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1 Christopher J. Hamner, Esq. (SBN 197117)
2 Amy T. Wootton, Esq. (SBN 188856)
3 **HAMNER LAW OFFICES, APC**
4 555 W. 5th Street, 31st Floor
5 Los Angeles, California 90013
6 Telephone: (213) 533-4160
7 Facsimile: (213) 533-4167
8 chamner@hamnerlaw.com
9 awootton@hamnerlaw.com

10 Attorneys for Plaintiff BRANDON KRAMER, on behalf
11 of himself and all others similarly situated

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

14 Case No.: **CV 13-6330 JFW (SH)**

15 BRANDON KRAMER, on behalf of
16 himself and all others similarly
17 situated, and the general public,

18 Plaintiff,

19 v.

20 WILSON SPORTING GOODS CO. a
21 Delaware Corporation and DOES 1
22 through 10, inclusive

23 Defendants.

24 **CLASS ACTION COMPLAINT**
25 **FOR:**

- 26 1. VIOLATION OF THE UNFAIR
27 COMPETITION LAW, Business
and Professional Code § 17200 et
seq.;
- 28 2. VIOLATIONS OF CONSUMER
29 LEGAL REMEDIES ACT, Civil
Code §1750 et seq.;
- 30 3. BREACH OF EXPRESS
31 WARRANTY;
- 32 4. VIOLATION OF FALSE
33 ADVERTISING LAW, California
34 Business and Professions Code §§
35 17500 et seq. ;
- 36 5. FRAUD;
- 37 6. NEGLIGENT
38 MISREPRESENTATION;
- 39 7. RESTITUTION
40 DEMAND FOR JURY TRIAL

1 Plaintiff, BRANDON KRAMER ("Plaintiff") brings this action on behalf of
2 himself and all others similarly situated against defendant WILSON SPORTING
3 GOODS CO., a Delaware Corporation ("Wilson" or "Defendants") and Does 1
4 through 10 and states:
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6 **JURISDICTION AND VENUE**

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8 1. This Court has original jurisdiction pursuant to 28 U.S.C.
9 §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds
10 the sum or value of \$5,000,000 and is a class action in which some of the
11 members of the class of plaintiffs are citizens of states different from
12 Defendants. Further, greater than two-thirds of the class members reside in
13 states other than the state in which defendant is a citizen.
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16 2. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that
17 many of the acts and transactions giving rise to this action occurred in this
18 district and because Defendants:
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20 (a) are authorized to conduct business in this district and have
21 intentionally availed themselves of the laws and markets within this
22 district through the promotion, marketing, distribution and sale of
23 their products in this district;

24 (b) do substantial business in this district; and

25 (c) are subject to personal jurisdiction in this district.

26 (d) Wilson is headquartered in Chicago, Illinois, and distributes and sells
27 to many different retailers in California, including but not limited to,
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1 Westwood Sporting Goods, located at 1065 Gayley Avenue,
2 Westwood, CA 90024; Merchant Of Tennis, located at 1118 S. La
3 Cienega Blvd, Los Angeles, CA 90035; Tennis Warehouse, located at
4 747 Buckley Road, San Luis Obispo, CA 93401; Dick's Sporting
5 Goods, Big 5; Tennis Ace, 12544 Ventura Blvd., Studio City, CA
6 91604 and Sport Chalet.

7 Plaintiff has concurrently filed an affidavit of proper venue pursuant to
8 Section 1780(d) which states facts showing that the instant action has been
9 commenced in a county, which is a proper place for the trial of the action.

10 **SUMMARY OF THE CASE**

11 3. Wilson is a maker and worldwide manufacturer and seller of tennis
12 racquets and other sporting and athletic equipment.

13 4. Wilson markets and sells its racquets in the U.S. through authorized
14 dealers throughout the country and in print advertisements, televised images and
15 over the internet. In its advertisements, Wilson claims its sponsored players, such
16 as Roger Federer ("Federer"), use the newest Wilson racquets on the professional
17 tennis tour. In many cases, this is not true. The tennis racquets which many of the
18 Wilson-sponsored pros actually use are comprised of different materials, different
19 weights, different stiffness, different balance points and, most importantly, they are
20 not made available for sale to the public. These custom racquets, which are
21 painted or otherwise modified for players like Federer, are altered so that the tennis
22 racquet used by the professional *appears to be identical* to the ones sold by Wilson
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1 in stores and on the internet to the consumers. Members of the public are led to
2 believe they are buying the same tennis racquets used by their favorite tennis pros,
3 when in fact there are significant differences between the racquets used by the pros
4 and those sold to the public.
5

6 5. Wilson's long-term and pervasive advertising campaign (for more
7 than four years) contains false and misleading statements designed to deceive
8 consumers about the racquets it sells. The long-term and pervasive advertising
9 campaign also deceives the public without the use of any "statements" at all. For
10 example, consumers are led to believe, simply by viewing players sponsored by
11 Wilson (and their racquets) in matches, and/or by viewing images of these players
12 and their racquets in magazines, other publications, the internet and television, that
13 the players are using the same racquets which are available for sale to the public,
14 when in fact, they are not. Wilson's advertising campaign is so pervasive,
15 widespread and convincing that the news media (newspapers, magazines,
16 television networks, and internet websites) perpetuate the myth that these
17 sponsored players are actually using the racquets they appear to be using. In fact,
18 the racquets used by the players sponsored by Wilson are painted and otherwise
19 altered to make them *appear* to be the same ones available for sale to the public,
20 but are significantly different than such racquets.
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1 6. By way of example, Federer, one of the best tennis players of all time
2 (who had been continuously ranked as one of the top 4 in the ATP rankings for the
3 last decade - from June 2003 until July 2013 – and who has won a record-breaking
4 17 Grand Slam titles in men’s singles), at all relevant times, endorsed the
5 distinctive white, red and black Wilson Pro Staff line racquet sold to the public
6 (e.g., K Factor SIX.ONE Tour 90 in 2009, SIX.ONE TOUR BLX in 2010,
7 SIX.ONE BLX 90 in 2012 and PRO STAFF BLX in 2013 and the recent Pro Staff
8 SIX.ONE 98) (hereinafter collectively “Pro Staff”). Wilson has falsely claimed, at
9 all times relevant hereto, that the Wilson Pro Staff line of the racquet is the *same*
10 racquet Federer has used and continues to use in professional tournaments.
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14 7. At all times relevant hereto, Wilson represented on its website, in its
15 marketing materials, in print advertisements and in live play that Federer uses the
16 Pro Staff on the professional tour. For example, on its website, Wilson specifically
17 stated that the Pro Staff is “*Roger’s (Federer) choice.*” All advertisements,
18 consisting of images and statements, have indicated that Federer played with the
19 Wilson Pro Staff Six.One. Federer has been seen on the professional tennis tour, in
20 exhibits and in practice consistently using a racquet with a white stem and red and
21 black frame that reads “PRO STAFF SIX.ONE.” This racquet looks identical to
22 the one sold in stores and on the internet by Wilson. Wilson retailers sell the
23 SIX.ONE 90 Pro Staff in the U.S for approximately \$199.
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1 8. Wilson has consistently claimed, and otherwise deceived the public
2 into believing, over at least the last four years, that Federer's racquet is the same
3 racquet for sale to the public. Prior to Kramer's purchase, Wilson's advertising
4 campaign contained statements and images that indicated that Federer's racquet
5 was a Pro Staff SIX.ONE BLX 90. However, the racquet Federer has used on tour
6 and in practice during at least the last four years is *not* the SIX.ONE 90 Pro Staff
7 racquet sold to the public.
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10 9. On information and belief, Plaintiff alleges the racquet Federer uses
11 on the pro tour was and is painted or otherwise customized to appear as though his
12 racquet is the same racquet made available to the public. However, the racquet
13 Federer has used on the pro tour for many years is instead a customized racquet
14 made with different material(s), with different stiffness, and/or different balance
15 points. Federer's actual racquet is not available for sale to the public. Federer's
16 actual racquet has not been available for sale to the public for at least the last four
17 years. Wilson has made and currently makes custom racquets for Federer each
18 season, which are made to appear like the newest racquet available to the public.
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23 10. Similar patterns of deception are engaged in by Wilson with respect to
24 the models of racquets purportedly used by other professional players Wilson
25 sponsors.
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11. Hence, Plaintiff, on behalf of himself and the proposed class, alleges that for at least the last four (4) years, Wilson has misrepresented to consumers that the Wilson racquets used on the professional tennis tour by its sponsored players are the same as the racquets that are made available to the public. In reality, Wilson deceptively alters the actual racquets used by its pros so that they look like the racquets Wilson sells to U.S. customers. Plaintiff, on behalf of himself and the proposed class, seeks damages for false advertising, fraud, restitution and all other and further damages as plead herein.

