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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAMES COLLINS, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

THE GILLETTE COMPANY and THE
PROCTER & GAMBLE COMPANY,

Defendants.

Case No. CV 12-01778 EDL

**FIRST AMENDED COMPLAINT
FOR VIOLATION OF CAL. BUS. &
PROF. CODE §§ 17200 ET SEQ. AND
§§ 17500 ET SEQ. AND VIOLATION
OF CAL. CIV. CODE §§ 1750 ET SEQ.**

CLASS ACTION

DEMAND FOR JURY TRIAL

Upon personal knowledge as to his own acts and status, and based upon his investigation, his counsel's investigation, and information and belief as to all other matters, plaintiff James Collins ("Plaintiff" or "Collins"), on behalf of himself and all others similarly situated, alleges as follows:

SUMMARY OF THE ACTION

1. This is a class action brought on behalf of consumers who purchased premium-priced Duracell Ultra Advanced ("Ultra Advanced") and Duracell Ultra Power ("Ultra Power") batteries based on the false promise that Ultra Advanced and Ultra

1 Power batteries would last longer than competing, lower-cost Duracell batteries.
 2 Plaintiff alleges that The Gillette Company (“Gillette”) and The Proctor and Gamble
 3 Company (“P&G”) (collectively “Defendants”), which produce and sell Duracell batteries
 4 in California, engaged in a scheme to mislead consumers about the benefits of these
 5 premium-priced batteries in violation of California Business and Professions Code §§
 6 17200 *et seq.* and California Civil Code §§ 1750 *et seq.*

7 2. Plaintiff alleges that Defendants concealed and misrepresented material
 8 facts concerning the true battery life of their Ultra Advanced and Ultra Power products.
 9 In reliance on Defendants’ marketing scheme, Plaintiff and the Class, as defined *infra*,
 10 paid a premium price for batteries with no material difference in battery life than lower-
 11 priced Duracell batteries and were damaged as a result. Plaintiff and the Class seek
 12 restitution and injunctive relief for Defendants’ false and misleading representations
 13 and omissions.

14 **PARTIES**

15 3. Plaintiff James Collins is a citizen of California and a resident of Alameda,
 16 California. During the Class Period, as defined *infra*, Plaintiff purchased Duracell Ultra
 17 Advanced and Duracell Ultra Power batteries in California.

18 4. Defendant Gillette is a Delaware corporation with its principal place of
 19 business in Boston, Massachusetts. Gillette maintains extensive contacts within the
 20 State of California. On information and belief, Gillette ships its products to distributors
 21 in California, sells its products in retail stores in California, and advertises its products
 22 in California.

23 5. Defendant P&G is an Ohio corporation with its principal place of business
 24 in Cincinnati, Ohio. P&G maintains extensive contacts within the State of California. On
 25 information and belief, P&G ships its products to distributors in California, sells its
 26 products in retail stores in California, and advertises its products in California. P&G also
 27 maintains corporate offices in California and employs workers in California.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because the amount in controversy exceeds \$5,000,000 exclusive of interest and costs, there are more than one hundred Class members, and minimal diversity exists because Plaintiff and numerous members of the Class are citizens of different states than Defendants.

7. This Court has personal jurisdiction over Defendants because Defendants have sufficient minimum contacts with California and/or Defendants otherwise purposely avail themselves of the markets in California through the promotion, marketing, and sale of their products and services in California to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper under 28 U.S.C. § 1391(a) because (1) Defendants are subject to personal jurisdiction in the Northern District of California, and (2) a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District. Defendants engaged in the extensive promotion, marketing, distribution, and sales of the products at issue in this District, and Plaintiff is a resident of this District and purchased the products at issue in this District.

9. Intradistrict Assignment: Pursuant to Civil L.R. 3-2(c) and 3-5(b), assignment to the San Francisco and Oakland Division of the Northern District of California is proper, because a substantial part of the events or omissions which give rise to the claim occurred in this Division or a substantial part of the property subject to the action is situated in this Division. Defendants engaged in the extensive promotion, marketing, distribution, and sales of the products at issue in this Division, and Plaintiff is a resident of this Division and purchased the products at issue in this Division.

FACTS

10. Duracell is a division of P&G and describes itself on its web site as “the world’s leading manufacturer of high-performance alkaline batteries.”

11. Duracell, Inc. operated as an independent corporation, incorporated in Delaware, until it was acquired by Gillette on April 21, 1999 and merged into Gillette under the Gillette name. On October 1, 2005, P&G acquired Gillette, including its Duracell-branded consumer battery line. Gillette continues to use the term Duracell as a brand name for its line of consumer batteries.

