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FILED
OCT 24 2011
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

M(4)
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E-filing

13 Attorneys for Defendant
14 EQUATOR, LLC (f/k/a REOTrans, LLC)

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

JCS

17 ANTHONY DANIELS, individually, and
18 on behalf of other members of the general
19 public similarly situated,

CV Case No. 11

5182

20 Plaintiff,

NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §§ 1332(d);
1441 and 1453;

21 v.

DECLARATION OF CHRIS SAITTA;
EXHIBIT A

22 EQUATOR, LLC, a California Limited
23 Liability Company; REOTRANS, LLC, a
24 California Limited Liability Company,

25 Defendants.

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

3
4 PLEASE TAKE NOTICE that Defendant Equator, LLC, a California
5 Limited Liability Company ("EQUATOR"), (formerly known as REOTrans, LLC), a
6 California Limited Liability Company, hereby removes the action entitled Daniels, et al. v.
7 Equator, LLC, et al. (San Francisco Superior Court Case No. CGC-11-514628) to the
8 United States District Court for the Northern District of California on the grounds set forth
9 below:

10
11 I.

12 **STATEMENT OF JURISDICTION**

13 1. This Court's removal jurisdiction is invoked pursuant to
14 28 U.S.C. § 1441 and the Class Action Fairness Act ("CAFA") - 28 U.S.C. §§ 1332(d) and
15 1453. CAFA provides that a class action may be removed in accordance with 28 U.S.C. §
16 1446 if: (1) membership in the putative class is not less than One Hundred (100) members;
17 (2) any member of the proposed plaintiff class is a citizen of a state different from any
18 defendant; and (3) the aggregate amount in controversy exceeds Five Million Dollars
19 (\$5,000,000). See 28 U.S.C. §§ 1332(d), 1453(b). As set forth below, Defendant
20 EQUATOR satisfies the elements for removal under CAFA.

21
22 A. **Plaintiff Alleges A Class Size Of Not Less Than 100 Putative Members**

23 2. CAFA's first requirement – that putative class membership must be no
24 less than One Hundred (100) members – is clearly satisfied. See 28 U.S.C. §
25 1332(d)(5)(B).

1 3. Plaintiff alleges a class defined as "all residents of the United States
2 who purchased any of Defendants' certification programs." Complaint, ¶ 39. Plaintiff
3 further alleges that "the membership of the entire class is unknown to Plaintiff at this time;
4 however, the class is estimated to be greater than 100 individuals . . ." Complaint, ¶ 42 a.

5
6 4. While denying any liability as to any and all of Plaintiff's claims, at
7 least 12,694 certifications have been purchased in the United States in the last three (3)
8 years. (Declaration of Chris Saitta ["Saitta Decl."], ¶ 4.)

9
10 **B. Minimum Diversity Exists Between Defendants And The Putative Class**

11 5. CAFA's minimal diversity requirement is satisfied when at least one
12 plaintiff or putative class member is a citizen of a state in which none of the defendants are
13 citizens. See 28 U.S.C. § 1332(d). Minimum diversity is met here because at least one
14 putative class member is a citizen of a state in which none of the defendants are citizens.

15
16 6. EQUATOR is headquartered and organized in California. (Saitta
17 Decl., ¶ 2.) For diversity purposes, a limited liability company is also deemed to be a
18 citizen of the state of each of its members. Johnson v. Columbia Properties Anchorage,
19 LP, 437 F.3d 894, 899 (9th Cir. 2006). The two members of EQUATOR are Chris Saitta
20 and Mark McKinley. Mr. Saitta is a citizen of the State of Washington. (Saitta Decl., ¶ 2.)
21 Mr. McKinley is a resident of the State of California. (Saitta Decl., ¶ 2.) REOTrans, LLC
22 ("REOTrans") is not a distinct entity from EQUATOR but, rather, is merely the former
23 name of EQUATOR. (Saitta Decl., ¶ 3.)

24
25 7. Plaintiff defines the proposed class as "all residents of the United
26 States who purchased any of Defendants' certification programs." Complaint, ¶ 39.
27 Plaintiff is a citizen of California. Complaint, ¶ 13. Diversity exists if any certification
28 program was purchased by a citizen of a state other than Washington or California.

1 8. Plaintiff admits, under the heading "Class Member Complaints" that
2 at least one putative class member resides in Phoenix, Arizona. Complaint, ¶ 36. Thus,
3 for purposes of 28 U.S.C. 1332(d), minimum diversity is met.

4
5 9. Moreover, while denying any liability as to any and all of Plaintiff's
6 claims, EQUATOR represents that its certification programs were purchased by residents
7 in 46 states other than California and Washington. (Saitta Decl., ¶ 5.) The vast majority
8 of the certifications were sold outside of California. In fact, only 35.89% of the
9 certifications were sold in the State of California. (Id.)

10
11 **C. The Amount In Controversy Exceeds \$5,000,000, As Pled In Plaintiffs'**
12 **Complaint**

13 10. Jurisdiction under CAFA exists when the amount in controversy
14 exceeds \$5,000,000.00, exclusive of interest and costs. 28 U.S.C. § 1332(d)(6). To
15 determine the amount in controversy under CAFA the Court must aggregate the claims of
16 all class members. Id.

17
18 11. Without making an admission of liability or damages with respect to
19 any aspect of this case or to the proper legal test(s) applicable to Plaintiff's allegations,
20 EQUATOR represents that the amount placed in controversy by Plaintiff's claims exceeds
21 the jurisdictional minimum of this Court. Sanchez v. Monumental Life Ins. Co., 102 F.3d
22 398, 404 (9th Cir. 1996); Singer v. State Farm Mutual Auto. Ins. Co., 116 F.3d 373, 376
23 (9th Cir. 1997).

24
25 12. Where a plaintiff does not specify a particular amount of damages, a
26 removing defendant has the burden to show that the amount placed in controversy "more
27 likely than not" exceeds the jurisdictional minimum of the court. See Sanchez v.
28 Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir. 1996).

1 13. Defendants can establish the amount in controversy by the allegations
2 in the Complaint, or by setting forth facts in the notice of removal that demonstrate that the
3 amount placed in controversy by Plaintiff exceeds the jurisdictional minimum. In other
4 words, the District Court may consider whether it is facially apparent from the Complaint
5 that the jurisdictional amount is in controversy. Singer v. State Farm Mut. Auto Ins. Co.,
6 116 F.3d 373, 377 (9th Cir. 1997); Conrad Assoc. v. Hartford Accident & Indem. Co., 994
7 F. Supp. 1196, 1198 (N.D. Cal. 1998). In addition to the contents of the removal petition,
8 the Court considers “summary-judgment-type evidence relevant to the amount in
9 controversy at the time of removal,” such as affidavits or declarations. Valdez v. Allstate
10 Ins. Co., 372 F.3d 1115, 1117 (9th Cir. 2004); Singer v. State Farm Mut. Auto Ins. Co.,
11 116 F.3d 373, 377 (9th Cir. 1997).

12
13 14. Plaintiff, who claims to be representative of the class members, seeks
14 restitution and the disgorgement of all of Defendants' revenues received from its
15 certification programs. Complaint, Prayer at ¶ 4. Plaintiff alleges that he paid Four
16 Hundred and Ninety Nine Dollars (\$499.00) to EQUATOR for his certification.
17 (Complaint, ¶ 16.) Plaintiff alleges he would not have paid any of this amount for the
18 certification had he known what he alleges. (Id.)

19
20 15. While denying liability as to any and all of Plaintiff's claims or that
21 Plaintiff was damaged at all or in any particular amount, EQUATOR represents that at
22 least 12,694 certifications have been sold, with total revenues from the certification
23 programs exceeding Six Million Two Hundred Twenty Thousand Dollars (\$6,220,000.00)
24 since April 2009. (Saitta Decl., ¶ 4.)

25
26 16. Accordingly, because Plaintiff seeks restitution and the disgorgement
27 of all revenues Defendants obtained from the certification programs, the amount in
28 controversy clearly exceeds \$5,000,000.00, exclusive of interest and costs.

1 II.

2 **THE NOTICE OF REMOVAL IS PROCEDURALLY CORRECT**

3 A. **The Removal Venue Is Proper**

4 17. Pursuant to 28 U.S.C. Section 1446(a), EQUATOR files this Notice
5 of Removal in the U.S. District Court for the Northern District of California. This venue is
6 proper because the state court action is pending in the California Superior Court for the
7 County of San Francisco. However, EQUATOR contends that venue should be transferred
8 to the Central District of California because the Defendant and one of its members are
9 located in Los Angeles County, all books and records and most witnesses are located in
10 Los Angeles County, and because the terms and conditions between EQUATOR and its
11 customers requires venue to be in Los Angeles County.

