

ARIAS SANGUINETTI STAHL & TORRIJOS LLP

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

14 NICHOLAS RAZO, an individual, on
15 behalf of himself and all others
16 similarly situated; KATHLEEN
17 KOEHN, an individual, on behalf of
18 herself and all others similarly
19 situated,

20 Plaintiffs,

21 vs.

22 ASHLEY FURNITURE
23 INDUSTRIES, INC., a Wisconsin
24 corporation; ASHLEY
25 HOMESTORES, LTD., a Wisconsin
26 corporation; and DOES 1 through
27 100, inclusive,

28 Defendants.

Case No. 2:16-cv-2911

CLASS ACTION

COMPLAINT

1. **VIOLATION OF CONSUMERS LEGAL REMEDIES ACT (CIV. CODE §§ 1750, ET SEQ.)**
2. **VIOLATION OF THE UNFAIR COMPETITION LAW (BUS. & PROF. CODE §§ 17200, ET SEQ.)**
3. **VIOLATION OF THE FALSE ADVERTISING LAW (BUS. & PROF. CODE §§ 17200, ET SEQ.)**
4. **FRAUD BY CONCEALMENT**
5. **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (COM. CODE § 2314)**
6. **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (CIV. CODE §§ 1790, ET SEQ.)**

DEMAND FOR JURY TRIAL

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JURISDICTION AND VENUE

1
2 1. This Court has original jurisdiction over this action pursuant to 28
3 U.S.C. § 1332(d)(2).

4 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
5 and (d).

6 **PLAINTIFFS**

7 3. The Class that Plaintiffs seek to represent (the “Class”) comprise
8 the following persons: *All persons who purchased furniture with DuraBlend®*
9 *upholstery from Defendants in California on or after December 22, 2011.*

10 4. The number of members of the Class is greater than 100.

11 5. The matter in controversy in this action exceeds the sum or value
12 of \$5,000,000, exclusive of interest and costs.

13 6. Plaintiff Nicholas Razo

14 a. Plaintiff Razo is a member of the Class identified in
15 Paragraph 3.

16 b. Plaintiff Razo is a citizen of California.

17 c. On or about October 27, 2013, Plaintiff Razo purchased
18 from Defendants, at a retail store doing business as “Casa Linda Furniture,”
19 located at 7510 Firestone Boulevard, Downey, California, a sofa and a
20 loveseat, both having brown DuraBlend® upholstery, for approximately \$2,000
21 (collectively, “Furniture I”). Plaintiff Razo purchased Furniture I believing its
22 upholstery to be leather, as it appeared to be leather. However, Defendants
23 sold Furniture I to Plaintiff Razo without disclosing to him that Furniture I’s
24 upholstery was in fact not leather and without disclosing to him the percentage
25 of leather scraps or fibers, if any, or the percentage of non-leather substances
26 contained in it. Nor did Defendants disclose to Plaintiff Razo that Furniture I
27 was of such nature and quality that it would not hold up to normal wear and
28

1 tear and that it would begin to peel or disintegrate within a short period of
2 time.

3 d. Plaintiff Razo has continuously owned Furniture I since he
4 bought it and has continuously kept it in his living room for him and his
5 family's normal course of use. In or about January of 2014, Plaintiff Razo
6 discovered that the DuraBlend® upholstery on Furniture I was peeling, causing
7 pieces and particles of the top "leather"-like layer to come off and exposing
8 the underlying material, which was coarse in texture and off-white in color.
9 The pictures attached hereto as **Exhibit A** show Furniture I in this state. From
10 then on, Plaintiff Razo kept Furniture I covered by blankets so as to avoid
11 further peeling.

12 e. In or about mid-2014, Plaintiff Razo complained to
13 Defendants that Furniture I was peeling and asked that they rectify it. When
14 Plaintiff Razo contacted the store where he had bought Furniture I and
15 explained what had happened and requested a refund, the salesman directed
16 him to contact Defendants at the factory level. When Plaintiff Razo did so,
17 Defendants told him they would look into the problem and get back to him,
18 which they never did despite his requests that they do so.

19 f. To this day, Defendants have failed to provide any remedy
20 for the monetary loss they caused Plaintiff Razo by selling him faulty
21 furniture.

22 7. Plaintiff Kathleen Koehn

23 a. Plaintiff Koehn is a member of the Class identified in
24 Paragraph 3.

