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CENTRAL DIVISION

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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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10 And the Putative Class

11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF SAN DIEGO**  
13 **CENTRAL DIVISION**

14 DANNY COHEN, individually and on behalf of ) **CASE NO. 37-2011-00100174-CU-BT-CTL**  
15 all others similarly situated, ) **CLASS ACTION**  
16 ) **COMPLAINT FOR:**  
17 **PLAINTIFFS,** )  
18 ) **1) UNFAIR BUSINESS**  
19 vs. ) **PRACTICES;**  
20 ) **2) UNLAWFUL BUSINESS**  
21 CALIFORNIA DELTA MECHANICAL, INC., a ) **PRACTICES;**  
22 California Corporation, and DOES 1-100, ) **3) FRAUDULENT BUSINESS**  
23 ) **PRACTICES;**  
24 ) **4) FALSE ADVERTISING; AND**  
25 ) **5) VIOLATIONS OF THE**  
26 ) **CONSUMERS LEGAL**  
27 ) **REMEDIES ACT**  
28 ) **[Jury Trial Demanded]**

29 Plaintiff Danny Cohen ("Plaintiff"), by and through his undersigned counsel, individually  
30 and on behalf of all others similarly situated, alleges the following facts and claims upon personal  
31 knowledge and upon information and belief as to all other matters as follows:



1           7.       California Delta Mechanical, Inc. is a corporation organized under the laws of  
2 California with its principal place of business located at 1235 Grand Ave., Spring Valley,  
3 California 91977. Plaintiff is informed and believes and based thereon alleges that Delta is the  
4 exclusive provider of water heater installation services for all Home Depot retail stores located in  
5 Southern California, including San Diego County, and other regions of California.

6           8.       The true names and capacities, whether individual, corporate, associate, affiliate,  
7 agent or otherwise, of defendants Does 1 through 100 are unknown to Plaintiff, who therefore sues  
8 these defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges  
9 that each of the defendants designated as a Doe is a resident of the State of California and/or did  
10 business in the County of San Diego at all relevant times herein referred to, and proximately  
11 caused injury and damages to plaintiff as herein alleged.

12           9.       Plaintiff is unaware of the basis of liability as to some or all such fictitiously named  
13 defendants sued herein as Does, but believes that their liability arises out of the same general facts  
14 as set forth herein. Plaintiff will move to amend this Complaint to identify the true names of the  
15 Doe defendants and to assert the theories of liability of the Doe defendants after they have been  
16 ascertained.

17           10.      Plaintiff is informed and believes and thereon alleges that California Delta  
18 Mechanical, Inc. and Does 1-100 are each alter egos of one another, are each agents or principals in  
19 agency/principal relationships with one another, and are each successor/predecessor corporations  
20 or companies of each other, and are liable for the acts and omissions of each other as alleged  
21 herein.

22           11.      Plaintiff is informed and believes, and thereon alleges that California Delta  
23 Mechanical, Inc. and Does 1-100 are alter egos of one another, or otherwise abuse the corporate  
24 privilege, in that they dominate the affairs of one another; a unity of interest existed and exists  
25 between one another; each one is a mere shell for the manipulation by the others; each was  
26 inadequately capitalized, insolvent, and/or failed to abide by the formalities of corporate existence;  
27 and that each is the successor/predecessor in interest to one another. Adherence to the fiction of a  
28 separate legal existence of California Delta Mechanical, Inc. and Does 1-100 would result in

1 injustice. Plaintiff is informed and believes and based thereon alleges that California Delta  
2 Mechanical, Inc. and Does 1-100 are so formed and organized by their shareholders with the  
3 fraudulent intent of evading civil or criminal liability. Each of California Delta Mechanical, Inc.  
4 and Does 1-100 should be held responsible for the acts of the others as they pertain to this action.  
5 Inequity will result if the acts of each defendant are treated as the acts of each defendant alone.  
6 Hereinafter Delta and Does 1-100 are collectively referred to as "Delta."

### 7 **JURISDICTION AND VENUE**

8 12. This Court has jurisdiction over this matter under the "local controversy" exception  
9 to the Class Action Fairness Act ("CAFA") because greater than two thirds of the members of all  
10 proposed plaintiff classes in the aggregate are citizens of California and Delta is a citizen of  
11 California. 28 U.S.C. § 1332(d)(4)(A)(i). Also, Plaintiff is informed and believes and based  
12 thereon alleges that the amount in controversy does not exceed \$5,000,000, exclusive of interest  
13 and costs (28 U.S.C. § 1332(d)(6)), and this is a class action in which venue is proper in this  
14 judicial district because Delta does substantial business in this district, and a substantial part of the  
15 events or omissions giving rise to Plaintiff's claims took place within this district.

