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Attorneys for Defendant
NEW BALANCE ATHLETICS, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SHEILA DASHNAW, WILLIAM
MEIER, and SHERRYL JONES,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

NEW BALANCE ATHLETICS, INC., a
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. '17CV159 L JLB

**DEFENDANT NEW BALANCE
ATHLETICS, INC.'S NOTICE OF
REMOVAL OF ACTION UNDER 28
U.S.C. § 1441(b)**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendant New Balance Athletics, Inc. (“New Balance”) hereby removes to this Court the state court action described below.

1. On December 27, 2016, plaintiffs Sheila Dashnaw, William Meier, and Sherryl Jones (collectively “Plaintiffs”) filed a complaint (“Complaint”) against New Balance in the Superior Court of the State of California in and for the City and County of San Diego entitled Dashnaw v. New Balance Athletics, Inc., Case No. 37-2016-00045461-CU-AT-CTL (the “State Court Action”). The complaint seeks relief under California’s False Advertising Law, Bus. & Prof. Code §§ 17500, *et seq.*, California’s Consumer Legal Remedies Act (“CLRA”), Civil Code §§ 1750, *et seq.*, California Bus. & Prof. Code § 17533.7, California’s Unfair Competition Law (“UCL”), California Bus. & Prof. Code §§ 17200, *et seq.*, and for breach of express warranty, negligent misrepresentation, and unjust enrichment. (Complaint ¶ 5.)

2. Plaintiffs served the complaint upon New Balance via process server on December 29, 2016. New Balance received the complaint on December 29, 2016.

3. This Notice of Removal is being filed within 30 days of New Balance’s receipt of the complaint and is, therefore, timely filed under 28 U.S.C. § 1446(b).

4. Plaintiff Dashnaw is a citizen of the United States and the State of California and a resident of San Diego, California. (Complaint ¶ 8.) For diversity purposes, therefore, Dashnaw is a citizen of California. *See* 28 U.S.C. § 1332.

5. Plaintiff Meier is a citizen of the United States and the State of California and a resident of San Diego, California. (Complaint ¶ 9.) For diversity purposes, therefore, Meier is a citizen of California. *See* 28 U.S.C. § 1332.

6. Plaintiff Jones is a citizen of the United States and the State of California and a resident of San Diego, California. (Complaint ¶ 10.) For diversity purposes, therefore, Jones is a citizen of California. *See* 28 U.S.C. § 1332.

7. Defendant New Balance is a Delaware Corporation with its principle place of business in Boston, Massachusetts. For diversity purposes, therefore, New Balance is a citizen of Delaware and Massachusetts. *See* 28 U.S.C. § 1332.

8. It is apparent from the complaint that Plaintiffs assert a claim that exceeds the jurisdiction minimum of \$75,000, irrespective of costs and interest. The value of the judgment Plaintiffs are seeking clearly exceeds \$75,000. Specifically, Plaintiffs allege that New Balance sells “approximately four million pairs” of shoes and a “significant percentage” of these are sold in California. (Complaint ¶ 12.) As compensation for New Balance’s alleged violations of California law, Plaintiffs have requested relief “including, without limitation, restitutionary disgorgement of all profits.” (Complaint 21.) The value of New Balance’s profits from four million pairs of shoes is well in excess of \$75,000. Thus, based on the allegations set forth in the complaint, it is clear that Plaintiffs’ claims far exceed the jurisdictional minimum.

9. There are no other defendants in this action whose joinder is required in order to properly effectuate the removal of this action to the Court.

10. New Balance has provided notice of the removal of this action to Plaintiffs and to the Superior Court of the State of California in and for the City and County of San Diego, and by serving copies of the same on counsel for Plaintiffs under 28 U.S.C. § 1446(d).

11. Pursuant to 28 U.S.C. § 1446(b)(2), true and correct copies of the following documents filed in the State Court Action are attached hereto in the sequence noted below:

EXHIBIT NUMBER	DOCUMENT
A	All process, pleadings, and orders, including the Summons and Complaint, served on New Balance

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B	Notice of Filing of Notice of Removal in San Diego Superior Court
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WHEREFORE, New Balance requests that all parties take notice that the above civil action previously pending in the Superior Court of the State of California in and for the City and County of San Diego has been removed to the United States District Court for the Southern District of California.

Dated: January 26, 2017

Respectfully submitted,

FISH & RICHARDSON P.C.