25 b. Plaintiff Koehn is a citizen of California.

26 c. On or about April 27, 2013, Plaintiff Koehn purchased from
27 Defendants, at a retail store doing business as "Design Center," located at 606
28 West Katella Avenue, Orange, California, a sectional sofa, having brown

1 DuraBlend® upholstery, for approximately \$650 (“Furniture II”). Plaintiff
2 Koehn purchased Furniture II believing its upholstery to be leather. She
3 believed it to be leather because it appeared to be leather and because
4 Defendants represented that the upholstery was made of “bonded leather.”
5 However, Defendants sold Furniture II to Plaintiff Koehn without disclosing to
6 her that Furniture II’s upholstery was in fact not leather and without disclosing
7 to her the percentage of leather scraps or fibers, if any, or the percentage of
8 non-leather substances contained in it. Nor did Defendants disclose to Plaintiff
9 Koehn that Furniture II was of such nature and quality that it would not hold
10 up to normal wear and tear and that it would begin to peel or disintegrate
11 within a short period of time.

12 d. Plaintiff Koehn has continuously owned Furniture II since
13 she bought it and has continuously kept it in her living room for her and her
14 family’s normal course of use. In or about early 2014, Plaintiff Koehn
15 discovered that the DuraBlend® upholstery on Furniture II was peeling,
16 causing pieces and particles of the top “leather”-like layer to come off and
17 exposing the underlying material, which was coarse in texture and off-white in
18 color. By or before the second anniversary of Plaintiff Koehn’s having bought
19 Furniture II, the brown top layer had almost completely peeled off from much
20 of the seating surfaces, leaving several of the surfaces to mostly comprise the
21 off-white coarse underlying material and little of the “leather”-like top layer
22 with which Furniture II was sold to Plaintiff Koehn. The pictures attached
23 hereto as **Exhibit B** show Furniture II in this state.

24 e. In or about mid-2014, Plaintiff Koehn complained to
25 Defendants that Furniture II was peeling and asked that they rectify it.
26 However, Defendants refused to provide a refund, but offered to reupholster
27 the peeling areas if Plaintiff Koehn paid for it. When she then contacted the
28 store where she had bought Furniture II and explained what had happened, the

1 salesman declined to provide a refund and told her there was nothing he could
2 do, as this type of furniture was not “designed to last” as much as two years.

3 f. To this day, Defendants have failed to provide any remedy
4 for the monetary loss they caused Plaintiff Koehn by selling her faulty
5 furniture.

6 **CLASS ALLEGATIONS**

7 8. The persons who comprise the Class are so numerous that joinder
8 with all such persons is impracticable and the disposition of their claims will
9 benefit the parties and the Court. The claims of Plaintiffs are typical of the
10 claims of the Class. Plaintiffs will fairly and adequately protect the interests of
11 the Class. Plaintiffs do not have any interests that are antagonistic to the
12 Class. Counsel for Plaintiffs are experienced, qualified, and generally able to
13 conduct complex class action litigation.

14 9. This Court should permit this action to be maintained as a class
15 action pursuant to CAL. CODE CIV. PROC. § 382 for the following reasons:

16 a. The questions of law and fact common to the Class
17 predominate over any question affecting only individual members;

18 b. A class action is superior to any other available method for
19 the fair and efficient adjudication of the claims of the members of the Class;

20 c. The members of the Class are so numerous that it is
21 impractical to bring all members of the Class before the Court;

22 d. Plaintiffs and the other members of the Class will not be
23 able to obtain effective and economic legal redress unless the action is
24 maintained as a class action;

25 e. There is a community of interest in obtaining appropriate
26 legal and equitable relief for the common law and statutory violations and
27 other improprieties alleged herein, as well as in obtaining adequate
28 compensation for the damages and injuries for which Defendants are

1 responsible in an amount sufficient to adequately compensate the members of
2 the Class for the injuries sustained;

3 f. Without class certification, the prosecution of separate
4 actions by individual members of the Class would create a substantial risk of
5 the following:

6 i. Inconsistent or varying adjudications with respect to
7 individual members of the Class that would establish incompatible standards of
8 conduct for Defendants, and/or

9 ii. Adjudications with respect to the individual members
10 that would, as a practical matter, be dispositive of the interests of other
11 members not parties to the adjudications, or would substantially impair or
12 impede their ability to protect their interests, including but not limited to the
13 potential for exhausting the funds available from those parties who are, or may
14 be, responsible Defendants; and

15 g. Defendants have acted, or refused to act, on grounds that are
16 generally applicable to the Class, thereby making final injunctive relief
17 appropriate with respect to the Class as a whole.