### 16 **FACTUAL BACKGROUND**

17 13. Delta is in the business of installing residential water heaters that are sold to  
18 consumers by Home Depot retail stores in California.

19 14. On or about June 11, 2011, Plaintiff visited a Home Depot retail store located in the  
20 City of San Marcos, California where he intended to buy a hot water heater to replace the existing  
21 one in his home which had failed. Plaintiff selected the water heater that he wanted to buy and at  
22 the same time read a sign in the plumbing department of the Home Depot retail store that  
23 instructed him to call 1-800-HOME-DEPOT, if he wanted to schedule installation of his new hot  
24 water heater.

25 15. While still in the Home Depot retail store, Plaintiff used a telephone to call 1-800-  
26 HOME-DEPOT. An automated operator instructed Plaintiff to press or say "1" to be transferred to  
27 installation services. Plaintiff pressed "1" on the telephone and his call was transferred to another  
28

1 automated operator who instructed him to say the type of product he wanted installed. Plaintiff  
2 stated “water heater.”

3 16. Plaintiff’s call was then transferred to a live Delta customer service representative  
4 (“CSR”). The Delta CSR processed Plaintiff’s order and advised Plaintiff that he would receive an  
5 email message confirming his order.

6 17. Upon returning home, Plaintiff received and opened an email message from the  
7 email address MichaelH@deltamechanical.com dated June 11, 2011. The subject line of the email  
8 reads “Workorder [sic] 170334.” Attached to the email message was a document entitled “Work  
9 Order” in PDF format. [See Ex. 1.] The Work Order was created and sent by California Delta  
10 Mechanical, Inc.

11 18. On June 13, 2011 Plaintiff received an email message from the email address  
12 silviya@deltamechanical.com. Attached to the email message was a document entitled “Invoice”  
13 in PDF format. [See Ex. 2.] The Invoice was created and sent by California Delta Mechanical, Inc.

14 19. The Work Order and Invoice itemize several charges for a total of \$1,069.04,  
15 including the purchase price of the water heater unit itself. The Work Order and Invoice itemize a  
16 charge for “Permit Processing and Jurisdiction administrative assesment [sic]” for a cost of \$20.00,  
17 reflecting Delta’s charge for procuring the water heater permit from the local municipality. The  
18 Work Order and Invoice also itemize a charge for “Permit San Marcos” for a cost of \$30.00. The  
19 “Permit San Marcos” charge is the basis for Plaintiff’s claims.

20 20. The actual cost of a City of San Marcos residential home replacement water heater  
21 permit is \$10.00, and Delta actually paid only \$10.00 to the City of San Marcos to obtain  
22 Plaintiff’s permit. [See Exhibit. 3<sup>1</sup>.] Despite the permit costing only \$10.00 from the City of San  
23 Marcos, and Delta remitting the sum of \$10.00 for the permit, Delta charged Plaintiff \$30.00 for  
24 the permit as depicted in the Work Order and Invoice. Delta also charged Plaintiff a separate  
25 \$20.00 “Permit Processing and Jurisdiction administrative assessment [sic]” for processing the  
26 permit.

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27 <sup>1</sup> Ex. 3 is a receipt for Delta’s payment for two (2) water heater permits, Plaintiff’s permit, which is  
28 identified as permit number B11-00603, and that of another person. The receipt is not provided to  
consumers by Delta. Rather, Plaintiff obtained the receipt directly from the City of San Marcos.

1           21. Together, through the permit charge and the permit processing charge, Delta  
2 charged Plaintiff \$50.00 for a \$10.00 permit. However, Plaintiff's only seeks restitution of the  
3 \$20.00 overcharge for the permit itself, not the permit processing fee.

4           22. The Overcharge is especially egregious because at all times material to the  
5 allegations of this Complaint, Delta portrayed on its website that it is a company that provides  
6 services with "no hidden charges" [See Ex. 4], but unbeknownst to Plaintiff, Delta overcharged  
7 Plaintiff \$20 in the form a fee hidden in the "cost" of the permit.

8           23. Plaintiff reviewed and read the emails he received from Delta, the Work Order, and  
9 the Invoice, and relied on the information contained therein, including Delta's specific omission of  
10 the Overcharge to his detriment in that he would not have purchased Delta's installation services or  
11 would not have purchased his permit through Delta had Delta disclosed the Overcharge.