By: s/ Garrett K. Sakimae

Garrett K Sakimae (SBN 288453)
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Counsel for Defendant,

NEW BALANCE ATHLETICS,
INC.

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PROOF OF SERVICE

I am employed in the County of San Diego. My business address is Fish & Richardson P.C., 12390 El Camino Real, San Diego, California 92130. I am over the age of 18 and not a party to the foregoing action. I am readily familiar with the business practice at my place of business for sending email messages, for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On January 26, 2017, I caused a copy of the **DEFENDANT NEW BALANCE ATHLETICS, INC.'S NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(b) (DIVERSITY JURISDICTION)** to be served on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

THE WAND LAW FIRM
Aubty Wand
400 Corporate Pointe, Suite 300
Culver City, California 90230
Telephone: (310) 590-4503
Facsimile: (310) 590-4596
awand@wandlawfirm.com

Attorney for Plaintiffs
SHEILA DASHNAW, WILLIAM MEIER,
and SHERRYL JONES

SCHNEIDER WALLACE COTTRELL
KONECKY & WOTKYNS LLP
Todd M. Schneider
Jason H. Kim
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105

Attorneys for Plaintiffs
SHEILA DASHNAW, WILLIAM MEIER,
and SHERRYL JONES

☐ **MAIL
SERVICE**

Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.

☒ **FEDERAL
EXPRESS:**

Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by Federal Express.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct. Executed on January 26, 2017, at San Diego, California.

s/ Garrett K. Sakimae
Garrett K. Sakimae

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

Sheila Dashnaw, William Meier, and Sherryl Jones, individually, and on behalf of all other similarly situated

(b) County of Residence of First Listed Plaintiff San Diego, California
(EXCEPT IN U.S. PLAINTIFF CASES)

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

Jason H. Kim, Schneider Wallace Cottrell Konecky & Wotkyns LLP
2000 Powell St. Suite 1400, Emeryville, CA 94608
Telephone: (415) 421-7000

DEFENDANTS

New Balance Athletics, Inc., a corporation; and Does 1 through 50, inclusive.

County of Residence of First Listed Defendant Suffolk, Massachusetts
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Garrett K. Sakimae, Fish & Richardson, P.C., 12390 El Camino Real, San Diego, CA 92130, Telephone: 858-678-5070

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

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

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

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

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

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

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 U.S.C. § 1332; 28 U.S.C. § 1441; 28 U.S.C. § 1446

Brief description of cause:
Alleged False Advertising

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
Over \$75,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/27/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Garrett K. Sakimae

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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.

EXHIBIT A

1 THE WAND LAW FIRM
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6 Todd M. Schneider (SBN 158253)
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10 jkim@schneiderwallace.com

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN DIEGO
14

15 SHEILA DASHNAW, WILLIAM MEIER,
16 and SHERRYL JONES, individually, and on
behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 NEW BALANCE ATHLETICS, INC., a
20 corporation; and DOES 1 through 50,
inclusive,

21 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/27/2016 at 01:44:01 PM

Clerk of the Superior Court
By Tamara Parra, Deputy Clerk

CASE NO.: 37-2016-00045481-CU-AT-CTL

CLASS ACTION COMPLAINT

1. Violation of California False Advertising Law
2. Violation of California Consumer Legal Remedies Act
3. Violation of Cal. Bus. & Prof. Code Section 17533.7
4. Violation of California Unfair Competition Law
5. Breach of Express Warranty
6. Negligent Misrepresentation
7. Unjust Enrichment and Common Law Restitution

DEMAND FOR JURY TRIAL

1 Plaintiffs Sheila Dashnaw, William Meier, and Sherryl Jones ("Plaintiffs"), on behalf of
 2 themselves and all others similarly situated, bring this class action against Defendant New Balance
 3 Athletics, Inc. and Does 1 through 50 ("New Balance" or "Defendant") to recover monetary
 4 damages, injunctive relief, and other remedies for violations of California laws. Plaintiffs make
 5 the following allegations based on the investigation of their counsel and on information and belief,
 6 except as to allegations pertaining to Plaintiffs individually, which is based on their personal
 7 knowledge.

8 INTRODUCTION

9 1. During the statute of limitations period, New Balance has sold hundreds of
 10 thousands of pairs of shoes to consumers throughout the State of California based on the
 11 misrepresentation that these shoes are "Made in the USA."¹ These shoes are actually comprised of
 12 a substantial percentage of foreign-made components.

