

**SUMMONS
(CITACION JUDICIAL)**

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

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

AMERICAN FIRE SERVICES INC., a corporation, also d/b/a
AMERICAN FIRE PROTECTION, DANNY VICTOR WILLIAMS,
ANTHONY DAVID ASH, KEN GORDON SPECK, DOES 1-50

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
THE PEOPLE OF THE STATE OF CALIFORNIA

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California for the County of Tulare
221 So. Mooney Blvd.,
Visalia, CA 93291

CASE NUMBER: 08-230753
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
PHILLIP J. CLINE, DISTRICT ATTORNEY, By: RICHARD B. ISHAM, DEP. DISTRICT ATTORNEY
701 West Center Street, Visalia, CA 93291 (559) 624-1054

DATE: DEC 11 2008 LaRayne Cleek Clerk, by _____, Deputy
(Fecha) (Secretario) (Adjunto)

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

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify): AMERICAN FIRE SERVICES, INC.
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify): and d/b/a AMERICAN FIRE PROTECTION
- 4. by personal delivery on (date):



FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

DEC 11 2008

LARAYNE CLEEK, CLERK

BY: _____

1 PHILLIP J. CLINE
2 DISTRICT ATTORNEY OF TULARE COUNTY
3 RICHARD B. ISHAM, SBN 37996
4 DEPUTY DISTRICT ATTORNEY
5 701 West Center Street
6 Visalia, California 93291
7 Telephone: (559) 624-1054
8 Facsimile: (559) 624-1077

9 Attorneys for Plaintiff

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF TULARE

12 THE PEOPLE OF THE STATE OF)
13 CALIFORNIA,)

14 Plaintiff,)

15 vs.)

16 AMERICAN FIRE SERVICES, INC., a)
17 Corporation, also doing business as)
18 AMERICAN FIRE PROTECTION, DANNY)
19 VICTOR WILLIAMS, ANTHONY DAVID ASH,)
20 KEN GORDON SPECK and DOES 1 through)
21 50, inclusive,)

22 Defendants)

No. 08-230753

NOTICE OF EX PARTE
APPLICATION FOR TRO
and OSC re
PRELIMINARY
INJUNCTION

23 TO Defendant AMERICAN FIRE SERVICES, INC., a corporation,
24 also doing business as AMERICAN FIRE PROTECTION, DANNY VICTOR
25 WILLIAMS, ANTHONY DAVID ASH, KEN GORDON SPECK:

26 THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel. Phillip J.
27 Cline, as the District Attorney for the County of Tulare
28 ("Plaintiff"), Hereby Puts You On Notice that plaintiff will file
an Ex Parte Application for a Temporary Restraining Order, an
Order to Show Cause ("OSC") re Preliminary Injunction and
Preliminary Injunction, said Application to be heard at 8:15

1 a.m., Tuesday, December 16, 2008, in Dept. 6, 3rd Floor of the
2 Tulare County Courthouse, located at 221 South Mooney Blvd.,
3 Visalia, California 93291.

4 Before the hearing, Plaintiff will file and serve said
5 Defendants with its "Complaint For Injunction, Civil Penalties,
6 Damages and Equitable Relief" captioned: "People of the State of
7 California, Plaintiff, vs. AMERICAN FIRE SERVICES, INC., a
8 corporation, also doing business as AMERICAN FIRE PROTECTION,
9 DANNY VICTOR WILLIAMS, ANTHONY DAVID ASH, KEN GORDON SPECK and
10 DOES 1 through 50, inclusive, Defendants."

11 By its application, Plaintiff seeks entry of a Temporary
12 Restraining Order, an Order to Show Cause (herein "OSC") re
13 Preliminary Injunction setting a hearing date and establishing a
14 briefing schedule for presentation of evidence and arguments in
15 support of Plaintiff's requested relief. Plaintiff seeks entry
16 of a Temporary Restraining Order and later a Preliminary
17 Injunction, pursuant to sec. 527 of the Code of Civil Proc., sec.
18 17203 of the Bus. & Prof. Code and sec. 3712 of the Labor Code,
19 and the Court's inherent equity powers, restraining defendants,
20 their successors and assigns, and all persons, or other entities
21 acting under, by, through or on behalf thereof, or acting in
22 concert or participation with or for defendants, from:

- 23 a. Impersonating governmental fire protection officials
24 to gain admission to places of business of retailers and
25 restaurant operators and falsely representing that they
26 service various items of fire protection equipment on
27

1 premises and thereafter attach inspection tags to equipment
2 which has not been properly inspected and serviced;

3 b. Making untrue and misleading statements in connection
4 with the sale or attempted sale of their fire equipment
5 contracting services;

6 c. Failing to inform their customers of their incomplete
7 inspection, maintenance and repair of said customers' fire
8 protection and suppression equipment; and

9 d. Failing to secure compensation for their employees in
10 violation of Labor Code sec. 3700.

11
12 Plaintiff's ex parte application for Temporary Restraining
13 Order and Order to Show Cause re: Preliminary Injunction is made
14 on the grounds that said defendants are placing persons and
15 property in immediate peril of death, injury and destruction as a
16 direct consequence of their unfair and unlawful business
17 practices.

18 This Ex Parte Application is supported by Plaintiff's
19 Complaint, Memorandum of Points and Authorities and Declaration
20 of Mark Lopez filed herein.

21 Dated: December 11, 2008

22
23 Very truly yours,
Phillip J. Cline,

24
25 By: _____
26 Richard B. Isham
27 Deputy District Attorney

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)
 PHILLIP J. CLINE, TULARE COUNTY DISTRICT ATTORNEY
 RICHARD B. ISHAM, DEPUTY DISTRICT ATTORNEY, SBN 37996
 701 WEST CENTER STREET, CA 93291

TELEPHONE NO: (559) 624-1054 FAX NO: (559) 624-1077
 ATTORNEY FOR (Name) PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE
 STREET ADDRESS 221 SO. MOONEY BLVD
 MAILING ADDRESS
 CITY AND ZIP CODE: VISALIA, CA 93291
 BRANCH NAME VISALIA DIVISION

FOR COURT USE ONLY

FILED
 TULARE COUNTY SUPERIOR COURT
 VISALIA DIVISION

DEC 11 2008

LARAYNE CLEEK, CLERK

BY: _____

CASE NAME:
 PEOPLE v. AMERICAN FIRE SERVICES, INC., etc., et al

CIVIL CASE COVER SHEET

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

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

CASE NUMBER: 08-230753

JUDGE
 DEPT

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

1. Check one box below for the case type that best describes this case:
- | | | |
|--|---|---|
| <p>Auto Tort</p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (45)</p> <p><input type="checkbox"/> Other PI/PD/WD (23)</p> <p>Non-PI/PD/WD (Other) Tort</p> <p><input checked="" type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> Civil rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (25)</p> <p><input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (36)</p> <p><input type="checkbox"/> Other employment (15)</p> | <p>Contract</p> <p><input type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Rule 3.740 collections (09)</p> <p><input type="checkbox"/> Other collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (39)</p> | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (28)</p> <p><input type="checkbox"/> Environmental/Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27)</p> <p><input type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p> |
|--|---|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. Large number of separately represented parties d. Large number of witnesses
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): One
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 11, 2008
 Richard B. Isham

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

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

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

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

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

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

CASE TYPES AND EXAMPLES

Auto Tort

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

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

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

Non-PI/PD/WD (Other) Tort

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

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

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

Real Property

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

Unlawful Detainer

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

Judicial Review

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

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

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

Enforcement of Judgment

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

Miscellaneous Civil Complaint

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

* Miscellaneous Civil Petition

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

1 PHILLIP J. CLINE
2 DISTRICT ATTORNEY OF TULARE COUNTY
3 RICHARD B. ISHAM, SBN 37996
4 DEPUTY DISTRICT ATTORNEY
5 701 West Center Street
6 Visalia, California 93291
7 Telephone: (559) 624-4402
8 Facsimile: (559) 624-1077

