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11 Attorneys for Plaintiffs PAYAM AHDOOT AND BRANDON CLARK, on behalf
12 of themselves and all others similarly situated

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

15 PAYAM AHDOOT, and BRANDON
16 CLARK, on behalf of themselves and
17 all others similarly situated, and the
18 general public,

19 Plaintiffs,

20 v.

21 Babolat VS North America, Inc., a
22 Colorado Corporation and DOES 1
23 through 10, inclusive,

24 Defendants.

Case No. CV13-02823 GAF (VBKx)
Consolidated with CV13-7898 GAF
(VBKx)

~~PROPOSED~~ **SECOND**
AMENDED CLASS ACTION
COMPLAINT FOR:

1. **Violation of the Unfair Competition Law, Business and Professional Code § 17200 et seq.;**
2. **Violations of Consumer Legal Remedies Act, Civil Code §1750 et seq.;**
3. **Breach of Express Warrant;**
4. **Violation of False Advertising, California Business and Professions Code §§ 17500 et seq. ;**
5. **Fraud; and**
6. **Negligent Misrepresentation**

DEMAND FOR JURY TRIAL

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15 Attorneys for Plaintiffs PAYAM AHDOOT AND BRANDON CLARK, on behalf
16 of themselves and all others similarly situated
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1 Plaintiffs, PAYAM AHDOOT and BRANDON CLARK (“Plaintiffs”) bring
2 this action on behalf of themselves and all others similarly situated against
3 defendant Babolat VS North America, Inc., a Colorado Corporation (“Babolat” or
4 “Defendants”) and Does 1 through 10 and states:
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6 **JURISDICTION AND VENUE**
7

8 1. This Court has original jurisdiction pursuant to 28 U.S.C.
9 §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds
10 the sum or value of \$5,000,000 and is a class action in which some of the
11 members of the class of plaintiffs are citizens of states different from
12 Defendants. Further, greater than two-thirds of the class members reside in
13 states other than the state in which defendant is a citizen.
14

15
16 2. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that
17 many of the acts and transactions giving rise to this action occurred in this
18 district and because Defendants:
19

20 (a) are authorized to conduct business in this district and have
21 intentionally availed themselves of the laws and markets within this
22 district through the promotion, marketing, distribution and sale of
23 their products in this district;

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

25 (c) are subject to personal jurisdiction in this district.
26

27 Babolat is headquartered in Louisville, Colorado, and distributes and sells to many
28

1 different retailers in California, including but not limited to, Westwood Sporting
2 Goods, located at 1065 Gayley Avenue, Westwood, CA 90024; Merchant Of
3 Tennis, located at 1118 S. La Cienega Blvd, Los Angeles, CA 90035; Tennis
4 Warehouse, located at 747 Buckley Road, San Luis Obispo, CA 93401; Dick's
5 Sporting Goods, Big 5 and Sport Chalet.
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7
8 Plaintiffs have filed an affidavit of proper venue pursuant to Section 1780(d)
9 which states facts showing that the instant action has been commenced in a county
10 which is a proper place for the trial of the action.
11

12 **SUMMARY OF THE CASE**

13 3. Babolat is a maker and worldwide seller of tennis racquets founded in
14 1875 in Lyon, France. Babolat manufactures, markets, and promotes its tennis
15 racquets, and various other sporting items. In 2000, Babolat established its U.S.
16 headquarters in Louisville, Colorado. The company's biggest selling lines of
17 racquets are the Pure Drive line, endorsed by Andy Roddick ("Roddick"), and the
18 AeroPro line, endorsed by Rafael Nadal ("Nadal").
19
20

21 4. Babolat markets and sells its racquets in the U.S. through authorized
22 dealers throughout the country and over the internet. In its advertisements, Babolat
23 claims its sponsored players use these racquets on the professional tennis tour. In
24 many cases, this is not true. The racquets which many of the Babolat-sponsored
25 pros actually use are much different than and not available to the public. Prior to
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27

1 major professional tennis tournaments, Babolat paints and otherwise modifies
2 these pros' customized racquets so that they appear to be identical to the ones sold
3 in stores and on the internet. Members of the public are led to believe they are
4 buying the same racquets used by their favorite tennis pros, when in fact there are
5 significant differences between the racquets used by the pros and those sold to the
6 public.
7
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9 5. Babolat's long-term and pervasive advertising campaign (for more
10 than four years) contains false and misleading statements designed to deceive
11 consumers about the racquets it sells. The long-term and pervasive advertising
12 campaign also deceives the public without the use of any "statements" at all. For
13 example, consumers are led to believe, simply by viewing players sponsored by
14 Babolat (and their racquets) in matches, and/or by viewing images of these players
15 and their racquets in magazines, other publications, the internet and television, that
16 the players are using the same racquets which are available for sale to the public,
17 when in fact, they are not. Babolat's advertising campaign is so pervasive,
18 widespread and convincing that the news media (newspapers, magazines,
19 television networks, and internet websites) perpetuate the myth that these
20 sponsored players are actually using the racquets they appear to be using. In fact,
21 the racquets used by the players sponsored by Babolat are painted and otherwise
22 altered to make them *appear* to be the same ones available for sale to the public,
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1 but are significantly different than such racquets.

2 6. By way of example, Nadal, one of the best tennis players of all time
3 (who has thirteen “Grand Slam” tennis titles to his credit as of the date this
4 pleading is filed, tied for third all time), endorses the Babolat AeroPro line of
5 tennis racquets. Nadal has endorsed the Babolat AeroPro tennis racquets for at
6 least the last four years.
7

8
9 7. Babolat has represented over the past four years on its website, in its
10 marketing materials to its retailers and in print advertisements that Nadal uses the
11 AeroPro Drive on the professional tour. Babolat retailers sold and currently sell
12 the AeroPro Drive in the U.S for approximately \$199. The AeroPro line of
13 racquets is colored with a distinctive yellow and black striping and incorporates the
14 “cortex system.” This “cortex system” was introduced by Babolat in or around
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16
17 2007. The cortex system is claimed by Babolat to reduce vibrations and improve
18 the player’s comfort and feel of contact with the ball.
19

20 8. Babolat has consistently claimed, and otherwise deceived the public
21 into believing, over at least the last four years, that Nadal’s racquet uses the
22 “cortex system.” However, when Babolat introduced the “cortex system” and
23 began claiming that this was the new technology being used by Nadal, Nadal
24 elected to keep using an older model of Babolat racquet which did not, in fact, use
25 the “cortex system.” Consumers were led to believe that if they wanted to play
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1 with the same racquet used by Nadal, they should buy the new “cortex system”
2 racquet used by Nadal, when in fact, Nadal himself did not use that racquet (and
3 does not, to this day, use a racquet with the cortex system).
4

