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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DAVID MACHLAN, an individual, on
behalf of himself, the general public, and
those similarly situated,

Plaintiff,

v.

PROCTER & GAMBLE COMPANY;
NEHEMIAH MANUFACTURING
COMPANY; AND DOES 1 THROUGH 50,

Defendants.

Civil Case No.: 3:14-cv-01982

**DEFENDANTS' JOINT NOTICE
OF REMOVAL OF CIVIL
ACTION FROM STATE COURT**

Defendants The Procter & Gamble Company (“P&G”) and Nehemiah Manufacturing Company (“Nehemiah”) hereby jointly notice removal of this civil action from the Superior Court of the State of California, County of San Francisco, to the United States District Court for the Northern District of California, San Francisco Division. This Court has jurisdiction under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d).

In further support of this Notice of Removal, Defendants state as follows:

I. PROCEDURAL HISTORY

1. On March 21, 2014, plaintiff David Machlan filed this action in the Superior Court of the State of California, County of San Francisco. A true and correct copy of the Class Action Complaint (“CAC”) is attached hereto as **Exhibit A**.

2. Plaintiff served the CAC on P&G by delivering a copy of the CAC, a Summons, a Notice to Plaintiff, information regarding the Bar Association of San Francisco’s Early Settlement Program, and an Alternative Dispute Resolution Program Information Package to P&G’s registered agent for service of process on April 1, 2014. A true and correct copy of the Summons served on P&G is attached hereto as **Exhibit B**. A true and correct copy of the Notice to Plaintiff served on P&G is attached hereto as **Exhibit C**. A true and correct copy of information regarding The Bar Association of San Francisco’s Early Settlement Program served on P&G is attached hereto as **Exhibit D**. A true and correct copy of the Alternative Dispute Resolution Program Information Package served on P&G is attached hereto as **Exhibit E**.

3. Plaintiff asserts that the CAC and a summons were delivered on April 1, 2014, to the registered agent listed for Nehemiah on the Ohio Secretary of State’s website. Declaration of Donald J. Mooney Jr. ¶ 3. Plaintiff’s counsel subsequently provided a courtesy copy of the summons to Nehemiah’s counsel. *Id.* ¶ 4. A true and correct copy of the Summons served on Nehemiah is attached hereto as **Exhibit F**.

4. Exhibits A-F constitute all of the process, pleadings, and orders served on Defendants in this case, and are attached hereto pursuant to 28 U.S.C. § 1446(a).

5. The CAC concerns Defendants’ sale and marketing of “flushable” personal hygiene moistened wipes. Ex. A, ¶ 1. The CAC identifies two specific products that are at

1 issue. Plaintiff alleges that P&G manufactures and markets the first product, Charmin
 2 Freshmates Flushable Wipes (“Freshmates”). *Id.* ¶¶ 19-20. The CAC further alleges that P&G
 3 and Nehemiah “share[] responsibility” for manufacturing and/or marketing of the second
 4 product, Pampers Kandoo Flushable Wipes (“Kandoo Wipes”), pursuant to a license. *Id.* ¶¶ 18-
 5 19, 21. Plaintiff asserts that Defendants’ marketing and advertisement of these two products as
 6 “flushable” is deceptive and misleading, as the wipes are allegedly “not suitable for disposal by
 7 flushing down a toilet,” do not “disperse, disintegrate, or biodegrade like toilet paper,” and “are
 8 not regarded by municipal sewage systems as appropriate to flush down a toilet.” *Id.* ¶ 1.
 9 Plaintiff asserts that Defendants’ conduct has injured consumers who purchased the products,
 10 and also caused “significant harm” to municipal wastewater treatment systems. *Id.* On behalf
 11 of a putative class of consumers who purchased Freshmates or Kandoo Wipes in California
 12 during the past four years, plaintiff asserts claims under California’s Consumers Legal
 13 Remedies Act (“CLRA”), California’s False Advertising Law (“FAL”), and California’s Unfair
 14 Competition Law (“UCL”); and for common law fraud, deceit, and/or misrepresentation. *See*
 15 *id.* ¶¶ 78, 87-129. Plaintiff seeks a variety of remedies, including restitution, damages, and
 16 injunctive relief. *See id.* at p. 30-31.

17 **II. PARTIES**

18 6. Named plaintiff David Machlan is a resident of San Francisco, California.
 19 *Id.* ¶ 2.

20 7. Defendant P&G is a corporation incorporated under the laws of Ohio.
 21 Declaration of Emily Johnson Henn ¶ 2. It has its principal place of business in Cincinnati,
 22 Ohio. Ex. A, ¶ 3.

23 8. Defendant Nehemiah is a corporation incorporated under the laws of Ohio.
 24 Mooney Decl. ¶ 2.¹ It has its principal place of business in Cincinnati, Ohio. Ex. A, ¶ 4.

25 _____
 26 ¹ The CAC incorrectly asserts that both P&G and Nehemiah are incorporated under the
 27 laws of Delaware. Ex. A, ¶¶ 3-4. This error does not affect the analysis that follows, as P&G
 28 and Nehemiah are still diverse from Machlan and the class of California consumers he seeks to
 represent.

9. The Complaint also names as defendants Does 1-50, but does not allege the residency or citizenship of these defendants. *Id.* ¶ 5.

III. TIMELINESS OF REMOVAL

10. P&G's registered agent received the summons served in this action on April 1, 2014.

11. Plaintiff asserts that a summons was delivered on April 1, 2014 to the registered agent listed for Nehemiah on the Ohio Secretary of State's website. Mooney Decl. ¶ 3. Plaintiff's counsel subsequently provided a courtesy copy of the summons to Nehemiah's counsel. *Id.* ¶ 4.

12. This notice of removal is therefore timely pursuant to 28 U.S.C. § 1446(b) and Rule 6(a) of the Federal Rules of Civil Procedure. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) (time for removal runs from receipt of formal service of process, including a summons).

IV. BASIS FOR REMOVAL JURISDICTION

A. Jurisdiction

13. The claims asserted by plaintiff give rise to jurisdiction under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d). Defendants also invoke all other grounds for removal that exist under applicable law.

14. This Court has jurisdiction over this action under CAFA, 28 U.S.C. § 1332(d), because this case is (1) a proposed class action within the meaning of CAFA, in which (2) "any member of a class of plaintiffs is a citizen of a State different from any defendant," (3) the "number of members of all proposed plaintiff classes in the aggregate is [not] less than 100," and (4) "the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs." *See* 28 U.S.C. § 1332(d)(2), (d)(5)(B).

B. CAFA's "class action" requirement is satisfied.

15. CAFA defines a "class action" to include "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute . . . authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). This

case qualifies as a class action removable under Section 1332(d)(1)(B). Plaintiff's CAC, which is styled as a "Class Action Complaint," states that he "brings this action against Defendants on behalf of himself and all other similarly situated, as a class action pursuant to section 382 of the California Code of Civil Procedure and section 1781 of the California Civil Code." Ex. A, ¶ 78.

16. Specifically, plaintiff seeks to represent all persons who, between March 21, 2010 and the present, "purchased, in California, any of the following products: Charmin Freshmates Flushable Wipes [] and Pampers Kandoo Flushable Wipes []." *Id.*²

C. CAFA's minimal diversity requirement is satisfied.

17. CAFA's minimal diversity requirement is satisfied when "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A). This requirement is satisfied here because (a) plaintiff is a resident of California and seeks to represent a class of California consumers, and (b) neither of the defendants is a citizen of California. Defendants are not incorporated in California and do not have their main offices or principal places of business here. *See* Henn Decl. ¶ 2; Mooney Decl. ¶ 2; Ex. A, ¶¶ 3-4. Because the defendants are diverse from the California consumers whom plaintiff seeks to represent, CAFA's minimal diversity requirement is satisfied.

D. CAFA's amount-in-controversy requirement is satisfied.

18. CAFA jurisdiction requires that "the matter in controversy [must] exceed[] the sum or value of \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(2). "In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy" meets the \$5,000,000 threshold. *Id.* § 1332(d)(6).

19. Plaintiff seeks damages for each class member that "includ[e], without limitation, the amount they paid" for Freshmates and/or Kandoo Wipes during the past four

² The class definition in the CAC states a starting date of March 21, "2014," for the class period. However, the reference to 2014 was an obvious typographical error, and on April 16, 2014, counsel for P&G contacted plaintiff's counsel to confirm this. Henn Decl. ¶ 3. Plaintiff's counsel confirmed that the reference to "2014" was indeed a typographical error and that plaintiff's proposed class period actually begins on March 21, 2010. *Id.* ¶ 4.

years. Ex. A, ¶¶ 116, 128.³ Plaintiff also seeks for class members “full restitution of monies ... to restore any and all monies acquired by Defendants from Plaintiff, the general public, or those similarly situated...” *Id.* ¶¶ 103, 124.

20. P&G has conducted an analysis of major retailers’ sales of Freshmates to consumers in certain metropolitan markets of California. *See generally* Declaration of Kevin Luttenegger In Support of Defendants’ Joint Notice of Removal of Civil Action From State Court. That analysis shows that just the major retailers in just the Los Angeles, San Francisco, Sacramento, and San Diego markets made sales of Freshmates well in excess of \$5 million to consumers during the past four years. *See id.* ¶¶ 8-9 & Ex. A. This total excludes additional sales of Freshmates by other retailers in those four markets, as well as sales of Freshmates in the rest of California. *See id.* ¶ 10. It also does not account for any of the sales of Kandoo Wipes to consumers in California.

21. If the putative class is awarded the damages and restitution sought in the CAC, the analysis described above demonstrates that the amount awarded would be well in excess of \$5 million.

22. In addition, the CAC seeks attorneys’ fees. *See* Ex. A, at p. 30-31. Such fees are included in any amount-in-controversy analysis. *See Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007).

23. For the reasons set forth above, the relief sought in the CAC places more than \$5,000,000 in controversy, exclusive of interest and costs. Thus, CAFA’s amount-in-controversy requirement is satisfied.

E. CAFA’s numerosity requirement is satisfied.

24. This is not an action in which the “number of members of all proposed plaintiff classes in the aggregate is less than 100.” 28 U.S.C. § 1332(d)(5)(B). Plaintiff brings

³ As noted above, plaintiff’s counsel has confirmed that, notwithstanding a typographical error in the CAC, plaintiff’s proposed class period begins approximately four years ago. *See supra* note 2.

