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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BOBBI SLEDGE, on behalf of herself and all  
others similarly situated,  
  
Plaintiff,  
  
v.  
  
PROVIDE COMMERCE, INC.,  
  
Defendant.

09 CV 2094  
Civil Case No.:

MMA BLM

**CLASS ACTION COMPLAINT**  
**JURY TRIAL DEMAND**

FILE BY FAX

Plaintiff Bobbi Sledge ("Plaintiff") brings this action on behalf of herself and all others  
similarly situated (the "Class," as defined below) against Provide Commerce, Inc. ("Provide  
Commerce" or "Defendant") and alleges on information and belief as follows:

CP

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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY WIX DEPUTY

**INTRODUCTION**

1  
2 1. Plaintiff brings this action for injunctive, declaratory and equitable relief,  
3 damages, restitution and/or disgorgement of profits and additional relief as may be appropriate on  
4 behalf of herself and all others similarly situated (the "Class," as more specifically described  
5 below), who purchased flowers, gifts or other retail items from one or more of Provide  
6 Commerce's online retail stores and whose private credit card, debit card or online payment  
7 account (e.g., Paypal) information (collectively, "Private Payment Information") was improperly  
8 transmitted to Regent Group Inc., d/b/a Encore Marketing International, Inc. ("Encore") and  
9 whose credit cards, debit cards or online payment accounts (collectively "Private Payment  
10 Accounts") were charged an activation fee and/or monthly fees for the Easy Saver Reward  
11 Program ("Easy Saver Program" or "Program") without authorizing that their payment  
12 information be shared, used to enroll in the Easy Saver Program, or charged, from January 1,  
13 2005 to the present. Defendant's conduct as alleged herein violates the Consumer Legal  
14 Remedies Act, Cal. Civ. Code § 1750, *et seq.* ("CLRA"), the Unfair Competition Law, Cal. Bus.  
15 & Prof. Code § 17200, *et seq.* ("UCL"), the False Advertising Law, Cal. Bus. & Prof. Code §  
16 17500, *et seq.* ("FAL"), and common law breach of contract, fraudulent concealment, breach of  
17 the covenant of good faith and fair dealing, conversion, and unjust enrichment.

**THE PARTIES**

18  
19 2. Plaintiff Bobbi Sledge ("Plaintiff") is and at all relevant times has been a  
20 resident of Dallas, Texas. On or about April 4, 2009, Plaintiff purchased flowers from Defendant  
21 Provide Commerce's online flower store, ProFlowers, for her personal, family or household use.  
22 During her transaction and for the limited purpose of completing her transaction for the purchase  
23 of flowers, Plaintiff provided Provide Commerce with her credit card and other personal  
24 information, which was unlawfully transmitted to an unauthorized third party, resulting in Easy  
25 Saver charges being charged to Plaintiff's account without her authorization or knowledge.

26 3. Defendant Provide Commerce is headquartered in San Diego, California.  
27 From its San Diego offices, Provide Commerce operates a number of online retail stores selling  
28 gifts and flowers, including but not limited to ProFlowers, Cherry Moon Farms, Red Envelope,

1 Secret Spoon, and Sharri's Berries. Provide Commerce is an operator of a commercial website or  
2 online service that collects personally-identifiable information and Private Payment Information  
3 through its websites and online services from individual consumers who use or visit its sites.

#### 4 JURISDICTION AND VENUE

5 4. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2)  
6 because, on information and belief, the amount in controversy exceeds \$5,000,000 exclusive of  
7 interests and costs and this is a class action in which the parties are citizens of different states.

8 5. Pursuant to 28 U.S.C. § 1391(b), this Court is the proper venue for this  
9 action because this Court has personal jurisdiction over Defendant Provide Commerce and a  
10 substantial amount of the events giving rise to the claim occurred in this District.

#### 11 FACTUAL ALLEGATIONS

12 6. Defendant Provide Commerce operates a number of online retail stores  
13 selling gifts and flowers for delivery, including but not limited to ProFlowers, Cherry Moon  
14 Farms, Red Envelope, Secret Spoon, and Sharri's Berries. When a consumer visits any number  
15 of Provide Commerce's commercial websites to purchase products for delivery, they are asked  
16 for private consumer information, including their name, address and Private Payment Information  
17 to complete the transaction. While completing a transaction on a Provide Commerce website,  
18 Plaintiff and Class members were presented with a promotional advertisement for the "Easy  
19 Saver Rewards Program." Provide Commerce represented that the offer would include coupons  
20 and savings benefits as a reward for shopping with its online retail sites. Plaintiff and Class  
21 members were asked to enter their email address and zip code and to click on an "Accept" button  
22 to claim their free coupon and enroll in the Program.

23 7. Plaintiff and Class members did not elect to enroll in the Easy Saver  
24 Program, did not voluntarily provide their Private Payment Information, and did not authorize  
25 that their Private Payment Information be used in connection with the Easy Saver Program.  
26 Regardless, Provide Commerce transferred Plaintiff's and Class members' contact and Payment  
27 Information to its agent, co-conspirator and partner, Encore.  
28

1           8.     As a result of this wrongful transmission of Private Payment Information,  
2 Plaintiff's and Class members' Private Payment Accounts were unlawfully charged an "activation  
3 fee" of \$1.95 for the Easy Saver Program. Plaintiff and Class members did not authorize such  
4 charges and, in fact, were not aware that they had been enrolled in the Easy Saver Program or that  
5 they were charged any "activation fee" until they received their payment statements, which  
6 indicated a charge was associated with "Easy Saver." Plaintiff and Class members received no  
7 discount, savings or economic benefit in exchange for the activation fee charged.

8           9.     Thereafter, Plaintiff's and Class members' accounts continued to be  
9 charged \$14.95 on a monthly basis, without authorization, although they had declined the offer to  
10 participate in the Program. Plaintiff and Class members did not receive any discount, savings, or  
11 economic benefit in exchange for the unauthorized charges or as a result of being secretly  
12 enrolled in the Program.

13           10.    Provide Commerce effectuated this scheme by unlawfully transmitting  
14 Plaintiff's and Class members' Private Payment Information to its agent, co-conspirator and  
15 partner, Encore, who then unlawfully billed the Private Payment Accounts without authorization.  
16 When Plaintiff and Class members complained about the unauthorized charges, Provide  
17 Commerce falsely insisted that the consumers must have signed up for the Program. When  
18 Plaintiff and Class members have contacted Encore, Encore has admitted that it obtained  
19 Plaintiff's and Class members' Private Payment Information from Provide Commerce, but also  
20 falsely insisted that Plaintiff and Class members must have signed up for the Program.

21           11.    In its online privacy policy, Provide Commerce states in pertinent part:

22                   **Personally Identifiable Information:**

23                   ...

24                   Personally Identifiable Information might include your name,  
25 mailing address, telephone number, mobile phone number, email  
26 address, and other identification and contact information.... We  
27 may also collect certain financial information, like your credit card  
28 number... whenever we do so, we will attempt to provide a link to  
this Policy so that you can confirm how this information will be  
used. With this information, we can fill your service and product  
orders and better provide you with personalized services. You also  
may have the option of importing information into certain Sites  
from third-party software.

1 ...  
2 Except as otherwise stated in this Policy, we do not sell, trade or  
3 rent your Personally Identifiable Information collected on our Sites  
4 to others. The information collected by our Sites is used to process  
5 orders, to keep you informed about your order status, to notify you  
6 of products or special offers that may be of interest to you, and for  
7 statistical purposes for improving our Sites. We will disclose your  
8 Personally Identifiable Information to third parties for tracking  
9 purposes, to charge your credit card (or process your check or  
10 money order, as appropriate), fill your order, improve the  
11 functionality of our Sites, customize our marketing efforts with you  
12 and perform statistical and data analyses, deliver your order and  
13 deliver promotional emails to you from us. These third parties may  
14 not use your Personally Identifiable Information other than to  
15 provide the services requested by us.