18 **DEFENDANTS**

19 10. Plaintiffs are informed and believe, and based on that information
20 and belief allege, that Defendant Ashley Furniture Industries, Inc., (“Ashley
21 Furniture”) is, and at all relevant times herein mentioned was:

- 22 a. A duly organized Wisconsin corporation;
23 b. A citizen of Wisconsin; and
24 c. Duly qualified to conduct business, and conducting
25 business, in the State of California, including the Central District of California.

26 11. Plaintiffs are informed and believe, and based on that information
27 and belief allege, that Defendant Ashley HomeStores, Ltd., (“Ashley
28 HomeStores”) is, and at all relevant times herein mentioned was:

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- 1 a. A duly organized Wisconsin corporation;
- 2 b. A citizen of Wisconsin; and
- 3 c. Duly qualified to conduct business, and conducting
- 4 business, in the State of California, including the Central District of California.

5 12. The true names and capacities, whether individual, corporate,

6 partnership, associate, or otherwise, of Defendants Does 1 through 100,

7 inclusive (“Doe Defendants”), are unknown to Plaintiffs who therefore sue

8 these Doe Defendants by such fictitious names pursuant to CAL. CODE CIV.

9 PROC. § 474. Plaintiffs will seek leave to amend this complaint to allege their

10 true names and capacities when they are ascertained.

11 13. Plaintiffs are informed and believe, and based on that information

12 and belief allege, that each of the Defendants named in this complaint,

13 including each of the Doe Defendants, is responsible in some manner for one

14 or more of the events and happenings, and proximately caused the injuries and

15 damages, hereinafter alleged.

16 14. Plaintiffs are informed and believe, and based on that information

17 and belief allege, that each of the Defendants named in this complaint,

18 including each of the Doe Defendants (collectively, “Defendants”), is, and at

19 all relevant times herein mentioned was, the agent, servant, and/or employee of

20 each of the other Defendants, and that each Defendant was acting within the

21 course and scope of his, her, or its authority as the agent, servant, and/or

22 employee of each of the other Defendants. Consequently, each Defendant is

23 jointly and severally liable to Plaintiffs and the other members of the Class for

24 the losses sustained as a proximate result of their conduct.

25 **BACKGROUND ALLEGATIONS**

26 15. Defendants Ashley Furniture and Ashley HomeStores (collectively

27 “Ashley”) have at all relevant times herein mentioned been engaged in the

28 manufacture and sale of residential furniture. Established in 1945, Ashley

1 holds itself out as the largest furniture manufacturer and retailer in the world,
2 with over 500 retail outlets in 123 countries, including the United States and
3 Canada.

4 16. In or about April of 2008, Ashley began incorporating an
5 upholstery product into some of its furniture, including sofas, loveseats,
6 sectionals, and ottomans, which it marketed as “blended leather upholstery”
7 under the trade name DuraBlend®. According to the online encyclopedia
8 WikiPedia.com, “blended leather” is synonymous with “bonded leather,” a
9 man-made material that incorporates leather scraps and fiber and mimics the
10 appearance of leather:

11 Bonded leather ... is a term used for a man-made upholstery
12 material made as a layered structure of a fiber or paper backer, a
13 pulp made from shredded leather, and a polyurethane coating
14 which may be embossed with a leather-like texture. Bonded
15 leather is made by shredding leather scraps and leather fiber, then
16 mixing it with bonding materials. The mixture is next extruded
17 onto a fiber cloth, or paper backing, and the surface is usually
18 embossed with a leather-like texture or grain. Color and
19 patterning, if any, are a surface treatment that does not penetrate
like a dyeing process would. The natural leather fiber content of
bonded leather varies. The manufacturing process is somewhat
similar to the production of paper.

20 Lower-quality materials may suffer flaking of the surface material
21 in as little as a few years, while better varieties are considered
22 very durable and retain their pattern and color even during
23 commercial use. Because the composition of bonded leathers and
24 related products varies considerably (and sometimes is a trade
25 secret), it may be difficult to predict how a given product will
26 perform over the course of time. There is a wide range in the long-
27 evity of bonded leathers and related products; some better-quality
28 bonded leathers are claimed to be superior in durability over low-
quality genuine leather.

