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**FILED** **FILED**  
 SUPERIOR COURT OF CALIFORNIA ALAMEDA COUNTY  
 COUNTY OF LOS ANGELES  
 JUN 19 2013 OCT 18 2012

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 BY Rachel Duran CLERK OF THE SUPERIOR COURT  
 Deputy

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21 Attorneys for Plaintiff and the Proposed Class

22 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 23 COUNTY OF ALAMEDA BC512429  
 24 UNLIMITED JURISDICTION  
 25 RG 12652694

26 KENDRA CUTTING, individually and on  
 27 behalf of all others similarly situated,

28 Plaintiff,

29 vs.

30 MARK YABLONOVICH, MICHAEL  
 31 COATS, THE LAW OFFICES OF MARK  
 32 YABLONOVICH and DOES 1 through 50,  
 33 inclusive,

34 Defendants.

Case No:  
CLASS ACTION - complex  
 COMPLAINT FOR BREACH OF  
 FIDUCIARY DUTY, LEGAL  
 MALPRACTICE, DECLARATORY  
 RELIEF, AND VIOLATIONS OF  
 BUSINESS AND PROFESSIONS CODE  
 § 17200, ET SEQ.

JURY TRIAL DEMANDED

ENTERED ON LINE

JUN 20 2013

Transfer Desk

RECEIPT #: CCHN85707086  
 DATE PAID: 06/20/13 02:25 PM  
 PAYMENT: \$435.00  
 RECEIVED:  
 CHECK: \$435.00  
 DSH: \$0.00  
 CHANGE: \$0.00  
 CRED: \$0.00

COMPLAINT FOR BREACH OF FIDUCIARY DUTY

Case assigned to D-308 CCW  
 Judge JANE JOHANSON

06/25/2013

CIT/CASE: BC512429  
 LEA/DEF#:

1 INTRODUCTION

2 1. In undertaking the representation of clients, lawyers assume certain basic  
3 responsibilities. Among other things, they must loyally serve their clients' interests, place the  
4 clients' interests ahead of their own, and competently provide legal services. This class action  
5 arises out of an egregious and sweeping breach of these fundamental fiduciary duties and  
6 legal malpractice by Defendants Mark Yablonovich, Michael Coats, and The Law Offices of  
7 Mark Yablonovich (collectively "Attorney Defendants"). As a result of their misconduct,  
8 Attorney Defendants wrongfully collected and continue to unlawfully retain substantial sums  
9 belonging to Plaintiff and the other members of the proposed class.

10 2. Plaintiff Kendra Cutting and approximately 600 others (collectively "Clients")  
11 were represented by Attorney Defendants in a wage and hour class action against Wells Fargo  
12 Bank, N.A. ("Wells Fargo"). Attorney Defendants entered into settlement negotiations with  
13 Wells Fargo to resolve the lawsuit and agreed to a secret settlement (the "Supplemental  
14 Settlement") without the consent or knowledge of Clients. The Supplemental Settlement  
15 contained three core provisions: (1) the class and individual lawsuits filed on behalf of Clients  
16 would be dismissed; (2) the Clients would forego their right to opt out of a class action  
17 settlement of their wage and hour claims; and (3) Wells Fargo would pay \$6 million in  
18 exchange for the dismissal of the lawsuits and the surrender of Clients' opt out rights. In  
19 essence, Attorney Defendants bargained away Clients' opt out rights for \$6 million without  
20 the approval of or disclosure to Clients.

21 3. As a result of a concerted and focused campaign, Clients were induced not to  
22 opt out of the class action settlement. Their wage and hour claims against Wells Fargo  
23 extinguished. The terms of the Supplemental Settlement remained undisclosed until it was  
24 too late for them to opt out and pursue individual claim which would have yielded far greater  
25 recoveries than the class action settlement.

26 4. Attorney Defendants concealed the existence of the Supplemental Settlement  
27 from Clients for eleven months during which they maneuvered to convert the entire \$6  
28 million settlement into attorneys' fees. Acting without the knowledge or approval of Clients,

1 Attorney Defendants attempted to persuade Wells Fargo to execute a "confidential"  
2 settlement agreement characterizing the entire \$6 million as attorneys' fees instead of funds  
3 belonging to Clients. Wells Fargo declined to sign this agreement.