1 this action on behalf of all consumers who purchased Freshmates or Kandoo Wipes in
 2 California over the past four years. Ex. A, ¶ 78. Plaintiff alleges that the size of the class is
 3 “composed of more than 100 persons.” *Id.* ¶ 80. As such, the size of the putative class in this
 4 case exceeds the numerosity requirements imposed by 28 U.S.C. § 1332(d)(5)(B).

5 **F. All of CAFA’s requirements are satisfied.**

6 25. None of the exclusions to CAFA jurisdiction set forth in 28 U.S.C.
 7 § 1332(d)(4) apply here, as neither of the defendants are citizens of California.

8 26. For the foregoing reasons, this Court has original jurisdiction over this
 9 action pursuant to 28 U.S.C. § 1332(d), and this action is removable pursuant to 28 U.S.C.
 10 §§ 1441, 1453.

11 27. The recitation of the allegations and requests for relief above is not a
 12 concession that plaintiff’s allegations or legal theories have merit. Defendants reserve the right
 13 to assert all applicable defenses in this matter and deny that plaintiffs are in fact entitled to any
 14 relief.

15 **V. REMOVAL TO THE NORTHERN DISTRICT OF CALIFORNIA, SAN**
 16 **FRANCISCO DIVISION, IS PROPER**

17 28. Removal to the Northern District of California is proper because it is the
 18 district within which the state action is pending. *See* 28 U.S.C. § 1446(a).

19 **A. Intradistrict Assignment**

20 29. Removal to the San Francisco Division of the Northern District of California
 21 is proper because it is the division within which the state action is pending. *See id.*

22 **VI. NOTICE TO STATE COURT AND PLAINTIFF**

23 30. Counsel for P&G and Nehemiah certify that, pursuant to 28 U.S.C.
 24 § 1446(d), copies of this Notice of Removal will be filed with the Clerk of the Superior Court of
 25 the State of California, County of San Francisco, and served upon counsel for plaintiff promptly.
 26
 27
 28

1 WHEREFORE, the case now pending in the Superior Court of the State of
2 California, County of San Francisco, No. CGC 14-538168, is hereby removed to the United
3 States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1441,
4 1453.

5
6 DATED: April 29, 2014

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26 *Attorneys for Defendant*
27 Nehemiah Manufacturing Company

ATTESTATION

I, Emily Johnson Henn, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: April 29, 2014

By: /s/ Emily Johnson Henn
Emily Johnson Henn

EXHIBIT A

**DEFENDANTS' JOINT NOTICE OF REMOVAL
OF CIVIL ACTION FROM STATE COURT**

FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2014 MAR 21 PM 2: 35

CLERK OF THE COURT

BY: _____
DEPUTY CLERK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DAVID MACHLAN, an individual, on behalf of
himself, the general public and those similarly situated

Plaintiff,

v.

PROCTER & GAMBLE COMPANY; NEHEMIAH
MANUFACTURING COMPANY; AND DOES 1
THROUGH 50

Defendants

CASE NO.

UNLIMITED CIVIL CASE

CLASS ACTION COMPLAINT
FOR VIOLATION OF THE
CALIFORNIA CONSUMERS
LEGAL REMEDIES ACT;
FALSE ADVERTISING;
FRAUD, DECEIT, AND/OR
MISREPRESENTATION; AND
UNFAIR BUSINESS
PRACTICES

JURY TRIAL DEMANDED

CGC 14-538168

FILE VIA FAX

1 David Machlan, by and through his counsel, brings this Class Action Complaint against
2 Defendants Procter & Gamble Company and Nehemiah Manufacturing Company on behalf of
3 himself and those similarly situated, for violations of the Consumer Legal Remedies Act, false
4 advertising, unfair trade practices, and fraud, deceit and/or misrepresentation. The following
5 allegations are based upon information and belief, including the investigation of Plaintiff's
6 counsel, unless stated otherwise.

7 **INTRODUCTION**

8 1. Defendants deceptively market several lines of personal hygiene moistened wipes
9 ("wipes") as "flushable." They charge a premium for these wipes, as compared to both toilet
10 paper and to wipes that are not marketed as "flushable." In fact, the allegedly "flushable" wipes
11 are not suitable for disposal by flushing down a toilet as they routinely damage or clog pipes,
12 septic systems, and sewage pumps; they do not disperse, disintegrate, or biodegrade like toilet
13 paper; and they are not regarded by municipal sewage systems as appropriate to flush down a
14 toilet. Defendants do not disclose any of these facts. Thus, Defendants mislead consumers into
15 believing that the products are suitable for disposal by flushing down a toilet and into paying a
16 premium price for the products that they would not otherwise pay. Defendants' actions also
17 cause significant harm to municipal wastewater treatment systems. Defendants obtained
18 substantial profits from these deceptive sales. This action seeks to require Defendants to pay
19 restitution and damages to purchasers of the wipes, to remove the word "flushable" from their
20 packaging and marketing, and to affirmatively inform purchasers that the wipes are not suitable
21 for flushing down a toilet.

22 **PARTIES**

23 2. David Machlan ("Plaintiff") is, and at all times alleged in this Class Action
24 Complaint was, an individual and a resident of San Francisco, California.

25 3. Defendant Procter & Gamble Company ("P&G") is a corporation incorporated
26 under the laws of the Delaware, having principal places of business in Cincinnati, Ohio.

27 4. Defendant Nehemiah Manufacturing Company ("Nehemiah") is a corporation
28 incorporated under the laws of the Delaware, having principal places of business in Cincinnati,

1 Ohio.

2 5. The true names and capacities of Defendants sued as Does 1 through 50 inclusive
3 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names pursuant to
4 section 474 of the California Code of Civil Procedure. Plaintiff will seek leave of Court to amend
5 this Class Action Complaint when said true names and capacities have been ascertained.

6 6. The Parties identified in paragraphs 3-4 of this Class Action Complaint are
7 collectively referred to hereafter as "Defendants."

8 7. At all times herein mentioned, each of the Defendants was the agent, servant,
9 representative, officer, director, partner or employee of the other Defendants and, in doing the
10 things herein alleged, was acting within the scope and course of his/her/its authority as such
11 agent, servant, representative, officer, director, partner or employee, and with the permission and
12 consent of each Defendant.

13 8. At all times herein mentioned, Defendants, and each of them, were members of,
14 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
15 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16 9. At all times herein mentioned, the acts and omissions of Defendants, and each of
17 them, concurred and contributed to the various acts and omissions of each and all of the other
18 Defendants in proximately causing the injuries and damages as herein alleged.

19 10. At all times herein mentioned, Defendants, and each of them, ratified each and
20 every act or omission complained of herein. At all times herein mentioned, the Defendants, and
21 each of them, aided and abetted the acts and omissions of each and all of the other Defendants in
22 proximately causing the damages, and other injuries, as herein alleged.

23 **JURISDICTION AND VENUE**

24 11. This action is brought by Plaintiff pursuant, *inter alia*, to the California Business
25 and Professions Code, section 17200, *et seq.* Plaintiff and Defendants are "persons" within the
26 meaning of the California Business and Professions Code, section 17201.

27 12. The injuries, damages and/or harm upon which this action is based, occurred or
28 arose out of activities engaged in by Defendants within, affecting, and emanating from, the State

1 of California.

2 13. Defendants have engaged, and continue to engage, in substantial and continuous
3 business practices in the State of California, including in San Francisco County.

4 14. In accordance with California Civil Code Section 1780(d), Plaintiff concurrently
5 files herewith a declaration establishing that, in 2014, he purchased at least one P&G product in
6 San Francisco. (Plaintiff's declaration is attached hereto as Exhibit A.)

7 15. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

8 **SUBSTANTIVE ALLEGATIONS**

9 **(1) Defendants Market and Sell "Flushable" Wipes**

10 16. P&G is a manufacturer and marketer of consumer product goods, including a
11 variety of paper products, such as toilet paper, paper towels, feminine hygiene products, diapers,
12 and baby wipes. Its products are widely available for purchase in supermarkets, drug stores, and
13 other retailers. Among its brands of paper products are Charmin, Pampers, Bounty, and
14 Tampax.

15 17. P&G runs a program called "Connect + Develop," in which it partners with
16 smaller manufacturers, licensing to them smaller product lines for them to develop in conjunction
17 with P&G. In addition to licensing the product, P&G provides Connect + Develop participants
18 with its research and development and marketing expertise to help bring new products to market
19 faster.

20 18. Nehemiah is a participant in P&G's Connect + Develop program. It is a licensee
21 of several P&G's products, including the a line of paper products for toddlers known as Pampers
22 Kandoo.

23 19. Among P&G's products are a variety of pre-moistened cloths, known as wet
24 wipes, wipes, or moist towelettes, that can be used for personal hygiene, child care needs, pet
25 care, or cleaning. The two pre-moistened cloth products at issue in this case are:

26 a. Charmin Freshmates® Flushable Wipes ("Charmin Wipes")

27 b. Pampers® Kandoo® Flushable Wipes ("Pampers Wipes")

28 In this complaint, these products will be collectively referred to as the "Flushable Wipes."

1 20. P&G manufactures and markets the Charmin Wipes.

2 21. While P&G invented the Pampers Wipes, and invested in the initial research and
3 development and marketing of those wipes, since 2009, P&G had shared responsibility with
4 Nehemiah for the manufacturing and/or marketing of the product. For example, P&G owns the
5 websites www.kandookids.com and www.pampers.com, on both of which it markets the Pampers
6 Wipes.

7 22. Through the use of intentional misrepresentations and selective omissions,
8 Defendants deceptively mislead consumers to believe that these products are in fact flushable.
9 None of the products are safe and appropriate for flushing down a toilet, as the “Flushable Wipes”
10 do not disintegrate or disperse quickly like toilet paper. Rather, even under optimal, lab-simulated
11 conditions, the Flushable Wipes take hours to begin to break down.

12 23. Specifically, as a result of the slow dispersement process, the Flushable Wipes,
13 when subjected to ordinary, consumer use, routinely (1) clog pipes; (2) do not properly break
14 down properly in septic tanks and cause damage septic pumps; and (3) cause blockages and
15 damage to municipal sewage lines and pumps, often due to proclivity of the Flushable Wipes to
16 tangle with each other, tree branches, rocks, and other non-flushable items, and form large masses
17 or ropes.

18 **(1)(a) All of Defendants’ Flushable Wipes Are Deceptively Advertised As “Flushable”**

19 24. All of the Flushable Wipes packages state that the product is “flushable” but the
20 Flushable Wipes are not, in fact, suitable for flushing down a toilet.