12. In 2011, the U.S. market for consumer batteries was approximately \$13 billion. Duracell’s share of the global market for consumer batteries was approximately 25%.

13. Defendants sell both primary (disposable) and secondary (rechargeable) batteries for use in consumer products. Current primary battery products include Duracell CopperTop and Duracell Ultra Power (previously branded as Duracell Ultra Advanced). Secondary battery products include Duracell Rechargeable and Duracell Rechargeable StayCharged.

14. On November 5, 2009, Defendants announced their new Ultra Advanced battery, which was available in AA and AAA sizes. In its press release announcing Ultra Advanced, Duracell described the product as follows:

The Duracell Ultra Advanced battery line is designed to meet the demands of the widest range of devices consumers rely on to protect and enjoy their lives including flashlights, smoke detectors, baby monitors and radios. As the latest product in the Duracell Smart Power portfolio, **Ultra Advanced with POWERCHECK lasts up to 30 percent longer in toys than the previous Ultra Digital, which is the largest category for battery usage and a key torture test for batteries.**

(emphasis added).

15. Throughout the Class Period, the product packaging for Duracell Ultra Advanced batteries included the statement, “Up to 30% Longer in Toys*” with an asterisk that included the disclaimer “vs. Ultra Digital” in small print. This product

package is displayed below:



16. In addition, Duracell's web site stated on the product page for Duracell Ultra Advanced: "Ideal for high-drain devices, these batteries give you up to 30% more power in toys than Ultra Digital batteries" and "Use with high drain devices, including battery-powered toys, high-powered flashlights, and video game controllers."

17. However, based on Plaintiff's counsel's investigation, Duracell Ultra Advanced batteries fail to last materially longer than Defendants' other alkaline batteries. Despite Defendants' representations to the contrary, there is no meaningful difference in battery life between Duracell Ultra Advanced and Defendants' other alkaline batteries.

18. Beginning in approximately January 2012, Defendants began to phase out their Ultra Advanced batteries and replace them with batteries branded as "Ultra Power." Duracell's web site product pages replaced the Ultra Power brand with the Ultra Advanced brand, and the Ultra Power brand also began replacing the Ultra Advanced brand in retail stores.

19. Both the Ultra Advanced and Ultra Power branded batteries use the same

1 model number, MX1500, and there is no discernible difference between the two
2 batteries, absent the change in branding and marketing.

3 20. On the product packaging for Duracell Ultra Power batteries, Defendants
4 prominently state that the battery is “Our Longest Lasting” on the front of the package.
5 On the back of the package, Defendants also include a chart indicating that Duracell
6 CopperTop batteries are “For Everyday Devices” and Duracell Ultra Power batteries are
7 for “When It Matters Most.” The product package for Duracell Ultra Power batteries is
8 displayed below:



20 21. On Duracell’s web site for Ultra Power, Defendants describe Ultra Power
21 as “Our Longest Lasting” and state, “Ultra Power is Duracell’s most powerful alkaline
22 battery. If you’re using a device that requires high battery output, Ultra Power is the way
23 to go.” Duracell’s web site also states that “Duracell Ultra Power batteries offer premium
24 power for many of your devices, including: Battery-powered toys, Video game
25 controllers, High-powered flashlights, Digital cameras, and Radio clocks.”

26 22. However, based on Plaintiff’s counsel’s investigation, Duracell Ultra Power
27 batteries fail to last materially longer than Defendants’ other alkaline batteries. Despite

1 Defendants' representations to the contrary, there is no meaningful difference in battery
2 life between Duracell Ultra Power and Defendants' other alkaline batteries.

3 23. Defendants conspicuously failed to disclose that Ultra Advanced and Ultra
4 Power branded batteries provide no material difference in battery life from any of their
5 other alkaline battery products. Coupled with their statements on the products'
6 packaging that their batteries would either last "up to 30% longer" or are "our longest
7 lasting," Defendants' glaring omission that there is no material difference between their
8 alkaline batteries would—and did—mislead reasonable consumers.

9 24. Because Defendants' claims were placed directly on the front of the
10 products' packaging—and there is no corresponding disclosure that Defendants'
11 batteries do not materially differ in battery life—a reasonable consumer would likely be
12 misled into believing that Duracell Ultra Advanced and Ultra Power products would last
13 longer than Defendants' other alkaline batteries. This deception occurs directly at the
14 point of sale when it is most likely to affect a consumer's purchasing decision.

