

1 BLOOD HURST & O'REARDON, LLP
 Timothy G. Blood, Bar No. 149343
 2 tblood@bholaw.com
 Thomas J. O'Reardon II, Bar No. 247952
 3 toreardon@bholaw.com
 701 B Street, Suite 1700
 4 San Diego, CA 92101
 Tel: (619) 338-1100
 5 Fax: (619) 338-1101

6 NEWPORT TRIAL GROUP
 A Professional Corporation
 7 Scott J. Ferrell, Bar No. 202091
 sferrell@trialnewport.com
 8 Victoria C. Knowles, Bar No. 277231
 vknowles@trialnewport.com
 9 4100 Newport Place Dr., Suite 800
 Newport Beach, CA 92660
 10 Tel: (949) 706-6464
 Fax: (949) 706-6469

11 Attorneys for Plaintiff and the Class

12
 13 **UNITED STATES DISTRICT COURT**
 14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 JOSE CONDE, individually and on behalf
 of all others similarly situated,
 16
 Plaintiff,
 17
 vs.
 18
 SENSEA PRODUCTS, LLC; and DOES 1-
 19 10, Inclusive,
 20
 Defendants.

Case No.: '14CV0051 JLS WVG

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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1 Plaintiff Jose Conde (“Plaintiff”), individually and on behalf of all others
2 similarly situated, alleges the following on information and belief:

3 **I. INTRODUCTION**

4 1. Sensa Products, LLC (“Defendant”) manufactures, markets, and sells
5 “Sensa,” a line of weight loss products consisting of Sensa crystals that consumers are
6 instructed to sprinkle on their food (“the Sensa Products”). Defendant claims through
7 multiple marketing and advertising channels including radio, TV, print, infomercials,
8 online, and via in-store retailers that the Sensa Products provide significant and proven
9 weight loss benefits, including “*Without Dieting.*”¹ Defendant promises that with the
10 Sensa Products, all you have to do is “sprinkle, eat, and lose weight.” These claimed
11 weight loss benefits are the only reason a consumer would purchase the Sensa Products.
12 In reality, Defendant’s advertising are false, misleading, and reasonably likely to
13 deceive the public because the Sensa Products do not, and cannot provide the weight
14 loss benefits promised.

15 2. Plaintiff brings this class action lawsuit to enjoin the ongoing deception of
16 hundreds of thousands of California and United States consumers by Defendant, and to
17 recover the money taken by this unlawful practice.

18 **II. THE PARTIES**

19 **A. Plaintiff.**

20 3. Plaintiff Jose Conde is a resident of California and purchased Defendant’s
21 Sensa Products in 2013. Plaintiff was exposed to and relied on Defendant’s
22 representations regarding the weight loss efficacy of the Sensa Products, as detailed
23 herein, and but for those representations, Plaintiff would not have purchased the Sensa
24 Products. The Product does not provide the promised benefits. Had Plaintiff known the
25 truth about Defendant’s misrepresentations and omissions at the time of his purchase,
26 Plaintiff would not have purchased the Sensa Products. By purchasing the falsely
27 advertised Sensa Products, Plaintiff suffered injury-in-fact and lost money.

28 ¹ See www.sensa.com (last visited January 7, 2014).

1 **B. Defendant.**

2 4. Sensa Products, LLC is a Delaware limited liability company with its
3 principal place of business and headquarters at 2301 Rosecrans Avenue, El Segundo,
4 California 90245. Sensa Products manufactures, markets, and sells the Sensa Products
5 across the entire United States. The conduct at issue substantially emanates from
6 California. For example, the following persons were based on and/or worked in El
7 Segundo, California: (1) Don Ressler, Executive Chairman, oversaw all operational
8 aspects of the company, including marketing and sales; (2) Kristen Chadwick, President
9 of Sensa Products, who took over Mr. Ressler's day-to-day management
10 responsibilities; (3) Scott Whitter, Chief Scientific Officer of Sensa Products; (4)
11 Stacey Kivel, Chief Marketing Officer of Sensa Products, who has overseen the
12 marketing of Sensa; (5) Elizabeth Francis, Chief Marketing Officer of Intelligent
13 Beauty, Inc. (a related company that is now known as Sensa, Inc.) who provided
14 various marketing services to Sensa Products, including media buying; (6) Jeff
15 Campbell, Executive Vice President of Sensa Products, who is familiar of the
16 marketing of Sensa; (7) Jason Morano, Vice President, Online Media for Sensa
17 Products, who is familiar with the marketing of Sensa; (8) Katelyn O'Reilly, Director
18 of Public Relations for Sensa Products; (9) Michael Shay, Vice President, Customer
19 Service for Sensa Products, who manages Sensa Products' on-site call center in El
20 Segundo; and (10) Cody Congleton, Vice President, Customer Relationship
21 Management for Sensa Products. According to Sensa Products, "[m]ost, if not all, of
22 Sensa Products' material marketing and sales documents are located in or accessible
23 through computers located in El Segundo and/or elsewhere in Los Angeles County."

