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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MELISSA L. VIGIL, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

COLGATE-PALMOLIVE CO.

Defendant.

Case No.

**VERIFIED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

Plaintiff Melissa Vigil ("Plaintiff"), by her attorneys, makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to allegations specifically pertaining to herself and her counsel, which are based on personal knowledge.

NATURE OF ACTION

1. This is a class action against Colgate-Palmolive Co. ("Defendant") for falsely representing that Colgate Optic White toothpaste ("Optic White") "Goes Beyond Surface Stain Removal To Deeply Whiten," that Optic White "Deeply Whitens," and that the peroxide in Optic White is clinically proven to whiten and go

1 beyond surface stain removal. In fact, Colgate Optic White toothpaste only reaches
2 surface stains by abrading teeth, does not go beyond surface stain removal, and does
3 not deeply whiten teeth. Because Colgate Optic White toothpaste does not function as
4 a whitening agent on intrinsic stains, Defendant's representations are false and
5 misleading.

6 2. As a direct and proximate result of Defendant's false and misleading
7 advertising claims and marketing practices, Plaintiff and the members of the Class, as
8 defined herein, purchased Colgate Optic White toothpaste. Plaintiff and the members
9 of the Class purchased Colgate Optic White because they were deceived into believing
10 that Optic White goes beyond surface stains to deeply whiten teeth. As a result,
11 Plaintiff and members of the Class purchased Colgate Optic White and have been
12 injured in fact because Optic White was not effective for deep whitening or whitening
13 intrinsic stains. Plaintiff and class members have suffered an ascertainable and out-of-
14 pocket loss. Plaintiff and members of the Class seek a refund and/or rescission of the
15 transaction and all further equitable and injunctive relief as provided by applicable
16 law.

17 3. Plaintiff seeks relief in this action individually and on behalf of all
18 purchasers of Colgate Optic White toothpaste for breach of express and implied
19 warranties. Plaintiff also seeks relief in this action individually and on behalf of
20 purchasers of Optic White in California for violation of Civil Code §§ 1750, *et seq.*,
21 the California Consumer Legal Remedies Act ("CLRA"), Bus. & Prof. Code §§
22 17200, *et seq.*, California's Unfair Competition Law ("UCL"), and Bus. & Prof. Code
23 §§ 17500, *et seq.*, California's False Advertising Law ("FAL").

24 **PARTIES**

25 4. Plaintiff Melissa Vigil is a resident of Alameda, California. Beginning on
26 or around August 2015, Plaintiff regularly purchased Colgate Optic White toothpaste
27 at Target store in Alameda, California. Plaintiff purchased Colgate Optic White based
28 on claims on Optic White's label and in television commercials, including, but not

1 limited to, claims that that the toothpaste would “deeply” whiten teeth and go beyond
2 surface stain removal. One of the commercials Plaintiff viewed featured a sand dollar
3 that “can absorb stains like teeth” that showed Colgate Optic White “whiten[ing]
4 deeper” than another toothpaste. She would not have purchased Colgate Optic White if
5 the label and television commercials had not stated that it would deeply whiten her
6 teeth. Although she has been purchasing and using Colgate Optic White as directed
7 her last purchase of August 2015, had her conclude Colgate Optic White did not
8 whiten her teeth, or positively affected any of the intrinsic stains on her teeth. She
9 ceased subsequent purchases.

10 5. Defendant Colgate Palmolive Co. is a Delaware corporation with its
11 principal place of business at 300 Park Avenue, New York, New York 10022. Colgate
12 Palmolive Co. is engaged in the business of manufacturing, mass marketing, and
13 distributing Colgate Optic White toothpaste throughout the United States.

14 **JURISDICTION AND VENUE**

15 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
16 1332(d) because there are more than 100 Class Members, the aggregate amount in
17 controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least
18 one Class member is a citizen of a state different from at least one Defendant.

19 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
20 Defendant does business throughout this District, Plaintiff resides in this District,
21 Plaintiff purchased Optic White several times in this District, and Optic White is sold
22 extensively in this District.

23 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

24 **A. Colgate Optic White’s False and Misleading Labels and Advertising**

25 8. As shown below, the labels of Colgate Optic White toothpaste falsely
26 represent that it “Deeply Whitens,” “Goes Beyond Surface Stain Removal To Deeply
27 Whiten,” and that “Optic White toothpaste is clinically proven to whiten teeth with
28 peroxide. It goes beyond surface stains unlike ordinary toothpastes.” In fact,

toothpastes cannot go beyond surface stains to deeply whiten teeth because peroxide in toothpaste does not function as a whitening agent on intrinsic stains. Instead, Optic White only reaches surface stains (created on the surface of teeth by substances like wine, coffee, or tobacco) by abrading the surface of teeth.¹ Thus, Defendant's "deeply whitens" representations on Colgate Optic White's labels are false and misleading.