21 25. As defined by Webster’s Dictionary, “Flushable” means “suitable for disposal by
22 flushing down a toilet.”

23 26. Many objects and materials theoretically will pass from the toilet to the pipes after
24 one flushes, such as food scraps, jewelry, small toys, or cotton swabs, but that does not make such
25 objects or materials “flushable.” Rather, the word “flushable” means in reasonable usage not just
26 that the object or material will pass from the toilet to the pipes, but that the object or material is
27 *appropriate or suitable* to flush down a toilet for purposes of passing into the sewer or septic
28 system. For example, the Merriam-Webster dictionary gives the following as the sole definition

1 of “flushable: *suitable* for disposal by flushing down a toilet.” See [http://www.merriam-](http://www.merriam-webster.com/dictionary/flushable)
 2 [webster.com/dictionary/flushable](http://www.merriam-webster.com/dictionary/flushable), last visited Feb. 27, 2014 (emphasis added).

3 27. The Water Environment Federation (WEF), a nonprofit association of water
 4 quality professionals, has explained how Defendants are misusing the word “flushable”:

5 The industry reference for dispersability is two-ply toilet paper ... [which] starts
 6 to break apart when the toilet is flushed and is indistinguishable in the wastewater
 7 system in a matter of seconds...Anything labeled as flushable should start to
 break apart during the flush and completely disperse within 5 minutes... Our
 mantra is, ‘It’s not flushable if it’s not dispersible’ . . .

8 See <http://news.wef.org/stop-dont-flush-that/> (last accessed February 26, 2014) (internal
 9 quotations omitted). WEF further reports that consumers flush nondispersible wipes because they
 10 are “mislabeled” as “flushable,” when they do not disperse like toilet paper. *Id.*

11 28. Municipal water facilities and water protection organizations, and related
 12 associations are in agreement with WEF that the only product other than human excrement
 13 suitable for disposal down a toilet is toilet paper. For example, the California Association of
 14 Sanitation Agencies has stated:

15 Many personal hygiene wipes and cleaning products are marketed as being
 16 “flushable.” But despite the confusing and misleading labels you should never
 17 flush “flushable” or “disposable” products. No matter what a label says, the only
 18 items you should flush are human waste and toilet paper. Just because something
 19 disappears down your toilet doesn’t mean it won’t cause a problem in your sewer
 pipe—or further down the line at wastewater treatment facilities. Items labeled as
 “flushable” or “disposable” (even “bio-degradable” ones) can get caught on roots
 in sewer pipes and contribute to blockages, back-ups, and overflows.

20 Dispose of them in the trash, not the toilet!

21 See <http://www.casaweb.org/flushable-wipes> (last accessed February 24, 2014).

22 29. San Francisco Public Utilities Commission officials have stated that with the
 23 exception of toilet paper and human waste, “Everything else should go in the trash” and should
 24 not be flushed. See [http://www.sfoxaminer.com/sanfrancisco/flushable-wipes-cause-problematic-](http://www.sfoxaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-sewage-plants/Content?oid=2514283)
 25 [backups-at-local-sewage-plants/Content?oid=2514283](http://www.sfoxaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-sewage-plants/Content?oid=2514283) (last accessed February 24, 2014).

26 30. The East Bay Municipal Utility District states:

27 **Non-Flushable Wipes and Products**

28 *No matter if the label says "disposable" or "flushable," cleaning and personal*

hygiene products should never be flushed.

“Disposable” or “flushable” wipes and other products don't breakdown in the sewer. Instead, they get tangled and clumped in hair and debris creating massive obstructions in the sewers. **Remember... your toilet is not a trash can!**

See <https://www.ebmud.com/water-and-wastewater/pollution-prevention/residential-pollution-prevention> (last accessed February 26, 2014).

31. The City of Carlsbad Wastewater Superintendent Don Wasko has stated:

They may be called flushable, but they can do severe damage to our sewer system . . . These cloth wipes don't break down in the sewer system the same way that toilet paper does.

See <http://news.carlsbadca.gov/news/flushable-wipes-and-other-things-you-should-not-flush> (last accessed February 24, 2014).

32. Wastewater treatment utilities outside of California have issued similar statemetns. For example, in Contra Costa, Colorado, the Central Contra Costa Sanitary District has said that the wipes are not flushable, and rather, “The reason they’re a problem is that they don’t break down as quickly as toilet paper and that’s really the standard for flush-ability, as far as we’re concerned.” See <http://sanfrancisco.cbslocal.com/2013/07/17/cleaning-wipes-used-in-homes-and-offices-clogging-bay-area-sewer-pipes/> (last accessed February 24, 2014).

33. Similarly, Pima County, Arizona, issued a release that stated that, “Unfortunately, disposable wipes are rarely, if ever, biodegradable in the sanitary sewer system. They just aren’t in there long enough to break down.” See http://www.insidetucsonbusiness.com/blogs/save-yourself-stop-flushing-flushable-wipes/article_e4db48de-312f-11e3-843e-001a4bcf887a.html (last accessed February 24, 2014).

34. Despite the fact that wastewater treatment professionals and municipalities are in broad agreement that Defendants’ Flushable Wipes are not suitable for flushing down a toilet because it does not disperse like toilet paper and causes damage to pipes, septic tanks, and sewage systems, Defendants market and advertise the Flushable Wipes in a way that is inconsistent with this accepted definition of “flushable.”

35. For example, on the front of the Charmin Wipes package, P&G advertises the product as “flushable wipes.”



On the back of the package, P&G falsely represents that the wipes are “Septic Safe,” “flushable,” and “Safe for sewer and septic systems.” Nowhere on the package does P&G disclose that the wipes are not suitable for disposal by flushing down a toilet, and rather, are not regarded as flushable by municipal sewage systems as the Flushable Wipes routinely damage or clog pipes, septic systems, and sewage pumps and do not disperse, disintegrate, or biodegrade like toilet paper.

36. On the Charmin website, P&G falsely informs consumers that “Charmin Freshmates wipes are flushable and safe for sewers and septic systems.” See <http://www.charmin.com/frequently-asked-questions-about-charmin-toilet-paper.aspx> (last accessed March 14, 2014) P&G discloses that the wipes are not suitable for disposal by flushing down a toilet, and rather, are not regarded as flushable by municipal sewage systems as the Flushable Wipes routinely damage or clog pipes, septic systems, and sewage pumps and do not disperse, disintegrate, or biodegrade like toilet paper.

37. Consumers visiting the Charmin website are given an option to view a page on “flushability” of the products. There, P&G makes an offer to refund consumers’ purchase price if they experience a clog, however the offer only applies to dry toilet tissue because P&G knows

1 that the Charmin Wipes are prone to clogging toilets and pipes. [http://www.charmin.com/clog-](http://www.charmin.com/clog-free)
2 free and <http://www.charmin.com/cf-money-back.aspx> (last accessed March 14, 2014).

3 38. On the front of the Pampers Wipes packages, P&G and Nehemiah advertise the
4 products as “Flushable Wipes.”





On the back of the package, Defendants further mislead consumers by informing them that the product is “Sewer and Septic Safe.” Elsewhere on the package, Defendants state “SAFE FOR SEWER AND SEPTIC. FOR BEST RESULTS, FLUSH ONLY ONE OR TWO WIPES AT A TIME. DO NOT USE IN BASEMENT TOILETS WITH EJECTOR PUMPS.” Nowhere on the package do Defendants disclose that the wipes are not suitable for disposal by flushing down ordinary household toilets, but rather, are not regarded as flushable by municipal sewage systems as they routinely damage or clog pipes, septic systems, and sewage pumps; and do not disperse, disintegrate, or biodegrade like toilet paper.

39. Defendants maintain two websites for the Kandoo products. On one, Defendants falsely inform consumers that “Flushable Wipes” are “Flushable & Biodegradable” and “Safe for sewer and septic systems.” See <http://www.kandookids.com> (last accessed March 14, 2014). On the other, Defendants simply state that “Kandoo Flushable Toilet Wipes clean up to 30% better than toilet paper.” See <http://www.pampers.com/flushable-wipes-kandoo> (last accessed March 14,

2014). On neither website do Defendants disclose that the wipes are not suitable for disposal by flushing down a toilet, and rather, are not regarded as flushable by municipal sewage systems as the Flushable Wipes routinely damage or clog pipes, septic systems, and sewage pumps and do not disperse, disintegrate, or biodegrade like toilet paper.

40. In marketing products to be used as part of a bathroom routine (Charmin Wipes) and as part of potty training (Pampers Wipes), Defendants know that consumers will be more likely to purchase the product in addition to, or instead of, toilet paper if they believed the product could be flushed down the toilet. Thus, for all the Flushable Wipes, Defendants intend for consumers to rely on the fact that the representation that the product is “Flushable.” Defendants further intend for consumers to rely on the omissions that the Flushable Wipes are not suitable for disposal by flushing down a toilet, and that the wipes are not regarded as flushable by municipal sewage systems; routinely damages or clogs pipes, septic systems, and sewage pumps; and do not disperse, disintegrate, or biodegrade like toilet paper.

41. To induce consumers into relying on the false representation that the wipes are “flushable,” Defendants’ ad campaigns routinely inform consumers that the Flushable Wipes are a useful part of good bathroom habit. For example, on the Charmin website, P&G states:

Ever feel like something's missing? Find your better half with Charmin Freshmates. These flushable wet wipes provide a cleaner clean than dry bath tissue alone. When two things are so good together, why keep them apart? Pair your Charmin toilet paper with Charmin Freshmates to feel fresh and clean.

The result is that consumers believe that the wipes are flushable like toilet paper, when in fact, they are not suitable for flushing down a toilet.

42. Defendants’ marketing campaign has been extremely successful. The nonwoven fabrics industry association, INDA, predicts the toddler wipes market to grow at 6% per year. *See* http://www.nonwovens-industry.com/contents/view_slideshows/2014-02-28/flushable-wipes/#slideshowimage_5 (last accessed March 13, 2014). Indeed, sales of consumer wipes have increased nearly 5 percent a year since they were introduced in 2007, and that rate is expected to grow. *See* http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs (last accessed February 24, 2014). In 2012, the “flushable wipes” market accounted for 14% of the \$4 billion a year pre-moistened wipes market, and it is predicted that the market

1 will grow six percent a year for the next few years. *See*
2 [http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html)
3 [sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html) (last
4 accessed February 24, 2014).