ALLEGATIONS

A. Wilson-Sponsored Players

12. On its website and through its advertising and marketing materials, Wilson has consistently claimed over at least the last four years that certain professional tennis players, including Federer, use the advanced Wilson racquets which are sold to the public, on the professional tennis tour. Many Wilson – sponsored players, specifically including Federer, do not use the Wilson racquets which they endorse and supposedly play with on tour. These players in fact use customized, one-of-a-kind racquets, with different materials, different stiffness, and/or different balance points, which Wilson paints, modifies and otherwise alters to look like the Wilson tennis racquets actually sold to consumers in the U.S. The sponsored player is then seen in major tennis tournaments each year like the

1 French Open, Wimbledon, Australian Open, Wimbledon and the U.S. Open using
2 the racquet which Wilson represents to the consumers is the same racquet that (1)
3 the particular pro uses on tour, and (2) is available for purchase by the general
4 public. Further, as Wilson's sponsored players generally do not keep switching
5 racquets every two or three years, whereas it is in Wilson's interest to make the
6 public *believe* its sponsored players frequently switch to "new and improved" or
7 "different" racquets (to encourage consumers to buy new models and increase
8 sales), sometimes with "new technology," there is a monumental gap between what
9 is represented to the public and reality.

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13 13. Plaintiff alleges on information and belief, that many of these
14 professional tennis players never used the Wilson racquet they sponsor and *appear*
15 to be using in professional tournaments. Instead, on information and belief,
16 Federer and other players regularly, if not always, use a different racquet, which is
17 customized, painted, modified and otherwise disguised to look like the particular
18 model of Wilson racquet that the player sponsors and purportedly uses.

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21 **B. Wilson's Advertisements and Statements.**

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23 14. Wilson, over the last 4 years, marketed and advertised its racquets on
24 the internet at www.wilson.com. Viewers of the website can choose to view a
25 player profile page for each Wilson-sponsored player. The player profile for each
26 such player lists the racquet that player purportedly uses with a picture of that
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1 particular racquet. The website also has a section where it promotes a roster of the
2 professional tennis players who endorse Wilson racquets. For example, on the
3 Wilson.com player profile page for Federer, the Pro Staff 90 was (and is) listed as
4 the equipment used and endorsed by Federer (although Federer allegedly recently
5 switched to a 98 inch frame). There also appears, and at all relevant times
6 appeared, an image of Federer playing with what appears to be the then-current Pro
7 Staff racquet. Wilson, at all relevant times, falsely advertised that Federer used the
8 then-current version of the Pro Staff which was available for sale to the public.
9 Wilson, on its website, continued the deceptive advertising campaign, falsely
10 misleading consumers with a promotional contest giving away a Pro Staff 90,
11 purporting to be the "racquet of champions," including Federer, as follows:
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16 **"WIN THE RACQUETS OF CHAMPIONS**

17 **Thank you for joining Wilson at the Spin Effect Technology Tour! To**
18 **show our appreciation, we're giving you a chance to win a Pro Staff 90**
19 **signed by Roger Federer & a Juice 100 signed by Victoria Azaren. Just**
20 **fill out the form below to enter!"**
21

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23 15. At all times relevant hereto, the Wilson website had a tab which
24 directs customers to Wilson "Dealers" throughout the U.S. Wilson marketed,
25 advertised and sold its tennis racquets in the U.S through Wilson authorized
26 dealers, such as Tennis Warehouse, Tennis Express, and Tennis Experts. Each of
27

1 these Wilson dealers has a significant web presence and sells thousands of Wilson
2 racquets each year over the internet to U.S. consumers. For example, Tennis
3 Warehouse stated on its website the Wilson BLX Pro Staff Six.One 90 was "*Roger
4 Federer's racquet. Roger Federer's racquet, the BLX Six.One Pro Staff 90 is
5 designed to offer the advanced player supreme control, feel and stability.*"
6

7 Plaintiff alleges on information and belief that Wilson is aware that the racquets
8 marketed and sold through these Dealers have little in common with the racquets
9 players like Federer actually use in pro tournaments. The principal similarity
10 between the racquets is their appearance, because the customized racquets have
11 deceptively been made altered to look like the racquets sold to the public. Plaintiff
12 alleges on information and belief that these and other Wilson Dealers and retailers
13 are simply repeating marketing materials these racquet sellers receive from Wilson.
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17 16. In a Wilson BLX Television commercial, Wilson claimed that,
18 "Federer switched to his new Six.One Tour BLX racket at the beginning of 2010."
19 Upon information and belief, Plaintiff believes that Federer did not switch racquets
20 in 2010, nor did he play with what Wilson described as his "new" racquet.
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23 17. Plaintiff was also led to believe that the SIX.ONE BLX 90 Pro Staff
24 racquet he purchased from the Tennis Ace on September 5, 2012 for \$206.63
25 (\$190.00 plus tax) was the *same* one used by Federer based on:
26

- 27 • Television commercials showing Federer holding and playing with

1 what appeared to be the Pro Staff Six.One;

- 2 • Plaintiff's viewing of Federer's live tennis matches, and highlights
3 from Federer's matches, on the Tennis Channel, ESPN, and other
4 networks, in which Federer appeared to be using the same racquet
5 made available to the public as the "Pro Staff Six.One;"
- 6 • Advertisements for the Pro Staff Six.One in Tennis Magazine, in
7 which Federer was shown holding what appeared to be Pro Staff
8 Six.One racquet;
- 9 • Advertisements at the U.S. Open showing Federer holding /playing
10 with what appeared to be the Pro Staff Six.One;
- 11 • Federer at exhibitions and practice playing with what appeared to be
12 the Pro Staff Six.One;
- 13 • Federer at the U.S. Open holding /playing with what appeared to be
14 the Pro Staff Six.One.