¹ See e.g., Webb, Camille, *The Toothpaste Trance*, UT Dentists (Oct. 8, 2014) (available at <https://www.utdentists.com/2014/10/toothpastetrance/>).

1 9. Defendant makes the same “deeply whitens” misrepresentations in
2 television commercials. For example, one commercial begins with the tagline “How
3 much whiter can your smile be?” So that consumers can find out how much whiter
4 their smile can be, Defendant “Introduc[es] new Colgate Optic White Whitening
5 Protect Toothpaste.” To illustrate Optic White’s supposed deeply whitening
6 capabilities, as shown below, Defendant use a dramatization of a shell dipped in wine
7 that “is made of calcium that can absorb stains like teeth.”



20 10. The commercial goes on to explain, “Brush one side with regular
21 whitening toothpaste and the other side with Optic White. It whitens deeper.” To
22 emphasize the commercial’s message that Optic White works by whitening intrinsic
23 stains, beneath the shell illustration, Defendant underscores that “Colgate Optic White
24 can penetrate to work below the tooth’s surface.”

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26 11. Because toothpaste only reaches surface stains, Defendant's shell
27 commercial is false and misleading.

28 12. Defendant highlights the same "deeply whitens" message in another

commercial featuring a series of smiling women adorning themselves with sunglasses, small purses, hats and other accessories while brushing with Colgate Optic White toothpaste. The commercial begins “Now your best accessory can be your smile with Colgate Optic White Toothpaste.”



13. While depicting sparkly Optic White particles reaching below surface stains to whiten teeth (shown below), the commercial continues, “Unlike the leading whitening toothpaste, Colgate Optic White toothpaste goes beyond surface stains to deeply whiten teeth.”





14. Like Defendant's labeling and shell commercial, Defendant's accessories commercial conveys the false and misleading message that Colgate Optic White deeply whitens teeth by acting as a whitening agent on intrinsic stains.

B. Colgate Optic White Toothpaste Does Not "Deeply Whiten" Teeth

15. Defendant's representations that Colgate Optic White toothpaste "Deeply Whitens," "Goes Beyond Surface Stain Removal To Deeply Whiten," and that "Optic White toothpaste is clinically proven to whiten teeth with peroxide. It goes beyond surface stains unlike ordinary toothpastes" are false and misleading because peroxide in toothpaste does not go beyond surface stains or deeply whiten teeth. In fact, dentists agree that peroxide in toothpaste does not work on intrinsic stains because the amount of peroxide in toothpaste is too small and gets rinsed away before it can deeply whiten teeth.

16. As Dr. De Vizio, DMD, Vice-President for Dental Clinical Research at Colgate-Palmolive, explained on behalf of Defendant:

Whitening toothpastes have some disadvantages. They don't actually whiten your teeth. Instead, they contain an abrasive that grinds away stains on the enamel, making your teeth seem brighter. When used for a long time, the abrasive can remove so much enamel that your teeth can get stained even more easily. In addition, using abrasive whitening toothpastes can dull veneers and crowns. *Toothpastes with hydrogen peroxide for whitening don't really help much. Because the toothpaste*

1 *gets all over your mouth, including your gums, and because you might*
 2 *swallow some, the amount of hydrogen peroxide is small. In addition,*
 3 *you probably won't brush long enough for the hydrogen peroxide to*
 4 *have much of an effect.*²

5 17. Dr. Vincent Mayher, dentist and the past president of the Academy of
 6 General Dentistry, similarly emphasized:

7 There's no doubt that whitening toothpastes can clean stains off teeth and
 8 give them a little extra gleam. But the term "whitening" is misleading.
 9 *Unlike trays and strips that can bleach deep within a tooth... toothpastes can reach only the surface ... bleaches in toothpastes are*
 10 *useless because they'll get rinsed away before they do anything.*³

11 18. Yet another dentist, Dr. Mark Burhenne DDS explains "*How Toothpaste*
 12 *Packaging Messes With Your Mind*" as follows:

13 The newer whitening toothpastes whiten your teeth chemically with a
 14 hydrogen peroxide-based chemical. *These toothpastes contain the right*
 15 *chemical for whitening, but you're never going to get the results with*
 16 *only two, or even five minutes of brushing.*

17 *Proper whitening requires you to hold the peroxide up against the tooth*
 18 *for several hours or more.* You can think of the second type of whitening
 19 toothpaste like sandpaper – the increased abrasiveness in whitening
 20 toothpaste helps to polish and remove surface staining. This is effective
 21 for removing surface staining from coffee, tea, and berries.

22 *Be aware that you are only removing stains, not changing the intrinsic*
 23 *color of your teeth.*

24 I don't recommend these toothpastes because they remove tooth structure
 25 by scraping away dentin and enamel.⁴

26 19. Likewise, the material for a continuing education course, implemented in
 27 accordance with the standards of the Academy of General Dentistry Program, teaches
 28 that:

² De Vizio, *What are the disadvantages of using whitening toothpaste?*, Teeth Whitening, Sharecare (July 27, 2011) (available at <http://www.sharecare.com/health/teethwhitening/Disadvantagesofusingwhiteningtoothpaste>); see also Dr. De Vizio DMD, Profile (available at <http://www.sharecare.com/user/dr-william-devizio>).