5 43. As a result of Defendants deceptive advertising, consumers believe that because
6 the Flushable Wipes disappear when flushed down the toilet, they are “flushable,” when in fact
7 the Flushable Wipes do not disperse like toilet paper, and by flushing the Flushable Wipes,
8 consumers risk damaging pipes, septic tanks, and sewage systems.

9 44. Because customers believe the wipes are suitable for flushing down a toilet and
10 purchase them for that convenience, P&G is able to charge a premium for the Flushable Wipes.
11 For example, A 40-count package of Charmin Wipes retails for \$8.99 on Amazon.com,
12 considerably more than a 40-count package of Wet Ones, a popular brand of non-flushable wipes,
13 which sells for \$2.28 on that website.

14 45. A consumer can buy 350 Pampers Wipes for \$13.59 on Amazon.com. In contrast,
15 a 448 count box of P&G’s Pampers® Sensitive Wipes, a non-flushable product, sells for \$10.97
16 on Amazon.com. A 448 count package of Huggies Soft Skin Baby Wipes, a non-flushable
17 product manufactured by another company, sells for \$11.97. A 350 count package of the non-
18 flushable Seventh Generation® “Original Soft and Gentle Free & Clear Baby Wipes” sells for
19 \$12.99 on Amazon.com.

20 46. If consumers knew that the Flushable Wipes were not suitable for flushing down a
21 toilet, they would not pay a premium, but rather, would opt to purchase the cheaper, non-
22 flushable items.

23 **(1)(b) All of Defendants’ Wipes Are Manufactured And Packaged the Same Way**

24 47. The Flushable Wipes are all manufactured using the same paper blend, a
25 spunlaced wetlaid paper, which is made by mechanically intertwining wood and pulp fibers using
26 water jets. In reality, the paper is not suitable for flushing down a toilet, since it does not break up
27 after flushing, and routinely clogs pipes and pumps.

28 48. A consumer who purchases the Flushable Wipes will find, upon opening the

1 package, sheets of moist paper, dampened by a coating of wet lotion. Unlike toilet paper, which
 2 is a dry paper product designed to fall apart in water, all of the Flushable Wipes are sold as pre-
 3 moistened products, and thus, the spunlaced wetlaid paper used to make them is designed to
 4 withstand months of soaking in a wet environment. Because weeks, months, or longer will pass
 5 between the time the Flushable Wipe is manufactured and the time at which it is ultimately used
 6 by a consumer, the paper used to manufacture the wipes must be strong enough to sit in a still,
 7 wet environment for extremely long periods of time. Thus in selecting the paper used to
 8 manufacture their Flushable Wipes, Defendants must first consider whether the paper is strong
 9 enough to withstand months of soaking in wet environment, suggesting that the wipes cannot
 10 possibly efficiently disperse when placed in more water.

11 **(1)(c) All Defendants' Wipes Are Subject To The Same Flawed Test**

12 49. When P&G tests the flushability of Defendants' wipes, it uses "industry
 13 guidelines." P&G has stated that it applies industry guidelines to its "flushable products for
 14 years." See <http://www.angieslist.com/articles/wastewater-experts-skeptical-flushable-wipes.htm>
 15 (last accessed March 13, 2014).

16 50. The "industry guidelines" that Defendants claim their Flushable Wipes satisfy are
 17 set by INDA, a lobbying association for manufacturers of flushable wipes, like Defendants, and
 18 Defendants consult on those standards. INDA fights aggressively against governmental efforts to
 19 regulate the sale of flushable wipes or use of the word "flushable". The non-mandatory INDA
 20 guidelines encourage manufacturers of flushable wipes to conduct a series of seven tests before
 21 labelling their products as "flushable." Closer look at those tests reveals flaws in their design and
 22 demonstrates that merely passing these self-serving guidelines does not mean the wipes are
 23 flushable.

24 51. P&G maintains a "Flushability Lab" where it tests all products, including the
 25 Charmin Wipes and Pampers Wipes, according to the flawed industry guidelines. In 2008, P&G
 26 describes the lab as follows:

27 P&G's Flushability Lab is a unique facility created in 1993. Thousands of
 28 products and prototypes have been tested here to evaluate compatibility with
 waste disposal systems in Europe, North America, and Asia. The Lab conducts
 extensive field and home-usage tests to determine each product's effect on toilets,

1 drain lines, sewage pumps, septic tanks, and aerated on-site systems, as well as
2 municipal collection and treatment systems. Products designed to be flushable are
3 fully evaluated before they are placed on the market.

4 https://www.pg.com/en_US/downloads/sustainability/pov/EnvBrochure2008.pdf, p. 11 (last
5 accessed March 13, 2014). All of Defendants Flushable Wipes have been subjected to the same
6 tests in P&G's Flushability Lab.

7 52. For example, in the Flushability Lab, P&G tests the wipes using the "Slosh Box
8 Disintegration Test" or "FG502" test. The test assesses the potential for a product to disintegrate
9 when it is submerged in water and subject to agitation. To conduct the test, the test material is
10 placed in a box of water. Testers then agitate the water, often by simulating the swirl of a toilet
11 flush or the movement of water in a pipe, and time how long it takes for the test material to
12 disintegrate. Defendants and INDA have agreed that the standard for "passing" this test is not
13 whether the product mimics the easily flushable and dispersible toilet paper or even that the
14 product will break down during a flush. Rather, the test only requires that after **three hours of**
15 **agitation** in the slosh box, more than **25%** of the wipe passes through a 12.5 millimeter (roughly a
16 half inch) sieve **80%** of the time. See [http://www.njwea.org/pdf/2013-guidelines-for-assessing-](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf)
17 [the-flushability-of-disposable-nonwoven-product.pdf](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf) (last accessed February 24, 2014) (emphasis
18 added). In other words, the test is still *passed even if after more than **three hours of agitation**,*
19 *nearly **three-quarters** of the material is **unable** to pass through the sieve.*

20 53. When subject to the Slosh Box Disintegration Test, a typical piece of toilet paper
21 begins to break down as soon as the water in the slosh box begins to move, and is completely
22 disintegrated within in a few seconds. See [http://www.consumerreports.org/cro/video-hub/home--](http://www.consumerreports.org/cro/video-hub/home--garden/bed--bath/are-flushable-wipes-flushable/16935265001/22783507001/)
23 [garden/bed--bath/are-flushable-wipes-flushable/16935265001/22783507001/](http://www.consumerreports.org/cro/video-hub/home--garden/bed--bath/are-flushable-wipes-flushable/16935265001/22783507001/) (last accessed
24 February 21, 2014). Thus, when flushed down a toilet, toilet paper will likely break into particles
25 within seconds after flushing. (Id.) Because Defendants products require a much longer time to
26 disperse, Defendants and INDA have agreed that they can label their products as "flushable"
27 provided they pass the much weaker Slosh Box test standard.

28 54. The Slosh Box test is flawed because wastewater utility officials say that wipes
can reach a sewage treatment pump in as quickly as a few minutes, much faster than the hours
needed for Defendants' wipes to begin to break down. See

1 [http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html)
 2 [sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html) (last
 3 accessed February 24, 2014). Further, the moist lotion used in manufacturing the wipes results in
 4 them traveling faster through sewer pipes than ordinary products. *See*
 5 [http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-](http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-san-11718265/)
 6 [san-11718265/](http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-san-11718265/) (last accessed February 26, 2014).

7 55. Because the wipes are always intact after a few minutes, and largely intact even
 8 after hours of agitation, they arrive at the sewage treatment pump intact, where they create the
 9 problems described in paragraphs 59- 72.

10 56. Nearly all the tests conducted by P&G in the Flushability Lab are further flawed as
 11 they do not simulate real-world conditions. Sewer systems typically move sewage to the plant
 12 via gravity. (Id.) The flowing water is not as hard on the wipes as the agitating water in some of
 13 Defendants' tests, meaning that they will not break down as quickly in the pipes as they do in
 14 Defendants' lab simulated tests. (Id.) For example, both the Slosh Box test described in
 15 paragraph 52 and FG505, the "Aerobic Biodisintegration" test, assess the wipes' abilities to
 16 disintegrate under constantly agitated water. *See* [http://www.njwea.org/pdf/2013-guidelines-for-](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf)
 17 [assessing-the-flushability-of-disposable-nonwoven-product.pdf](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf) (last accessed February 24, 2014).
 18 Since the Flushable Wipes are unlikely to be subjected to the same agitating water as they are
 19 subjected to in Defendants' lab, the tests are not reliable predictors of whether the Flushable
 20 Wipes are suitable for flushing down a toilet. The result is that many of the Flushable Wipes
 21 arrive at the sewage treatment plant in tact or insufficiently broken down.

22 57. The tests are further flawed in that they fail to take into account the wipes
 23 propensity for "ragging." After being flushed down the toilet, the Flushable Wipes have a
 24 propensity to tangle amongst one another and with other debris, and form long ropes that can fill
 25 sewer lines for tens of feet. *See*
 26 [http://www.hsconnect.com/page/content.detail/id/590706/Concerns-on-wipes-no-laughing-](http://www.hsconnect.com/page/content.detail/id/590706/Concerns-on-wipes-no-laughing-matter.html?nav=5005)
 27 [matter.html?nav=5005](http://www.hsconnect.com/page/content.detail/id/590706/Concerns-on-wipes-no-laughing-matter.html?nav=5005) (last accessed February 24, 2014). The tests however, assume that wipes
 28 are passing through pipes and pumps one at a time, instead of in clumps of rags and ropes. For

1 example, while the Slosh Box Disintegration Test only considers what one wipe will do, there
2 will often be multiple wipes in a pipe at a time. The bigger the mass of wipes, the slower the
3 disintegration time. See [http://www.washingtonpost.com/local/trafficandcommuting/flushable-](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html)
4 [personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html)
5 [b47e45e6f8ef_story.html](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html) (last accessed February 24, 2014).

6 58. The test FG507, the Municipal Pump Test, which evaluates the wipes'
7 "compatibility" with municipal pumping systems, is flawed for the same reason. To conduct that
8 test, Defendants and INDA have agreed to only introduce into the pump one wipe every ten
9 seconds to assess whether the pump can process the wipes. See [http://www.njwea.org/pdf/2013-](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf)
10 [guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf), p. 18 (last
11 accessed March 13, 2014). Because the wipes will likely entangle with other wipes and debris,
12 the test is a poor predictor of the wipes "compatability" with municipal pumping systems.

