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BY: _____
10 APR 26 AM 10: 25
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

Attorneys for the Plaintiff THE UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SMARTREPLY, INC.,

Defendant.

Case No. **CV 10-03087 GHK**

**COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION, AND OTHER
EQUITABLE RELIEF**

(RCx)

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), for its Complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief from Defendant for its violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a).
3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

DEFENDANT

4. Defendant SmartReply, Inc. (“SmartReply”), is a California for-profit corporation with its principal place of business in Irvine, California. SmartReply is a telemarketer that provides “voice marketing” and other services to induce consumers to purchase goods or services. SmartReply’s voice marketing services use automation to deliver prerecorded messages to individuals, answering machines, and voicemail services. SmartReply transacts or has transacted business in this District.

THE TELEMARKETING SALES RULE

5. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing And Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108. The FTC adopted the original Telemarketing Sales Rule in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310 (“TSR”).

1 6. Under the TSR, an “outbound telephone call” means a telephone call
2 initiated by a telemarketer to induce the purchase of goods or services or to
3 solicit a charitable contribution. 16 C.F.R. § 310.2(u).

4 7. The TSR recognizes that a person may make a “Do Not Call request” by
5 stating that he or she does not wish to receive an outbound telephone call
6 made by or on behalf of a particular seller. Under the TSR, it is an abusive
7 telemarketing practice and a violation of the Rule for a telemarketer to
8 engage in, or for a seller to cause a telemarketer to engage in, initiating an
9 outbound telephone call to a person who has previously made such a Do
10 Not Call request. 16 C.F.R. § 310.4(b)(1)(iii)(A).

11 8. On August 29, 2008, the Commission published an amendment to the TSR
12 that prohibits initiating outbound telephone calls to deliver prerecorded
13 messages unless the message makes certain disclosures and provides a
14 mechanism for the recipients of such messages to make Do Not Call
15 requests. 73 Fed. Reg. 51163, 51188 (2008). As amended, effective
16 December 1, 2008, 16 C.F.R. § 310.4(b)(1)(v)(B)(ii) of the TSR requires
17 that an outbound telephone call that delivers a prerecorded message
18 promptly disclose the identity of the seller, that the purpose of the call is to
19 sell goods or services, and the nature of the goods or services; and that these
20 disclosures be followed immediately by disclosure of one or both of the
21 following:

22 A. In the case of a call that could be answered in person by a
23 consumer, that the person called can use an automated
24 interactive voice and/or keypress-activated opt-out mechanism
25 to assert a Do Not Call request at any time during the message;
26 and

27 B. In the case of a call that could be answered by an answering
28 machine or voicemail service, that the person called can use a

1 toll-free telephone number to assert a Do Not Call request.

2 9. As amended, effective December 1, 2008, 16 C.F.R. § 310.4(b)(1)(v)(B)(ii)
3 of the TSR requires that an outbound telephone call that delivers a
4 prerecorded message and could be answered by a person allow the recipient
5 of the call to assert a Do Not Call request by using an automated interactive
6 voice and/or keypress-activated opt-out mechanism that will, once invoked,
7 immediately disconnect the call.

8 10. Since December 1, 2008, it is an abusive telemarketing practice and a
9 violation of the TSR for a telemarketer to initiate, or for a seller to cause a
10 telemarketer to initiate, an outbound telephone call that delivers a
11 prerecorded message that does not disclose that the recipient of the call may
12 make a Do Not Call request as set forth in 16 C.F.R. § 310.4(b)(1)(v)(B)(ii),
13 or does not immediately disconnect the call when the opt-out mechanism is
14 invoked.

15 11. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and
16 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the
17 TSR constitutes an unfair or deceptive act or practice in or affecting
18 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

19 **DEFENDANT'S BUSINESS ACTIVITIES**

20 12. Defendant is a telemarketer that initiates outbound telephone calls to
21 consumers in the United States to induce the purchase of goods or services.