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION
DEC 11 2008
LARAYNE CLEEK, CLERK
BY: _____

6 Attorneys for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF TULARE

10 THE PEOPLE OF THE STATE OF)
11 CALIFORNIA,) No. 08-230753
12)
13 Plaintiff,)
14 vs.) COMPLAINT FOR
15) INJUNCTION, CIVIL
16 AMERICAN FIRE SERVICES, INC., a) PENALTIES, DAMAGES
17 Corporation, also doing business as) AND EQUITABLE
18 AMERICAN FIRE PROTECTION, DANNY) RELIEF
19 VICTOR WILLIAMS, ANTHONY DAVID ASH,)
20 KEN GORDON SPECK and DOES 1 through)
21 50, inclusive,)
22)
23 Defendants)

19 STATEMENT OF FACTS

20 THE PEOPLE OF THE STATE OF CALIFORNIA, by and through
21 PHILLIP J. CLINE, District Attorney for the County of Tulare
22 (herein "Plaintiff"), acting on information and belief, allege:

23 VENUE AND JURISDICTION

24 1. Phillip J. Cline, District Attorney for the County of
25 Tulare, State of California, acting to protect the general public
26 from unlawful business practices, brings this suit in the public
27

1 interest in the name of THE PEOPLE OF THE STATE OF CALIFORNIA.
2 Plaintiff, by this action and pursuant to Bus. & Prof. Code secs.
3 17203, 17204 and 17206, seeks to enjoin defendants AMERICAN FIRE
4 SERVICES, INC., a corporation, also doing business as AMERICAN
5 FIRE PROTECTION, DANNY VICTOR WILLIAMS, ANTHONY DAVID ASH, KEN
6 GORDON SPECK and DOES 1 through 50, inclusive (herein
7 "Defendants"), from engaging in the unlawful business practices
8 alleged herein and seeks to obtain civil penalties for
9 defendants' unlawful business practices. Additionally, plaintiff
10 seeks a permanent injunction prohibiting defendants from engaging
11 in the unlawful business practices alleged herein.
12

13 2. Defendants at all times mentioned herein have
14 transacted business in the Counties of Tulare, Kings, Fresno,
15 Madera, Merced and Mariposa and elsewhere in the State of
16 California. The unlawful practices hereinafter described have
17 been and are now being committed within and from said Counties
18 within the State of California. Pursuant to Code of Civil
19 Procedure section 393, this action is properly venued in the
20 County of Tulare.
21

22 DEFENDANTS

23 3. Plaintiff is informed and believes and thereon alleges
24 that defendant DANNY VICTOR WILLIAMS (herein "WILLIAMS") is an
25 individual residing in the County of Ventura, State of
26
27
28

1 California, and serves as Chief Executive Officer of defendant
2 AMERICAN FIRE SERVICES, INC., a corporation.

3 4. Plaintiff is informed and believes and thereon alleges
4 that defendant ANTHONY DAVID ASH (herein "ASH"), served as an
5 agent, employee, contractor, partner or co-venturer or each of
6 the other defendants herein.

7 5. Plaintiff is informed and believes and thereon alleges
8 that defendant KEN GORDON SPECK (herein "SPECK") served as an
9 agent, employee, contractor, partner or co-venturer or each of
10 the other defendants herein.

11 6. Plaintiff is informed and believes and thereon alleges
12 that defendant AMERICAN FIRE SERVICES, INC. (herein "AMERICAN")
13 is a corporation organized and doing business in the State of
14 California under the corporate name mentioned herein and is also
15 doing business as AMERICAN FIRE PROTECTION, a fictitiously named
16 entity of unknown legal structure. Said defendant currently
17 holds license number 726110, Class C-16 (fire protection
18 contractor), issued by the Contractors State License Board
19 (herein "CSLB"). Defendant WILLIAMS serves as the responsible
20 managing officer (herein "RMO") of defendant AMERICAN.

21 Defendants are engaged in the offering and selling of their
22 services as fire protection contractors. Defendants misrepresent
23 their intentions to potential customers and consumers in general.
24 Defendants do not perform as they promise and leave their
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1 customers with fire suppression equipment that is poorly
2 maintained or not maintained at all, thereby exposing members of
3 the community to injury, loss of life and property destruction.

4 7. Defendants, DOES 1 through 50 inclusive, and each of
5 them, are sued by their fictitious names because their true and
6 correct names are unknown to plaintiff. Each fictitiously named
7 defendant was the agent or employee of each other defendant at all
8 times mentioned herein and was acting within the scope of said
9 agency or employment. Said fictitiously named defendants are also
10 responsible and liable for the injuries and damages suffered by
11 persons who hired or contracted for defendants' services. Once
12 the correct names of said fictitiously named defendants become
13 known to plaintiff, this Complaint will be amended accordingly.

15 8. Within four years before the filing of this Complaint,
16 beginning on a date unknown to plaintiff and continuing to the
17 present, defendants made or caused to be made false
18 representations about products and services they offered to
19 potential customers, as more fully described herein below.

20 FIRST CAUSE OF ACTION

21 **Unfair Competition, Bus. & Prof. Code sec. 17200 et seq.**

22 9. Plaintiff realleges and incorporates by reference
23 Paragraphs 1 through 8 of this Complaint as though fully set
24 forth herein.
25
26
27

1 functional at a time when defendants could not, and should not,
2 have made such implied warranties of fitness to their customers;
3 and

4 d. Defendants failed to secure compensation for
5 their employees in violation of Labor Code sec. 3700.

6 Defendants' failure to secure compensation for the benefit of
7 their employees unfairly shifts the burden of the cost of injured
8 workers to the general public including competitors of defendants
9 who are lawfully engaged in the contracting business and properly
10 insured for the risk of industrial accidents.

11 11. Defendants' acts of unfair competition as described
12 herein constitute patterns and practices central to the operation
13 of defendants' businesses. As a consequence of defendants'
14 wrongful conduct, the safety of personnel and members of the
15 public on the premises where defendants left fire suppression
16 equipment in substandard condition was placed in jeopardy.
17 Furthermore, unlawful conduct such as that described in paragraph
18 10, above, harms the welfare of the general business community
19 and permits defendants to compete at an unfair advantage because
20 defendants intentionally interfere with maintenance patterns
21 established with customers by reputable and law-abiding service
22 providers, whereby proper inspections, maintenance and repair
23 practices are performed. Furthermore, defendants do not insure or
24 otherwise secure their construction projects with insurance or
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1 other qualifying programs for workers compensation and liability
2 claims. Unless enjoined by order of this Court, defendants are
3 likely to continue to engage in such acts of unfair competition.

4 SECOND CAUSE OF ACTION

5 **False Advertising, Bus. & Prof. Code sec. 17500 et seq.**

6 12. Plaintiff realleges and incorporates by reference
7 Paragraphs 1 through 11 of this Complaint as though fully set
8 forth herein.

9 13. Within three years prior to the filing of this
10 Complaint, defendants made untrue or misleading statements in
11 violation of Bus. & Prof. Code sec. 17500 with the intent to
12 induce members of the public in California to purchase
13 defendants' services and products. Said untrue or misleading
14 statements, which are made unlawful and are prohibited by Bus. &
15 Prof. Code sec. 17500, include but are not necessarily limited to
16 the following: that defendants were impliedly authorized by
17 governmental agencies to provide fire suppression equipment
18 inspections and repairs, when such authorization was not so
19 extended to defendants.
20

21 14. The statements or material omissions made by
22 defendants as set forth in paragraph 10 above were untrue or
23 misleading when made, and were known, or by the exercise of
24 reasonable care should have been known to defendants, to be
25 untrue or misleading.
26

1 Unless enjoined and restrained by order of the court, defendants
2 will continue to engage in such unlawful conduct.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiff requests relief as follows:

5 1. That, pursuant to sec. 527 of the Code of Civil Proc.,
6 and sec. 17203 of the Bus. & Prof. Code and the Court's inherent
7 equity powers, defendants, their successors and assigns, and all
8 persons, or other entities acting under, by, through or on behalf
9 thereof, or acting in concert or participation with or for
10 defendants, be preliminarily and thereafter permanently
11 restrained and enjoined from:
12

13 (a) violating Bus. & Prof. Code secs. 17200, 17500, and
14 Labor Code sec. 3712 as more fully described in this Complaint;

15 (b) misrepresenting their authority as governmental fire
16 marshals and personnel to engage in the business of inspecting,
17 repairing and maintaining fire suppression equipment; and

18 (c) attaching false inspection tags to fire suppression
19 equipment which defendants have not lawfully inspected, repaired
20 or maintained.