13 **Because the Flushable Wipes Are Not Suitable For Flushing Down a Toilet, They Wreck**
14 **Havoc On Municipal Sewage Treatment Facilities**

15 59. Municipalities all over the country have experienced numerous problems from
16 Defendants' Flushable Wipes.

17 60. In Bakersfield, California, crews of three or four workers must regularly visit the
18 city's 52 sewage lift stations to cut up the balls of wipes that clog the lift stations. If they do not,
19 there is a risk that back flow damage will spill inside homes. Mike Connor, Street Superintendent at
20 Public Works in Bakersfield has stated "There's no safe brand for disposables, none of them
21 break down." See [http://www.turnto23.com/news/local-news/bakersfield-sewer-systems-keep-](http://www.turnto23.com/news/local-news/bakersfield-sewer-systems-keep-getting-clogged-because-of-flushable-bathroom-wipes-092413)
22 [getting-clogged-because-of-flushable-bathroom-wipes-092413](http://www.turnto23.com/news/local-news/bakersfield-sewer-systems-keep-getting-clogged-because-of-flushable-bathroom-wipes-092413) (last accessed February 21, 2014).
23 The city has documented one of the clogs:



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2
3
4 61. In Orange County, California, the Sanitation District recorded 971 “de-ragging”
5 maintenance calls to remove wipes from ten pump stations in a single year at a cost of \$320,000.
6 [http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs)
7 clogs, last accessed February 24, 2014.

8 62. The San Francisco Public Utilities Commission has documented the pipe-clogging
9 wipes that the crews must break up:



19 [http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-](http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-sewage-plants/Content?oid=2514283)
20 sewage-plants/Content?oid=2514283, last accessed February 24, 2014. The city spends \$160,000
21 a year to remove wipes and debris. *Id.*

22 63. In 2012, thirty percent of the sewage overflows in Contra Costa County were
23 caused by “flushable wipes.” [http://articles.chicagotribune.com/2013-10-08/news/ct-tl-1010-s-](http://articles.chicagotribune.com/2013-10-08/news/ct-tl-1010-s-tinley-park-flushables-20131009_1_baby-wipes-flushable-toilet-paper)
24 tinley-park-flushables-20131009_1_baby-wipes-flushable-toilet-paper, last accessed February 24,
25 2014. At one sanitation district in Contra Costa County, workers take apart pumps approximately
26 30 times a year to detangle debris. Before flushable wipes were introduced, such repairs were
27 necessary just six times a year. *See* [http://www.casaweb.org/news/unwelcome-junk-keeps-sewer-](http://www.casaweb.org/news/unwelcome-junk-keeps-sewer-line-workers-busy)
28 line-workers-busy (last accessed February 26, 2014).

1 64. In El Dorado Hills, California, a recent sewage spill was found to be caused in
2 large part by disposable wipes. The result was not only extra maintenance costs, but the city was
3 fined by the state for the spill. *See* [http://www.mtdemocrat.com/news/flushable-wipes-clog-](http://www.mtdemocrat.com/news/flushable-wipes-clog-pipes-trash-them-instead/)
4 [pipes-trash-them-instead/](http://www.mtdemocrat.com/news/flushable-wipes-clog-pipes-trash-them-instead/) (last accessed February 24, 2014).

5 65. Outside of California, the story is much the same. For example, the city of
6 Vancouver, Washington, has been forced to spend more than \$1 million over the last five years to
7 respond to problems creating from the increased use of “flushable” wipes. *See*
8 <http://www.kctv5.com/story/23508880/flushable-wipes-clog-sewer-lines> (last accessed February
9 26, 2014). In particular, the city has spent \$810,000 on new equipment, \$140,00 on electricity
10 wasted through inefficiencies created by running clogged pumps, \$480,000 in field labor to
11 unclog pumps, and about \$100,000 in engineering and administrative support. *See*
12 <http://news.wef.org/wipes-in-pipes-cause-costly-problems-for-water-resource-recovery-facilities/>
13 (last accessed February 26, 2014).

14 66. In Illinois, the Downers Grove Sanitary District spent \$30,000 last year to repair a
15 pump clogged by wipes, and additional \$5,000 to install vibration monitoring equipment to alert
16 staff to new blockages. *See* [http://news.wef.org/wipes-in-pipes-cause-costly-problems-for-water-](http://news.wef.org/wipes-in-pipes-cause-costly-problems-for-water-resource-recovery-facilities/)
17 [resource-recovery-facilities/](http://news.wef.org/wipes-in-pipes-cause-costly-problems-for-water-resource-recovery-facilities/) (last accessed February 26, 2014). Despite this upgrade, the wipes
18 continue to accumulate in the lift station, additional equipment may need to be installed. *Id.*

19 67. Outside of Washington, D.C., the Washington Suburban Sanitary Commission has
20 spent more than \$1 million over five years installing heavy duty grinders to try to address the
21 problem. [http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs)
22 [sewer-clogs](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs), last accessed February 24, 2014. In addition, the organization has started using a
23 modified shopping cart to catch the wipes before they reach the pumps and clog equipment,
24 which arrive intact at the treatment facility:
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26
27
28



68. Once at the municipal treatment plant, the wipes will clog pipes and pumps. It can take hours to unclog them, and is very expensive. The city of Jacksonville Beach estimates that the consumers are paying for the wipes multiple times – in plumbing costs and increased tax expenditures. See <http://www.news4jax.com/news/officials-flushable-wipes-clog-pipes/-/475880/23740904/-/t5h2vrz/-/index.html> (last accessed February 26, 2014). The city has released a photo that demonstrates the extent to which the wipes have clogged the pumps:



Id.

69. In Hillsborough, Florida, the sewage treatment facility has hooked ropes to pumps that are plagued by clogs from the wipes. Every day, teams of plant maintenance mechanics and other workers remove the wipes using the hooks, so that they can cut and untangle the wipes, which resemble “mop strings”, using pliers, screwdrivers, and cutters. <http://www.tampabay.com/news/humaninterest/flushable-bathroom-wipes-get-blame-for-sewer-clogs/2144911> (last accessed February 21, 2014).

70. In San Antonio, Texas, the San Antonio Water System has said that flushable wipes are clogging up sewers in ways in which sewer workers have never seen before. See <http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-san-11718265/> (last accessed February 26, 2014). Sewer workers are responding to dozens of

1 clogs, and to repair, they retrieve large “rope like mass[es]” from the pipes. *Id.*

2 71. In Arkansas, the Jacksonville Wastewater Utility has found that wipes wreck the
3 most havoc on pumps, causing thousands of dollars in damages. Years ago, the town would
4 remove pump clogs once or twice a year, but since the flushable wipes have become popular
5 amongst consumers, the town must remove pump clogs several times a month. *See*
6 [http://www.arkansasmatters.com/story/wastewater-treatment-facilities-waging-war-with-](http://www.arkansasmatters.com/story/wastewater-treatment-facilities-waging-war-with-wipes/d/story/1ZNQd1uAZECshHMB5daErA)
7 [wipes/d/story/1ZNQd1uAZECshHMB5daErA](http://www.arkansasmatters.com/story/wastewater-treatment-facilities-waging-war-with-wipes/d/story/1ZNQd1uAZECshHMB5daErA) (last accessed February 26, 2014). The city spends
8 thousands a year in fixing pump clogs. *Id.*

9 72. Defendants repeatedly have insisted that these problems are caused by other non-
10 flushable products, and not their wipes. In response, Contra Costa sewer officials dyed several
11 kinds of wipes to see what happens once they enter the sewer system, and found that wipes
12 labeled “flushable” were still intact after traveling a mile through sewage pipes.
13 [http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs)
14 [clogs](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs), last accessed February 24, 2014.

15 **PLAINTIFF’S EXPERIENCE**

16 73. Plaintiff is a parent, and first saw Defendants’ Pampers Wipes at his children’s
17 preschool. He noticed they were smaller than the moist wipes he had used at home, but decided to
18 buy Defendants’ Flushable Wipes for home use because he thought it would be more convient to
19 be able to flush the wipes and he did not like the smell that resulted from throwing non-flushable
20 wipes in the trash.

21 74. On January 6, 2014, Plaintiff purchased one 350-count package of Pampers Wipes
22 from www.diapers.com. He paid \$12.32, less a promotion of \$1.23, for a total of \$11.09, to
23 purchase the Pampers Wipes. The wipes were 6.7 inches by 4.1 inches, or 27.45 square inches,
24 each. Prior to purchasing Pampers Wipes, Plaintiff had purchased Babyganics brand non-
25 flushable wipes. Plaintiff preferred the Babyganics wipes because at 50.4 square inches each, they
26 were larger, and therefore he needed fewer wipes per use, and because they did not contain
27 certain chemicals. Because Defendants had represented that they were “flushable,” Plaintiff
28 made the decision to purchase the Pampers Wipes even though each wipe was half the size of the

1 Babyganics wipes, and therefore significantly more expensive per square inch.

2 75. He began using the Pampers Wipes. After his children went to the bathroom, he
3 would use 1-2 wipes to clean and dry them. He immediately had problems flushing the wipes, as
4 the toilet clogged and backed up. After he unclogged the toilet, he noticed that the toilet paper
5 had partially decomposed, but the wipes were completely intact.

6 76. Concerned about a risk of expensive plumbing repairs, he stopped flushing the
7 wipes.

8 77. Had Defendants not misrepresented (by omission and commission) the true nature
9 of their “Flushable” Products, Plaintiff would not have purchased Defendants’ product.

10 **CLASS ALLEGATIONS**

11 78. Plaintiff brings this action against Defendants on behalf of himself and all others
12 similarly situated, as a class action pursuant to section 382 of the California Code of Civil
13 Procedure and section 1781 of the California Civil Code. Plaintiff seeks to represent a group of
14 similarly situated persons (the “Class”), defined as follows:

15 All persons who, between March 21, 2014 and the present, purchased, in
16 California, any of the following products: Charmin Freshmates Flushable
17 Wipes (“Charmin Wipes”) and Pampers Kandoo Flushable Wipes (“Pampers
Wipes”).

18 79. This action has been brought and may properly be maintained as a class action
19 against Defendants pursuant to the provisions of California Code of Civil Procedure section 382
20 because there is a well-defined community of interest in the litigation and the proposed class is
21 easily ascertainable.

22 80. Numerosity: Plaintiff does not know the exact size of the class, but it is estimated
23 that it is composed of more than 100 persons. The persons in the class are so numerous that the
24 joinder of all such persons is impracticable and the disposition of their claims in a class action
25 rather than in individual actions will benefit the parties and the courts.

