of this removal notice, on its
24 face the Complaint asserts that there are at least 2,000 class members. (*Id.* ¶¶ 34 (“thousands of
25 members”).) Accordingly, the alleged damages in this case exceed \$20,000,000, given Plaintiff’s
26 allegation that he personally suffered damages that “exceed[] \$10,000” and that his claims are
27 “typical” of those of other class members. *Adams v. Toys 'R' Us - Delaware, Inc.*, 2015 WL
28 395214, at *4 (N.D. Cal. Jan. 29, 2015) (CAFA threshold satisfied based on comparison of

1 alleged class size and named plaintiff's claimed damages, "[s]ince Plaintiff at no point alleges
2 that the damages she sustained were atypical to the class"); *Moffett*, 2019 WL 3230976 at *3
3 ("With at least 2,000 class members suffering an average injury of \$13,000, the Notice of
4 Removal calculates that \$26 million is in controversy on compensatory damages alone.").

5 11. Thus, although Schwab disputes that either Plaintiff or the members of the putative
6 class have suffered any injury or are entitled to any recovery, the amount in controversy in this
7 case exceeds \$5 million. *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 925 (9th Cir. 2019)
8 (notice of removal need only "plausibly allege[] a basis for federal court jurisdiction" and "need
9 not contain evidentiary submissions." (citing *Dart Cherokee Basin Operating Co., LLC v. Owens*,
10 574 U.S. 81, 81 (2014))).

11 C. Diversity of Citizenship

12 12. Where a putative class action meets the first two requirements under CAFA,
13 diversity of citizenship is found to exist if "any member of a class of plaintiffs" has diverse
14 citizenship from at least one defendant. 28 U.S.C. § 1332(d)(2)(A).

15 13. Schwab is incorporated in California and is headquartered in San Francisco,
16 California. Thus, for diversity purposes, Schwab is a citizen of California. *See Hertz Corp. v.*
17 *Friend*, 130 S.Ct. 1181, 1184 (U.S. 2010).

18 14. Plaintiff Robert Wright is a citizen of the State of California and a resident of Los
19 Angeles County. (Compl. ¶ 6.)

20 15. The putative class in this action is defined as "[a]ll Schwab brokerage account
21 clients who placed an order to close a short trading position, but the order was not executed as
22 made." (Compl. ¶ 34.) Plaintiff further alleges that Schwab "offers investment products and
23 services, including online brokerage accounts, to retail customers throughout the United States,"
24 and "Schwab's customers maintain more than 12.3 million active brokerage accounts." (Compl.
25 ¶ 7.)

26 16. Accordingly, based on the allegations in the Complaint, it is reasonable to assume
27 that at least one putative class member (and likely many more) is not a citizen of California,
28 thereby satisfying minimal diversity for purposes of CAFA jurisdiction. 28 U.S.C. §

1 1332(d)(2)(A); *Stern v. RMG Sunset, Inc.*, 2018 WL 2296787, at *7 (S.D. Cal. May 21, 2018)
2 (where class definition “contains no limiting provision as to citizenship in the class,” minimal
3 diversity satisfied for nationwide class because “any non-California [customer] of Defendant[] []
4 would be included in Plaintiff’s class definition.”).

5 **D. No Exception to CAFA Applies**

6 17. CAFA also contains a number of exceptions which, where applicable, prevent the
7 Court from exercising jurisdiction over a class action, even where that class action meets CAFA’s
8 threshold requirements for establishing diversity jurisdiction. Plaintiff bears the burden of
9 demonstrating that an exception applies. *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1023-24
10 (9th Cir. 2007) (requiring party seeking remand to demonstrate the applicability of the “home
11 state” and “local controversy” exceptions to CAFA).

12 18. In particular, where “greater than two-thirds of the members of all proposed
13 plaintiff classes in the aggregate are citizens of the State in which the action was originally filed,”
14 district courts “shall decline to exercise jurisdiction” if either (1) at least one defendant from
15 whom significant relief is sought is a citizen of the state and the principal injuries were incurred
16 in-state; or (2) the primary defendants are citizens of the State. 28 U.S.C. § 1332(d)(4)(A) (local
17 controversy), 1332(d)(4)(B) (home state). These exceptions are known as the “local controversy”
18 and “home state” exceptions, respectively.