24 5. The true names and capacities of the Defendants sued herein as DOES 1
25 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such
26 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is
27 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of
28 Court to amend this Complaint to reflect the true names and capacities of the DOE

1 Defendants when such identities become known.

2 6. At all relevant times, each and every Defendant was acting as an agent
3 and/or employee of each of the other Defendants and was acting within the course
4 and/or scope of said agency and/or employment with the full knowledge and consent of
5 each of the Defendants. Each of the acts and/or omissions complained of herein were
6 alleged and made known to, and ratified by, each of the other Defendants (Sensa
7 Products, LLC and DOE Defendants will hereafter collectively be referred to as
8 “Defendant”).

9 **III. JURISDICTION AND VENUE**

10 7. A Court has diversity jurisdiction over this class action pursuant to 28
11 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the
12 amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and is a
13 class action in which some members of the class are citizens of different states than the
14 Defendant. *See* 28 U.S.C. §1332(d)(2)(A).

15 8. This Court also has personal jurisdiction over Defendant because
16 Defendant currently does business in this state.

17 9. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because
18 Defendant is subject to personal jurisdiction in this District and a substantial portion of
19 the conduct complained of herein occurred in this District.

20 **IV. FACTS**

21 10. Defendant manufactures, markets, and sells the Sensa Products in the form
22 of flavored powders as weight-loss products that consumers may use “*Without Dieting*”
23 to lose weight.² Since the launch of the Sensa Products in or about 2008, and
24 throughout its extensive, integrated, and widespread marketing campaign, Defendant
25 has consistently conveyed the message to consumers throughout the United States that
26 the Sensa Products provide substantial weight loss benefits, including by promising
27 consumers all they need to do is “sprinkle, eat, and lose weight.”

28 ² *Id.*

1 11. Defendant claims the Sensa Products “work[] with your sense of smell and
2 taste to help you feel full faster so you eat less and feel more satisfied.”³ Indeed,
3 Defendant assures consumers that by merely using the Sensa Products, you can “feel
4 full faster without deprivation” “causing you to eat less and lose weight.”⁴ Defendant
5 promises that these weight loss promises are “based on over 25 years of scientific
6 research on the science of smell and taste....”⁵

7 12. To bolster its significant weight loss promises to consumers, Defendant
8 also uses testimonials from Sensa Product users; however, Defendant *pays* those
9 consumers for their positive weight loss results. For example, on Defendant’s website,
10 www.sensa.com/original-sensa, Defendant includes a testimonial from “Fefe” in
11 Florida who claims that with the Sensa Products, she has lost 70 lbs in 11 months and
12 “feel[s] like a completely new person.” What consumers are barely able to see is that
13 “Fefe” was “compensated for excellent results” and that her weight loss was also due to
14 a “sensible diet.” In other words, Defendant is paying for positive testimonials where
15 consumers are using the Sensa Products while *dieting*. Defendant’s promise that these
16 results may be achieved “without dieting” is false and misleading to the average
17 consumer looking to lose weight.

18 13. Defendant makes the false and deceptive weight-loss promises throughout
19 its websites. For example, at www.dm.trysensa.com, Defendant states:

- 20 • STOP DIETING. START LIVING.
- 21 • SENSEA gives you the freedom to lose weight without giving up the foods
22 you love.
- 23 • SENSEA helps you eat less food.
- 24 • SENSEA helps you kick cravings to the curb.
- 25 • TOP TEN REASONS TO TRY SENSEA

26
27 ³ www.sensa.com/original-sensa (last visited January 7, 2014).

28 ⁴ *Id.*

⁵ *Id.*

- 1 1. It's NOT a diet
- 2 2. There are no stimulants, fat blockers or side effects
- 3 3. You can still eat all of your favorite foods (life's too short to deprive
- 4 yourself of the things you love)
- 5 4. You don't have to spend money on bland, pre-packed meals
- 6 5. The patent-pending technology is based on 25 years of scientific
- 7 research
- 8 6. It's proven effective in one of the largest clinical weight-loss studies
- 9 7. Average weight loss is 30.5 pounds!
- 10 8. It's as easy to use as salt & pepper. Just sprinkle it one...and watch
- 11 the weight come off.
- 12 9. You'll have 30 DAYS to try Sensa, and your satisfaction is
- 13 GUARANTEED.
- 14 10. You can try it FREE
- 15 • NO OTHER WEIGHT-LOSS PRODUCT HAS SUCH
- 16 EXTRAORDINARY CLINICAL RESULTS.
- 17 • **Sensa was proven effective in one of the largest clinical studies ever**
- 18 **performed on a non-prescription weight-loss product.**