22 13. Defendant is a "telemarketer" engaged in "telemarketing," as defined by the
23 TSR, 16 C.F.R. § 310.2(bb).

24 14. At all times relevant to this Complaint, Defendant has maintained a
25 substantial course of trade or business in the offering for sale and sale of
26 goods or services via the telephone, in or affecting commerce, as
27 "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
28

1 15. Since December 1, 2008, Defendant has engaged in telemarketing by a plan,
2 program, or campaign conducted to induce the purchase of goods or
3 services by use of one or more telephones and which involves more than
4 one interstate telephone call. Specifically, SmartReply made outbound
5 telephone calls that would deliver prerecorded messages advertising offers
6 for the purchase of goods sold under the Talbots brand or the J. Jill brand.
7 SmartReply initiated at least 3.4 million outbound telephone calls that
8 delivered prerecorded messages during telephone calls answered by
9 persons, answering machines and voicemail services from February 11,
10 2009 through July 23, 2009.

11 16. The prerecorded messages that Defendant delivered did not provide
12 information about an automated keypad mechanism or toll-free number to
13 contact the sender immediately after disclosure of the seller, the purpose of
14 the call and the nature of the goods and services. Instead, the prerecorded
15 messages did not mention an automated keypad mechanism or toll free
16 number until after thirty or more seconds of the telemarketing message had
17 already been played.

18 17. The prerecorded messages that Defendant delivered did not inform
19 consumers who answered in person that they may automatically assert a Do
20 Not Call request any time during the message by invoking an automated
21 interactive voice and/or keypress-activated opt-out mechanism. Instead,
22 after approximately thirty or forty seconds of the telemarketing message, the
23 recordings delivered by Defendant contained statements such as, “[i]f you’d
24 like more information and to choose whether or not to receive future calls
25 about special offers and promotions, press 1 now or call” a toll-free number,
26 or “[t]o make sure you’ll receive pre-recorded exclusive J. Jill savings and
27 event messages – like this one, please press 1 now or call” a toll-free
28 number.

1 18. When consumers who answered Defendants' outbound telephone calls
2 delivering prerecorded messages advertising for the Talbots brand or the J.
3 Jill brand invoked the automated key pad mechanism described in the
4 messages, Defendant did not disconnect the outbound calls immediately
5 and, instead, connected the consumers to additional recordings and
6 additional advertising.

7 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

8 19. In numerous instances on or after December 1, 2008, SmartReply made
9 outbound telephone calls to persons that delivered prerecorded messages
10 that did not comply with 16 C.F.R. § 310.4(b)(1)(v)(B)(ii)(A) or (B),
11 because the messages did not disclose that the recipients of the call could
12 assert a Do Not Call request immediately after disclosure of the identity of
13 the seller, the purpose of the call and the nature of the goods or services.

14 20. In numerous instances on or after December 1, 2008, SmartReply made
15 outbound telephone calls that were answered in person by a consumer and
16 delivered a prerecorded message that did not comply with 16 C.F.R.
17 § 310.4(b)(1)(v)(B)(ii)(A) because the messages did not inform the
18 consumer that he or she could invoke an automated mechanism to assert a
19 Do Not Call request at any time during the message, and SmartReply did not
20 immediately disconnect the call when the automated mechanism was
21 invoked.

22 **CONSUMER INJURY**

23 21. Consumers in the United States have suffered and will suffer injury as a
24 result of Defendant's violations of the TSR. Absent injunctive relief by this
25 Court, Defendant is likely to continue to injure consumers and harm the
26 public interest.
27
28

THIS COURT'S POWER TO GRANT RELIEF

- 1
- 2 22. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to
- 3 grant injunctive and other ancillary relief to prevent and remedy any
- 4 violation of any provision of law enforced by the FTC.
- 5 23. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified
- 6 by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of
- 7 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R.
- 8 § 1.98(d) (2008) and by 74 Fed. Reg. 857 (Jan. 9, 2009) (to be codified at
- 9 16 C.F.R. § 1.98(d)), authorizes this Court to award monetary civil penalties
- 10 of up to \$16,000 for each violation of the TSR after February 9, 2009.
- 11 Defendant's violations of the TSR were committed with the knowledge
- 12 required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).
- 13 24. This Court, in the exercise of its equitable jurisdiction, may award ancillary
- 14 relief to remedy injury caused by Defendant's violations of the TSR and the
- 15 FTC Act.