4 5. Undeterred by this setback, Attorney Defendants then participated in a  
5 fraudulent scheme to induce Clients to accept a self-serving allocation of approximately \$5.5  
6 million of the settlement to "attorneys' fees." Attorney Defendants were covertly paid and  
7 continue to retain a portion of these "attorneys' fees."

8 6. The activities of Attorney Defendants challenged in this action were both  
9 unethical and unlawful. In negotiating a settlement under which Attorney Defendants sold the  
10 opt out rights of Clients as a commodity in exchange for a multimillion dollar fee, Attorney  
11 Defendants had an inherent and irreconcilable conflict of interest. Moreover, Attorney  
12 Defendants utterly failed to comply with their duties of utmost candor and undivided loyalty  
13 to Clients and committed legal malpractice. Attorney Defendants concealed and  
14 misrepresented material facts, put their own interests ahead of Clients and, ultimately,  
15 defrauded Clients out of approximately \$5.5 million. To redress this appalling misconduct,  
16 Plaintiff seeks compensatory and punitive damages against each of the Attorney Defendants,  
17 restitution, and appropriate declaratory and injunctive relief.

18 **JURISDICTION AND VENUE**

19 7. This Court has jurisdiction over Plaintiff's claims because they exceed the  
20 jurisdictional limit of this Court and because Plaintiff and Attorney Defendants are residents  
21 of California.

22 8. Venue is appropriate in this judicial district because Plaintiff resides in  
23 Alameda County. The injuries resulting from Attorney Defendants' wrongful conduct also  
24 occurred, in part, in Alameda County because class members reside in this judicial district,  
25 and suffered injury in Alameda County.

26 **THE PARTIES**

27 9. Plaintiff Kendra Cutting is an individual over the age of eighteen years who  
28 resides in California.



1           17.   Wells Fargo classified Plaintiff and other HMCs as exempt from overtime pay.  
2 It did not pay HMCs overtime, provide them with rest periods or afford them meal periods.

3           18.   On November 15, 2010 Attorney Defendants filed an action against Wells  
4 Fargo entitled *Peña v. Wells Fargo Bank, N.A.*, (Los Angeles County Superior Court Case  
5 No. BC449501).

6           19.   The complaint in the *Peña* case alleged a class action on behalf of:

7                   All persons who were assigned to fixed locations as  
8 Home Mortgage Consultants, or held similar titles  
9 and performed similar duties, for Defendant [Wells  
10 Fargo] in California within four years prior to February  
11 10, 2005, until the date of certification, and who only  
earned guaranteed pay (i.e. a "draw") during at least one  
week during their employment.

12           20.   The gravamen of the complaint in *Peña* was that Wells Fargo had misclassified  
13 its HMCs as exempt employees. The complaint sought damages and penalties for  
14 uncompensated overtime, meal and rest periods for all class members. Plaintiff and the other  
15 Clients were included in the definition of the class in *Peña*.

16           21.   The wage and hour claims in *Peña* overlapped with those alleged on behalf of  
17 HMCs in an action entitled, *In Re Wells Fargo Home Mortgage Overtime Pay Litigation*,  
18 (N.D. Cal. Case No. CV-06-01770-MHP), which had been filed on February 10, 2005. The  
19 plaintiffs in *In Re Wells Fargo* were represented by Attorney Kevin McNerney. In addition,  
20 the same wage and hour claims had been alleged in a series of mass individual lawsuits filed  
21 by Attorney Marc Primo and Initiative Legal Group (collectively "ILG"). Defendant  
22 Yablonovich and Attorney Primo were the founders of ILG, were partners in ILG for  
23 approximately seven years and continued to joint venture litigation together after Defendant  
24 Yablonovich left to establish the Law Office of Mark Yablonovich in 2009.