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The actual leather content of bonded leather varies depending on the manufacturer and the quality level they are selling. In the home furnishings industry there is much debate and controversy over the ethics of using the term “bonded leather” to describe an upholstery product, which is actually a reconstituted leather. Opinion in the leather industry says that calling a product “bonded leather” is “deceptive because it does not represent its true nature. It’s a reconstituted hide, not an organically grown leather.”

The US Federal Trade Commission recommends according to 16 C.F.R. Section 24: “For example: An industry product made of a composition material consisting of 60% shredded leather fibers may be described as: Bonded Leather Containing 60% Leather Fibers and 40% Non-leather Substances.” The Federal Trade Commission has said that “The guidelines caution against misrepresentations about the leather content in products containing ground, reconstituted, or bonded leather, and state that such products, when they appear to be made of leather, should be accompanied by a disclosure as to the percentage of leather or other fiber content. The guidelines also state that these disclosures should be included in any product advertising that might otherwise mislead consumers as to the composition of the product.”

(See https://en.wikipedia.org/wiki/Bonded_leather. Footnotes omitted.)

17. Rather than disclose the true nature and content of the DuraBlend® upholstery, Ashley knowingly, affirmatively, and actively concealed its true nature and content from Plaintiffs and the other members of the Class. Instead, Ashley marketed the DuraBlend® upholstery as “blended leather,” which appeared to be leather to a reasonable consumer, without providing disclosures of such conspicuousness and clarity as to be noted by a reasonable consumer casually inspecting the products, or casually reading or listening to Defendants’ marketing materials, that the DuraBlend® upholstery was in fact not leather or of the percentage of leather scraps or fibers, if any, or the percentage of non-leather substances contained in it, as required by law. As a result, Plaintiffs and the other members of the Class purchased furniture from Ashley

1 with DuraBlend® upholstery, without knowing the true nature, content, or
2 quality of the upholstery, instead reasonably believing it to be leather and
3 reasonably believing it to be of such nature and quality as to hold up to normal
4 wear and tear and not begin to peel or disintegrate within a short period of
5 time.

6 **TOLLING OF STATUTES OF LIMITATION**

7 18. Any and all applicable statutes of limitation have been tolled by
8 Defendants' knowing and active fraudulent concealment of the true nature and
9 content of the DuraBlend® upholstery. Plaintiffs and the other members of the
10 Class could not reasonably have discovered the true nature and content of the
11 DuraBlend® upholstery until it began peeling, as described herein.

12 19. Defendants were under a continuing duty to disclose to Plaintiffs
13 and the other members of the Class the true nature and content of the Dura-
14 Blend® upholstery. Rather than comply with this duty, Defendants knowingly,
15 affirmatively, and actively concealed the true nature and content of the
16 DuraBlend® upholstery. Defendants marketed the DuraBlend® upholstery as a
17 "blended leather," which appeared to be leather to a reasonable consumer,
18 without providing disclosures of such conspicuousness and clarity as to be
19 noted by a reasonable consumer casually inspecting the products, or casually
20 reading or listening to Defendants' marketing materials, that the DuraBlend®
21 upholstery was in fact not leather or of the percentage of leather scraps or
22 fibers, if any, or the percentage of non-leather substances contained in it, as
23 required by federal law.

24 20. Based on the foregoing, Defendants are estopped from relying on
25 any statutes of limitation in defense of this action. Further, any and all statutes
26 of limitation otherwise applicable have been tolled by operation of the
27 discovery rule with respect to all claims alleged herein on behalf of Plaintiffs
28 and the other members of the Class.

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FIRST CAUSE OF ACTION
VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT

[Civil Code §§ 1750, *et seq.*]

(By Plaintiffs and the Class Against all Defendants)

21. Plaintiffs reallege and incorporate herein by reference, as though fully set forth herein, paragraphs 1 through 20, inclusive, of this complaint.

22. This cause of action is brought pursuant to the Consumers Legal Remedies Act (Civ. Code §§ 1750, *et seq.*) (“CLRA”) because Defendants’ actions and conduct described herein constitute transactions that have resulted in the sale or lease of goods to consumers.