15 25. As a result of Defendants' deceptive marketing scheme, consumers
16 purchased Duracell Ultra Advanced and Ultra Power batteries based on the false belief
17 that the batteries would last longer than Defendants' other alkaline batteries. These
18 customers paid significantly higher prices with no meaningful additional benefits.

19 26. Duracell Ultra Advanced and Ultra Power batteries retail at a substantial
20 premium price over standard Duracell CopperTop batteries and cost on average \$0.30
21 more per battery (or \$2.40 per eight-pack). Therefore, all consumers who purchased
22 Ultra Advanced or Ultra Power batteries have been injured by Defendants' deceptive
23 marketing scheme and are owed restitution.

24 **PLAINTIFF JAMES COLLINS**

25 27. In 2010, Collins purchased a 30-pack of Defendants' Duracell Ultra
26 Advanced batteries in size AA from a retail store in California. Collins saw the deceptive
27 representations on the product packaging that Duracell Ultra Advanced batteries lasted

1 “up to 30% longer” and believed that the batteries would last longer than Defendants’
 2 other batteries. Due to Defendants’ omissions, Collins did not know that there was no
 3 material difference between the battery life of Duracell Ultra Advanced batteries and
 4 Defendants’ other alkaline batteries. Had Collins known that Duracell Ultra Advanced
 5 batteries did not last materially longer than Defendants’ other alkaline batteries, Collins
 6 would not have purchased Duracell Ultra Advanced batteries.

7 28. In late 2010 and early 2011, Collins purchased two 30-packs of
 8 Defendants’ Duracell Ultra Power batteries in size AA from a retail store in California.
 9 Collins saw the deceptive representations on the product packaging that Duracell Ultra
 10 Power batteries were Defendants’ “longest lasting” batteries and believed that the
 11 batteries would last longer than Defendants’ other alkaline batteries. Due to Defendants’
 12 omissions, Collins did not know that there was no material difference between the
 13 battery life of Duracell Ultra Power batteries and Defendants’ other alkaline batteries.
 14 Had Collins known that Duracell Ultra Power batteries did not last materially longer
 15 than Defendants’ other alkaline batteries, Collins would not have purchased Duracell
 16 Ultra Advanced batteries.

17 29. Collins has been injured by paying more for Duracell Ultra Advanced and
 18 Duracell Ultra Power batteries than he would have absent Defendants’ deception.

19 CLASS ACTION ALLEGATIONS

20 30. Plaintiff brings this class action on behalf of himself and all others
 21 similarly situated in California as members of a proposed Class defined as follows:

22 **All persons who purchased Duracell Ultra Advanced or Duracell**
 23 **Ultra Power batteries in the State of California during the**
 24 **period beginning four years prior to the date of filing of this**
complaint through the present (the “Class Period”).

25 31. Within the Class, there is one subclass for purposes of Plaintiff’s claim
 26 under the Consumer Legal Remedies Act (the “CLRA Subclass” or “Subclass”). The
 27 proposed CLRA Subclass is defined as follows:

All Class members who purchased Duracell Ultra Advanced or Duracell Ultra Power batteries for personal, family, or household purposes during the Class Period.

32. Excluded from the Class and Subclass are governmental entities, Defendants, any entity in which Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal representatives, employees, coconspirators, successors, subsidiaries, and assigns. Also excluded from the Class and Subclass are any judges, justices, or judicial officers presiding over this matter and the members of their immediate families and judicial staff.

33. This action is brought and may properly be maintained as a class action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of these rules.

34. ***Numerosity Under Rule 23(a)(1).*** The Class and Subclass are so numerous that the individual joinder of all members is impracticable. While the Class's and Subclass's exact number and the identity of Class and Subclass members are currently unknown and can only be ascertained through appropriate discovery, Plaintiff, on information and belief, alleges that the Class and Subclass include at least hundreds of thousands of individuals.

35. ***Commonality Under Rule 23(a)(2).*** Common legal and factual questions exist that predominate over any questions affecting only individual Class or Subclass members. These common questions, which do not vary among Class members and which may be determined without reference to any Class member's individual circumstances, include, but are not limited to:

- A. Whether Defendants' representations regarding their Ultra Advanced and Ultra Power batteries were false and misleading;
- B. Whether Defendants' failure to disclose that their Ultra Advanced and Ultra Power batteries did not last materially longer than their