16 12. Provide Commerce knowingly and willfully and/or negligently and  
17 materially violated its online privacy policy. Plaintiff and Class members' Private Payment  
18 Information constitutes Personally Identifiable Information, as identified in Provide Commerce's  
19 privacy policy. At all times relevant, Provide Commerce knowingly and willfully transmitted  
20 Plaintiff's and Class members' Private Payment Information to Encore in violation of its privacy  
21 policy without disclosing its intention or obtaining permission to do so. Provide Commerce had a  
22 duty to keep Plaintiff's and Class members' Private Payment Information secure. Transmitting  
23 Private Payment Information without authorization constitutes a material breach of the privacy  
24 policy, which assures consumers that their private and payment information will not be given to  
25 third parties without authorization or beyond what is reasonably necessary to fill their orders.  
26 Limitations on the use and transmission of Personally Identifiable Information, including Private  
27 Payment Information, go to the very core of Provide Commerce's privacy policy. A reasonable  
28 consumer would find the fact that Provide Commerce transmits customers' Private Payment  
Information to unauthorized third parties, despite its published policy to not do so, material in  
deciding whether to provide their Personal Payment Information, particularly where, as here, such  
transmission results in unauthorized charges to their Private Payment Accounts from which no  
service, discount, savings or economic benefit is derived.

13. Additionally, a reasonable consumer purchasing goods or services online  
anticipates that the Private Payment Information they provide will only be used to pay for items  
purchased, that they will not be enrolled in an illusory "rewards program" for which they are

1 charged but that provides no benefits or savings without their consent, and that Private Payment  
2 Information will not be given to third parties without authorization.

3 14. Provide Commerce knowingly participated in this scheme and engaged in  
4 this systematic nationwide practice of transferring Private Payment Information without  
5 authorization to Encore, which it knew would lead to unauthorized charges to Plaintiff's and  
6 Class members' Private Payment Accounts. Provide Commerce operated Easy Saver Program  
7 through its agreements with Encore and profited from the Program at Plaintiff's and Class  
8 members' expense. In exchange for providing unauthorized information to Encore, Provide  
9 Commerce received an economic benefit and has profited from its wrongful conduct.

10 15. At all times relevant, Provide Commerce misrepresented, concealed and/or  
11 failed to disclose its affiliation and association with Encore. At all times relevant, Provide  
12 Commerce misrepresented, concealed and/or failed to disclose that it would share Plaintiff's and  
13 Class members' Private Payment Information with unauthorized third parties as a result of  
14 ordering products from its websites. Provide Commerce also misrepresented that the Easy Saver  
15 Rewards Program would provide "great benefits and savings" that it does not provide, and  
16 Plaintiff and Class members received no service, savings or discounts as a result of being  
17 unwittingly enrolled.

18 16. Provide Commerce misrepresented the Program in its advertising and  
19 promotional materials by stating that it was a voluntary program that would only activate when  
20 the consumer affirmatively signs up by clicking the "Acceptance" button, and as a Program that  
21 would provide consumers savings and other economic benefits.

22 17. At the end of the online order, for example, Provide Commerce offers the  
23 consumer the opportunity to enroll in the Easy Saver Program. Specifically, Provide Commerce  
24 states: "Claim your \$15 ProFlowers Gift Code Now" and in the "Offer Details" states:

25 Activate your membership in EasySaver Rewards<sup>SM</sup> to claim your \$15 Gift Code  
26 good for your next purchase and start saving and enjoying all the benefits and  
27 access for the next 30 days for just a **\$1.95 activation fee** billed by EasySaver  
28 Rewards to the credit card or PayPal account you just entered during your  
ProFlowers purchase. Please note, by entering your e-mail address and zip code  
("Enrollment Details") and clicking the Green Acceptance Button, your

1 Enrollment Details as well as the following information from your most recent  
2 ProFlowers order will be transmitted securely through PGP and SSL encryption to  
3 EMI, the EasySaver Rewards Administrator, to be stored and to secure and  
4 administer your membership: your name, credit card information or PayPal billing  
5 ID number, billing address, billing telephone number and order ID number. To  
6 continue after the introductory trial period, do nothing and all the great benefits  
7 and savings will automatically continue for just **\$14.95 per month**, billed by  
8 EasySaver Rewards to the same credit card or PayPal account where applicable.  
9 You may cancel at anytime, with no further obligation, just by calling the toll-free  
10 number contained in the membership information provided to you. **And, you  
11 keep the \$15 Gift Code just for trying EasySaver Rewards for 30 days.**

12 The Provide Commerce website goes on: **"Claim Your Gift Code Below!** Just enter your  
13 e-mail address and zip code as your electronic signature and click the green acceptance button  
14 below to **activate your EasySaver Rewards<sup>SM</sup> Membership** as described in the offer details on  
15 this page".

16 18. Plaintiff and Class members were enrolled in the Easy Saver Program after  
17 declining to join, and they received no benefits or savings as a result.

18 19. Furthermore, Provide Commerce deceptively represented that Plaintiff and  
19 Class members would instantly receive a "gift code" for a rebate or discount on their flower  
20 purchase if they enrolled in the Program. Plaintiff and Class members did not receive a gift code  
21 or discount on their purchase upon being involuntarily enrolled in the Program, however,  
22 although they were charged an activation fee and incurred subsequent monthly charges. Because  
23 Plaintiff and Class members did not affirmatively enroll in the Program and, in fact, declined the  
24 offer, they did not receive the promised benefits. Moreover, Plaintiff and Class members did not  
25 and could not receive any benefits from the Program unless they discovered that they had been  
26 fraudulently enrolled in the Program, demanded a gift code after the fact, and then spent  
27 additional money to purchase additional items from the Defendant. Thus, the "gift" and other  
28 program "benefits" that Defendant purported would flow from Program membership were, and at  
all relevant times have been, illusory.

29 20. The above-described representations, omissions and misrepresentations  
30 were made, directed, authorized, adopted and/or affirmed by Provide Commerce independently  
and/or in furtherance of its partnership and conspiracy with Encore. At all times relevant, Provide

1 Commerce maintained control of the information, links and pop-up offers linked to its websites  
2 that relate to the Easy Saver Program. Indeed, the Program relates directly to discounts Provide  
3 Commerce purportedly offers on the products it sells. Thus, Provide Commerce is responsible for  
4 representations and omissions set forth above.

5 **Plaintiff's Experience With Provide Commerce**

6 21. On April 4, 2009, Plaintiff purchased flowers from Provide Commerce's  
7 ProFlowers.com website. To complete her purchase, she provided private consumer information,  
8 including her Private Payment Information, pursuant to Defendant's posted privacy policy.

9 22. At the time of her purchase, a pop up screen appeared with a promotional  
10 advertisement to receive \$15 dollars off this order. Plaintiff then read the details of the EasySaver  
11 Reward offer and chose not to accept the \$15 offer since it required her to enroll in the Easy  
12 Saver Reward Program. Instead, she closed the screen by clicking the "x" in the top right corner  
13 and completed her ProFlowers transaction.

14 23. On April 7, 2009, Plaintiff was charged a \$1.95 activation fee on her credit  
15 card. The fee was attributed to Easy Saver. At no time did she authorize such a charge or enroll  
16 in the Easy Saver Program.

17 24. Between May and July of 2009, Plaintiff received four Easy Saver charges  
18 on her credit card for \$14.95 each. Plaintiff never authorized any such charges, nor did she  
19 receive any benefits, savings or services from Defendant or the Easy Saver Program.

20 25. Plaintiff did not notice the charges until August 19, 2009.

21 26. On or around August 20, 2009, Plaintiff called the 800 number provided on  
22 her credit card statement. The Easy Saver representative denied that the charges were  
23 unauthorized and falsely insisted that Plaintiff must have enrolled in the Easy Saver Rewards  
24 Program through the pop up advertisement screen in order for them to have her credit card  
25 information. Plaintiff was informed that she would have received a "welcome email"  
26 acknowledging her enrollment. Plaintiff received no "welcome email". When Plaintiff asked the  
27 Easy Saver agent to provide her with a copy of the email, Easy Saver could not produce a copy or  
28 record of the "welcome email" it purportedly sent.



1                   27.     On August 20, 2009, Plaintiff called Provide Commerce via the  
2 ProFlowers number on their website to complain about the charges. She was told she would be  
3 contacted by phone by a manager who coordinates with the partner companies. She received an  
4 email from a Special Programs Associate in California. The Proflowers Special Programs  
5 Associate again insisted that Plaintiff must have enrolled in the Easy Saver Program. Despite  
6 requests, Provide Commerce was unable to provide any evidence that Plaintiff had enrolled in the  
7 Program. Provide Commerce acknowledged that Plaintiff had not received any discount on any  
8 purchase but that she had been enrolled in, and charged for, the Easy Saver Program.