³ See Woolston, Chris, *Are Whitening Toothpastes a Bright Idea?*, The Healthy Skeptic, *Los Angeles Times* (July 4, 2011) (available at <http://articles.latimes.com/2011/jul/04/health/la-he-skeptic-whitening-toothpaste-20110704>).

⁴ Burhenne, Mark, *How Toothpaste Packaging Messes With Your Mind*, Ask the Dentist (Oct. 15, 2014) (available at <http://askthedentist.com/toothpastemarketing/>).

Toothpastes with hydrogen peroxide are not very effective because the peroxide reacts with other substances on the teeth. The effectiveness is also dependent on the duration of time peroxide is on the teeth. The longer it is in contact with the tooth surface, the better it works. ***Since brushing is usually done quickly, peroxide does not have much time to work properly.***⁵

20. Dr. Joe Oliver at London's Welbeck Clinic also explained his skepticism about the efficacy of the small amount of peroxide (0.1 %) in toothpaste, "Unless a peroxide toothpaste is left in contact with teeth for 30 minutes it's probably not going to have an effect."⁶

21. Richard Bebermeyer, DDS, MBA and retired professor and former chairman of restorative dentistry and biomaterials at The University of Texas Health Science Center at Houston (UTHealth) School of Dentistry also agrees that intrinsic staining cannot be achieved with toothpaste.⁷

22. Donna Warren-Morris, a registered dental hygienist and professor at the University of Texas School of Dentistry agrees and adds that "to whiten or bleach the teeth to any significant degree, the hydrogen or carbamide peroxide concentration has to be much higher than can be found in whitening toothpastes."⁸ Another registered dental hygienist, Kristina Kucinskaite, also commented that whitening toothpaste with peroxide is not in contact with the enamel surface of teeth for long enough and had too little peroxide because "[r]eal whitening needs peroxide and time."

23. Moreover, scientific research also shows that the whitening effect of hydrogen peroxide in toothpaste is not clinically significant. As researchers summarized in the Brazilian Dental Journal: "In vitro studies show that brushing with

⁵ Dynamic Dental Educators, Teeth Whitening, ADA Continuing Education Recognition Program (May 1, 2014).

⁶ Coleman, Claire, *Is whitening toothpaste just a waste of money?*, Daily Mail, (Jan. 20, 2013) (available at <http://www.dailymail.co.uk/femail/article-2265539/Iswhitening-toothpaste-just-waste-money-They-promise-dazzling-Hollywood-smileinvestigation-reveals-products-barely-make-difference.html>)

⁷ Webb, Camille, *The Toothpaste Trance*, UT Dentists (Oct. 8, 2014) (available at <https://www.utdentists.com/2014/10/toothpaste-trance/>).

⁸ *Id.*

1 toothpaste containing bleaching products do not promote significant results in
2 discolored teeth compared to conventional dentifrices [toothpastes], concluding that
3 these dentifrices, due to their mechanical action (abrasion) and the increase of high-
4 performance abrasives as hydrated silica, act just at removing pigmentation, giving a
5 false sense of whitening.”⁹

6 24. In another example, in the Brazilian Oral Research Journal, researchers
7 explained that the whitening effect obtained from whitening toothpastes is not
8 clinically significant because a “study that compared the efficacy and safety of three
9 OTC bleaching products (1% hydrogen peroxide dentifrice [toothpaste], 18%
10 carbamide peroxide paint-on gel, and 5% carbamide tray system) showed that ... *the*
11 *paint-on gel and dentifrice [toothpaste] groups did not result in significant color*
12 *improvements from baseline.*”¹⁰

13 25. Colgate Optic White only makes teeth appear whiter because it contains
14 an abrasive that grinds away stains on the enamel. Using abrasive whitening
15 toothpaste can remove enamel exposing the yellowish dentin beneath the surface,
16 which can also cause teeth to stain more easily. Indeed, Colgate Optic White received
17 a Relative Dentin Abrasion (RDA) score of 100, and is considered highly abrasive, or
18 even more abrasive than the majority of whitening toothpastes.¹¹

19 **C. The National Advertising Division Concluded That Defendant Misled**
20 **Consumers by Claiming That Colgate Optic White Deeply Whitens Teeth**

21 26. In 2012, the National Advertising Division of the Council of Better
22 Business Bureaus (“NAD”) found that Defendant did not have sufficient evidence to
23 support the message that hydrogen peroxide as contained in Optic White functions as a
24

25 ⁹ Horn, Bruna Andrade, *Clinical Evaluation of the Whitening Effect of Over-the-*
Counter Dentifrices on Vital Teeth, Braz. Dent. J. Vol. 25 No. 3 (2014).