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20 18. Wilson's advertising campaign is the most deceptive of any kind as it
21 incorporates false statements with false images, thereby tricking the consumers by
22 both its words and images contains images and statements.
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24 19. Some of the print advertisements Plaintiff viewed and relied upon in
25 deciding to purchase the Wilson Pro Staff Six.One include the following:
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- 27 • Tennis Magazine March 2009:

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Below a picture of Federer holding what appears to be the Wilson Pro Staff

Six.One reads:

(K)FACTOR

TAKE (K)ONTROL

STEADY.PRECISE.ELITE

ROGER FEDERER

(K) SIX.ONE

WILSON

- Tennis Magazine April 2009

Below a picture of Federer holding what appears to be the Wilson Pro

Staff Six.One reads:

A GREAT DEAL ON

THE PERFECT COMBO

We know you have a desire for the fame

We know the perfect racket deserves the perfect bag

And we know...one of these combos is right for you...

- Tennis Magazine August 2009

Below a picture of Federer holding what appears to be the Wilson Pro

Staff Six.One reads:

ROGER FEDERER

(K) SIX.ONE

- Tennis Magazine September 2009

1 Below a picture of Federer holding what appears to be the Wilson Pro
2 Staff Six.One reads:

3 **ROGER FEDERER**

4 **(K) SIX.ONE**

- 5
6 • Tennis Magazine October 2009

7 Below a picture of Federer holding what appears to be the Wilson Pro
8 Staff Six.One reads:

9
10 **(K)FACTOR**

11 **TAKE (K)ONTROL**

12 **STEADY.PRECISE.ELITE**

13 **ROGER FEDERER**

14 **(K) SIX.ONE**

15 **WILSON**

- 16
17 • Tennis Magazine January/February 2010

18 A full page advertisement consisting of a picture of Federer holding a
19 racquet that says WILSON SIX.ONE TOUR

- 20
21 • Tennis Magazine July/August 2010

22 A full page advertisement consisting of a picture of Federer holding a
23 racquet that says WILSON SIX.ONE TOUR, below it reads:

24 “...SIX.ONE TOUR BLX”

- 25
26
27 • Tennis Magazine September/October 2010- Federer is on the cover

1 holding what appears to be a WILSON Pro Staff and on the racquet is
2 printed "SIX.ONE"

3 A full page advertisement consisting of a picture of Federer holding what
4 appears to be the WILSON SIX.ONE BLX

- 5 • Tennis Magazine June 2011

6 A full page advertisement consisting of a picture of Federer holding a
7 racquet that says " WILSON SIX.ONE TOUR"

- 8 • The advertisements continued and in the January/February 2013 issue of
9 Tennis Magazine, Wilson's ad states, under pictures of Federer holding
10 what appears to be the Pro Staff SIX.ONE:
11

12 **FOR A NEUTRAL NOTION,
13 SWITZERLAND SURE BUILDS
14 ONE HELL OF A WEAPON.**

15 **Armed with a Will Pro Staff, Roger Federer is dangerous
16 on the court. Its unique braided construction and classic
17 cross section give you the perfect blend of control and spin
18 for unbeatable precision. Don't go to battle without it.**

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21 20. Additionally, the advertising campaign for, at least the past four years
22 and continuing until the present, contained and continues to contain
23 misrepresentations regarding the sponsored players' racquets and how the players,
24 such as Federer, purportedly use the "newest" or "improved" version of the racquet
25 each time a "technological advance" or other change is made, when in fact the
26 players rarely, if ever, change the version of the racquet they use.
27

1 21. Plaintiff relied on Wilson's false and misleading advertising campaign
2 as detailed above. Specifically, Plaintiff relied on (a) Wilson-sponsored marketing
3 materials shown on Wilson's website and at the U.S. Open; (b) Wilson's television
4 commercials showing Federer holding and playing with what appeared to be the
5 then current Pro Staff Six.One; (c) Tennis Channel, ESPN and other networks
6 showing live matches and/or highlights with Federer, who was seen playing with
7 what appeared to be the identical racquet available to the public for sale, (d)
8 Wilson's advertisements in Tennis Magazine showing Federer holding and playing
9 with the Pro Staff Six.One which was available for sale to the public, (e) Federer
10 playing / practicing at the U.S. Open with what appeared to be the Wilson Pro Staff
11 Six.One 90; and (f) images from a variety of other sources, including the cardboard
12 cover affixed to tennis racquets for sale to the public showing Federer with what
13 appeared to be the Pro Staff Six.One racquet, all of which formed part of Wilson's
14 pervasive and all-encompassing advertising campaign pertaining to the racquet.
15
16 The representations, images and/or warranties contained and displayed within the
17 advertisements, television broadcasts, magazine pictures and other identified
18 sources and viewing Federer playing tennis in person, all led Plaintiff to believe he
19 was purchasing the same Pro Staff Six.One racquet used by Federer on or about
20 September 5, 2012, when he purchased the racquet (and later strings) from Tennis
21 Ace for \$206.63, not including the price of strings and stringing.
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1 **C. Wilson Alters Its Players' Actual Racquets to Look Like the Ones**
2 **It Sells To the Public.**

3 22. Plaintiff alleges on information and belief, and after significant pre-
4 filing investigation, that the aforementioned false advertising is part of a policy and
5 practice by Wilson. Federer does not use and has not used for at least the last 4
6 years the current version of the Wilson Pro Staff Six.One 90 racquet. He instead
7 used and continues to use a custom racquet produced by Wilson which is
8 customized, altered, modified and/or painted over and otherwise disguised before
9 televised matches to look like the latest version of the Wilson Pro Staff Six.One
10 90.
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14 23. Plaintiff alleges on information and belief that Wilson does
15 knowingly, or negligently at a minimum, and has been doing this for at least the
16 last 4 years, to deceive consumers into thinking they are purchasing the same
17 tennis racquet Federer and others use on the professional tour. Wilson also
18 benefits by leading the public to believe that Federer changes his racquet
19 periodically, by using supposedly "new and improved" versions of Wilson racquets
20 with new technology; this is intended to coerce consumers into thinking that they,
21 too, would benefit by purchasing the latest version of the racquet supposedly being
22 used by Federer. In fact, Federer does not change his racquet with the frequency
23 Wilson leads the consumers to believe.
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1 24. Plaintiff alleges that he and the proposed class have been damaged by
2 the aforementioned deceptive marketing practices and long-term advertising
3 campaign by Wilson by purchasing the racquet believed to be used by Federer.
4

5 **D. Reliance By and Harm to The Class.**

6 25. Plaintiff alleges on information and belief that Wilson has engaged in
7 this unfair advertising conduct and long-term false and misleading advertising
8 campaign for at least the last 4 years, and that said conduct continues.
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10 26. U.S. consumers who purchased the racquets in question have
11 reasonably relied on the representations and misleading images with which
12 consumers are bombarded. These misleading statements and images have led the
13 consumers to believe that the Wilson-sponsored players, such as, Federer, are in
14 fact using the same models that Wilson leads the public to believe the players
15 actually use on tour. This reliance is furthered by the fact that the racquet the
16 Wilson-sponsored player uses on the world-wide tennis tour has been disguised,
17 painted, customized and otherwise altered to look like the new model advertised
18 and sold to U.S. consumers.
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23 **PARTIES**

24 27. At all times relevant to this matter, plaintiff Brandon Kramer
25 (“Plaintiff”) resides and continues to reside in this district. During the class period,
26 Plaintiff was exposed to and saw the advertisements and images described above.
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1 As a result of Wilson's deception of the public, Plaintiff suffered injury in fact and
2 lost money by purchasing a racquet he otherwise would not have purchased.