12  
13                           **NON-FRAUD ALLEGATIONS REGARDING DELTA'S VIOLATION OF THE**  
14                           **UNFAIR PRONG OF CALIFORNIA'S UNFAIR COMPETITION LAW**

15           24. The following allegations apply to Plaintiff's claim that Delta's conduct violates the  
16 unfair prong of the UCL. These allegations do not sound in fraud, and the requirements for  
17 pleading fraud do not apply to Plaintiff's claim under the unfair prong of the UCL. Plaintiff  
18 expressly disclaims any allegations that could be construed as sounding in fraud as applied to this  
19 claim, and those allegations are disavowed in this section of the Complaint. Furthermore, the  
20 conduct complained of that gives rise to Plaintiff's unfair-prong claim is separate and apart from  
21 the course of conduct giving rise to Plaintiff's claims under the fraudulent prong of the UCL, as  
22 well as the Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* ("CLRA") and  
23 California's False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.* ("FAL").

24           25. Delta violates the unfair prong of the UCL simply by charging more than the actual  
25 cost of the permit while simultaneously charging a separate permit processing fee.

26           26. Delta's conduct satisfies the definitions for unfair conduct under the UCL in that  
27 Delta's practice offends an established public policy and/or is immoral, unethical, oppressive,  
28 unscrupulous or substantially injurious to consumers. Further, consumers' injuries are substantial;

1 the injury is not outweighed by any countervailing benefits to consumers or competition; and  
2 consumers' injuries are injuries that consumers themselves could not have reasonably avoided.

3 27. Delta's practice of charging more money for a permit than the permit actually costs  
4 while at the same time charging a separate permit processing fee is immoral, unethical,  
5 unscrupulous and substantially injurious to consumers. Delta charges 300% of the actual cost of  
6 the permit and at the same time charges consumers twenty additional dollars for processing the  
7 permits. By specifically identifying a separate charge for the administrative process services of  
8 obtaining the permit, Delta's practices are immoral, unethical and unscrupulous because they  
9 mislead consumers into believing the separate itemized charge for the "permit" is the actual cost of  
10 the permit from the issuing municipality. Delta's practices are especially immoral, and  
11 unscrupulous because Delta portrays itself as a business that offers services with "no hidden  
12 charges," but then does exactly the opposite. The injury to consumers is substantial. In the case of  
13 Plaintiff, Delta charged him 300% of the actual cost of the permit or 300% of the amount Delta  
14 actually paid to obtain the permit. Taking into account the additional \$20 permit processing fee,  
15 Plaintiff paid Delta a total of \$50.00 to obtain a permit for which the City of San Marcos only  
16 charged \$10.00.

17 28. The injury to consumers is not outweighed by any countervailing benefits to  
18 consumers or competition. There is no benefit to consumers in overpaying for water heater permits  
19 when they are simultaneously paying permit processing fees to Delta.

20 29. The injury to consumers is an injury that consumers themselves could not have  
21 reasonably avoided because consumers have no reason to suspect that Delta will charge them more  
22 than the actual cost of the permit when Delta simultaneously charges consumers a separate  
23 itemized charge for procuring the permit.

24 30. Delta's conduct also offends established public policies concerning consumer  
25 protection and class action litigation. The California Supreme Court has opined that "[p]rotection  
26 of unwary consumers from being duped by unscrupulous sellers is an exigency of the utmost  
27 priority in contemporary society." *Vasquez v. Super. Ct.*, 4 Cal. 3d 800, 808 (1971). Moreover, the  
28 public policy at the very core of the class action mechanism is to overcome the problem that

1 relatively small recoveries do not provide the incentive for any individual to bring a solo action  
2 prosecuting his or her rights. A class action solves this problem by aggregating the relatively small  
3 potential recoveries into something worth someone's time and labor. *Amchem Prods. v. Windsor*,  
4 521 U.S. 591, 617 (1997) (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir.  
5 1997). Furthermore, the California legislature has announced a general policy favoring the  
6 protection of "consumers against unfair and deceptive business practices and to provide efficient  
7 and economical procedures to secure such protection." Cal. Civ. Code § 1760.

### 9 **DELTA'S OMISSIONS OF MATERIAL FACTS AT THE POINT OF SALE**

10 31. Delta fails to disclose to Plaintiff and Class members, at the time of purchase, the  
11 material fact that Delta charges more for water heater permits than is charged by, and the amount  
12 Delta actually pays to the municipalities that issue permits.