- 1 other alkaline batteries would mislead a reasonable consumer;
- 2 C. Whether Duracell Ultra Advanced and Ultra Power batteries last
- 3 materially longer than their other alkaline batteries;
- 4 D. Whether Defendants charged a price premium for their Ultra
- 5 Advanced and Ultra Power batteries;
- 6 E. Whether Defendants engaged in unfair, unlawful, and/or deceptive
- 7 business practices regarding their Ultra Advanced and Ultra Power
- 8 batteries in violation of the California Unfair Competition Law
- 9 (“UCL”);
- 10 F. Whether Defendants conduct alleged herein constitutes false
- 11 advertising in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq*;
- 12 G. Whether Defendants represented, through their words or conduct,
- 13 that Duracell Ultra Advanced and Duracell Ultra Power batteries
- 14 had characteristics, uses, or benefits that they did not actually have
- 15 in violation of the California Consumer Legal Remedies Act
- 16 (“CLRA”);
- 17 H. Whether Defendants advertised Duracell Ultra Advanced and
- 18 Duracell Ultra Power batteries with the intent not to sell them as
- 19 advertised in violation of the CLRA; and
- 20 I. Whether Plaintiff and the Class have been damaged by the wrongs
- 21 complained of herein, and if so, whether Plaintiff and the Class are
- 22 entitled to injunctive and/or other equitable relief, including
- 23 restitution, whether Plaintiff and the Class are entitled to damages
- 24 under the CLRA, and if so, the nature and amount of such relief.

25 36. ***Typicality Under Rule 23(a)(3).*** Plaintiff’s claims are typical of the

26 Class and Subclass members’ claims. Defendants’ common course of conduct caused

27 Plaintiff and all Class members the same harm. In particular, Defendants’ conduct

1 caused each Class member's economic losses. Likewise, Plaintiff and other Class
2 members must prove the same facts in order to establish the same claims.

3 37. ***Adequacy of Representation Under Rule 23(a)(4).*** Plaintiff is an
4 adequate Class and Subclass representative because he is a Class and Subclass member,
5 and his interests do not conflict with Class or Subclass interests. Plaintiff retained
6 counsel competent and experienced in consumer protection class actions, and Plaintiff
7 and his counsel intend to prosecute this action vigorously for the Class's benefit.
8 Plaintiff and his counsel will fairly and adequately protect Class interests.

9 38. The Class and Subclass can be properly maintained under Rule 23(b)(2).
10 Defendants have acted or refused to act, with respect to some or all issues presented in
11 this Complaint, on grounds generally applicable to the Class, thereby making
12 appropriate final injunctive relief with respect to the Class as a whole.

13 39. The Class and Subclass can be properly maintained under Rule 23(b)(3). A
14 class action is superior to other available methods for the fair and efficient adjudication
15 of this litigation because individual litigation of each Class member's claim is
16 impracticable. Even if each Class member could afford individual litigation, the court
17 system could not. It would be unduly burdensome if thousands of individual cases
18 proceed. Individual litigation also presents the potential for inconsistent or
19 contradictory judgments, the prospect of a race to the courthouse, and the risk of an
20 inequitable allocation of recovery among those with equally meritorious claims.
21 Individual litigation would increase the expense and delay to all parties and the courts
22 because it requires individual resolution of common legal and factual questions. By
23 contrast, the class action device presents far fewer management difficulties and provides
24 the benefit of a single adjudication, economies of scale, and comprehensive supervision
25 by a single court.

FIRST CLAIM FOR RELIEF
(Violation Of Cal. Bus. & Prof. Code
§§ 17200, *et seq.*—“Unfair” Conduct)

40. Plaintiff, individually and on behalf of the Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint.

41. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Defendants’ actions as set forth above.

42. Defendants’ actions as alleged in this complaint constitute “unfair” conduct within the meaning of California Business and Professions Code §§ 17200 *et seq.*

43. Defendants’ business practices, as alleged herein, are “unfair” because they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to their customers. Additionally, Defendants’ conduct is “unfair” because Defendants’ conduct violated the legislatively declared policies in California’s False Advertising Law (Bus. & Prof. Code §§ 17500 *et seq.*) and the Consumer Legal Remedies Act (Civ. Code §§ 1750 *et. seq.*). Defendants misled consumers into believing that their Duracell Ultra Advanced and Duracell Ultra Power batteries would last longer than their other alkaline batteries when, in fact, there was no material difference in battery life. Defendants concealed this fact from consumers by failing to include it on their products’ packaging or related marketing materials.

44. As a result of Defendants’ “unfair” conduct, Plaintiff and members of the Class spent money on premium-priced Ultra Advanced and Ultra Power batteries that they would not otherwise have spent and did not receive the increased battery life promised by Defendants.