19 14. Defendant's television commercials, infomercials and Internet-based video
20 advertisements repeat and reinforce the Sensa Products' false and deceptive weight loss
21 advertisements. In a video entitled "Sensa on the Street, which is available on
22 Defendant's YouTube page, www.youtube.com/sensaweightloss, and has been viewed
23 nearly 380,000 times, Defendant's announcer asks purported independent consumers
24 participating in a taste-test: "What if I told you that the pizza on your right by eating it,
25 you could actually lose weight?" Taglines stating "Revolutionary Weight Loss System.
26 When Diet & Exercise Aren't Enough" and "Sensa Weight-Loss System" also appear
27 in the video. Another video, entitled "Michelle's Weight Loss Story," which is
28 disseminated by Defendant and has been viewed online over 100,000 times, repeats and

1 reinforces the false and deceptive message, stating in part, “I’m Michelle, from San
2 Juan Capistrano, California, and I lost 40 pounds using Sensa.” Likewise, in one of
3 Defendant’s infomercial with Sensa Products’ celebrity endorser Patti Stanger, the
4 following occurs:

5 Announcer: “What do you say to people that are just like, there is no way that
6 you can tell me that this is all you do [depicting sprinkling the Sensa Products]
7 and you’re gonna lose weight?”

8 Patti Stanger: “I’m sorry, the science is there. Go online, read Dr. Hirsch’s
9 studies. It is there. And it works. You and I are living proof of it working.”

10 Announcer: “Absolutely.”

11 Patti Stanger: “And I don’t know why people are waiting. Pick up the phone.
12 Call. Order it. Try it. What do you got to lose?”

13 15. In another of Defendant’s video advertisements, entitled, “How Sensa
14 Works,” (which has been viewed over 1.4 million times), the following is stated:

15 Announcer: “How does Sensa work? As you eat, Sensa works with your sense of
16 smell and taste to help stimulate your body’s natural hunger control switch. So
17 one bite triggers your body into thinking that you’ve eaten more than you have.
18 Let’s say you typically eat four slices of pizza in one sitting. Now imagine if you
19 could feel full and satisfied from two slices, instead of your usual four. That
20 might not sound like a major change, but suppose you had pizza for dinner every
21 Friday night. A typical slice of cheese pizza has approximately 300 calories, so
22 you’d save 31,200 calories in a year. You simply sprinkle sense on your food to
23 help you feel full faster, curb your appetite, and reduce cravings.”

24 16. Defendant’s print advertisements for its Sensa Products also repeat and
25 reinforce the false and deceptive weight-loss promises. For example, a print
26 advertisement for the Sensa Products states: “SENSA is clinically proven to help you
27 lose 30 lbs without dieting or spending all your time working out.** Just sprinkle on
28 your food, eat and lose weight!”

1 17. Defendant's weight loss promises are false and deceptive. In reality,
2 Defendant's Sensa Product do not, cannot and will not provide the significant weight
3 loss benefits promised to consumers. The ingredients in the Sensa Products do not have
4 the ability to perform as promised and, as recently remarked by a spokesperson for the
5 Federal Trade Commission (hereafter "FTC"), "the science just isn't there."⁶

6 18. As the inventor, manufacturer, and distributor of Sensa Products,
7 Defendant possesses specialized knowledge regarding the content and effects of the
8 ingredients contained in Sensa Products and Defendant is in a superior position to know
9 whether its Sensa Products work as advertised.

10 19. Specifically, Defendant knew, but failed to disclose, that the Sensa
11 Products do not provide the weight loss benefits represented.

12 20. Defendant's misrepresentations regarding the Sensa Products' weight loss
13 efficacy were designed to, and did, lead Plaintiff and others similarly situated
14 (collectively the "Class") to believe that the Sensa Products could effectively cause
15 weight loss. Plaintiff and members of the Class relied on Defendant's
16 misrepresentations and would not have paid as much, if at all, for the Sensa Products
17 but for Defendant's misrepresentations. Plaintiff and the Class's reliance on
18 Defendant's efficacy assertions also caused them to forego using other healthy,
19 effective weight loss options.

20 21. Defendant sells a *one-month* supply of the Product for approximately \$59
21 based on the preceding false advertising claims. As a result, Defendant has wrongfully
22 taken millions of dollars from consumers nationwide. In fact, the FTC recently
23 reported that Defendant has wrongfully profited off its false advertising for the Sensa
24 Products to the tune of more than \$364 million in sales the United States.⁷

25 22. Plaintiff brings this class action lawsuit to enjoin the ongoing deception of
26

27 ⁶ See Katy Bachman, "Sprinkle, Eat and Pay Up BigTime: Sensa Sheds \$26.5 Million to Settle FTC Charges," AdWeek.
28 Available at <http://www.adweek.com/news/advertising-branding/sprinkle-eat-and-pay-big-time-sensa-sheds-265-million-settle-ftc-charges-154781> (last visited January 7, 2014).

⁷ *Id.*

1 hundreds of thousands of consumers by Defendant, and to recover the money taken by
2 this unlawful practice.

3 **V. CLASS ACTION ALLEGATIONS**

4 23. Plaintiff brings this class action for damages and other monetary relief on
5 behalf of the following class:

6 All persons located within the United States who purchased
7 any of the Sensa Products between August 22, 2012, through
8 the date of final judgment in this action (the "Class").

9 24. This action is brought and may be properly maintained as a class action
10 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-
11 (3). This action satisfies the numerosity, typicality, adequacy, predominance and
12 superiority requirements of those provisions.

13 25. The Class is so numerous that the individual joinder of all of its members
14 is impractical. *See* Fed. R. Civ. P. 23(a)(1). While the exact number and identities of
15 Class members are unknown to Plaintiff at this time and can only be ascertained
16 through appropriate discovery, Plaintiff is informed and believes the Class includes
17 hundreds of thousands of members. Plaintiff alleges that the Class may be ascertained
18 by the records maintained by Defendant.

19 26. Common questions of fact and law exist as to all members of the Class
20 which predominate over any questions affecting only individual members of the Class.
21 *See* Fed. R. Civ. P. 23(a)(2). These common legal and factual questions, which do not
22 vary from class member to class member, and which may be determined without
23 reference to the individual circumstances of any class member, include, but are not
24 limited to, the following:

- 25 a. Whether Defendant's Sensa Products contain ingredients that can
26 cause weight loss;
- 27 b. Whether Defendants Sensa Products contain ingredients that may
28 effect a consumers sense of taste and smell;

- 1 c. Whether Defendant's Sensa Products can provide the results
- 2 promised;
- 3 c. Whether Defendant's representations regarding the Sensa Products
- 4 were false;
- 5 d. Whether Defendant knew that its representations were false;
- 6 e. Whether Defendant's conduct constitutes a violation of California's
- 7 false advertising law (Cal. Bus. & Prof. Code §§ 17500, et seq.);
- 8 f. Whether Defendant's conduct constitutes an unfair, unlawful, and/or
- 9 fraudulent business practice in violation of California's unfair
- 10 competition law (Cal. Bus. & Prof. Code §§ 17200, et seq.);
- 11 g. Whether Defendant's conduct constitutes a violation of California's
- 12 Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750, et seq.);
- 13 h. Whether Plaintiff and Class members are entitled to compensatory
- 14 damages, and if so, the nature of such damages;
- 15 i. Whether Plaintiff and Class members are entitled to restitutionary
- 16 relief; and
- 17 j. Whether Plaintiff and Class members are entitled to injunctive
- 18 relief.

19 27. Plaintiff's claims are typical of the claims of the members of the Class.
20 *See* Fed. R. Civ. P. 23(a)(3). Plaintiff and all members of the Class have sustained
21 injury and are facing irreparable harm arising out of Defendant's common course of
22 conduct as complained of herein. The losses of each member of the Class were caused
23 directly by Defendant's wrongful conduct as alleged herein.

24 28. Plaintiff will fairly and adequately protect the interests of the members of
25 the Class. *See* Fed. R. Civ. P. 23(a)(4). Plaintiff has retained attorneys experienced in
26 the prosecution of class actions, including complex consumer and mass tort litigation.

27 29. A class action is superior to other available methods of fair and efficient
28 adjudication of this controversy, since individual litigation of the claims of all Class

1 members is impracticable. *See* Fed. R. Civ. P. 23(b)(3). Even if every Class member
2 could afford individual litigation, the court system could not. It would be unduly
3 burdensome to the courts in which individual litigation of numerous issues would
4 proceed. Individualized litigation would also present the potential for varying,
5 inconsistent, or contradictory judgments, and would magnify the delay and expense to
6 all parties and to the court system resulting from multiple trials of the same complex
7 factual issues. By contrast, the conduct of this action as a class action, with respect to
8 some or all of the issues presented herein, presents fewer management difficulties,
9 conserves the resources of the parties and of the court system, and protects the rights of
10 each Class member.

11 30. The prosecution of separate actions by thousands of individual Class
12 members would create the risk of inconsistent or varying adjudications with respect to,
13 among other things, the need for and the nature of proper notice, which Defendant must
14 provide to all Class members. *See* Fed. R. Civ. P. 23(b)(1)(A).

15 31. The prosecution of separate actions by individual class members would
16 create a risk of adjudications with respect to them that would, as a practical matter, be
17 dispositive of the interests of the other Class members not parties to such adjudications
18 or that would substantially impair or impede the ability of such non-party Class
19 members to protect their interests. *See* Fed. R. Civ. P. 23(b)(1)(B).

20 32. Defendant has acted or refused to act in respects generally applicable to
21 the Class, thereby making appropriate final injunctive relief with regard to the members
22 of the Class as a whole. *See* Fed. R. Civ. P. 23(b)(2).

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1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW**

4 **(CAL. BUS. & PROF. CODE §§ 17500, *ET SEQ.*)**

5 **(By Plaintiff and on Behalf of the Class Against Defendants)**

6 33. Plaintiff incorporates by this reference the allegations contained in the
7 paragraphs above as if fully set forth herein.

8 34. Plaintiff has standing to pursue this cause of action because Plaintiff has
9 suffered injury in fact and has lost money as a result of Defendant's actions as set forth
10 herein. Plaintiff and the other Class members have suffered injury in fact and lost
11 money as a result of purchasing the falsely advertised Sensa Products and Defendant's
12 unlawful, unfair, and fraudulent practices.

13 35. Defendant has engaged in false advertising as it has disseminated false
14 and/or misleading advertising and marketing representations about the Sensa Products
15 and their ability to provide effective weight loss.

16 36. Defendant knew or should have known by exercising reasonable care that
17 its representations were false and/or misleading. During the Class Period, Defendant
18 engaged in false advertising in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*, by
19 misrepresenting in its labeling, advertising, and marketing of the Sensa Products to
20 Plaintiff, Class members, and the consuming public, that its Products could cause
21 weight loss when they could not.

22 37. By disseminating and publishing these statements in connection with the
23 sale of the Sensa Products, Defendant has engaged in and continues to engage in false
24 advertising in violation of Bus. & Prof. Code §§ 17500, *et seq.*

25 38. As a direct and proximate result of Defendant's conduct, as set forth
26 herein, Defendant has received ill-gotten gains and/or profits, including but not limited
27 to, money. Therefore, Defendant has been unjustly enriched. Pursuant to Cal. Bus. &
28 Prof. Code § 17535, Plaintiff requests restitution and restitutionary disgorgement for all

1 sums obtained in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.* Plaintiff seeks
2 injunctive relief, restitution, and restitutionary disgorgement of Defendant's ill-gotten
3 gains as specifically provided in Cal. Bus. & Prof. Code § 17535.

4 39. Plaintiff and Class members seek to enjoin Defendant from engaging in
5 these wrongful practices, as alleged herein, in the future. There is no other adequate
6 remedy at law and if an injunction is not ordered, Plaintiff and the Class will suffer
7 irreparable harm and/or injury.

8 **SECOND CAUSE OF ACTION**

9 **UNLAWFUL, FRAUDULENT & UNFAIR BUSINESS PRACTICES**

10 **(CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*)**

11 **(By Plaintiff and on Behalf of the Class Against Defendants)**

12 40. Plaintiff incorporates by this reference the allegations contained in the
13 paragraphs above as if fully set forth herein.

14 41. Plaintiff has standing to pursue this cause of action because Plaintiff has
15 suffered an injury in fact and has lost money as a result of Defendant's actions as set
16 forth herein. Specifically, Plaintiff purchased the Sensa Products in reliance on
17 Defendant's efficacy assertions and promises related thereto. Plaintiff and the other
18 Class members have suffered injury in fact and lost money as a result of purchasing the
19 falsely advertised Sensa Products and Defendant's unlawful, unfair, and fraudulent
20 practices.

21 42. Defendant's actions as alleged in this Complaint constitute an unfair or
22 deceptive business practice within the meaning of California Business and Professions
23 Code §§ 17200, *et seq.*, the Unfair Competition Law ("UCL"), in that Defendant's
24 actions are unfair, unlawful, and fraudulent, and because Defendant has made unfair,
25 deceptive, untrue, or misleading statements in advertising media, including the Internet,
26 within the meaning of California Business and Professions Code §§ 17200, *et seq.*

27 43. Defendant knew or should have known by exercising reasonable care that
28 its representations and omissions were false and/or misleading. During the Class

1 Period, Defendant engaged in unfair, unlawful, and fraudulent business practices in
2 violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by misrepresenting in its
3 labeling, advertising, and marketing of the Sensa Products to Plaintiff, Class members,
4 and the consuming public that the Sensa Products contained ingredients that could
5 effectively cause weight loss and were effective based thereon.

6 44. Each of the aforementioned representations alleged in this Complaint was
7 false and misleading because the Sensa Products do not contain ingredients that can
8 cause weight loss individually, or in any combination. The efficacy claims regarding
9 the Sensa Products' ability to cause weight loss are therefore false and deceptive.

10 45. Defendant knew, or should have known, that its material representations
11 and omissions would be likely to deceive the consuming public and result in
12 consumers purchasing the Sensa Products and, indeed, intended to deceive consumers.

13 46. As a result of its deception, Defendant has been able to reap unjust revenue
14 and profit.

15 47. Defendant's business practices, as alleged herein, are "unfair" because
16 they offend established public policy and/or are immoral, unethical, oppressive,
17 unscrupulous, and/or substantially injurious to consumers in that consumers are misled
18 by the claims made with respect to the Sensa Products as set forth herein. Plaintiff
19 alleges violations of California consumer protection and unfair competition laws
20 resulting in harm to consumers. Plaintiff asserts violations of public policy against
21 engaging in unfair competition, and deceptive conduct towards consumers. There were
22 reasonably available alternatives to further Defendant's legitimate business interests
23 other than Defendant's wrongful conduct described herein.

24 48. Defendant's above-described wrongful acts and practices also constitute
25 "unlawful" business acts and practices in violation of California's fraud and deceit
26 statutes, Civil Code §§1572, 1573, 1709, 1711, Business & Professions Code §§17200,
27 *et seq.*, 17500, *et seq.*, and the common law, including breach of express warranty.
28 Plaintiff and Class members reserve the right to allege other violations of law

1 Defendant committed constituting unlawful business acts or practices violating
2 California Business and Professions Code §17200..

3 49. Defendant’s business practices constitute “fraudulent business acts or
4 practices” because, among other things, its representations and omissions of material
5 facts are likely to, and did, deceive customers—including Plaintiff and members of the
6 Class—into believing that the Sensa Products have characteristics, ingredients, and
7 benefits they do not have.

8 50. Defendant’s wrongful business practices constituted, and constitute, a
9 continuing course of conduct of unfair competition since Defendant is marketing and
10 selling its Sensa Products in a manner likely to deceive the public.

11 51. As a direct and proximate result of Defendant’s wrongful business
12 practices in violation of Business and Professions Code §§ 17200, *et seq.*, Plaintiff and
13 members of the Class have suffered economic injury by losing money as a result of
14 purchasing the Sensa Products. Plaintiff and members of the Class would not have
15 purchased or would have paid less for the Sensa Products had they known that they
16 were not as represented.

17 52. Pursuant to Business and Professions Code § 17203, Plaintiff and the Class
18 seek an order of this Court enjoining Defendant from continuing to engage in unlawful,
19 unfair, or deceptive business practices and any other act prohibited by law, including
20 those set forth in the Complaint. Plaintiff and the Class also seek an order requiring
21 Defendant to make full restitution of all moneys they wrongfully obtained from
22 Plaintiff and the Class.

23 **THIRD CAUSE OF ACTION**

24 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

25 **(CAL. CIV. CODE §§ 1750, ET SEQ.)**

26 **(By Plaintiff and on Behalf of the Class Against Defendants)**

27 53. Plaintiff incorporates by this reference the allegations contained in the
28 paragraphs above as if fully set forth herein.

1 54. Plaintiff has standing to pursue this cause of action because Plaintiff has
2 suffered an injury in fact and has lost money as a result of Defendant's actions as set
3 forth herein. Specifically, Plaintiff and other members of the Class purchased the Sensa
4 Products in reliance on Defendant's claims about the Sensa Products' ability to provide
5 weight loss benefits.

6 55. Defendant has engaged in and continues to engage in business practices in
7 violation of California Civil Code §§ 1750, *et seq.* (the "Consumers Legal Remedies
8 Act") by making false representations concerning the Sensa Products' ability to cause
9 weight loss. These business practices are misleading and/or likely to mislead consumers
10 and should be enjoined.

11 56. Defendant has engaged in deceptive acts or practices intended to result in
12 the sale of the Sensa Products in violation of Civil Code § 1770. As described above,
13 Defendant knew and/or should have known that its misrepresentations of fact
14 concerning the abilities of the Sensa Products were material and likely to mislead the
15 public, and that the omissions were of material facts they were obligated to disclose.
16 Defendant affirmatively misrepresented that the Sensa Products had benefits which they
17 did not have.

18 57. Defendant's conduct alleged herein violates the Consumers Legal
19 Remedies Act, including but not limited to, the following provisions: (1) representing
20 that goods or services have sponsorship, approval, characteristics, ingredients, uses,
21 benefits, or quantities which they do not have in violation of Civil Code § 1770(a)(5);
22 (2) representing that good or services are of a particular standard, quality, or grade...if
23 they are of another in violation of Civil Code § 1770(a)(7); (3) advertising goods or
24 services with intent not to sell them as advertised in violation of Civil Code §
25 1770(a)(9); and (4) representing that the subject of a transaction has been supplied in
26 accordance with a previous representation when it has not in violation of Civil Code §
27 1770(a)(16). As a direct and proximate result of Defendant's conduct, as set forth
28

1 herein, Defendant has received ill-gotten gains and/or profits, including but not limited
2 to, money. Therefore, Defendant has been unjustly enriched.

3 58. There is no other adequate remedy at law, and Plaintiff and Class members
4 will suffer irreparable harm unless Defendant's conduct is enjoined.

5 59. Plaintiff's counsel mailed to Defendant, by certified mail, return receipt
6 requested, the written notice required by Civil Code Section 1782(a). A copy of this
7 letter is attached hereto as Exhibit One. Should Defendant fail to respond within thirty
8 days, Plaintiffs will amend to seek damages under the California Consumer Legal
9 Remedies Act.

10 60. The declaration of venue required by Civil Code § 1780(d) is concurrently
11 filed herewith and is attached hereto as Exhibit Two.

12 61. Defendant's conduct is fraudulent, wanton, and malicious. For example,
13 Defendant was previously the subject of several class action lawsuits regarding the false
14 and misleading representations and omissions about the Sensa Products' ability to
15 provide substantial weight loss benefits. After conducting discovery, including
16 deposing the study director of one of the primary studies upon which Defendant relies,
17 these class action lawsuits resulted in a nationwide settlement over Sensa Products sold
18 prior to August 22, 2012. Nevertheless, Defendant continues to falsely advertise the
19 weight loss benefits of the Sensa Products. Moreover, on January 7, 2014, the Federal
20 Trade Commission announced a settlement with the Defendant over the Sensa Products.
21 In its complaint, the FTC noted that in one of the studies Defendant funded and
22 controlled, "some test subjects did not lose the weight reported in the data," and "on
23 one or more occasions, [the study center] or its contractors sent the subjects' purported
24 monthly weight data to the Corporate Defendants and a third party in advance of
25 weighing the subjects. Moreover, owners of [the study center] or their family members
26 appeared as endorsers in Sensa advertising." Despite the pendency of the FTC
27 investigation, Defendant continued to falsely advertise the Sensa Products.

28 ///

1 62. Defendant’s wrongful business practices constituted, and constitute, a
 2 continuing course of conduct in violation of the Consumer Legal Remedies Act since
 3 Defendant is still representing that its Sensa Products have ingredients, characteristics,
 4 uses, benefits, and abilities which are false and misleading, and have injured Plaintiff
 5 and the Class. Plaintiff and the Class therefore seek an order of this court enjoining
 6 Defendant from continuing to engage in unlawful, unfair, or deceptive business
 7 practices and any other act prohibited by law, including those set forth in the complaint,
 8 pursuant to California Civil Code Section 1780(a)(2).

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff and members of the Class request that the Court enter
 11 an order or judgment against Defendants, and each of them as named in the future, as
 12 follows:

- 13 1. For an order certifying the Class, appointing Plaintiff and his counsel to
- 14 represent the Class, and notice to the Class to be paid by Defendants;
- 15 2. For damages suffered by Plaintiff and Class members;
- 16 3. For restitution to Plaintiff and Class members of all monies wrongfully
- 17 obtained by Defendants;
- 18 4. For an injunction ordering Defendants to cease and desist from engaging in
- 19 the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;
- 20 5. For both pre-judgment and post-judgment interest at the maximum
- 21 allowable rate on any amounts awarded;
- 22 6. For Plaintiff’s costs of the proceedings herein;
- 23 7. For reasonable attorneys’ fees as allowed by statute; and
- 24 8. For any and all such other and further relief that this Court may deem just
- 25 and proper.

26 ///

27 ///

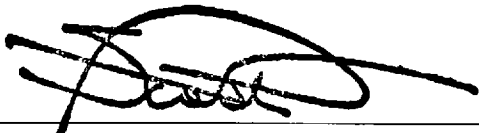
28 ///

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: January 7, 2014

NEWPORT TRIAL GROUP
A Professional Corporation
Scott J. Ferrell

By: 

Scott J. Ferrell
Attorney for Plaintiff and the Class

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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JOSE CONDE, individually, an on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Los Angeles
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Blood Hurst & O'Reardon, LLP
701 B Street, Suite 1700
San Diego, CA 92101

DEFENDANTS

SENSA PRODUCTS, LLC; and DOES 1-10, Inclusive

County of Residence of First Listed Defendant Kent
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'14CV0051 JLS WVG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

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

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
CAL. BUS. & PROF. CODE §§ 17500, 17200; CAL. CIV. CODE §§ 1750 28:1331 (kcm)
 Brief description of cause:
False Advertising, Unlawful, Fraudulent, & Unfair Business Practices; Violation of CLRA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 01/07/2014 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT 1

1 I, Jose Conde, declare as follows:

2 1. I am a Plaintiff in this action, and am a citizen of the State of California. I have
3 personal knowledge of the facts herein and, if called as a witness, I could and would testify
4 competently thereto.

5
6 2. The Complaint in this action, filed concurrently with this Declaration, is filed in the
7 proper place for trial under Civil Code Section 1780(d) in that San Diego County is a county in which
8 Defendants are doing business.

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct.

12
13 Dated: January 7, 2014

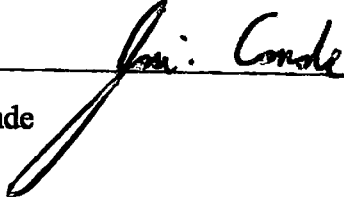
14  _____
15 Jose Conde

EXHIBIT 2

NEWPORT TRIAL GROUP

A National Litigation Firm

January 7, 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Sensa Products, LLC
2301 Rosecrans Ave., Ste. 4100
El Segundo, CA 90245

Re: Notification Pursuant to California Civil Code §1782 and UCC Notice Requirements

To whom it may concern:

Please be advised that this demand letter is meant to comply with the requirements of California Civil Code §1782 and similar statutes of other states on behalf of our client and a nationwide class of consumers (“Plaintiffs”). This letter includes a summary of Plaintiffs’ claims regarding the practices of Sensa Products, LLC (hereafter referred to as “Defendant”) that Plaintiffs allege are false and misleading and violate the Consumer Legal Remedies Act (“CLRA”) and companion statutes in other states.

Defendant manufactures, markets, and sells the “Sensa” line of weight-loss products (the “Products”). Defendant claims the Products are effective weight loss products whereby all consumers have to do is “sprinkle, eat, and lose weight.” The Products also promise that this weight loss can be achieved “*Without Dieting.*” Defendant claims that the Products “work[] with your sense of smell and taste to help you feel full faster so you eat less and feel more satisfied.” Indeed, Defendant assures consumers that by merely using the Products, you can “feel full faster without deprivation” “causing you to eat less and lose weight.” Defendant assures consumers that these weight loss promises are “based on over 25 years of scientific research on the science of smell and taste....”

However, the Products do not, and cannot cause the weight-loss promised to consumers. Not only do the ingredients in the Products lack the ability to provide any of the weight-loss results promised, but there is no competent, reliable scientific evidence or data to back up *any* of Defendant’s claims about the efficacy of the Products.

By misrepresenting its Products and their qualities, Defendant has violated California’s consumer protection laws and companion statutes in other states. Specifically, in addition to violating Sections 17200 and 17500 et seq. of the California Business and Professions Code and various common laws, Defendant has violated the Consumer Legal Remedies Act in at least the following respects:

Sensa Products, LLC

January 7, 2014

Page 2

NEWPORT TRIAL GROUP
A Professional Corporation

- a. in violation of Civil Code § 1770(a)(5), Defendant has represented that its products have certain characteristics and/or benefits, when in fact they do not;
- b. in violation of Civil Code § 1770(a)(7), Defendant has represented that its products are of a particular standard, quality, or grade when they are in fact of another; and
- c. in violation of Civil Code § 1770(a)(9), Defendant has advertised its products with the intent not to sell them as advertised.

Pursuant to California Civil Code § 1780(a)(2), Plaintiffs demand that:

- i. Defendant publicly discloses accurate statements regarding the true quality and ingredients of its Product, Defendant refunds to all customers the amounts that were wrongly charged, within the statutory allowable period for class actions, due to Defendant's improper practices; and
- ii. Defendant halts all unlawful practices described above.

Please feel free to contact me should you like to discuss any of the points addressed herein.

Very truly yours,

NEWPORT TRIAL GROUP
A National Litigation Firm



Scott J. Ferrell, Esq.

SJF/ka