9                   **Other Class Members' Experience With Provide Commerce**

10                   28.     Plaintiff's experience mirrors those of hundreds, if not thousands, of other  
11 Class members. In purchasing their online orders, Class members relied on Defendant's  
12 misrepresentations that their credit card information would not be misused and that their Private  
13 Payment Information would not be shared. The Internet is replete with references to the common  
14 problems consumers have encountered with Provide Commerce and its Easy Saver scam, as the  
15 following representative complaints appearing on a selection of on-line consumer forums  
16 demonstrate:

17                   I just purchased flowers for Valentine's Day last week from  
18 ProFlowers. I too had a charge of \$1.95 to my credit card this  
19 morning that said EasySaver (Phone number 800-355-1837). I  
20 called and got through to them. They told me that when I purchased  
21 from Pro Flowers that I signed up for Easy Saver Rewards program.  
22 I was not aware of signing up for ANYTHING....

23                   I have been billed by Easy Saver Rewards (EASY SAVER 800-  
24 355-1837 PA) for \$14.95 per month since making a purchase on  
25 Proflowers.com. Easy Saver is apparently associated with  
26 ProFlowers and I inadvertently signed up for their 'services' while  
27 placing my order. They claim that I requested to be a member when  
28 I replied to an email after placing an order. I do not recall replying  
to any email or asking for the service. Obviously, their business  
practices are disingenuous at best, since I, and many others, have  
been fooled by this blatantly unethical business practice.

... I have been charged 14.95 every month from AT LEAST [J]uly  
by this "easy saver" program. Turns out when [I] ordered my mom  
chocolates for mother[']s day from SECRET SPOON, they took my  
information and gave it to these guys. I called the 800 number on  
my online statement and she said the only way they could get my  
information was if [I] filled in my email and clicked the button

1 saying [I] wanted to do this easy saver thing, which [I] know for a  
2 FACT that [I] didn[']t do. [S]he also told me that the program was  
3 to save me money on my hotels, vacations, etc but how is charging  
me 15 bucks a month without my permission saving me  
money!?!?....

4 I just got my bank statement with a notice from my bank letting me  
5 know that Easy Sav[e]r has been taking that same 14.95 out of my  
6 account for three months but that I should be concerned as this  
7 company has a lot of red flags. I called the bank today as I have  
8 never even heard of Easy Sav[e]r and I have never placed an order  
from them for anything. The bank has done a lot of research for me  
and found out that it was after ordering flowers for [V]alentine[']s  
[D]ay for my aunt these charges started. Easy [S]av[e]r said that  
they were an affiliate program of Proflowers.com.

9 Simply wanted to order a fruit basket from CherryMoonFarms  
10 (www.cherrymoonfarms.com) to send to grieving friend and ended  
up with unauthorized membership to EasySaverRewards  
11 (www.easysaverrewards.com) aka Encore Marketing International.  
They billed my credit card used to purchase fruit for \$1.95 and then  
12 \$14.95 even after I followed their cancellation process to the letter.  
Cancellation for something I never knowingly agreed to. Do NOT  
13 buy online at Cherry Moon Farms or ProFlowers and save yourself  
a headache. This is fraud as far as I'm concerned.....

14 I also am disgusted that "Red Envelope[]" would have such a  
15 practice as this! What really upset me was that there was no  
confirmation of credit card usage. Instead the credit card number  
16 was stolen from the one I had entrusted with Red Envelope for the  
order I made.

17 What a scam...I called ProFlowers and EasySaver about the three  
18 months of unauthorized charges to my credit card made by  
EasySaver. I ordered flowers from ProFlowers and was signed up  
19 for EasySaver. I know I didn't agree to EasySaver as I never sign  
up for these kind[s] of things (I don't even know what it is and what  
20 it saves me)....

21 I am the victim of Proflowers / Easy Savers deceptive practice also.  
22 I saw several charges from EMI Marketing and Easy Saver on my  
credit card. I did not provide my information to either of these  
23 companies at the end of my Proflowers order and did not accept the  
15% offer, so the information was definitely given without my  
permission....

### 24 CLASS ACTION ALLEGATIONS

25 29. Plaintiff brings this class action against Provide Commerce pursuant to  
26 Federal Rule of Civil Procedure 23, on behalf of herself and all persons who are members of the  
27 following Class and Sub-Class:  
28

9/24

1            Class: All individuals and entities residing in the United States  
2            who purchased merchandise from a Provide Commerce website, did  
3            not affirmatively enroll in the Easy Saver Program, and who  
4            incurred a charge on their Private Payment Account from Easy  
5            Saver in connection with their Provide Commerce transaction from  
6            January 1, 2005 to the present.

7            Sub-Class: All Class members who are "consumers" as defined by  
8            California Civil Code § 1761(d).

9            30. Defendant, Defendant's affiliates, employees, agents, officers and  
10            directors, and the Judge to whom this case is assigned are excluded from this Class. Plaintiff  
11            reserves the right to amend this Class definition if discovery and further investigation reveals that  
12            the Class should be expanded or otherwise modified.

13            31. Numerosity: The members of the Class are so numerous that joinder of all  
14            members would be impracticable. While the exact number of Class members is unknown at this  
15            time, Plaintiff reasonably believes that there are thousands of purchasers whose information was  
16            used by Encore without their authorization. The members of the Class are readily identifiable  
17            from information and records in Defendant's or third parties' possession, custody, or control. The  
18            disposition of these claims will provide substantial benefits to the Class.

19            32. Common Issues Predominate: There are questions of law and fact common  
20            to the members of the Class that predominate over any questions affecting only individual Class  
21            members, including, but not limited to the following:

22            a. Whether Provide Commerce provided Plaintiff's and Class  
23            members' Private Payment Information to Encore and/or in connection with the Easy Saver  
24            Program;

25            b. Whether Provide Commerce's conduct violated its published  
26            privacy policy in violation of California Business & Professions Code § 22576, which requires  
27            any operator of a commercial website to comply with the provisions of its posted privacy policy;

28            c. Whether transmissions of Plaintiff's and Class members' Private  
                 Payment Information were without authorization;

                 d. Whether such transmissions were knowing and willful;

                 e. Whether such transmissions were negligent;

1 f. Whether such transmissions materially violated Provide  
2 Commerce's published privacy policy;

3 g. Whether Provide Commerce was unjustly enriched by its unlawful  
4 conduct;

5 h. Whether Provide Commerce concealed or failed to disclose  
6 material information about the Easy Saver Program and how consumers would be enrolled and  
7 charged for the Program;

8 i. Whether Provide Commerce concealed or failed to disclose  
9 material information about the use of Private Payment Information to Plaintiff and Class members  
10 submitted in connection with their purchases on Provide Commerce websites;

11 j. Whether Defendant violated the CLRA, Cal. Civ. Code § 1750, *et*  
12 *seq.*;

13 k. Whether the privacy policy constitutes a contract between Provide  
14 Commerce, on one hand, and Plaintiff and Class members, on the other;

15 l. Whether Defendant breached its contracts with Plaintiff and Class  
16 Members;

17 m. Whether Plaintiff and the Class are entitled to injunctive relief; and

18 n. Whether Plaintiff and the Class are entitled to damages.

19 33. Typicality: Plaintiff's claims are typical of the claims of the members of  
20 the Class. Plaintiff has no interests antagonistic to those of the Class and is not subject to any  
21 unique defenses.

22 34. Plaintiff will fairly and adequately protect the interests of all members of  
23 the Class and has retained attorneys with the resources and experience in class action and  
24 complex litigation to vigorously prosecute Class claims.

25 35. Superiority: A class action is superior to all other available methods for the  
26 fair and efficient adjudication of this controversy. Because of the relatively small size of the  
27 individual Class members' claims, absent a class action most Class members would likely find  
28 the cost of litigating their claims against Provide Commerce to be prohibitive. The class

1 treatment of common questions of law and fact is also superior to multiple individual actions or  
2 piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes  
3 consistency and efficiency of adjudication.

4 36. The consideration of common questions of fact and law will conserve  
5 judicial resources and promote a fair and consistent resolution of this consumer problem, and no  
6 significant management issues exist with respect to the litigation of this matter.