25           22.   The *Peña* action was filed by Attorney Defendants to pressure Wells Fargo into  
26 paying Attorney Defendants and ILG millions of dollars in exchange for settling the wage and  
27 hour claims of Clients. This was a common tactic utilized by Attorney Defendants. Although  
28 all of the HMCs were being represented on their wage and hour claims in the class litigation

1 filed by Attorney McInerney, the HMCs were solicited to authorize Attorney Defendants and  
2 ILG to prosecute their wage and hour claims in mass individual actions and the duplicative  
3 *Peña* class action. Attorney Defendants sought to use the combined threat and burden of  
4 overlapping individual and class litigation over the same wage and hour claims to extract  
5 millions of dollars from Wells Fargo.

6 23. The approach utilized by Attorney Defendants in the Wells Fargo litigation was  
7 not unique. Attorney Defendants and ILG had successfully solicited class members on  
8 previous occasions and then used the combination of individual and class actions to leverage  
9 settlements from defendants in other litigation.

10 24. As experienced class action lawyers, Attorney Defendants were fully aware of  
11 the conflict of interest and adequacy of representation challenges that might arise from their  
12 simultaneous representation of individual plaintiffs and class action plaintiffs on overlapping  
13 wage and hour claims. Consequently, in filing both individual and class action cases against  
14 defendants, Attorney Defendants elected to conceal their participation in all of the litigation  
15 by secretly joint venturing with ILG. Attorney Defendants and ILG utilized a tag team  
16 approach to the litigation alternating the representation of individual and class plaintiffs and  
17 dividing the proceeds of their joint ventures.

18 25. Paula Peña, the named plaintiff in the *Peña* action filed by Attorney  
19 Defendants, was one of the HMCs solicited by ILG. She was named as an individual plaintiff  
20 in two of the mass individual actions filed by ILG. Although Ms. Peña's wage and hour  
21 claims were pending in the individual litigation, Attorney Defendants also used Ms. Peña to  
22 increase their leverage through the filing of a class action against Wells Fargo on the same  
23 claims.

24 26. Attorney Defendants did not prosecute the *Peña* action. Nor were the mass  
25 individual action filed by ILG litigated.

26 27. On or about February 15, 2011, Attorney McInerney on behalf of the entire class  
27 of HMCs, Attorney Defendants with the competing *Peña* action, and ILG purportedly  
28 representing the approximately 600 clients successfully solicited, participated in a mediation

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1 concerning the claims alleged on behalf of the current and former HMCs. Attorney McInerny  
2 agreed to a \$19 million class action settlement on behalf of all of the HMCs. The parties  
3 agreed that this class settlement would be presented to the court for approval in *Lofton v.*  
4 *Wells Fargo Bank* (San Francisco Superior Court Case No.CGC-11-509502). The definition  
5 of the settlement class in *Lofton* included Ms. Peña, Plaintiff and Clients.

6 28. In addition to the overall class settlement, Attorney Defendants and ILG  
7 separately negotiated a \$6 million Supplemental Settlement on behalf of clients. Under the  
8 terms of this Supplemental Settlement, Attorney Defendants and ILG agreed to dismiss *Peña*  
9 and the 12 mass individual actions filed on behalf of Clients and trade the right of Clients to  
10 opt out of the *Lofton* class settlement in exchange for a payment of \$6 million. Attorney  
11 Defendants did not seek or obtain the consent of Clients before bargaining away their opt out  
12 rights, did not disclose the secret sale of their opt rights and did not even inform Clients of the  
13 Supplemental Settlement.

14 29. As the United States Supreme Court has repeatedly emphasized, the right of an  
15 absent class member to opt out of a class action settlement resolving claims for monetary  
16 damages is an essential component of due process. This fundamental right is individual in  
17 nature. It cannot be bargained away by a class representative or compromised by a court in  
18 the interest effectuating a settlement. An attorney cannot sell the right of a client to opt out of  
19 a class action settlement in exchange for a fee.