26 81. Common Questions Predominate: This action involves common questions of law
27 and fact to the potential class because each class member’s claim derives from the deceptive,
28 unlawful and/or unfair statements and omissions that led Defendants’ customers to believe that
the Non-Flushable Wipes were flushable. The common questions of law and fact predominate

1 over individual questions, as proof of a common or single set of facts will establish the right of
2 each member of the Class to recover. Among the questions of law and fact common to the class
3 are:

4 a) Whether Defendants' Flushable Wipes are suitable for flushing down a
5 toilet;

6 b) Whether Defendants unfairly, unlawfully and/or deceptively failed to
7 inform class members that their Flushable Wipes were not flushable;

8 c) Whether Defendants' advertising and marketing regarding their Flushable
9 Wipes sold to class members was likely to deceive class members or was unfair;

10 d) Whether Defendants engaged in the alleged conduct knowingly, recklessly,
11 or negligently;

12 e) The amount of revenues and profits Defendants received and/or the amount
13 of monies or other obligations lost by class members as a result of such wrongdoing;

14 f) Whether class members are entitled to injunctive and other equitable relief
15 and, if so, what is the nature of such relief; and

16 g) Whether class members are entitled to payment of actual, incidental,
17 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the
18 nature of such relief.

19 82. Typicality: Plaintiff's claims are typical of the class because, in 2014, he
20 purchased one of the Flushable Wipes, namely Defendants' Pampers Kandoo Flushable Wipes, in
21 reliance on Defendants' misrepresentations and omissions that they were flushable. Thus,
22 Plaintiff and class members sustained the same injuries and damages arising out of Defendants'
23 conduct in violation of the law. The injuries and damages of each class member were caused
24 directly by Defendants' wrongful conduct in violation of law as alleged.

25 83. Adequacy: Plaintiff will fairly and adequately protect the interests of all class
26 members because it is in her best interests to prosecute the claims alleged herein to obtain full
27 compensation due to her for the unfair and illegal conduct of which he complains. Plaintiff also
28 has no interests that are in conflict with or antagonistic to the interests of class members. Plaintiff

1 has retained highly competent and experienced class action attorneys to represent her interests
 2 and the interests of the class. By prevailing on her own claim, Plaintiff will establish Defendants'
 3 liability to all class members. Plaintiff and her counsel have the necessary financial resources to
 4 adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their
 5 fiduciary responsibilities to the class members and are determined to diligently discharge those
 6 duties by vigorously seeking the maximum possible recovery for class members.

7 84. Superiority: There is no plain, speedy, or adequate remedy other than by
 8 maintenance of this class action. The prosecution of individual remedies by members of the class
 9 will tend to establish inconsistent standards of conduct for the Defendants and result in the
 10 impairment of class members' rights and the disposition of their interests through actions to
 11 which they were not parties. Class action treatment will permit a large number of similarly
 12 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,
 13 and without the unnecessary duplication of effort and expense that numerous individual actions
 14 would engender. Furthermore, as the damages suffered by each individual member of the class
 15 may be relatively small, the expenses and burden of individual litigation would make it difficult
 16 or impossible for individual members of the class to redress the wrongs done to them, while an
 17 important public interest will be served by addressing the matter as a class action.

18 85. Nexus to California. The State of California has a special interest in regulating the
 19 affairs of corporations that do business here. Defendants have more customers here than in any
 20 other state. Accordingly, there is a substantial nexus between Defendants' unlawful behavior and
 21 California such that the California courts should take cognizance of this action on behalf of a
 22 class of individuals who reside anywhere in the United States.

23 86. Plaintiff is unaware of any difficulties that are likely to be encountered in the
 24 management of this action that would preclude its maintenance as a class action.

25 **CAUSES OF ACTION**

26 **PLAINTIFF'S FIRST CAUSE OF ACTION**

27 **(Violation of the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*)**
 28 **On Behalf of Himself and the Class**

87. Plaintiff realleges and incorporates the paragraphs of this Class Action Complaint

1 as if set forth herein.

2 88. This cause of action is brought pursuant to the California Consumers Legal
3 Remedies Act, California Civil Code § 1750, *et seq.* (“CLRA”).

4 89. Defendants’ actions, representations and conduct have violated, and continue to
5 violate the CLRA, because they extend to transactions that are intended to result, or which have
6 resulted, in the sale or lease of goods or services to consumers.

7 90. Plaintiff and other class members are “consumers” as that term is defined by the
8 CLRA in California Civil Code § 1761(d).

9 91. The Flushable Products that Plaintiff (and others similarly situated class members)
10 purchased from Defendants were “goods” within the meaning of California Civil Code § 1761(a).

11 92. By engaging in the actions, representations and conduct set forth in this Class
12 Action Complaint, Defendants have violated, and continue to violate, § 1770(a)(2), § 1770(a)(5),
13 § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California Civil Code
14 §1770(a)(2), Defendants’ acts and practices constitute improper representations regarding the
15 source, sponsorship, approval, or certification of the goods they sold. In violation of California
16 Civil Code §1770(a)(5), Defendants’ acts and practices constitute improper representations that
17 the goods they sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or
18 quantities, which they do not have. In violation of California Civil Code §1770(a)(7),
19 Defendants’ acts and practices constitute improper representations that the goods they sell are of a
20 particular standard, quality, or grade, when they are of another. In violation of California Civil
21 Code §1770(a)(8), Defendants have disparaged the goods, services, or business of another by
22 false or misleading representation of fact. In violation of California Civil Code §1770(a)(9),
23 Defendants have advertised goods or services with intent not to sell them as advertised.
24 Specifically, in violation of sections 1770 (a)(2), (a)(5), (a)(7) and (a)(9), Defendants’ acts and
25 practices led customers to falsely believe that that their Flushable Products were suitable for
26 flushing down a toilet. In violation of section 1770(a)(8), Defendants falsely or deceptively
27 market and advertise that, unlike products not specifically denominated as flushable, its Flushable
28 Products are suitable for flushing down a toilet, when in fact none of the products are suitable for

1 flushing.

2 93. Plaintiff requests that this Court enjoin Defendants from continuing to employ the
3 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
4 § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the
5 future, Plaintiff and the other members of the Class will continue to suffer harm.

6 94. CLRA § 1782 NOTICE. **Irrespective of any representations to the contrary in**
7 **this Class Action Complaint, Plaintiff specifically disclaims, at this time, any request for**
8 **damages under any provision of the CLRA.** Plaintiff, however, hereby provides Defendants
9 with notice and demand that within thirty (30) days from that date, Defendants correct, repair,
10 replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of
11 herein. Defendants' failure to do so will result in Plaintiff amending this Class Action Complaint
12 to seek, pursuant to California Civil Code § 1780(a)(3), on behalf of himself and those similarly
13 situated class members, compensatory damages, punitive damages and restitution of any ill-gotten
14 gains due to Defendants' acts and practices.

15 95. Plaintiff also requests that this Court award her her costs and reasonable attorneys'
16 fees pursuant to California Civil Code § 1780(d).

17 **PLAINTIFF'S SECOND CAUSE OF ACTION**
18 **(False Advertising, Business and Professions Code § 17500, et seq. ("FAL"))**
19 **On Behalf Of Himself and the Class**

20 96. Plaintiff realleges and incorporates by reference the paragraphs of this Class
21 Action Complaint as if set forth herein.

22 97. Beginning at an exact date unknown to Plaintiff, but within three (3) years
23 preceding the filing of the Class Action Complaint, Defendants made untrue, false, deceptive
24 and/or misleading statements in connection with the advertising and marketing of their Flushable
25 Products.

26 98. Defendants made representations and statements (by omission and commission)
27 that led reasonable customers to believe that they were purchasing products that could be flushed
28 down the toilet without problem. Defendants deceptively failed to inform Plaintiff, and those
similarly situated, that their Flushable Wipes were not suitable for disposal by flushing down a

1 toilet, and that the Flushable wipes are not regarded as flushable by municipal sewage systems;
2 routinely damage or clog pipes, septic systems, and sewage pumps; and do not disperse,
3 distingrate, or biodgrade like toilet paper.

4 99. Plaintiff and those similarly situated relied to their detriment on Defendants' false,
5 misleading and deceptive advertising and marketing practices, including each of the
6 misrepresentations and omissions set forth in paragraphs 34-41 and 74, above. Had Plaintiff and
7 those similarly situated been adequately informed and not intentionally deceived by Defendants,
8 they would have acted differently by, without limitation, refraining from purchasing Defendants'
9 Flushable Wipes or paying less for them.

10 100. Defendants' acts and omissions are likely to deceive the general public.

11 101. Defendants engaged in these false, misleading and deceptive advertising and
12 marketing practices to increase their profits. Accordingly, Defendants have engaged in false
13 advertising, as defined and prohibited by section 17500, et seq. of the California Business and
14 Professions Code.

15 102. The aforementioned practices, which Defendants used, and continue to use, to
16 their significant financial gain, also constitute unlawful competition and provide an unlawful
17 advantage over Defendants' competitors as well as injury to the general public.

18 103. Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as
19 necessary and according to proof, to restore any and all monies acquired by Defendants from
20 Plaintiff, the general public, or those similarly situated by means of the false, misleading and
21 deceptive advertising and marketing practices complained of herein, plus interest thereon.

22 104. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit
23 Defendants from continuing to engage in the false, misleading and deceptive advertising and
24 marketing practices complained of herein. The acts complained of herein occurred, at least in
25 part, within three (3) years preceding the filing of this Class Action Complaint.

26 105. Plaintiff and those similarly situated are further entitled to and do seek both a
27 declaration that the above-described practices constitute false, misleading and deceptive
28 advertising, and injunctive relief restraining Defendants from engaging in any such advertising

1 and marketing practices in the future. Such misconduct by Defendants, unless and until enjoined
 2 and restrained by order of this Court, will continue to cause injury in fact to the general public
 3 and the loss of money and property in that the Defendants will continue to violate the laws of
 4 California, unless specifically ordered to comply with the same. This expectation of future
 5 violations will require current and future customers to repeatedly and continuously seek legal
 6 redress in order to recover monies paid to Defendants to which Defendants are not entitled.
 7 Plaintiff, those similarly situated and/or other consumers nationwide have no other adequate
 8 remedy at law to ensure future compliance with the California Business and Professions Code
 9 alleged to have been violated herein.