13 32. Plaintiff now pleads his material omission claims with the requisite particularity to  
14 satisfy the heightened pleading standards of claims sounding in fraud.

#### 15 **WHO:**

16 33. California Delta Mechanical, Inc. is the entity that fails to disclose the Overcharge.

#### 17 **WHAT:**

18 34. Delta fails to disclose that it charges more for water heater permits than is charged  
19 by, and the amount Delta actually pays to, the municipalities that issue permits for its work. In the  
20 case of Plaintiff Cohen, Delta failed to disclose that it was charging Plaintiff 300% of the cost of  
21 the permit it obtained to perform the installation of a new water heater in his home. Delta charged  
22 Plaintiff \$30.00 for a permit for which the City of San Marcos charged \$10.00 and for which Delta  
23 only paid the City of San Marcos \$10.00.

#### 24 **WHEN:**

25 35. Delta omits the material fact that it overcharges for permits: (1) at the time that that  
26 its customer service representatives engage consumers over the telephone after consumers call 1-  
27 800-HOME-DEPOT; (2) at the time Delta sends to prospective customers email messages  
28 containing "Work Orders" and/or "Invoices"; and (3) at the time consumers review the Work



1 Orders and Invoices themselves that are attached to the emails. [See, for example, Ex. 1-2.] In the  
2 case of Plaintiff Cohen, Delta omitted the material information on June 11, 2011 when he first  
3 spoke with a Delta CSR and received an email from Delta containing the Work Order, and June 13,  
4 2011 when he received an email from Delta containing the Invoice.

5 **WHERE:**

6 36. Delta fails to disclose the Overcharge: (1) over the telephone upon accepting orders  
7 from consumers; (2) in emails it sends to consumers; and (3) on Work Orders and/or Invoices that  
8 it sends to consumers via email, fax or other means of communication. [See Ex. 1-2.]

9 **WHY and HOW:**

10 37. Delta's overcharging for water heater permits is material because reasonable  
11 consumers would consider paying 300% of the municipality permit fee important when deciding  
12 which company to select to install a water heater in their homes. Had Delta disclosed the material  
13 fact that it was overcharging for the water heater permit, Plaintiff would have acted differently by  
14 not hiring Delta to install his water heater or by not purchasing his permit through Delta.

15 38. Delta was obligated to disclose the fact that it was overcharging for permits because:  
16 1) Delta had exclusive knowledge of the overcharge; 2) Delta actively concealed and suppressed  
17 the overcharge by representing on Work Orders and Invoices that the \$30 permit fee was the actual  
18 cost of the permit, especially in light of the fact that Delta itemizes a separate fee for procuring the  
19 permit; and/or 3) Delta makes express partial representations on its website  
20 [www.deltamemechnical.com](http://www.deltamemechnical.com) that it does not charge "hidden fees" when it in fact charges  
21 consumers more than the actual cost of the permit itself, i.e., a hidden fee. As a result of Delta's  
22 concealment of the overcharge, Plaintiff and Class members were not provided material  
23 information, known by Delta, before they decided whether to pay for Delta's services. Plaintiff  
24 and Class members lost money in that they would not have paid for Delta's services, or at least  
25 would not have paid Delta the permit fees, had they known Delta was overcharging for the permits.

1 **CLASS ACTION ALLEGATIONS**

2 39. Plaintiff Danny Cohen brings this action on behalf of himself and all others similarly  
3 situated as a class action pursuant to California Code of Civil Procedure § 382 and California Civil  
4 Code § 1781. The Class that Plaintiff seeks to represent is defined as follows:

5  
6 **All persons and entities in the State of California whom Delta charged**  
7 **more than the actual cost of a water heater permit and which persons**  
8 **or entities also paid Delta separate permit processing fees, from October**  
9 **27, 2007 through the date of class notice.**

10  
11 40. Excluded from the Class are: (i) Delta, any entity in which Delta has a controlling  
12 interest or which has a controlling interest in Delta, and Delta’s legal representatives, predecessors,  
13 successors and assigns; (ii) governmental entities; (iii) Delta’s employees, officers, directors,  
14 agents, and representatives and their family members; and (iv) the Judge and staff to whom this  
15 case is assigned, and any member of the Judge’s immediate family.

16 41. This action has been brought and may properly be maintained as a class action  
17 because there is a well-defined community of interest in the litigation and the proposed class is  
18 easily ascertainable:

19 42. Numerosity. Plaintiff is informed and believes and thereon alleges that Delta is the  
20 exclusive installer of water heaters for Home Depot retail stores in Southern California and other  
21 regions of California. Plaintiff is informed and believes and based thereon alleges that Home  
22 Depot has over 100 stores throughout California. Plaintiff is informed and believes that the  
23 proposed putative Class is made-up of thousands of customers throughout California.