19 19. Here, Plaintiff will be unable to demonstrate that either exception applies because
20 (among other things) California citizens do not comprise two-thirds of the putative nationwide
21 class. Both the home state and the local controversy exception require that at least two-thirds of
22 the putative class members be citizens of the same state. But most Schwab retail brokerage
23 accounts for customers in the United States (77%) are registered to customers with addresses in
24 states other than California. (Declaration of Sander Texel, (“Texel Decl.”) ¶ 4.) Thus, no
25 exception to CAFA jurisdiction applies here and the Complaint contains no allegations suggesting
26 otherwise. (See Compl. ¶ 7 (claiming Schwab has “tens of thousands of customers throughout
27 California” but “more than 12.3 million active brokerage accounts” throughout the United States);
28 Texel Decl. ¶ 4.)

1 **III. VENUE**

2 20. Plaintiff's state court action was commenced in the Superior Court of the State of
3 California for the County of San Francisco and, pursuant to 28 U.S.C. §§ 84(c), 1441(a), 1446(a)
4 and (b), and 1453(b), may be removed to this United States District Court for the Northern
5 District of California, which embraces San Francisco County within its jurisdiction.

6 **IV. NOTICE**

7 21. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being
8 contemporaneously filed with the Clerk of the Superior Court for the State of California for the
9 County of San Francisco and served upon Plaintiff.

10 **V. CONCLUSION**

11 22. Removal jurisdiction exists in this action under 28 U.S.C. §§ 1441(a) and 1453(b)
12 because minimal diversity exists, the amount in controversy exceeds \$5 million, and this Notice
13 has been filed within thirty days of Schwab being served with the complaint. See 28 U.S.C. §
14 1446(b). Accordingly, Schwab, as the sole named defendant in the above-titled action,
15 respectfully removes this action to the Federal District Court for the Northern District of
16 California, San Francisco Division.

17 Dated: July 31, 2020

O'MELVENY & MYERS LLP

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20 By: /s/ Matthew D. Powers
Matthew D. Powers
21 Attorneys for Defendant Charles Schwab
& Co., Inc.
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EXHIBIT A

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18 Attorneys for Plaintiff and the Class

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 FOR THE COUNTY OF SAN FRANCISCO

21 ROBERT WRIGHT, on Behalf of Himself
22 and All Others Similarly Situated,

23 Plaintiff,

24 v.

25 CHARLES SCHWAB & CO., INC.,

26 Defendant.

Case No:

CGC-20-585092

CLASS ACTION

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF THE UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE §§ 17200 *et seq.*;
2. NEGLIGENCE; and
3. UNJUST ENRICHMENT

(UNLIMITED MATTER-Amount demanded exceeds \$25,000)

DEMAND FOR JURY TRIAL

FILED
San Francisco County Superior Court

JUN 23 2020

CLERK OF THE COURT
BY: Estelene Robins
Deputy Clerk

BY FAX

BLOOD HURST & O' REARDON, LLP

Case No.

BLOOD HURST & O' REARDON, LLP

1 Plaintiff Robert Wright brings this action on behalf of himself and all others similarly
2 situated against defendant Charles Schwab & Co., Inc. ("Schwab") and states:

3 **NATURE OF THE ACTION**

4 1. Schwab is a retail brokerage firm. Its customers make their own investment
5 trades through Schwab's automated online brokerage system. This class action arises from a
6 malfunction of Schwab's online system that processes certain types of trades in the opposite
7 way instructed by the customer. Because of the malfunction, when customers act to close their
8 "short" trading positions, the malfunction causes the online system to instead purchase "long"
9 positions while keeping the short positions open and active. As a result of Schwab's
10 malfunctioning system, Plaintiff and Class members acquired investments they did not order
11 and were forced to hold investments they instructed Schwab to sell.