45. Defendants’ wrongful business practices alleged herein constitute a continuing course of unfair competition because Defendants marketed and sold their

1 products in a manner that offends public policy and/or in a fashion that is immoral,
 2 unethical, oppressive, unscrupulous, and/or substantially injurious to their customers.

3 46. Plaintiff and the Class seek an order requiring Defendants to make full
 4 restitution of all moneys they have wrongfully obtained from Plaintiff and the Class,
 5 along with all other relief permitted under Bus. & Prof. Code §§ 17200 *et seq.*

6 **SECOND CLAIM FOR RELIEF**
 7 **(Violation Of Cal. Bus. & Prof. Code**
 8 **§§ 17200, *et seq.*—“Fraudulent” Conduct)**

9 47. Plaintiff, individually and on behalf of the Class, incorporates by reference
 10 all of the allegations contained in the preceding paragraphs of this Complaint.

11 48. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in
 12 fact and has lost money or property as a result of Defendants’ actions as set forth above.

13 49. Defendants’ actions as alleged in this complaint constitute “fraudulent”
 14 conduct within the meaning of California Business and Professions Code §§ 17200 *et*
 15 *seq.*

16 50. Defendants’ business practices, as alleged herein, are “fraudulent” because
 17 they are likely to deceive consumers, including Plaintiff and members of the Class.

18 51. Defendants failed to disclose all material information to purchasers of
 19 Duracell Ultra Advanced and Duracell Ultra Power batteries concerning the true battery
 20 life of these products and affirmatively concealed the fact that there is no material
 21 difference between Ultra Advanced and Ultra power batteries and Defendants’ other
 22 alkaline battery products.

23 52. As a result of Defendants’ “fraudulent” conduct, Plaintiff and members of
 24 the Class spent money on premium-priced Ultra Advanced and Ultra Power batteries
 25 that they would not otherwise have spent and did not receive the increased battery life
 26 promised by Defendants.
 27

53. Defendants' wrongful business practices alleged herein constituted a continuing course of unfair competition since Defendants marketed and sold their products in a manner that was likely to deceive customers.

54. Plaintiff and the Class seek an order requiring Defendants to make full restitution of all moneys they have wrongfully obtained from Plaintiff and the Class, along with all other relief permitted under Bus. & Prof. Code §§ 17200 *et seq.*

THIRD CLAIM FOR RELIEF
(Violation Of Cal. Bus. & Prof. Code
§§ 17200, *et seq.*—"Unlawful" Conduct)

55. Plaintiff, individually and on behalf of the Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint.

56. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Defendants' actions as set forth above.

57. Defendants' actions as alleged in this complaint constitute an "unlawful" practice within the meaning of Business and Professions Code §§ 17200 *et seq.*, because Defendants' actions were "unfair" and "fraudulent," as alleged above, because they violated Business and Professions Code §§ 17500 *et seq.*, which proscribes false advertising, as alleged *infra*, and because they violated Civil Code §§ 1750 *et seq.*, the Consumer Legal Remedies Act, as alleged *infra*.

58. As a result of Defendants' "unlawful" conduct, Plaintiff and members of the Class spent money on premium-priced Ultra Advanced and Ultra Power batteries that they would not otherwise have spent and did not receive the increased battery life promised by Defendants.

59. Plaintiff and the Class seek an order requiring Defendants to make full restitution of all moneys they have wrongfully obtained from Plaintiff and the Class, along with all other relief permitted under Bus. & Prof. Code §§ 17200 *et seq.*

FOURTH CLAIM FOR RELIEF
(Violation Of Cal. Bus. & Prof. Code
§§ 17500, *et seq.*—False Advertising)

60. Plaintiff, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint.

61. Plaintiff brings this claim for relief on behalf of himself and the Class.

62. Defendants engaged in advertising and marketing to the public and offered for sale Duracell Ultra Advanced and Duracell Ultra Power batteries in California.

63. Defendants engaged in the advertising and marketing alleged herein with the intent to directly or indirectly induce the sale of their Ultra Advanced and Ultra Power batteries to consumers like Plaintiff.

64. Defendants' advertising and marketing representations regarding the battery life of their Ultra Advanced and Ultra Power products were false, misleading, and deceptive as set forth in detail above. Defendants also concealed material information from consumers about the battery life of their Ultra Advanced and Ultra Power products.

65. Defendants' misrepresentations and omissions alleged herein deceive or have the tendency to deceive the general public regarding the benefits of purchasing Ultra Advanced or Ultra Power batteries.