20 30. On or about April 27, 2011, the San Francisco Superior Court granted  
21 preliminary approval of the settlement negotiated by *Lofton* Plaintiff and ordered that notice  
22 of the settlement be provided to all class members including Clients. The class notice did not  
23 advise Clients of the existence or terms of the Supplemental Settlement negotiated for Clients  
24 by Attorney Defendants. Nor did Attorney Defendants take any steps to inform Clients of the  
25 existence or terms of the Supplemental Settlement. The Court set June 27, 2011 as the last  
26 day for class members to object to the settlement or opt out of the settlement class in *Lofton*.  
27 Attorney Defendants could not advise Clients of the potential benefits of opting out of the  
28 *Lofton* class because they had covertly sold the opt out rights of clients.

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1           31. Under the terms of the *Lofton* settlement, class members were required to  
2 submit claims forms to receive any compensation. Attorney Defendants and ILG repeatedly  
3 reminded Clients of the need to submit claims forms to participate in the *Lofton* settlement  
4 and urged Clients to do so. Attorney Defendants were fully aware that the *Lofton* settlement  
5 would fully resolve and extinguish the wage and hour claims raised on behalf of Clients and  
6 acted to ensure that Clients would not opt out of the *Lofton* settlement.

7           32. On June 22, 2011, ILG sent a letter via email to Wells Fargo purporting to  
8 memorialize the terms of the \$6 million Supplemental Settlement negotiated by Attorney  
9 Defendants and ILG. The letter identified ILG as the settling party. It asserted that “Wells  
10 Fargo agreed to a confidential settlement whereby Wells Fargo would pay Initiative Legal  
11 Group LLP \$6,000,000 (six million) in satisfaction of the firm’s fees, expenses and costs  
12 associated with all of the currently pending litigation that the firm has against Wells Fargo.”  
13 The letter went on to state that “[t]he payment is conditioned upon final approval of the class  
14 action settlement in *Lofton v. Wells Fargo Bank, N.A.*, San Francisco Superior Court case no.  
15 CGC-11-509502 and the dismissal thereof and the dismissal with prejudice” of the lawsuits  
16 filed by Attorney Defendants and ILG. The letter reminded Wells Fargo that the deadline to  
17 submit objections or opt out of the *Lofton* settlement was only five days away, asserted that  
18 ILG was “detrimentally relying” on the stated understanding of the settlement terms, and  
19 requested immediate notice if the letter did not reflect Wells Fargo’s understanding of those  
20 terms.

21           33. The June 22, 2011 letter enclosed a draft settlement agreement purporting to set  
22 forth the terms of a “confidential” settlement between ILG and Wells Fargo. Under the terms  
23 of this purported “confidential” settlement, Wells Fargo would pay ILG \$6 million in  
24 attorneys’ fees in exchange for the dismissal of the lawsuits filed on behalf of Clients and a  
25 release by ILG. It provided no compensation for Clients whose individual opt out rights were  
26 bargained away for the \$6 million. In other words, the agreement proposed to secretly  
27 convert the entire \$6 million Supplemental Settlement into an attorneys’ fees payment.

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1           34.    The draft settlement agreement contained a strict confidentiality provision  
2 structured to avoid any disclosure of the “confidential” settlement terms. This provision  
3 would have barred Wells Fargo, its attorneys or anyone else from disclosing “either publicly  
4 or privately, to any entity, person, party or court, the existence of this Agreement or any of its  
5 terms, unless otherwise ordered by a court of competent jurisdiction.” The expansive wording  
6 of this provision would have prevented any disclosure of the “confidential” settlement to the  
7 Clients who were the plaintiffs in the lawsuits filed by Attorney Defendants and ILG. As an  
8 enforcement mechanism, the draft settlement provided that if “either party or its attorneys  
9 violate the terms of [the confidentiality provision], then that party shall be liable to the other  
10 for the greater of its actual damages or liquidated damages of five hundred thousand dollar[s]  
11 (\$500,000).” Attorney Defendants and ILG did not inform Clients of the existence or terms  
12 of the draft settlement agreement much less seek or obtain their approval for the terms of the  
13 proposed “confidential” settlement.