10 106. As a direct and proximate result of such actions, Plaintiff and the other members of
 11 the Class have suffered, and continue to suffer, injury in fact and have lost money and/or property
 12 as a result of such false, deceptive and misleading advertising in an amount which will be proven
 13 at trial, but which is in excess of the jurisdictional minimum of this Court.

14 **PLAINTIFF'S THIRD CAUSE OF ACTION**
 15 **(Fraud, Deceit and/or Misrepresentation)**
 16 **On Behalf of Himself and the Class**

17 107. Plaintiff realleges and incorporates by reference the paragraphs of this Class
 18 Action Complaint as if set forth herein.

19 108. In 2014, Defendants fraudulently and deceptively led Plaintiff to believe that
 20 Defendants' Flushable Wipes were suitable for flushing down a toilet. Defendants also failed to
 21 inform Plaintiff that Defendants' Flushable Wipes were not suitable for disposal by flushing
 22 down a toilet, and the wipes are not regarded as flushable by municipal sewage systems; routinely
 23 damages or clogs pipes, septic systems, and sewage pumps; and do not disperse, disintegrate, or
 24 biodegrade like toilet paper.

25 109. These omissions were material at the time they were made. They concerned
 26 material facts that were essential to the analysis undertaken by Plaintiff as to whether to purchase
 27 Defendants' Flushable Wipes.

28 110. Defendants made identical misrepresentations and omissions to members of the
 Class regarding Defendants' Flushable Wipes.

111. In not so informing Plaintiff and the members of the Class, Defendants breached their duty to her. Defendants also gained financially from, and as a result of, their breach.

112. Plaintiff and those similarly situated relied to their detriment on Defendants' fraudulent omissions. Had Plaintiff and those similarly situated been adequately informed and not intentionally deceived by Defendants, they would have acted differently by, without limitation, not purchasing (or paying less for) Defendants' Flushable Wipes.

113. Defendants had a duty to inform class members at the time of their purchase of that the Flushable Wipes were not suitable for flushing down a toilet, and the wipes are not regarded as flushable by municipal sewage systems; routinely damage or clog pipes, septic systems, and sewage pumps; and do not disperse, disintegrate, or biodegrade like toilet paper. Defendants omitted to provide this information to class members. Class members relied to their detriment on Defendants' omissions. These omissions were material to the decisions of the class members to purchase the Flushable Wipes. In making these omissions, Defendants breached their duty to class members. Defendants also gained financially from, and as a result of, their breach.

114. By and through such fraud, deceit, misrepresentations and/or omissions, Defendants intended to induce Plaintiff and those similarly situated to alter their position to their detriment. Specifically, Defendants fraudulently and deceptively induced Plaintiff and those similarly situated to, without limitation, to purchase their Flushable Wipes.

115. Plaintiff and those similarly situated justifiably and reasonably relied on Defendants' omissions, and, accordingly, were damaged by the Defendants.

116. As a direct and proximate result of Defendants' misrepresentations, Plaintiff and those similarly situated have suffered damages, including, without limitation, the amount they paid for the Flushable Wipes.

117. Defendants' conduct as described herein was willful and malicious and was designed to maximize Defendants' profits even though Defendants knew that it would cause loss and harm to Plaintiff and those similarly situated.

PLAINTIFF'S FOURTH CAUSE OF ACTION
(Unfair, Unlawful and Deceptive Trade Practices,
Business and Professions Code § 17200, et seq.)
On Behalf of Himself and the Class

118. Plaintiff realleges and incorporates by reference the paragraphs of this Class Action Complaint as if set forth herein.

119. Within four (4) years preceding the filing of this Class Action Complaint, and at all times mentioned herein, Defendants have engaged, and continue to engage, in unfair, unlawful and deceptive trade practices in California by engaging in the unfair, deceptive and unlawful business practices outlined in this Class Action Complaint. In particular, Defendants have engaged, and continue to engage, in unfair, unlawful and deceptive trade practices by, without limitation, the following:

a. deceptively representing to Plaintiff, and those similarly situated, the Flushable Products were suitable for flushing down a toilet;

b. failing to inform Plaintiff, and those similarly situated, that the Flushable Products were not suitable for disposal by flushing down a toilet, and the wipes are not regarded as flushable by municipal sewage systems; routinely damage or clog pipes, septic systems, and sewage pumps; and do not disperse, disintegrate, or biodegrade like toilet paper.

c. engaging in fraud, deceit, and misrepresentation as described herein;

d. violating the CLRA as described herein; and

e. violating the FAL as described herein.

120. Plaintiff and those similarly situated relied to their detriment on Defendants' unfair, deceptive and unlawful business practices. Had Plaintiff and those similarly situated been adequately informed and not deceived by Defendants, they would have acted differently by not purchasing (or paying less for) Defendants' Flushable Wipes.

121. Defendants' acts and omissions are likely to deceive the general public.

122. Defendants engaged in these unfair practices to increase their profits.

Accordingly, Defendants have engaged in unlawful trade practices, as defined and prohibited by section 17200, et seq. of the California Business and Professions Code.

123. The aforementioned practices, which Defendants have used to their significant

1 financial gain, also constitute unlawful competition and provide an unlawful advantage over
2 Defendants' competitors as well as injury to the general public.

3 124. Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as
4 necessary and according to proof, to restore any and all monies acquired by Defendants from
5 Plaintiff, the general public, or those similarly situated by means of the unfair and/or deceptive
6 trade practices complained of herein, plus interest thereon.

7 125. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit
8 Defendants from continuing to engage in the unfair trade practices complained of herein.

9 126. The acts complained of herein occurred, at least in part, within four (4) years
10 preceding the filing of this Class Action Complaint.

11 127. Plaintiff and those similarly situated are further entitled to and do seek both a
12 declaration that the above-described trade practices are unfair, unlawful and/or fraudulent, and
13 injunctive relief restraining Defendants from engaging in any of such deceptive, unfair and/or
14 unlawful trade practices in the future. Such misconduct by Defendants, unless and until enjoined
15 and restrained by order of this Court, will continue to cause injury in fact to the general public
16 and the loss of money and property in that Defendants will continue to violate the laws of
17 California, unless specifically ordered to comply with the same. This expectation of future
18 violations will require current and future customers to repeatedly and continuously seek legal
19 redress in order to recover monies paid to Defendants to which Defendants are not entitled.
20 Plaintiff, those similarly situated and/or other consumers nationwide have no other adequate
21 remedy at law to ensure future compliance with the California Business and Professions Code
22 alleged to have been violated herein.

23 128. As a direct and proximate result of such actions, Plaintiff and the other members of
24 the Class have suffered and continue to suffer injury in fact and have lost money and/or property
25 as a result of such deceptive, unfair and/or unlawful trade practices and unfair competition in an
26 amount which will be proven at trial, but which is in excess of the jurisdictional minimum of this
27 Court. Among other things, Plaintiff and the class lost the amount they paid for the Flushable
28 Products.

129. As a direct and proximate result of such actions, Defendants have enjoyed, and continue to enjoy, significant financial gain in an amount which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. On Cause of Action Number 1 against Defendants and in favor of Plaintiff and the other members of the Class:

1. for restitution and injunctive relief pursuant to California Civil Code section 1780;
2. [Reserved]; and
3. [Reserved].

B. On Causes of Action Numbers 2 and 4 against Defendants and in favor of Plaintiff and the other members of the Class:

1. for restitution pursuant to, without limitation, the California Business & Professions Code §§ 17200, et seq. and 17500, et seq.; and
2. for injunctive relief pursuant to, without limitation, the California Business & Professions Code §§ 17200, et seq. and 17500, et seq.;

C. On Cause of Action Number 3 against Defendants and in favor of Plaintiff and the other members of the Class:

1. an award of compensatory damages, the amount of which is to be determined at trial; and
2. an award of punitive damages, the amount of which is to be determined at trial.

D. On all causes of action against Defendants and in favor of Plaintiff, class members and the general public:

1. for reasonable attorneys' fees according to proof pursuant to, without limitation, the California Legal Remedies Act and

California Code of Civil Procedure § 1021.5;

2. for costs of suit incurred; and

3. for such further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: March 21, 2014

GUTRIDE SAFIER LLP



Adam J. Gutride, Esq.
Seth A. Safier, Esq.
Kristen G. Simplicio, Esq.
835 Douglass Street
San Francisco, California 94114

Attorneys for Plaintiff

EXHIBIT A

I, David Machlan, declare:

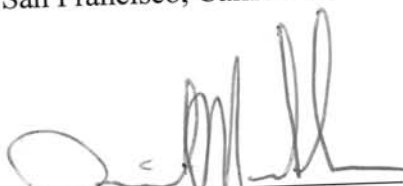
1. I am the Plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2215.5 and California Civil Code section 1780(d).

3. I am a resident of San Francisco, California. As set forth in my complaint, on January 6, 2014, I purchased Pampers® Kandoo® Flushable Wipes from www.diapers.com, for shipping to my home address in San Francisco.

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

Executed this 20th day of March, 2014, in San Francisco, California.



David Machlan

EXHIBIT B

**DEFENDANTS' JOINT NOTICE OF REMOVAL
OF CIVIL ACTION FROM STATE COURT**

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

The Procter & Gamble Company; Nehemiah Manufacturing Company
LLC and does 1 through fifty

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

David Machlan

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del caso) C 14-538168

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Adam Gutride, Kristen Simplicio Gutride Safier LLP, 835 Douglass St, SF, CA 94114 (415) 639-9090

DATE: 3/21/2014 **MAR 21 2014** **CLERK OF THE COURT** Clerk, by **M.A. MORAN** Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): Procter & Gamble Co; Nehemiah Manufacturing Co.
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

Page 1 of 1

EXHIBIT C

**DEFENDANTS' JOINT NOTICE OF REMOVAL
OF CIVIL ACTION FROM STATE COURT**

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: AUG-20-2014

TIME: 10:30AM

**PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.10. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.**

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.

EXHIBIT D

**DEFENDANTS' JOINT NOTICE OF REMOVAL
OF CIVIL ACTION FROM STATE COURT**

Early Settlement Program:

- ▶ Helps you resolve cases **quickly** and **economically**
- ▶ Has been a trusted program for over **20 years**
- ▶ Boasts a **78% settlement rate** and **97% satisfaction rate**

Early Settlement provides:

- ▶ Panels of experienced trial attorneys (all with at least **10 years of experience**)
- ▶ **Three free hours** of settlement conference time per case, including one hour of preparation time
- ▶ Panelists who are matched with the case's type of law
- ▶ **Low administrative fee** of \$295 (early capped at \$590 for parties represented by the same counsel)

FAST

Do you have a case filed in San Francisco Superior Court and want to settle sooner than your trial date?