66. Defendants' misrepresentations and omissions alleged herein were the type of misrepresentations that are material, i.e., a reasonable person would attach importance to them and would be induced to act on the information in making purchase decisions.

67. Defendants' misrepresentations and omissions alleged herein are objectively material to a reasonable consumer, and therefore reliance upon such misrepresentations may be presumed as a matter of law.

68. At the time they made the misrepresentations and omissions alleged herein, Defendants knew or should have known that they were untrue or misleading and acted in violation of Bus. & Prof. Code §§ 17500 *et seq.*

69. Unless restrained by this Court, Defendants will continue to engage in untrue and misleading advertising, as alleged above, in violation of Cal. Bus. & Prof Code §§ 17500, *et. seq.*

70. As a result, Plaintiff and each member of the Class has been injured, has lost money or property, and is entitled to relief. Plaintiff and the Class seek restitution, injunctive relief, and all other relief permitted under Bus. & Prof. Code §§ 17500 *et seq.*

FIFTH CLAIM FOR RELIEF
(Violation Of Cal. Civ. Code §§ 1750,
***et seq.*—Consumer Legal Remedies Act)**

71. Plaintiff, individually and on behalf of the CLRA Subclass, incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint.

72. Defendants are “persons” as defined in Cal. Civ. Code § 1761(c).

73. Plaintiff and the Subclass members are “consumers” as defined in Cal. Civ. Code § 1761(d).

74. The Duracell Ultra Advanced and Ultra Power batteries that Plaintiff and the Subclass purchased from Defendants are “goods” within the meaning of Cal. Civ. Code § 1761(a).

75. The purchases by Plaintiff and the Subclass of the goods sold by Defendants, alleged herein, constitute “transactions” within the meaning of Cal. Civ. Code §§ 1761(e) and 1770.

76. In connection with their sale of goods to Plaintiff and the Subclass, Defendants violated the CLRA by:

- A. Misrepresenting to Plaintiff and the Subclass that Duracell Ultra Advanced and Ultra Power batteries would last longer than

- 1 Defendants' other alkaline batteries, when they in fact do not, in
 2 violation of Cal. Civ. Code §§ 1770(a)(5), (7), (9), (14), and (16);
- 3 B. Misrepresenting to Plaintiff and the Subclass that Defendants'
 4 goods had characteristics and benefits they did not have, in
 5 violation of Cal. Civ. Code § 1770(a)(5);
- 6 C. Representing to Plaintiff and the Subclass that Defendants'
 7 goods were of a particular standard, quality, or grade, when they
 8 were of another in violation of Cal. Civ. Code § 1770(a)(7);
- 9 D. Advertising goods to Plaintiff and the Subclass with the intent
 10 not to sell them as advertised, in violation of Cal. Civ. Code §
 11 1770(a)(9);
- 12 E. Misrepresenting that their transactions with Plaintiff and the
 13 Subclass conferred benefits and rights on Plaintiff and the
 14 Subclass, and obligations on Defendants, which were not, in
 15 fact, conferred, in violation of Cal. Civ. Code § 1770(a)(14); and
- 16 F. Misrepresenting to Plaintiff and the Subclass that the subject of
 17 a transaction has been supplied in accordance with a previous
 18 representation when it had not, in violation of Cal. Civ. Code §
 19 1770(a)(16).

20 77. In addition, under California law, a duty to disclose arises in four
 21 circumstances: (1) when the defendant is in a fiduciary relationship with the plaintiff;
 22 (2) when the defendant had exclusive knowledge of material facts not known to the
 23 plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and
 24 (4) when the defendant makes partial representations but also suppresses some
 25 material facts.

26 78. Defendants had a duty to disclose to Plaintiff and the Subclass the true
 27 battery life of their Duracell Ultra Advanced and Ultra Power products for the following

three independent reasons: (a) Defendants had exclusive knowledge of the information at the time of sale; (b) Defendants actively concealed from Plaintiff and the Subclass the true battery life of Ultra Advanced and Ultra Power products, which was material to customers; and (c) Defendants made partial representations to Plaintiff and the Subclass regarding the battery life of their Ultra Advanced and Ultra Power products.

79. Defendants violated the CLRA by concealing material information from Plaintiff and the Subclass regarding the true battery life of their Ultra Advanced and Ultra Power products.

80. Defendants' misrepresentations and omissions in violation of the CLRA were likely to mislead consumers. Plaintiff and the Subclass reasonably believed Defendants' representations and omissions to mean that Ultra Advanced and Ultra Power batteries would last longer than Defendants' other alkaline batteries.