14           35.    Wells Fargo declined to sign the “confidential” settlement agreement proposed  
15 by Attorney Defendants and ILG because it failed to allocate any of the Supplemental  
16 Settlement to Clients. In a June 22, 2011 email response to the June 22, 2011 letter, Wells  
17 Fargo confirmed in writing that under the terms of the actual Supplemental Settlement, Wells  
18 Fargo would pay \$6 million to ILG “and its 600+ plaintiffs-clients in the 13 actions for  
19 compensation, attorney fees, costs and expenses as part of the overall *Lofson* class action  
20 settlement.” Ms. Peña was one of “plaintiffs-clients” and the *Peña* action was one of “the 13  
21 actions” referred to in this email.

22           36.    Attorney Defendants did not convey the June 22, 2011 email from Wells Fargo  
23 to Clients or disclose to Clients the contents of the email in any manner. Instead, Attorney  
24 Defendants continued to conceal the existence of the Supplemental Settlement from Clients  
25 and, once again, attempted to persuade Wells Fargo to pay the entire \$6 million to Attorney  
26 Defendants as attorneys’ fees. They did so without informing Clients of their actions or  
27 obtaining Clients’ consent to convert the \$6 million Supplemental Settlement into a payment  
28 of attorneys’ fees.

1           37. In an email sent to Wells Fargo late on the night of June 22, 2011, ILG asserted  
2 that “[o]ur clients compensation from the Lofton settlement appears to be acceptable to my  
3 clients” because none had decided to opt out and pursue their claims individually and that  
4 Clients “find the compensation from the Lofton settlement sufficient in large part because  
5 Wells Fargo is separately paying our firm’s attorneys fees and costs and thus my clients need  
6 not do so.” This email went on to assure Wells Fargo that “[s]ince none of our firm’s clients  
7 are opting-out of the Lofton Settlement, the pending actions will be dismissed with prejudice  
8 releasing Wells Fargo of the alleged claims in those pending cases...”

9           38. These statements were made without disclosing the existence or terms of the  
10 Supplemental Settlement to Clients, without ascertaining the views of Clients on the efforts to  
11 convert the Supplemental Settlement into an attorneys’ fee payment, without seeking or  
12 obtaining the approval of Clients and after repeatedly urging Clients not to opt out of the  
13 *Lofton* settlement to pursue their own claims individually. After making these statements and  
14 ignoring Wells Fargo’s written confirmation that the Supplemental Settlement provided  
15 “compensation” to Clients, ILG again proposed that Wells Fargo agree to pay the entire \$6  
16 million as attorneys’ fees. Wells Fargo again declined to execute the draft “confidential”  
17 settlement proposed by Attorney Defendants.

18           39. Wells Fargo’s refusal to execute the draft settlement agreement frustrated the  
19 attempt to convert all of the Supplemental Settlement into attorneys’ fees. Attorney  
20 Defendants once again chose not to disclose the existence and terms of the Supplemental  
21 Settlement to Clients. Instead, Attorney Defendants and ILG participated in a fraudulent  
22 scheme to induce Clients to bless the allocation of most of the \$6 million Supplemental  
23 Settlement to Attorney Defendants in exchange for token payments of \$750 per Client.

24           40. In order to implement this fraudulent scheme, ILG sent form letters and  
25 “Confidential Individual Release and Acknowledgement” forms to Clients between January  
26 24, 2012 and January 30, 2012. The form letter contains a series of false and misleading  
27 statements. Most importantly, the letter did not disclose the actual terms of the Supplemental  
28 Settlement. Attorney Defendants fraudulently induced most Clients to execute the release

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1 form. After securing the "confidential" release forms from Clients, Attorney Defendants  
2 presented them to Wells Fargo as evidence that Clients had approved an allocation of the \$6  
3 million Supplemental Settlement providing for a payment of approximately \$5.5 million to  
4 Attorney Defendants and \$750 per Client.

5 41. Wells Fargo subsequently paid ILG approximately \$5.5 million as "attorneys'  
6 fees". Attorney Defendants had an agreement to divide these "fees" with ILG. In accordance  
7 with this agreement, ILG covertly paid a portion of the attorneys' fees received from Wells  
8 Fargo to Attorney Defendants.