5 9. Upon information and belief, Nadal’s racquet was and is painted or
6 otherwise customized to appear as though his racquet incorporates the cortex
7 system and is otherwise the same racquet made available to the public. However,
8 the racquet Nadal has used on the pro tour for many years is instead a customized
9 racquet made with different material(s), with different stiffness, different balance
10 points, and no cortex system. Nadal’s actual racquet is not available for sale to the
11 public. Nadal’s actual racquet has not been available for sale to the public for at
12 least the last four years. Babolat has made and currently makes many of these
13 custom racquets for Nadal each season, which are made to appear like the newest
14 Babolat AeroPro Drive racquet available to the public.
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18 10. Similar patterns of deception are engaged in by Babolat with respect
19 to the models of racquets purportedly used by other professional players Babolat
20 sponsors, including, but not limited to, Roddick.
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23 11. Beginning in 2009, Babolat began advertising on its website, the
24 internet, magazines and on television that certain of its racquets contained “GT
25 Technology,” which Babolat represented to be a graphite/tungsten hybrid material
26 that combined a carbon fiber sheet with tungsten filaments. Tungsten fibers were
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1 represented by Babolat to be throughout the entire racquet with the percentage of
2 tungsten optimized at key sections of the frame to stabilize the racquet for optimal
3 control and feel. Babolat further represented that the tungsten component in the
4 racquets increased stability and provided 10% more energy recovery for added
5 power.
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8 12. Babolat labels its racquets with GT Technology with a sticker in the
9 racquets' heads that reads, "GT TECHNOLOGY Graphite/Tungsten." Moreover
10 the facecard attached to the racquets states, "GT INNOVATIVE TECHNOLOGY
11 COMBINES CROSSED LAYERS OF GRAPHITE AND THIN THREADS OF
12 TUNGSTEN INTEGRATED INTO THE RACQUET'S LAYUP" or words to like
13 effect.
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15
16 13. In reality, Babolat never included tungsten in any of its racquets.
17 Rather, GT Technology was a change in the orientation of the individual layers of
18 the carbon fiber sheets in the racquets, known as the "layup," but the GT
19 Technology layup change did not include the addition of tungsten filaments.
20

21
22 14. Babolat's racquets advertised and labeled as containing tungsten, but
23 which do not contain tungsten, are: Pure Drive, Pure Drive +, Pure Drive 107,
24 Pure Drive Roddick, Pure Drive + Roddick, Pure Drive Roddick Junior, Pure Drive
25 Lite, Pure Drive French Open, Pure Drive Lite French Open, Pure Drive 260
26 French Open, Pure Drive Junior 26 French Open, Pure Drive Lite Pink, Pure Drive
27

1 Wimbledon, Pure Drive Junior Wimbledon, Pure Drive Play, AeroPro Drive,
2 AeroPro Drive +, AeroPro Drive Junior, AeroPro Team, AeroPro Lite, AeroPro
3 Drive French Open, AeroPro Drive Junior French Open, AeroPro Lite French
4 Open, AeroPro Team Wimbledon, Aero Storm, Aero Storm Tour, Pure Storm,
5 Pure Storm Limited, Pure Storm Limited +, Pure Storm Tour, Pure Storm Tour +,
6 Pure Storm Team, Pure Control, Pure Control Tour, Pure Control Tour +, Pure
7 Control 95 and Pure Control 95 +.
8
9

10 15. Hence, Plaintiffs, on behalf of themselves and the proposed class,
11 allege that for at least the last four (4) years, Babolat has misrepresented to
12 consumers that the Babolat racquets used on the professional tennis tour by its
13 sponsored players are the same as the racquets that are made available to the public
14 and that Babolat has misrepresented to consumers and mislabeled the racquets
15 referenced in paragraph 14 above as containing tungsten. In reality, Babolat
16 deceptively alters the actual racquets used by its pros so that they look like the
17 racquets Babolat sells to U.S. customers and, contrary to Babolat's advertisements
18 and labeling, none of its racquets contain tungsten. Plaintiffs, on behalf of
19 themselves and the proposed class, seek damages and restitution for false
20 advertising, unfair business practices, fraud, breach of warranty and negligent
21 misrepresentation, as plead herein.
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ALLEGATIONS

A. Babolat-Sponsored Players

16. On its website and through its advertising and marketing materials, Babolat has consistently claimed over at least the last four years that certain professional tennis players, including Nadal and Roddick, use the Babolat racquets which are sold to the public, on the professional tour. This is not true. Many Babolat-sponsored players do not use the Babolat racquets which they endorse and supposedly play with on tour. These players in fact used and continue to use customized racquets, made with different materials, different stiffness and different balance points which Babolat paints, modifies, customizes and otherwise alters to look like the Babolat racquets actually sold to consumers in the U.S. The sponsored player is then seen in major tennis tournaments like Wimbledon and the U.S. Open using the racquet which Babolat represents to its customers is the same racquet that (1) the particular pro uses on tour, and (2) is available for purchase by the general public. Further, as Babolat’s sponsored players generally do not keep switching racquets every two or three years, whereas it is in Babolat’s interest to make the public *believe* its sponsored players are using “new and improved” or “different” racquets (to encourage consumers to buy new models and increase sales) every two or three years, sometimes with “new technology,” there is a monumental gap between what is represented to the public and reality.

1 17. Plaintiff alleges, on information and belief, and after significant
2 investigation, that many of these professional tennis players never used the Babolat
3 racquet they sponsor and *appear* to be using in professional tournaments. Instead,
4 on information and belief, many of these players regularly, if not always, use a
5 different racquet, which is customized, painted, modified and otherwise disguised
6 to look like the particular model of Babolat racquet that the player sponsors and
7 purportedly uses.
8

9
10 **B. GT Technology/Tungsten**

11 18. Beginning in 2009, on its website and through its advertising and
12 marketing materials, as well as by labeling on its racquets and the facecards
13 attached thereto, Babolat has consistently represented that its racquets identified in
14 Paragraph 14 above contain tungsten. This is not true. Babolat's GT Technology
15 Racquets have a different and stiffer layup than previous Babolat racquets but
16 contain no tungsten.
17
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19
20 **C. Babolat Advertisements and Statements**

21 1. Babolat Sponsored Players

22 a. *Advertising*

23
24 19. Babolat markets and advertises its racquets in all media, including the
25 internet at babolat.com and has done so for at least the last four years. This
26 website has, and at all relevant times had, a U.S version the customer can select,
27

1 which directs customers to Babolat “Dealers” throughout the U.S. The website
2 also has, and at all relevant times had a section where it promotes a roster of the
3 professional tennis players who endorse Babolat racquets. Viewers of the website,
4 over the past four years, can choose to view a player profile page for each Babolat-
5 sponsored player. The player profile for each such player lists the racquet that
6 player purportedly uses with a picture of the particular racquet at the bottom of the
7 page.
8
9

10 20. For example, on the babolat.com player profile page for Nadal, the
11 AeroPro Drive and/or AeroPro Drive GT racquet has been identified as his racquet
12 over the last four years. The bottom of Nadal’s profile page has displayed, over
13 the past four years, a picture of a black and yellow striped AeroPro Drive racquet
14 which looks like the racquet used by Nadal on the tour. At all times relevant
15 hereto, clicking on this picture has opened a page which markets the Babolat
16 AeroPro Drive line of racquets. Babolat at all relevant times falsely advertised, on
17 its website, that Nadal used the then-current version of the AeroPro Drive which
18 was available for sale to the public. The website currently reads as follows:
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23 **“Nadal’s racquet of choice.**