21 2. That the Court make such orders or judgments,
22 including the awarding of rescission and restitution, as may be
23 necessary to preserve assets and restore to customers any money
24 or property which was or may have been acquired by means of the
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1 unlawful and unfair practices alleged herein, as authorized by
2 Bus. & Prof. Code secs. 17203 and other law;

3 3. That the Court impose a civil penalty of Two Thousand
4 Five Hundred Dollars (\$2,500) pursuant to Bus. & Prof. Code sec.
5 17536 against defendants for each violation of Bus. & Prof. Code
6 sec. 17500. Plaintiff requests civil penalties of no less than
7 One Hundred Thousand Dollars (\$100,000) be imposed against each
8 defendant.

9
10 4. That the Court impose a civil penalty of Two Thousand
11 Five Hundred Dollars (\$2,500) pursuant to Bus. & Prof. Code sec.
12 17206 against defendants for each violation of Bus. & and Prof.
13 Code sec. 17200. Plaintiff requests a civil penalty of no less
14 than One Hundred Thousand Dollars (\$100,000) be imposed against
15 each defendant.

16 5. That the Court order defendants to make full
17 restitution of all money and other property they may have
18 acquired by their violations of Bus. & Prof. Code secs. 17200 and
19 17500.

20 6. That defendants be ordered to pay the investigative
21 expenses of all governmental bodies contributing to the
22 substantial investigation effort in this matter.

23
24 7. That the Court revoke or suspend the contractors
25 license number 726110, Class C-16 (fire suppression contractor)

1 held by defendant AMERICAN, pursuant to Bus. & Prof. Code secs.
2 7106 and 7110;

3 8. That plaintiff recover all costs incurred in this
4 action; and

5 9. Such other and further relief as the Court may deem
6 just and proper.

7 Dated: December 11, 2008

PHILLIP J. CLINE
DISTRICT ATTORNEY

9
10 By: _____
RICHARD B. ISHAM
DEPUTY DISTRICT ATTORNEY
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21 [NOTICE: This Complaint is deemed verified pursuant to
22 section 446(a) of the Code of Civ. Proc.]
23
24
25
26
27

DEC 11 2008

LARAYNE CLEEK, CLERK

BY: _____

1 PHILLIP J. CLINE
DISTRICT ATTORNEY OF TULARE COUNTY
2 RICHARD B. ISHAM, SBN 37996
DEPUTY DISTRICT ATTORNEY
3 701 West Center Street
4 Visalia, California 93291
Telephone: (559) 624-1054
5 Facsimile: (559) 624-1077

6 Attorneys for Plaintiff

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF TULARE

10 THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

No. 08-230753

11 Plaintiff,)

12 vs.)

DECLARATION OF
INVESTIGATOR
MARK LOPEZ

13 AMERICAN FIRE SERVICES, INC., a)
14 Corporation, also doing business as)
15 AMERICAN FIRE PROTECTION, DANNY)
VICTOR WILLIAMS, ANTHONY DAVID ASH,)
16 KEN GORDON SPECK and DOES 1 through)
50, inclusive,)

17 Defendants)
18)

19 I, MARK LOPEZ, declare and affirm as follows:

20 I am an Investigator with the Tulare County Office of the
21 District Attorney, Bureau of Investigation. I make this
22 Declaration based upon my own personal knowledge, except as to
23 those matters stated upon information and belief. If called upon
24 to so testify, I would and could competently do so. I am the
25 Tulare County District Attorney Investigator assigned to this
26 case.
27

28 Declaration of Investigator Mark Lopez

1 I am a duly qualified investigator with the Tulare County
2 District Attorney's Office and currently assigned to the Consumer
3 Protection Unit. My current assignment involves primarily
4 Consumer Protection investigations described in Bus. & Prof. Code
5 Secs. 17200 and 17500 and the enforcement of any associated Fraud
6 related Penal Code and Bus. & Prof. Code sections.

7
8 Prior to my appointment with this office, I began my career
9 as a sworn Police officer in 1984, and have been a sworn officer
10 with the Visalia Police Department, the San Jose Police Dept. and
11 the Drug Enforcement Administration Task Force.

12 Your Declarant's effort in law enforcement has included a
13 nineteen year term as a Detective and the remainder as a
14 uniformed officer. As a result, your Declarant has investigated
15 hundreds of crimes and has written hundreds of search warrants in
16 an effort to secure evidence for many types of cases. Your
17 Declarant during this career has been given numerous hours of
18 investigative training and experience.

19 For this Declaration, your Declarant has relied on four
20 years of training and experience with employees of the California
21 Contractors State License Board and by personally participating
22 in the arrest and prosecution of construction trade suspects.
23 Furthermore, your Declarant has enlisted expert fire inspectors
24 or marshals throughout the state to provide your Declarant with
25 detailed offense descriptions and evidence for the prosecution of
26

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Declaration of Investigator Mark Lopez

1 these suspects and their information is included in this
2 Declaration.

3 I am informed and believe and therefore declare, that
4 AMERICAN FIRE SERVICES, INC., a corporation also doing business
5 as AMERICAN FIRE PROTECTION (herein "AMERICAN"), DANNY VICTOR
6 WILLIAMS, ANTHONY DAVID ASH and KEN GORDON SPECK are engaged in
7 illegal activities and conduct within the jurisdiction of the
8 court herein, as more fully described below.

9
10 Based upon a full and lengthy investigation of the
11 defendants' activities, I have discovered adequate facts to ask
12 the court to consider issuing an injunction to restrain said
13 defendants from violating the following laws: the felony crimes
14 of 386(a) Penal Code [hereinafter "P.C."] (installation of
15 impaired fire protection System) 487 P.C. (theft by false
16 pretenses) 532 P.C. (failure to secure workers compensation
17 Insurance, 3700.5 Labor Code and 182(a) P.C. (conspiracy); all
18 offenses described in California legal references were committed
19 by defendants from their efforts operating the construction
20 businesses called "American Fire Protection" and "American Fire
21 Services Inc."

22
23 Your Declarant states that defendant WILLIAMS committed
24 these offenses while acting as the chief executive officer of the
25 corporate defendant described business, offering "contractor"
26 services to the general public. Your Declarant states that these

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Declaration of Investigator Mark Lopez

1 offenses occurred in several California cities within the
2 counties of Tulare, Kings, Fresno, Madera, Mariposa, Merced and
3 Ventura.

4 Defendants maintained business offices at 900 Avenida Acaso
5 #M, Camarillo, CA, 6804 Aviano Dr., Camarillo, California, 232
6 Dolores St., Exeter, California, and 6549 N. Palm Ave., #215,
7 Fresno, California. These are the main offices for the
8 defendants' business enterprise.

9
10 For this investigation, your Declarant is working directly
11 with California firefighters representing Tulare County: Fire
12 Inspector Jerry Sterling, Fire Captain Larry Stucker and Fire
13 Marshal Joe Garcia. The State of California, "Cal Fire," is
14 represented by Deputy Fire Marshal Jeff Hartsuyker, Cal Fire
15 Special Inv. E.R. Scott Baker, a retired Deputy Fire Marshal,
16 City of Porterville Fire Marshal Loran Blasdell and City of Selma
17 Fire Investigator, Sid Chacon.