3 28. Wilson, is a Delaware corporation doing business in the State of
4 California. Wilson has dealers that it distributes to in Northern and Southern
5 California, including but not limited to, Tennis Ace, located at 12544 Ventura
6 Blvd., Studio City, CA 91604; Westwood Sporting Goods, located at 1065 Gayley
7 Avenue, Westwood, CA 90024; and Tennis Warehouse, located at 747 Buckley
8 Road, San Luis Obispo, CA 93401. Throughout California, Wilson perpetuated its
9 false and deceptive advertising campaign at issue, and promotes, markets, and
10 distributes its racquets to hundreds of thousands of consumers throughout the
11 United States.
12

13 29. The true names and capacities, whether individual, corporate,
14 associate, or otherwise, of defendants sued herein as DOES 1 to 10, inclusive, are
15 currently unknown to Plaintiff, who therefore sues Defendants by such fictitious
16 names. Plaintiff is informed and believes, and based thereon alleges, that each of
17 the defendants designated herein as a DOE is legally responsible in some manner
18 for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
19 this Complaint to reflect the true names and capacities of the defendants designated
20 hereinafter as DOES when such identities become known.
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1 30. At all times mentioned herein, each of said Defendants participated in
2 the doing of the acts alleged to have been done by the named Defendants; and
3 furthermore, the Defendants, and each of them, were the agents, servants, and
4 employees of each and every one of the other Defendants, as well as the agents of
5 all Defendants, and at all times mentioned herein, were acting within the course
6 and scope of said agency and employment.
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9 31. At all times mentioned herein, Defendants, and each of them, were
10 members of, and engaged in, a joint venture, partnership and common enterprise,
11 and acting within the course and scope of, and in pursuance of said joint venture,
12 partnership and common enterprise.
13

14 32. At all times herein mentioned, the acts and omissions of various
15 Defendants, and each of them, occurred with and contributed to the various acts
16 and omissions of each and every one of the other Defendants in proximately
17 causing the complaints, injuries and damages alleged herein.
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20 33. At all times mentioned herein, Defendants, and each of them,
21 approved of, condoned and/or otherwise ratified each and every one of the acts or
22 omissions complained of herein. At all times herein mentioned, Defendants, and
23 each of them, aided and abetted the acts and omissions of each and every one of
24 the other Defendants, thereby proximately causing the damages as alleged.
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1 **CLASS DEFINITION AND ALLEGATIONS**

2 34. Plaintiff brings this action on behalf of himself and members of a
3 Class of similarly situated consumers defined as: All persons or entities in the
4 United States who purchased, in the last four (4) years, a Wilson tennis racquet
5 purportedly (but not actually) used by a Wilson-sponsored tennis professional
6 (including, but not limited to, Wilson Pro Staff SIX.ONE 90).
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9 35. **Numerosity.** The members of the Class are so numerous that their
10 individual joinder is impracticable. Plaintiff is informed and believes, and on that
11 basis alleges, that the proposed Class contains hundreds of thousands of members.
12 The precise number of Class members is unknown to Plaintiff. The true number of
13 Class members is known by the Defendant, however, and thus, may be notified of
14 the pendency of this action by first class mail, electronic mail, and by published
15 notice.
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18 36. **Existence and Predominance of Common Questions of Law and**
19 **Fact.** Common questions of law and fact exist as to all members of the Class and
20 predominate over any questions affecting only individual Class members. These
21 common legal and factual questions include, but are not limited to, the following:
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24 (a) whether Defendants had adequate substantiation for their claims prior
25 to making them;

26 (b) whether the advertising claims made by Defendants are true, or are
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1 false and/or misleading, or reasonably likely to deceive;

2 (c) whether Defendants' alleged conduct violates public policy;

3 (d) whether the alleged conduct constitutes violations of the laws
4 asserted;

5 (e) whether Defendants engaged in false or misleading advertising;

6 (f) whether Plaintiff and Class members have sustained monetary loss
7 and the proper measure of that loss;

8 (g) whether Plaintiff and Class members are entitled to an award of
9 punitive damages;

10 (h) whether Plaintiff and Class members are entitled to declaratory and
11 injunctive relief; and

12 (i) whether Plaintiff and Class Members are entitled to restitution.

13 37. **Typicality.** Plaintiff's claims are typical of the claims of the members
14 of the Class in that the Defendants were unjustly enriched as a result of Plaintiff's
15 and the Class' respective purchases of the tennis racquets.

16 38. **Adequacy of Representation.** Plaintiff will fairly and adequately
17 protect the interests of the members of the Class. Plaintiff has retained counsel
18 experienced and highly successful in complex consumer class action litigation.
19 Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or
20 antagonistic interests to those of the Class.

1 39. **Superiority.** A class action is superior to all other available means for
2 the fair and efficient adjudication of this controversy. The damages or other
3 financial detriment suffered by individual Class members is relatively small
4 compared to the burden and expense that would be entailed by individual litigation
5 of their claims against the defendant. It would thus be virtually impossible for the
6 Class, on an individual basis, to obtain effective redress for the wrongs done to
7 them. Furthermore, even if Class members could afford such individualized
8 litigation, the court system could not. Individualized litigation would create the
9 danger of inconsistent or contradictory judgments arising from the same set of
10 facts. Individualized litigation would also increase the delay and expense to all
11 parties and the court system from the issues raised by this action. By contrast, the
12 class action device provides the benefits of adjudication of these issues in a single
13 proceeding, economies of scale, and comprehensive supervision by a single court,
14 and presents no unusual management difficulties under the circumstances here.

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20 40. Unless a Class is certified, Defendants will retain monies received as a
21 result of its conduct that was taken from Plaintiff and Class members. Unless a
22 Class-wide injunction is issued, Defendants will continue to commit the violations
23 alleged, and the members of the Class and the general public will continue to be
24 misled.
25
26
27

FIRST CLAIM FOR RELIEF

**Violation of Business & Professions Code Section 17200, *et seq.*;
and Section 17500 *et seq.***

1
2
3
4
5 41. Plaintiff incorporates by reference and realleges each and every
6 allegation contained in paragraphs 1 through 40 above as though fully set forth
7 herein.

8
9 42. Plaintiff brings this claim individually and on behalf of the Class.