12
13 B. **The Removal Is Timely**

14 18. Plaintiff filed this action on September 26, 2011 and served the
15 Summons and Complaint on Defendants on September 28, 2011.

16
17 19. Pursuant to 28 U.S.C. Section 1446(b), EQUATOR files this Notice
18 of Removal within thirty days of being served with the Summons and Complaint. See
19 Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 354 (1999).

20
21 C. **Consent By Defendant REOTrans, LLC, Is Not Required**

22 20. As discussed above at Paragraph 7, REOTrans, LLC does not exist.
23 REOTrans, LLC is merely the former name of defendant EQUATOR and there is no
24 existing company by the name REOTrans, LLC. (Saitta Decl., ¶ 3.)

1 **D. Status Of The Pleadings In State Court**

2 21. On September 26, 2011, Plaintiff filed his Complaint with the
3 Superior Court of the State of California for the County of San Francisco. The Complaint
4 alleges causes of action for: (1) Fraud and/or Intentional Deceit; (2) Violation of Unfair
5 Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*); and (3) Unjust Enrichment.
6 Attached hereto as Exhibit "A" is a true and correct copy of the Summons and Complaint
7 served on Equator. Defendants believe that these documents constitute all of the pleadings
8 and documents on file and served in the State Court Action to date.

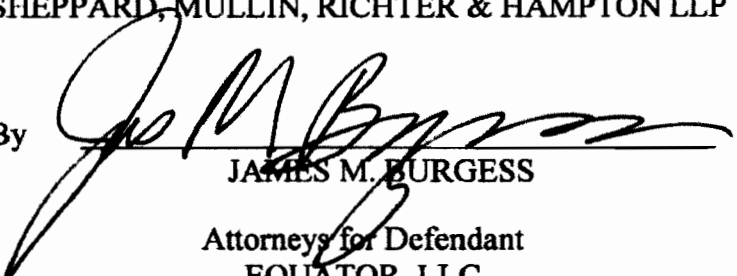
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CONCLUSION

For all of the forgoing reasons, Defendant respectfully requests that this
Court proceed with this matter as if the Complaint had been originally filed in the U.S.
District Court for the Northern District of California. A copy of this Notice of Removal is
being filed with the Los Angeles Superior Court and served upon counsel for Plaintiff.

Dated: October 24, 2011

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By 
JAMES M. BURGESS
Attorneys for Defendant
EQUATOR, LLC

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12 Telephone: (310) 228-3700

13 Attorneys for Defendant
14 EQUATOR, LLC (f/k/a REOTrans, LLC)

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 ANTHONY DANIELS, individually, and
18 on behalf of other members of the general
19 public similarly situated,

20 Plaintiff,

21 v.

22 EQUATOR, LLC, a California Limited
23 Liability Company; REOTRANS, LLC, a
24 California Limited Liability Company,

25 Defendants.

Case No.

DECLARATION OF CHRIS SAITTA IN
SUPPORT OF DEFENDANT EQUATOR
LLC'S NOTICE OF REMOVAL OF
CLASS ACTION PURSUANT TO 28
U.S.C. §§ 1332(d); 1441 and 1453

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I, CHRIS SAITTA, do hereby declare as follows:

1. I am the Chief Executive Officer of Equator, LLC, a California Limited Liability Company ("Equator"). I am also one of two members of Equator. As part of my job responsibilities, I am familiar with all aspects of Equator's business, including but not limited to the number of certification programs that have been purchased, the state in which the purchase was made, and the revenues generated by those programs. The facts stated in this Declaration are known to me based on my personal knowledge and, if asked to do so, I could and would testify under oath to the truth of such facts.

2. Equator is organized as a limited liability company and is registered with the California Secretary of State. Equator has its headquarters in Los Angeles, California. Equator has two members. I am one member. I am a resident of the State of Washington. The other member, Mark McKinley, resides in Los Angeles County, California.

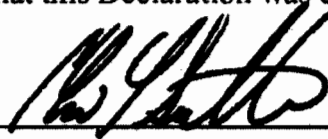
3. REOTrans, LLC was the previous name for Equator. REOTrans, LLC does not exist as a separate and distinct entity, and does not have any operations, books or records separate and apart from Equator. Rather, the name REOTrans, LLC was used by Equator from 2004 through 2009. For all intents and purposes, REOTrans, LLC is Equator.

4. According to Equator's records, since April 2009 until September 26, 2011, the date on which Plaintiff filed his Complaint, Equator had sold 12,694 certification programs in the United States. The total revenue derived from these certification programs exceeds \$6,220,000.

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5. The REO/Short Sale certification programs have been sold in at least 48 different states of the United States, as well as Puerto Rico and the District of Columbia. Certifications were purchased by residents of 46 states other than California or Washington. The vast majority of the certifications were sold outside of California. In fact, only 35.89% of the certifications were purchased in the State of California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct that this Declaration was executed on October 21, 2011, at Hollywood, Florida.



CHRIS SAITTA

**SUMMONS
(CITACION JUDICIAL)**

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

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

EQUATOR, LLC, a California Limited Liability Company;
REOTRANS, LLC, a California Limited Liability Company,

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

ANTHONY DANIELS, individually, and on behalf of other members of
the general public similarly situated.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

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

The name and address of the court is:
(El nombre y dirección de la corte es): **San Francisco County Superior Court**
Civic Center Courthouse
400 McAllister Street; San Francisco, CA 94102-4514

CASE NUMBER:
(Número del Caso):

CJC-11-514628

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Sue J. Kim, Initiative Legal Group, APC, 1800 Century Park E., 2nd Flr., CA 90067 (310)556-5637

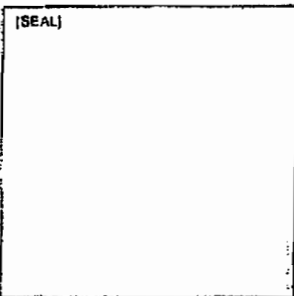
DATE: September 26, 2011
(Fecha)

CLERK OF THE COURT Clerk, by
(Secretario)

R. NATI

, Deputy
(Adjunto)

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



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **EQUATOR, LLC a California Limited Liability Company**
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Gene Williams (211390); David M. Medby (227401); Sue J. Kim (256392)
Initiative Legal Group APC
1800 Century Park East, Second Floor
Los Angeles, CA 90067
TELEPHONE NO.: (310) 556-5637 FAX NO.: (310) 861-9051
ATTORNEY FOR (Name): Plaintiff

FOR COURT USE ONLY
ENDORSED FILED
San Francisco County Superior Court
SEP 26 2011
CLERK OF THE COURT
BY: PARAM NATT
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister St.
MAILING ADDRESS: 400 McAllister St.
CITY AND ZIP CODE: San Francisco, CA 94102-4514
BRANCH NAME: Civic Center Courthouse

CASE NAME:
ANTHONY DANIELS v. EQUATOR, LLC, 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: CGC-11-514628
JUDGE:
DEPT:

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

FILED BY FAX
PURSUANT TO LOCAL RULES

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)	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)	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 PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	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 checked="" 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 checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input checked="" 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): Three

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: September 26, 2011
Sue J. Kim
(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.

FILED BY FAX
PURSUANT TO LOCAL RULES

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

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New York, New York 10004
Telephone: (212) 847-8315
Facsimile: (646) 520-3237

Attorneys for Plaintiff Anthony Daniels

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

ANTHONY DANIELS, individually, and
on behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

EQUATOR, LLC, a California Limited
Liability Company; REOTRANS, LLC, a
California Limited Liability Company,

Defendants.

ENDORSED
FILED
San Francisco County Superior Court

SEP 26 2011

CLERK OF THE COURT
BY: PARAM NATT
Deputy Clerk

CGC-11-514628
Case No:

CLASS ACTION COMPLAINT FOR:

- (1) Fraud and/or Intentional Deceit; and
- (2) Violation of Unfair Competition Law
(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)
- (3) Unjust Enrichment

Jury Trial Demanded

1 Plaintiff Anthony Daniels ("Plaintiff") brings this action against Defendants Equator,
2 LLC and REOTrans, LLC (collectively, "Defendants"), on behalf of himself and all others
3 similarly situated, and alleges on information and belief as follows:

4 NATURE OF THE ACTION

5 1. This is a class action brought by Plaintiff on behalf of a class of all persons in
6 the United States who paid for Short Sale¹ and Real Estate Owned (REO)² Certification
7 Programs sold by Defendants.