24 The Aeropro Drive 2013 is a great fit for a very wide array of players. This
25 new version will be equipped with the new Cortex Active Technology at the
26 top of the handle to provide an even better solid feel thanks to Cortex
27

1 material and a new handle construction. The Aero shaft is designed for
2 faster swing speeds. The result is more power and spin.” (Emphasis in bold
3 added.)
4

5 Similar representations on babolat.com were made with respect to Andy
6 Roddick and his use of the Pure Drive Roddick racquet, including, “ANDY
7 RODDICK’S OFFICIAL RACQUET.”
8

9 21. Plaintiffs, and the others Plaintiffs seek to represent, viewed, among
10 other Babolat advertisements, the Babolat website prior to purchasing their Babolat
11 racquets, and relied upon Babolat’s representations therein in deciding to purchase
12 their racquets. At the time Plaintiffs and the other putative class members viewed
13 Babolat’s website and other advertisements, similar representations were made
14 regarding Babolat-sponsored players’ purported use of the then-current Babolat
15 racquets.
16
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19 22. Plaintiffs were also led to believe that the Babolat racquets they
20 purchased were the ones used by the Babolat-sponsored professionals based on:

- 21 • Babolat sponsored marketing materials shown on authorized online
22 retailer <http://www.tennis-warehouse.com>;
- 23 • Tennis Channel television commercials showing Babolat-sponsored
24 players holding and playing with what looked to be the then-current
25 version of the racquets they endorse;
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- 1 • Plaintiffs’ viewing of live tennis matches, and highlights from tennis
2 matches, on the Tennis Channel, ESPN, and other networks, in which
3 Babolat-sponsored players appeared to be using the same racquet
4 made available to the public;
- 5 • Advertisements for Babolat racquets in Tennis Magazine, in which
6 Babolat-sponsored players were shown holding what appeared to be
7 the then current version of the Babolat racquet they endorse.
8

9
10 23. Babolat now and at all relevant times also markets, advertises and
11 sells its tennis racquets in the U.S through Babolat authorized dealers, such as
12 Westwood Sporting Goods, Tennis Warehouse, Tennis Express and Tennis
13 Experts. Each of these Babolat dealers has a significant web presence and sells
14 thousands of Babolat racquets each year over the internet to U.S. consumers.
15
16

17 24. Tennis Warehouse states, and all times relevant hereto has stated, on
18 its website that the Babolat AeroPro Drive (or the then-current model being
19 marketed by Babolat as Nadal’s racquet) is “Rafael Nadal’s racquet of choice.”
20 Tennis Warehouse states, and at all relevant times has stated, on its website the
21 Babolat Pure Drive Roddick GT Plus (or the then-current model being marketed by
22 Babolat as Roddick’s racquet) is “Andy Roddick’s signature racquet.” Babolat
23 knows that the racquets marketed and sold through these dealers have little in
24 common with the racquets players like Nadal and Roddick actually use in pro
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1 tournaments. The principal similarity between the racquets used by the sponsored
2 players and those sold to the public is their appearance, because the customized
3 racquets have deceptively been made to look like the racquets sold to the public.
4

5 25. Additionally, the advertising campaign for, at least the past four years,
6 contained misrepresentations regarding the sponsored players' racquets and how
7 the players purportedly use the "newest" or "improved" version of the racquet each
8 time a "technological advance" or other change is made, when in fact the players
9 rarely, if ever, change the version of the racquet they use. One of the internet ads
10 in question, which is similar to those in the prior years (updated to reflect the
11 "newest" version) and supports the existence of Babolat's long-term false and
12 misleading advertising campaign, currently states:
13
14

15
16 **Babolat AeroPro Drive 2013**

17 *New Rafael Nadal's racquet of choice*, the AeroPro Drive offers a
18 truly exceptional blend of maneuverability, stability and all-around
19 playability. Strung weight: 11.3 oz. Headsize: 100 sq. in. Standard
20 length. This racquet is available for pre-sale. Due in stock 12/12.
21

22 (Emphasis included.)
23

24 Other ads include the following:

25 **"The already impressive Pure Drive Roddick GT gets updated**
26 **with Cortex Active Technology..."** (Tennisexpress.com)
27

1 and

2 **“The all-new Babolat Pure Drive Roddick Plus has been updated**
3 **with Active Cortex technology. A new construction featuring a**
4 **Cortex Damping System interface highlights this year’s newest**
5 **Babolate models...”** (Tennisexpress.com).
6

7
8 26. Tennis Express also claimed and continues to claim on its website,
9 that the Babolat AeroPro Drive (GT) is “Rafael Nadal’s racquet of choice.”

10 27. Tennis Experts carried on Babolat’s false and misleading advertising
11 campaign for at least the last 4 years (updated to reflect the “newest” version).
12

13 Next to a yellow and black striped (2013) AeroPro Drive Babolat racquet, Tennis
14 Experts continues to falsely represent as follows:
15

16 **Babolat AeroPro Drive Plus GT 2013**

17 The **Babolat AeroPro Drive Plus GT** is the extended version of
18 **Rafael Nadal’s racquet of choice**. This is an exceptionally
19 aerodynamic racquet, allowing for tremendous swing speed, awesome
power and great access to spin. (Emphasis included.)

20 The advertisements were virtually the same in substance but updated to reflect the
21 “newest” version for at least the last four years, and reflect the existence of
22 Babolat’s long-term, ongoing false and misleading advertising campaign.
23

24 Representations regarding Roddick’s use of the Pure Drive Roddick racquet were
25 similarly featured.
26

27 28. Tennis Warehouse’s website provided and continues to provide a

1 reviews page, which is similar to those over the last 4 years and demonstrates the
2 existence of Babolat's long-term false and misleading advertising campaign. The
3 advertisements, which generally change to include recent accomplishments and the
4 most current version of the racquet and are accessed by clicking on the image of
5 Nadal stated:
6

7 The latest version of the AeroPro Drive, our most popular racquet,
8 swings a little faster than its predecessor. This makes it even more
9 dangerous in the hands of aggressive baseliners. The fast feel conjures
10 up images of Rafael Nadal who has played with this racquet through
11 multiple generations....
12
13

14 29. Plaintiffs allege on information and belief, and after substantial pre-
15 filing investigation, that these and other Babolat Dealers and retailers are simply
16 repeating marketing materials these racquet sellers received from Babolat, which
17 are false and misleading.
18
19