24 43. Common Issues Exist and Predominate. Common questions of law and fact exist as  
25 to all members of the Class and predominate over any questions which affect only individual  
26 members of the Class. The common questions of law and fact include, without limitation:

27 A. Whether Delta charges consumers more than the amount of money Delta pays  
28 municipalities for water heater permits;

- 1 B. Whether Delta's Work Orders and Invoices and the permit and permit  
2 processing fees itemized on them are likely to deceive a reasonable consumer  
3 acting reasonably under the circumstances;
- 4 C. Whether the Overcharge is unconscionable;
- 5 D. Whether Delta had a duty to disclose the Overcharge;
- 6 E. Whether Delta has engaged in unfair methods of competition, and unfair or  
7 deceptive acts or practices in connection with the sale and installation of water  
8 heaters;
- 9 F. Whether, as a result of Delta's misconduct, Plaintiff and Class members have  
10 suffered damages, and if so, the appropriate amount thereof; and
- 11 G. Whether, as a result of Delta's misconduct, Plaintiff and Class members are  
12 entitled to equitable relief and/or other relief, and if so, the nature of such  
13 relief.

14 44. Typicality. Plaintiff's claims are typical of the claims of the Class members in that  
15 Plaintiff and Class members purchased installation services from Delta and Delta acted unfairly as  
16 to all Class members, and repeatedly made the same, if not identical, uniform omissions of  
17 material information about charging its California customers more than it paid for permits required  
18 for the legal installation of water heaters. Therefore Plaintiff's claims are typical of Class members.

19 45. The Class is Ascertainable. Plaintiff has adequately defined the Class so the Court  
20 will be able to use the definition to determine class membership. In addition, Delta's records, and  
21 third-party records such as those in the possession, custody and control of Home Depot, will  
22 facilitate identifying individuals who are members of the proposed Class.

23 46. Adequacy. Plaintiff will fairly and adequately represent the interests of all Class  
24 members. Plaintiff purchased installation services from Delta and is an adequate representative of  
25 the Class as he has no interests which are adverse to the interests of absent Class members.  
26 Plaintiff has retained counsel with substantial experience and success in the prosecution of class  
27 actions and other complex litigation.

28









1           81.     The CLRA provides, in relevant part, that unfair methods of competition and unfair  
2 or deceptive acts or practices undertaken by any person in a transaction intended to result or which  
3 results in the sale or lease of goods or services to any consumer are unlawful: subsection (a)(9)  
4 advertising services with intent not to sell them as advertised; subsection (a)(14) representing that a  
5 transaction confers or involves rights, remedies, or obligations which it does not have or involve,  
6 or which are prohibited by law; and subsection (a)(19) inserting an unconscionable provision in the  
7 contract.

8           82.     Delta violates Cal. Civ. Code § 1770(a)(9) by falsely advertising its prices for its  
9 installation services by omitting from its advertising, including its live solicitation, emails, Work  
10 Orders and Invoices, the material fact that it charges 300% of the cost of the required water heater  
11 installation permits.

12           83.     Delta violates Cal. Civ. Code § 1770(a)(14) by representing that the transaction  
13 involves an obligation which it does not have or involve. Specifically, Delta represents that  
14 Plaintiff is obligated to pay \$30.00 for a water heater permit to the City of San Marcos, when, in  
15 fact, there is no such obligation because the City of San Marcos charges only the sum of \$10.00  
16 for a water heater permit. Delta likewise represents to Class members that they are obligated to  
17 pay the more for the water heater installation permits than the applicable municipality actually  
18 requires.

19           84.     Delta violates Cal. Civ. Code § 1770(a)(19) by inserting unconscionable provisions  
20 in its water heater installation contracts with Plaintiff and Class members. Specifically, Delta  
21 inserts the price term for water heater permits that is false and in the case of Plaintiff, was 300% of  
22 the actual cost charged by San Marcos for the water heater installation permit. The Overcharge is  
23 procedurally and substantively unconscionable. Specifically, the water heater installation contracts  
24 are contracts of adhesion drafted by Delta and offered on a take-it-or-leave-it basis by Delta who is  
25 in a superior bargaining position to that of residential consumers such as Plaintiff and Class  
26 members.