18 Your Declarant also participated in a joint investigation
19 with the Mariposa and Ventura District Attorney offices through
20 their representatives, Investigator Harry Estep and Investigator
21 Aide Dominique Rosales.

22
23 Opinions of Fire Inspector Jerry Sterling are referenced in
24 this Declaration. Sterling referred to his expertise as follows:

25 Prior to my appointment with the Tulare County
26 Fire Department, I began my career as a Firefighter in
27 1986; I have been a firefighter/Paramedic with the
Custer Township Fire District (IL), Elwood Fire

28

Declaration of Investigator Mark Lopez

1 Protection District (IL), Wilmington Fire Protection
2 District (IL) Central Lyon County Fire District (NV),
and the Kings County Fire Department (Ca).

3 I have held Fire Officer positions in the Elwood
4 Fire Protection District where I was a division chief
5 responsible for emergency medical services and rescue
6 operations, Wilmington Fire Protection District where
7 I was assigned to oversee fire prevention operations
as well as being the lead fire investigator for the
district as well as participating on a fire
investigation task force for a tri-county area.

8 I held the position of Fire Captain, Assistant
9 Fire Chief, Deputy Fire Chief and Training officer for
10 the Central Lyon County Fire District (Nv) I am
11 currently employed by the Tulare County Fire
12 Department as a fire Prevention Inspector and I have
13 met the California State Fire Marshal's training
14 standards as a Fire Prevention Officer.

15 I am also employed by the Tulare County Fire
16 department as an extra help firefighter/Fire
17 Investigator. In the course of my career I have been
18 involved with several aspects of fire suppression,
19 Fire Prevention, Rescue, and commercial structural
20 firefighting.

21 Furthermore, while employed by the Kings County
22 Fire Department as a volunteer firefighter, I was also
23 employed by the Santa Rosa Rancheria (Lemoore, Ca) as
24 a Tribal Police Captain. I have attended numerous
25 classes for both Fire safety and law enforcement and
26 have several certificates available to verify my
27 education, training and experience. I have
28 investigated many cases of various natures.

Your Declarant also worked directly with Enforcement
Representative II John Jefferson Miller, an eighteen year veteran
of the California Contractors State License Board's (herein
"CSLB"), Statewide Investigative Fraud Team ("S.W.I.F.T").

Declaration of Investigator Mark Lopez

1 Section 386(a) of the Penal Code Offense provides:

2 Any person who willfully or maliciously
3 constructs or maintains a fire protection system in
4 any structure with the intent to install a fire
5 protection system which is known to be inoperable or
6 to impair the effective operation of a system, so as
7 to threaten the safety of any occupant or user of the
8 structure in the event of fire, shall be subject to
9 imprisonment in the state prison for two, three or
10 four years.

11 On October 30, 2008, a consumer complaint was reported to
12 your Declarant by management of a local (Exeter, California)
13 commercial bakery that revealed violations of the Penal Code, the
14 Labor Code, the Fire Code, and Contractor Law found in the Bus. &
15 Prof. Code. These violations were committed by an adult male
16 identified as defendant DANNY VICTOR WILLIAMS as well as
17 employees of his business known as AMERICAN FIRE SERVICES, INC.
18 dba, AMERICAN FIRE PROTECTION.

19 This complaint was received by your Declarant from
20 management representatives of Svenhard's Swedish Bakery (herein
21 "Svenhard") in Exeter, and further investigated by Tulare County
22 Fire Dept. personnel, mentioned herein.

23 In summary, this year in 2008, management of the bakery
24 hired defendants to design, engineer and install a commercial
25 fire suppression system and a fire alarm system for the subject
26 230,000 square foot commercial bakery building undergoing
27 renovation at the time. The project involved renovating and
28 upgrading the fire suppression and alarm system already present

Declaration of Investigator Mark Lopez

1 in the building which is located at 701 Industrial Dr., Exeter,
2 California, formerly a yarn manufacturing site. The building was
3 undergoing a three million dollar remodel that is expected to
4 accommodate over 200 employees. The future bakery employees
5 would be involved in the production of bakery items for
6 distribution nationwide.

7
8 Defendant WILLIAMS obtained a written construction contract
9 dated July 25, 2008, covering the renovation work at Svenhard's
10 facility. During the month of August, Svenhard's paid over
11 \$80,000 to WILLIAMS for defendants' work that he said was fully
12 "completed". He later confirmed to your Declarant that he had
13 fully performed the contract. Based upon my investigation it is
14 clear to me that the project was neither complete nor in
15 fulfillment of the contract with Svenhard.

16 Before the last phase of the contract was started
17 (estimated at approximately \$20,000), the Tulare County Fire
18 Department became aware of defendants' work at this facility. An
19 inspection was performed and the inspectors discovered that
20 installation and retrofitting of the system was contrary to the
21 Fire Code, CCR Title 19, Volume 25, Chapter 5, Sec. 3.3.20.

22 TCFD Inspector Jerry Sterling inspected the system at
23 Svenhard's in September, 2008 and discovered that the
24 modification or repair of the structure's fire system was not
25 engineered, planned, inspected or properly permitted by
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Declaration of Investigator Mark Lopez

1 appropriate governmental agencies. Svenhard's management was
2 informed of the dangers and halted any current plans for
3 occupancy of the affected portions of the building (accounting
4 for most of the useful space inside the building).

5 Sterling's concern was that when the building became
6 operational, it would have been "red tagged" and shut down
7 completely for the safety of the public and employees at the
8 site. Sterling conducted another inspection with your Declarant
9 present this time and pointed out numerous failures in the system
10 defendants allegedly repaired, as more fully described below.
11 Sterling concluded once again that the system was illegal and
12 dangerous.
13

14 Applicable laws require engineered plans covering the
15 design of fire suppression and alarm system in commercial and
16 industrial bakeries. No such plans were ever submitted to
17 officials. No permits were issued for the construction work.

18 Sterling notified appropriate staff at the City of Exeter
19 that defendants had connected to the city water supply, yet no
20 record existed of any plans, permits or inspections as required for
21 this aspect, as well.
22

23 An engineered and planned schematic is necessary to inform
24 users on the water flow and, in case of an emergency, the water
25 shut offs, pressure requirements and the ability to add
26 additional amounts of water by outside sources. Defendants
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Declaration of Investigator Mark Lopez

1 totally failed to satisfy these requirements at Svenhard's
2 facility, regardless of the absence of the required engineered
3 schematics.

4 Within the facility, Sterling and TCFD Capt. Stucker found
5 items addressed in the written contract that were not completed.
6 For example, malfunctioning pressure gauges were present on
7 risers. Risers are water control stations that ensure that the
8 proper water pressure is supplied to the sprinklers in case of a
9 fire.

10
11 Your Declarant observed the riser stations and the gauges
12 which did not function, appeared to be frozen, and were not
13 acceptable according to Fire Inspectors examination. Required
14 completion "Fire Tags" were not applied to the risers as
15 required.

16 The Svenhard's audible alarm system was checked by
17 Sterling. It was inadequate: the volume was too low and not
18 audible enough to reach all parts of the building. The system
19 had not been prepared for any notification of an Emergency
20 Responder should a fire commence.

21
22 Sterling's analysis of this fire sprinkler system revealed
23 that the fire suppression system at Svenhard's was improperly
24 altered and modified in such a manner that it was rendered
25 substandard and insufficient for the protection of lives and
26 property and the facility.

27
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Declaration of Investigator Mark Lopez

1 Svenhard's management sought an inspection and opinion from
2 AAA Quality Services, a licensed fire suppression business. On
3 September 27, 2008, AAA examined the site for management of the
4 bakery. Your Declarant reviewed the written findings of AAA
5 manager Kelly Weese and noted that she discovered obvious
6 violations on the mechanical portions of the system and also
7 discovered the lack of plans, an inoperative alarm system, and
8 fully supported the findings and conclusions of the TCFD. AAA
9 Quality Services "failed" the fire suppression system installed
10 by defendant AMERICAN.
11

12 In an effort to gain evidence concerning this matter, your
13 Declarant conducted an undercover operation. Svenhard's
14 management wished to install a new fire suppression system in an
15 area that was earmarked for a large refrigerated room.