20 30. Plaintiffs relied on Babolat's false advertising campaign as detailed
21 above. Specifically, Plaintiffs relied on (a) Babolat-sponsored marketing materials
22 shown on Babolat's website and other authorized online retailer sites, including but
23 not limited to <http://www.tennis-warehouse.com>; (b) Babolat's television
24 commercials on the Tennis Channel showing Babolat-sponsored players holding
25 and playing with what appeared to be the then current versions of Babolat racquets;
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1 (c) Tennis Channel, ESPN and other networks showing live matches and/or
2 highlights with Babolat-sponsored players who were seen playing with what
3 appeared to be the identical racquets available to the public for sale, (d) Babolat's
4 advertisements in Tennis Magazine showing Babolat-sponsored players holding
5 and playing with the racquets which were available for sale to the public, (e) the
6 advertisements and images contained in Tennis Magazine, including but not
7 limited to the February 2010 issue; and (f) images from a variety of other sources
8 showing Babolat-sponsored players with what appeared to be the racquets sold to
9 consumers, all of which formed part of Babolat's pervasive and all-encompassing
10 advertising campaign pertaining to Babolat racquets. The representations, images
11 and/or warranties contained and displayed within the advertisements, television
12 broadcasts, magazine pictures and other identified sources led (a) Plaintiff Payam
13 Ahdoot to believe he was purchasing the same AeroPro racquet used by Nadal on
14 or about January 15, 2011, when he purchased the racquet (and strings) from
15 Westwood Sporting Goods (for \$204.98 plus tax of \$17.94) for a total of \$222.92,
16 (b) Plaintiff Brandon Clark to believe he was purchasing the same Pure Drive
17 Roddick racquet used by Andy Roddick when he purchased two Pure Drive
18 Roddick racquets (as a package with other items) directly from Babolat in April of
19 2012 for between \$250 and \$300, and (c) Plaintiff Brandon Clark to believe he was
20 purchasing the same AeroPro racquet used by Nadal when he purchased two
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1 AeroPro racquets directly from Babolat in May 2010 for \$254.

2
3 b. *Babolat Alters Its Players' Actual Racquets to Look Like*
4 *the Ones It Sells To the Public.*

5
6 31. Plaintiffs allege on information and belief, and after significant pre-
7 filing investigation, that the aforementioned false advertising is part of a policy and
8 practice by Babolat. Nadal does not use and has not used for at least the last 4
9 years the current version of the AeroPro Drive racquet and Roddick did not use for
10 at least the last 4 years the current version of the Pure Drive Roddick . They
11 instead used and Nadal continues to use customized racquets produced by Babolat
12 which are and were customized, altered, modified and/or painted over before
13 televised matches to look like the latest versions of the Babolat racquets.
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17 32. Plaintiffs allege on information and belief that Babolat does this
18 knowingly, or negligently at a minimum, and has been doing this for at least the
19 last 4 years, to deceive consumers into thinking they are purchasing the same
20 tennis racquets Nadal and others use on the professional tour. Babolat also
21 benefits by leading the public to believe that Babolat-sponsored players change
22 their racquets periodically, by using supposedly “new and improved” versions of
23 Babolat racquets with new technology; this is intended to coerce consumers into
24 thinking that they, too, would benefit by purchasing the latest version of the
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1 racquet supposedly being used by the Babolat-sponsored players. In fact, the
2 Babolat-sponsored players do not change their racquets with the frequency Babolat
3 leads the public to believe.
4

5 33. Plaintiffs allege that they and the proposed class have been damaged
6 by the aforementioned deceptive marketing practices and long-term advertising
7 campaign by Babolat by purchasing the “new” racquets believed to be used by
8 Babolat-sponsored players.
9

10 2. GT Technology/Tungsten
11

12 34. Commencing in 2009, Babolat began advertising on its website, the
13 internet, magazines and on television, through words and images, that its racquets
14 identified in Paragraph 14 above contain a graphite/tungsten hybrid material that
15 combined a carbon fiber sheet with tungsten filaments. The tungsten filaments
16 were represented by Babolat to be throughout the entire racquet with the
17 percentage of tungsten optimized at key sections of the frame to stabilize the
18 racquet for optimal control and feel. Babolat further represented that the tungsten
19 component in the GT Technology Racquets increased stability and provided 10%
20 more energy recovery for added power.
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24 35. Babolat labels these racquets with a sticker in the racquets’ heads that
25 read, “GT TECHNOLOGY Graphite/Tungsten.” Moreover the facecards attached
26 to the racquets state, “GT INNOVATIVE TECHNOLOGY COMBINES
27

1 CROSSED LAYERS OF GRAPHITE AND THIN THREADS OF TUNGSTEN
2 INTEGRATED INTO THE RACQUET’S LAYUP” or words to like effect.

3 36. On information and belief, Babolat authorized dealers, based upon
4 information obtained from Babolat and/or following advertising by Babolat, made
5 similar representations and continue to make representations regarding the
6 inclusion of tungsten in Babolat’s racquets referenced in Paragraph 14 above.
7

8 37. For example, Tennis Express’s website stated that “Babolat’s GT
9 (Graphite Tungsten) is a hybrid material, combining a braided carbon fiber cloth
10 with tungsten filaments throughout the entire racquet. The tungsten percentage is
11 optimized at key sections of the frame to stabilize the racquet for optimal control
12 and feel. The increased stability also provides a 10% more energy recovery for
13 added power.”
14

15 38. Tennis Warehouse’s website stated that GT Technology consists of
16 “Hybrid material, combing braided carbon fibers and tungsten filaments,
17 throughout the entire racquet. Improves racquet performance, based on the
18 concentration of Tungsten fibers at various strategic parts of the frame. Main
19 Benefit: Control and feel. Value-added aspects of GT technology: A greater
20 concentration of Tungsten in the core of the racquet. 10% additional energy
21 recovery for even more power.”
22

23 39. In reality, Babolat never included tungsten in any of its racquets.
24
25
26
27

1 Rather, GT Technology was a change in the orientation of the individual layers of
2 the carbon fiber sheets in the racquets, known as the “layup,” but the GT
3 Technology layup change did not include the addition of tungsten.
4

5 **D. Reliance by and Harm to the Class.**

6 40. Plaintiffs allege on information and belief that Babolat has engaged in
7 this unfair advertising conduct and long-term false and misleading advertising
8 campaign for at least the last 4 years.
9

10 41. U.S. consumers who purchased the racquets in question have
11 reasonably relied on the representations and misleading images with which
12 consumers are bombarded. These misleading statements and images have led the
13 consumers to be believe that the Babolat-sponsored players, such as Nadal, are in
14 fact using the models that Babolat leads the public to believe the players actually
15 use on tour and that the racquets they purchased identified in Paragraph 14 above
16 contain tungsten.
17
18
19

20 **PARTIES**

21 42. At all times relevant to this matter, plaintiffs Payam Ahdoot and
22 Brandon Clark resided in this district. During the class period, Plaintiffs were
23 exposed to and saw the advertisements and images described above. As a result of
24 Babolat’s deception of the public, Plaintiffs suffered injury in fact and lost money
25 by purchasing racquets they otherwise would not have purchased.
26
27

1 43. Babolat is a Colorado corporation headquartered in Louisville,
2 Colorado and does business in the State of California. Babolat has dealers that it
3 distributes to in Northern and Southern California, including but not limited to,
4 Westwood Sporting Goods, located at 1065 Gayley Avenue, Westwood, CA
5 90024; Merchant Of Tennis, located at 1118 S. La Cienega Blvd, Los Angeles, CA
6 90035; and Tennis Warehouse, located at 747 Buckley Road, San Luis Obispo, CA
7 93401. From its headquarters and throughout California, Babolat perpetuated its
8 false and deceptive advertising campaign at issue, and promotes, markets, and
9 distributes its racquets to hundreds of thousands of consumers throughout the
10 United States.