26 ¹⁰ Demarco, Flavio, *Over-the-counter whitening agents: a concise review*, Braz. Oral
27 Res. Vol. 23 Supl.1 (2009).

28 ¹¹ Sorin, Robert, *Toothbrush Abrasion* (available at <http://www.nycdmd.com/toothbrush-abrasion-2/>).

1 significant whitening agent on intrinsic stains. Specifically, the NAD cautioned that
 2 Colgate should avoid conveying the message that whitening improvement from Optic
 3 White toothpaste is attributable to the peroxide contained in Optic White.
 4 Accordingly, the NAD recommended that Defendant discontinue claims that suggest
 5 that hydrogen peroxide in toothpaste deeply whitens and whitens below surface stains.
 6 Defendant, however, refused to change their advertising and continues to make claims
 7 about the intrinsic whitening capabilities of Colgate Optic White.¹²

8 27. In 2014, the NAD again conducted a compliance inquiry because, in the
 9 latest advertising for Colgate Optic White toothpaste, Defendant's Optic White
 10 packaging claims that Optic White toothpaste, "Goes Beyond Surface Stain Removal
 11 to Deeply Whiten," that "This Unique Formula is Clinically Proven to Whiten Teeth
 12 With Peroxide," and that Optic White "Goes Beyond Surface Stains Unlike Ordinary
 13 Toothpastes."¹³

14 28. In response to the NAD's compliance inquiry, Defendant claimed that
 15 Optic White had been "reformulated" and that new evidence supported the claims
 16 made for the "reformulated" Optic White's intrinsic whitening capabilities. The NAD
 17 disagreed because the amount of peroxide in Optic White had not changed. In
 18 particular, the NAD observed "[t]hat changes to the reformulated product are of little
 19 consequence with respect to the advertiser's claims of Optic White's ability to provide
 20 whitening benefits below the tooth surface." Further, the NAD found that the claim
 21 challenged in the 2014 compliance proceeding was not markedly different from the
 22 claim that it recommended be discontinued in 2012. Thus, the NAD found "that the
 23 claim 'whitens deeper' and related claims contravene NAD's earlier decision and

24 ¹² *NAD Recommends Colgate Discontinue Certain Claims for Optic White Toothpaste*,
 25 Advertising Self-Regulation Council (Aug. 14, 2012) (available at
 26 <http://www.asrcreviews.org/2012/08/nad-recommends-colgate-discontinue-certain-claims-for-optic-white-toothpaste-following-pg-challenge/>)

27 ¹³ *NAD Refers Advertising from Colgate to FTC for Further Review*, Advertising
 28 Self-Regulation Council (July 16, 2014) (available at <http://www.asrcreviews.org/2012/08/nad-recommends-colgate-discontinue-certainclaims-for-optic-white-toothpaste>).

1 recommendations and recommended that the company modify its broadcast
2 advertising to remove the word ‘deeper’ and to avoid any implication that the Optic
3 White product intrinsically whitens teeth.” Defendant again refused to bring its
4 advertising into compliance with the NAD’s decision and recommendations.¹⁴

5 **CLASS ACTION ALLEGATIONS**

6 29. Plaintiff brings this action as a class action under Federal Rule of Civil
7 Procedure 23 on behalf of a Class consisting of all persons in the United States who,
8 within the relevant statute of limitations period, purchased Optic White.

9 30. Plaintiff also seeks to represent a subclass defined as all members of the
10 Class who purchased Optic White in California (“the California Class”).

11 31. Excluded from the Classes are the Defendant, the officers and directors of
12 the Defendant at all relevant times, members of their immediate families and their
13 legal representatives, heirs, successors or assigns and any entity in which either
14 Defendant has or had a controlling interest.

15 32. Also excluded from the Classes are persons or entities that purchased
16 Optic White for purposes of resale.

17 33. Plaintiff is a member of the Classes she seeks to represent.

18 34. The Classes are so numerous that joinder of all members is impractical.
19 Although Plaintiff does not yet know the exact size of the Classes, Optic White is sold
20 in major retail stores across the United States, including stores such as Target, and
21 Walgreens. Major online retailers include Amazon.com and Drugstore.com. Upon
22 information and belief, the Class includes more than one million members.

