

Name and Address of Court:  
SUPERIOR COURT OF SAN MATEO COUNTY  
800 NORTH HUMBOLDT STREET

SAN MATEO, CA 94401-1499

SMALL CLAIMS CASE NO. SCC 101498

PLAINTIFF/DEMANDANTE (Name, address, and telephone number of each):  
HYPER TOUCH INC.  
C/O JAMES WAGNER  
359 PORT ROYAL AVENUE  
FOSTER CITY, CA 94404  
Telephone No.: \_\_\_\_\_

DEFENDANT/DEMANDADO (Name, address, and telephone number of each):  
DISCOVER FINANCIAL SERVICES, INC.  
C/O JENNIFER SCHOTT  
2500 LAKE COOK ROAD  
RIVERWOODS, IL 60015  
Telephone No.: (224) 405-4131

Telephone No.: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

See attached sheet for additional plaintiffs and defendants.

**NOTICE OF FILING NOTICE OF APPEAL**

TO:  Plaintiff (name): HYPER TOUCH INC.  
 Defendant (name): DISCOVER FINANCIAL SERVICES, INC.

Your small claims case has been **APPEALED** to the superior court. Do not contact the small claims court about this appeal. The superior court will notify you of the date you should appear in court. The notice of appeal is set forth below.

*La decisión hecha por la corte para reclamos judiciales menores en su caso ha sido **APELADA** ante la corte superior. No se ponga en contacto con la corte para reclamos judiciales menores acerca de esta apelación. La corte superior le notificará la fecha en que usted debe presentarse ante ella. El aviso de la apelación aparece a continuación.*

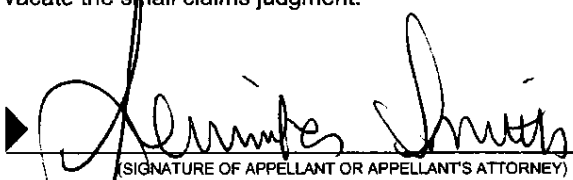
Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

**NOTICE OF APPEAL**

I appeal to the superior court, as provided by law, from  
 the small claims judgment or  the denial of the motion to vacate the small claims judgment.

DATE APPEAL FILED (clerk to insert date):  
\_\_\_\_\_

JENNIFER A. SMITH  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF APPELLANT OR APPELLANT'S ATTORNEY)

I am an insurer of defendant (name) \_\_\_\_\_ in this case. The judgment against defendant exceeds \$2,500, and the policy of insurance with the defendant covers the matter to which the judgment applies.

\_\_\_\_\_  
(NAME OF INSURER)

\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

**CLERK'S CERTIFICATE OF MAILING**

I certify that  
1. I am not a party to this action.  
2. This Notice of Filing Notice of Appeal and Notice of Appeal were mailed first class, postage prepaid, in a sealed envelope to  
 plaintiff  
 defendant  
at the address shown above.  
3. The mailing and this certification occurred  
at (place): \_\_\_\_\_, California,  
on (date): \_\_\_\_\_

Clerk, by \_\_\_\_\_, Deputy

# Buchalter Nemer Fields & Younger

A Professional Law Corporation

601 SOUTH FIGUEROA STREET, SUITE 2400, LOS ANGELES, CALIFORNIA 90017-5704  
TELEPHONE (213) 891-0700 / FAX (213) 896-0400

File Number: D5854-0007  
Direct Dial Number: (213) 891-5265  
E-Mail: [jsmith@buchalter.com](mailto:jsmith@buchalter.com)

April 12, 2004

The Judge of the Superior Court  
Central Branch  
800 N. Humboldt St.  
San Mateo, CA 94401

Re: Hypertouch Inc. v. Discover Financial Services, Inc.  
Small Claims Case No. SCC 101498  
**Notice of Appeal**

Dear Judge:

On March 11, 2004, judgment was entered in the above matter in favor of Plaintiff, Hypertouch Inc., and against Defendant Discover Financial Services, Inc. Notice of Entry of Judgment was mailed to one of Defendant's customer service centers in Phoenix, AZ that same date. However, Defendant's agent for service of process, as indicated on Plaintiff's claim (also enclosed), is located in Los Angeles. Consequently, Defendant (specifically, Defendant's legal department in Illinois) did not actually receive the Notice until March 16, 2004, as indicated by the date stamp in the upper right hand corner on the enclosed Notice.