23. Plaintiffs and the other members of the Class are consumers as defined by Civil Code section 1761(d).

24. The furniture with the DuraBlend® upholstery that Defendants sold to Plaintiffs and the other members of the Class (“Class Furniture”) are “goods” as defined in Civil Code section 1761(a).

25. Defendants violated the CLRA in at least the following respects:

a. In violation of Civil Code section 1770(a)(5), Defendants represented that the Class Furniture had characteristics, ingredients, uses, and benefits which it does not have;

b. In violation of Civil Code section 1770(a)(7), Defendants represented that the Class Furniture was of a particular standard, quality, or grade, when in fact the Class Furniture was of lesser standard, quality, and grade;

c. In violation of Civil Code section 1770(a)(9), Defendants advertised the Class Furniture with the intent not to sell it as advertised; and

d. In violation of Civil Code section 1770(a)(16), Defendants represented that the Class Furniture had been supplied in accordance with a previous representation, when it had not.

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1 26. Defendants knew, or should have known, that the representations
2 made in their marketing of the DuraBlend® upholstery were false and
3 misleading.

4 27. Plaintiffs and the other members of the Class have been harmed
5 and continue to be threatened with harm as a direct and proximate result of
6 Defendants' actions in violation of the CLRA.

7 28. Plaintiffs, on behalf of themselves and the other members of the
8 Class, seek an order from this Court under Civil Code section 1780(a)(2)
9 enjoining Defendants from continuing to engage in the practices described in
10 this complaint and a declaration that Defendants' conduct violates the CLRA.
11 Without such an order, Plaintiffs and the other members of the Class will
12 continue to be harmed and threatened with harm as a direct and proximate
13 result of Defendants' action in violation of the CLRA. Moreover, without such
14 an order, Plaintiffs and the other members of the Class will have no assurance
15 that furniture sold by Defendants with upholstery that appears to be leather, or
16 is represented to be or contain leather, in fact is leather or contains leather.
17 Nor will Plaintiffs and the other members of the Class have any assurance that
18 a disclosure in compliance with applicable law of the ratio of leather to non-
19 leather substances contained in such upholstery is being provided or that the
20 upholstery is of such nature and quality as to hold up to normal wear and tear
21 and not begin to peel or disintegrate within a short period of time.

22 29. Plaintiffs are not presently seeking compensatory or exemplary
23 damages, pursuant to Civil Code sections 1780 and 1782(b). In accordance
24 with Civil Code section 1782(a), however, Plaintiffs will be serving, or has
25 served, Defendants with notice of Defendants' alleged violations of the CLRA
26 via certified mail, return receipt requested. If Defendants fail to provide
27 appropriate relief to Plaintiff and the other members of the Class for its
28 violations of the CLRA within 30 days of Plaintiffs' notification letter,

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1 Plaintiffs will amend this complaint, pursuant to Civil Code section 1782(d), to
2 seek compensatory and exemplary damages under Civil Code sections 1780
3 and 1782(b).

4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF THE UNFAIR COMPETITION LAW**

6 [BUS. & PROF. CODE §§ 17200, *et seq.*]

7 (By Plaintiffs and the Class Against all Defendants)

8 30. Plaintiffs reallege and incorporate herein by reference, as though
9 fully set forth herein, paragraphs 1 through 29, inclusive, of this complaint.

10 31. Defendants fall within the definition of “person” under Business &
11 Professions Code section 17021.

12 32. Plaintiffs have standing to pursue this cause of action, as Plaintiffs
13 have suffered injury in fact and have lost money or property as a result of
14 Defendants’ actions as described herein.

15 33. Defendants’ marketing of the DuraBlend® upholstery as “blended
16 leather” without providing disclosures of such conspicuousness and clarity as
17 to be noted by a reasonable consumer casually inspecting the products, or
18 casually reading or listening to Defendants’ marketing materials, that the Dura-
19 Blend® upholstery was in fact not leather or of the percentage of leather scraps
20 or fibers, if any, or the percentage of non-leather substances contained in it,
21 instead knowingly, affirmatively, and actively concealing its true nature and
22 content from Plaintiffs and the other members of the Class, constitutes
23 unlawful, unfair, and/or fraudulent business practices in violation of Business
24 and Professions Code sections 17200, *et seq.*