23 35. The Classes are ascertainable because the Class Members can be
24 identified by objective criteria – the purchase of Colgate Optic White toothpaste
25 during the Class Period. Individual notice can be provided to Class Members “who can
26 be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

27
28 ¹⁴ *Id.*

1 36. There are numerous questions of law and fact common to the Class which
2 predominate over any individual actions or issues, including but not limited to:

3 (a) Whether Defendant breached an express warranty made to Plaintiff
4 and the Class;

5 (b) Whether Defendant breached the implied warranty of fitness for a
6 particular purpose;

7 (c) Whether Defendant's marketing of Optic White is false,
8 misleading, and/or deceptive;

9 (d) Whether Defendant's marketing of Optic White is an unfair
10 business practice;

11 (e) Whether Optic White goes beyond surface stains to deeply whiten
12 teeth;

13 (f) Whether Optic White is clinically proven to whiten with peroxide
14 and to go beyond surface stains to deeply whiten teeth;

15 (g) Whether Defendant was unjustly enriched by its conduct;

16 (h) Whether Defendant violated the CLRA;

17 (i) Whether Defendant violated the UCL;

18 (j) Whether Defendant violated the FAL;

19 (k) Whether Class Members suffered an ascertainable loss as a result
20 of Defendant's misrepresentations; and

21 (l) Whether, as a result of Defendant's misconduct as alleged herein,
22 Plaintiff and the Class Members are entitled to restitution, injunctive and/or
23 monetary relief and, if so, the amount and nature of such relief.

24 37. Plaintiff's claims are typical of the claims of the members of the Class as
25 all members of the Class are similarly affected by Defendant's wrongful conduct.
26 Plaintiff has no interests antagonistic to the interests of the other members of the
27 Class. Plaintiff and all members of the Class have sustained economic injury arising
28 out of Defendant's violations of common and statutory law as alleged herein.

1 Optic White was effective and would whiten intrinsic stains below the tooth's surface.

2 43. Defendant's affirmations of fact and promises made to Plaintiff and the
3 Class on Optic White labels and in television commercials, became part of the basis of
4 the bargain between Defendant on the one hand, and Plaintiff and the Class Members
5 on the other, thereby creating express warranties that Optic White would conform to
6 Defendant's affirmations of fact, representations, promises, and descriptions.

7 44. Defendant breached its express warranties because Optic White does not
8 in fact deeply whiten teeth, does not go beyond surface stain removal, and is not
9 clinically proven to whiten with peroxide below the tooth's surface. In short, Optic
10 White does not perform as expressly warranted.

11 45. Plaintiff and the Class Members were injured as a direct and proximate
12 result of Defendant's breach because: (a) they would not have purchased Optic White
13 if they had known the true facts; (b) they paid for Optic White due to the mislabeling;
14 and (c) Optic White did not have the quality, effectiveness, or value as promised. As a
15 result, Plaintiff and the Class have been damaged.

16 **COUNT II**

17 **Breach of Implied Warranty of Fitness for a Particular Purpose**

18 46. Plaintiff repeats the allegations contained in the paragraphs above as if
19 fully set forth herein.

20 47. Plaintiff brings this Count individually and on behalf of the members of
21 the Class.

22 48. Defendant marketed, distributed, and/or sold Optic White with implied
23 warranties that they were fit for the particular purpose of deeply whitening teeth, and
24 going beyond surface stain removal to whiten below the tooth's surface. However, the
25 peroxide in Optic White has no effect on intrinsic stains in teeth and does not deeply
26 whiten teeth. At the time Optic White was sold, Defendant knew or should have
27 known that Plaintiff and the Class Members would rely on Defendant's skill and
28 judgment regarding the efficacy of Optic White.

1 transactions that intended to result, or which have resulted in, the sale of Optic White
2 to consumers.

3 57. The policies, acts, and practices described in this Complaint were
4 intended to and did result in the sale of Optic White to Plaintiff and the Class.
5 Defendant's practices, acts, policies, and course of conduct violated the CLRA §§
6 1750, *et seq.* as described above.

7 58. Defendant represented that Optic White had sponsorship, approval,
8 characteristics, uses, and benefits which it did not have in violation of Cal. Civ. Code
9 § 1770(a)(5).

10 59. Defendant represented that Optic White was of a particular standard,
11 quality, and grade, when it was another, in violation of California Civil Code §
12 1770(a)(7).

13 60. Defendant violated California Civil Code §§ 1770(a)(5) and (a)(7) by
14 representing that Optic White was effective at deeply whitening teeth, and effective at
15 going beyond surface stain removal to deeply whiten teeth when, in fact, it was not.

16 61. Defendant represented that Optic White was of a particular standard or
17 quality when Defendant was aware that they were of another in violation of §
18 1770(a)(7) of the CLRA. Defendant represented that Optic White deeply whitens
19 teeth, and that it was clinically proven to whiten and go beyond surface stain removal
20 when Optic White does not deeply whiten, and does not go beyond surface stain
21 removal.

22 62. Defendant advertised Optic White with the intent not to sell it as
23 advertised in violation of § 1770(a)(9) of the CLRA. Defendant did not intend to sell
24 Optic White as advertised because Defendant knew that peroxide in toothpaste is not
25 effective at deeply whitening teeth, or at removing intrinsic stains in teeth.

26 63. Plaintiff and the California Class Members suffered injuries caused by
27 Defendant's misrepresentations because: (a) Plaintiff and the Class Members would
28 not have purchased Optic White if they had known the true facts; (b) Plaintiff and the

1 Class paid an increased price for Optic White due to the mislabeling of Optic White;
 2 and (c) Optic White did not have the level of quality, effectiveness, or value as
 3 promised.