13 2. New Balance publicly acknowledges it advertises that its shoes are Made in the
 14 USA when domestic value is at least 70 percent. Put differently, New Balance admits that it has a
 15 common policy of advertising that its shoes are Made in the USA even when up to 30 percent of
 16 the value of the shoes is attributable to foreign-made components and/or labor.

17 3. The falsely advertised shoes at issue in this action are marketed, distributed and
 18 sold by New Balance to California consumers at retail stores located throughout the State of
 19 California and online via New Balance's e-commerce website: www.newbalance.com.

20 4. Plaintiffs and other California consumers purchased New Balance's Made in the
 21 USA labeled shoes because they reasonably believed that these products were American-made,
 22 when in actuality, a significant part of the materials and labor in these shoes are derived from other
 23 countries such as China. As a result, Plaintiffs and other consumers have been deceived and have
 24 suffered economic injury.

25 5. Plaintiffs seek relief in this action individually, and on behalf of all other
 26 individuals located in the State of California who purchased New Balance's Made in the USA

27
 28 ¹ Hereinafter, these shoes are collectively referred to as "Made in the USA labeled shoes."

1 labeled shoes during the statute of limitations period, for violations of California's False
 2 Advertising Law ("FAL"), Bus. & Prof. Code §§ 17500, *et seq.*, California's Consumer Legal
 3 Remedies Act ("CLRA"), Civil Code §§ 1750, *et seq.*, California Bus. & Prof. Code § 17533.7,
 4 California's Unfair Competition Law ("UCL"), California Bus. & Prof. Code §§ 17200, *et seq.*,
 5 and for breach of express warranty, negligent misrepresentation, and unjust enrichment.

6 6. As a result of the unlawful scheme alleged herein, New Balance has been able to
 7 overcharge Plaintiffs and other California consumers for merchandise, induce purchases that
 8 would otherwise not have occurred, and/or obtain wrongful profits. New Balance's misconduct
 9 has caused Plaintiffs and other California consumers to suffer significant monetary damages.
 10 Plaintiffs, on behalf themselves and other similarly situated consumers, seek a refund and/or
 11 rescission of the transaction, and all further equitable and injunctive relief as provided by
 12 applicable law.

13 VENUE

14 7. Venue is proper in this judicial district and the County of San Diego pursuant to
 15 Cal. Code of Civ. Proc. § 395(b) because Plaintiffs Dashnaw and Meier, and other persons
 16 similarly situated, are residents of the County of San Diego and purchased the goods described
 17 herein for personal, family, or household use in the County of San Diego.

18 PLAINTIFFS

19 8. Plaintiff Dashnaw is a citizen of the United States and the State of California and
 20 she currently resides in the County of San Diego. During the statute of limitations period, Plaintiff
 21 Dashnaw purchased at least one pair of New Balance Made in the USA labeled shoes at a retail
 22 store located in the County of San Diego.

23 9. Plaintiff Meier is a citizen of the United States and the State of California and he
 24 currently resides in the County of San Diego. During the statute of limitations period, Plaintiff
 25 Meier purchased at least one pair of New Balance Made in the USA labeled shoes at a retail store
 26 located in the County of San Diego.

27 10. Plaintiff Jones is a citizen of the United States and the State of California and she
 28 currently resides in the County of Los Angeles. During the statute of limitations period, Plaintiff

1 Jones purchased at least one pair of New Balance Made in the USA labeled shoes at a retail store
2 located in the County of Los Angeles.

3 11. Plaintiffs bring this action on behalf of themselves and the following similarly
4 situated individuals ("Class members"): all persons located within the State of California who
5 purchased a pair of New Balance shoes that were labeled and/or advertised as Made in the USA at
6 any time beginning four (4) years prior to the filing of this action, and ending at the time this
7 action settles or proceeds to final judgment. Plaintiffs reserve the right to name additional Class
8 representatives.

9 DEFENDANT

10 12. New Balance is a multi-billion dollar shoe and apparel company that is based in
11 Massachusetts. New Balance sells approximately four million pairs of Made in the USA labeled
12 shoes annually – a significant percentage of which are sold in California.

13 13. New Balance conducts substantial business in the State of California by owning
14 and operating its own retail stores and an e-commerce website through which it advertises,
15 markets, and sells its shoes. New Balance also sells its Made in the USA labeled shoes through
16 third party retailers.