7 37. Defendant is a California resident headquartered in California. All  
8 communications, website, sales, customer service and contracts and agreements at issue in this  
9 litigation were made at and emanated from Defendant's San Diego headquarters. Thus, the acts  
10 and omissions giving rise to Plaintiff's state law claims arose in California. The Class also  
11 includes a significant number of California residents who purchased Defendant's products in  
12 California. California's interest in this action and the conduct of corporations doing business in,  
13 contracting and effectuating business decisions in California is, therefore, greater than that of any  
14 other state, and Class members are entitled to application of California law to their claims.  
15 Moreover, Provide Commerce has included a choice of law provision in the terms and conditions  
16 of use published on its website which indicates that any legal action brought by a consumer for  
17 any reason is governed by the laws of the State of California. Accordingly, California law applies  
18 to Plaintiff and Class members' claims and such application presents no manageability problems.

19 **FIRST CAUSE OF ACTION**

20 **(Violations of the Consumer Legal Remedies Act, Cal. Civ. Code § 1750, et seq.)**

21 **(On behalf of the Sub-Class)**

22 38. Plaintiff incorporates by reference the allegations contained in the  
23 preceding paragraphs of this Complaint.

24 39. Defendant is a "person" as defined by Civil Code § 1761(c).

25 40. Plaintiff and the members of the Sub-Class are "consumers" within the  
26 meaning of Civil Code §1761(d).

27 41. The flowers and gifts ordered by Plaintiff and Class members from Provide  
28 Commerce constitute "goods" as defined by Civil Code § 1761(a).

1           42.     The purported benefits of the Easy Saver Program in which Plaintiff and  
2 Class members were enrolled, including coupons for Defendant's flowers and gifts, also  
3 constitute "goods" as defined by Civil Code § 1761(a).

4           43.     Plaintiff's and Class members' purchase of the flowers and gifts, and their  
5 unwitting enrollment in and payment for the Program benefits, are "transaction[s]" as defined by  
6 Civil Code § 1761(e).

7           44.     Defendant provided or purported to provide goods to Plaintiff and Class  
8 members by offering a rewards program in connection with the ordering, sale and delivery of the  
9 flowers and gifts on their online retail stores.

10          45.     Venue is proper pursuant to Civil Code § 1780(c) because Provide  
11 Commerce is headquartered and does a significant amount of business in this County. A  
12 Declaration of the Plaintiff establishing this Court as the proper venue for this action is attached  
13 hereto as Exhibit A, as required by applicable law.

14          46.     Provide Commerce violated the CLRA by misrepresenting its affiliation  
15 and association with third parties, including Encore, and by sharing Plaintiff's and Class  
16 members' private information with unauthorized third parties. Provide Commerce also violated  
17 the CLRA by representing that the Easy Saver Rewards Program would provide benefits it does  
18 not offer because Plaintiff and Class members received no savings or discounts as a result of  
19 being enrolled. Provide Commerce also violated the CLRA by advertising the Easy Saver  
20 Program as a Program that Plaintiff's and Class members could decline, representing the Program  
21 as a voluntary program that would only activate when the consumer affirmatively signs up by  
22 clicking the enroll button, and as a Program that would offer consumer discounts, savings, and  
23 other economic benefits. In fact, Plaintiff and Class members were enrolled in the Easy Saver  
24 Program after declining to join and they received no benefits or savings as a result. Furthermore,  
25 Provide Commerce represented that Plaintiff and Class members would receive a rebate or  
26 discount by enrolling in the Program, although the earning of the benefit was contingent on  
27 Plaintiff and Class members knowingly and actively enrolling in the Program to obtain the  
28 promised coupon. Because they declined the offer, Plaintiff and Class members did not receive a

1 discount code or discount on their purchase, but were nonetheless charged an activation fee and  
2 subsequent monthly charges.

3 47. Defendant violated Civil Code § 1770(a)(3) by, *inter alia*, misrepresenting  
4 and failing to disclose its affiliation, connection or association with, or certification of Encore.

5 48. Defendant violated Civil Code § 1770(a)(5) by, *inter alia*, representing that  
6 the Easy Saver Program had sponsorship, approval or benefits that it did not have by representing  
7 that enrollment was voluntary and not automatic, and by misrepresenting that Plaintiff and Class  
8 members would receive automatic discounts and savings if enrolled.

9 49. Defendant violated Civil Code § 1770(a)(9) by, *inter alia*, advertising and  
10 marketing the Easy Saver Program as a program in which consumers must voluntarily and  
11 affirmatively join and that membership would result in discounts and savings with the intent to  
12 automatically sign Plaintiff and Class members up for the Program and without selling or  
13 providing them the promised savings and benefits.

14 50. Defendant violated Civil Code § 1770(a)(14) by, *inter alia*, representing  
15 that the transaction would confer rights and remedies, i.e., the right to decline to join the Easy  
16 Saver Program, which the transaction did not have. In fact, the transaction resulted in Plaintiff  
17 and Class members being enrolled in, and charged for, the Program without authorization.

18 51. Defendant violated Civil Code § 1770(a)(17) by, *inter alia*, representing  
19 that the consumer would receive a rebate, discount, or other economic benefit, when the earning  
20 of such benefit, if any, was contingent on an event to occur subsequent to the consummation of  
21 the transactions. Indeed, Provide Commerce deceptively represented that Plaintiff and Class  
22 members would receive a gift code "now" if enrolled in the Program. However, Plaintiff and  
23 Class members did not receive a gift code or any rebate or discount on their purchase when they  
24 were unwittingly enrolled in the Program and charged an activation fee. Because Plaintiff and  
25 Class members did not affirmatively enroll in the Program and, in fact, declined the offer, they  
26 could not receive the promised benefits, if any, unless they discovered that they were fraudulently  
27 enrolled in the Program, demanded the gift code after the fact, and were unfairly forced to  
28 purchase additional items from the Defendant.

1           52. Defendant engaged in deceptive practices, in violation of the CLRA, that  
 2 were designed to induce Plaintiff and the members of the Class to purchase products on Provide  
 3 Commerce websites (and provide their Private Payment Information to do so) and to force  
 4 Plaintiff and Class members to involuntarily enroll in the Program. Defendant also engaged in  
 5 deceptive practices by telling consumers their Private Payment Information would not be  
 6 transmitted and then transmitting such information and enrolling them, without authorization, in  
 7 an illusory "rewards program."

8           53. By engaging in the foregoing unfair or deceptive conduct, Defendant  
 9 actively concealed and failed to disclose material facts about the Program and its use of Private  
 10 Payment Information.

11           54. The representations set forth above regarding the Program and Provide  
 12 Commerce's privacy policy are material facts that a reasonable person would have considered  
 13 important in deciding whether or not to purchase products on Defendant's sites. Plaintiff and the  
 14 Class justifiably acted or relied upon to their detriment the misrepresentations and/or concealed or  
 15 non-disclosed facts as evidenced by their providing the Private Payment Information to  
 16 Defendant to complete their purchase while declining to affirmatively enroll in the Program.

17           55. Defendant's acts were intended to be deceptive and/or fraudulent.  
 18 Specifically, Defendant secretly enrolled Plaintiff and Class members in the Easy Saver Program  
 19 and intentionally shared their Private Payment Information with Encore, its business partner,  
 20 without authorization.

21           56. Plaintiff and the members of the Class suffered injury in fact as a direct  
 22 result of Defendant's misleading marketing campaign and/or concealment of material facts in  
 23 violation of the CLRA in that they have paid, or will have to pay, fees in connection with the  
 24 Easy Saver Program from which they receive no benefits. Had Defendant disclosed the true  
 25 nature of the Program and its intention to transmit Private Payment Information to Encore for the  
 26 purposes of charging their Private Payment Accounts when no services or benefits are rendered in  
 27 exchange, Plaintiff and the members of the Class would have taken steps to further secure or  
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1 withhold their Private Payment Information and/or would not have purchased products on  
2 Defendant's sites.

3 57. To this day, Defendant continues to violate the CLRA by concealing its  
4 affiliation with the Easy Saver Program, by transmitting Private Payment Information without  
5 authorization and misrepresenting and concealing the true nature of the Program.

6 58. Pursuant to Civil Code § 1782(a), Plaintiff served Defendant with notice of  
7 the alleged violations of the CLRA by certified mail, return receipt requested, on September 24,  
8 2009. A copy of this notice is attached hereto as Exhibit B. If after thirty days of receipt of this  
9 letter, Defendant has failed to adequately address the violations alleged herein, Plaintiff will  
10 amend the Complaint to add a claim for damages under the CLRA.