14 44. The true names and capacities, whether individual, corporate,
15 associate, or otherwise, of defendants sued herein as DOES 1 to 10, inclusive, are
16 currently unknown to Plaintiffs, who therefore sue Defendants by such fictitious
17 names. Plaintiffs are informed and believe, and based thereon allege, that each of
18 the defendants designated herein as a DOE is legally responsible in some manner
19 for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend
20 this Complaint to reflect the true names and capacities of the defendants designated
21 hereinafter as DOES when such identities become known.

25 45. At all times mentioned herein, each of said Defendants participated in
26 the doing of the acts alleged to have been done by the named Defendants; and
27

1 furthermore, the Defendants, and each of them, were the agents, servants, and
2 employees of each and every one of the other Defendants, as well as the agents of
3 all Defendants, and at all times mentioned herein, were acting within the course
4 and scope of said agency and employment.
5

6 46. At all times mentioned herein, Defendants, and each of them, were
7 members of, and engaged in, a joint venture, partnership and common enterprise,
8 and acting within the course and scope of, and in pursuance of said joint venture,
9 partnership and common enterprise.
10

11 47. At all times herein mentioned, the acts and omissions of various
12 Defendants, and each of them, occurred with and contributed to the various acts
13 and omissions of each and every one of the other Defendants in proximately
14 causing the complaints, injuries and damages alleged herein.
15
16

17 48. At all times mentioned herein, Defendants, and each of them,
18 approved of, condoned and/or otherwise ratified each and every one of the acts or
19 omissions complained of herein. At all times herein mentioned, Defendants, and
20 each of them, aided and abetted the acts and omissions of each and every one of
21 the other Defendants, thereby proximately causing the damages as alleged.
22
23

24 **CLASS DEFINITION AND ALLEGATIONS**

25 49. Plaintiffs bring this action on behalf of themselves and members of a
26 Class of similarly situated consumers defined as: All persons or entities in the
27

1 United States who purchased, from January 1, 2009 to the present, a Babolat tennis
2 racquet purportedly (but not actually) used by a Babolat-sponsored tennis
3 professional and/or advertised and labeled as containing tungsten.
4

5 50. *Numerosity.* The members of the Class are so numerous that their
6 individual joinder is impracticable. Plaintiffs are informed and believe, and on that
7 basis allege, that the proposed Class contains thousands of members.
8

9 51. *Existence and Predominance of Common Questions of Law and*
10 *Fact.* Common questions of law and fact exist as to all members of the Class and
11 predominate over any questions affecting only individual Class members. These
12 common legal and factual questions include, but are not limited to, the following:
13

- 14 (a) whether Defendants had adequate substantiation for their claims prior
15 to making them;
16
17 (b) whether the advertising and labeling claims made by Defendants are
18 true, or are false and/or misleading, or reasonably likely to deceive;
19
20 (c) whether Defendants' alleged conduct violates public policy;
21
22 (d) whether the alleged conduct constitutes violations of the laws
23 asserted;
24
25 (e) whether Defendants engaged in false or misleading advertising;
26
27 (f) whether Plaintiffs and Class Members have sustained monetary loss
and the proper measure of that loss;

1 (g) whether Plaintiffs and Class Members are entitled to an award of
2 punitive damages;

3 (h) whether Plaintiffs and Class Members are entitled to declaratory and
4 injunctive relief; and

5 (i) whether Plaintiffs and Class Members are entitled to restitution.
6

7
8 52. **Typicality.** Plaintiffs' claims are typical of the claims of the members
9 of the Class in that the Defendants were unjustly enriched as a result of Plaintiffs'
10 and the Class' respective purchases of the tennis racquets.

11
12 53. **Adequacy of Representation.** Plaintiffs will fairly and adequately
13 protect the interests of the members of the Class. Plaintiffs have retained counsel
14 experienced and highly successful in complex consumer class action litigation.
15 Plaintiffs have no adverse or antagonistic interests to those of the Class.
16

17 54. **Superiority.** A class action is superior to all other available means for
18 the fair and efficient adjudication of this controversy. The damages or other
19 financial detriment suffered by individual Class Members is relatively small
20 compared to the burden and expense that would be entailed by individual litigation
21 of their claims against the defendant. It would thus be virtually impossible for the
22 Class, on an individual basis, to obtain effective redress for the wrongs done to
23 them. Furthermore, even if Class Members could afford such individualized
24 litigation, the court system could not. Individualized litigation would create the
25
26
27

1 danger of inconsistent or contradictory judgments arising from the same set of
2 facts. Individualized litigation would also increase the delay and expense to all
3 parties and the court system from the issues raised by this action. By contrast, the
4 class action device provides the benefits of adjudication of these issues in a single
5 proceeding, economies of scale, and comprehensive supervision by a single court,
6 and presents no unusual management difficulties under the circumstances here.
7
8

9 55. Unless a Class is certified, Defendants will retain monies received as a
10 result of its conduct that was taken from Plaintiffs and Class members. Unless a
11 Class-wide injunction is issued, Defendants will continue to commit the violations
12 alleged, and the members of the Class and the general public will continue to be
13 misled.
14
15

16 **FIRST CLAIM FOR RELIEF**

17 **Violation of Business & Professions Code Section 17200, *et seq.***

18
19 56. Plaintiffs incorporate by reference and reallege each and every
20 allegation contained in paragraphs 1 through 55 above as though fully set forth
21 herein.
22

23 57. Plaintiffs bring this claim individually and on behalf of the Class.

24 58. The Unfair Competition Law, Business & Professions Code §17200,
25 *et seq.* (“UCL”), prohibits any “unlawful,” “fraudulent” or “unfair” business act or
26 practice and any false or misleading advertising. In the course of conducting
27

1 business, Defendants committed unlawful business practices by, *inter alia*, making
2 the representations (which also constitutes advertising within the meaning of
3 §17200) and omissions of material facts, as set forth more fully herein, and
4 violating Civil Code §§1572, 1573, 1709, 1710, 1711, 1770, Business &
5 Professions Code §§17200, et seq., 17500, et seq., California Health & Safety
6 Code §110390 et seq., 21 U.S.C. §301, et seq., and the common law.
7
8

9 59. As alleged herein, Defendants’ misrepresentations, mislabeling, and
10 omissions of material facts, constitute “unfair” business acts and practices within
11 the meaning of Business & Professions Code §§17200, et seq., in that Defendants’
12 conduct was injurious to consumers, offended public policy, and were unethical
13 and unscrupulous.
14

15 60. Plaintiffs also assert a violation of public policy by Defendants’
16 withholding of material facts from consumers. Defendants’ violation of
17 California’s consumer protection and unfair competition laws in California resulted
18 in harm to consumers including Plaintiffs and the Class.
19
20

21 61. Plaintiffs Payam Ahdoot and Brandon Clark have suffered injury in
22 fact and lost money as a result of Defendants’ conduct because they purchased
23 Defendant’s AeroPro tennis racquets and Pure Drive Roddick racquets,
24 respectively, believing them to be the same racquets used by Nadal and Roddick
25 and believing them to contain tungsten in reliance upon Defendants’ false
26
27

1 advertising claims and labeling, in the form of images and statements, contained in
2 magazines and other printed materials, on television, on the internet and on the
3 racquets themselves. The racquets that Plaintiffs purchased are not the same
4 racquet Nadal and Roddick played with nor do they contain tungsten despite
5 Defendants' claims.
6

7
8 62. Plaintiffs and the Class reserve the right to allege other violations of
9 law which constitute other unlawful business acts or practices.