4 64. Prior to the filing of this Complaint, a CLRA notice letter was served on
 5 Defendant which complies in all respects with California Civil Code § 1782(a). A true
 6 and correct copy of Plaintiff's letter is attached as Exhibit A. In December 2014,
 7 Plaintiff sent Defendant a letter via certified mail, return receipt requested, advising
 8 Defendant that it is in violation of the CLRA and must correct, repair, replace, or
 9 otherwise rectify the goods alleged to be in violation of § 1770. Defendant was further
 10 advised that in the event that the relief requested had not been provided within thirty
 11 (30) days, Plaintiff would bring an action for damages pursuant to the CLRA.

12 65. Wherefore, Plaintiff seeks damages, restitution, and injunctive relief for
 13 this violation of the CLRA.

14 **COUNT IV**

15 **False Advertising Law, Business & Professions Code §§ 17500, *et seq.***

16 66. Plaintiff repeats the allegations contained in the paragraphs above as if
 17 fully set forth herein.

18 67. Plaintiff brings this Count on behalf of the California Class.

19 68. California's FAL (Bus. & Prof. Code §§ 17500, *et seq.*) makes it
 20 "unlawful for any person to make or disseminate or cause to be made or disseminated
 21 before the public in this state, . . . in any advertising device . . . or in any other manner
 22 or means whatever, including over the Internet, any statement, concerning . . . personal
 23 property or services, professional or otherwise, or performance or disposition thereof,
 24 which is untrue or misleading and which is known, or which by the exercise of
 25 reasonable care should be known, to be untrue or misleading."

26 69. Throughout the Class Period, Defendant committed acts of false
 27 advertising, as defined by the FAL, by using false and misleading statements to
 28 promote the sale of Optic White, as described above, and including, but not limited to,

1 representing that Optic White deeply whitens teeth, that Optic White is clinically
 2 proven to whiten and go beyond surface stain removal to deeply whiten teeth, and that
 3 Optic White whitens intrinsic stains.

4 70. Defendant knew or should have known, through the exercise of
 5 reasonable care, that their statements were untrue and misleading.

6 71. Defendant's actions in violation of the FAL were false and misleading
 7 such that the general public is and was likely to be deceived.

8 72. As a direct and proximate result of these acts, consumers have been and
 9 are being harmed. Plaintiff and members of the Class have suffered injury and actual
 10 out-of-pocket losses as a result of Defendant's FAL violation because: (a) Plaintiff and
 11 the Class would not have purchased Optic White if they had known the true facts
 12 regarding the effectiveness of Optic White; (b) Plaintiff and the Class paid an
 13 increased price due to the misrepresentations about Optic White; and (c) Optic White
 14 did not have the promised quality, effectiveness, or value.

15 73. Plaintiff brings this action pursuant to Bus. & Prof. Code § 17535 for
 16 injunctive relief to enjoin the practices described herein and to require Defendant to
 17 issue corrective disclosures to consumers. Plaintiff and the California Class are
 18 therefore entitled to: (a) an order requiring Defendant to cease the acts of unfair
 19 competition alleged herein; (b) full restitution of all monies paid to Defendant as a
 20 result of their deceptive practices; (c) interest at the highest rate allowable by law; and
 21 (d) the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*,
 22 California Code of Civil Procedure §1021.5.

23 **COUNT V**

24 **The "Unlawful Prong" of the Unfair Competition Law,** 25 **Bus. & Prof. Code §§ 17200, *et seq.***

26 74. Plaintiff repeats the allegations contained in the paragraphs above as if
 27 fully set forth herein.

28 75. Plaintiff brings this Count on behalf of the California Class.

76. The UCL, Bus. & Prof. Code §§ 17200, *et seq.*, provides, in pertinent part: “Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising” The UCL also provides for injunctive relief and restitution for UCL violations.

77. “By proscribing any unlawful business practice, section 17200 borrows violations of other laws and treats them as unlawful practices that the UCL makes independently actionable.” *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163, 180 (1999) (citations and internal quotation marks omitted).

78. Virtually any law or regulation – federal or state, statutory, or common law – can serve as a predicate for an UCL “unlawful” violation. *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1383 (2012).

79. Defendant violated the “unlawful prong” by violating the CLRA, and the FAL, as well as by breaching express and implied warranties as described herein.

80. As a direct and proximate result of these acts, consumers have been and are being harmed. Plaintiff and members of the Class have suffered injury and actual out-of-pocket losses as a result of Defendant’s UCL “unlawful prong” violation because: (a) Plaintiff and the Class would not have purchased Optic White if they had known the true facts regarding the effectiveness and contents of Optic White; (b) Plaintiff and the Class paid an increased price due to the misrepresentations about Optic White; and (c) Optic White did not have the promised quality, effectiveness, or value.