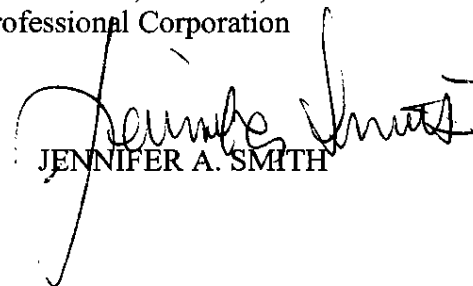
Our office represents Defendant, and desires to file the enclosed Notice of Appeal with the Superior Court. However, we realize that the 30 day time limit to file the Notice of Appeal expired on April 10, 2004, which was this past Saturday. We respectfully request that since service of the Notice of Entry of Judgment was defective, and Defendant did not receive the Notice until March 16<sup>th</sup>, and because the 30<sup>th</sup> day fell on a Saturday, the Court accept the enclosed Notice of Appeal.

Thank you.

Respectfully,

BUCHALTER, NEMER, FIELDS & YOUNGER  
A Professional Corporation

By



JENNIFER A. SMITH

Enclosures

cc: Discover Financial Services, Inc.  
Abraham Colman, Inc.

MAR 16 2004

SC-130

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO, SMALL CLAIMS DIVISION

SOUTHERN BRANCH
500 County Center
Redwood City, CA 94063
(650) 363-4303

CENTRAL BRANCH
800 N. Humboldt St.
San Mateo, CA 94401
(650) 573-2605

NORTHERN BRANCH
1050 Mission Road
So. San Francisco, CA 94080
(650) 877-5775

Court Website: www.sanmateocourt.org

SMALL CLAIMS CASE NO.: SCC 101498

NOTICE TO ALL PLAINTIFFS AND DEFENDANTS: Your small claims case has been decided. If you lost the case, and the court ordered you to pay money, your wages, money, and property may be taken without further warning from the court. Read the back of this sheet for important information about your rights.
AVISO A TODOS LOS DEMANDANTES Y DEMANDADOS: Su caso ha sido resuelto por la corte para reclamos judiciales menores. Si la corte ha decidido en su contra y ha ordenado que usted pague dinero, le pueden quitar su salario, su dinero, y otras cosas de su propiedad, sin aviso adicional por parte de esta corte. Lea al reverso de este formulario para obtener información de importancia acerca de sus derechos.

PLAINTIFF/DEMANDANTE (Name, street address, and telephone number of each):

HYPERTOUCH INC.
C/O JAMES WAGNER
359 PORT ROYAL AVENUE
FOSTER CITY, CA 94404

Telephone No.:

DEFENDANT/DEMANDADO (Name, street address, and telephone number of each):

DISCOVER FINANCIAL SERVICES
2402 W. BEARDSLEY ROAD
PHOENIX, AZ 85027

Telephone No.:

Telephone No.:

Telephone No.:

See attached sheet for additional plaintiffs and defendants.

NOTICE OF ENTRY OF JUDGMENT

Judgment was entered as checked below on (date): 03-11-04

- 1. Defendant (name, if more than one): shall pay plaintiff (name, if more than one): \$ 5,000.00 principal and: \$ 30.00 costs on plaintiff's claim.
2. Defendant does not owe plaintiff any money on plaintiff's claim.
3. Plaintiff (name, if more than one): shall pay defendant (name, if more than one): \$ principal and: \$ costs on defendant's claim.
4. Plaintiff does not owe defendant any money on defendant's claim.
5. Possession of the following property is awarded to plaintiff (describe property):
6. Payments are to be made at the rate of: \$ per (specify period): beginning on (date): and on the (specify day): day of each month thereafter until paid in full. If any payment is missed, the entire balance may become due immediately.
7. Dismissed in court with prejudice without prejudice.
8. Attorney-Client Fee Dispute (Attachment to Notice of Entry of Judgment) (form SC-132) is attached.
9. Other (specify):
10. This judgment results from a motor vehicle accident on a California highway and was caused by the judgment debtor's operation of a motor vehicle. If the judgment is not paid, the judgment creditor may apply to have the judgment debtor's driver's license suspended.
11. Enforcement of the judgment is automatically postponed for 30 days or, if an appeal is filed, until the appeal is decided.
12. This notice was personally delivered to (insert name and date):
13. CLERK'S CERTIFICATE OF MAILING—I certify that I am not a party to this action. This Notice of Entry of Judgment was mailed first class, postage prepaid, in a sealed envelope to the parties at the addresses shown above. The mailing and this certification occurred at the place and on the date shown below.