17 FACTUAL ALLEGATIONS

18 New Balance Broadly Disseminates the Made in the USA Claim to Create the 19 Impression that Its Products are American-Made

20 14. The Made in the USA claim is a central aspect of New Balance's marketing
21 campaign and brand recognition. New Balance broadly disseminates the Made in the USA claim
22 across many different channels, including on its e-commerce website, on social media, and most
23 importantly, on the shoe products themselves.

24 15. New Balance disseminates the Made in the USA claim throughout its e-commerce
25 website. For instance, on the Company Overview section of its e-commerce website, New
26 Balance advertises the following:

27 //

28 //

1 “MADE IN AMERICA MATTERS

2 New Balance always has, and always will be, committed to making shoes in the U.S. Join
3 us and thousands of other American Makers who understand that making things here
4 matters.”

5 See Figure 1.

6 16. At the top of the Made in the USA shoes page of New Balance’s e-commerce
7 website, New Balance advertises the following:

8 “MADE IN USA SNEAKERS

9 We’re proud to be the only major company to make or assemble more than 4 million pairs
10 of athletic footwear per year in the USA, which represents a limited portion of our sales.
11 Where the domestic value is at least 70%, we label our shoes Made in the USA.”

12 See Figure 2.

13 17. On its Facebook page, in the About section, New Balance states in relevant part,
14 “To ensure the best fitting, best performing shoes and apparel, we focus on improving our
15 technology and production methods. A big part of that is maintaining five manufacturing
16 facilities here in the United States where we continue to produce shoes and apparel that
17 meet the standards we’ve employed for more than 100 years. We have also remained
18 committed to a core set of values that include integrity, teamwork and total customer
19 satisfaction. In 2013, 1 out of every 4 pairs of shoes we sold in the USA was made or
20 assembled here. Where domestic value is at least 70%, we label our shoes ‘Made in the
21 USA.’”²

22 See Figure 3.

23 18. On YouTube, there are several videos produced by New Balance in which New
24 Balance touts the fact that its shoes are American-made and creates the general impression that all
25 of its shoes products are made in the USA.

26 19. One of these videos, entitled “New Balance Custom US574: From the Factory to
27 You,” depicts American workers producing New Balance shoes at a factory in Maine.³ Toward
28 the end of the video, it shows a pair of shoes with the “MADE IN THE USA” label prominently

² <https://www.facebook.com/Newbalance/>.

³ <https://www.youtube.com/watch?v=YiUqHJMDBio>.

1 advertised on the tongue of the shoe. At the end of the video, it says, "One out of every 4 pairs of
2 shoes we sell in the USA is made or assembled here. Where the domestic value is at least 70%,
3 we label our shoes 'Made in the USA.'" See Figures 4 and 5, respectively.

4 20. Another YouTube video, entitled "New Balance Made in USA with Giovanni
5 DeCunto," includes an interview with Mr. DeCunto, an artist, during which New Balance
6 promotes the image that it is an American company that produces only American products.⁴ The
7 video description states, "Watch American Expressionist painter Giovanni DeCunto talk about
8 how New Balance's commitment to domestic manufacturing supports his passion for America."
9 During the video, there are numerous Made in the USA representations. See, e.g., Figures 6
10 through 8, respectively.

11 21. In the video, Mr. DeCunto makes the following statements:

- 12 • "God, freedom, prosperity. I'm an American painter. They have me listed in the books as
13 an American expressionist. I got an Italian name, but guess what? I'm American made."
- 14 • "American made is something to be proud of. To have a company here in America that's
15 making a quality product, I couldn't be more proud. It makes culture. You can't outsource
16 everything and expect a culture to survive. We're Americans. We're all one people. We
17 band together and unite to make something great."
- 18 • "Made in America, baby. That's where it's at."

19 22. In sum, New Balance employs a widespread marketing and advertising campaign
20 to give consumers the general impression that its products are American made. New Balance
21 exploits the Made in the USA claim in order to create a brand image that it is an American
22 company that employs American factory workers who produce American-made products.

23 //

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28 ⁴ <https://www.youtube.com/watch?v=Q5-loJNvRfw>

The Made in the USA Labeled Shoes Themselves Contain Specific Made in the USA Representations

23. Apart from the general advertising alleged herein, the products themselves – which constitute the most prominent and powerful advertising mechanism – contain misrepresentations that they are made in the USA. New Balance disseminates the Made in the USA claim on the shoe box and on various parts of the shoes themselves.