8 2. Defendants are California LLCs that own and operate Equator, LLC
9 ("Equator"), formerly known as REOTrans, a website (<https://www.equator.com>) that works
10 as a tool for processing real estate transactions, including short sales and REOs (real estate
11 owned).

12 3. Through Equator, all parties involved in default real estate transactions,
13 including lenders, asset managers, real estate agents, and homeowners, can log into an account
14 on the Equator website and are able to view and maintain an organized record of all
15 documentation and processing involved in such transactions.

16 4. Through its website, Equator also provides a database in which it offers real
17 estate agents leads for transactions such as short sales and REO's. Real estate agents may
18 sign up for a free account in Equator and be listed within this database.

19 5. In addition to this free account, Equator, for a premium, offers visitors to its

20 ¹ A "short sale" is a sale of real estate in which the proceeds from selling the property
21 will fall short of the balance of debts secured by liens against the property and the property
22 owner cannot afford to repay the liens full amounts, whereby the lien holders agree to release
23 their lien on the real estate and accept less than the amount owed on the debt. A short sale is
often used as an alternative to foreclosure, which mitigates additional fees and costs to both
the creditor and borrower.

24 ² "Real estate owned" or "REO" is a class of property owned by a lender typically a
25 bank, government agency, or government loan insurer, after an unsuccessful sale at a
26 foreclosure auction. A foreclosing beneficiary will typically set the opening bid at a
27 foreclosure auction for at least the outstanding loan amount. If there are no bidders that are
28 interested, then the beneficiary will legally repossess the property. This is commonly the case
when the amount owed on the home is higher than the current market value of this foreclosure
property, such as with a high loan-to-value mortgage following a real estate bubble. As soon
as the beneficiary repossesses the property it is listed on their books as REO and categorized
as an asset. After a repossession from which the property becomes classified as REO, the
beneficiary will go through the process of trying to sell the property on its own or obtain the
service of an REO Asset Manager.

1 Short Sale and Real Estate Owned (REO) Certification Programs.

2 6. In offering these certification programs, Defendants have made false,
3 deceptive, and misleading advertising statements, and material omissions concerning the
4 advantages that the Short Sale and Real Estate Owned (REO) Certification Programs allegedly
5 provide, including but not limited to misleading statements about the advantages of acquiring
6 business leads in the form of short sale and REO listings from lenders, servicers, homeowners,
7 and asset managers.

8 7. Specifically, through Equator's website, real estate agents are told that by
9 making the annual premium payment, passing the certification exams, and becoming certified
10 via Defendants' Short Sale and Real Estate Owned (REO) Certification Programs, agents can
11 obtain more short sale and REO listings.³ However, contrary to Defendants representations,
12 Defendants' certification programs do not provide agents with more listings. Indeed, contrary
13 to Defendants' representations concerning the benefits of its Short Sale and Real Estate
14 Owned (REO) Certification Programs that state, among other things, "Certified Agents
15 received a majority of the Listings."⁴ Class members in most, if not all, instances received no
16 short sale or REO listings, let alone any contact regarding these listings. Indeed, Plaintiff
17 Daniels has not received a single business lead to date.

18 8. Defendants' representations concerning the advantages of its certification
19 programs, including Defendants' failure to disclose to prospective class members that
20 Defendants' Short Sale and Real Estate Owned (REO) Certification Programs fail to produce
21 more listings, are deceptive and misleading and are intended to induce consumers to purchase
22 Defendants' certification programs. As a result of Defendants' deceptive and misleading
23 practices, Plaintiff and class members have been damaged.

24 JURISDICTION AND VENUE

25 9. This class action is brought pursuant to California Code of Civil Procedure
26 section 382. The restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the

27 ³ The term "listing" in the real estate industry refers to business leads, such as REO or
28 short business leads (i.e. REO or short sale listings).

⁴ <https://www.equator.com/home/index.cfm/solutions/real-estate-agents/>

1 Superior Court and will be established according to proof at trial. The amount in controversy
2 for each class representative, including claims for restitution and injunctive relief and pro rata
3 share of attorneys' fees, is less than seventy-five thousand dollars (\$75,000).

4 10. This Court has jurisdiction over this action pursuant to the California
5 Constitution, Article VI, section 10, which grants the Superior Court "original jurisdiction in
6 all causes except those given by statute to other courts." The statutes under which this action
7 is brought do not specify any other basis for jurisdiction.

8 11. This Court has jurisdiction over the Defendants because, upon information and
9 belief, Defendants are either citizens of California, have sufficient minimum contacts in
10 California, or otherwise intentionally avail themselves of the California market so as to render
11 the exercise of jurisdiction over them by the California courts consistent with traditional
12 notions of fair play and substantial justice.

13 12. Venue is proper in this Court because, on information and belief, Defendants
14 transact business in this county and the acts and omissions alleged herein took place in this
15 county.

16 THE PARTIES

17 Plaintiff

18 13. Plaintiff Anthony Daniels ("Plaintiff") is a resident of San Francisco County.
19 He has been a real estate agent since December 2004 with a concentration on REO (real estate
20 owned) properties.

21 14. In September 2010, Plaintiff initially signed up for Equator's free account, in
22 reliance on the representation that he would be listed in Equator's database of real estate
23 agents. Shortly thereafter, and within the same month, Plaintiff considered the representations
24 on Defendants' website (<http://www.equator.com>) before he purchased and obtained Equator
25 certification. Specifically, Plaintiff viewed and relied on the following:
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15. The above-excerpted banner advertisement appeared on the right side of the screen each time Plaintiff logged into his free Equator account. The language, "Get Certified For More Listings," with the Equator Platinum certification logo told visitors to Equator's website that platinum certification would produce "more" REO or short sale listings.

16. Shortly after signing up for Equator's free account, and within the same month of September 2010, after considering the representations on Equator's website, Plaintiff purchased Defendants' Platinum REO certification for \$499 by using his credit card through Equator's website. However, shortly after having purchased Defendants' Platinum REO certification, Plaintiff discovered that he had not received a single inquiry from a lender or asset manager let alone an REO or short sale listing via Equator. Had Plaintiff, like all class members, known that Defendant's certification programs do not produce more REO or short sale listings, he would not have purchased Defendant's certification program.

17. As a result of Defendants' deceptive, unfair and unlawful practices, Plaintiff,

1 like all class members, has been damaged by purchasing Defendants' certification programs.

2 **Defendants**

3 18. Defendants Equator, LLC and REOTrans, LLC (collectively, "Defendants"),
4 were and are, on information and belief, California LLCs engaged in sales throughout this
5 county, the State of California and the various states of the United States of America.
6 Defendants are headquartered in Los Angeles, California.

7 19. Plaintiff is informed and believes, and thereon alleges, that each and all of the
8 acts of misrepresentations and omissions alleged herein occurred and/or emanated from
9 Defendants' California headquarters.

10 **FACTS**

11 20. Defendants own and operate Equator, formerly known as REOTrans, a web-
12 based default servicing software platform (<https://www.equator.com>) for real estate
13 transactions, including, short sales and REO's (real estate owned).

14 21. Equator allows lenders, asset managers, sellers, and real estate agents to
15 facilitate communication and organize document collection between all of the parties involved
16 within a real estate transaction.

17 22. Major companies such as Bank of America, GMAC, and Wells Fargo use
18 Equator to process short sales.

19 23. Real estate agents may sign up for a free profile in Equator in which they will
20 be added to a real estate agent database, which is then searchable and viewable by lenders and
21 asset managers according to zip code. Free profiles are only viewable by one zip code. The
22 free profiles serve as an inducement to attract real estate agents who Defendants try to upsell
23 on purchasing Defendants' Real Estate Owned (REO) and Short Sale Certification Programs.

24 24. On or around June 2009, Defendants began offering their REO (real estate
25 owned) certification. The REO certification purports to educate real estate agents about the
26 REO process and how to use Equator to process REO's.

27 25. On or around March 17, 2010, Defendants began offering their short sale
28 certification. The short sale certification educates real estate agents on the short sale process

1 as well as how to use Equator to process short sales.