10
11 63. The actions of Defendants constitute "unfair" business acts or
12 practices because, as alleged above, *inter alia*, Defendants engage in false
13 advertising, misrepresent and omit material facts regarding the tennis racquets
14 offered for sale to the public, and thereby offend an established public policy, and
15 engage in immoral, unethical, oppressive, and unscrupulous activities that are
16 substantially injurious to consumers.
17

18
19 64. As stated in this complaint, Plaintiffs allege violations of consumer
20 protection, unfair competition and truth in advertising laws, resulting in harm to
21 consumers. Defendants' acts and omissions also violate and offend the public
22 policy against engaging in false and misleading advertising, unfair competition and
23 deceptive conduct towards consumers. This conduct violates the unfair prong of
24 Business & Professions Code § 17200, et seq.
25

26
27 65. There were reasonably available alternatives to further Defendants'

1 legitimate business interests, other than the unlawful and fraudulent conduct
2 described herein.

3 66. Business & Professions Code §17200, et seq., also prohibits any
4
5 “fraudulent business act or practice” which is alleged herein.

6 67. Defendants’ actions, claims, nondisclosures, and misleading
7
8 statements, as alleged in this Complaint, were false, misleading and likely to
9
10 deceive the consuming public within the meaning of Business & Professions Code
11 §17200, et seq.

12 68. Plaintiffs and other members of the Class have in fact been deceived
13
14 as a result of their reliance on Defendants’ representations and omissions. This
15
16 reliance has caused harm to Plaintiffs and other members of the Class. Plaintiffs
17
18 and other Class members have suffered injury in fact and lost money as a result of
19 these unlawful, unfair, and fraudulent practices.

20 69. As a result of its deception, Defendants have been able to reap unjust
21
22 revenue and profit.

23 70. Unless restrained and enjoined, Defendants will continue to engage in
24
25 the above-described conduct. Accordingly, injunctive relief is appropriate.

26 71. Plaintiffs, on behalf of themselves, all others similarly situated, and
27
28 the general public, seek restitution and disgorgement of all money obtained from
29 Plaintiffs and the members of the Class collected as a result of unfair competition,

1 an injunction prohibiting Defendants from continuing such practices, corrective
2 advertising and all other relief this Court deems appropriate, consistent with
3 Business & Professions Code §17203.
4

5 **SECOND CLAIM FOR RELIEF**
6 **Violations of the Consumers Legal Remedies Act -**
7 **Civil Code §1750 *et seq.***

8 72. Plaintiffs incorporate by reference and reallege each and every
9 allegation contained in paragraphs 1 through 71 above as though fully set forth
10 herein.
11

12 73. Plaintiffs bring this claim individually and on behalf of the Class.

13 74. This cause of action is brought pursuant to the Consumers Legal
14 Remedies Act, California Civil Code §1750, *et seq.* (the “Act”). Plaintiffs and
15 members of the Class are consumers as defined by California Civil Code §1761(d).
16 Defendants’ tennis racquets described herein are goods within the meaning of
17 California Civil Code §1761(a).
18
19

20 75. Defendants, Babolat, and each of them, violated and continue to
21 violate the Act by engaging in the following practices proscribed by California
22 Civil Code §1770(a) in transactions with Plaintiffs and the Class which were
23 intended to result in, and did result in, the sale of the above-referenced tennis
24 racquets:
25
26

27 (a) The following unfair methods of competition and unfair or

1 deceptive acts or practices undertaken by any person in a transaction
2 intended to result or which results in the sale or lease of goods or
3 services to any consumer are unlawful:
4

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

6 * * *

7
8 (3) Misrepresenting the affiliation, connection, or association
9 with, or certification by, another.

10 * * *

11
12 (5) Representing that goods or services have sponsorship,
13 approval, characteristics, ingredients, uses, benefits, or quantities
14 which they do not have or that a person has a sponsorship, approval,
15 status, affiliation, or connection which he or she does not have.
16

17 * * *

18
19 (7) Representing that goods or services are of a particular
20 standard, quality, or grade, or that goods are of a particular style
21 or model, if they are of another.
22

23 * * *

24 (9) Advertising goods or services with intent not to sell them as
25 advertised.
26

27 76. Defendants, and each of them, violated the Act by representing and

1 advertising that their racquets offered for sale to the public, were the same as the
2 racquets used in professional competition by, *inter alia*, Nadal and Roddick and
3 that those racquets identified in Paragraph 14 above contained tungsten when
4 Defendants knew, or should have known, that the representations, labeling and
5 advertisements were unsubstantiated, untrue, false and misleading. Defendants,
6 and each of them, concealed the truth about the racquets sold to the public. By
7 doing so, Defendants, and each of them, encouraged consumers to purchase the
8 racquets because they believed they were the same as those used by the Babolat-
9 sponsored tennis pros and because they contained tungsten .
10
11
12

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

17 78. Pursuant to section 1782 of the Act, Plaintiffs notified Defendant in
18 writing of the particular violations of the Consumer Legal Remedies Action
19 (“CLRA”) set forth in §1770 related to the representations that Babolat-sponsored
20 players used the same racquets available to the public and demanded that
21 Defendant rectify the problems associated with those representations and give
22 notice to all affected consumers of its intent to so act. The CLRA letters were
23 mailed as directed by Civil Code §1782.
24
25
26

27 79. Defendants failed to rectify or agree to rectify the problems

1 associated with the actions detailed above related to the endorsement of Babolat-
2 sponsored players and give notice to all affected consumers within 30 days of the
3 date of written notice pursuant to §1782 of the Act. Therefore, Plaintiffs further
4 seek claims for actual, punitive and statutory damages, as appropriate.
5

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

13 81. Concurrent with the filing of the complaints in this action, Plaintiffs
14 filed an Affidavit of Venue in accordance with Civil Code section 1780(d).
15

16 **THIRD CLAIM FOR RELIEF**

17 **Breach of Express Warranty**

18 82. Plaintiffs incorporate by reference and reallege each and every
19 allegation contained in paragraphs 1 through 81 above as though fully set forth
20 herein.
21

22 83. Plaintiffs bring this claim individually and on behalf of the Class.
23

24 84. Plaintiffs, and each member of the Class, formed a contract with
25 Defendants at the time Plaintiffs and the other members of the Class purchased
26 Defendants' tennis racquets based on the representations and warranties made by
27