10 43. The Unfair Competition Law, Business & Professions Code §17200,
11 et seq. (“UCL”), prohibits any “unlawful,” “fraudulent” or “unfair” business act or
12 practice and any false or misleading advertising. In the course of conducting
13 business, Defendants committed unlawful business practices by, *inter alia*, making
14 the representations (which also constitutes advertising within the meaning of
15 §17200) and omissions of material facts, as set forth more fully herein, and
16 violating Civil Code §§1572, 1573, 1709, 1710, 1711, 1770, Business &
17 Professions Code §§17200, et seq., 17500, et seq., California Health & Safety
18 Code §110390 et seq., 21 U.S.C. §301, et seq., and the common law.
19
20
21
22

23 44. As alleged herein, Defendants’ misrepresentations and omissions of
24 material facts, constitute “unfair” business acts and practices within the meaning of
25 Business & Professions Code §§17200, et seq., in that Defendants’ conduct was
26 injurious to consumers, offended public policy, and was unethical and
27

1 unscrupulous.

2 45. Plaintiff also asserts a violation of public policy by Defendants'
3 withholding of material facts from consumers. Defendants' violation of
4 California's consumer protection and unfair competition laws in California resulted
5 in harm to consumers including Plaintiff and the Class.
6

7
8 46. Plaintiff has suffered injury in fact and lost money or property as a
9 result of Defendants' conduct because he purchased Defendants' Pro Staff
10 SIX.ONE tennis racquet on or about September 5, 2012 from Tennis Ace,
11 believing it to be the same racquet used by Federer, in reliance upon Defendants'
12 false advertising claims, which were in the forms of images and statements,
13 contained in magazines and other printed materials, on television, on the internet
14 and perpetuated by the images of the tennis pros, including Federer, playing with
15 what appeared to be the racquet available to the public. The racquet that Plaintiff
16 purchased is not the racquet Federer played with at the time despite Defendants'
17 claims to the contrary.
18
19
20

21 47. Plaintiff and the Class reserve the right to allege other violations of
22 law which constitute other unlawful business acts or practices. Such conduct is
23 ongoing and continues to this date.
24

25 48. The actions of Defendants constitute "unfair" business acts or
26 practices because, as alleged above, *inter alia*, Defendants engaged in and continue
27

1 to engage in false advertising, misrepresenting and omitting material facts
2 regarding the tennis racquets offered for sale to the public, and thereby offend an
3 established public policy, and engaged and continue to engage in immoral,
4 unethical, oppressive, and unscrupulous activities that are substantially injurious to
5 consumers.
6

7
8 49. As stated in this Complaint, Plaintiff alleges violations of consumer
9 protection, unfair competition and truth in advertising laws, resulting in harm to
10 consumers. Defendants' acts and omissions also violate and offend the public
11 policy against engaging in false and misleading advertising, unfair competition and
12 deceptive conduct towards consumers. This conduct violates the unfair prong of
13 Business & Professions Code § 17200, et seq.
14

15
16 50. There were reasonably available alternatives to further Defendants'
17 legitimate business interests, other than the unlawful and fraudulent conduct
18 described herein.
19

20 51. Business & Professions Code §17200, et seq., also prohibits any
21 "fraudulent business act or practice" which is alleged herein.
22

23 52. Defendants' actions, claims, nondisclosures, and misleading
24 statements, as alleged in this Complaint, were false, misleading and likely to
25 deceive the consuming public within the meaning of Business & Professions Code
26 §17200, et seq.
27

1 53. Plaintiff and other members of the Class have in fact been deceived as
2 a result of their reliance on Defendants' representations and omissions. This
3 reliance has caused harm to Plaintiff and other members of the Class. Plaintiff and
4 other Class members have suffered injury in fact and lost money as a result of
5 these unlawful, unfair, and fraudulent practices.
6

7
8 54. As a result of its deception, Defendants have been able to reap unjust
9 revenue and profit.

10 55. Unless restrained and enjoined, Defendants will continue to engage in
11 the above-described conduct. Accordingly, injunctive relief is appropriate.
12

13 56. Plaintiff, on behalf of himself, all others similarly situated, and the
14 general public, seeks restitution and disgorgement of all money obtained from
15 Plaintiff and the members of the Class collected as a result of unfair competition,
16 an injunction prohibiting Defendants from continuing such practices, corrective
17 advertising and all other relief this Court deems appropriate, consistent with
18 Business & Professions Code §17203.
19
20

21 **SECOND CLAIM FOR RELIEF**

22
23 **Violations of the Consumers Legal Remedies Act -**
24 **Civil Code §1750 *et seq.***

25 57. Plaintiff incorporates by reference and realleges each and every
26 allegation contained in paragraphs 1 through 56 above as though fully set forth

27 **herein.**
Complaint

1 58. Plaintiff brings this claim individually and on behalf of the Class.

2 59. This cause of action is brought pursuant to the Consumers Legal
3 Remedies Act, California Civil Code §1750, *et seq.* (the "Act"). Plaintiff and
4 members of the Class are consumers as defined by California Civil Code §1761(d).
5 Defendants' tennis racquets described herein are goods within the meaning of
6 California Civil Code §1761(a).
7
8

9 60. Defendants, Wilson, and each of them, violated and continue to
10 violate the Act by engaging in the following practices proscribed by California
11 Civil Code §1770(a) in transactions with plaintiff and the Class which were
12 intended to result in, and did result in, the sale of the above-referenced tennis
13 racquets:
14

15
16 (a) The following unfair methods of competition and unfair or
17 deceptive acts or practices undertaken by any person in a transaction
18 intended to result or which results in the sale or lease of goods or
19 services to any consumer are unlawful:
20

21 (1) Passing off goods or services as those of another.

22 * * *

23
24 (3) Misrepresenting the affiliation, connection, or association
25 with, or certification by, another.
26

27 * * *

1 (9) Advertising goods or services with intent not to sell them as
2 advertised.

3
4 61. Defendants, and each of them, violated the Act by representing and
5 advertising that their racquets, including, but not limited to the Wilson SIX.ONE
6 90 Pro Staff tennis racquet, offered for sale to the public, were the same as the
7 racquets used in professional competition by, *inter alia*, Federer when they knew,
8 or should have known, that the representations and advertisements were
9 unsubstantiated, false and misleading. Defendants, and each of them, concealed
10 the truth about the racquets sold to the public. By doing so, Defendants, and each
11 of them, encouraged consumers to purchase the racquets that they believed were
12 the same as those used by the Wilson-sponsored tennis pros.

13
14
15
16 62. Pursuant to California Civil Code §1782(d), Plaintiff and the Class
17 seek a Court order enjoining the above-described wrongful acts and practices of
18 Defendants and for restitution and disgorgement.