ECONOMICAL

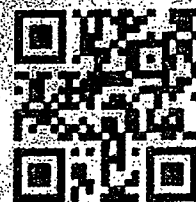
Want a settlement option with less stress and cost than trial?

Want the skills of experienced panelists in arriving at a realistic, satisfying settlement?

Consider The Bar Association
of San Francisco's

**Early
Settlement
Program**

Learn more about the Early Settlement Program--scan the QRCode or visit www.sfbbar.org/adr/esp



What is ESP?

The Bar Association of San Francisco's **Early Settlement Program (ESP)** is available as one of San Francisco Superior Court's Alternative Dispute Resolution (ADR) programs (Local Rule 3).

SP is a **highly successful** ADR program that handles cases in areas of law such as business, personal injury, employment, labor, civil rights, discrimination, insurance, malpractice, landlord/tenant, and many others.

SP is **unique** in that the panelists, in helping you move toward settlement, can provide you confidential feedback about their evaluation of your case, including opinions as to potential case value.

For more information as well as the complete Policies & Procedures, go to:
www.sfbאר.org/esp

Who are the Panelists?

They are experienced attorneys with at least **10 years of trial experience**. Panels consist of one plaintiff and one defense attorney. Sometimes an attorney who is experienced in both types of representation serves as a solo panelist.

Costs

There is a **\$295 administrative fee** per party, capped at **\$590** for multiple parties represented by the same attorney, to pay for the cost of running this program. **If you have a lawyer with the Superior Court, your fee will be waived by the ESP program.**

Contact

- ▶ email: esp@sfbאר.org
- ▶ phone: **415-982-1600**
- ▶ fax: **415-989-0381**

Steps

The forms you need can be found at www.sfbאר.org/esp, or email adr@sfbאר.org or call 415-782-8905 for a packet to be sent to you.

- ① Please complete the ESP Agreement and return it to BASF via email at adr@sfbאר.org or by fax to 415-989-0381. You don't have to get the other parties to sign, just send yours.
- ② When all parties have signed the ESP Agreement, you will be sent the Notice of ESP, along with an invoice.
- ③ There is a \$295 administrative fee per party, with a cap of \$590 for multiple parties represented by the same attorney. You can pay by check, money order or credit card.
- ④ Send your administrative fee by fax, email or mail to: BASF / ESP, 301 Battery Street, Third Floor, San Francisco, California 94111.
- ⑤ When BASF receives the fees from all parties, your matter will be assigned to a panelist (or panel of 2), who you will work with to set the date, time and location for your conference.
- ⑥ If you must reschedule your ESP conference date, work with the other side and your panelist(s) to set the new date. BASF does not need to be notified.
- ⑦ Before your conference, provide a copy of your description of the dispute to all parties and panelists. BASF does not need a copy.
- ⑧ If the matter is settled in your ESP conference, congratulations!
- ⑨ If the matter is not settled in your ESP conference, your initial court date remains the same.

EXHIBIT E

**DEFENDANTS' JOINT NOTICE OF REMOVAL
OF CIVIL ACTION FROM STATE COURT**



Superior Court of California, County of San Francisco

Alternative Dispute Resolution Program Information Package



The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. (CRC 3.221(c))

WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to court.

WHY CHOOSE ADR?

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial." (Local Rule 4)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet) at the clerk's office located at 400 McAllister Street, Room 103;
- Indicating your ADR preference on the Case Management Statement (also attached to this packet); or
- Contacting the court's ADR office (see below) or the Bar Association of San Francisco's ADR Services at 415-782-8905 or www.sfbar.org/adr for more information.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
415-551-3876

Or, visit the court ADR website at www.sfsuperiorcourt.org

The San Francisco Superior Court offers different types of ADR processes for general civil matters; each ADR program is described in the subsections below:

1) SETTLEMENT CONFERENCES

The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute early in the litigation process.

(A) THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) EARLY SETTLEMENT PROGRAM (ESP): ESP remains as one of the Court's ADR programs (see Local Rule 4.3) but parties must select the program – the Court no longer will order parties into ESP.

Operation: Panels of pre-screened attorneys (one plaintiff, one defense counsel) each with at least 10 years' trial experience provide a minimum of two hours of settlement conference time, including evaluation of strengths and weakness of a case and potential case value. On occasion, a panelist with extensive experience in both plaintiff and defense roles serves as a sole panelist. BASF handles notification to all parties, conflict checks with the panelists, and full case management. The success rate for the program is 78% and the satisfaction rate is 97%. Full procedures are at: www.sfbar.org/esp.

Cost: BASF charges an administrative fee of \$295 per party with a cap of \$590 for parties represented by the same counsel. Waivers are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbar.org or see the enclosed brochure.

(B) MANDATORY SETTLEMENT CONFERENCES: Parties may elect to apply to the Presiding Judge's department for a specially-set mandatory settlement conference. See Local Rule 5.0 for further instructions. Upon approval of the Presiding Judge, the court will schedule the conference and assign the case for a settlement conference.

2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement, before incurring the expense of going to court, that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law. A mediator strives to bring the parties to a mutually beneficial settlement of the dispute.

(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO, in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending.

Operation: Experienced professional mediators, screened and approved, provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at www.sfbar.org/mediation or BASF can assist with mediator selection. The BASF website contains photographs, biographies, and videos of the mediators as well as testimonials to assist with the selection process. BASF staff handles conflict checks and full case management.

Mediators work with parties to arrive at a mutually agreeable solution. The success rate for the program is 64% and the satisfaction rate is 99%.

Cost: BASF charges an administrative fee of \$295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the administrative fee are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbaz.org or see the enclosed brochure.

(B) PRIVATE MEDIATION: Although not currently a part of the court's ADR program, civil disputes may also be resolved through private mediation. Parties may elect any private mediator or mediation organization of their choice; the selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

3) ARBITRATION

An arbitrator is neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

(A) JUDICIAL ARBITRATION: When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial.

Operation: Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the court's arbitration panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 60 days after the arbitrator's award has been filed.

Local Rule 4.2 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after the filing of a complaint. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

Cost: There is no cost to the parties for judicial arbitration.

(B) PRIVATE ARBITRATION: Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE THE ATTACHED STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASF TO ENROLL IN THE LISTED BASF PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF COMPLETED STIPULATIONS TO BASF.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) TELEPHONE NO.: ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514	
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT:	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: DEPARTMENT 610

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- ☐ Early Settlement Program of the Bar Association of San Francisco (BASF) - Pre-screened experienced attorneys provide a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$250 per party. Waivers are available to those who qualify. BASF handles notification to all parties, conflict checks with the panelists, and full case management. www.sfbars.org/esp
- ☐ Mediation Services of BASF - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$250 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. www.sfbars.org/mediation
- ☐ Private Mediation - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- ☐ Judicial Arbitration - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. www.sfsuperiorcourt.org
- ☐ Other ADR process (describe) _____

2) The parties agree that the ADR Process shall be completed by (date): _____

3) Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

Dated: _____

☐ Additional signature(s) attached

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
CASE MANAGEMENT STATEMENT (Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)	
CASE NUMBER: _____	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court (if different from the address above): _____ <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): _____	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. ☐ This statement is submitted by party (name):
 - b. ☐ This statement is submitted jointly by parties (names):

2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date):
 - b. ☐ The cross-complaint, if any, was filed on (date):

3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. ☐ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):

4. **Description of case**
 - a. Type of case in ☐ complaint ☐ cross-complaint (Describe, including causes of action):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. Trial date

a. ☐ The trial has been set for *(date)*:

b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. Estimated length of trial

The party or parties estimate that the trial will take *(check one)*:

a. ☐ days *(specify number)*:

b. ☐ hours (short causes) *(specify)*:

8. Trial representation *(to be answered for each party)*

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference *(specify code section)*:

10. Alternative dispute resolution (ADR)

a. ADR information package. Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. Referral to judicial arbitration or civil action mediation (if available).

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (explain):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (specify):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.

(1) Name of case: _____

(2) Name of court: _____

(3) Case number: _____

(4) Status: _____

☐ Additional cases are described in Attachment 13a.

- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

15. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (describe all anticipated discovery):

<u>Party</u>	<u>Description</u>	<u>Date</u>
--------------	--------------------	-------------

- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (specify):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other Issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

EXHIBIT F

**DEFENDANTS' JOINT NOTICE OF REMOVAL
OF CIVIL ACTION FROM STATE COURT**

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

The Procter & Gamble Company; Nehemiah Manufacturing Company
LLC And does i through f.f.ty

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

David Machlan

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso) 14-538168

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Adam Gutride, Kristen Simpicio Gutride Safier LLP, 835 Douglass St, SF, CA 94114 (415) 639-9090

DATE: 3/21/2014 MAR 21 2014
(Fecha)

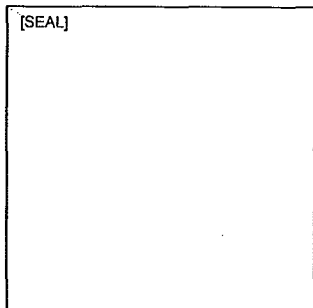
CLERK OF THE COURT

Clerk, by
(Secretario)

M.A. MORAN

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): Procter & Gamble Co; Nehemiah Manufacturing Co.
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

David Machlan

(b) County of Residence of First Listed Plaintiff **San Francisco**

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Adam Gutride, Seth Safier, Kristen Simplicio

GUTRIDE SAFIER LLP

835 Douglass Street, San Francisco, CA, 94114; Tel: 415-271-6469

DEFENDANTSThe Procter & Gamble Company
Nehemiah Manufacturing Company

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

See attachment

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

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

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

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

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

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

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

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

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 1332, 1441, 1446, 1453.

Brief description of cause:

Plaintiff asserted statutory and common law claims in state court; Defendants jointly remove pursuant to CAFA.

VII. REQUESTED IN COMPLAINT:☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/29/2014

SIGNATURE OF ATTORNEY OF RECORD

/s/ Emily Johnson Henn

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)



SAN FRANCISCO/OAKLAND



SAN JOSE



EUREKA

ATTACHMENT TO CIVIL COVER SHEET

I. Attorneys for Defendant The Procter & Gamble Company

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II. Attorneys for Defendant Nehemiah Manufacturing Company

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