25 34. Defendants’ business practices, as alleged herein, violate the
26 “unfair” prong of Business & Professions Code sections 17200, *et seq.*
27 because: (i) the injury to Plaintiffs and the other members of the Class was
28 substantial in that Defendants’ concealment of the true nature and content of

1 the DuraBlend® upholstery caused Plaintiffs and the other members of the
 2 Class to purchase furniture that failed to be of such nature and quality as to
 3 hold up to normal wear and tear and not begin to peel or disintegrate within a
 4 short period of time; (ii) the gravity of the injury that Defendants' concealment
 5 of the true nature and content of the DuraBlend® upholstery imposed on
 6 Plaintiffs and the other members of the Class significantly outweighed the
 7 utility of the concealment; and (iii) the injury suffered by Plaintiffs and the
 8 other members of the Class as a result of Defendants' concealment of the true
 9 nature and content of the DuraBlend® upholstery is not one that Plaintiffs and
 10 the other members of the Class could reasonably have avoided.

11 35. Defendants' business practices, as alleged herein, violate the
 12 "unlawful" prong of Business & Professions Code sections 17200, *et seq.*
 13 because they violate federal law, including section 24.2 of Title 16 of the Code
 14 of Federal Regulations (16 C.F.R. § 24.2), which provides as follows in
 15 pertinent part:

16 **§ 24.2 Deception as to composition.**

17 It is unfair or deceptive to misrepresent, directly or by implication,
 18 the composition of any industry product or part thereof. It is unfair
 19 or deceptive to use the unqualified term "leather" or other
 20 unqualified terms suggestive of leather to describe industry
 21 products unless the industry product so described is composed in
 22 all substantial parts of leather.

23 . . .

- 24 (f) Ground, pulverized, shredded, reconstituted, or bonded leather.
 25 A material in an industry product that contains ground, pulver-
 26 ized, shredded, reconstituted, or bonded leather and thus is not
 27 wholly the hide of an animal should not be represented, direct-
 28 ly or by implication, as being leather. This provision does
 not preclude an accurate representation as to the ground, pul-
 verized, shredded, reconstituted, or bonded leather content of
 the material. However, if the material appears to be leather, it
 should be accompanied by either:

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(1) An adequate disclosure as described by paragraph (a) of this section; or

(2) If the terms “ground leather,” “pulverized leather,” “shredded leather,” “reconstituted leather,” or “bonded leather” are used, a disclosure of the percentage of leather fibers and the percentage of non-leather substances contained in the material. For example: An industry product made of a composition material consisting of 60% shredded leather fibers may be described as: Bonded Leather Containing 60% Leather Fibers and 40% Non-leather Substances.

(g) Form of disclosures under this section. All disclosures described in this section should appear in the form of a stamping on the product, or on a tag, label, or card attached to the product, and should be affixed so as to remain on or attached to the product until received by the consumer purchaser. All such disclosures should also appear in all advertising of such products irrespective of the media used whenever statements, representations, or depictions appear in such advertising which, absent such disclosures, serve to create a false impression that the products, or parts thereof, are of a certain kind of composition. The disclosures affixed to products and made in advertising should be of such conspicuousness and clarity as to be noted by purchasers and prospective purchasers casually inspecting the products or casually reading, or listening to, such advertising. A disclosure necessitated by a particular representation should be in close conjunction with the representation.

36. Defendants’ business practices, as alleged herein, violate the “fraudulent” prong of Business & Professions Code section 17200, *et seq.* because they are likely to deceive a reasonable consumer.

37. Accordingly, Defendants violated, and continues to violate, the proscription under Business & Professions Code section 17200 against engaging in unlawful, unfair, and fraudulent business acts and practices.

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1 43. Defendants directly disseminated or caused to be disseminated
2 statements in California in advertisements, marketing materials, and other
3 publications, including on Defendants’ website, suggesting that the Class
4 Furniture had upholstery that was composed of “leather” and was “durable”
5 while failing to disclose the true nature and content of the DuraBlend®
6 upholstery, which statements were (1) untrue and/or misleading, (2) known, or
7 with the exercise of reasonable care should have been known, to Defendants to
8 be untrue and/or misleading to consumers, including Plaintiffs and the other
9 members of the Class, and (3) material and likely to deceive a reasonable
10 consumer, including Plaintiffs and the other members of the Class.