12 2. Plaintiff brings this action on behalf of himself and others similarly situated to
13 obtain injunctive relief in accordance with the McGill Rule (*McGill v. Citibank, N.A.*, 2 Cal.
14 5th 945 (2017)) and to recover their monetary losses and allege claims for negligence,
15 violations of California's unfair competition law, and for unjust enrichment.

16 **JURISDICTION AND VENUE**

17 3. This Court has jurisdiction pursuant to Article VI, Section 10 of the California
18 Constitution, because this case is not a cause given by statute to other trial courts.

19 4. This Court has personal jurisdiction over Defendant because Defendant is
20 authorized to and does conduct business in California. Defendant's headquarters and primary
21 place of business is in California, rendering exercise of jurisdiction by California courts
22 permissible.

23 5. Venue is proper in this Court because Defendant is headquartered in this
24 County, Defendant transacts substantial business in this County, and a substantial part of the
25 events giving rise to the claim occurred in this County.

26 **PARTIES**

27 6. Plaintiff Robert Wright is a citizen of the State of California and a resident of
28 Los Angeles County. Plaintiff is a retail customer of defendant Schwab. As described more

1 fully below, on April 20, 2020, Plaintiff submitted trade instructions using Schwab's online
2 trading system to close short positions he owned on Royal Caribbean stock. He did so by
3 clicking "close." However, Schwab's system did not execute the trade as Plaintiff instructed.
4 Instead of closing Plaintiff's short position on 6,300 shares of Royal Caribbean stock which is
5 accomplished by purchasing 6,300 shares of the stock, Schwab's system purchased for
6 Mr. Wright 6,300 long position shares of Royal Caribbean stock, but did not close his short
7 position. This erroneous transaction is because of a malfunction in Schwab's online trading
8 system that does not buy shares and close short positions as the customer instructs; instead, the
9 system improperly buys additional long position shares and keeps open short positions. This
10 happened several times, and Schwab's trading system defect eventually left Plaintiff owning
11 31,500 shares of a stock (valued at over \$1.1 million) he tried to get out of in the first place.
12 Two days later, on April 22, 2020, Plaintiff again attempted to close short positions on stock
13 he owned. As before, Schwab's trading system did not execute the trade as Plaintiff instructed
14 by closing the short position, but kept open the short position and purchased Plaintiff long
15 positions of the same stock he was attempting to sell. As a result, Plaintiff suffered injury in
16 fact and lost money. Plaintiff continues to maintain and place investment orders through his
17 Schwab brokerage account and desires to keep doing so, provided the malfunction is corrected.
18 Nevertheless, unless and until Schwab corrects the malfunction, Plaintiff will be subjected to
19 Schwab's ongoing conduct complained of in this Complaint.

20 7. Defendant Schwab is a California corporation with its principal place of
21 business in San Francisco, California. Schwab is a registered broker-dealer with the U.S.
22 Security and Exchange Commission in all fifty states and is a member of the Financial
23 Industry Regulatory Authority, Inc. (FINRA). It offers investment products and services,
24 including online brokerage accounts, to retail customers throughout the United States,
25 including tens of thousands of customers throughout California. Schwab's customers maintain
26 more than 12.3 million active brokerage accounts with over \$4 trillion in client assets.

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FACTUAL ALLEGATIONS

Schwab's Online Brokerage Accounts

8. Many of Schwab's customers utilize Schwab's online brokerage account system. After setting up an account at Schwab.com and depositing funds into it, the customer can place investment orders online. Once an order is placed, Schwab executes it. Customers can place a wide variety of investment orders online, including buying and selling stocks, bonds, and mutual funds and placing various types of simple and sophisticated trades, including purchasing short positions.

9. Like other online brokerage firms, Schwab uses automated systems to process and execute investment orders received from its customers.

Schwab's Trading System Fails to Follow Customer Trading Instructions

10. Recently, Schwab's online platform began malfunctioning when customers, including Plaintiff, attempted to close short positions taken on securities.

11. A short position refers to a trading technique in which an investor, like Plaintiff, sells a security with plans to profit by repurchasing it later at a lower price. In short selling, a position is opened by borrowing and then selling shares of a stock that the investor believes will decrease in value. Eventually, short sellers must return the shares they borrowed. The investor is betting the share price will decline, and new shares be purchased and given back to the stock lender at a lower price than originally borrowed.

12. To sell short, investors sell shares which are borrowed from a broker. Short sellers pay these stock lenders (here, Schwab) fees and interest while the short position is in place or "open."

13. Investing in short positions can be particularly profitable during times of significant stock market fluctuation, like that caused by the coronavirus pandemic. To be profitable in a short position, the price of the stock when closed must be lower than the price of the stock when the short position is purchased.

14. Short selling has a high risk/reward ratio: It can offer big profits, but losses can mount quickly and infinitely. Thus, it is critically important that the investor be able to end the

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1 short position timely because if the stock price begins to rise rather than fall, the investor is
2 exposed to significant, theoretically unlimited risk of loss. Ending the short position is known
3 as “closing” it. To close a short position, an investor buys the same number of shares back on
4 the market—hopefully at a price less than the price the investor paid for it—and returns them
5 to the lender or broker. This is known as “buying to close” the short position.

6 15. The following is an example of the lifecycle of a short position: An investor
7 thinks that ABC Company’s stock is poised to fall after it reports quarterly results. To take
8 advantage of this possibility, the investor opens a short position by “borrowing” 100 shares of
9 ABC stock from the investment firm the investor uses for trades. At the time the short is
10 opened and the stock sold to another investor, it is trading at \$150 per share (for a total of
11 \$15,000). The investor made a good investment because in the following weeks, ABC
12 Company reports weaker than expected revenue, resulting in ABC Company’s shares dropping
13 to \$130. At this moment, the investor closes the short position by purchasing 100 shares of
14 ABC Company for \$130 per share to “cover” the position, thereby giving shares back to his
15 investment firm and closing his short position. The trade results in a profit (before fees and
16 costs) of \$20 per share or \$2,000.

17 16. The opposite of a short position is a “long” position. A long position is buying
18 shares in a company and holding on to them, in hopes that the price of the stock will go up.
19 The goal is to eventually sell the shares for more than you paid for them.

20 17. To purchase a short position at Schwab, investors, including Plaintiff and the
21 Class members, must borrow shares of that stock in a Schwab margin account.

22 18. Schwab charges its customers interest on money borrowed on margin. The
23 margin interest varies, but interest charges are assessed whenever money is borrowed on
24 margin towards the purchase of securities. Interest is charged on the borrowed funds for the
25 period of time the loan is outstanding. For a short position, Schwab charges interest on the
26 price of the stock borrowed. As of May 28, 2020, Schwab’s effective margin interest rates
27 were between 6.575% and 8.325%.

28

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1 19. As a result of this malfunction, Schwab's trading system does not "buy and
2 close" short positions as instructed by its customers. Instead, Schwab's system simply adds
3 shares to the customer's fictitious long position. That is, rather than buy and close as instructed
4 by Schwab customers, the system incorrectly processes the trade as a buy and not a close. This
5 results in the customer's short position being kept open *and* shares of the unwanted stock
6 being added to the customer's account.

7 20. The financial consequences of the system's malfunction are significant. For
8 illustrative purposes, assume a Class member is short 100 shares of ABC Company stock. To
9 later close that open short position, the customer must buy 100 shares of ABC Company stock,
10 and so instructs Schwab's online trading system to buy (and therefore close by purchasing)
11 100 shares of ABC Company. However, because of the defect, Schwab's system incorrectly
12 processes the customer's buy and close instructions as an order to purchase 100 additional
13 shares of ABC Company stock. The customer is then left with an open short position he or she
14 wanted to close, plus additional shares of a stock the customer did not want to buy. Worse yet,
15 these unwanted shares are also purchased on margin, thereby incurring Schwab's margin
16 interest charges, while decreasing the customer's margin buying power.

17 21. Schwab employees admit its automated system is not working correctly. They
18 acknowledge short trades not being closed as instructed, but instead treated as requests to buy
19 and hold the stock long. Schwab has had developers and programmers working on this "big
20 project" to figure out the cause and remedy it.

21 22. Plaintiff and Class members have been and will continue to be harmed by the
22 ongoing trading system malfunction.

23 ***Plaintiff's Transactions***

24 23. Plaintiff is a frequent trader. In the first quarter of 2020 alone, Plaintiff
25 executed thousands of trades using his online Schwab trading account.

26 24. On April 20, 2020, Plaintiff submitted trade instructions through Schwab to
27 close short positions on 6,300 shares of Royal Caribbean stock (NYSE: RCL). Plaintiff did so
28 as he has done many times before – by hovering over the shorted RCL stock on his account

1 page, clicking “Close RCL” and then confirming the transaction by clicking “Place Order.”
2 Closing a short position of 6,300 shares is accomplished through the purchase of an equal
3 number of the same company’s shares. In Plaintiff’s case, by purchasing 6,300 shares of Royal
4 Caribbean stock. Schwab’s trading system should process this transaction as a “buy and
5 close.”

6 25. However, Schwab’s automated trading system acted contrary to Plaintiff’s
7 instructions to buy and close. Instead of purchasing 6,300 shares to buy and close Plaintiff’s
8 short position, Schwab’s system erroneously purchased 6,300 shares long and kept open
9 Plaintiff’s short position.

10 26. Plaintiff noticed he was not closed out of his investment position as requested,
11 and so again instructed Schwab’s trading system (by clicking “Close RCL”) to buy and
12 “close” through the purchase of 6,300 shares. However, once again, Schwab’s system failed to
13 execute Plaintiff’s order as instructed. Instead, it purchased another 6,300 shares of Royal
14 Caribbean, but did not close Plaintiff’s short position. This happened several times, and
15 Schwab’s system malfunction eventually left Plaintiff owning 31,500 shares of a stock he
16 instructed Schwab to sell in the first place. These 31,500 shares Plaintiff never desired were
17 purchased on margin (i.e., on loaned funds) and were valued at over \$1.1 million. This all
18 transpired over a 10-minute period during which Plaintiff repeatedly instructed Schwab’s
19 system to close his original position.

20 27. Given the risk of significant financial loss from being loaned over \$1.1 million
21 in Royal Caribbean stock he never wanted to begin with, Plaintiff attempted to mitigate the
22 damages inflicted by Schwab’s system malfunction and sold over \$1.1 million in Royal
23 Caribbean stock after-hours at a loss that exceeded \$10,000.

24 28. The purchase of over \$1.1 million in shares also greatly exceeded Plaintiff’s
25 margin buying power. This was also the result of Schwab’s system malfunction. Because
26 Plaintiff’s trading instructions were to “close,” Schwab’s system ignored Plaintiff’s margin
27 buying power and erroneously processed the multiple “close” trades as covering the same
28 position over and over—even though nothing was closed as instructed. Nevertheless, because

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1 he was deemed to have exceeded his margin buying power and therefore trading with unsettled
2 funds because of this, Schwab further harmed Plaintiff by removing his margin buying power
3 for 90 days.

4 29. As Schwab representatives later explained, Schwab's system incorrectly
5 processed Plaintiff's transactions as buying long positions while still keeping the short position
6 open. Schwab's system kept adding 6,300 shares of Royal Caribbean stock to Plaintiff's
7 account each time he attempted to close the original short position.

8 30. Approximately two days later, on April 22, 2020, Plaintiff again attempted to
9 close short positions on other Royal Caribbean stock he owned by clicking "Close RCL". As
10 before, Schwab's trading system did not execute the trade as Plaintiff instructed by buying to
11 close his short position on RCL stock. Instead, Schwab's system again incorrectly purchased
12 long positions of the same stock Plaintiff was attempting to sell.

13 31. That same day after experiencing the same defect twice in one week, Plaintiff
14 called and spoke with a Schwab representative. The Schwab representative stated that its
15 automated system is "getting confused and changing the type" of transaction, which results in
16 trades not buying and closing positions as instructed, but adding to them. The Schwab
17 representative further informed, Schwab was aware of the problem and had been working for
18 several months to correct it.

19 32. Approximately one week later, a Resolution Manager in Schwab's Client
20 Advocacy Team contacted Plaintiff and confirmed that Schwab's system failed to perform as
21 Plaintiff instructed and as Schwab intended.

22 33. Despite conceding the defects in its trading system, Schwab has refused to fully
23 compensate Plaintiff for his losses and refused to lift the 90-day restriction on using his margin
24 account for trading.

25 CLASS DEFINITION AND ALLEGATIONS

26 34. Plaintiff brings this action on behalf of himself and all others similarly situated
27 pursuant to Civil Code § 1781, and seeks certification of the following Class:
28

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All Schwab brokerage account clients who placed an order to close a short trading position, but the order was not executed as made.

35. The Class excludes Schwab's officers and directors, current or former employees, as well as their immediate family members, other broker dealers, as well as any judge, justice or judicial officer presiding over this matter and members of their immediate families and judicial staff.

36. *Numerosity.* The members of the Class are so numerous that their individual joinder is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contains thousands of members. While the precise number of Class members is unknown to Plaintiff, it is known to Defendant.

37. *Existence and Predominance of Common Questions of Law and Fact.* Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual Class members. All members of the Class have been subject to the same conduct and their claims arise from the same legal claims. The common legal and factual questions include, but are not limited to, the following:

- (a) whether Schwab has a duty to follow the trading instructions of Plaintiff and members of the Class;
- (b) whether Schwab's trading systems are defective;
- (c) whether Schwab's trading systems code or otherwise record Plaintiff and Class members as in a boxed trading position when they are not;
- (d) whether Schwab engaged in unlawful or unfair business practices;
- (e) whether Schwab breached its duty of care to Plaintiff and Class members;
- (f) whether the Plaintiff and the Class are entitled to injunctive relief;
- (g) whether Schwab has been unjustly enriched by its improper course of action; and
- (h) whether Plaintiff and members of the Class are entitled to equitable relief, and the proper measure of that equitable relief.

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1 44. Plaintiff, on behalf of himself and the Class, brings this cause of action for
2 violations of the "unlawful" and "unfair" prongs of the Unfair Competition Law, Cal. Bus. &
3 Prof. Code §§ 17200, *et seq.* ("UCL").

4 45. Plaintiff and Defendant are "persons" within the meaning of the UCL. Bus. &
5 Prof. Code § 17201.

6 46. The UCL defines unfair competition to include any "unlawful" or "unfair"
7 "business act or practice." Bus. & Prof. Code § 17200.

8 47. By committing the acts and practices alleged herein, Schwab has engaged in
9 unlawful and unfair business practices in violation of the UCL.

10 48. Unlawful Conduct: In the course of conducting business, as a result of engaging
11 in the conduct alleged in this Complaint, including failing to ensure that its systems follow the
12 trading instructions provided by Plaintiff and Class members, Schwab has violated § 17200's
13 prohibition against engaging in unlawful acts and practices by virtue of its conduct, which
14 constitutes negligence and unjust enrichment.

15 49. Plaintiff reserves the right to allege other violations of law, which constitute
16 other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

17 50. Unfair Conduct: Schwab's acts and practices as alleged herein also constitute
18 "unfair" business acts and practices within the meaning of Business & Professions Code
19 §§ 17200, *et seq.* In the course of conduct business, Schwab has violated the UCL's
20 proscription against unfair business practices by, among other things failing to take reasonable
21 steps to ensure that its trading system carries out Plaintiff and Class members' instructions
22 fully, promptly and accurately, failing to regularly and rigorously examine trade execution
23 quality, failing to undo the trades its defective trading system executes, failing to close short
24 positions as instructed, purchasing long positions that were not ordered, charging margin
25 interest rates on the unwanted long positions, causing Plaintiff and Class members to use and
26 exceed their margin buying power by virtue of the trades not executed as instructed, and not
27 compensating Plaintiff and Class members for its negligence.
28

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1 51. Schwab's wrongful conduct is substantially injurious to consumers, offends
2 legislatively-declared public policy, and is immoral, unethical, oppressive, and unscrupulous.
3 Schwab's practices are also contrary to legislatively declared and public policies that seek to
4 foster trust and transparency in the securities marketplace. The gravity of Schwab's wrongful
5 conduct outweighs any alleged benefits attributable to such conduct. There were reasonably
6 available alternatives to further Schwab's legitimate business interests other than engaging in
7 the above-described wrongful conduct.

8 52. Plaintiff is a "person" within the meaning of Business & Professions Code
9 section 17204, has suffered injury, and lost money or property, and therefore has standing to
10 bring this cause of action for injunctive relief, restitution, disgorgement, and other appropriate
11 equitable relief.

12 53. Pursuant to Business & Professions Code sections 17203 and 17205, Plaintiff
13 seeks an injunction prohibiting Schwab from continuing such practices, restitution and all
14 other relief this Court deems appropriate.

15 COUNT II

16 **Negligence**

17 54. Plaintiff incorporates by reference and realleges each and every allegation
18 contained above, as though fully set forth herein.

19 55. The relationship between a customer (e.g., Plaintiff and Class members) and
20 his/her broker-dealer (e.g., Schwab) is that of principal and agent. The broker, as agent, has a
21 duty to carry out its customer's instructions promptly and accurately and to ensure the
22 mechanisms it uses for this purpose function properly.

23 56. Schwab owed duties to Plaintiff and the Class, including a duty of care to act
24 with the care, competence, and diligence normally exercised by brokers in similar
25 circumstances.

26 57. Pursuant to its duty of care, Schwab was required to comply with the trading
27 instructions of Plaintiff and Class members and to diligently and competently fulfill their trade
28 requests.

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1 58. By using its defective automated trading systems to process the investment
2 orders placed by Plaintiff and Class members, which failed to execute their investment orders
3 as instructed and purchased unwanted securities instead, Schwab was negligent and breached
4 its duties owed to Plaintiff and the Class.

5 59. But for Schwab's negligent conduct, Plaintiff's and Class members' trades
6 would have been executed as instructed: they would have closed short positions as desired in a
7 timely manner, they would not have acquired long positions of stock they did not instruct
8 Schwab to purchase for their accounts, they would not have been forced to take the risks of
9 owning and selling the unwanted stock, they would not have been assessed and paid fees and
10 commissions for selling the unwanted stock, they would not have been forced to spend the
11 time and effort to sell the unwanted stock, and they would not have depleted their margin
12 buying power as a result of buying the unwanted shares.

13 60. The injury and harm suffered by Plaintiff and the other Class members was the
14 reasonably foreseeable result of Schwab's failure to exercise reasonable care in executing the
15 investment trades as instructed.

16 61. Schwab's customers have been damaged as a result of Schwab's negligence, in
17 an amount to be determined at trial.

18 **COUNT III**

19 **Unjust Enrichment**

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

22 63. By its wrongful conduct, Schwab was unjustly enriched at the expense of and to
23 the detriment of Plaintiff and the Class. Schwab was unjustly enriched as a result of the
24 compensation it received from processing investment trades in the opposite way instructed by
25 Plaintiff and members of the Class.

26 64. Plaintiff and the Class seek restitution from Schwab and seek an order of this
27 Court disgorging all profits, benefits, and other compensation obtained by Schwab from its
28 wrongful conduct.

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65. Plaintiff and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Class as requested herein;
- B. Awarding Plaintiff and the proposed Class members damages;
- C. Awarding restitution to Plaintiff and the proposed Class members;
- D. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Schwab from continuing the unlawful practices as set forth herein, and directing Schwab to identify, with court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Schwab by means of any act or practice declared by this Court to be wrongful;
- E. Awarding attorneys' fees and costs; and
- F. Providing such further relief as may be just and proper.

JURY DEMAND

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

Respectfully submitted,

Dated: June 19, 2020

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THOMAS J. O'REARDON II (247952)
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Attorneys for Plaintiff

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Timothy G. Blood (149343) [SEE ATTACHMENT A] Blood Hurst & O'Reardon, LLP 501 West Broadway, Suite 1490, San Diego, CA 92101 TELEPHONE NO.: 619/338-1100 FAX NO. (Optional): 619/338-1101 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY <h1 style="margin: 0;">FILED</h1> San Francisco County Superior Court JUN 23 2020 CLERK OF THE COURT Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco 94102-4515 BRANCH NAME: Civic Center Courthouse	CASE NUMBER: <h2 style="margin: 0; color: red;">CC-20-585092</h2> JUDGE: DEPT.:
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000) 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: <h2 style="margin: 0; color: red;">CC-20-585092</h2> JUDGE: DEPT.:

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

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

Auto Tort: <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIPD/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 PIPD/WD (23) Non-PIPD/WD (Other) Tort: <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIPD/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 checked="" 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	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary; b. nonmonetary; declaratory or injunctive relief; c. punitive

4. Number of causes of action (specify): 3: Violations of: B&P Code §17200; Negligence; and Unjust Enrichment

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 19, 2020
 Timothy G. Blood
 (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.

BY FAX

Robert Wright v. Charles Schwab & Co., Inc.
San Francisco Superior Court – Civic Center Courthouse

ATTACHMENT TO CIVIL CASE COVER SHEET (CM-010)

Attorneys for Plaintiff Robert Wright

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INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

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

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

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

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22) Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease	Construction Defect (10)
	Contract (not unlawful detainer or wrongful eviction)	Claims Involving Mass Tort (40)
	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)	Securities Litigation (29)
	Negligent Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Other Breach of Contract/Warranty	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Asbestos (04)	Collections (e.g., money owed, open book accounts) (09)	Enforcement of Judgment
Asbestos Property Damage	Collection Case—Seller Plaintiff	Enforcement of Judgment (20)
Asbestos Personal Injury/Wrongful Death	Other Promissory Note/Collections Case	Abstract of Judgment (Out of County)
Product Liability (not asbestos or toxic/environmental) (24)	Insurance Coverage (not provisionally complex) (18)	Confession of Judgment (non-domestic relations)
Medical Malpractice (45)	Auto Subrogation	Sister State Judgment
Medical Malpractice—Physicians & Surgeons	Other Coverage	Administrative Agency Award (not unpaid taxes)
Other Professional Health Care Malpractice	Other Contract (37)	Petition/Certification of Entry of Judgment on Unpaid Taxes
Other PI/PD/WD (23)	Contractual Fraud	Other Enforcement of Judgment Case
Premises Liability (e.g., slip and fall)	Other Contract Dispute	Miscellaneous Civil Complaint
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Real Property	RICO (27)
Intentional Infliction of Emotional Distress	Eminent Domain/Inverse Condemnation (14)	Other Complaint (not specified above) (42)
Negligent Infliction of Emotional Distress	Wrongful Eviction (33)	Declaratory Relief Only
Other PI/PD/WD	Other Real Property (e.g., quiet title) (26)	Injunctive Relief Only (non-harassment)
Non-PI/PD/WD (Other) Tort	Writ of Possession of Real Property	Mechanics Lien
Business Tort/Unfair Business Practice (07)	Mortgage Foreclosure	Other Commercial Complaint Case (non-tort/non-complex)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Quiet Title	Other Civil Complaint (non-tort/non-complex)
Defamation (e.g., slander, libel) (13)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Miscellaneous Civil Petition
Fraud (16)	Unlawful Detainer	Partnership and Corporate Governance (21)
Intellectual Property (19)	Commercial (31)	Other Petition (not specified above) (43)
Professional Negligence (25)	Residential (32)	Civil Harassment
Legal Malpractice	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Workplace Violence
Other Professional Malpractice (not medical or legal)	Judicial Review	Elder/Dependent Adult Abuse
Other Non-PI/PD/WD Tort (35)	Asset Forfeiture (05)	Election Contest
Employment	Petition Re: Arbitration Award (11)	Petition for Name Change
Wrongful Termination (36)	Writ of Mandate (02)	Petition for Relief From Late Claim
Other Employment (15)	Writ—Administrative Mandamus	Other Civil Petition
	Writ—Mandamus on Limited Court Case Matter	
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Charles Schwab Short Sellers Harmed Financially by Online Account Malfunction](#)