27           85.     Delta does not disclose that it is overcharging for the water heater permits. At the  
28 same time, Delta itemizes a separate contract term, the permit processing fee, which it charges for



1 the cost of processing the permits. Therefore, the overcharge is outside the reasonable expectations  
2 of Plaintiff and consumers.

3 86. Furthermore, charging 300% of the actual cost of the water heater installation  
4 permit is unduly oppressive, and surprising. The Work Order and Invoice involve a lack of  
5 negotiation and meaningful choice. The unconscionable permit overcharge is hidden in a prolix  
6 printed form and by the fact that Delta charges a separate permit processing fee, which gives  
7 Plaintiff and Class members no reason to suspect that they would pay Delta more than Delta paid a  
8 municipality for the water installation permit required to legally install a water heater in a Class  
9 member's home.

10 87. Plaintiff and Class members lack reasonable choice because Delta is the exclusive  
11 installer for all water heaters purchased at Home Depot stores in Southern California and other  
12 regions of California.

13 88. Delta's charge of 300% of the water heater installation permit fee, while also  
14 charging a separate permit processing fee is one-sided in favor of Delta and shocks the conscience  
15 of a reasonable consumer.

16 89. The price term of \$30.00 for Plaintiff's water heater installation permit was  
17 unconscionable because the actual cost to Delta, or any applicant, for the permit is \$10.00, and any  
18 cost or expense incurred by Delta for obtaining the subject permit is accounted for by the  
19 separately itemized and charged permit processing fee of \$20.00.

20 90. The Overcharge is material in that a reasonable consumer would have considered it  
21 important in deciding whether to purchase, or whether to pay the stated price for Delta's water  
22 heater installation services. Had Plaintiff and Class members been aware of the overcharge, they  
23 would behaved differently by not buying Delta's installation services or procuring the permits  
24 themselves.

25 91. Plaintiff and Class members justifiably acted or relied to their detriment upon the  
26 undisclosed overcharge as evidenced by their purchase of Delta's installation services.

27 92. Cal. Civil Code § 1780 (a)(2) permits any court of competent jurisdiction to enjoin  
28 practices that violate Civ. Code § 1770. Plaintiff requests that this Court enter an order enjoining

1 Delta's deceptive and unfair practices as alleged herein. Specifically, this Court should enjoin  
2 Delta's practice of overcharging for permits without disclosing the overcharge while it charges a  
3 separate permit processing fee. Plaintiff and Class members are entitled to recover costs, and  
4 attorney's fees pursuant to Cal. Civil Code §§ 1780(e).

5 93. Pursuant to Cal. Civ. Code § 1782, Plaintiff brings this cause of action for  
6 injunctive relief only at this time. Plaintiff intends to serve Delta with notice of his claims for  
7 damages under the CLRA on behalf of himself and others similarly situated pursuant to Cal. Civ.  
8 Code § 1782(a). Depending on Delta's response to Plaintiff's demand, Plaintiff may exercise his  
9 statutory right to amend his CLRA claim to include a claim for compensatory and punitive  
10 damages.

11  
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment against the Delta and Doe defendants for the  
14 following:

- 15 1. An order certifying the Class, and appointing Danny Cohen as the representative  
16 plaintiff of this action and his undersigned counsel to be Class counsel;
- 17 2. A constructive trust on, and restitution of, all amounts obtained by Delta and Doe  
18 defendants as a result of their misconduct, together with interest thereon from the date of payment,  
19 to the victims of such violations;
- 20 3. All recoverable compensatory and other damages sustained by Plaintiff and Class  
21 members;
- 22 4. Actual and/or statutory damages for injuries suffered by Plaintiff and Class  
23 members in the maximum amount permitted by applicable law;
- 24 5. An order (1) enjoining Delta's wrongful, unfair, unlawful, fraudulent, and deceptive  
25 conduct as set forth above; (2) directing Delta to engage in a corrective notice campaign; and (3)  
26 directing Delta to refund to Plaintiff and Class members the funds they paid to Delta above the  
27 actual cost of the water heater permits;
- 28 6. Statutory pre-judgment and post-judgment interest on any amounts;

1           7.     Payment of reasonable attorneys' fees and costs as provided for under applicable  
2 law; and

3           8.     Such other relief as the Court may deem just and proper.

4           Plaintiff, individually and on behalf of all others similarly situated, hereby demands a trial  
5 by jury on all issues so triable.

6  
7 Dated: October 27, 2011

EPPSTEINER & FIORICA ATTORNEYS, LLP

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9

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By: 

Stuart M. Eppsteiner, Esq.