11 59. Plaintiff, on behalf of herself and all others similarly situated, demands  
12 judgment against Defendant under the CLRA for injunctive relief as may be appropriate and an  
13 award of attorneys' fees and costs.

14 **SECOND CAUSE OF ACTION**

15 **(Fraudulent Misrepresentation/Omissions)**

16 **(On Behalf Of All Class Members)**

17 60. Plaintiff incorporates by reference the allegations contained in preceding  
18 paragraphs of this Complaint.

19 61. At all times relevant, Defendant concealed material information about the  
20 Easy Saver Program from Plaintiff and Class members. Defendant failed to disclose that Plaintiff  
21 and Class members would be enrolled in the Program regardless of whether they clicked the  
22 acceptance button. At the same time, Defendant made affirmative representations on its website  
23 when Plaintiff and Class members were processing their purchases, that the Program was optional  
24 and that the acceptance button would have to be selected to be enrolled. Defendant also  
25 concealed the material fact that it was transmitting Plaintiff's and Class members' Private  
26 Payment Information to Encore in connection with the Program without authorization. At the  
27 same time, Defendant made affirmative representations to Plaintiff and Class members at the  
28 point of sale and in its privacy policy that Private Payment Information would not be transmitted

1 or used without authorization beyond what was necessary to fill the customer's original order.  
2 Defendant further concealed and/or failed to disclose that Plaintiff and Class members' Private  
3 Payment Accounts would be charged an Easy Saver activation fee or monthly fees regardless of  
4 whether they declined the offer to join. To the contrary, Defendant misrepresented to Plaintiff  
5 and Class members that the Program was optional when it presented the offer to Plaintiff and  
6 Class members at the time of their purchase, and represented that they would have to  
7 affirmatively enroll by providing additional information and clicking the "acceptance" button.  
8 Defendant further misrepresented to Plaintiff and Class members at the point of sale that they  
9 would have to affirmatively enroll in the Program to be charged. Defendant also failed to  
10 disclose material information regarding the Program itself, including, but not limited to, the fact  
11 that the Program did not provide any savings or benefits and that consumers would be charged  
12 monthly regardless of whether they used, or even affirmatively enrolled, in the Program. Instead,  
13 Defendant affirmatively misrepresented that, if enrolled, Plaintiff and Class members would  
14 immediately receive a "gift code" and that "benefits and savings will automatically continue."  
15 Plaintiff and Class members were unwittingly enrolled in the Program, but did not receive the gift  
16 code at the time of their purchase and/or other benefits or savings as a result of being enrolled in  
17 the Program. Defendant also concealed and failed to disclose that it was financially benefiting  
18 from its partnership with Encore, instead misrepresenting the offer as a "gift." These  
19 misrepresentations and omissions were made by Provide Commerce and/or by Encore acting with  
20 Provide Commerce's authorization and on its behalf, while Plaintiff and Class members were  
21 processing and completing their Provide Commerce transactions.

22           62. The concealed information is material in that a reasonable consumer would  
23 find information important when deciding whether to purchase products from an Encore website.  
24 Had the concealed information been disclosed to Plaintiff and Class members, they would have  
25 acted differently, by either not providing Defendant with their Personal Payment Information or  
26 acting to cancel their membership before they were charged.

27           63. Plaintiff and Class members were unaware that by declining the Easy Saver  
28 Program offer that Provide Commerce would provide their Private Payment Information to

1 Encore or that their Payment Accounts would be charged as a result because Defendant concealed  
2 the material information as alleged above.

3 64. Plaintiff and the Class justifiably acted or relied upon to their detriment the  
4 omissions and misrepresentations that their Private Payment Information would not be  
5 transmitted, as evidenced by the fact that they gave Provide Commerce their Private Payment  
6 Information to complete their purchase, but did not authorize, in fact declined, any offer that their  
7 Private Payment Information transmitted to Encore or their accounts charged in connection with  
8 the Easy Saver Program.

9 65. Defendant was and continues to be under a duty to Plaintiff and the Class  
10 to disclose these facts because:

11 a. Defendant is in a superior position to know the truth about the Easy  
12 Saver Program and its business practice of transmitting Private Payment Information to Encore;

13 b. Defendant made partial disclosures and representations as alleged  
14 above about the Program and about its policies regarding use of consumers' Private Payment  
15 Information; and

16 c. Defendant actively concealed from Plaintiff and the Class the true  
17 nature of the Program and its true practices with respect to the use of Private Payment  
18 Information.

19 66. Defendant intentionally represented and concealed from and/or failed to  
20 disclose to Plaintiff and the Class the facts described above with the intent to defraud Plaintiff and  
21 Class members, and for the purpose of inducing Plaintiff and the Class to provide their Private  
22 Payment Information, which was later transmitted to Encore to involuntarily enroll Plaintiff and  
23 Class members in the illusory Program. By concealing this material information, Defendant  
24 sought to ensure that Plaintiff and Class members would complete their transaction on the  
25 Provide Commerce website while allowing it to still profit by giving that information to Encore  
26 without authorization to enroll Plaintiff and Class members in the sham Program. Defendant  
27 knew that Plaintiff and Class members would not have provided their Private Payment  
28 Information to Encore if all material information was disclosed because Plaintiff and Class

1 members declined to participate in the Program. Despite this, Defendant completed their  
2 transactions with Plaintiff and Class members, fraudulently enrolled them in the Easy Saver  
3 Program and unlawfully transmitted Plaintiff and Class members' Private Payment Information to  
4 Encore.

5 67. Had Defendant disclosed that it intended to transmit Plaintiff's and Class  
6 members' Private Payment Information to third parties without their permission and that their  
7 Private Payment Accounts would be charged as a result, Plaintiff and Class members would have  
8 taken additional steps to secure their accounts, would not have provided their Private Payment  
9 Information and/or purchased products from Provide Commerce.

10 68. As a direct and proximate cause of Defendant's misconduct, Plaintiff and  
11 the Class members have suffered actual damages in that they have paid activation and monthly  
12 fees without receiving any benefits, discounts or savings.

13 69. Defendant's misconduct has been and is wanton and/or reckless and/or  
14 shows a reckless indifference to the interests of others.

15 70. Plaintiff, on behalf of herself and all others similarly situated, demands  
16 judgment against Defendant for actual and punitive damages for herself and each member of the  
17 Class, plus attorneys' fees for the establishment of a common fund, interest, and costs.

18 **THIRD CAUSE OF ACTION**

19 **(Breach of Contract)**

20 **(On Behalf Of All Class Members)**

21 71. Plaintiff incorporates by reference the allegations contained in the  
22 preceding paragraphs of this Complaint.

23 72. As part of its terms of conditions of use, Provide Commerce states that its  
24 privacy policy applies to any consumer using any one of its websites and that the privacy policy is  
25 a legally binding agreement. The privacy policy sets forth Provide Commerce's obligations to  
26 Plaintiff and Class members with respect to handling of their Private Payment Information.

27 73. Defendant drafted the terms and conditions of use and the privacy policy  
28 posted on its website and did not allow Plaintiff or the Class members any opportunity to make

1 changes to the policy or terms and conditions. As such, the policy and terms of conditions are  
2 contracts of adhesion.

3 74. Plaintiff and Class members did everything required of them in completing  
4 their transactions with Provide Commerce.

5 75. Defendant agreed that it would not share or transmit the Private Payment  
6 Information Plaintiff and Class members provided to complete their purchases without  
7 authorization. Defendant breached this agreement by transmitting Plaintiff's and Class members'  
8 Private Payment Information to Encore without authorization. Defendant also breached its  
9 agreement by assuring consumers that they would not be enrolled in the Easy Saver Program  
10 without giving explicit permission. In fact, Plaintiff and Class members declined to join, but  
11 were enrolled and charged for the Program anyway.

12 76. As a result of Defendant's breach of its agreement, Plaintiff and the Class  
13 members have suffered harm. Plaintiff's and Class members' credit and debit cards or online  
14 payment accounts were charged an unauthorized activation fee and/or subsequent monthly  
15 charges.

16 77. Plaintiff and members of the Class seek declaratory relief, compensatory  
17 damages proximately caused by Defendant's breach of contract, pre-judgment interest, costs of  
18 suit and other relief as the Court deems just and proper.