81. Defendants' conduct alleged herein was intentional and was specifically designed to induce customers to purchase more expensive Ultra Advanced and Ultra Power batteries.

82. Defendants' misrepresentations and omissions alleged herein were material in that a reasonable person would attach importance to the information and would be induced to act upon the information in making purchase decisions.

83. Plaintiff and the Subclass relied to their detriment on Defendants' misrepresentations and omissions in purchasing Ultra Advanced and Ultra Power batteries.

84. Plaintiff, on behalf of himself and the Subclass, demands judgment against Defendants under the CLRA for injunctive relief and restitution to Plaintiff and the Subclass in an amount to be proven at trial.

85. Plaintiff, on behalf of himself and the Subclass, seeks compensatory damages in an amount to be proven at trial.

1 86. In light of Defendants' oppression, fraud, and malice, Plaintiff, on behalf
2 of himself and the Subclass, also seeks punitive damages under Cal. Civ. Code § 3294 in
3 an amount to be proven at trial.

4 87. Pursuant to Cal. Civ. Code § 1782(a), on April 11, 2012, counsel for Plaintiff
5 and the Subclass served P&G and Duracell, Inc. by United States certified mail, return
6 receipt requested, with notice of Defendants' violations of the CLRA. A true and accurate
7 copy of the CLRA demand notice is attached as Exhibit A. These notices were received
8 by Defendants on April 16, 2012, as evidenced by the Domestic Return Receipts signed
9 by their agents. A true and accurate copy of the Domestic Return Receipts is attached as
10 Exhibit B.

11 88. Counsel for Defendants responded to Plaintiff's CLRA letter on May 3,
12 2012 and informed Plaintiffs' counsel, *inter alia*, that the entity Duracell, Inc. no longer
13 exists as a corporate entity. In subsequent communications, Defendants' counsel
14 informed Plaintiffs' counsel that the The Gillette Company should be substituted as the
15 proper defendant in place of Duracell, Inc. As such, Plaintiffs have substituted Gillette in
16 place of Duracell, Inc. in this amended complaint.

17 89. On May 11, 2012, counsel for Gillette agreed in an email message that
18 Plaintiff's prior letter dated April 11, 2012 and received April 16, 2012 was deemed to
19 have provided preliminary notice and demand to Gillette under CLRA.

20 90. Defendants have failed to provide appropriate relief for their violations of
21 the CLRA within thirty days of their receipt of Plaintiff's demand notices. Accordingly,
22 pursuant to §§ 1780 and 1782(b) of the CLRA, Plaintiffs are entitled to recover actual
23 damages, punitive damages, attorneys' fees and costs, and any other relief the Court
24 deems proper.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself and the Class, requests that the Court order the following relief and enter judgment against Defendants as follows:

- A. An Order certifying the proposed Class and Subclass under Fed. R. Civ. P. 23 and appointing Plaintiff and his counsel to represent the Class;
- B. A declaration that Defendants have engaged in the illegal conduct alleged herein;
- C. An Order that Defendants be permanently enjoined from their improper activities and conduct described herein;
- D. A judgment awarding Plaintiff and the Class restitution in an amount according to proof, including without limitation, restitution of, disgorgement of, and/or the imposition of a constructive trust upon, all profits, benefits, and other compensation obtained by Defendants from their deceptive, misleading, and unlawful conduct alleged herein;
- E. A judgment awarding Plaintiff and the Subclass compensatory damages in an amount to be proven at trial;
- F. A judgment awarding Plaintiff and the Subclass punitive damages in an amount to be proven at trial;
- G. Pre-judgment and post-judgment interest at the maximum allowable rate;
- H. Attorneys' fees and expenses and the costs of this action; and
- I. All other relief that the Court deems necessary, just, and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury.

1 DATED: May 31, 2012

SCHUBERT JONCKHEER & KOLBE LLP

2 BY: /s/ Noah Schubert
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EXHIBIT A

SCHUBERT JONCKHEER & KOLBE LLP

Attorneys at Law

Robert C. Schubert
Willem F. Jonckheer
Miranda P. Kolbe

Dustin L. Schubert
Jason A. Pikler
Noah M. Schubert

April 6, 2012

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Duracell, Inc.
The Corporation Trust Company
Corporation Trust Center
1209 Orange St
Wilmington, DE 19801

The Procter & Gamble Company
CT Corporation System
1300 E 9th St
Cleveland, OH 44114

Re: Notice of Violation of California Consumer Legal Remedies Act

Dear Duracell, Inc. and The Procter & Gamble Company:

Pursuant to the California Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* (“CLRA”), my client, James Collins, hereby gives notice that Duracell, Inc. and The Procter & Gamble Company (collectively “Defendants”) have engaged in conduct in violation of the CLRA in connection with the marketing, advertising, and sale of their Duracell Ultra Advanced and Ultra Power batteries.