24. On the box of Made in the USA labeled shoes, it prominently states on both the top and side of the box: “MADE IN THE USA.” There are no qualifications or disclosures regarding the Made in the USA claim on the shoe box. *See, e.g.,* Figure 9.

25. The Made in the USA claim is also advertised on the Made in USA labeled shoes themselves. For instance, on the Men’s 990v4 shoe model, there is a logo with an American flag with the words “MADE IN THE USA” on the tongue of the shoe. *See* Figure 10. This is a typical New Balance logo that is on the tongue of many other Made in the USA labeled shoe models. It also states “MADE IN THE U.S.A.” on the back of the shoe. *See* Figure 11. This is also a typical New Balance logo that is commonly made on other Made in the USA labeled shoe models. There are no qualifications or disclosures regarding the Made in the USA claim anywhere on the Men’s 990v4 shoe model.

26. All other Made in the USA labeled shoe models have similar Made in the USA representations on the outside of the shoes – either on the tongue or the back of the shoes. *See, e.g.,* Figures 12 through 15, respectively.

27. It also states “Made in USA” on a label located on the inside of the tongues of the Made in the USA labeled shoe models. There are no qualifications or disclosures regarding the Made in the USA claim anywhere on the Made in the USA labeled shoes themselves.

Many New Balance Shoe Models are Advertised as Made in the USA

28. According to its e-commerce website, New Balance advertises and sells approximately 60 different models that are Made in the USA. Some of these shoe models are listed in the following table:

//

Men's 990v4	Men's NB1 990V3	Men's NB1998	Men's BV1 574
Men's 990 Distinct Mid Century	Men's 997 New Balance	Men's New Balance 1540v2	Men's New Balance 3040
Men's 990v2 Made in the USA	Men's 996 Distinct Mid-Century	Men's 997 Distinct Retro Ski	Men's 996 Connoisseur Retro Ski
Men's 1400 Connoisseur	Men's 996 Rockability	Men's 998 Rockability	Men's 996 Age of Exploration
Men's 997 Age of Exploration	Men's 998 Age of Exploration	Men's 1300 Age of Exploration	Men's 1400 Age of Exploration
Men's 1700 Age of Exploration	Men's 996 Explore by Air	Men's 997 Explore by Air	Men's 998 Explore by Air
Men's 1300 Explore by Air	Men's 1400 Explore by Air	Men's 1700 Explore by Air	Men's 996 Explore by Sea
Men's 997 Explore by Sea	Men's 1300 Explore by Sea	Men's 1400 Explore by Sea	Men's 1700 Explore by Sea
Men's 990 Heritage	Men's 996 Heritage	Men's 1300 Heritage	Men's 1400 Heritage
Men's 1700 Heritage	Men's 996 Distinct USA	Men's 997 Distinct USA	Men's 1400 Distinct USA
Men's 585 Danner x NB	Men's NB1 574	New Balance 3040	Women's NB1 998
Women's 998 New Balance	Women's NB1 574	Women's Pink Ribbon 990v3	Women's New Balance 1540 v2
Women's New Balance 3040	Women's NB1 990v3	Women's New Balance 990v3	Women's New Balance 990v4

29. Approximately one out of every four pairs of shoes are labeled and advertised by New Balance as Made in the USA.

New Balance Charges a Price Premium For Made in the USA Labeled Shoes

30. Many consumers prefer to purchase American-made products for different reasons. For one, reasonable consumers believe that American-made products are of higher quality than foreign-made products. Reasonable consumers also like to support American companies, and the American workforce, by purchasing domestically-made products. Conversely, consumers do not

1 like the idea of purchasing goods that they believe might be made in "sweatshops" in other
2 countries that may be committing human rights violations to produce the consumer goods.

3 31. Consumers are more inclined to purchase American-made products and they will
4 pay more for them. New Balance is well aware of this, and it intentionally disseminates deceptive
5 Made in the USA claims in order to capitalize on strong consumer sentiment favoring American
6 products.

7 32. A review of pricing data shows that New Balance charges a premium for its Made
8 in the USA labeled shoes. Made in the USA labeled shoe models range in price from \$164.99 to
9 \$369.99, while New Balance sells many shoe models that are not advertised as Made in the USA
10 for less than \$100.