81. Pursuant to Bus. & Prof. Code § 17203, Plaintiff and the California Class are therefore entitled to: (a) an order requiring Defendant to cease the acts of unfair competition alleged herein; (b) full restitution of all monies paid to Defendant as a result of their deceptive practices; (c) interest at the highest rate allowable by law; and (d) the payment of Plaintiff’s attorneys’ fees and costs pursuant to, *inter alia*, California Code of Civil Procedure §1021.5.

COUNT VI**The “Fraudulent Prong” of the Unfair Competition Law,
Bus. & Prof. Code §§ 17200, *et seq.***

82. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth herein.

83. Plaintiff brings this Count on behalf of the California Class.

84. The UCL, Bus. & Prof. Code §§ 17200, *et seq.*, provides, in pertinent part: “Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising”

85. Defendant’s conduct, described herein, violated the “fraudulent” prong of the UCL because Defendant represented that Optic White deeply whitens teeth, and goes beyond surface stain removal to deeply whiten teeth when, in fact, it does not. As described above, Defendant misrepresented that Optic White deeply whitens and that it is clinically proven to whiten teeth with peroxide and to go beyond surface stains.

86. Plaintiff and the California Class Members are not sophisticated experts with independent knowledge of the formulation or efficacy of Optic White, and they acted reasonably when they purchased Optic White based on their belief that Defendant’s representations were true.

87. Defendant knew or should have known, through the exercise of reasonable care, that their representations about Optic White were untrue and misleading.

88. As a direct and proximate result of these acts, consumers have been and are being harmed. Plaintiff and members of the Class have suffered injury and actual out-of-pocket losses as a result of Defendant’s UCL “fraudulent prong” violation because: (a) Plaintiff and the Class would not have purchased Optic White if they had known the true facts regarding the effectiveness of Optic White; (b) Plaintiff and the Class paid an increased price due to the misrepresentations about Optic White; and (c) Optic White did not have the promised quality, effectiveness, or value.

89. Pursuant to Bus. & Prof. Code §17203, Plaintiff and the California Class are therefore entitled to: (a) an order requiring Defendant to cease the acts of unfair competition alleged herein; (b) full restitution of all monies paid to Defendant as a result of their deceptive practices; (c) interest at the highest rate allowable by law; and (d) the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California Code of Civil Procedure §1021.5.

COUNT VII

The "Unfair Prong" of the Unfair Competition Law, Bus.& Prof. Code §§ 17200, *et seq.*

90. Plaintiff repeats the allegations contained in the paragraphs above as if fully set forth herein.

91. Plaintiff brings this Count on behalf of the California Class.

92. The UCL, Bus. & Prof. Code §§ 17200, *et seq.*, provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising"

93. Defendant's misrepresentations and other conduct, described herein, violated the "unfair" prong of the UCL in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendant's conduct is unfair in that the harm to Plaintiff and the Class arising from Defendant's conduct outweighs the utility, if any, of those practices.

94. Defendant's practices as described herein are of no benefit to consumers who are tricked into believing that Optic White will deeply whiten teeth, that Optic White will whiten intrinsic stains, and that Optic White is clinically proven to whiten with peroxide to go beyond surface stain removal. Defendant's practice of injecting misinformation into the marketplace about the capabilities of toothpaste is unethical and unscrupulous especially because consumers trust companies like Defendant to provide accurate information about dental care. Taking advantage of that trust,

1 Defendant misrepresents the effectiveness of Colgate Optic White to sell more
2 toothpaste. Consumers believe that Defendant is an authority on the effectiveness and
3 quality of toothpaste for dental care and therefore believe Defendant's representations
4 that toothpaste can magically penetrate the tooth's surface when in fact Optic White's
5 abrasive properties wears off the outer layer of teeth exposing the yellowish under
6 layer. Defendant's practices are also substantially injurious to consumers because,
7 among other reasons, consumers pay for toothpaste that purportedly deeply whitens
8 teeth, while in fact, they are unknowingly rubbing off the surface layer of their teeth
9 exposing dentin.

10 95. As a direct and proximate result of these acts, consumers have been and
11 are being harmed. Plaintiff and members of the Class have suffered injury and actual
12 out-of-pocket losses as a result of Defendant's UCL "unfair prong" violation because:
13 (a) Plaintiff and the Class would not have purchased Optic White if they had known
14 the true facts regarding the effectiveness and contents of Optic White; (b) Plaintiff and
15 the Class paid an increased price due to the misrepresentations about Optic White; and
16 (c) Optic White did not have the promised quality, effectiveness, or value.