19
20 63. Pursuant to section 1782 of the Act, by letter dated October 8, 2012,
21 Plaintiff notified Defendant in writing by certified mail of the particular violations
22 of the Consumer Legal Remedies Action ("CLRA") set forth in §1770 and
23 demanded that Defendant rectify the problems associated with the actions detailed
24 above and give notice to all affected consumers of its intent to so act. The CLRA
25 letter was mailed as directed by Civil Code §1782.
26
27

1 64. Defendants have failed to rectify or agree to rectify the problems
2 associated with the actions detailed above and give notice to all affected consumers
3 within 30 days of the date of written notice pursuant to §1782 of the Act.
4
5 Therefore, Plaintiff further seeks claims for actual, punitive and statutory damages,
6 as appropriate.

7 65. Defendants' conduct is malicious, fraudulent, willful and wanton, and
8
9 Defendants intentionally misleads and withholds material information from
10 consumers in order to increase the sale of the racquets. Plaintiff and the class
11 members would not have purchased the racquets had it not been for Defendants'
12 misrepresentations and concealment of material misrepresentations and omissions.
13

14 66. Concurrent with the filing of the complaint in this action, Plaintiff
15 filed an Affidavit of Venue in accordance with Civil Code section 1780(d).
16

17 **THIRD CLAIM FOR RELIEF**

18 **Breach of Express Warranty**

19
20 67. Plaintiff incorporates by reference and realleges each and every
21 allegation contained in paragraphs 1 through 66 above as though fully set forth
22 herein.
23

24 68. Plaintiff brings this claim individually and on behalf of the Class.

25 69. Plaintiff, and each member of the Class, formed a contract with
26 Defendants at the time Plaintiff and the other members of the Class purchased
27

1 Defendants' tennis racquets based on the representations and warranties made by
2 Defendants. These representation and warranties included representations that
3 Wilson-sponsored tennis professional, including but not limited to Federer, used
4 the same tennis racquet(s) offered for sale to the public, when in fact such racquets
5 were not available to the public. The terms of that contract included these
6 promises and affirmations of fact made by Wilson to consumers in Wilson's
7 advertisements and through Wilson's long-term and widespread, pervasive
8 marketing campaign, as described above. This advertising included express
9 warranties, which became part of the basis of the bargain, and is part of a
10 standardized contract between plaintiff and the members of the Class on the one
11 hand, and Defendants on the other. Wilson, through its long-term marketing and
12 advertising campaign represented that those who purchased the Wilson SIX.ONE
13 Pro Staff 90 would be purchasing the *same* racquet – *same* model, *same* materials,
14 *same* stiffness, *same* balance points and other characteristics- as used by Federer.
15 In reliance on these claims and images, Plaintiff purchased the Wilson SIX.ONE
16 Pro Staff 90 from the Tennis Ace on or about September 5, 2012.
17
18
19
20
21
22

23 70. All conditions precedent to Defendants' liability under this contract
24 have been performed by Plaintiff and the Class.

25 71. Defendants, and each of them, breached the terms of their contracts,
26 including the express warranties with Plaintiff and the Class by not providing its
27

1 consumers with the tennis racquets they believed they were purchasing, as
2 described above.

3
4 72. As a result of Defendants' breach, Plaintiff and the Class have been
5 damaged in the amount of the purchase price of the tennis racquets they
6 purchased, and/or the difference between the value of the racquet as warranted
7 and the value of the racquet purchased.
8

9
10 **FOURTH CLAIM FOR RELIEF**

11 **VIOLATION OF FALSE ADVERTISING LAW**
12 **(California Business & Professions Code §§ 17500 *et seq.*)**

13 73. Plaintiff incorporated by reference and re-alleges each and every
14 allegation contained in paragraphs 1 through 72 above as though fully set forth
15 herein.
16

17 74. California *Business and Professions* Code section 17500 prohibits
18 "unfair, deceptive, untrue or misleading advertising."
19

20 75. Defendant violated California Business and Professions Code section
21 17500 by, *inter alia*, misleadingly advertising that Wilson-sponsored tennis
22 professionals, including but not limited to Federer, used the tennis racquet(s)
23 offered for sale to the public, when in fact such racquets were not available to the
24 public; concealing material information about the tennis racquets available for sale
25 to the public; specifically that such racquets are not the same as those used by the
26
27

1 Wilson-sponsored tennis pros such as Federer; that the tennis professionals use
2 customized racquets that are not available for sale by Wilson to the public; and that
3
4 Wilson encourages, allows, promotes, facilitates and/or actually performs the
5 disguising of the tennis professionals' racquets to appear as though they are the
6 same as those available to consumers for purchase.

7
8 76. Defendant's deceptive practices were specifically designed to induce
9 Plaintiff and members of the Class to purchase the Wilson racquets over those of
10 its competitors. Defendant's deceptive practices were carried out in a widespread,
11 long-term advertising campaign in advertisements and promotions in print, on
12 television, on Defendant's website, and other broad-based media, in order to
13 induce Plaintiff and members of the Class to purchase Wilson tennis racquets.
14
15 Wilson's advertising campaign is so compelling and pervasive that the media,
16 newspapers, journalists, magazines, television networks, and internet websites,
17 perpetuate the myth that these sponsored players are actually using the racquets
18 they appear to be using when in fact they are not.

19
20
21 77. Plaintiff and members of the Class would not have purchased the
22 tennis racquets had it not been for Defendant's misrepresentations and
23 concealment of material facts. Plaintiff and members of the Class were denied the
24 benefit of the bargain when they decided to purchase the tennis racquets over other
25 racquets, which are often less expensive. Had Plaintiff and members of the Class
26
27

1 been aware of Wilson's false and misleading advertising tactics, they would not
2 have purchased those tennis racquets purportedly used by the tennis professionals
3 promoting the racquets, may have paid less than what they paid for the racquets, or
4 they would not have purchased the racquets at all.
5

6 78. The content of the advertisements, as alleged herein, were of a nature
7 likely to deceive a reasonable consumer. Furthermore, because Wilson engaged in
8 a long-term and pervasive advertising campaign, spanning over many years, to
9 which the consumers, including Plaintiff, were exposed, Plaintiff need not present
10 each and every advertisement upon which he relied. *In re Tobacco II Cases* (2009)
11 46 Cal.4th 298, 328 ("where, as here, a plaintiff alleges exposure to a long-term
12 advertising campaign, the plaintiff is not required to plead with an unrealistic
13 degree of specificity that the plaintiff relied on particular advertisements or
14 statements.")
15
16
17

18 79. Defendant knew, or in the exercise of reasonable care, should have
19 known, that the representations were untrue or misleading and likely to deceive
20 reasonable consumers.
21

22 80. Defendant's misrepresentations and omissions alleged herein are
23 objectively material to the reasonable consumer, and reliance upon such
24 misrepresentations and omissions also established causation between Defendant's
25 conduct and Plaintiff's and the members of the Class' injuries.
26
27

1
2 81. Unless restrained by this Court, Defendant will continue to engage in
3 misleading advertising, as alleged above, in violation of California Business and
4 Professions Code section 17500.
5

6 82. As a result of the foregoing, Plaintiff and members of the Class have
7 been injured in fact and lost money or property, and they are entitled to restitution
8 and injunctive relief.
9

10 **FIFTH CLAIM FOR RELIEF**

11 **FRAUD**

12
13 83. Plaintiff incorporates by reference and realleges each and every
14 allegation contained in paragraphs 1 through 82 above as though fully set forth
15 herein.
16

17 84. Plaintiff brings this cause of action on behalf of himself and the
18 members of the Class.
19

20 85. Defendant represented and advertised its tennis racquets, as discussed
21 above, with false and materially misleading claims, including the claim that the
22 Wilson-sponsored tennis players, such as Federer used the same racquet available
23 for sale to the public. Wilson engaged in a long-term advertising campaign,
24 spanning over many years, and no less than 4 years, to which the consumers,
25 including Plaintiff, were exposed. California law holds that a plaintiff need not
26
27

1 present each and every advertisement upon which he relied when, as here, the
2 defendant engages in a long-term advertising campaign. *In re Tobacco II Cases*
3 (2009) 46 Cal.4th 298, 328 (“where, as here, a plaintiff alleges exposure to a long-
4 term advertising campaign, the plaintiff is not required to plead with an unrealistic
5 degree of specificity that the plaintiff relied on particular advertisements or
6 statements.”) Notwithstanding this fact, Plaintiff and the Class Members relied on
7
8 (a) Wilson-sponsored marketing materials shown on the Wilson website and at the
9 U.S. Open, (b) Wilson’s television commercials on the Tennis Channel showing
10 Federer holding and playing with what appeared to be the then current Pro Staff
11 SIX.ONE 90, (c) Tennis Channel, ESPN and other networks showing live Federer
12 matches and highlights from Federer’s matches in which Federer was seen playing
13 with what appeared to be the identical Pro Staff SIX.ONE 90 racquet available to
14 the public for sale, (d) Wilson’s advertisements in Tennis Magazine showing
15 Federer holding and playing with the Pro Staff SIX.ONE 90 which was available
16 for sale to the public, (e) the advertisements and images contained on cardboard
17 advertisement affixed to the tennis racquets for sale in stores, and (f) viewing
18 Federer playing tennis in person (in practice and in professional tournaments) with
19 what appeared to be the then-current Pro Staff, which Federer was endorsing.
20 Some advertisements stated “*Pro Staff Six.One 90 is "Roger Federer's racquet.*
21 *Roger Federer's racquet, the BLX Six.One Pro Staff 90 is designed to offer the*
22
23
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1 *advanced player supreme control, feel and stability;" "Fusing the past and the*
2 *future, the Wilson Pro Staff Six-One 90 BLX restores the Pro Staff name to the*
3 *Roger Federer signature line while providing yet another technological advance in*
4 *feel...;" "...The BLX line includes the racquets of choice for Roger Federer, Juan*
5 *Martin Del Potro, & Justin Henin;" "BLX PRO STAFF SIX.ONE 90 Review:*
6 *Best Seller Roger Federer's racquet of choice. A staple of the Wilson line, the*
7 *BLX version of the 90 is slightly faster and more playable than its predecessor. It's*
8 *still a great racquet for the advanced player looking for the most control, feel, and*
9 *touch;"* and the advertisements referenced in paragraph 19 above. The
10 representations and warranties contained and displayed within the advertisements
11 led Plaintiff to believe he was purchasing Federer's Pro Staff SIX.ONE 90 on or
12 about September 5, 2012, when he purchased the racquet from Tennis Ace for
13 \$206.63, and later strings from Kriegers Tennis Sports.

14
15
16
17
18
19 86. Defendant concealed and continues to conceal the truth about its
20 products that the racquets sold are not the same as those used by the pros, thereby
21 encouraging consumers to purchase its products each year a "new" or "improved"
22 racquet is introduced and endorsed by the tennis pro.
23

24 87. Defendant knew these statements were false and misleading.
25 Defendant was aware of laws and regulations concerning the claims and marketing
26 of the racquets.
27

1 88. Whether or not the tennis professional uses a particular racquet is a
2 material feature of the racquet itself. Wilson would not pay the sponsored players
3 millions of dollars to endorse a racquet, and create the impression that the player is
4 using a particular racquet, unless that endorsement directly correlated to increased
5 sales and profits for Wilson. Plaintiff and other members of the Class would not
6 have purchased the racquets but for Defendant's false and misleading
7 representations and concealment of material facts.

8
9
10
11 89. Defendant made the misrepresentations and omissions stated with
12 knowledge of the effect of concealing these material facts. Defendant knew that
13 by misleading consumers, it would sell more racquets, which would result in
14 higher profits.

15
16 90. By misrepresenting and concealing material information about the
17 racquets, Defendant intended to induce Plaintiff and members of the Class into
18 purchasing the racquets.

19
20 91. Plaintiff and the members of the Class justifiably relied on the
21 representations made about the products.

22
23 92. Defendant's representations and omissions regarding the tennis
24 racquets, namely that they are the same as those used by the pros, were made with
25 knowledge or with reckless disregard of the laws of California prohibiting false
26 and misleading statements.
27

1 93. Defendants and each of them:

- 2 a. made representations, as facts, which were not true and
3 Defendant did not believe to be true at the time made;
4
5 b. made assertions, as facts, which were not true and Defendant
6 had no reasonable grounds for believing to be true at the times
7 they were made;
8
9 c. misled the public, through misleading images and in other
10 manners (e.g., by painting racquets), to believe facts which
11 Wilson knew were false; and/or
12
13 d. suppressed facts, which it was bound to disclose, or give
14 information of other facts which were likely to mislead for want
15 of communications of the suppressed facts.
16

17 94. As a result of Defendants' wrongful conduct, Plaintiff and members
18 of the Class have suffered and continue to suffer economic losses and other general
19 and specific damages, including but not limited to monies paid for the tennis
20 racquets, stringing the racquets, tennis accessories, and any interest that would
21 have been accrued on those monies, all in an amount to be determined according to
22 proof at time of trial.
23
24

25 95. The wrongful acts of Defendants were done maliciously, oppressively
26 and with the intent to defraud, and Plaintiffs and members of the Class are entitled
27

1 to punitive and exemplary damages in an amount to be ascertained according to
2 proof, which is appropriate to punish, deter, and set an example of Defendants.

3 96. Defendant acted with malice, oppression, or fraudulent intent.
4

5 97. As a direct and proximate result of Defendants' misrepresentations
6 and omissions, Plaintiff and each member of the Class has been damaged in an
7 amount according to proof at trial.
8

9 **SIXTH CLAIM FOR RELIEF**

10 **NEGLIGENT MISREPRESENTATION**

11 98. Plaintiff incorporates by reference and re-alleges each and every
12 allegation contained in paragraphs 1 through 97 above as though fully set forth
13 herein.
14

15 99. Defendant, directly or through its agents and employees, made false
16 representations, concealments, and nondisclosures to Plaintiff and members of the
17 Class. Defendants breached the duties owed to Plaintiff and its consumers with
18 their long-term advertising campaign spanning more than 4 years, which contained
19 and still contains false and misleading statements designed to deceive consumers
20 about the racquets it sells. The long-term and pervasive advertising campaign also
21 deceives the public without the use of any "statements" at all. As set forth above,
22 consumers are led to believe, simply by viewing players sponsored by Wilson (and
23 their racquets) in matches, and/or by viewing images of these players and their
24
25
26
27

1 racquets in magazines, other publications, the internet and television, that the
2 players are using the same racquets which are available for sale to the public, when
3 in fact, they are not. In fact, the racquets used by the players sponsored by Wilson
4 are painted, disguised and otherwise altered to make them *appear* to be the same
5 ones available for sale to the public, but are significantly different than such
6 racquets.
7
8

9 100. For example, throughout its advertising campaign, Wilson, at a
10 minimum, *negligently* displayed and promoted and continues to display and
11 promote images of Federer using what appeared to be the Wilson SIX.ONE 90 Pro
12 Staff racquet. Federer does not and has not during the last 4 years used the Wilson
13 SIX.ONE 90 Pro Staff racquet which is available for sale to the public. Instead,
14 upon information and belief, Federer's racquet was and is painted, disguised,
15 altered and/or otherwise customized to *appear* as though his racquet is the same as
16 the SIX.ONE 90 Pro Staff available to the public for sale. It is alleged that Federer
17 has recently switched racquets, however, Plaintiff alleges upon information and
18 belief that the current racquet is similarly not available for sale to the public.
19
20
21
22

23 101. In making the representations of fact to Plaintiff and members of the
24 Class described herein, Defendants and each of them, have, at a minimum,
25 *negligently* failed to fulfill its duties to disclose the material facts pertaining to the
26 racquets in question. The direct and proximate cause of said failure to disclose was
27

1 the negligence and carelessness of Defendant.

2 102. In making the representations and omissions, and in doing the acts
3 alleged above, Defendant acted without any reasonable grounds for believing the
4 representations were true, and either (a) intended by said representations to induce
5 the reliance of Plaintiff and members of the Class, or (b) acted in reckless disregard
6 of the possibility that Plaintiff and the members of the class would rely on the
7 representations in question.
8
9

10 103. Plaintiff and members of the Class relied on these false
11 representations, concealments and nondisclosures by Defendant when purchasing
12 the products at issue herein, which reliance was justified.
13

14 104. As a result of Defendant's wrongful conduct, Plaintiff and members
15 of the Class have suffered and continue to suffer economic losses and other general
16 and specific damages, including but not limited to the amounts paid for the
17 racquets, the costs of strings and stringing the racquet, accessories, and any interest
18 that would have been accrued on those monies, all in an amount to be determined
19 according to proof at time of trial.
20
21
22

23 **SEVENTH CLAIM FOR RELIEF**

24 **RESTITUTION**

25 105. Plaintiff incorporates by reference and realleges each and every
26 allegation contained in paragraphs 1 through 104 above as though fully set forth
27
28

1 herein.

2 106. As described above, Defendants, and each of the, received money
3 from Plaintiff and the proposed Class, which Defendants knowingly accepted, at
4 the expense of Plaintiff and the proposed Class. Plaintiff alleges it would be unjust
5 and unconscionable to permit Defendants to be unjustly enriched at the expense of
6 Plaintiff and the proposed Class. *Peterson v. Cellco P'ship* (2008) 164 Cal.App.4th
7 1583, 1593; *Lectrodryer v. SeoulBank* (2000) 77 Cal.App.4th 723, 726.
8

9 107. As a proximate result of the wrongful conduct described herein by
10 Defendants and each of them, Plaintiff and the proposed Class have suffered and
11 continue to suffer damages, and are entitled to a return of all monies paid to
12 Wilson for the racquets in question.
13
14

15
16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiff, on behalf of himself and the Class, prays for a
18 judgment:
19

20 1. Certifying the Class as requested herein, and appointing Plaintiff as
21 Class Representative, and Plaintiff's counsel as Class Counsel;
22

23 2. Awarding Plaintiff and the proposed Class Members all due damages,
24 including actual economic damages and general and specific damages;
25

26 3. Awarding restitution and disgorgement of Defendants' revenues to
27 Plaintiff and the proposed Class Members;

1 4. Awarding declaratory and injunctive relief as permitted by law or
2 equity, including: enjoining Defendants from continuing the unlawful practices as
3 set forth herein, and directing Defendants to identify, with Court supervision,
4 victims of its conduct and pay them restitution and disgorgement of all monies
5 acquired by Defendants by means of any act or practice declared by this Court to
6 be wrongful;
7

8
9 5. Ordering Defendants to engage in a corrective advertising campaign;

10 6. Awarding attorneys' fees and costs to Plaintiff's counsel;

11 7. Awarding punitive damages as against Defendants;

12 8. Awarding damages, fines and penalties against Defendants as
13 permitted by law; and
14

15
16 9. Providing such further relief as may be just and proper.
17

18 **JURY DEMAND**

19 Plaintiff demands a trial by jury on all issues so triable.
20

21 Date: August 26, 2013

HAMNER LAW OFFICES, APC

22
23
24 By:

Christopher J. Hamner

Amy T. Wootton

25 Attorneys for Plaintiff BRANDON
26 KRAMER, on behalf of himself and all
27 others similarly situated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge John F. Walter and the assigned Magistrate Judge is Stephen J. Hillman.

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

2:13CV6330 JFW SHx

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.

Clerk, U. S. District Court

August 29, 2013
Date

By J.Prado
Deputy Clerk

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 Street, G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

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

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) BRANDON KRAMER, on behalf of himself and all others similarly situated, and the general public	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) WILSON SPORTING GOODS CO. a Delaware Corporation and DOES 1 through 10, inclusive
--	--

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Christopher J. Hamner, Esq. (SBN 197117) / Amy T. Wootton, Esq. (SBN 188865) HAMNER LAW OFFICES, APC 555 W. 5th Street, 31st Floor Los Angeles, California 90013	(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
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II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input checked="" 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:33%;">Citizen of This State</td> <td style="width:10%;">PTF</td> <td style="width:10%;">DEF</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF</td> <td style="width:10%;">DEF</td> </tr> <tr> <td></td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td></td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF		<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1		<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 checked="" 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
Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF																				
	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1		<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 checked="" type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

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

<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify)	<input type="checkbox"/> 6. Multi-District Litigation
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V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ 10,000,000

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.)
 Violation of Unfair Business Competition Law; Violations of Consumer Remedies Act (Civil Code Section 1750 et seq.)

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

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 530 General	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	TORTS	PERSONAL PROPERTY	<input type="checkbox"/> 535 Death Penalty	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	PERSONAL INJURY	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 330 Fed. Employers' Liability	BANKRUPTCY	FORFEITURE/PENALTY	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	FEDERAL TAX SUITS
<input checked="" type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 350 Motor Vehicle	CIVIL RIGHTS	LABOR	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 210 Land	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision		<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 751 Family and Medical Leave Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 790 Other Labor Litigation	
		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	
		<input type="checkbox"/> 376 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 448 Education		

FOR OFFICE USE ONLY: Case Number: **CV 13-6330**

AFTER COMPLETING PAGE TWO OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

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
Los Angeles	

(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
	Illinois

(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
L.A. Count as to named Plaintiff, other counties as to the putative class.	Various cities and counties throughout California and the U.S.

***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 SELF-REPRESENTED LITIGANT):

DATE: 8/26/13

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. 405 (g))