2 26. Defendants' short sale and REO certifications include three levels, silver, gold,
3 and platinum, with platinum being the highest level. The platinum certification costs \$499. If
4 an agent wishes to sign up for both the short sale and REO certifications, there is an additional
5 charge of \$199. After payment, an agent must complete online training programs and then
6 pass a test to receive certification.

7 27. Certified agents are then added to Equator's real estate agent database—a
8 database that is also composed of non-Equator certified agents. Upon a search for agents
9 within a specific zip code, certified agents are allegedly listed at the top of the zip code
10 listings with non-Equator certified agents listed underneath. Platinum certified agents are
11 listed above silver and gold certified agents. The certified status of agents is indicated on the
12 zip code listings, as well as on each agent's Equator profile.

13 28. According to Defendants' website, <https://www.equator.com>, another benefit of
14 certification includes the "ability to market experience using the Equator certification logo" on
15 marketing materials such as business cards, websites, and brochures.

16 29. Defendants' certification programs mislead potential consumers such as real
17 estate agents into believing that becoming certified will lead to "more listings" and provide a
18 business advantage over non-certified real estate agents in today's highly competitive real
19 estate market. Despite Defendants' awareness that their certifications provide no advantage
20 over the free Equator real estate agent accounts, Defendants continue to market, promote and
21 sell their certifications to unsuspecting real estate agents looking to obtain more business.
22 Defendants' misrepresentations appear on Defendants' webpage
23 (<https://www.equator.com/home/index.cfm/solutions/real-estate-agents/>), which is geared
24 towards recruiting real estate agents.

25 30. In addition to Defendants' misrepresentations suggesting an increase in
26 listings—"Get Certified For More Listings"—the following text appears at the top of the
27 webpage, under the heading, "EQUATOR IS THE BEST WAY TO GET REO AND
28 **SHORT SALE LISTINGS**":

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Currently 40% of all Real Estate sold nationwide is distressed (REO or Short Sale). Most of the nation's largest banks (4 of the top 5) and government entities use Equator to select Listing Agents and manage the sale of their Real Estate. Over 75,000 distressed Real Estate listings are assigned through Equator every month...if you're really serious about being successful, Get certified!"

31. The following language also appears on the aforementioned webpage (<https://www.equator.com/home/index.cfm/solutions/real-estate-agents/>):

Get Certified!

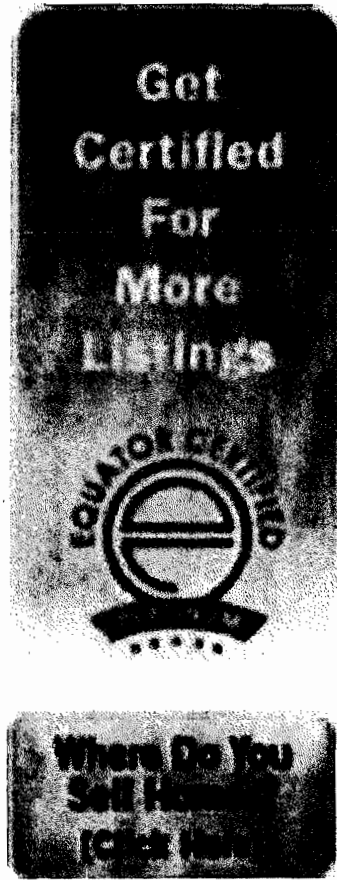
Certified Agents received a majority of the Listings
The secret is out many of the listings assigned through Equator are going to Agents who are Certified. Why? Because the Banks and Homeowners rely on Equator Certification to know which agents are educated and dedicated to selling distressed properties.

"...certification has added to our overall success."

- REO Now

32. As soon as a real estate agent is signed into their Equator account, the following banner advertisement appears on the right side of the screen:

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The language, "Get Certified For More Listings," with the Equator Platinum certification logo is clearly misleading as it unambiguously and plainly conveys that platinum certification will produce more REO or short sale listings. Defendants employ another deceitful advertising approach in their webpage geared specifically towards real estate agents of one of the nation's largest real estate companies, Re/Max. The webpage (<http://www.equator.com/remax/>), which is hosted on Defendants' website, can be viewed below:

Welcome to Equator, RE/MAX Associates!

Join the thousands of other Real Estate agents who GET MORE LISTINGS by being Equator Certified.

Equator, the default servicing industry's leading solution provider, and RE/MAX, the premier real estate brokerage are excited to announce their partnership! This partnership will provide RE/MAX Associates with a special discount on Equator's Agent Certification program.

With your Equator Certification you will enjoy these benefits:

- Enrollment in up to 14 ONLINE TRAINING Courses
- Show up at the TOP in LENDER SEARCHES.
- Show up at the TOP in BORROWER SEARCHES
- Market yourself with your Agent Certification Logo
- Receive FREE Account UPGRADES on your Profile: \$60 a year value
- Access to Exclusive Certified Agent Events

Certified Agents sell 33% of all properties on Equator!

Agent Certification gives you the knowledge and tools you need to quickly sell properties on Equator.

Agent Certification offers training for both REO and Short Sale properties.

Near the top of the webpage, Defendants prominently state, "Join the thousands of other Real Estate agents who GET MORE LISTINGS by being Equator Certified." By having "GET MORE LISTINGS" in all capital letters, Defendants put additional emphasis on the fact that being Equator-certified will produce increased REO and short sale listings.

33. Defendants had exclusive and superior knowledge about their certification programs and knew or should have known that they did not, in fact, result in more listings for Equator certified real estate agents.

34. As a result of Defendants' misrepresentations and failure to disclose material facts, including the fact that the certifications do not result in more listings, Plaintiff and Class Members purchased Defendant's certification programs. Had Plaintiff and Class Members known that Defendants certification programs would not have provided the additional listings they promised, they would not have purchased the said certification programs or would have paid less for them.

35. The reason for Defendants' concealment is clear; it is done to induce real estate agents to pay a premium for Defendants' certifications instead of maintaining a free account in Equator or having no account at all. As a result, Defendants maintain inflated revenues and an unfair competitive advantage.

Class Member Complaints

36. Plaintiff's experience is by no means unique or isolated. Countless real estate

1 agents, who have been misled by Defendants' representations and obtained Defendants'
2 certifications, have posted complaints on the internet. The following is a sample of
3 representative complaints appearing on various real estate agent online forums:

- 4 • PhoenixReo from Phoenix, Arizona—"I did not notice any increase in my
5 existing business and have not received any new business from new
6 contacts that resulted from this Certification. In my opinion, the
7 certification process was rather foolish and elementary..."
- 8 • PacificBreeze from California—"Platinum is a RIPOFF! I never got
9 anything from it and I got the cert...Save your time and money! Basic is all
10 you need (if you have clients that use the platform). I can't believe that
11 Equator expects us to actually pay this ridiculous fee "annually" to maintain
12 Platnum [sic] status!"
- 13 • Bratchny from San Francisco Bay, California—"I spent the money last year
14 to get Platinum certified and I agree that it is a total waste of money. If you
15 are considering doing this PLEASE do yourself a favor and just get \$500 in
16 small bills and set fire to it. It will waste less time and would be a more
17 productive use of the money"
- 18 • Bessie Blazejewski—"I got sucked into paying for a Platinum two years
19 ago, but never saw any increase of business."
- 20 • Arthur Monroe—"I paid once for Platinum membership and it was a waste
21 of money. Not even a single listing! Al [sic] these companies come up
22 with these certification programs, so they can milk us for more money.
23 Total waste of time, money and energy."
- 24 • Merry Cobb—"I have been on equator for a year now and so far I havent
25 [sic] received any business from them. Highly unlikely I will pay for it
26 again this coming up year."
- 27 • Justin Baker—"I became Equator Platinum and Certified in December.
28 NOTHING. \$600 waste of money. \$600 could have gone a LONG way if I

1 used it to prospect. VERY DISSAPOINTEED!”

- 2 • Nina Jihee Bonan—“I got called “Platinum Certified”. No benefit so far.
3 Don’t waste ur [sic] money.”
- 4 • Terry L. Osburn—“I took the GOLD training. Absolutely no benefit from
5 becoming certified.”

6 **CLASS ACTION ALLEGATIONS:**

7 37. Plaintiff brings this action on her own behalf, as well as on behalf of each and
8 all other persons similarly situated, and thus, seeks class certification under California Code of
9 Civil Procedure section 382.