11 **New Balance Made in the USA Labeled Shoes are Substantially Comprised of**
12 **Foreign Components**

13 33. New Balance's Made in the USA representation is false and misleading because a
14 substantial percentage of its Made in the USA labeled shoes are comprised of foreign components.
15 For example, on information and belief, the outer soles of many Made in the USA labeled shoes
16 are imported from China.

17 34. New Balance publicly admits that when "70% of the value of its U.S. made shoes
18 reflect domestic content and labor" it labels its shoes as Made in the USA.

19 35. On information and belief, New Balance's Made in the USA labeled shoes consist
20 of at most 70 percent domestic value. Conversely, approximately 30 percent of the value of Made
21 in the USA labeled shoes is derived from foreign components and/or labor. California's consumer
22 protection statutes prohibit these types of false representations and render New Balance's Made in
23 the USA labeled shoes misbranded and unfit for sale in the State of California.

24 **Plaintiffs' Purchases**

25 36. During the statute of limitations period, Plaintiffs each separately purchased pairs
26 of New Balance Made in the USA labeled shoes at retail stores located in the State of California.

27 37. Plaintiffs each read the Made in the USA claim on the boxes of the shoes and on
28 the shoes themselves before they made the decision to purchase the products.

1 38. Plaintiffs' reasonable beliefs that the pair of shoes that they purchased were made
 2 in the USA were factors in their decision to purchase the shoes. Plaintiffs would not have
 3 purchased the shoes, or would have paid significantly less for the shoes, had they known that the
 4 Made in the USA representation was inaccurate.

5 **Class Members' Purchases**

6 39. As with Plaintiffs, Class members were likely to be deceived by New Balance's
 7 misrepresentations on the Made in the USA labeled shoes, in that they would not have purchased
 8 the product, or would have paid substantially less for the product, but for the misrepresentations.

9 40. As a result of New Balance's misrepresentations, Plaintiffs and the Class have been
 10 injured to the financial benefit of New Balance.

11 **CLASS ACTION ALLEGATIONS**

12 41. Plaintiffs bring this class action pursuant to California Code Civil Procedure § 382,
 13 California Civil Code § 1781, and all other applicable laws and rules, individually, and on behalf
 14 of all members of the following Class:

15 All persons located within the State of California who purchased any New Balance shoe
 16 model labeled or advertised as made in the United States at any time beginning four (4)
 17 years prior to the filing of this action, and ending at the time this action settles or proceeds
 to final judgment.

18 42. Excluded from the Class are the following individuals and/or entities: New Balance
 19 and its parents, subsidiaries, affiliates, officers and directors, current or former employees, and any
 20 entity in which New Balance has a controlling interest; all individuals who make a timely election
 21 to be excluded from this proceeding using the correct protocol for opting out; and all judges
 22 assigned to hear any aspect of this litigation, as well as their immediate family members.

23 43. Plaintiffs reserve the right to modify or amend the definition of the proposed Class
 24 and/or add subclasses before the Court determines whether certification is appropriate.

25 44. The Class is so numerous that joinder of all members would be impractical. The
 26 number of individuals who purchased a pair of New Balance Made in the USA labeled shoes
 27 within the relevant time period is at least in the thousands. These Class members are identifiable
 28 and ascertainable through New Balance's records and other proofs of purchase.

1 45. There is a community of interest among the class members because there are
 2 questions of law and fact common to the Class that relate to and affect the rights of each member
 3 of the Class that will drive the resolution of this action. These questions include, but are not
 4 limited to, the following:

- 5 a. Whether New Balance misrepresented material facts and/or failed to disclose
- 6 material facts in connection with the marketing and sale of its New Balance
- 7 Made in the USA labeled shoes;
- 8 b. Whether New Balance's use of false or deceptive labeling and advertising
- 9 constituted false advertising under California Law;
- 10 c. Whether New Balance Made in the USA labeled shoes consist of more than 5
- 11 percent foreign value;
- 12 d. Whether New Balance engaged in unfair, unlawful and/or fraudulent business
- 13 practices under California law;
- 14 e. Whether New Balance's unlawful conduct, as alleged herein, was intentional
- 15 and knowing;
- 16 f. Whether Plaintiffs and the Class are entitled to damages and/or restitution, and
- 17 in what amount;
- 18 g. Whether New Balance is likely to continue using false, misleading or unlawful
- 19 conduct such that an injunction is necessary; and
- 20 h. Whether Plaintiffs and the Class are entitled to an award of reasonable
- 21 attorneys' fees, interest, and costs of suit.