9 42. As experienced class action attorneys, Attorney Defendants were fully aware  
10 that they had a legal obligation to disclose any attorneys' fees being paid for the dismissal of  
11 the *Peña* action and to obtain judicial approval of the fees payment. Nevertheless, Attorney  
12 Defendants concealed the existence and extent of their fee splitting agreement with ILG from  
13 both the courts and Clients.

14 43. Acting without the authorization of Clients, ILG dismissed the mass individual  
15 lawsuits it had filed on behalf of Clients. It dismissed the mass individual lawsuits for those  
16 Clients who returned the "Confidential" release forms with prejudice. The lawsuits of those  
17 who did not return the "Confidential" release forms were dismissed without prejudice.

18 44. The *Peña* action was dismissed contemporaneously with ILG's dismissal of the  
19 mass individual lawsuits it had filed. Attorney Defendants filed two dismissal forms in *Peña*.  
20 The request for dismissal form filed on behalf of Ms. Peña's individual claim states:

- 21 a. The individual action of Plaintiff Paula Peña is dismissed with prejudice;  
22 b. As a condition of this dismissal, the parties waive their rights to seek or  
23 recover any fees and costs incurred in this action; and  
24 c. This Request for Dismissal arises from and is based upon the Plaintiff's  
25 participation in and recovery for those claims made as part of the class action  
26 settlement in a related action entitled *Lofton v. Wells Fargo Home Mortgage*,  
San Francisco County Superior Court Case No. CGC-11-509502.

27 The last paragraph of the dismissal form repeats verbatim the language used in dismissing the  
28 other ILG lawsuits.



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(b) whether the Attorney Defendants breached their fiduciary duties to Clients;

(c) whether Attorney Defendants committed malpractice; and

(d) whether Attorney Defendants collected and unlawfully retain money belonging to Clients.

51. Plaintiff's claims are typical of the claims of the Class, which all arise from the same transactions and occurrences and are based on the same legal theories.

52. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is committed to vigorously litigating this matter and has no conflicts with the Class. Plaintiff has retained counsel experienced in handling class actions.

53. A class action is a superior method for the fair and efficient adjudication of this controversy. The interests of Class members in individually controlling the prosecution of separate claims against Attorney Defendants is small, and management of the Class claims in a single proceeding will avoid inconsistent judgments, ensure equal treatment of all individuals injured by Attorney Defendants, protect Attorney Defendants from multiple punitive damages awards, and result in a more efficient use of judicial resources than resolving these same issues in many individual cases.

**FIRST CAUSE OF ACTION**  
**Breach of Fiduciary Duty**  
**(Against All Defendants)**

54. Plaintiff realleges and incorporates by reference herein each of the allegations set forth above.

55. In undertaking to represent Clients on their claims against Wells Fargo, in filing the *Peña* action on behalf of Clients, and in holding themselves out as advocates for and representatives of Clients, Attorney Defendants assumed fiduciary obligations to Clients. These duties, embodied in the proposition that attorneys must put the clients' interests ahead of their own, included the duty of utmost candor and the duty of undivided loyalty.

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1           56. Attorney Defendants also owed fiduciary duties to Clients under California's  
2 Rules of Professional Conduct and the Business and Professions Code, including, but not  
3 limited to, the following:

4           (a) the duty not to charge Clients an illegal or unconscionable fee (Rule 4-  
5 200(A)); and

6           (b) the duty not to commit acts of deceit intended to deceive members of the  
7 public (Bus. & Prof. Code § 6128).

8           57. Clients reposed trust and confidence in Attorney Defendants to prosecute their  
9 claims vigorously and to protect Clients' interests, and Attorney Defendants accepted that  
10 trust and confidence.

11           58. Attorney Defendants breached their fiduciary duties to Clients through acts and  
12 practices detailed above.

13           59. As a direct and proximate result of Attorney Defendants' breaches of fiduciary  
14 duties, Clients have been damaged in an amount to be proven at trial.

15           60. Attorney Defendants committed the breaches set forth above knowingly,  
16 intentionally, and with the intent to profit at the expense of Clients. In engaging in the acts  
17 and practices and in making the representations and omissions alleged herein, Attorney  
18 Defendants acted with conscious disregard of Clients' rights.