11 44. Plaintiffs and the other members of the Class have suffered injury
12 in fact, including the loss of money and/or property, as a result of Defendants’
13 untrue and/or misleading statements regarding the Class Furniture, which
14 statements constitute unfair, deceptive, untrue, and/or misleading advertising
15 in violation of the False Advertising Law (Bus. & Prof. Code, §§ 17500, *et*
16 *seq.*).

17 45. Plaintiffs and the other members of the Class would not have
18 purchased the Class Furniture had they known of the deceptive nature of
19 Defendants’ untrue and/or misleading statements, or they would have paid less
20 for the Class Furniture.

21 46. The wrongful conduct alleged herein occurred, and on information
22 and belief continues to occur, in the conduct of Defendants’ business as part of
23 a pattern or generalized course of conduct that is still perpetuated and repeated.

24 47. Plaintiffs and the other members of the Class request that this
25 Court enter such orders or judgments as may be necessary to enjoin Defen-
26 dants from continuing their unfair, unlawful, and/or deceptive practices and to
27 restore to Plaintiffs and the other members of the Class any money Defendants
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1 acquired by unfair competition, including restitution and/or restitutionary
2 disgorgement, and for such other relief set forth herein.

3 **FOURTH CAUSE OF ACTION**

4 **FRAUD BY CONCEALMENT**

5 **(By Plaintiffs and the Class Against all Defendants)**

6 48. Plaintiffs reallege and incorporate herein by reference, as though
7 fully set forth herein, paragraphs 1 through 47, inclusive, of this complaint.

8 49. Defendants knew at all material times the true nature and content
9 of the DuraBlend® upholstery in the Class Furniture and that it was neither
10 “leather” nor “durable” and that it failed to be of such nature and quality as to
11 hold up to normal wear and tear and not begin to peel or disintegrate within a
12 short period of time after purchase.

13 50. These facts were not known or reasonably known to Plaintiffs and
14 the other members of the Class.

15 51. Defendants knowingly, affirmatively, and actively concealed these
16 facts from Plaintiffs and the other members of the Class, which facts were
17 material to Plaintiffs and the other members of the Class because they
18 concerned the quality, durability, and value of the Class Furniture.

19 52. Defendants had a duty to disclose the above known material facts
20 because Defendants knew that these material facts were unknown to Plaintiffs
21 and the other members of the Class, because Defendants was in a superior
22 position of knowledge with regard to the Class Furniture and the true nature
23 and content of the DuraBlend® upholstery, and because Defendants chose to
24 make certain representations (including suggesting that the upholstery was
25 indeed composed of “leather” and was “durable”) that presented only a part of
26 the true story and misled Plaintiffs and the other members of the Class about
27 the Class Furniture.

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1 53. Plaintiffs and the other members of the Class reasonably relied
2 upon the completeness and veracity of Defendants’ representations and would
3 not have purchased the Class Furniture had they known of the concealed
4 material facts, which material facts Defendants concealed with the intent to
5 defraud Plaintiffs and the other members of the Class.

6 54. Defendants’ concealment of the above facts has caused damage to
7 Plaintiffs and the other members of the Class in an amount to be shown at trial.

8 55. Defendants acted maliciously, wantonly, oppressively, deliber-
9 ately, and with the intent to defraud Plaintiffs and the other members of the
10 Class. Defendants acted with reckless disregard of the rights of Plaintiffs and
11 the other members of the Class. Therefore, Defendants’ conduct rises to a
12 level that warrants the award of punitive damages in an amount sufficient to
13 deter such conduct in the future.

14 **FIFTH CAUSE OF ACTION**

15 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

16 [COM. CODE § 2314]

17 **(By Plaintiffs and the Class Against all Defendants)**

18 56. Plaintiffs reallege and incorporate herein by reference, as though
19 fully set forth herein, paragraphs 1 through 55, inclusive, of this complaint.

20 57. Defendants are, and at all relevant times were, a “merchant”
21 within the meaning of Commercial Code section 2104(1).

22 58. A warranty that the Class Furniture was in merchantable condition
23 was implied by law in the transactions between Defendants and Plaintiffs and
24 the other members of the Class, pursuant to Commercial Code section 2314.

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1 64. Plaintiffs and the other members of the Class have complied with
2 all obligations under the warranty, or otherwise have been excused from
3 performance of said obligations as a result of Defendants’ conduct described
4 herein.