Place of mailing: SAN MATEO, CALIFORNIA

Date of mailing: 03-11-04

PEGGY THOMPSON, Court Executive Officer by I. ILANG, Deputy

The county provides small claims advisor services free of charge. Read the information sheet on the reverse.

APR. 9. 2004 3:44 PM NCSI LAW DEPT (847) 405-4972 NO. 9001 P. 3

SC-100

SOUTHERN BRANCH  
500 County Center  
Redwood City, CA 94063  
(650) 363-4303

CENTRAL BRANCH  
800 N. Humboldt St.  
San Mateo, CA 94401  
(650) 573-2606

NORTHERN BRANCH  
1050 Mission Road  
So. San Francisco, CA 94080  
(650) 877-5775

Court Website: [www.sanmateocourt.org](http://www.sanmateocourt.org)

SMALL CLAIMS CASE NO.: SCC-101498

|  |   |
|--|---|
| <p align="center"><b>- NOTICE TO DEFENDANT</b></p> <p align="center"><b>YOU ARE BEING SUED BY PLAINTIFF</b></p> <p>To protect your rights, you must appear in this court on the trial date shown in the table below. You may lose the case if you do not appear. The court may award the plaintiff the amount of the claim and the costs. Your wages, money, and property may be taken without further warning from the court.</p> | <p align="center"><b>- AVISO AL DEMANDADO -</b></p> <p align="center"><b>A USTED LO ESTAN DEMANDANDO</b></p> <p>Para proteger sus derechos, usted debe presentarse ante esta corte en la fecha del juicio indicada en el cuadro que aparece a continuación. Si no se presenta, puede perder el caso. La corte puede decidir en favor del demandante por la cantidad del reclamo y los costos. A usted le pueden quitar su salario, su dinero, y otras cosas de su propiedad, sin aviso adicional por parte de esta corte.</p> |
| <p>PLAINTIFF/DEMANDANTE (Name, address, and telephone number for each):</p> <p>HYPERTOUCHE INC.<br/>C/O JAMES WAGNER<br/>359 PORT ROYAL AVE,<br/>FOSTER CITY CA 94404</p>  | <p>DEFENDANT/DEMANDADO (Name, address, and telephone number for each):</p> <p>DISCOVER FINANCIAL SERVICES<br/>C/O CT CORPORATION SYSTEM<br/>818 WEST SEVENTH ST<br/>LOS ANGELES CA 90017</p>  |
| <p>Court can not review any letter until other side has been provided a copy. Indicate that you have sent a copy to the opposite party.</p>  |   |
| <p><b>DEFENDANTS COPY</b></p>  |   |

Fict. Bus. Name Stmt. No. Expires: 00/00/00  See attached sheet for additional plaintiffs and defendants