16 Reference to that interior room was made in the original
17 bid as "Riser 6" by defendant AMERICAN. In August 2008,
18 Svenhard's did receive an engineered and detailed fire
19 suppression sprinkler plan from defendant WILLIAMS, purportedly
20 for the refrigerated room in question. Thereafter, Svenhard's
21 management found that the plans were nonconforming and drafted
22 for a room with entirely different dimensions. Nonetheless,
23 defendant WILLIAMS represented the plan as appropriate for the
24 room involved. TCFD Inspector Sterling confirmed that the plans
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1 were not for that room, not submitted to TCFD or the Tulare
2 County Resource Management Agency, as required by law.

3 Svenhard's management determined to terminate the services
4 of defendants and agreed to allow your Declarant to go
5 "undercover," serve as an "employee" of Svenhard's and then
6 notify defendant WILLIAMS that his services were no longer
7 desired by Svenhard. The meeting for this purpose took place on
8 November 5, 2008.

9
10 For this covert contact, Investigator Thao of the Tulare
11 County District Attorney's Office, TCFD Insp. Jerry Sterling and
12 your Declarant posed as construction management personnel and met
13 with defendant WILLIAMS in a conference room at the Svenhard's
14 facility.

15 WILLIAMS wore an American Fire Protection uniform that
16 contained embroidered logos in blue and was pressed with military
17 creases. WILLIAMS gave the impression that he was a uniformed
18 firefighter. There is no indication or record that defendant
19 WILLIAMS is serving fire official for any public agency at this
20 time.

21
22 He explained every detail of the work he completed at the
23 facility. In the ninety minute interview, he repeatedly informed
24 law enforcement that his work was finished, sufficient and ready
25 for operation. He stated that he had spent less than a week with
26 his staff at Svenhard's and that the staff included, among
27

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Declaration of Investigator Mark Lopez

1 others, defendant KEN SPECK. WILLIAMS said that no major
2 problems existed. He noted that a few small problems remained
3 after his work, although they were within the limits of normal
4 "wear and tear".

5 WILLIAMS acknowledged payment of all sums due his company,
6 a sum of over seventy thousand dollars. He said that he had only
7 the last project to complete. He was shown the bogus plans that
8 he had previously provided to Svenhard's for "Riser 6". He then
9 informed your Declarant that these plans were "no good" and to
10 "throw them away".
11

12 WILLIAMS was confronted by your Declarant with the lack of
13 plans, inspections, permits, water connections, fire
14 extinguishers and the other problems with his installation at the
15 site. Your Declarant maintained undercover status.

16 WILLIAMS insisted that the fire marshal was completely
17 wrong in his interpretation of the Fire Codes and that the fire
18 department staff had other problems that he expressed in
19 denigrating terms. However, WILLIAMS admitted to violating some
20 codes with regard to the fire extinguishers and confessed that he
21 did enter the City of Exeter's water system, but claimed to have
22 authority to do so, nonetheless. WILLIAMS admitted to painting
23 portions of risers and overhauling some parts.
24

25 WILLIAMS was adamant in his interpretations saying that
26 plans or permits were not required and that he properly fixed the
27

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Declaration of Investigator Mark Lopez

1 city water connection shut off called the "OSY". Wether he
2 actually did so or not will not be known until the installation
3 is uncovered and properly inspected before tested. This process
4 was never carried out. WILLIAMS said that everything that he
5 completed was proper and he acknowledged he was paid in full for
6 his work. He said that if anything was amiss he would honor the
7 fire department's request to remedy whatever problems were
8 discovered.

9
10 WILLIAMS admitted to having employees, defendants KEN
11 SPECK, ANTHONY ASH and others under his control and that he had
12 AMERICAN offices in their respective homes located in Exeter and
13 Fresno. He admitted that he failed to secure workers
14 compensation insurance until after September 2008, but that his
15 company is now properly insured with a current policy.

16 When WILLIAMS was invited to leave the facility, your
17 Declarant walked him to the parking lot and discovered that
18 defendant KEN SPECK was present and waiting outside the building
19 for him. He identified the individual as KEN SPECK, the person
20 responsible for the fire extinguisher work at the Svenhard's
21 facility.

22
23 As part of your Declarant's duties, complaints of fraud are
24 often maintained even if they are not actionable. AMERICAN was a
25 business that was documented by the City of Visalia's Fire
26 Inspector, Vorissa Henderson, in 2007. In her complaint to this
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Declaration of Investigator Mark Lopez

1 Investigator, individuals from American Fire Protection were
2 posing as firefighters to obtain business from local restaurants.

3 Concerned about public safety, your Declarant asked the
4 TCFD to make inquiries of other fire departments for instances of
5 fraud by AMERICAN in this or other jurisdictions.

6 TCFD Insp. Jerry Sterling located five complaints with the
7 California State Fire Marshal's Engineering Division in
8 Sacramento, California, against this business for unfair business
9 practices generated from Tulare County victims. The documented
10 complaints were made in the summer of 2006 and were from the
11 Cities of Tulare, Visalia and Porterville.
12

13 The documented complaints were for Keothip Restaurant,
14 Super Mercado Restaurant, Subway Restaurant, Tapaho Restaurant,
15 and China Alley Mexican Restaurant. The complaints were made
16 because AMERICAN employees, including KEN SPECK, misled these
17 customers and billed them amounts of money for premature
18 servicing of hood systems and fire extinguishers.

19 Tulare County Insp. Jerry Sterling conducted routine fire
20 safety inspections within the boundaries of Tulare County in the
21 month of October and November, 2008. The inspections were of
22 commercial food preparation sites such as restaurants and
23 convenience stores. Sterling located fire suppression system
24 equipment placed in local businesses by AMERICAN within this
25 calendar year.
26

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Declaration of Investigator Mark Lopez

1 Sterling determined that AMERICAN had altered, repaired,
2 replaced or serviced fire suppression equipment such as fire
3 extinguishers, commercial hood and duct systems, and fire
4 sprinkler systems at these local establishments. He demonstrated
5 at least one location in North Visalia to your Declarant which
6 evidenced a pattern of errors and law violations.

7 Sterling summarized the following California Fire Code
8 violations at these Tulare County locations:

- 9
10 **1. SA Market, 855 S. State Street, Earlimart, Ca**
11 906.1.4 (C.F.C.) Portable Fire Extinguishers shall be
12 in areas where flammable or combustible liquids are
13 stored.
14 906.5 (C.F.C.) Fire Extinguishers shall be located
15 in a conspicuous place
16 Title 19 Ch. 3 Article 1 sec 550.2
17 Servicing/maintenance of Portable Fire
18 extinguishers
19 904.11.6 (C.F.C.) Operations and Maintenance of a
20 Commercial Cooking Systems
21 Title 19 Chapter 5- Commercial Cooking Systems
22 2205.5 (C.F.C.) Fire extinguishers to be provided at
23 fuel dispensing locations
- 24 **2. Best Truck Stop 451 N. Park St. Pixley, Ca.**
25 Title 19 Ch. 3 Article 1 sec 550.2
26 904.11.6(C.F.C.)
27 906.1.4 (C.F.C.)
- 28 **3. Bob's Truck Stop, 444 E. Court St, Pixley, Ca**
906.1.4 (C.F.C.).
906.5 (C.F.C.)
Title 19 Ch. 3 Article 1 sec 550.2
904.11.6(C.F.C.)
2205.5(C.F.C.)
Title 19 Chapter 5 Commercial Cooking Systems
- 4. Sanad Freeze Restaurant, 853 Armstrong St, Earlimart ,
Ca.**
906.1.4 (C.F.C.)
906.5 (C.F.C.)
Title 19 Ch. 3 article 1 sec 550.2
904.11.6(C.F.C.)
Title 19 Chapter 5

1 Though SPECK attempted to display knowledge of his servicing
2 ability Blasdell concluded he was less than competent. Speck did
3 not have in his possession the required equipment that is
4 mandatory and legally necessary for persons trained and acting as
5 Fire Extinguisher Technicians.

6 Your Declarant learned that the California State Fire
7 Marshal's office requires a certificate of registration to be
8 activated and registered with their office before anyone can work
9 or service fire extinguishers. Defendant SPECK had been trained
10 by this office and possesses certification. SPECK's practice in
11 conducting false inspection and repair services is known as "Rag
12 and Tagging" extinguishers for the money. The term is a slang
13 description for a fraudulent fire extinguisher service conducted
14 by a suspect just for the money. An inspection of SPECK's
15 residence by Fire Inspector Vorrisa Henderson at that time
16 revealed no other equipment, in spite of SPECK's statement of
17 possessing the proper equipment at his residence.
18

19 On October 16, 2008, Cal Fire Special Investigator Baker
20 conducted another inspection of the AMERICAN home office of
21 defendant SPECK. Speck informed him that the necessary tools
22 and equipment were "on order, and should be here next week."
23

24 Your Declarant has reviewed numerous reports from public
25 agencies and the Better Business Bureau concerning complaints
26 about the shoddy work performed by defendants in the past four
27

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Declaration of Investigator Mark Lopez

1 years. A total of over fifty complaints of such incidents are
2 on record for this time period. Your Declarant is of the
3 opinion that all the fire extinguisher work completed at
4 Svenhard's and other locales before this date, is suspect and
5 potentially a public safety issue, based on this evidence.

6 Your Declarant is convinced that unless defendants are
7 restrained from committing unlawful fire suppression and alarm
8 inspection practices, the public is at great risk of injury, even
9 death and property damage which could have been prevented if
10 defendants had performed according to their promises and the
11 reasonable expectations of their customers.
12

13 Records of the Contractors State License Board reveal
14 defendant AMERICAN held License no. 726110, Class C-16, which
15 expired August 31, 2008. It was renewed on November 28, 2008 and
16 is now active. Any work performed during the period August 31,
17 2008 through November 28, 2008 which required defendants to have
18 an active C-16 contractors license constitutes violations of Bus.
19 & Prof. Code sec. 7117.5(b), which provides that: "Acting in the
20 capacity of a contractor under any license that has been suspended
21 for any reason constitutes a cause for disciplinary action."
22

23 Your Declarant checked with Investigator Ben Rodriguez of
24 the Department of Insurance for assistance in determining whether
25 defendant AMERICAN had secured payment of compensation for its
26 employees. Rodriguez, after checking the department records,
27

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Declaration of Investigator Mark Lopez

1 confirmed that WILLIAMS' statements pertaining to not having
2 workers compensation insurance "for years" provided to undercover
3 investigators, were indeed accurate.

4 Your Declarant is aware that AMERICAN FIRE SERVICES, INC.
5 uses the business name, or "DBA" of AMERICAN FIRE PROTECTION and
6 that relationship is evident in invoices, policies and Contractors
7 State License Board Records. Your Declarant states that within
8 this Declaration the two names are synonymous and are used to
9 reference the same entity.

10
11 Your Declarant contacted the Central California Better
12 Business Bureau and requested information of any complaints
13 concerning the activities of defendants. In August 3, 2006, the
14 BBB released a public service announcement regarding "Sneak
15 Solicitation for Fire Equipment." The BBB warned the general
16 public of defendant AMERICAN and its employees posing as officials
17 associated to the State Fire Marshal's Office for the purpose of
18 selling services and products to unsuspecting customers.

19 In another BBB file a copy of a City of Merced news release
20 dated April 6, 2007 warned: "Be careful hiring your fire
21 extinguisher servicing company." In summary, the City of Merced
22 attempted to protect the consumer's in Merced County from
23 defendant AMERICAN's deceptive practices. Furthermore, the news
24 release warned consumers that American Fire Protection wore
25 uniforms similar to fire department staff, as though they were

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Declaration of Investigator Mark Lopez

1 sent by the Merced Fire Department and that customers'
2 extinguishers were due for service before the actual time.

3 Additional victims of defendants' unlawful activities have
4 been identified by law enforcement agencies and are listed in
5 Exhibit "A" attached to this Declaration and hereby incorporated
6 by this reference.

7 I declare under penalty of perjury under the laws of State of
8 California that the foregoing is true and correct, except to
9 those matters based on information and belief, and as to those
10 matters, I believe them to be true.

11
12 December __, 2008

13 _____
14 Mark Lopez, Investigator
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Declaration of Investigator Mark Lopez

AMERICAN FIRE PROTECTION

VICTIMS IDENTIFIED

EXHIBIT #1

	Victim/Business Name	Address	Phone	County	Fire Code #	Date of Offense
1	Svenhard's Swedish Bakery	701 Industrial Dr, Exeter	559-592-2270	Tulare	386PC, 50 other violations	July . 2008
2	Super Mercado Sol Del Valle	591 W. Bardsley, Tulare 93274	559-685-1634	Tulare	532PC, 488PC	Sept. 2006
3	Koethip Restaurant	619 W. Murray, Visalia 93291	559-739-0747	Tulare	532PC, 488PC	Nov. 2006
4	Subway	5404 W. Cypress	559-651-1770	Tulare	596C1, Title 18 560.2	Sept. 2006
5	El Tapatio	134 E. Orange, Porterville 93257	559-781-2115	Tulare	532PC, 488PC	Sept. 2006
6	China Alley Mexican Restaurant	1377 W. Henderson	559-782-3615	Tulare	532PC, 488PC	Sept. 2006
7	Bob's Truck Stop	444 E. Court St., Pixley, CA	559-759-3368	Tulare	906.1.4 cfc; 906.5 cfc; Title 19 Ch 3 Article 1 sec 550.2; 904.11.6 cfc; Title 19 Ch 5; 22050.5 cfc	Oct. 2008
8	Best Truck Stop	451 N. Park St, Pixley	559-759-3368	Tulare	Title 19 Ch 3 article 1 sec 550.2; 904.11.6 cfc; 906.1.4 cfc	Oct. 2008
9	Sanad Freeze Restaurant	853 Armstrong St, Earlimart	661-849-3038	Tulare	906.1.4 cfc; 906.5 cfc; Title 19 Ch 3 article 1 sec 550.2; 904.11.6 cfc; Title 19 Ch 5	Oct. 2008
10	SA Market	855 S. State Street, Earlimart	661-849-6934	Tulare	906.1.4 cfc; 906.5 cfc; Title 19 Ch. 3 article 1 sec 550.2; 904.11.6 cfc; Title 19 Ch 5; 2205.5 cfc	Oct. 2008
11	Kings River Market	40021 Rd, 40, Kingsburg		Tulare	906.1.4 cfc; 906.5 cfc; Title 19 Ch 3 article 1 sec 550.2; 904.11.6 cfc; Title 19 ch 5	Oct. 2008
12	Salvador's Mexican Restaurant	Mariposa, CA 95338	209-966-7227	Mariposa	386(a) P.C.	Nov. 2007
13	Sugar Pine Restaurant	Mariposa, CA 95338		Mariposa		June. 2008
14	Sheperd's Market	32586 RD 124, Visalia		Tulare	904.1.1 cfc, Title 19 Sec 904	Nov. 2008
15	PC Food Mart	12373 Ave 328, Visalia CA	627-4888	Tulare	904.1.1 cfc, Title 19 Sec 904	Nov. 2008
16	Oaxca Resturant II	2004 Second St, Selma Ca		Fresno	7110 B&P	Aug. 2008
17	Casa Vallarta	39993 Highway 41, Oakhurst	683-4606	Madera	459 PC/386 PC	Nov. 2008
18	Pizza Pirate	3822 McCall, Selma	896-3320	Fresno	7110 B&P, Title 19 sect.319	Dec. 2008
19	Carniceria Botanas Taqueria	2507 Nebraska, Selma	891-8760	Fresno	7110 B&P	Aug. 2008
20	Botanas Carniceria	2507 Nebraska, Selma	891-8760	Fresno	Title 19 Ch 3 article 1 sec 550.2; 904.11.6 cfc; 906.1.4 cfc	July. 2008
21	Clovis Digital Camera	300 W. Shaw, Clovis	323-0478	Fresno	13190.4 H&S 459 PC	Nov. 2007
22	Tokyo Garden	3320 S. Fairway Blvd., Visalia	625-0638	Tulare	386(a) P.C.	Nov. 2007
23	Shop N' Go	2411 N. Dinuba Blvd., Visalia		Tulare	488a P.C.	Dec. 2008

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FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

DEC 11 2008

LARAYNE CLEEK, CLERK
BY: _____

6 Attorneys for Plaintiff

7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF TULARE

10 THE PEOPLE OF THE STATE OF)
CALIFORNIA,)
11)
Plaintiff,)
12)
vs.)
13)
AMERICAN FIRE SERVICES, INC., a)
14 Corporation, also doing business)
as AMERICAN FIRE PROTECTION,)
15 DANNY VICTOR WILLIAMS, ANTHONY)
16 DAVID ASH, KEN GORDON SPECK and)
DOES 1 through 50, inclusive,)
17)
Defendants)
18)

No. 08-230753

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPLICATION FOR TEMPORARY
RESTRAINING ORDER, ORDER
TO SHOW CAUSE AND
PRELIMINARY INJUNCTION

19 Pursuant to Bus. & Prof. Code sections 17203 and 17545,
20 plaintiffs, the People of the State of California, request this
21 court to issue a Temporary Restraining Order and an Order to Show
22 Cause re Preliminary Injunction against defendants AMERICAN FIRE
23 SERVICES, INC., a corporation, also doing business as AMERICAN
24 FIRE PROTECTION, DANNY VICTOR WILLIAMS, ANTHONY DAVID ASH, and
25 KEN GORDON SPECK in the form set forth in the proposed Temporary
26

27

28 Memorandum of Points and Authorities in Support of Application for Temporary
Restraining Order, Order to Show Cause and Preliminary Injunction

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. SUMMARY OF ARGUMENT

3 Defendants committed "unfair competition" as defined in
4 Bus. & Prof. Code sec. 17200 by engaging in the following acts or
5 practices: (1) impersonating fire marshals and fire inspectors in
6 order to gain admission to the business premises of persons
7 operating public accommodations such as restaurants and other
8 facilities wherein fire suppression equipment was installed; (2)
9 representing to customers they were performing routine periodic
10 service and maintenance work on existing fire suppression systems
11 at such establishments as required by law; and (3) failing to
12 provide adequate or acceptable levels of performance to satisfy
13 reasonable standards of adequate maintenance of such systems,
14 thereby conveying the false impression to customers that their
15 fire suppression systems were properly serviced and in good
16 operating condition when in fact they were not.

17
18 Defendants thereby exposed untold numbers of persons to
19 risk of injury or death and destruction of property in the case
20 of an emergency involving a fire on premises with failure of the
21 fire suppression equipment to perform as designed for the benefit
22 and protection of the facilities and persons involved.
23
24
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1 II. SUMMARY OF DEFENDANTS' PRACTICES

2 A. The Defendants

3 Defendants timed their visits to premises of potential
4 customers to give the impression they were visiting to make an
5 "official" inspection of fire suppression equipment on site.
6 They dressed in "uniforms" which gave the impression to the
7 general public that were fire personnel from an authorized
8 governmental agency, when in fact they were not so sworn or
9 constituted.
10

11 Once in control of the premises, defendants carried out
12 several "procedures" to give the impression that they were
13 recharging fire extinguishers, cleaning systems and carrying out
14 routine maintenance of the fire suppression equipment.
15 Defendants attached inspection tags to fire extinguishers and
16 other equipment, signed their names on many occasions, but failed
17 to service or maintain said units. In many cases, defendants had
18 neither the equipment nor the training from a distributor to
19 carry out the service they claimed they had provided to
20 customers.
21

22 By their actions, defendants conveyed false impressions to
23 the customers who paid for their false services that the
24 customers' equipment was fully operational and in good working
25 order, when in reality the equipment had not been properly
26 inspected or repaired as needed. Thus, customers had no way of
27

1 knowing that their fire suppression equipment very likely would
2 not perform as expected in times of crisis and emergency.

3 B. Defendants' Unfair Business Practices

4 Defendants' business practices are unfair since defendants
5 compete in the field of maintaining and repairing fire
6 suppression equipment. Their activities involve servicing
7 specialized and complicated equipment designed to extinguish
8 fires during instances of dire emergency. Since defendants do
9 not perform the services in question, yet still accept full
10 payment of their invoices from customers without informing them
11 of their failure to properly service the equipment in question,
12 they are generating a false sense of security with their customer
13 group and are interfering with efforts of competitors in such
14 maintenance business to provide *bona fide* services to such
15 customers.
16

17 Defendants are increasing the risk of catastrophic losses
18 of life and property in the event of an emergency caused by fires
19 at such business establishments. At risk are the lives of all
20 persons on site when such an emergency might strike as well all
21 others who may be threatened in cases when a fire is not promptly
22 suppressed and spreads into a major conflagration.
23

24 **III. THE COURT SHOULD ISSUE AN INJUNCTION**

25 A. The Court Should Enjoin Defendants' Illegal and
26 Deceptive Practices

1 The court is empowered to enjoin anyone "who engages, has
2 engaged, or proposes to engage" in acts of unfair competition.
3 (Bus. & Prof. Code, sec. 17203.) Under section 17535, the court
4 has independent grounds to enjoin untrue or misleading
5 statements. An injunction may be as comprehensive as necessary
6 to stop fraudulent and illegal conduct. While "an injunction may
7 not go against statutory law, it may go beyond statutory law. A
8 court sitting in equity has broad power to fashion relief to fit
9 the facts before it," *People v. Custom Craft Carpets, Inc.* (1984)
10 159 Cal.App.3d 676, 684. The court's injunctive powers to stop
11 unfair competition and the making of untrue and misleading
12 statements has been described as "extraordinarily broad," *Hewlett*
13 *v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 540.

15 It is not plaintiff's burden to prove irreparable harm.
16 When the Legislature has provided the government with injunctive
17 relief remedies for violation of a statute, "a showing by a
18 governmental entity that it is likely to prevail on the merits
19 should give rise to a presumption of public harm," *IT Corp. v.*
20 *County of Imperial* (1983) 35 Cal.3d 63, 71. Under *IT Corp.* the
21 burden shifts to defendants to show they would suffer grave or
22 irreparable harm before the court is required to examine the
23 relative harm to the parties, *supra*, at p. 72.

25 An injunction is proper even when defendants have ceased
26 the illegal activity. In 1992, Bus, & Prof. Code sec. 17203 was

1 amended to add the words "have engaged" thus expanding the
2 court's injunctive relief powers to stop past conduct (and
3 prevent future activity of a similar nature), *Stop Youth*
4 *Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 570.
5 Before said amendment the court had the power to enjoin activity
6 as long a defendants retained the means to resume their illegal
7 conduct, *California Service Station etc. Assn. v. Union Oil Co.*
8 (1991) 232 Cal.App.3d 44.

9
10 **IV. DEFENDANTS ENGAGED IN UNFAIR COMPETITION IN VIOLATION**
11 **OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

12 **A. The UCL's Coverage**

13 Bus. & Prof. Code sec. 17200 is often referred to as the
14 unfair competition law ("UCL"). Unfair competition is defined to
15 "mean and include any unlawful, unfair or fraudulent business act
16 or practice and unfair, deceptive, untrue or misleading
17 advertising" necessarily including any act prohibited by Bus. &
18 Prof. Code secs. 17500 et seq. (Bus. & Prof. Code sec. 17200.)
19 The proscriptions are in the disjunctive and plaintiff only need
20 prove defendants committed an unlawful act, unfair or fraudulent
21 act or practice, *Prata v. Superior Court* (2001) 91 Cal.App.4th
22 1128, 1137; *Schnall v. Hertz Corporation* (2000) 78 Cal.App.4th
23 1144, 1153 and *Podolsky v. First Healthcare Corp.* (1996) 50
24 Cal.App.4th 632, 647.