16 **PRAAYER FOR RELIEF**

17 Wherefore, Plaintiff requests that this Court, as authorized by Sections 5(a),

18 5(m)(1)(A), and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), and

19 53(b), and pursuant to its own equitable powers:

- 20 A. Enter judgment against Defendant and in favor of plaintiff for each violation
- 21 alleged in this Complaint;
- 22 B. Award plaintiff monetary civil penalties from Defendant for every violation
- 23 of the TSR;
- 24 C. Enter a permanent injunction to prevent future violations of the TSR and the
- 25 FTC Act by Defendant;
- 26 D. Order Defendant to pay the costs of this action, and
- 27 E. Award plaintiff such other and additional relief as the Court may determine
- 28 to be just and proper.

1 Respectfully submitted,

2
3 OF COUNSEL:
4 FEDERAL TRADE COMMISSION

5 LOIS C. GREISMAN
6 Associate Director for Marketing
7 Practices
8 FEDERAL TRADE COMMISSION

9 MICHAEL E. TANKERSLEY
10 Staff Attorney
11 Division of Marketing Practices
12 Federal Trade Commission
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14 Washington, DC 20580
15 202-326-2991

FOR THE PLAINTIFF:
UNITED STATES OF AMERICA

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge George King and the assigned discovery Magistrate Judge is Rosalyn M. Chapman.

The case number on all documents filed with the Court should read as follows:

CV10- 3087 GHK (RCx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====:

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

COPY

Name & Address:

ANDRÉ BIROTTE JR., United States Attorney
GARY PLESSMAN, AUSA, Chief, Civil Fraud Sec.
300 N. Los Angeles St., Ste 7516, Federal Bldg.
Los Angeles, CA 90012
Phn: 213-894-2474; Fax: 213-894-2380

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

CASE NUMBER

PLAINTIFF(S)

CV 10-03087 GHK (RCx)

v.

SMARTREPLY, INC.,

SUMMONS

DEFENDANT(S).

TO: DEFENDANT(S): SMARTREPLY, INC.

A lawsuit has been filed against you.

Within ²¹/₂₀ days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, AUSA Gary Plessman, whose address is 300 N. Los Angeles St., Ste 7516, Federal Bldg., Los Angeles, CA 90012; 213-894-2474. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

26 APR 2010

Dated: _____

By: 
Deputy Clerk
SEAL
(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) UNITED STATES OF AMERICA	DEFENDANTS SMARTREPLY, INC. County of Residence of First Defendant (in US Plaintiff Case Only) Orange
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) ANDRÉ BIROTTE JR., United States Attorney GARY PLESSMAN, AUSA, Chief, Civil Fraud Section, 300 North Los Angeles Street, Rm. 7516, Federal Bldg., Los Angeles, CA 90012, Phn.:213-894-2474	Attorneys (If Known) WILLIAM RANEY, Esquire Coplevitz & Canter, LLC 310 W. 20th Street, Suite 300 Kansas City, MO 64108 Phone: 816-472-9000; Fax 816-472-5000

II. BASIS OF JURISDICTION (Place an X in one box only.) <input checked="" type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

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

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No MONEY DEMANDED IN COMPLAINT: \$ 112,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Action for injunctive relief and civil penalties (\$1,138,551, with all but \$50,000 suspended) for violations of the FTC's Telemarketing Sales Rule, 16 CFR Part 310.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
UNITED STATES OF AMERICA: County n/a	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
SmartReply, Inc.: Orange County	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

[Handwritten Signature] Date 4/21/10

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))