**PLAINTIFF'S CLAIM**

1. a.  Defendant owes me the sum of: \$ 5,000.00, not including court costs, because (describe claim and date): 03/27/03  
**AT FOSTER CITY, DEFENDANT SENT JUNK EMAIL (AKA "SPAM") TO HYPERTOUCHE SERVERS.**
  - b.  I have had an arbitration of an attorney-client fee dispute. (Attach Attorney-Client Fee Dispute form (see form SC-101).)
  2.  This claim is against a government agency, and I filed a claim with the agency. My claim was denied by the agency, or the agency did not act on my claim before the legal deadline. (see form SC-150.)
  3. a.  I have asked defendant to pay this money, but it has not been paid.
  - b.  I have NOT asked defendant to pay this money because (explain):
  4. This court is the proper court for the trial because  (In the box at the left, insert one of the letters from the list called "Venue Table" on page 3. If you select D, E, or F, specify additional facts in this space):
- If known, please give the zip code for the location of the letter you put in the box (zip code):
5.  I have  have not filed more than one other small claims action anywhere in California during this calendar year in which the amount demanded is more the \$2,500.
  6.  I have  have not filed more than 12 small claims, including this claim, during the previous 12 months.
  7. I understand that:
    - a. I may talk to an attorney about this claim, but I cannot be represented by an attorney at the trial in the small claims court.
    - b. I must appear at the time and place of trial and bring all witnesses, books, receipts, and other papers or things to prove my case.
    - c. I have no right of appeal on my claim, but I may appeal a claim filed by the defendant in this case.
    - d. If I cannot afford to pay the fees for filing or service by a sheriff or marshal I may ask that the fees be waived.
  8. I have received and read the information sheet (Form SC-150) explaining some important rights of plaintiffs in the small claims court.
  9. No defendant is in the military service  except (name):
- I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- Date: 12/31/03

JAMES WAGNER, CEO  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF PLAINTIFF)

**ORDER TO DEFENDANT**

You must appear in this court on the trial date and at the time LAST SHOWN IN THE BOX BELOW if you do not agree with the plaintiff's claim. Bring all witnesses, books, receipts, and other papers or things with you to support your case.

| TRIAL DATE       | DATE        | DAY     | TIME    | PLACE          | COURT USE |
|------------------|-------------|---------|---------|----------------|-----------|
| FECHA DEL JUICIO | 1. 02/17/04 | Tuesday | 6:00 PM | CENTRAL BRANCH |           |
|                  | 2.          |         |         |                |           |
|                  | 3.          |         |         |                |           |

Filed on (date): 12/31/03 PEGGY THOMPSON, Court Executive Officer, by C. GONZALEZ, Deputy

The county provides small claims advisor services free of charge. Read the information sheet on the reverse.

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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is at Buchalter, Nemer, Fields & Younger, A Professional Corporation, 601 South Figueroa Street, Suite 2400, Los Angeles, California 90017-5704.

On April 12, 2004, I served the foregoing document described as:

**NOTICE OF FILING NOTICE OF APPEAL**

on all other parties and/or their attorney(s) of record to this action by placing a true copy thereof in a sealed envelope as follows:


**HYPERTOUCHE INC.  
C/O JAMES WAGNER  
357 PORT ROYAL AVENUE  
FOSTER CITY, CA 94404**

**BY MAIL** I am a resident of, or employed in, the county where the mailing occurs; I am over the age of 18 years and am not a party to the cause. I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. The correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. The address(es) shown above is(are) the same as shown on the envelope. The envelope was placed for deposit in the United States Postal Service at Buchalter, Nemer, Fields & Younger in Los Angeles, California on April 12, 2004. The envelope was sealed and placed for collection and mailing with first-class prepaid postage on that date following ordinary business practices. Service made pursuant to CCP § 1013a(3), upon motion of a party served, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in the affidavit.

**Federal** I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

**State** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on April 12, 2004, at Los Angeles, California.

\_\_\_\_\_  
Geri Anderson

  
\_\_\_\_\_  
(Signature)

Name and Address of Court:  
SUPERIOR COURT OF SAN MATEO COUNTY  
100 NORTH HUMBOLDT STREET

SAN MATEO, CA 94401-1499

SMALL CLAIMS CASE NO. SCC 101499

ORIGINAL

PLAINTIFF/DEMANDANTE (Name, address, and telephone number of each):

HYPERTOUCHE INC.  
C/O JAMES WAGNER  
359 PORT ROYAL AVENUE  
FOSTER CITY, CA 94404

Telephone No.:

DEFENDANT/DEMANDADO (Name, address, and telephone number of each):

DISCOVER FINANCIAL SERVICES, INC.  
C/O JENNIFER SCHOTT  
2500 LAKE COOK ROAD  
RIVERWOODS, IL 60015

Telephone No.: (224) 405-4131

Telephone No.:

Telephone No.:

See attached sheet for additional plaintiffs and defendants.

NOTICE OF FILING NOTICE OF APPEAL

TO:  Plaintiff (name): HYPERTOUCHE INC.