10 38. All claims alleged herein arise under California law for which Plaintiff seeks
11 relief authorized by California law.

12 39. Plaintiff’s proposed class is defined as:

13 All residents of the United States who purchased any of
14 Defendants’ certification programs.

15 40. Plaintiff reserves the right to amend the Class definition if discovery and
16 further investigation reveals that the Class should be expanded or otherwise modified.

17 41. Plaintiff reserves the right to establish sub-classes, as appropriate.

18 42. There is a well-defined community of interest in the litigation and the class is
19 readily ascertainable:

20 (a) Numerosity: The members of the class (and each subclass, if any) are
21 so numerous that joinder of all members would be unfeasible and
22 impractical. The membership of the entire class is unknown to Plaintiff
23 at this time; however, the class is estimated to be greater than 100
24 individuals and the identity of such membership is readily ascertainable
25 by inspection of Defendants’ sales records.

26 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
27 protect the interests of each class member with whom he has a well
28 defined community of interest, and Plaintiff’s claims (or defenses, if

any) are typical of all class members' as demonstrated herein.

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2 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately,
3 protect the interests of each class member with whom she has a well-
4 defined community of interest and typicality of claims, as demonstrated
5 herein. Plaintiff's attorneys, the proposed class counsel, are versed in
6 the rules governing class action discovery, certification and settlement.
7 Plaintiff has incurred, and throughout the duration of this action, will
8 continue to incur costs and attorneys' fees that have been, are and will
9 be necessarily expended for the prosecution of this action for the
10 substantial benefit of each class member.

11 (d) Superiority: The nature of this action makes the use of class action
12 adjudication superior to other methods. A class action will achieve
13 economies of time, effort and expense as compared with separate
14 lawsuits, and will avoid inconsistent outcomes because the same issues
15 can be adjudicated in the same manner and at the same time for the
16 entire class.

17 (e) Public Policy Considerations: Companies often take advantage of
18 consumers via misrepresentations and/or material omissions regarding
19 their services or products. Misrepresentations regarding professional
20 certifications only result in lowering the integrity of the respective
21 fields. Consumers are often left feeling like they may not have a voice
22 or the ability to fight for their rights against such misrepresentations.
23 Class actions provide the class members with a mechanism for the
24 vindication of their rights.

25 43. There are common questions of law and fact as to the class members that
26 predominate over questions affecting only individual members, including but not limited to:

27 (a) Whether Defendants engaged in unlawful, unfair, misleading or
28 deceptive business acts or practices;

- 1 (b) Whether, by the misconduct set forth herein, Defendants have engaged
2 in unfair, deceptive, untrue, or misleading advertising of the Equator
3 certifications;
4 (c) Whether Defendants representations and statements about the Equator
5 certifications were false and/or misleading;
6 (d) Whether Defendants omitted material facts from its communications
7 and disclosures regarding the Equator certifications;
8 (e) Whether Defendants knew or should have known that its
9 communications and disclosures regarding the Equator certifications
10 would induce real estate agents to purchase its certifications; and
11 (f) Whether representations and failure to disclose material facts are likely
12 to mislead a reasonable consumer.

13 **FIRST CAUSE OF ACTION**

14 **Fraud and/or Intentional Deceit**

15 44. Plaintiff hereby incorporates by reference the allegations contained in the
16 preceding paragraphs of this Complaint.

17 45. Plaintiff brings this cause of action on behalf of himself and the members of the
18 Class.

19 46. Defendants have made misrepresentations, including representations that
20 Defendants' Equator certifications would get real estate agents more short sale and REO
21 listings.

22 47. Defendants knew or should have known that Equator certifications would not
23 produce more REO or short sale listings for Equator certified real estate agents. Defendants
24 omitted to disclose this fact to Plaintiff and Class Members. Had Plaintiff and other Class
25 Members known that Defendants' certifications would not produce more listings, they would
26 not have purchased Defendants' certifications.

27 48. Defendants made the misrepresentations stated above with knowledge of the
28 effect of concealing these material facts. By concealing material information about Equator

1 certifications, Defendants intended to induce Plaintiff and Class Members into purchasing
2 Equator certifications. Indeed, Plaintiff and Class Members justifiably relied on the
3 representations and material omissions that were made on Defendants' website.

4 49. Defendants acted with malice, oppression and/or fraud.

5 50. As a direct and proximate result of Defendants' misrepresentations and material
6 omissions, Plaintiff and each Class Member have been damaged in an amount according to
7 proof at trial.

8 **SECOND CAUSE OF ACTION**

9 **Violation of Unfair Business Practices Act**

10 **(California Business & Professions Code §§ 17200 *et seq.*)**

11 51. Plaintiff hereby incorporates by reference the allegations contained in the
12 preceding paragraphs of this Complaint.

13 52. Plaintiff brings this cause of action on behalf of himself and the members of the
14 Class.

15 53. California Business and Professions Code § 17200 prohibits "any unlawful,
16 unfair or fraudulent business act or practice." For the reasons described above Defendants
17 have engaged in unlawful, unfair and/or fraudulent business acts or practices in violation of
18 California Business and Professions Code §17200.

19 54. Defendants' misrepresentations and omission of material facts, as set forth
20 herein, constitute an unlawful practice because of California Business and Professions Code
21 §§ 17200 *et seq.*, and the common law.

22 55. Defendants' misrepresentations and omission of material facts, as set forth
23 herein, also constitutes "unfair" business acts and practices within the meaning of California
24 Business and Professions Code §§ 17200 *et seq.*, in that their conduct was injurious to
25 consumers, offended public policy, and was unethical and unscrupulous. Plaintiff also asserts
26 a violation of public policy by withholding material facts from consumers. Defendants'
27 violation of consumer protection and unfair competition laws in California and other states
28 resulted in harm to consumers.

1 has been unjustly enriched.

2 65. Through deliberate misrepresentations or omissions in connection with the
3 marketing and sales of Equator certifications, Defendants have reaped benefits which resulted
4 in their wrongful receipt of profits. Accordingly, Defendant will be unjustly enriched unless
5 ordered to disgorge those profits for the benefit of Plaintiff and the Class.

6 **PRAYER FOR RELIEF**

7 Plaintiff, and on behalf of all others similarly situated, requests the Court enter
8 judgment against Defendant, as follows:

- 9 1. Certifying the Class as requested herein;
- 10 2. Ordering that Defendants are financially responsible for notifying all Class
11 Members of the alleged misrepresentation discussed herein;
- 12 3. Awarding Plaintiff and the proposed Class Members compensatory damages in
13 an amount according to proof at trial;
- 14 4. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and
15 the proposed Class Members;
- 16 5. Awarding declaratory and injunctive relief as permitted by law or equity,
17 including: enjoining Defendants from continuing the unlawful practices as set forth herein,
18 and directing Defendants to identify, with Court supervision, victims of its conduct and pay
19 them restitution and disgorgement of all monies acquired by Defendants by means of any act
20 or practice declared by this Court to be wrongful;
- 21 6. Awarding Plaintiff and the Class punitive damages;
- 22 7. Ordering Defendants to engage in corrective advertising;
- 23 8. Awarding interest on the monies wrongfully obtained from the date of
24 collection through the date of entry of judgment in this action;
- 25 9. An award of attorneys' fees and costs pursuant to California Code of Civil
26 Procedure Section 1021.5, the common fund theory, or any other applicable statute, theory, or
27 contract; and
- 28 10. For such other and further relief as the Court deems just and proper.

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Dated: September 26, 2011

Respectfully submitted,

Initiative Legal Group APC

By: 

Gene Williams
David M. Medby
Sue J. Kim
Initiative Legal Group APC
1800 Century Park East, 2nd Floor
Los Angeles, California 90067

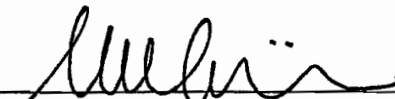
1 **DEMAND FOR JURY TRIAL**

2 Plaintiff requests a trial by jury on all issues so triable.

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4 Dated: September 26, 2011

Respectfully submitted,

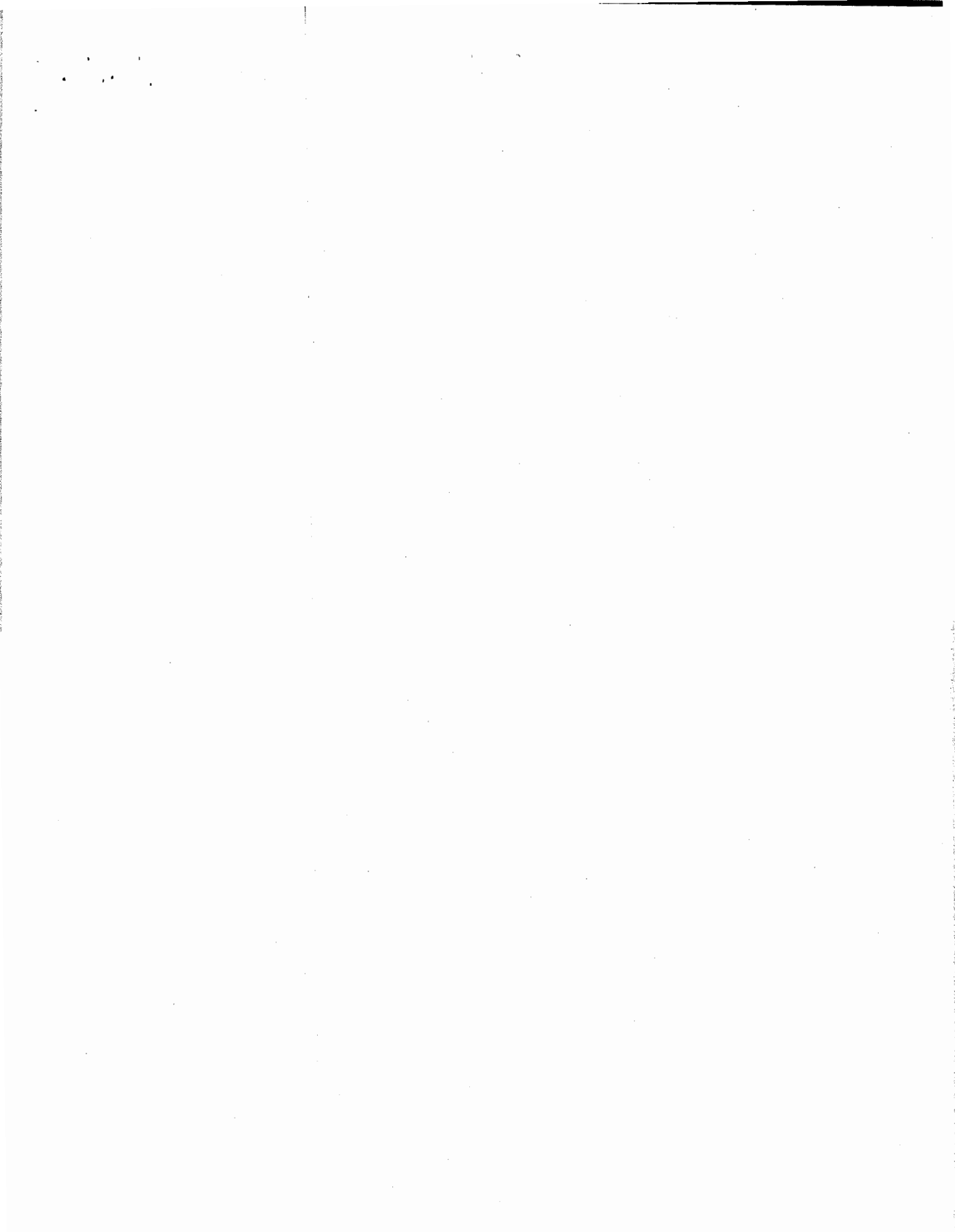
5 Initiative Legal Group APC

6
7 By: 

8 Gene Williams
9 David M. Medby
10 Sue J. Kim
11 Initiative Legal Group APC
12 1800 Century Park East, 2nd Floor
13 Los Angeles, California 90067

14 Attorneys for Plaintiff Anthony Daniels

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INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067



NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: FEB-24-2012

TIME: 9:00AM

**PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges

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FILED
San Francisco County Superior Court

OCT 23 2007

GORDON PARK-LI, Clerk

BY: _____ Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 304

In re:

COMPLEX LITIGATION

)
)
) **AMENDED GENERAL ORDER RE:
) PROCEDURE FOR APPROVAL OF
) COMPLEX LITIGATION DESIGNATION**

)
)
)
)
) The Honorable Richard A. Kramer

This Order shall apply to any case designated as a Complex Case on the Civil Case Cover Sheet (Judicial Council Form CM-010, Rule 3.220, Cal. Rules of Court) filed in San Francisco Superior Court. As to all such cases:

1. The fee(s) required by California Government Code section 70616 shall be paid upon filing such designation.
2. No case shall be assigned to the Complex Litigation Department until an Application For Approval of Complex Litigation Designation has been made in accordance with this Order, and the Court has ordered the case so assigned.

1 3. An Application for Approval of Complex Designation should be made as early in the case
2 as is feasible and must set forth with specificity the reasons that the case should be assigned to the
3 Complex Litigation Department in accordance with the factors set forth in Rule 3.400 *et seq.*,
4 California Rules of Court. A copy of such Application, together with a copy of the operative
5 Complaint and of the Civil Case Cover Sheet, shall be delivered to the clerk of Department 304
6 promptly upon filing. Copies of the Application shall be served on all other parties who have been
7 served with the Complaint or have appeared in the case.

8 4. A Complex Case Designation which does not comply with this Order may be deemed
9 denied without further order..

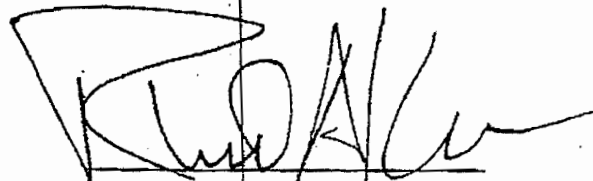
10 5. Until such time as the Court issues an order assigning the case to the Complex Litigation
11 Department, it will remain in its otherwise assigned case management plan and shall be subject to all
12 applicable case management rules and procedures. *See* Rule 3 – Civil Case Management, San
13 Francisco Superior Court Local Rules of Court.

14 6. Upon the denial of Complex Case Designation, either under paragraph 4 hereof or by
15 specific court order, and no sooner than 60 days after the date of filing the Civil Case Cover Sheet,
16 the Clerk of the Court shall, upon request, refund any fees paid pursuant to California Government
17 Code section 70616(a) or (b). *See* Cal. Gov. Code § 70616(d).

18 7. This Order does not modify the provisions of Rule 3.403(b), California Rules of Court.

19 IT IS SO ORDERED.

20 Dated: October 23, 2007

21
22 

23 The Honorable Richard A. Kramer
24

MEDIATION SERVICES

What users are saying . . .

"We had an excellent experience and, after 8 1/2 hours of mediation, [the BASF mediator] settled a very difficult case involving claims against four clients of ours by a wealthy investor who claimed inadequate disclosure was made."

Robert Charles Friese, Esq.
Shartsis Friese LLP

"The BASF Mediation Services is the best deal in town and the mediator was the best I have ever experienced."

Vernon Bradley, Esq.
Bradley Law Offices

"Much thanks to the mediator and The Bar Association of San Francisco. The mediator was extraordinary; he went above and beyond the call of duty, and his knowledge of real property issues greatly assisted the parties."

Robert P. Travis, Esq.
Travis and Pon

"BASF staff was very helpful – stayed on the task and kept after a hard to reach party. The mediator was great!"

Mark Abelson, Esq.
Campagnoli, Abelson
& Campagnoli

"The [BASF] mediator was excellent! He was effective with some strong, forceful personalities."

Denise A. Leadbetter, Esq.
Zacks, Utrecht & Leadbetter

PROCEDURES, PODCASTS, FORMS,
MEDIATOR BIOGRAPHIES AND
PHOTOGRAPHS:

www.sfbar.org/mediation
adrsfbar.org or 415-982-1600

Business
Civil Rights
Commercial
Construction
Contracts
Disability
Discrimination
Education
Employment/Workplace
Environmental
Family
Family-Certified Specialists
Fee Disputes
Financial
Government
Insurance
Intellectual Property
Intra-Organizational
Labor
Landlord/Tenant
Land Use
LGBT Issues
Malpractice: Legal-Medical-Professional
Partnership Dissolutions
Personal Injury
Probate/Trust
Products Liability
Real Estate
Securities
Taxation
Uninsured Motorist
Women's Issues
And more...

WHAT IS BASF'S MEDIATION SERVICE?

Mediation Services was established in 2005 by The Bar Association of San Francisco (BASF) with extensive input from experienced mediators, litigators and judges. Our mediation service can assist with almost any type of dispute, from simple contract disputes to complex commercial matters.

WHO ARE THE MEDIATORS?

They are established mediators who have private mediation practices and have met our rigorous training and experience requirements. By going through BASF, you receive the services of these highly qualified mediators at a great value.

HOW MUCH DOES THE SERVICE COST?

A \$250 per party administrative fee is paid to BASF. This fee covers the first hour of mediator preparation time and the first two hours of session time, but your mediation is not limited to three hours. Time beyond these three hours is paid at the mediator's normal hourly rate. To qualify for the pro-bono hours from our professional mediators, parties must file the Consent to Mediate form with BASF.

HOW IS THE MEDIATOR CHOSEN?

You may request a specific mediator from our website (www.sfbbar.org/mediation) and indicate your choice on the BASF Consent to Mediate form, or you may indicate on the form that you would like BASF to assist with the selection.

WHY DO THE MEDIATORS GIVE FREE HOURS; IS THE SERVICE ONLY FOR "SMALL" MATTERS?

The mediators are professionals who have agreed to provide the free time as a service to BASF, allowing us to offer a unique mediation panel of high quality and value. Our mediators are available for any size case; we've handled everything from simple property disputes to complex business matters.

WHY SHOULD I GO THROUGH BASF, CAN'T I JUST CALL THE MEDIATOR DIRECTLY?

The BASF mediators are available privately but have also agreed to serve on our panel and provide three free hours as a service to BASF. If you go directly to one of our mediators, you do not qualify for the pro bono hours. Once you have filed with us, you will work directly with the mediator.

HOW LONG IS THE MEDIATION SESSION?

The time spent in mediation will vary depending on your dispute. The mediators are dedicated to reaching a settlement, whether you need a few hours or several days.

WHO CAN USE THE SERVICE?

The BASF mediators can be utilized by anyone and is NOT limited to San Francisco residents or issues. Also, the service may be used before a court action is filed or at any time during court action.

OUR CASE IS FILED IN COURT; HOW DO WE USE BASF'S MEDIATION SERVICE?

When you file the San Francisco court's stipulation to ADR, simply check the box indicating your choice as Mediation Services of BASF. Then complete BASF's Consent to Mediate form found on our website and file it with us, or call us for the form. (If the matter was filed in a different county, please check with that court for the appropriate process.)

WE ARE ON A DEADLINE; HOW QUICKLY CAN WE MEDIATE?

Once all parties have filed the BASF Consent to Mediate form and paid the administrative fees, BASF can normally have you in touch with the mediator within a day or two. If you have a deadline, staff will give the matter top priority.

WHAT TYPES OF DISPUTES CAN I MEDIATE?

BASF mediators are trained in dozens of areas of disputes. If you don't see the area you need in our 30+ panels found on our website and this brochure just contact us; it is very likely we can match your need with one of our panelists.

MORE INFORMATION

Our website provides photographs, short biographic and hourly rates of our mediators. You can search by name or by area of law. For personal assistance, please call 415-982-1600.

Alternative Dispute Resolution (ADR) Program Information Package

Alternatives to Trial

**There are other ways to
resolve a civil dispute.**

The plaintiff must serve a copy of the ADR information package
on each defendant along with the complaint. (CRC 3.221(c))



**Superior Court of California
County of San Francisco**

Introduction

Did you know that most civil lawsuits settle without a trial?

And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?

These alternatives to a lawsuit are known as alternative dispute resolutions (ADR). The most common forms of ADR are mediation, arbitration and case evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities through dispute resolution programs and private neutrals.

Advantages of ADR

ADR can have a number of advantages over a lawsuit.

- ***ADR can save time.* A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.**
- ***ADR can save money.* Court costs, attorneys fees, and expert fees can be saved.**
- ***ADR can be cooperative.* This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.**
- ***ADR can reduce stress.* There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.**
- ***ADR encourages participation.* The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.**
- ***ADR is flexible.* The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.**
- ***ADR can be more satisfying.* For all the above reasons, many people have reported a high degree of satisfaction with ADR.**

Because of these advantages, many parties choose ADR to resolve a dispute, instead of filing a lawsuit. Even when a lawsuit has been filed, the court can refer the dispute to a neutral before the parties' position harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

Disadvantages of ADR

ADR may not be suitable for every dispute.

- If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.
- There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.
- The neutral may charge a fee for his or her services.
- If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.
- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

ALTERNATIVE DISPUTE RESOLUTION PROGRAMS Of the San Francisco Superior Court

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to a mandatory settlement conference or trial."
(Superior Court Local Rule 4)

This guide is designed to assist attorneys, their clients and self-represented litigants in complying with San Francisco Superior Court's alternative dispute resolution ("ADR") policy. Attorneys are encouraged to share this guide with clients. By making informed choices about dispute resolution alternatives, attorneys, their clients and self-represented litigants may achieve a more satisfying resolution of civil disputes.

The San Francisco Superior Court currently offers three ADR programs for general civil matters; each program is described below:

- 1) Judicial Arbitration
- 2) Mediation
- 3) The Early Settlement Program (ESP) in conjunction with the San Francisco Bar Association.

JUDICIAL ARBITRATION

Description

In arbitration, a neutral "arbitrator" presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case. When the Court orders a case to arbitration it is called judicial arbitration. The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.

Although not currently a part of the Court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties

voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

Operation

Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the Court's Arbitration Panel. Most cases ordered to arbitration are also ordered to a pre-arbitration settlement conference. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a court trial within 30 days after the arbitrator's award has been filed.

Cost

There is no cost to the parties for judicial arbitration or for the pre-arbitration settlement conference.

MEDIATION

Description

Mediation is a voluntary, flexible, and confidential process in which a neutral third party "mediator" facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of the dispute after exploring the significant interests, needs, and priorities of the parties in light of relevant evidence and the law.

Although there are different styles and approaches to mediation, most mediations begin with presentations of each side's view of the case. The mediator's role is to assist the parties in communicating with each other, expressing their interests, understanding the interests of opposing parties, recognizing areas of agreement and generating options for resolution. Through questions, the mediator aids each party in assessing the strengths and weaknesses of their position.

A mediator does not propose a judgment or provide an evaluation of the merits and value of the case. Many attorneys and litigants find that mediation's emphasis on cooperative dispute resolution produces more satisfactory and enduring resolutions. Mediation's non-adversarial approach is particularly effective in disputes in which the parties have a continuing relationship, where there are multiple parties, where equitable relief is sought, or where strong personal feelings exist.

Operation

San Francisco Superior Court Local Court Rule 4 **provides three different voluntary mediation programs** for civil disputes. An appropriate program is available for all civil cases, regardless of the type of action or type of relief sought.

To help litigants and attorneys identify qualified mediators, the Superior Court maintains a list of mediation providers whose training and experience have been reviewed and approved by the Court. The list of court approved mediation providers can be found at www.sfsuperiorcourt.org. Litigants are not limited to mediators on the court list and may select any mediator agreed upon by all parties. A mediation provider need not be an attorney.

Local Rule 4.2 D allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate within 240 days from the date the complaint is filed. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

Private Mediation

The Private Mediation program accommodates cases that wish to participate in private mediation to fulfill the court's alternative dispute resolution requirement. The parties select a mediator, panel of mediators or mediation program of their choice to conduct the mediation. The cost of mediation is borne by the parties equally unless the parties agree otherwise.

Parties in civil cases that have not been ordered to arbitration may consent to private mediation at any point before trial. Parties willing to submit a matter to private mediation should indicate this preference on the Stipulation to Alternative Dispute Resolution form or the Case Management Statement (CM-110). Both forms are attached to this packet.

Mediation Services of the Bar Association of San Francisco

The Mediation Services is a coordinated effort of the San Francisco Superior Court and The Bar Association of San Francisco (BASF) in which a court approved mediator provides three hours of mediation at no charge to the parties. It is designed to afford civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint, in an effort to resolve the matter before substantial funds are expended on the litigation process. Although the goal of the program is to provide the service at the outset of the litigation, the program may be utilized at anytime throughout the litigation process.

The mediators participating in the program have been pre-approved by BASF pursuant to strict educational and experience requirements.

After the filing of the signed Stipulation to Alternative Dispute Resolution form included in this ADR package the parties will be contacted by BASF. Upon payment of the \$250 per party administration fee, parties select a specific mediator from the list of approved mediation providers or BASF will help them select an appropriate mediator for the matter. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waiver of the administrative fee based on financial hardship is available.

A copy of the Mediation Services rules can be found on the BASF website at www.sfbar.org/mediation or you may call the BASF at 415-982-1600.

Judicial Mediation

The Judicial Mediation program is designed to provide early mediation of complex cases by volunteer judges of the San Francisco Superior Court. Cases considered for the program include construction defect, employment discrimination, professional malpractice, insurance coverage, toxic torts and industrial accidents.

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court's Alternative Dispute Resolution Coordinator will coordinate assignment of cases that qualify for the program.

Cost

Generally, the cost of Private Mediation ranges from \$100 per hour to \$800 per hour and is shared equally by the parties. Many mediators are willing to adjust their fees depending upon the income and resources of the parties. Any party who meets certain eligibility requirements may ask the court to appoint a mediator to serve at no cost to the parties.

The Mediation Services of the Bar Association of San Francisco provides three hours of mediation time at no cost with a \$250 per party administrative fee.

There is no charge for participation in the Judicial Mediation program.

EARLY SETTLEMENT PROGRAM

Description

The Bar Association of San Francisco, in cooperation with the Court, offers an Early Settlement Program ("ESP") as part of the Court's settlement conference calendar. The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of the dispute. The two-member volunteer attorney panel reflects a balance between plaintiff and defense attorneys with at least 10 years of trial experience.

As in mediation, there is no set format for the settlement conference. A conference typically begins with a brief meeting with all parties and counsel, in which each is given an opportunity to make an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of the case. The Early Settlement Conference is considered a "quasi-judicial" proceeding and, therefore, is not entitled to the statutory confidentiality protections afforded to mediation.

Operation

Civil cases enter the ESP either voluntarily or through assignment by the Court. Parties who wish to choose the early settlement process should indicate this preference on the Case Management Statement (CM-110).

If the Court assigns a matter to the ESP, parties may consult the ESP program materials accompanying the "Notice of the Early Settlement Conference" for information regarding removal from the program.

Participants are notified of their ESP conference date approximately 4 months prior to trial. The settlement conference is typically held 2 to 3 months prior to the trial date. The Bar Association's ESP Coordinator informs the participants of names of the panel members and location of the settlement conference approximately 2 weeks prior to the conference date.

Local Rule 4.3 sets out the requirements of the ESP. All parties to a case assigned to the ESP are required to submit a settlement conference statement prior to the conference. All parties, attorneys who will try the case, and insurance representatives with settlement authority are required to attend the settlement conference. If settlement is not reached through the conference, the case proceeds to trial as scheduled.

Cost

All parties must submit a \$250 generally non-refundable administrative fee to the Bar Association of San Francisco. Parties who meet certain eligibility requirements may request a fee waiver. For more information, please contact the ESP Coordinator at (415) 782-9000 ext. 8717.

For further information about San Francisco Superior Court ADR programs or dispute resolution alternatives, please contact:

Superior Court Alternative Dispute Resolution,
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

Or, visit the Superior Court Website at www.sfsuperiorcourt.org

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

400 McAllister Street, San Francisco, CA 94102-4514

Case No. _____

v. Plaintiff

**STIPULATION TO ALTERNATIVE
DISPUTE RESOLUTION**

Defendant

DEPARTMENT 610

The parties hereby stipulate that this action shall be submitted to the following alternative dispute resolution process:

- | | | |
|---|---|---|
| <input type="checkbox"/> Private Mediation | <input type="checkbox"/> Mediation Services of BASF | <input type="checkbox"/> Judicial Mediation |
| <input type="checkbox"/> Binding arbitration | | Judge _____ |
| <input type="checkbox"/> Non-binding judicial arbitration | | Judge _____ |
| <input type="checkbox"/> BASF Early Settlement Program | | |
| <input type="checkbox"/> Other ADR process (describe) _____ | | |

Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating Name of Party or Attorney Executing Stipulation Signature of Party or Attorney
 Plaintiff Defendant Cross-defendant Dated: _____

Name of Party Stipulating Name of Party or Attorney Executing Stipulation Signature of Party or Attorney
 Plaintiff Defendant Cross-defendant Dated: _____

Name of Party Stipulating Name of Party or Attorney Executing Stipulation Signature of Party or Attorney
 Plaintiff Defendant Cross-defendant Dated: _____

Additional signature(s) attached

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
CASE MANAGEMENT STATEMENT (Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)	CASE NUMBER: _____
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court (if different from the address above): _____ <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): _____	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. This statement is submitted by party (name):
 - b. This statement is submitted jointly by parties (names):

2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date):
 - b. The cross-complaint, if any, was filed on (date):

3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. The following parties named in the complaint or cross-complaint
 - (1) have not been served (specify names and explain why not):
 - (2) have been served but have not appeared and have not been dismissed (specify names):
 - (3) have had a default entered against them (specify names):
 - c. The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):

4. **Description of case**
 - a. Type of case in complaint cross-complaint (Describe, including causes of action):

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
--	--------------

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**

The party or parties request a jury trial a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

- a. The trial has been set for *(date)*:
- b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:
- c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

- a. days *(specify number)*:
- b. hours *(short causes) (specify)*:

8. **Trial representation *(to be answered for each party)***

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

- a. Attorney:
- b. Firm:
- c. Address:
- d. Telephone number:
- e. E-mail address:
- f. Fax number:
- g. Party represented:

Additional representation is described in Attachment 8.

9. **Preference**

This case is entitled to preference *(specify code section)*:

10. **Alternative dispute resolution (ADR)**

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

- (1) For parties represented by counsel: Counsel has has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.
- (2) For self-represented parties: Party has has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation *(if available)*.**

- (1) This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.
- (2) Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- (3) This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
--	--------------

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete mediation by (<i>date</i>): <input type="checkbox"/> Mediation completed on (<i>date</i>):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete settlement conference by (<i>date</i>): <input type="checkbox"/> Settlement conference completed on (<i>date</i>):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete neutral evaluation by (<i>date</i>): <input type="checkbox"/> Neutral evaluation completed on (<i>date</i>):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete judicial arbitration by (<i>date</i>): <input type="checkbox"/> Judicial arbitration completed on (<i>date</i>):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete private arbitration by (<i>date</i>): <input type="checkbox"/> Private arbitration completed on (<i>date</i>):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (<i>date</i>): <input type="checkbox"/> Agreed to complete ADR session by (<i>date</i>): <input type="checkbox"/> ADR completed on (<i>date</i>):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

11. Insurance

- a. Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- Bankruptcy Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. There are companion, underlying, or related cases.
 - (1) Name of case:
 - (2) Name of court:
 - (3) Case number:
 - (4) Status:
- Additional cases are described in Attachment 13a.
- b. A motion to consolidate coordinate will be filed by (*name party*):

14. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

16. Discovery

- a. The party or parties have completed all discovery.
 - b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|
|--------------|--------------------|-------------|

- c. The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	CASE NUMBER: _____
--	-----------------------

17. Economic litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other Issues

The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.



Superior Court of California County of San Francisco



HON. KATHERINE FEINSTEIN
PRESIDING JUDGE

Judicial Mediation Program

JENIFFER B. ALCANTARA
ADR ADMINISTRATOR

The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to personal injury, professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial Mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable Linda Colfax
The Honorable Michael Begert
The Honorable Gail Dekreon
The Honorable Ernest H. Goldsmith
The Honorable Curtis Karnow
The Honorable Charlene P. Kiesselbach
The Honorable Patrick J. Mahoney
The Honorable Tomar Mason

The Honorable James J. McBride
The Honorable Ronald Quidachay
The Honorable A. James Robertson, II
The Honorable John K. Stewart
The Honorable Monica F. Wiley
The Honorable Mary E. Wiss
The Honorable Charlotte W. Woolard

Parties interested in Judicial Mediation should file the Stipulation to Alternative Dispute Resolution form indicating a joint request for inclusion in the program and deliver a courtesy copy to Dept. 610. A preference for a specific judge may be indicated on the form but assignment to a particular judge is not guaranteed. Please allow at least 30 days from the filing of the form to receive the notice of assignment. The court Alternative Dispute Resolution Administrator will facilitate assignment of cases that qualify for the program.

Note: Space and availability is limited. Submission of a stipulation to Judicial Mediation does *not* guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Alternative Dispute Resolution
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