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Andrew P. Fiorica, Esq.

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Andrew J. Kubik, Esq.

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Counsel for Plaintiff and the Putative Class

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# EXHIBIT 1



# California Delta Mechanical

1235 Grand Ave

Spring Valley CA 91977

Phone: (619) 229-6800

Fax: (619) 229-8200

[california@deltamechanical.com](mailto:california@deltamechanical.com)

[www.deltamechanical.com](http://www.deltamechanical.com)

## Work Order

<b>Service Information</b>	
DANNY COHEN 1461 CORAL WAY	
San Marcos CA 92078	
Contact:	
Phone: (760) 591-3421	Fax:
Alt Contact:	Alt Phone:
E-Mail: DC1ST@AOL.COM	

<b>Billing Information</b>
Home Depot - 6656 550 San Marcos Blvd.
San Marcos CA 92069

<b>Job Name</b>	<input type="checkbox"/> Call Ahead	<input type="checkbox"/> Confirmed
170334		

<b>Job Type</b>	<b>PO #</b>
Home Depot:SFNI	

Marketing Campaign			
Sales Rep	Terms	Type	Class
MH			Home Depot
Route	Scheduled	Start	End
plamen	8/11/2011	02:00 PM	05:00 PM

Item	Quantity	Rate	Amount
WH:NG:185-191 HD - 50 Gas T GE12 E*(185-191)HD 59 23	1	\$558.0000	\$558.00
B/I SF&I W/H - Basic Install SF&I Water Heater	1	\$197.0000	\$197.00
S F&I:Installation Kit - SF&I Installation Kit	1	\$40.0000	\$40.00
S F&I:Location Fee:Attic, Basement, Garage - S F&I Location Fee - Example: Attic, Basement, Garage	1	\$50.0000	\$50.00
S F&I:Jurisdiction administrati - Permit Processing and Jurisdiction administrative assesment	1	\$20.0000	\$20.00
S F&I:Up to Code Package 2 - Bring Installation up to Code based on W/H age: 5-10 Years	1	\$128.0000	\$128.00
We Also Install:Sediment Trap - Sediment Trap / Value \$40.00	1	\$0.0000	\$0.00
HD003 - Permit San Marcos	1	\$30.0000	\$30.00
		Job Subtotal:	\$1,023.00
		California	\$46.04
		<b>Total Due:</b>	<b>\$1,069.04</b>

Quantity	Additional Item(s)	Rate	Amount
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Scheduled Job Subtotal:	
Additional Items:	
Additional Tax:	
<b>Total Due:</b>	

<b>Driver License No.</b>	<b>Expiration</b>	<b>State</b>	<b>Check #</b>	<b>Card Type</b>
				H.D. Card

<b>Expiration</b>	<b>CC ID #</b>	<b>Authorization #</b>
	295	

<b>Job Notes and Instructions</b>
-----------------------------------

# EXHIBIT 2



# California Delta Mechanical

1235 Grand Ave

Spring Valley CA 91977

Phone: (619) 229-6800

Fax: (619) 229-8200

[california@deltamechanical.com](mailto:california@deltamechanical.com)

[www.deltamechanical.com](http://www.deltamechanical.com)

<b>Service Information</b>	
DANNY COHEN 1461 CORAL WAY	
SAN MARCOS CA 92078	
Contact:	DANNY COHEN
Phone:	(760) 591-3421 Fax:
Alt Contact:	All Phone:
E-Mail:	DC1ST@AOL.COM

## Invoice

56448907

PAID

<b>Billing Information</b>
Home Depot - 6856 550 San Marcos Blvd.
San Marcos CA 92069

### Marketing Campaign

<b>Job Name</b>	<input type="checkbox"/> Call Ahead	<input type="checkbox"/> Confirmed
170334		

Sales Rep	Terms	Type	Class
MH			Home Depot
Route	Scheduled	Start	End
plamen	6/14/2011	08:00 AM	10:00 AM