17 96. Pursuant to Bus. & Prof. Code § 17203, Plaintiff, and the California Class
18 are therefore entitled to: (a) an order requiring Defendant to cease the acts of unfair
19 competition alleged herein; (b) full restitution of all monies paid to Defendant as a
20 result of their deceptive practices; (c) interest at the highest rate allowable by law; and
21 (d) the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*,
22 California Code of Civil Procedure § 1021.5.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

25 A. Determining that this action is a proper class action;

26 B. For an order declaring that the Defendant's conduct violates the statutes
27 referenced herein;

28 C. Awarding compensatory and punitive damages in favor of Plaintiff,

1 members of the Class, and the California Class against Defendant for all damages
2 sustained as a result of the Defendant's wrongdoing, in an amount to be proven at trial,
3 including interest thereon;

4 D. Awarding injunctive relief against Defendant to prevent Defendant from
5 continuing their ongoing unfair, unconscionable, and/or deceptive acts and practices;

6 E. For an order of restitution and/or disgorgement and all other forms of
7 equitable monetary relief;

8 F. Awarding Plaintiff and members the Class their reasonable costs and
9 expenses incurred in this action, including counsel fees and expert fees; and

10 G. Awarding such other and further relief as the Court may deem just and
11 proper.

12 **JURY DEMAND**

13 Plaintiff hereby demands a trial by jury on all claims so triable in this action

14 Respectfully submitted,

15
16 FINKELSTEIN & KRINSK LLP

17
18 Dated: May 18, 2016

By: s/Jeffery R. Krinsk

Jeffrey R. Krinsk

William R. Restis

David J. Harris, Jr.

Trenton R. Kashima


21
22 Attorneys for the Plaintiff
23
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25
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27
28

VERIFICATION

I, Melissa Vigil, declare and certify that I have read the foregoing complaint and know its contents. I am the Plaintiff in this action. The matters stated in the complaint described above are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare (or certify) under penalty of perjury that the foregoing is true and correct.

Executed on MAY, 17th, 2016, at Hayward,
California.



Melissa Vigil

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

Melissa L. Vigil, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
FINKELSTEIN & KRINSK LLP
JEFFERY R. KRINSK
550 W. C Street, Suite 1760
San Diego, CA 92101
Tel: (619) 238-1333 Fax: (619) 238-5425

DEFENDANTS

COLGATE-PALMOLIVE CO.,

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)

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)

- | | | | | | |
|--|--|--|---|---|--|
| <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 checked="" type="checkbox"/> 190 Other Contract
<input type="checkbox"/> 195 Contract Product Liability
<input type="checkbox"/> 196 Franchise | PERSONAL INJURY
<input type="checkbox"/> 310 Airplane
<input type="checkbox"/> 315 Airplane Product Liability
<input type="checkbox"/> 320 Assault, Libel & Slander
<input type="checkbox"/> 330 Federal Employers' Liability
<input type="checkbox"/> 340 Marine
<input type="checkbox"/> 345 Marine Product Liability
<input type="checkbox"/> 350 Motor Vehicle
<input type="checkbox"/> 355 Motor Vehicle Product Liability
<input type="checkbox"/> 360 Other Personal Injury
<input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY
<input type="checkbox"/> 365 Personal Injury - Product Liability
<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability
<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
<input type="checkbox"/> 370 Other Fraud
<input type="checkbox"/> 371 Truth in Lending
<input type="checkbox"/> 380 Other Personal Property Damage
<input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881
<input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158
<input type="checkbox"/> 423 Withdrawal 28 USC 157
<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 840 Trademark | <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"/> 210 Land Condemnation
<input type="checkbox"/> 220 Foreclosure
<input type="checkbox"/> 230 Rent Lease & Ejectment
<input type="checkbox"/> 240 Torts to Land
<input type="checkbox"/> 245 Tort Product Liability
<input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 440 Other Civil Rights
<input type="checkbox"/> 441 Voting
<input type="checkbox"/> 442 Employment
<input type="checkbox"/> 443 Housing/Accommodations
<input type="checkbox"/> 445 Amer. w/Disabilities Employment
<input type="checkbox"/> 446 Amer. w/Disabilities Other
<input type="checkbox"/> 448 Education | Habeas Corpus:
<input type="checkbox"/> 463 Alien Detainee
<input type="checkbox"/> 510 Motions to Vacate Sentence
<input type="checkbox"/> 530 General
<input type="checkbox"/> 535 Death Penalty
Other:
<input type="checkbox"/> 540 Mandamus & Other
<input type="checkbox"/> 550 Civil Rights
<input type="checkbox"/> 555 Prison Condition
<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | <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
<input type="checkbox"/> 462 Naturalization Application
<input type="checkbox"/> 465 Other Immigration Actions | <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))
<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 950 Constitutionality of State Statutes |

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332(d)

Brief description of cause:

Defendant misrepresented essential elements of its product for sales.

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

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

(Place an "X" in One Box Only)

(X) SAN FRANCISCO/OAKLAND

() SAN JOSE

() EUREKA

DATE

SIGNATURE OF ATTORNEY OF RECORD

05/18/2016

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

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

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

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

Northern District of California

Civil Action No. 4:16-cv-2697

Signature of Clerk or Deputy Clerk

Civil Action No. 4:16-cv-2697

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: