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Attorney for Plaintiff
Capobianco Law Offices, P.C.
and Anthony Capobianco

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUL 12 2013

E. Barrows

NR
JUL 16 2013
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE
(UNLIMITED JURISDICTION)

CAPOBIANCO LAW OFFICES, a California
professional law corporation, ANTHONY
CAPOBIANCO, an individual;

Plaintiffs,

v.

FIRST FOUNDATION BANK, a California
corporation; DAVID RAHN, an individual,
STUART BAILEY, an individual, and DOES 1
through 10, inclusive,

Defendants.

Case No **INC 1304494**

[Assigned to Hon. _____]

COMPLAINT FOR:

- 1. **VIOLATIONS OF THE COMMERCIAL CODE;**
- 2. **BREACH OF CONTRACT;**
- 3. **BREACH OF FIDUCIARY DUTY;**
- 4. **UNFAIR BUSINESS PRACTICES;**
- 5. **NEGLIGENCE;**
- 6. **CONVERSION;**
- 7. **DEFAMATION; AND**
- 8. **INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

1 Plaintiffs Capobianco Law Offices, P.C. and Anthony Capobianco (collectively,
2 "*Plaintiffs*"), for their complaint in this action, allege as follows:

3 THE PARTIES

4 1. Plaintiff Capobianco Law Offices, P.C. ("*CLO*") is, and at all relevant times was,
5 a professional corporation organized and existing under the laws of the State of California,
6 having its principal place of business in Riverside County, California. CLO is a law firm which
7 conducts business throughout California.

8 2. Plaintiff Anthony Capobianco ("*Capobianco*") is, and at all relevant times was,
9 an individual residing in Riverside County, California. Capobianco is an officer, director and the
10 sole shareholder of CLO and an attorney licensed to practice law in the State of California.

11 3. Defendant First Foundation Bank ("*Bank*") is, and at all relevant times was, a
12 corporation organized and existing under the laws of the State of California, having its principal
13 place of business in Orange County, California. Bank operates a branch located in Indian Wells,
14 Riverside County, California where CLO's account was located.

15 4. Defendant David Rahn ("*Rahn*") is, and at all relevant times was, an individual
16 residing in Riverside County, California. Rahn is an executive officer of Bank and at all relevant
17 times was acting within the course and scope of such employment.

18 5. Defendant Stuart Bailey ("*Bailey*") is, and at all relevant times was, an individual
19 residing in Riverside County, California. Bailey is an officer and/or employee of Bank and at all
20 relevant times was acting within the course and scope of such employment.

21 6. The true names and capacities, whether individual, corporate, associate or
22 otherwise, of defendants DOES 1 through 10, inclusive, are unknown to plaintiffs, who therefore
23 sue such defendants by such fictitious names pursuant to Code of Civil Procedure Section 474.
24 Plaintiffs further allege that each of such fictitious defendants is in some manner responsible for
25 the acts and occurrences set forth in this complaint. Plaintiffs will amend this complaint to show
26 these defendants' true names and capacities when same are ascertained, as well as the manner in
27 which each fictitious defendant is responsible. "*Defendants*" as used in this complaint includes
28 all named defendants and all DOE defendants, collectively.

1 and Capobianco had developed a business relationship in prior years.

2 13. In his meetings and discussions with Capobianco, Bailey (Bank's vice president
3 and manager of its Indian Wells branch) induced Capobianco to invest his trust and confidence
4 in Bailey and Bank by promising that he, as Capobianco's and CLO's private banker, would
5 personally oversee their accounts and attend to their banking needs. Bailey's sales pitch was
6 aggressive and persistent and emphasized the personal care that he promised to provide to
7 plaintiffs. Bailey made clear that he would attend to plaintiffs' banking affairs with fairness, trust
8 and good faith and that he and Bank would preserve the security of plaintiffs' funds and the
9 confidentiality of their account information.

10 14. Based on Bailey's representations and Bank's public statements on its website
11 and elsewhere, Capobianco reasonably believed that his and CLO's funds would be safe and
12 secure while in Bank's custody and control, free from interference by rogue employees and/or
13 third parties.

14 15. Accordingly, in or around January 2012, in reliance on the representations made
15 by Bailey and Bank's other public statements, CLO opened two accounts with Bank at its branch
16 in Indian Wells, California. In or around the same period, Capobianco also opened two personal
17 accounts with Bank at the same branch.

18 16. One of the accounts that CLO opened with Bank was an "Essential Business
19 Checking" account (the "*Account*"). In connection with opening the Account, Bank supplied
20 various documents to CLO, including one titled, "ELECTRONIC FUNDS TRANSFERS:
21 YOUR RIGHTS AND RESPONSIBILITIES" (the "*EFT Disclosures*"). The EFT Disclosures
22 included the following material provisions.

23 • Under "CONFIDENTIALITY," it states, "We will disclosure information to third
24 parties about your account or the transfers you make: (1) where it is necessary for
25 completing transfers; or (2) in order to verify the existence and condition of your
26 account for a third party, such as a credit bureau or merchant, or (3) in order to
27 comply with government agency or court orders; or (4) if you give us written
28 permission [or] was explained in the separate Privacy Disclosure." No separate

1 "Privacy Disclosure" was ever supplied to plaintiffs.

- 2 • Under "ERROR RESOLUTION NOTICE" it promises that Bank "will determine
3 whether an error occurred within 10 business days . . . after we hear from you and
4 will correct any error promptly. . . . You may ask for copies of the documents
5 that we used in our investigation."
- 6 • Under "YOUR DEPOSIT ACCOUNT TERMS AND CONDITIONS
7 AGREEMENT" it states, "This document, along with any other documents that
8 we give you pertaining to your account(s), is a contract that establishes rules
9 which control your account(s) with us."

10 17. Plaintiffs' accounts with Bank remained open until in or around January 2013.
11 During that period, Capobianco frequently conferred with Bailey and other bank representatives,
12 in person, by phone and by email, concerning Bank's services and plaintiffs' accounts and
13 banking transactions.

14 18. While it was a customer of Bank, CLO never made an outgoing wire transfer and
15 its average transaction size was less than \$1,500.

16 **An Unauthorized Payment Hits CLO's Account**

17 19. Beginning in the summer of 2012, Bank embarked on a program to convert or
18 upgrade its online banking systems to provide "an enhanced online banking suite of products,"
19 including "cash management service enhancements." To do this, Plaintiffs are informed and
20 believe, and on that basis allege, Bank chose to retain the services of various third party vendors.
21 Bank's new platform became available for customer use on or around September 17, 2012. It,
22 along with Bank's conversion and implementation process, was fraught with glitches and
23 difficulties.

24 20. As part of its new online platform, Bank began offering "enhanced" wire transfer
25 services called WireXchange but failed to disclose to CLO that it could opt out of, or limit, this
26 new feature. In addition, Bank failed to disclose to CLO that it could require certain notices
27 regarding wires or other transfers initiated from its accounts. Also, Bank failed to disclose to
28 CLO that certain security procedures existed to protect against fraudulent or unauthorized

1 withdrawals and failed to offer such procedures to CLO. Finally, Bank failed to provide to or
2 offer CLO adequate security methods, such as telephonic verification for unusual or atypical
3 transactions, to verify that wire or electronic transfer requests were legitimate and initiated by
4 CLO. Instead, Bailey, CLO's designated private banker, automatically enrolled CLO in all such
5 services without any discussion or explanation of any kind.

6 21. In the afternoon of December 3, 2012, a funds withdrawal occurred out of the
7 Account in the amount of \$18,700. This withdrawal was not initiated or authorized by CLO or its
8 agents. Based upon statements by Bank's agents, Plaintiffs are informed and believe, and on that
9 basis allege, that the withdrawn funds ultimately were transferred to the Ukraine to an individual
10 named Tatiana Zemskova. Plaintiffs are informed and believe, and on that basis allege, that
11 Tatiana Zemskova is a Ukrainian fashion model. However, prior to December 3, 2012, Plaintiffs
12 had never heard of Tatiana Zemskova.

13 22. Prior to the start of business hours on December 4, 2012, CLO discovered the
14 unauthorized withdrawal from the Account. Upon discovery, Capobianco immediately contacted
15 Bailey by email and by telephone (consistent with their established course of dealing) to inform
16 Bank that the unauthorized wire had been debited from CLO's account. CLO asked Bank to take
17 prompt steps to correct this error and to credit those funds back to CLO's account.

18 23. Plaintiffs are informed and believe, and based thereon allege, that the
19 unauthorized withdrawal either was made by a third party criminal organization or that Bank's
20 computer systems were "hacked." Alternatively, the withdrawal was made by a rogue Bank
21 employee or third party vendor with access to CLO's confidential information.

22 24. Prior to this unauthorized withdrawal, Bank was aware that various scams existed
23 whereby criminals and/or criminal enterprises would attempt to usurp customers' confidential
24 information in order to access their accounts without permission. In addition, Bank was aware
25 that its employees and its various third-party vendors had access to Plaintiffs' confidential
26 information, including log-in information, and that such employees and third parties, if not
27 properly supervised or restrained, had the ability to withdraw funds from Bank's customers'
28 accounts without permission. Plaintiffs are informed and believe, and on that basis allege, that

1 Bank failed to take adequate steps to ensure the confidentiality of plaintiffs' information and/or
2 to safeguard that confidential information.

3 25. In 2012 it was common knowledge in the banking industry that local community
4 banks were particularly susceptible to fraudulent activity, employee embezzlement and various
5 schemes, involving the use of "phishing," malware and other computer-based tools, to
6 misappropriate depositor information and funds. Plaintiffs are informed and believe, and on that
7 basis allege, that other unauthorized payment orders and/or withdrawals had been initiated on the
8 accounts of other Bank customers. Because it had prior notice and knowledge of these risks,
9 Bank had a heightened duty to safeguard its customers and their deposited funds against such
10 fraudulent activity.

11 26. In addition, prior to this unauthorized withdrawal, Bank and Plaintiffs had a
12 course of dealing whereby Bank and Plaintiffs regularly communicated regarding Plaintiffs'
13 banking activities, in person, by telephone and by email. Given CLO's banking transaction
14 history, Bank could not reasonably or in good faith have concluded that this withdrawal or
15 payment request was legitimate. Similarly, given CLO's relationship with Bailey, its designated
16 private banker, who regularly communicated with CLO regarding its banking transactions, it
17 would have been simple for Bank to telephone or email CLO to verify this attempted withdrawal
18 before processing it, but Bank failed to take any such steps and instead ignored the red flags
19 associated with this transaction.

20 27. After it was notified of the unauthorized withdrawal by Plaintiff, Bank's
21 representatives failed to react within a reasonable time and failed to investigate CLO's claims
22 fairly or in good faith. Bank performed only a cursory investigation, if any, and wrongly
23 concluded that Capobianco was guilty of unlawful conduct. Based upon that cursory
24 investigation and incorrect conclusion, Bank failed to promptly request that the withdrawn funds
25 be tracked and then credited back to CLO's account until it was too late. Instead, Bank delayed
26 unreasonably in attempting to recall or recover the unauthorized withdrawal in violation of its
27 duties to CLO.

28

1 **Bank Refuses to Pay Back Stolen Funds and Defames Capobianco**

2 28. Bank has repeatedly rejected CLO's request for reimbursement of the funds that
3 were illegally withdrawn from the Account.

4 29. In addition, despite its promise to do so in the EFT Disclosures and in
5 communications with Plaintiffs, Bank refused, and continues to refuse, to produce any and all
6 documents related to its alleged investigation into this unauthorized withdrawal from CLO's
7 account, thus making it impossible for CLO to investigate the cause of the withdrawal, provide
8 adequate information about the incident to law enforcement and pursue recovery of the funds.

9 30. Moreover, shortly after the unauthorized withdrawal occurred, Bank, Rahn and
10 Bailey accused Capobianco of having a "mail order girlfriend" in the Ukraine and accused him
11 of making the withdrawal from CLO's account in an effort to send money to that "mail order"
12 girlfriend, or words to that effect. Defendants then accused Capobianco of fabricating his story
13 that the withdrawal was not authorized in an effort to conceal or cover up the fact that he had
14 initiated the subject withdrawal, or words to that effect. Each of the Defendants has repeated
15 these false accusations to other professionals and business colleagues in Capobianco's
16 community, resulting in injury to Capobianco's and CLO's reputations and harming their
17 business.

18 31. Subsequently, to add insult to injury, in mid-December 2012, the Bank directed
19 Plaintiffs to close all of their accounts with Bank and to move those accounts elsewhere, causing
20 Plaintiffs to incur additional costs and inconvenience.

21 **FIRST CAUSE OF ACTION**

22 (Violation of Commercial Code Division 11 Against Bank)

23 32. Plaintiffs incorporate each and every allegation in paragraphs 1 through 31,
24 above, as if set forth in full and re-alleged herein.

25 33. Assuming that the withdrawal of funds was part of a "funds transfer" as defined
26 by Section 11104(a) of Division 11 of the California Commercial Code (the "*Code*"), then Bank
27 violated the Act by failing to refund to CLO the amount of the withdrawal plus interest.

28 34. The withdrawal was not authorized by CLO or its agents. *See* Cal. Com. Code ¶

1 11202(a). Nor was the withdrawal caused by any person who obtained access to CLO's
 2 transmitting facilities or, from a source controlled by CLO, information facilitating breach of
 3 Bank's security procedures. See Cal. Com. Code § 11203(a)(2).

4 35. Bank's security procedures were not commercially reasonable. See Cal. Com.
 5 Code § 11202(b). Under applicable law, financial institutions are required to rely on multiple
 6 layers of control and user authentication to prevent fraud and to safeguard their customer's
 7 information, but Bank failed to do so here. Bank failed to use adequate security procedures,
 8 consistent with prevailing banking standards, to prevent fraud, criminal activity and
 9 embezzlement. Indeed, Bank failed to offer any alternative security procedures to Plaintiffs even
 10 though reasonable alternatives existed and would have been easy to employ.

11 36. Alternatively, even if Bank had commercially reasonable security procedures, it
 12 failed to act in accordance with such procedures, its computer systems were inadequate or had
 13 been compromised, it failed to act in compliance with its customer's instructions and/or it failed
 14 to act in "good faith" under the circumstances, all as required by the Code.

15 37. Even if Bank had commercially reasonable security procedures and observed
 16 them, it could not have accepted a payment order for the wire transfer in good faith. The size was
 17 far in excess of the Account's usual transaction size. CLO had never ordered a wire transfer of
 18 any size. It was routine for plaintiffs and Rahn and Bailey to discuss and confirm unusual
 19 transactions. And Bailey had previously given assurances to Capobianco that he, as CLO's
 20 private banker, would give extraordinary care and attention to plaintiffs' accounts. Under these
 21 circumstances Bank simply could not have acted in good faith when it processed the withdrawal
 22 in question. Defendants had every reason to know that the transfer was suspicious and that
 23 plaintiffs expected to be notified before such a transfer was carried out.

24 38. As a result of Defendants' statutory violations, Plaintiffs have been damaged in an
 25 amount to be determined at trial, but far in excess of this Court's jurisdictional limit.

26 SECOND CAUSE OF ACTION

27 (Breach of Contract Against Bank)

28 39. Plaintiff incorporates each and every allegation in paragraphs 1 through 38,

1 above, as if set forth in full and re-alleged herein.

2 40. Bank and plaintiffs had agreed that the authenticity of payment orders, including
3 wire transfers, would be verified pursuant to a security procedure, using certain secure token
4 technology and other confidential user information. However, plaintiffs are informed and believe
5 that Bank delegated its security obligations to a third-party vendor and failed to adequately
6 supervise those procedures and/or to ensure their reasonableness and effectiveness to prevent
7 fraud. Also, Bank failed to safeguard plaintiffs' confidential information.

8 41. In addition, by allowing the unauthorized transfer, without any verification, Bank
9 failed to observe reasonable commercial standards of good faith and fair dealing. Under the
10 circumstances, Bank should have recognized that this transfer was likely fraudulent. It did not
11 and accordingly failed to act in a manner that was fair and reasonable to its customer.

12 42. Thereafter, Bank failed and refused to produce all documents related to its
13 investigation as required by its agreement with plaintiffs. Bank also violated its contract with
14 CLO by disclosing information about plaintiffs' account activity to third parties without
15 plaintiffs' permission.

16 43. In addition to the terms and conditions referenced above, under California law,
17 implied in each of these agreements is a covenant of good faith and fair dealing which obligates
18 defendants, and each of them, to deal with plaintiffs fairly and honestly and not to do anything to
19 deprive plaintiffs of the intended benefits of their agreements.

20 44. Plaintiffs have duly performed all of their obligations under these agreements, or
21 to the extent they did not do so, were prevented from such performance by defendants' wrongful
22 conduct and such performance was thus excused or waived. At all times plaintiffs remained
23 ready, willing and able to complete its performance under these agreements, if required.

24 45. As a result of defendants' breach of contract and their continuing breach of the
25 contract as alleged herein, plaintiffs have been damaged in an amount to be determined at trial,
26 but far in excess of this Court's jurisdictional limit.

27

28

1 addition, Bank authorized or ratified its employees' wrongful acts as described above. This
 2 conduct entitles plaintiffs to an award of punitive and exemplary damages against defendants in
 3 an amount to be ascertained at time of trial.

4 FOURTH CAUSE OF ACTION

5 (Unfair Business Practices Against All Defendants)

6 53. Plaintiffs incorporate each and every allegation in paragraphs 1 through 52 above,
 7 as if set forth in full and realleged herein.

8 54. The acts of defendants, and each of them, as alleged above, were unfair,
 9 fraudulent and/or unlawful business acts or practices, all of which violate California Business
 10 and Professions Code Sections 17200, et seq.

11 55. Among other things, defendants, as a part of their business practices, violated
 12 various California statutes governing a bank's relationship with its customers.

13 56. Defendants' unfair business acts or practices have caused and will continue to
 14 cause plaintiffs to suffer pecuniary injury, in that plaintiff lost funds entrusted to Defendants,
 15 under false pretenses, and these Defendants refuse to return those amounts to plaintiffs.

16 57. Further, defendants should be ordered to pay restitution to plaintiffs and/or to
 17 disgorge any ill-gotten gains based upon their acts of unfair business practices.

18 FIFTH CAUSE OF ACTION

19 (Negligence Against All Defendants)

20 58. Plaintiffs incorporate each and every allegation in paragraphs 1 through 57 above,
 21 as if set forth in full and re-lleged herein.

22 59. By virtue of their professional banking relationship with plaintiffs and under
 23 California law, defendants owed a duty to plaintiffs to exercise reasonable care in carrying out
 24 their advice and responsibilities on behalf of plaintiffs, and to safeguard plaintiffs' monies and
 25 confidential information, to disclose all material information associated with that banking
 26 relationship and not to misrepresent or conceal material information.

27 60. Defendants failed to exercise reasonable care in carrying out their duties and
 28 responsibilities to plaintiffs, and breached those duties owed to plaintiffs.

1 74. Defendants' statements tended to injure Capobianco in his industry and his
2 business relationships, to expose him to emotional distress, contempt, ridicule or shame, and/or
3 to discourage others from associating with Capobianco or from conducting business with him.

4 75. Defendants' statements were a substantial factor in causing Capobianco's harm.

5 76. The defamatory statements made by defendants were made regarding
6 Capobianco's actions in his occupation, profession, trade and business, and imputed to him
7 business practices and values that have a natural tendency to lessen the profits and/or to increase
8 the costs of that business. The natural and probable effect of these statements on the average
9 listener is to injure Capobianco in respect of his occupation, profession, trade and business. And,
10 the clear design and intent of defendants' publications were to affect adversely Capobianco's
11 professional reputation. Finally, such statements were reasonably understood by third parties in
12 their clearly defamatory meaning as alleged above.

13 77. The continued defamatory statements by defendants have caused and will
14 continue to cause great and irreparable injury to Capobianco in an amount to be determined at
15 trial but far in excess of the jurisdictional amount of this court. Defendants' continued wrongful
16 conduct will continue to irreparably injure Capobianco unless enjoined by this Court.
17 Capobianco has no speedy or adequate remedy at law to prevent this irreparable injury absent an
18 injunction.

19 78. As a result of the defendants' false statements, Capobianco has suffered harm to
20 his reputation, including money spent as a result of the false statements. As a direct and
21 proximate result of the publications, Capobianco has suffered and will continue to suffer special
22 damages. However, because the statements at issue are defamatory on their face as set forth
23 above, Capobianco is not required to prove actual damage in order to recover from defendants
24 for these defamatory statements.

25 79. Nonetheless, as a direct and proximate result of the publications, Capobianco has
26 suffered and will continue to suffer special damages in the form of increased expenses, decreased
27 goodwill value, lost business opportunities, harm to his reputation, and emotional distress,
28 among other things.

- 1 a. For an award of compensatory, general and consequential damages in an amount
- 2 to be proven at trial;
- 3 b. For an award of punitive and exemplary damages in an amount to be proven at
- 4 trial;
- 5 c. For the imposition of a constructive trust requiring defendants to hold and account
- 6 for all income, revenue, interest, or financial gains of any kind based upon deposits received
- 7 from plaintiffs;
- 8 d. For an award of restitution and/or disgorgement of funds wrongfully withdrawn
- 9 from plaintiffs' Bank accounts;
- 10 e. For injunctive relief, including the imposition of a preliminary and/or permanent
- 11 injunction;
- 12 f. For prejudgment and post-judgment interest at the maximum legal rate;
- 13 g. For its costs of suit and disbursements, including reasonable attorneys' fees,
- 14 incurred in connection with this action; and
- 15 h. For such other and further relief as the Court may deem proper.

17 Date: July 12, 2013

LAW OFFICES OF DEREK WALLEN

19 By:



20 Derek O. Wallen
21 Attorney for Plaintiffs Capobianco Law
22 Offices, P.C. and Anthony Capobianco

CM-010

ATTORNEY OR PARTY WITHOUT AN OFFICE (Name, State Bar number, and address): Derek Wallen Law Offices of Derek Wallen 1555 North Vine Street, Suite 305-S Los Angeles, CA 90028 TELEPHONE NO.: (213) 321-9258 ATTORNEY FOR (Name): Plaintiffs Capobianco Law Offices, P.C., et al.		CASE NUMBER: INC 1304494 JUDGE: DEPT:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside STREET ADDRESS: 46200 Oasis Street MAILING ADDRESS: 46200 Oasis Street CITY AND ZIP CODE: Indio 92201 BRANCH NAME: Larson Justice Center		
CASE NAME: Capobianco Law Offices, P.C., et al. v. First Foundation Bank, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

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

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

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (08) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	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)
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)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PIP/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 (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	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)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **Eight: Violations of the Commercial Code; Breach of Contract; etc.**
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: July 12, 2013
Derek Wallen

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

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

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

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

CASE TYPES AND EXAMPLES

Auto Tort

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

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

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

Non-PI/PD/WD (Other) Tort

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

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

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

Real Property

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

Unlawful Detainer

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

Judicial Review

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

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

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

Enforcement of Judgment

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

Miscellaneous Civil Complaint

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

Miscellaneous Civil Petition

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