Mr. Collins and thousands of other consumers purchased Duracell Ultra Advanced and Ultra Power batteries based on the false promise that Ultra Advanced and Ultra Power batteries would last longer than Duracell’s competing, lower-cost batteries. Defendants’ product packaging, marketing, and press statements include the representation that Ultra Advanced batteries would last “up to 30% longer in toys” and that Ultra Power batteries were “our longest lasting.” However, based on published reports and our investigation, Duracell Ultra Advanced and Ultra Power batteries fail to last materially longer than Duracell’s other alkaline batteries. Despite Defendants’ representations to the contrary, there is no meaningful difference in battery life between Duracell Ultra Advanced, Duracell Ultra Power, and Duracell’s other alkaline batteries.

Because Defendants’ claims were placed directly on the front of the product’s packaging—and there is no corresponding disclosure that Duracell’s batteries do not materially differ in battery life—a reasonable consumer would likely be misled into believing that Duracell’s Ultra Advanced and Ultra Power products would last longer than its regular alkaline batteries. This deception occurs directly at the point of sale when it is most likely to affect a consumer’s purchasing decision. As a result of Defendants’ fraudulent marketing scheme, customers purchased

Duracell's Ultra Advanced and Ultra Power batteries based on the false belief that the batteries would last longer. These customers paid significantly higher prices with no meaningful additional benefits.

Defendants' conduct violated the CLRA by:

- Misrepresenting that their goods had characteristics and benefits they did not have, in violation of Cal. Civ. Code § 1770(a)(5);
- Representing that their goods were of a particular standard, quality, or grade, when they were of another in violation of Cal. Civ. Code § 1770(a)(7);
- Advertising goods with the intent not to sell them as advertised, in violation of Cal. Civ. Code § 1770(a)(9);
- Misrepresenting that their transactions conferred benefits and rights on Plaintiff and the Class, and obligations on Defendants, which were not, in fact, conferred, in violation of Cal. Civ. Code § 1770(a)(14); and
- Misrepresenting that the subject of a transaction has been supplied in accordance with a previous representation when it has not, in violation of Cal. Civ. Code § 1770(a)(16).

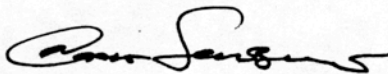
On April 6, 2012, Mr. Collins filed a class action complaint against Defendants in the United States District Court for the Northern District of California (Case No. CV 12-1778 EDL), alleging claims under California consumer protection laws, including a claim seeking injunctive relief under the CLRA. The allegations of the complaint, which is attached to this letter, are incorporated here by reference. Pursuant to Cal. Civ. Code § 1782(d), the complaint does not currently seek damages in connection with its CLRA claim.

Mr. Collins hereby demands that within thirty days of receiving this letter, Defendants fully compensate all purchasers of Ultra Advanced and Ultra Power batteries in California for the difference in price between these batteries and Duracell's standard CopperTop batteries, including any difference in sales tax.

If Defendants fail to rectify their violations of the CLRA by complying with this demand within thirty days of receiving this letter, then pursuant to the CLRA, Mr. Collins intends to amend his complaint to also seek compensatory and punitive damages, restitution, and any other appropriate relief on behalf of himself and the Class.

If you have any questions regarding this notice and demand, please feel free to contact me at 415.788.4220 or nschubert@schubertlawfirm.com.

Respectfully,



Noah M. Schubert
Attorney for James Collins

EXHIBIT B

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature</p> <p><input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received By (Printed Name) Debbie Justice</p> <p>C. Date of Delivery APR 16 2012</p>
<p>1. Article Addressed to:</p> <p>The Procter + Gamble Company CT Corporation System 1300 E 9th Street Cleveland, OH 44114</p>	<p>Does delivery address differ from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>2308 3250 0000 3665 1778</p>
<p>PS Form 3811, February 2004</p>	<p>Domestic Return Receipt 102595-02-M-154</p>

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature X <i>Scott Sabatino</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Duracell, Inc. The Corporation Trust Company Corporation Trust Center 1209 Orange St. Wilmington, DE 19801		B. Received by (Printed Name) APR 16 2012	C. Date of Delivery
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label) 2308 3250 0000 3665 1761			
PS Form 3811, February 2004		Domestic Return Receipt 102595-02-M-154	