Defendant (name):

Your small claims case has been APPEALED to the superior court. Do not contact the small claims court about this appeal. The superior court will notify you of the date you should appear in court. The notice of appeal is set forth below.

La decisión hecha por la corte para reclamos judiciales menores en su caso ha sido APELADA ante la corte superior. No se ponga en contacto con la corte para reclamos judiciales menores acerca de esta apelación. La corte superior le notificará la fecha en que usted debe presentarse ante ella. El aviso de la apelación aparece a continuación.

Date:

4/22/04

Clerk, by MARIE F. SHEEHAN, Deputy

FILED  
SAN MATEO COUNTY

APR 22 2004

Clerk of the Superior Court  
MARIE F. SHEEHAN

By Jennifer Smith  
DEPUTY CLERK

NOTICE OF APPEAL

I appeal to the superior court, as provided by law, from

the small claims judgment or  the denial of the motion to vacate the small claims judgment.

DATE APPEAL FILED (clerk to insert date):

4/22/04

JENNIFER A. SMITH  
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR APPELLANT'S ATTORNEY)

I am an insurer of defendant (name) \_\_\_\_\_ in this case. The judgment against defendant exceeds \$2,500, and the policy of insurance with the defendant covers the matter to which the judgment applies.

(NAME OF INSURER)

(SIGNATURE OF DECLARANT)

CLERK'S CERTIFICATE OF MAILING

I certify that

- I am not a party to this action.
- This Notice of Filing Notice of Appeal and Notice of Appeal were mailed first class, postage prepaid, in a sealed envelope to  plaintiff  defendant at the address shown above.

3. The mailing and this certification occurred at (place): San Mateo, California,

on (date): 4/22/04

Clerk, by MARIE F. SHEEHAN, Deputy

Name and Address of Court:

SUPERIOR COURT OF SAN MATEO COUNTY  
300 NORTH HUMBOLDT STREET

SAN MATEO, CA 94401-1499

SMALL CLAIMS CASE NO. SCC 101498

PLAINTIFF/DEMANDANTE (Name, address, and telephone number of each):

HYPER TOUCH INC.  
C/O JAMES WAGNER  
359 PORT ROYAL AVENUE  
FOSTER CITY, CA 94404

Telephone No.:

DEFENDANT/DEMANDADO (Name, address, and telephone number of each):

DISCOVER FINANCIAL SERVICES, INC.  
C/O JENNIFER SCHOTT  
2500 LAKE COOK ROAD  
RIVERWOODS, IL 60015

Telephone No.: (224) 405-4131

Telephone No.:

Telephone No.:

See attached sheet for additional plaintiffs and defendants.

**NOTICE OF FILING NOTICE OF APPEAL**

TO:  Plaintiff (name): HYPERTOUCH INC.

Defendant (name): DISCOVER FINANCIAL SERVICES, INC.

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Date:

4/22/04

Clerk, by

*Marie F. Sheehan*

**FILED**  
SAN MATEO COUNTY

Deputy

**NOTICE OF APPEAL**

APR 22 2004

I appeal to the superior court, as provided by law, from

the small claims judgment or  the denial of the motion to vacate the small claims judgment.

DATE APPEAL FILED (clerk to insert date):

4/22/04

JENNIFER A. SMITH

(TYPE OR PRINT NAME)

Clerk of the Superior Court  
**MARIE F. SHEEHAN**  
DEPUTY CLERK

*Jennifer A. Smith*  
(SIGNATURE OF APPELLANT OR APPELLANT'S ATTORNEY)

I am an insurer of defendant (name) \_\_\_\_\_ in this case. The judgment against defendant exceeds \$2,500, and the policy of insurance with the defendant covers the matter to which the judgment applies.

(NAME OF INSURER)

(SIGNATURE OF DECLARANT)

**CLERK'S CERTIFICATE OF MAILING**

I certify that

- I am not a party to this action.
- This Notice of Filing Notice of Appeal and Notice of Appeal were mailed first class, postage prepaid, in a sealed envelope to  plaintiff  defendant at the address shown above.

3. The mailing and this certification occurred

at (place): San Mateo, California,

on (date): 4/22/04

Clerk, by

*Marie F. Sheehan*

Deputy