19 **FOURTH CAUSE OF ACTION**

20 **(Breach of the Covenant of Good Faith And Fair Dealing)**

21 **(On Behalf Of All Class Members)**

22 78. Plaintiff incorporates by reference the allegations contained in the  
23 preceding paragraphs of this Complaint.

24 79. Defendant entered into a contract with Plaintiff and Class members based  
25 on representations Defendant made directly and indirectly to Plaintiff and the Class members in  
26 its privacy policy and terms of conditions and on its website at point of sale regarding whether  
27 Private Payment Information would be transmitted to Encore and, if so, under what conditions.  
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1           80. Plaintiff and Class members did everything the contracts and agreements  
2 required of them. Specifically, they provided their Private Payment Information for the limited  
3 purpose of completing their purchases on the Provide Commerce website and declined offers to  
4 enroll in the Easy Saver Program or to have their information transmitted to Encore for any  
5 reason. Thus, all conditions had been met to allow Defendant to perform in compliance with the  
6 contracts.

7           81. Defendant unfairly interfered with Plaintiff's and Class members' rights to  
8 receive the security and privacy benefits they were entitled to under the contract. Indeed,  
9 Defendant expressly represented to Plaintiff and the Class members that they would only use their  
10 Private Payment Information for purposes of completing their selected purchase on the Provide  
11 Commerce website and that their Private Payment Information would neither be used for other  
12 purposes nor shared with unauthorized nonparties, including Encore. Defendant also expressly  
13 represented that consumers would only be enrolled in the Easy Saver Program if they explicitly  
14 agreed to do so.

15           82. In violation of its agreements and representations, Defendant provided  
16 Plaintiff's and Class members' private consumer information, including their Private Payment  
17 Information, to Encore without authorization, thereby unfairly denying Plaintiff and Class  
18 members of the security benefits to which they were entitled. As such, Defendant failed to act in  
19 good faith to further its economic interests and at the expense of Plaintiff and Class members.

20           83. Plaintiff and Class members suffered harm and were damaged as the direct  
21 and proximate cause of Defendant's misconduct in that their Private Payment Accounts were  
22 wrongfully charged fees for a Program in which they declined to enroll.

23           84. Plaintiff and members of the Class seek judgment against Defendant for  
24 compensatory and punitive damages and declaratory relief along with pre-judgment interest, costs  
25 of suit and other relief as the Court deems just and proper.  
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**FIFTH CAUSE OF ACTION**

**(Negligence)**

**(On Behalf Of All Class Members)**

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4 85. Plaintiff incorporates by reference the allegations contained in preceding  
5 paragraphs of this Complaint.

6 86. At all times relevant, Defendant owed a duty of care to Plaintiff and Class  
7 members to not transmit their Private Payment Information to third parties without explicit  
8 authorization. At all times relevant, Defendant also owed a duty of care to Plaintiff and Class  
9 members to ensure that the Private Payment Information provided to it was only used for  
10 specifically-authorized charges.

11 87. Defendant breached its duty of care by transmitting Plaintiff and Class  
12 members' Private Personal Information to Encore without ensuring that Plaintiff and Class  
13 members had affirmatively authorized such transmission. Defendant breached its duty of care by  
14 enrolling Plaintiff and Class members in the Easy Saver Program without their permission.  
15 Defendant further breached its duty of care by failing to keep Plaintiff's and Class members'  
16 Private Payment Information secure and allowing unauthorized charges be made to Plaintiff and  
17 Class members' Private Payment Accounts in connection with the Easy Saver Program.

18 88. As a direct and proximately cause of Defendant's misconduct, Plaintiff and  
19 Class members were damaged in that they were charged for Easy Saver activation and monthly  
20 fees that were not authorized. Plaintiff and Class members did not receive any discount, service  
21 or benefit from being secretly enrolled in the program. Had Defendant not provided Private  
22 Payment Information to Encore without permission and not allowed Plaintiff's and Class  
23 members' Private Payment Accounts to be charged for services they neither requested nor used,  
24 Plaintiff and Class members would not have been damaged.

25 89. Plaintiff and members of the Class seek declaratory relief and all damages  
26 proximately caused by Defendant's negligence pre-judgment interest, costs of suit and other relief  
27 as the Court deems just and proper.  
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**SIXTH CAUSE OF ACTION**

**(False Advertising Law, Bus. & Prof. Code § 17500, et seq.)**

**(On Behalf Of All Class Members)**

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4 90. Plaintiff incorporates by reference the allegations contained in preceding  
5 paragraphs of this Complaint.

6 91. Provide Commerce has falsely advertised, marketed and sold to the public  
7 a variety of products with the understanding that Private Payment Information provided by  
8 consumers to effectuate those transactions will not be transmitted to nonparties without  
9 authorization unless reasonably necessary to complete the transaction.

10 92. Provide Commerce has also falsely advertised and marketed the purported  
11 benefits of the Easy Saver Program, including, but not limited to, promising that consumers will  
12 receive instantly receive a gift code for a discounted if they are enrolled it the Easy Saver  
13 Program and that "great benefits and savings" automatically flow from Program membership.

14 93. Provide Commerce has also falsely advertised and marketed the Easy  
15 Saver Program as being voluntary and that consumers will not be enrolled or charged unless they  
16 affirmatively accept the offer.

17 94. Provide Commerce has disseminated and engaged in unfair, deceptive,  
18 untrue or misleading advertising on its websites when it falsely represented, through its  
19 advertising, marketing, and other express representations, that enrollment in the Easy Saver  
20 Program was voluntary, would result in savings and benefits and would result in a savings on the  
21 consumer's current purchase.

22 95. Defendant disseminated the false and misleading advertisements and  
23 statements to either directly or indirectly induce members of the public, including Plaintiff and  
24 the Class members, to provide their Private Payment Information to purchase items on Provide  
25 Commerce websites and enroll them in the Easy Saver Program

26 96. Defendant's advertisements and marketing statements were false,  
27 misleading and/or deceptive, and are likely to deceive the public. Defendant failed to disclose  
28 that it would transmit Plaintiff's and Class members' Private Payment Information to Encore or



1 that their accounts would be charged without authorization. Defendant failed to disclose that the  
 2 Easy Saver Program does not offer Plaintiff and Class members promised benefits and services.  
 3 Defendant also posted a false and misleading privacy policy and failed to disclose that it did not  
 4 adhere to its own published privacy policies. As a result of these deceptive advertising and  
 5 marketing statements, Plaintiff and Class members suffered an injury in fact and lost money, as  
 6 they were charged activation and/or monthly fees in connection with a program in which they did  
 7 not enroll and from which they received no benefits.

8 97. Plaintiff, on behalf of herself and for all others similarly situated, demands  
 9 judgment against Defendant for restitution, disgorgement, injunctive relief, and all other relief  
 10 afforded under Business & Professions Code § 17500, plus interest, attorneys' fees and costs.

11 **SEVENTH CAUSE OF ACTION**

12 **(Unjust Enrichment)**

13 **(On Behalf Of All Class Members)**

14 98. Plaintiff incorporates by reference the allegations contained in preceding  
 15 paragraphs of this Complaint.

16 99. By its wrongful acts and omissions described herein, including but not  
 17 limited to (a) selling products on its websites without honoring the privacy policy that purports to  
 18 govern such transactions, (b) representing that Plaintiff and Class members would receive a  
 19 discount on the current purchase if enrolled in the Easy Saver Program, and (c) enrolling Plaintiff  
 20 and Class members in the Easy Saver Program without authorization, Defendant was unjustly  
 21 enriched at the expense of Plaintiff and the Class.

22 100. It would be inequitable for Defendant to retain the profits, benefits, and  
 23 other compensation obtained from its wrongful conduct as alleged herein.

24 101. Plaintiff on behalf of herself and all others similarly situated, seeks  
 25 restitution from Defendant, and an order of this Court proportionally disgorging all profits,  
 26 benefits, and other compensation obtained by Defendant from its wrongful conduct.

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1 **EIGHTH CAUSE OF ACTION**

2 **(Conversion)**

3 **(On Behalf Of All Class Members)**

4 102. Plaintiff incorporates by reference the allegations contained in preceding  
5 paragraphs of this Complaint.