25 **1. Unlawful Acts or Practices**

1 Section 17200 "prohibits any practices forbidden by law, be
2 it civil or criminal, federal, state, or municipal, statutory,
3 regulatory, or court-made." (*Saunders v. Superior Court* (1994)
4 27 Cal.App.4th 832-39; *Stop Youth Addiction, Inc., v. Lucky*
5 *Stores, Inc., supra* (1998) 17 Cal.4th 553 and *People v. McKale*
6 (1979) 25 Cal.3d 626, 632. In essence, section 17200 borrows
7 violations of other laws and treats these violations, when
8 committed pursuant to business activity, as unlawful practices
9 independently actionable under section 17200 et seq. and subject
10 to the distinct remedies provided thereunder, *Farmers Ins.*
11 *Exchange v. Superior Court* (1992) 2 Cal.4th 377, 383. Intent is
12 not required, *Hewlett v. Squaw Valley Ski Corp., supra*, 54
13 Cal.App.4th 499, 520 and *People ex. Rel Van de Kamp v. Cappuccio,*
14 *Inc.* (1988) 204 Cal.App.3d 761. The UCL is a strict liability
15 statute, *Prata v. Superior Court, supra*, 91 Cal.App.4th 1128, 1137
16 and *South Bay Chevrolet v. General Motors Acceptance Corp.* (1999)
17 72 Cal.App.4th 877.

19 2. Unfair Acts or Practices

20 Section 17200 also establishes a broad standard that
21 enables courts to combat "unfair" acts or practices violating
22 fundamental rules of honesty and fair dealing, *Barquis v.*
23 *Merchants Collection Assn.* (1972) 7 Cal.3d 94, 112. A practice
24 is unfair "when it offends an established public policy or when
25 the practice is immoral, unethical, oppressive, unscrupulous or
26

1 substantially injurious to consumers," *Smith v. State Farm Mutual*
2 *Automobile Insurance Co.* (2001) 93 Cal.App.4th 700, 719, quoting
3 *FTC v. Sperry & Hutchinson Co.* (1972) 405 U.S. 233, 244; *People*
4 *v. Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3d
5 509, 530, disapproved in actions involving business competitors.
6 "'Unfair'" simply means any practice whose harm to the victim
7 outweighs its benefits," *Saunders v. Superior Court* (1994) 27
8 Cal.App.4th 832, 839. Section 17200 "was intentionally framed in
9 its broad, sweeping language, precisely to enable judicial
10 tribunals to deal with the innumerable 'new schemes which the
11 fertility of man's invention would contrive'," *Barquis, supra*, at
12 112. It is a strict liability statute.

14 3. Fraudulent Acts or Practices

15 The term "fraudulent" as used in section 17200 does not
16 refer to the common law tort of fraud but only requires a showing
17 that members of the public "are likely to be deceived," *Saunders*
18 *v. Superior Court, supra*, 27 Cal.App.4th at 839.

19 4. Deceptive Advertising Prohibited

20 Section 17200 expressly prohibits any "unfair, deceptive,
21 untrue or misleading advertising" on a strict liability basis.
22 It also prohibits violations of Bus. & Prof. Code sec. 17500
23 (untrue or misleading statements).
24

25 B. Unfair Competition Under the Facts of This Case

26 1.- Violations of Statutory Law

1 Defendants committed violations of numerous statutory
2 provisions, including:

3 Bus. & Prof. Code sec. 17200 by engaging in the business of
4 servicing and repairing fire suppression equipment (while holding
5 a proper license, which had expired from August 31, 2008 and
6 renewed thereafter), but performing services of no value and
7 taking full compensation for doing so without revealing their
8 fraudulent acts to their customers; and
9

10 Labor Code section 3700.5 by failing to secure compensation
11 for employees.

12 **V. DEFENDANTS MADE UNTRUE OR MISLEADING STATEMENTS IN**
13 **VIOLATION OF BUS. & PROF. CODE SECTION 17200 AS WELL AS**
14 **17500**

15 Bus. & Prof. Code sec. 17500 makes it unlawful for any
16 person to make any statement that the person knows or by the
17 exercise of reasonable care should know to be untrue or
18 misleading in order to sell goods or services. It is sufficient
19 to prove defendants knew or by the exercise of reasonable care
20 should have known the statements they made or caused to be made
21 were untrue or misleading. Plaintiff does not have to prove
22 intent to deceive, reliance by customers or other sales
23 prospects, or damages. (See generally, *Chern v. Bank of America*
24 (1976) 15 Cal.3d 866, 876 and *People v. Superior Court (Olson)*
25 (1979) 96 Cal.App.3d 181, 190.)
26
27

1 Under section 17500, a statement is impermissibly untrue or
2 misleading if the statement has "a capacity, likelihood or
3 tendency to deceive or confuse the public." (*Leoni v. State Bar*
4 (1985) 39 Cal.3d, 609, 626; *Committee on Children's Television,*
5 *Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 211; *Fletcher*
6 *v. Security Pacific Nat. Bank* (1979) 23 Cal.3d at p. 451; *Chern,*
7 *supra*, 15 Cal.3d at 876; *People v. Superior Court (Olson), supra,*
8 96 Cal.App.3d at p. 190.) The test for a section 17500 violation
9 is whether the "statement" is likely to mislead members of the
10 public. (*Fletcher v. Security Pacific National Bank, supra*, 23
11 Cal.3d at p. 451; *Chern v. Bank of America, supra* at p.876; *Mosk*
12 *v. Lynam* (1967) 253 Cal.App.2d 959, 965-966.) Section 17500 is
13 violated where the statement "complained of is not actually
14 false, but thought likely to mislead or deceive, or is in fact
15 false." (*Day v. AT&T Corp.* (1998) 63 Cal.App.4th 325, 332; *Kasky*
16 *v. Nike* (2002) 24 Cal.4th 939, 951.)

18 An omission may create a misrepresentation "[w]here, in the
19 absence of an affirmative disclosure, consumers are likely to
20 assume something which is not in fact true, the failure to
21 disclose the true state of affairs can be misleading," *Ford*
22 *Dealers Assn v. Department of Motor Vehicles* (1982) 32 Cal.3d
23 347, 364; *Day v. AT&T Corp, supra* at 332-333. Statements made to
24 a group, *People v. Bestline Products, Inc.* (1976) 61 Cal.App.3d
25 879 or to a single person, *Ford Dealers Assn. v. Department of*

1 *Motor Vehicles, supra*, (1982) 32 Cal.3d 347, fall within the
2 purview of section 17500. A violation occurs when a misleading
3 statement is made. Once a violation occurs, it cannot be
4 eliminated by subsequent disclosures. See *People v. Superior*
5 *Court (Jayhill)* (1973) 9 Cal.3d 283, 289 and *Prata v. Superior*
6 *Court, supra*, 91 Cal.App.4th 1128, 1145.

7
8 **CONCLUSION**

9 Defendants' unfair business practices must be enjoined in
10 order to prevent continuation of said unlawful practices. The
11 proposed injunction seeks to stop defendants' illegal practices.

12 It will impose a minimal burden on defendants since the
13 court's injunction would simply secure the status quo pending the
14 final outcome of this civil proceeding.

15 Finally, an injunction prohibiting similar acts of
16 unfair competition will afford a measure of protection of the
17 public should defendants engage in business activities such as
18 those complained of herein.

19 Dated: December 11, 2008

20
21 PHILLIP J. CLINE, District Attorney

22
23 By _____
24 Richard B. Isham
25 Deputy District Attorney
26 Attorneys for Plaintiff,
27 the People of the State
28 of California