<b>Job Type</b>	<b>PO #</b>
Home Depot:SFNI	56448907

Item	Quantity	Rate	Amount
WH:NG:185-191 HD - 50 Gas T GE12 E*(185-191)HD 59 23	1	\$558.0000	\$558.00
B/I SF&I W/H - Basic Install SF&I Water Heater	1	\$197.0000	\$197.00
S F&I:Installation Kit - SF&I Installation Kit	1	\$40.0000	\$40.00
S F&I:Location Fee:Attic, Basement, Garage - S F&I Location Fee - Example: Attic, Basement, Garage	1	\$50.0000	\$50.00
S F&I:Jurisdiction administrati - Permit Processing and Jurisdiction administrative assesment	1	\$20.0000	\$20.00
S F&I:Up to Code Package 2 - Bring Installation up to Code based on W/H age: 5-10 Years	1	\$128.0000	\$128.00
We Also Install:Sediment Trap - Sediment Trap / Value \$40.00	1	\$0.0000	\$0.00
HD003 - Permit San Marcos	1	\$30.0000	\$30.00
		Job Subtotal:	\$1,023.00
		California	\$46.04

Total Due: \$1,069.04

Quantity	Additional Item(s)	Rate	Amount
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Scheduled Job Subtotal:

Additional Items:

Additional Tax:

Total Due:

<b>Driver License No.</b>	<b>Expiration</b>	<b>State</b>	<b>Check #</b>	<b>Card Type</b>
				HD CARD
<b>Expiration</b>	<b>CC ID #</b>	<b>Authorization #</b>		
	295			

### Job Notes and Instructions

6/14/11 9-11...REPAIR...DRAIN VALVE KEEPS LEAKING...30 MIN CALL PLEASE AT 760-519-2564

# EXHIBIT 3



E166677

City of San Marcos 06/17/11 15:57:42
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Description  
PERMIT: B11-00603  
PERMIT: B11-00604  
CALIFORNIA DELTA MECH

G/L Account #	Amount
100-42-421013	20.00
Total Paid	\$20.00
Amount Tendered:	
Credit Card	20.00
Change Returned	0.00

Your Cashier: Finance

Thank You

# EXHIBIT 4

Search

Submit Query

HOME RESIDENTIAL REPIPE MULTIFAMILY SERVICES PLUMBING &amp; HVAC

KITEC REPIPE Q &amp; A CONTACT US

## PLUMBING & HVAC



Tank Water Heater ~ Delta Mechanical is the only company that can guarantee a final price over the phone, with no hidden charges including same day installation. We will qualify your installation properly over the phone and guarantee a final price with no hidden charges. Its simple you pick up the phone you dial 1-800 Home Depot say the word "Water Heater" and you will be connect to one our water heaters installation experts. If you need a new water heater installed, You're one simple call away from getting your water heater installed today!

Tank-Less Water Heater ~ Are you looking to save or reduce your energy bill? Then Tank less is the way to go! Delta Mechanical is the only company that can guarantee a final price over the phone, with no hidden charges including same day installation. Call 1-800-Home Depot to ask one of our well trained staff about your applicable tax incentives! It could mean serious savings for your household! We guarantee a final price, lowest price and same day installation. You're one simple call away from getting your tank less water heater installed today!

Solar Water Heaters ~ Are you looking to save or reduce your energy bill? Then a solar water heater is the way to go! Delta Mechanical is the only company that can

# EXHIBIT 5

1 Stuart M. Eppsteiner (CA SBN 098973)  
 2 Andrew P. Fiorica (CA SBN 200732)  
 3 Andrew J. Kubik (CA SBN 246902)  
**EPPSTEINER & FIORICA ATTORNEYS, LLP**  
 4 12555 High Bluff Dr., Ste. 155  
 San Diego, CA 92130  
 5 Tel. (858) 350-1500  
 Fax (858) 350-1501  
 6 Counsel for Plaintiff  
 and the Putative Class

7  
 8 **SUPERIOR COURT OF CALIFORNIA**  
 9 **COUNTY OF SAN DIEGO**  
 10 **CENTRAL DIVISION**  
 11

12	DANNY COHEN, individually and on behalf of	)	Case No.
13	all others similarly situated,	)	
14	PLAINTIFFS,	)	<b>CLRA VENUE DECLARATION</b>
15	vs.	)	
16	CALIFORNIA DELTA MECHANICAL, INC., a	)	
17	California Corporation, and DOES 1-100,	)	
18	DEFENDANTS.	)	
19		)	

20  
 21  
 22 I, DANNY COHEN, declare as follows:

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

1 4. I am informed and believe that venue is proper in this Court under California Civil Code §  
2 1780(d) based on the fact that the transaction at issue, or a substantial portion thereof, occurred in  
3 this county, and because California Delta Mechanical, Inc. does business in this county.

4 I declare under penalty of perjury under the laws of the state of California that the foregoing  
5 is true and correct and that this declaration was executed on October 12, 2011 in  
6 San Marcos, California.

7  
8   
9 By \_\_\_\_\_  
DANNY COHEN

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