6 103. Plaintiff and Class members had a right to retain the moneys taken from  
7 their Private Payment Accounts when they were enrolled in the Easy Saver Program without  
8 authorization. Plaintiff and Class members also have a right of ownership and possession of their  
9 own Private Payment Information.

10 104. Defendant wrongfully converted the funds it fraudulently obtained as a  
11 result of enrolling Plaintiff and Class members in the illusory Easy Saver Program without  
12 authorization. Defendant also wrongfully converted Plaintiff's and Class members' Private  
13 Payment Information, which was provided for a limited purpose and used beyond the scope of  
14 what was authorized.

15 105. As a result of Defendant's wrongful conversion, Plaintiff and Class  
16 members were damaged because their Private Payment Accounts were charged for unauthorized  
17 fees and monthly payments and their Private Payment Information was disseminated to  
18 unauthorized third parties.

19 106. Plaintiff, on behalf of herself and all others similarly situated, demands  
20 judgment against Defendant for damages arising from its misconduct, along with pre-judgment  
21 interest, costs of suit and other relief this Court deems appropriate.

22 **NINTH CAUSE OF ACTION**

23 **(Violations of the Unfair Competition Law, Bus & Prof Code § 17200, et seq)**

24 **(On Behalf Of All Class Members)**

25 107. Plaintiff incorporates by reference the allegations contained in the  
26 preceding paragraphs of this Complaint.

27 108. Business & Professions Code § 17200 prohibits acts of "unfair  
28 competition," including any "unlawful, unfair or fraudulent business act or practice."

1 Defendant's conduct, as described above, is unlawful, unfair or fraudulent in violation of the  
2 statute.

3 109. Defendant's acts and practices are unlawful because they violate California  
4 Civil Code §§ 1572, 1668, 1709, 1710, 1770(a)(3), 1770(a)(5), 1770(a)(9), 1770(a)(14) and/or  
5 1770(a)(17), as described above.

6 110. Defendant's acts and practices are unlawful because they violate California  
7 Business & Professions Code § 22576. Defendant is an operator of a commercial website that  
8 collects personally identifiable information through its website from consumers. Class members  
9 include consumers who used or visited the commercial website who reside in all fifty states,  
10 including California. Defendant violated its posted privacy policy by sharing personal payment  
11 information with Encore without authorization beyond what was necessary to complete Plaintiff's  
12 and Class members' orders and permitted Encore to charge Plaintiff's and Class members'  
13 Private Payment Accounts without authorization.

14 111. Defendant's acts and practices are also unlawful because they violate  
15 §17500 of the Business and Professions Code and common law as alleged above.

16 112. Defendant violated the Unfair Business Practices Act, Business &  
17 Professions Code § 17200, *et seq.*, by fraudulently misrepresenting and concealing from and/or  
18 intentionally failing to disclose to Plaintiff and the Class the true facts about its business practice  
19 of transmitting Private Payment Information without authorization and the Easy Saver Program,  
20 as alleged herein.

21 113. Defendant violated the Unfair Business Practices Act, Business &  
22 Professions Code § 17200, *et seq.*, by breaching their contracts with Plaintiff and Class members.

23 114. Defendant violated Unfair Business Practices Act, Business & Professions  
24 Code § 17200, *et seq.*, by breaching the covenant of good faith and fair dealing.

25 115. Defendant's conduct was fraudulent in violation of the Unfair Business  
26 Practices Act, Business and Professions Code § 17200, *et seq.*, in that Defendant actively  
27 misrepresented in, and/or concealed and omitted from, its advertising, marketing and other  
28 communications, material information about the Easy Saver Program and its policies with respect

1 to the use of private consumer information, including Private Payment Information, in a manner  
2 that has deceived and is likely to continue to deceive consumers and the public. Plaintiff relied on  
3 these misrepresentations and omissions when providing Defendant with her Private Payment  
4 Information and purchasing products on Defendant's website and, as a result, suffered an injury  
5 in fact and lost money.

6 116. Defendant violated the Unfair Business Practices Act, Business &  
7 Professions Code § 17200, *et seq.*, by, *inter alia*, representing to Plaintiff and Class members that  
8 their Private Payment Information would be secure and not transmitted to unauthorized parties,  
9 while knowing that the information would be transmitted to Encore without explicit authorization.

10 117. Defendant also violated the Unfair Business Practices Act, Business and  
11 Professions Code § 17200, *et seq.*, by, *inter alia*, representing that Plaintiff and Class members  
12 who were enrolled in the Easy Saver Program would immediately receive a discount code and  
13 that they would receive discounts and savings their purchasers. Plaintiff and Class member were  
14 unwittingly enrolled in the Program, but did not receive the promised discounts, savings or other  
15 benefits.

16 118. Defendant's conduct was unfair in violation of the Unfair Business  
17 Practices Act, Business and Professions Code § 17200, *et seq.*, because, *inter alia*, the injury to  
18 Plaintiff and Class members by Defendant's conduct greatly outweighs any alleged  
19 countervailing benefit to consumers or competition under all of the circumstances.

20 119. To this day, Defendant continues to violate the Unfair Business Practices  
21 Act by continuing to misrepresent and actively conceal material information regarding the Easy  
22 Saver Program, the benefits it offers, and its own privacy policies and practices.

23 120. As a direct and proximate cause of Defendant's violation of the Unfair  
24 Business Practices Act, Plaintiff and the Class have suffered injury in fact and lost money in that  
25 their Private Payment Accounts were charged for services and benefits they did not receive.

26 121. As a proximate result of Defendant's violation of the Business and  
27 Professions Code § 17200, *et seq.*, Defendant has been unjustly enriched and should be required  
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1 to make restitution to Plaintiff and the Class and/or disgorge their ill-gotten profits pursuant to  
2 Business & Professions Code § 17203.

3 122. Plaintiff, on behalf of herself and all others similarly situated, demands  
4 judgment against Defendant for injunctive relief, restitution, and/or proportional disgorgement of  
5 profits earned as a result of the conduct alleged herein, including promised discounts and savings  
6 that were not given, along with interest, attorneys' fees and costs pursuant to, *inter alia*, Cal.  
7 Code Civ. Proc. § 1021.5.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, on behalf of herself and the members of the Class and Sub-  
10 Class, demands judgment against the Defendant as follows:

- 11 a. An order certifying the Class and any appropriate subclasses and
- 12 designating Plaintiff as the Class Representative and Plaintiff's counsel as Class Counsel;
- 13 b. Restitution and disgorgement to the extent permitted by applicable
- 14 law, together with interest thereon from the date of payment, to the victims of such violations;
- 15 c. Monetary damages, including, but not limited to any compensatory,
- 16 incidental or consequential damages commensurate with proof at trial for the acts complained of
- 17 herein;
- 18 d. Punitive damages in accordance with proof and in an amount
- 19 consistent with applicable precedent;
- 20 e. Injunctive and declaratory relief;
- 21 f. A declaration that Defendant is financially responsible for notifying
- 22 all Class members of the pendency of this action;
- 23 g. Reasonable costs and attorneys' fees;
- 24 h. Statutory pre-judgment interest; and
- 25 i. All other relief the Court deems just and appropriate.

26 **DEMAND FOR JURY TRIAL**

27 Plaintiff, on behalf of herself and the Class members, demands a jury trial in this action  
28 for all of the claims so triable.

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Dated: September 24, 2009

**ANDRUS ANDERSON LLP**

By:   
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*Attorneys for Plaintiff and the Proposed Class*

# EXHIBIT “A”

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 2 Lori E. Andrus (SBN 205816)  
 3 ANDRUS ANDERSON LLP  
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 5 San Francisco, CA 94104  
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 7 Melissa Hutts  
 8 Bruce Steckler  
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 mhutts@baronbudd.com  
 bsteckle@baronbudd.com

12 *Attorneys for Plaintiff and the Proposed Class*

13 UNITED STATES DISTRICT COURT  
 14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
 15

16 BOBBI SLEDGE, on behalf of herself and all  
 17 others similarly situated,

18 Plaintiff,

19 v.