1 Defendants. These representation and warranties included representations that
2 Babolat-sponsored professionals, including but not limited to Nadal and Roddick,
3 used the same tennis racquet(s) offered for sale to the public, when in fact such
4 racquets were not available to the public and that the racquets identified in
5 Paragraph 14 above contained tungsten when they did not. The terms of that
6 contract included the promises and affirmations of fact made by Babolat in their
7 advertisements, labeling and through their long-term marketing campaign, as
8 described above. This advertising and labeling included express warranties, which
9 became part of the basis of the bargain, and was part of a standardized contract
10 between Plaintiffs and the members of the Class, on the one hand, and Defendants
11 on the other. Babolat, through its long-term marketing and advertising campaign
12 represented that those who purchased the Babolat endorsed racquets would be
13 purchasing the *same* racquet – *same* model, *same* materials, *same* stiffness, *same*
14 balance points and other characteristics- as used by Babolat sponsored players,
15 including Roddick and Nadal and that the racquets identified in Paragraph 14
16 above contained tungsten. In reliance on these claims and images, Plaintiffs
17 purchased their racquets as set forth above.
18
19
20
21
22
23

24 85. All conditions precedent to Defendants' liability under this contract
25 have been performed by Plaintiffs and the Class.
26

27 86. Defendants, and each of them, breached the terms of their contracts,
28

1 including the express warranties with Plaintiff and the Class by not providing its
2 consumers with the tennis racquets they believed they were purchasing, as
3 described above.

4
5 87. As a result of Defendants' breach, Plaintiffs and the Class have been
6 damaged in the amount of the purchase price of the tennis racquets they
7 purchased, and/or the difference between the value of the racquet as warranted
8 and the value of the racquet purchased.
9

10
11 **FOURTH CLAIM FOR RELIEF**

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

14 88. Plaintiffs incorporate by reference and re-allege each and every
15 allegation contained in paragraphs 1 through 87 above as though fully set forth
16 herein.
17

18 89. California *Business and Professions* Code section 17500 prohibits
19 "unfair, deceptive, untrue or misleading advertising."
20

21 90. Defendant violated California Business and Professions Code section
22 17500 by, *inter alia*, misleadingly advertising that Babolat-sponsored tennis
23 professionals, including but not limited to Nadal and Roddick, used the tennis
24 racquet(s) offered for sale to the public and that the racquets identified in
25 Paragraph 14 above contain tungsten, when, in fact, the Babolat-sponsored tennis
26
27

1 players' racquets were not available to the public and the racquets identified in
2 Paragraph 14 above do not contain tungsten; and concealing material information
3 about the tennis racquets available for sale to the public, specifically that such
4 racquets are not the same as those used by the Babolat-sponsored tennis
5 professionals, that the tennis professionals use customized racquets that are not
6 available for sale by Babolat to the public, that Babolat encourages, allows,
7 promotes, facilitates and/or actually performs the disguising of the tennis
8 professionals' racquets to appear as though they are the same as those available to
9 consumers for purchase, and that the racquets identified in Paragraph 14 above do
10 not contain tungsten.
11
12
13

14 91. Defendant's deceptive practices were specifically designed to induce
15 Plaintiffs and members of the Class to purchase the Babolat racquets over those of
16 its competitors. Defendant's deceptive practices were carried out in a long-term
17 advertising campaign in advertisements and promotions in print, on television, on
18 Defendant's website, in other broad-based media, and in its labeling of the racquets
19 in order to induce Plaintiffs and members of the Class to purchase Babolat tennis
20 racquets.
21
22
23

24 92. Plaintiffs and members of the Class would not have purchased the
25 tennis racquets had it not been for Defendant's misrepresentations and
26 concealment of material facts. Plaintiffs and members of the Class were denied the
27

1 benefit of the bargain when they decided to purchase these Babolat tennis racquets
2 over other racquets, which are often less expensive. Had Plaintiffs and members of
3 the Class been aware of Babolat's false and misleading advertising tactics, they
4 would not have purchased those tennis racquets, would have paid less than what
5 they paid for the racquets, or would not have purchased any Babolat racquets at all.
6

7
8 93. The content of the advertisements and labeling, as alleged herein,
9 were of a nature likely to deceive a reasonable consumer. Furthermore, because
10 Babolat engaged in a long-term advertising campaign, spanning over many years,
11 to which the consumers, including Plaintiffs, were exposed, Plaintiffs need not
12 present each and every advertisement upon which they relied. *In re Tobacco II*
13 *Cases* (2009) 46 Cal.4th 298, 328 (“where, as here, a plaintiff alleges exposure to a
14 long-term advertising campaign, the plaintiff is not required to plead with an
15 unrealistic degree of specificity that the plaintiff relied on particular advertisements
16 or statements.”)
17
18

19
20 94. Defendant knew, or in the exercise of reasonable care, should have
21 known, that the representations were untrue or misleading and likely to deceive
22 reasonable consumers.
23

24 95. Defendant's misrepresentations and omissions alleged herein are
25 objectively material to the reasonable consumer, and reliance upon such
26 misrepresentations and omissions also established causation between Defendant's
27

1 conduct and Plaintiffs' and the members of the Class' injuries.

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

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

10 **FIFTH CLAIM FOR RELIEF**

11 **FRAUD**

12
13 98. Plaintiffs incorporate by reference and reallege each and every
14 allegation contained in paragraphs 1 through 97 above as though fully set forth
15 herein.
16

17 99. Plaintiffs bring this cause of action on behalf of themselves and the
18 members of the Class.
19

20 100. Defendant represented and advertised its tennis racquets, as discussed
21 above, with false and materially misleading claims, including the claim that the
22 Babolat-sponsored tennis players, such as Nadal and Roddick, used the same
23 racquets available for sale to the public and that the racquets identified in
24 Paragraph 14 above contained tungsten. Babolat engaged in a long-term
25 advertising campaign, spanning over many years, and no less than 4 years, to
26
27

1 which the consumers, including Plaintiffs, were exposed. California law holds that
2 a plaintiff need not present each and every advertisement upon which he relied
3 when, as here, the defendant engages in a long-term advertising campaign. *In re*
4 *Tobacco II Cases* (2009) 46 Cal.4th 298, 328 (“where, as here, a plaintiff alleges
5 exposure to a long-term advertising campaign, the plaintiff is not required to plead
6 with an unrealistic degree of specificity that the plaintiff relied on particular
7 advertisements or statements.”) Notwithstanding this fact, Plaintiffs and the Class
8 Members relied on, among other things, (a) Babolat’s website, (b) Babolat-
9 sponsored marketing materials shown on authorized online retailer sites, including
10 but not limited to <http://www.tennis-warehouse.com>, (c) Babolat’s television
11 commercials on the Tennis Channel, (d) Tennis Channel, ESPN and other
12 networks showing live Nadal and Roddick matches and highlights from Nadal’s
13 and Rodick’s matches in which Nadal and Roddick were seen playing with what
14 appeared to be the identical AeroPro Drive and Pure Drive Roddick racquets
15 available to the public for sale, (e) Babolat’s advertisements in Tennis Magazine,
16 and (f) the labeling on the racquets and the racquet facecards, themselves.
17
18
19
20
21
22

23 101. The representations and warranties contained and displayed within the
24 advertisements and labels led Plaintiffs Ahdoot and Clark to believe they were
25 purchasing Nadal’s AeroPro racquet and Roddick’s Pure Drive Roddick racquets,
26 respectively, and that they were purchasing racquets with tungsten.
27

1 102. Defendant concealed the truth about its products that the racquets sold
2 are not the same as those used by the pros and that they do not contain tungsten.