19           61. Attorney Defendants acted maliciously, because their actions were designed  
20 and intended to cause economic injury to Clients.

21           62. Attorney Defendants acted fraudulently, because they knowingly and  
22 intentionally concealed material facts from Clients and knowingly and intentionally made  
23 factual misrepresentations to Clients.

24           63. Clients are entitled to an award of punitive damages for the sake of example  
25 and to punish Attorney Defendants.

26           WHEREFORE, Plaintiff prays for relief as set forth below.

27 //

28 //



1 Wells Fargo should be restored to Clients; and that Clients should recover the entire amount.  
2 Clients further contend that Attorney Defendants should be enjoined from dissipating any of  
3 the funds they acquired as purported attorneys fees from Wells Fargo.

4 72. Attorney Defendants dispute Clients' allegations and contend to the contrary.  
5 Declaratory Relief is necessary to resolve this controversy.

6 WHEREFORE, Plaintiff seeks a declaration as to the respective rights and obligations  
7 of the parties, and prays for relief as set forth below.

8 **FOURTH CAUSE OF ACTION**  
9 **(Violations of Business and Professions Code §17200, et seq.)**  
10 **(Against All Defendants)**

11 73. Plaintiff realleges and incorporates herein by reference each of the allegations  
12 set forth above.

13 74. Plaintiff brings this cause of action individually, and on behalf of Clients to  
14 challenge and to remedy the unfair business practices of Attorney Defendants. Business and  
15 Professions Code §17200, et seq., often referred to as the "Unfair Competition Law,"  
16 (hereinafter "the UCL") defines unfair competition to include any unlawful, unfair, or  
17 fraudulent business act or practice. The UCL provides that a court may order injunctive relief  
18 and restitution to affected individuals as remedies for any violations of the UCL.

19 75. Attorney Defendants have committed acts of unfair competition prescribed by  
20 the UCL, have aided and abetted the commission of acts of unfair competition prescribed by  
21 the UCL, and/or conspired to commit acts of unfair competition, prescribed by the UCL  
22 through the activities and conduct alleged herein.

23 76. The business acts and practices of Attorney Defendants as hereinabove alleged  
24 constitute unlawful business practices in that, for the reasons set forth above, said acts and  
25 practices violate Business and Professions Code § 6068(m) and § 6128, and constitute  
26 violations of the common law.

27 77. The business acts and practices of Attorney Defendants as hereinabove  
28 alleged, constitute unfair business practices in that said acts and practices offend public policy



1 and are substantially injurious to consumers. Said acts and practices have no utility that  
2 outweighs their substantial harm to consumers.

3 78. The business acts and practices of Attorney Defendants as hereinabove alleged,  
4 constitute fraudulent business practices in that said acts and practices are likely to deceive the  
5 public and affected consumers as to their legal rights and obligations, and by use of such  
6 deception, may preclude consumers from exercising legal rights to which they are entitled.

7 79. The unlawful, unfair, and fraudulent business acts and practices of Attorney  
8 Defendants described herein present a continuing threat to Plaintiff and the Class in that  
9 Attorney Defendants are currently engaging in such acts and practices, and will persist and  
10 continue to do so unless and until an injunction is issued by this Court.

11 80. As a direct and proximate result of the acts and practices described herein,  
12 Attorney Defendants have received and collected substantial monies or property from Plaintiff  
13 and the Class to which they are not entitled. Plaintiff has suffered injury in fact and has lost  
14 money or property as a result of the unlawful, unfair, and fraudulent acts and practices of  
15 Attorney Defendants challenged herein.

16 81. Pursuant to Business and Professions Code § 17203, Plaintiff seeks an order  
17 enjoining Attorney Defendants from engaging in such acts and practices as hereinabove  
18 alleged, and providing appropriate restitution to Clients.

19 82. In addition, pursuant to Code of Civil Procedure §1021.5, Plaintiff seeks  
20 recovery of attorneys' fees, costs, and expenses incurred in the filing and prosecution of this  
21 action.