20 PROVIDE COMMERCE, INC.,

21 Defendant.

Civil Case No.:

**DECLARATION OF BOBBI SLEDGE**  
**PURSUANT TO CAL. CIV. CODE**  
**§1780(c)**

22  
 23 I, Bobbi Sledge, declare as follows:

- 24 1. I am the named plaintiff in this litigation.  
 25 2. I have personal knowledge of the matters set forth below except as to those matters  
 26 stated herein which are based on information and belief, which matters I believe to be true.  
 27 3. If called as a witness I could and would testify competently to these matters herein  
 28

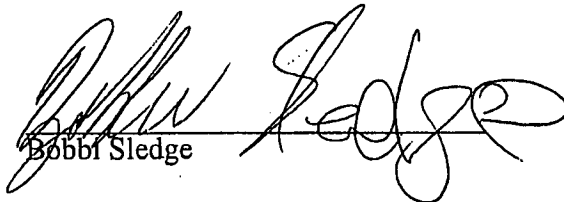


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included.

4. I am informed and believe that venue is proper in this court under Civil Code 1780(c) based on the fact that, on information and belief, Defendant Provide Commerce is headquartered in and does business in San Diego County and within this judicial district.

I declare under penalty of perjury under the laws of the state of United States that the foregoing is true and correct and that this declaration was executed on September 22, 2009 in Dallas, Texas.

  
Bobbi Sledge

# EXHIBIT “B”

# EXHIBIT “B”

ANDRUS  ANDERSON LLP

September 24, 2009

Via Certified Mail, Return Receipt Requested

William Strauss, CEO and Director  
Provide Commerce, Inc.  
(San Diego Headquarters)  
4840 Eastgate Mall  
San Diego, California 92121

William Strauss, CEO and Director  
Provide Commerce, Inc.  
(Corporate Address)  
5005 Wateridge Vista Drive  
San Diego, CA 92121

**RE: Notice of Violations of Consumer Legal Remedies Act and Demand**

Dear Mr. Strauss,

Pursuant to California Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* ("CLRA"), and specifically § 1782(a)(1)(2), Bobbi Sledge ("Plaintiff") on behalf of herself and all others similarly situated, and through the undersigned counsel, hereby notify you that Provide Commerce, Inc. ("Provide Commerce") has violated California Civil Code § 1770 by misrepresenting its affiliation and association with third parties, including the Regent Group Inc., d/b/a Encore Marketing International, Inc. ("Encore"), and by sharing Plaintiff's and putative Class members' private information with unauthorized third parties.

Specially, our investigation has revealed the following. Provide Commerce improperly transmitted Plaintiff's and Class members' private credit card, debit card or online payment account (e.g., Paypal) information (collectively, "Private Payment Information") to Encore, without their authorization, after Plaintiff and Class members' purchased flowers, gifts or other retail items for delivery from one or more of Provide Commerce's online retail stores. Provide Commerce improperly represented that the Easy Saver Rewards Program would provide benefits it does not offer because Plaintiff and Class members received no savings or discounts as a result of being enrolled. Provide Commerce advertised the Easy Saver Program as a Program that Plaintiff's and Class members could decline, representing the Program as a voluntary program that would only activate when the consumer affirmatively signs up by clicking the enroll button, and as a Program that would offer consumer discounts, savings, and other economic benefits. In fact, Plaintiff and Class members were enrolled in the Easy Saver Program after declining to join and they received no benefits or savings. Furthermore, Provide Commerce represented that Plaintiff and Class members would receive a rebate or discount by enrolling in the Program, although the earning of the benefit was contingent on Plaintiff and Class members actively enrolling in the Program to obtain the promised coupon. Because they declined the offer, Plaintiff and Class members did not receive a discount on their purchase, but were nonetheless charged an activation fee and subsequent monthly charges.

Provide Commerce, Inc.  
September 24, 2009  
Page 2

The aforementioned conduct violates the CLRA in several respects.

1. Provide Commerce violated Civil Code § 1770(a)(3) by misrepresenting and failing to disclose its affiliation, connection or association with, or certification of Encore.
2. Provide Commerce violated Civil Code § 1770(a)(5) by, *inter alia*, representing that the Easy Saver Program had sponsorship or approval or benefits that it did not have by representing that enrollment was voluntary and not automatic and by misrepresenting that Plaintiff and Class members would receive discounts and savings if enrolled.
3. Provide Commerce violated Civil Code § 1770(a)(9) by, *inter alia*, advertising and marketing the Easy Saver Program as a program in which consumers must voluntarily and affirmatively join and that membership would result in discounts and savings with the intent to automatically sign Plaintiff and Class members up for the Program and without sending them the promised savings and benefits.
4. Provide Commerce violated Civil Code § 1770(a)(14) by, *inter alia*, representing that the transaction would confer rights and remedies, i.e., the right to decline to join the Easy Saver Program, which the transaction did not have. In fact, the transaction resulted in Plaintiff and Class members being enrolled in, and charged for, the Program without authorization.
5. Provide Commerce violated Civil Code § 1770(a)(17) by, *inter alia*, representing that Plaintiffs and Class members would receive a rebate, discount, or other economic benefit when the earning of any benefit, if any, was contingent on an event to occur subsequent to the consummation of the transactions. Indeed, Provide Commerce deceptively represented that Plaintiff and Class members would receive a gift code "now" if enrolled in the Program. However, Plaintiff and Class members did not receive a gift code or discount on their purchase when they were unwittingly enrolled in the Program and charged an activation fee. Because Plaintiff and Class members did not affirmatively enroll in the Program, and, in fact, declined the offer, they could not receive the promised benefits, if any, unless they discovered that they were fraudulently enrolled in the Program, demanded the gift code after the fact, and purchased additional items from Provide Commerce. Plaintiff and Class members were enrolled and charged without their knowledge or consent, but to earn a benefit or discount, if any, they would unfairly be forced to make an additional purchase.

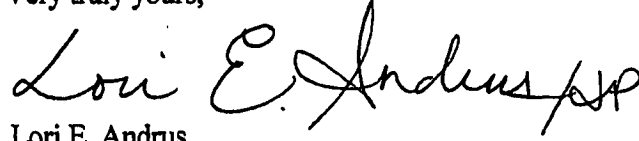
This Notice is being served on behalf of Plaintiff and all similarly-situated consumers, who hereby demand that Provide Commerce correct or rectify the illegal conduct alleged herein, that Provide Commerce cease and desist from the conduct described herein, notify all consumers whose Private Payment Information has been illegally transmitted to Encore and reimburse Plaintiff and all other similarly-situated consumers for all amounts that were improperly charged to them as a result.

We have sent this letter directly to you in order to fully comply with the requirements of California Civil Code § 1782. We, of course, hope that you will act immediately to rectify this situation and stand ready to discuss a reasonable resolution of this matter on the terms outlined above or on similar terms acceptable to Plaintiff and similarly-situated consumers.

Provide Commerce, Inc.  
September 24, 2009  
Page 3

If you have any questions, require any additional information or would like to discuss these matters, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Lori E. Andrus" followed by a stylized flourish.

Lori E. Andrus

JS 44 (Rev. 12/07)

### CIVIL COVER SHEET

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

#### I. (a) PLAINTIFFS

Bobbi Sledge

(b) County of Residence of First Listed Plaintiff Dallas County, Texas  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Andrus Anderson LLP, 155 Montgomery St, Ste 900, San Francisco, CA 94104, (415) 986-1400

#### DEFENDANTS

Provide Commerce **2009 SEP 24 PM 3:06**

County of Residence of First Listed Defendant: San Diego, California  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, INDICATE LOCATION OF THE LAND INVOLVED WVA

Attorneys (If Known)

**09 CV 2094**

**MMA BLM**

#### II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

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

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

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

#### IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input checked="" type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input checked="" type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 880 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

#### V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

#### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1391(d)

Brief description of cause:  
CLRA; Fraud; Breach of Contract; Breach Good Faith; Neg.; FAL; Unjust Enrich.; Conversion; UCL

#### VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
DEMAND \$ TBD  
CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

#### VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

09/24/2009

SIGNATURE OF ATTORNEY OF RECORD

Jennie Lee Anderson

FOR OFFICE USE ONLY

RECEIPT # 5614 AMOUNT \$350.00 APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

MS 9/24/09

FILE BY FAX

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS005614  
Cashier ID: msweaney  
Transaction Date: 09/24/2009  
Payer Name: DIVERSIFIED LEGAL SERVICES

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CIVIL FILING FEE  
For: BOBBI SLEDGE V PROVIDE COMMERC  
Case/Party: D-CAS-3-09-CV-002094-001  
Amount: \$350.00

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CHECK  
Check/Money Order Num: 0045155  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.