3 103. Defendant knew these statements were false and misleading.
4
5 Defendant was aware of laws and regulations concerning the claims and marketing
6 of the racquets.

7 104. Whether or not the tennis professional uses a particular racquet and
8 whether the racquets contain tungsten are material features of the racquets,
9 themselves. Plaintiffs and other members of the Class would not have purchased
10 the racquets but for Defendant's false and misleading representations and
11 concealment of material facts.
12

13 105. Defendant made the misrepresentations and omissions stated with
14 knowledge of the effect of concealing these material facts. Defendant knew that
15 by misleading consumers, it would sell more racquets, which would result in
16 higher profits.
17
18

19 106. By misrepresenting and concealing material information about the
20 racquets, Defendant intended to induce and did induce Plaintiffs and members of
21 the Class into purchasing the racquets.
22

23 107. Plaintiffs and the members of the Class justifiably relied on the
24 representations made about the products.
25

26 108. Defendant's representations and omissions regarding the tennis
27

1 racquets were made with knowledge or with reckless disregard of the laws of
2 California prohibiting false and misleading statements.

3 109. Defendant:

- 4 a. made representations, as facts, which were not true and
5 Defendant did not believe to be true at the time made;
6
7 b. made assertions, as facts, which were not true and Defendant
8 had no reasonable grounds for believing to be true at the times
9 they were made; and/or
10
11 c. misled the public, through misleading images and in other
12 manners, to believe facts which Babolat knew were false;
13
14 d. suppressed facts, which it was bound to disclose, or give
15 information of other facts which were likely to mislead for want
16 of communications of the suppressed facts.
17

18 110. As a result of Defendant's wrongful conduct, Plaintiffs and members
19 of the Class have suffered and continue to suffer economic losses and other general
20 and specific damages, including but not limited to monies paid for the tennis
21 racquets, stringing the racquets, tennis accessories, and any interest that would
22 have been accrued on those monies, all in an amount to be determined according to
23 proof at time of trial.
24
25

26 111. The wrongful acts of Defendants were done maliciously, oppressively
27

1 and with the intent to defraud, and Plaintiffs and members of the Class are entitled
2 to punitive and exemplary damages in an amount to be ascertained according to
3 proof, which is appropriate to punish, deter, and set an example of Defendant.
4

5 112. Defendant acted with malice, oppression, or fraudulent intent.

6 113. As a direct and proximate result of Defendant's misrepresentations
7 and omissions, Plaintiffs and each member of the Class has been damaged in an
8 amount according to proof at trial.
9

10 **SIXTH CLAIM FOR RELIEF**

11 **NEGLIGENT MISREPRESENTATION**

12
13 114. Plaintiffs incorporate by reference and re-allege each and every
14 allegation contained in paragraphs 1 through 113 above as though fully set forth
15 herein.
16

17 115. Defendants, and each of them, directly or through their agents and
18 employees, made false representations, concealments, and nondisclosures to
19 Plaintiffs and members of the Class as described above. Defendants breached the
20 duties owed to Plaintiffs and its consumers with their long-term advertising
21 campaign spanning more than 4 years, which contained false and misleading
22 statements designed to deceive consumers about the racquets it sells. The long-
23 term and pervasive advertising campaign also deceives the public without the use
24 of any "statements" at all. As set forth above, consumers are led to believe, simply
25
26
27

1 by viewing players sponsored by Babolat (and their racquets) in matches, and/or by
2 viewing images of these players and their racquets in magazines, other
3 publications, the internet and television, that the players are using the same
4 racquets which are available for sale to the public, when in fact, they are not. In
5 fact, the racquets used by the players sponsored by Babolat are painted and
6 otherwise altered to make them *appear* to be the same ones available for sale to the
7 public, but are significantly different than such racquets.
8
9

10 116. In making the representations of fact to Plaintiffs and members of the
11 Class described herein, Defendants and each of them, have, at a minimum,
12 *negligently* failed to fulfill its duties to disclose the material facts pertaining to the
13 racquets in question. The direct and proximate cause of said failure to disclose was
14 the negligence and carelessness of Defendant.
15
16

17 118. In making the representations and omissions, and in doing the acts
18 alleged above, Defendants and each of them, acted without any reasonable grounds
19 for believing the representations were true, and either (a) intended by said
20 representations to induce the reliance of Plaintiffs and members of the Class, or (b)
21 acted in reckless disregard of the possibility that Plaintiffs and the members of the
22 class would rely on the representations in question.
23
24

25 119. Plaintiffs and members of the Class relied on these false
26 representations, concealments and nondisclosures by Defendant when purchasing
27

1 the products at issue herein, which reliance was justified.

2 120. As a result of Defendant's wrongful conduct, Plaintiffs and members
3 of the Class have suffered and continue to suffer economic losses and other general
4 and specific damages, including but not limited to the amounts paid for the
5 racquets, the costs of stringing the racquet, purchasing accessories such as grips
6 and vibration dampeners, any interest that would have been accrued on those
7 monies, and other damages, all in an amount to be determined according to proof
8 at time of trial.
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11 **PRAYER FOR RELIEF**

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13 Wherefore, Plaintiffs, on behalf of themselves and the Class, pray for a
14 judgment:
15

16 1. Certifying the Class as requested herein, and appointing Plaintiffs as
17 Class Representatives, and Plaintiffs' counsel as Class Counsel;

18 2. Awarding Plaintiffs and the proposed Class Members all due
19 damages, including actual economic damages and general and specific damages;
20

21 3. Awarding restitution and disgorgement of Defendants' revenues to
22 Plaintiffs and the proposed Class Members;
23

24 4. Awarding declaratory and injunctive relief as permitted by law or
25 equity, including: enjoining Defendants from continuing the unlawful practices as
26 set forth herein, and directing Defendants to identify, with Court supervision,
27

1 victims of its conduct and pay them restitution and disgorgement of all monies
2 acquired by Defendants by means of any act or practice declared by this Court to
3 be wrongful;

4
5 5. Ordering Defendants to engage in a corrective advertising campaign;

6 6. Awarding attorneys' fees and costs to Plaintiffs' counsel;

7 7. Awarding punitive damages as against Defendants;

8 8. Awarding damages, fines and penalties against Defendants as
9 permitted by law; and
10

11 9. Providing such further relief as may be just and proper.
12

13
14 **JURY DEMAND**

15 Plaintiffs demand a trial by jury on all issues so triable.
16

17
18 Date: _____, 2014

HAMNER LAW OFFICES, APC

19
20 _____
21 Christopher J. Hamner
22 Amy T. Wootton
23 Attorneys for Plaintiffs PAYAM AHDOOT
24 and BRANDON CLARK on behalf of
25 themselves and all others similarly situated
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