22 WHEREFORE, Plaintiff prays for relief as set forth below.

23 **PRAYER FOR RELIEF**

24 Plaintiff seeks judgment in favor of himself and Clients for the following:

- 25 1. An order certifying the proposed Class under Code of Civil Procedure § 382  
26 and appointing Plaintiff and his counsel to represent the Class;
- 27 2. Compensatory damages according to proof;
- 28 3. Restitution in an amount to be determined at trial;

DEMAND FOR JURY TRIAL

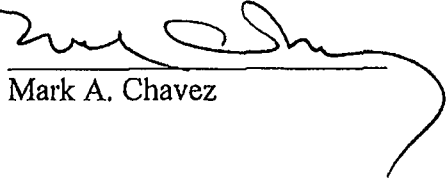
Plaintiff hereby demands a jury trial in this action on all causes of action permitted.

Dated: October 18, 2012

CHAVEZ & GERTLER LLP

ZITRIN LAW OFFICE

ANDERSON LAW

By:   
Mark A. Chavez

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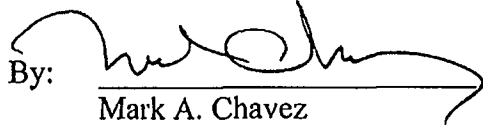
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- 4. Punitive damages pursuant to Civil Code § 3294;
- 5. Declaratory relief including an order or orders finding and declaring certain of the acts and practices challenged herein are unlawful, unfair, and fraudulent;
- 6. Preliminary and permanent injunctive relief;
- 7. Costs and reasonable attorney's fees pursuant to Code of Civil Procedure § 1021.5 or any other applicable provisions; and
- 8. Such other and further relief as the Court may deem just and proper.

Dated: October 18, 2012

CHAVEZ & GERTLER LLP  
ZITRIN LAW OFFICE  
ANDERSON LAW

By:   
Mark A. Chavez

06 / 25 / 2013



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
**CHAVEZ & GERTLER, LLP**  
 MARK A. CHAVEZ (BAR NO. 90858)  
 NANCE F. BECKER (BAR NO. 99292)  
 42 Miller Avenue, Mill Valley, CA 94941  
 TELEPHONE NO.: 415-381-5599 FAX NO.: 415-381-5572  
 ATTORNEY FOR (Name): Plaintiff and the Proposed

FOR COURT USE ONLY

**FILED**  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF LOS ANGELES

**FILED**  
 ALAMEDA COUNTY

**JUN 18 2013** **OCT 18 2012**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda  
 STREET ADDRESS: 1225 Fallon Street  
 MAILING ADDRESS:  
 CITY AND ZIP CODE: Oakland, CA 94612  
 BRANCH NAME:

John A. Clarke, Executive Officer/Clerk  
 BY *[Signature]* Rachel Duran  
 CLERK OF THE SUPERIOR COURT  
 BY *[Signature]* Deputy

CASE NAME: Kendra Cutting, et al. v. Mark Yablonovich, et al.

**CIVIL CASE COVER SHEET**  
 **Unlimited** (Amount demanded exceeds \$25,000)  
 **Limited** (Amount demanded is \$25,000 or less)

**Complex Case Designation**  
 **Counter**  **Joinder**  
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **RG 12652694**  
 JUDGE: **BC512429**  
 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:

<p><b>Auto Tort</b></p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b></p> <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) <p><b>Non-PI/PD/WD (Other) Tort</b></p> <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) <p><b>Employment</b></p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p><b>Contract</b></p> <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) <p><b>Real Property</b></p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p><b>Unlawful Detainer</b></p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p><b>Judicial Review</b></p> <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)	<p><b>Provisionally Complex Civil Litigation</b>      (Cal. Rules of Court, rules 3.400-3.403)</p> <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) <p><b>Enforcement of Judgment</b></p> <input type="checkbox"/> Enforcement of judgment (20) <p><b>Miscellaneous Civil Complaint</b></p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p><b>Miscellaneous Civil Petition</b></p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input checked="" 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):

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: October 18, 2012

Mark A. Chavez (TYPE OR PRINT NAME)

*[Signature]* (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**BY FAX**

**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

## 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