5 65. Defendants are the “manufacturer” of the Class Furniture within the
6 meaning of Civil Code section 1791(j).

7 66. Defendants impliedly warranted to Plaintiffs and the other
8 members of the Class that the Class Furniture was “merchantable” within the
9 meaning of Civil Code sections 1791.1(a) and 1792.

10 67. Section 1791.1(a) of the California Civil Code provides that,
11 “implied warranty of merchantability” or “implied warranty that goods are
12 merchantable” means that the consumer goods meet each of the following:

- 13 a. Pass without objection in the trade under the contract
14 description;
- 15 b. Are fit for the ordinary purposes for which such goods are
16 used;
- 17 c. Are adequately contained, packaged, and labeled; and
- 18 d. Conform to the promises or affirmations of fact made on the
19 container or label.

20 68. The Class Furniture would not pass without objection in the
21 furniture trade because the DuraBlend® upholstery was neither “leather” nor
22 “durable” and failed to be of such nature and quality as to hold up to normal
23 wear and tear and not begin to peel or disintegrate within a short period of time
24 after purchase.

25 69. The Class Furniture was not fit for the ordinary purposes for which
26 it is used because the DuraBlend® upholstery was neither “leather” nor
27 “durable” and failed to be of such nature and quality as to hold up to normal
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1 wear and tear and not begin to peel or disintegrate within a short period of time
2 after purchase.

3 70. The Class Furniture was not adequately labeled because Defen-
4 dants failed, in violation of 16 C.F.R. § 24.2(f)(2) and (g), to disclose on the
5 Class Furniture itself (1) that the DuraBlend® upholstery was in fact not
6 leather, and (2) the percentage of leather fibers or the percentage of non-
7 leather substances contained in it.

8 71. Defendants breached the implied warranty of merchantability
9 because the Class Furniture, which Defendants sold and marketed, would not
10 pass without objection in the furniture trade, was not fit for the ordinary
11 purposes for which such goods are used, and was not adequately labeled, as
12 described herein, and therefore was inherently defective upon being placed in
13 the stream of commerce by Defendants.

14 72. As a direct and proximate result of Defendants' breach of the
15 implied warranty of merchantability, Plaintiffs and the other members of the
16 Class received goods whose condition substantially impairs their value to
17 Plaintiffs and the other members of the Class. Plaintiffs and the other
18 members of the Class have been damaged as a result of the diminished value of
19 the Class Furniture, the malfunctioning of the Class Furniture, the nonuse of the
20 Class Furniture, and the increased maintenance, repair, and maintenance costs
21 of the Class Furniture.

22 73. Pursuant to Civil Code sections 1791.1(d) and 1794, Plaintiffs and
23 the other members of the Class are entitled to damages and other legal and
24 equitable relief including, at their own election, the purchase price of their
25 Class Furniture, or the overpayment or diminution in value of their Class
26 Furniture.

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PRAYER

WHEREFORE, Plaintiffs pray for judgment as follows:

- 1. **On the First Cause of Action:**
 - a. For injunctive relief.
- 2. **On the Second Cause of Action:**
 - a. For restitution; and
 - b. For injunctive relief.
- 3. **On the Third Cause of Action:**
 - a. For restitution; and
 - b. For injunctive relief.
- 4. **On the Fourth Cause of Action:**
 - a. For compensatory damages; and
 - b. For punitive damages.
- 5. **On the Fifth Cause of Action:**
 - a. For compensatory damages;
 - b. For restitution; and
 - c. For injunctive relief.
- 6. **On the Sixth Cause of Action:**
 - a. For compensatory damages;
 - b. For restitution; and
 - c. For injunctive relief.

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7. **On All Causes of Action:**

- a. For prejudgment interest;
- b. For reasonable attorney’s fees, costs, and expenses; and
- c. For such other and further relief as this Court deems just and proper.

Dated: April 27, 2016

**ARIAS SANGUINETTI STAHL
& TORRIJOS LLP**

By: /s/ Mikael H. Stahle
 MIKE ARIAS
 MIKAEL H. STAHL
 Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims so triable.

Dated: April 27, 2016

**ARIAS SANGUINETTI STAHL
& TORRIJOS LLP**

By: /s/ Mikael H. Stahle

MIKE ARIAS
MIKAEL H. STAHL

Attorneys for Plaintiffs

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EXHIBIT “A”





EXHIBIT “B”