22 46. New Balance engaged in a common course of conduct giving rise to violations of
 23 the legal rights sought to be enforced uniformly by Plaintiffs and Class members. Similar or
 24 identical statutory and common law violations, business practices, and injuries are involved.
 25 Therefore, individual questions, if any, pale in comparison to the numerous common questions
 26 presented in this action.

27 47. The injuries sustained by members of the Class flow, in each instance, from a
 28 common nucleus of operative fact. Each instance of harm suffered by Plaintiffs and the Class has

1 directly resulted from a single course of illegal conduct – namely, New Balance’s false Made in
2 the USA representations.

3 48. Given the similar nature of the Class members’ claims and the absence of material
4 differences in the statutes and common laws upon which the Class members’ claims are based, the
5 proposed Class will be easily managed by the Court and the parties.

6 49. Because of the relatively small size of the individual Class members’ claims, no
7 Class member could afford to seek legal redress on an individual basis. A class action is superior
8 to any alternative means of prosecution.

9 50. The representative Plaintiffs’ claims are typical of those of the Class, as all
10 members of the Class are similarly affected by New Balance’s uniform unlawful conduct as
11 alleged herein.

12 51. New Balance acted, and failed to act, on grounds generally applicable to Plaintiffs
13 and the Class, supporting the imposition of uniform relief to ensure compatible standards of
14 conduct toward the members of the Class.

15 52. Plaintiffs will fairly and adequately protect the interests of the Class, and they have
16 retained counsel competent and experienced in class action litigation. The Class representatives
17 have no interests which conflict with or are adverse to those of the other Class members.

18 **COUNT I**

19 **Violation of the California False Advertising Law**

20 **(On behalf of Plaintiffs and the Class against New Balance)**

21 53. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
22 allegations in paragraphs 1 through 53.

23 54. California’s False Advertising Law (“FAL”), California Business and Professions
24 Code § 17500, *et seq.*, prohibits unfair, deceptive, untrue, or misleading advertising.

25 55. New Balance’s practice of representing that its Made in the USA labeled shoes are
26 American-made violates the FAL. Specifically, the FAL makes it unlawful for “[a]ny person . . .
27 to make or disseminate or cause to be made or disseminated from this state before the public in
28 any state . . . in any advertising device . . . or in any other manner or means whatever, including

1 over the Internet, any statement, concerning . . . personal property or services, professional or
2 otherwise, or performance or disposition thereof, which is untrue or misleading and which is
3 known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”
4 Cal. Bus. & Prof. Code § 17500.

5 56. New Balance has engaged in a scheme of offering mislabeled shoes for sale to
6 Plaintiffs and Class members by way of product packaging, labeling, internet advertising, and
7 other promotional materials. These labels and materials misrepresented and/or omitted the true
8 content and nature of the mislabeled products. New Balance’s advertisements and inducements –
9 the Made in the USA representations – were made in California, and come within the definition of
10 advertising as contained in Bus. & Prof. Code § 17500, *et seq.*, in that the product packaging,
11 labeling, and promotional materials were intended as inducements to purchase New Balance’s
12 Made in the USA labeled shoes, and they are statements disseminated by New Balance to
13 Plaintiffs and Class members. New Balance knew or should have known that these statements
14 were inaccurate and misleading.

15 57. New Balance’s false advertisements, as alleged herein, were calculated to induce
16 Plaintiffs and Class members to purchase merchandise they otherwise would not have and/or to
17 spend more money than they otherwise would have spent, in order to increase New Balance’s
18 profits.

19 58. Through its unfair acts and practices, New Balance has improperly obtained money
20 from Plaintiffs and the Class. As such, Plaintiffs requests that this Court cause New Balance to
21 restore this money to Plaintiffs and all Class members, and to enjoin New Balance from
22 continuing to violate the FAL in the future.

23 59. In prosecuting this action for the enforcement of important rights affecting the
24 public interest, Plaintiffs also request that the Court award reasonable attorneys’ fees and costs
25 pursuant to Cal. Code of Civ. Proc. § 1021.5.

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COUNT II

**Violation of the California Consumer Legal Remedies Act
(On behalf of Plaintiffs and the Class against New Balance)**

60. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 59.

61. This cause of action is brought pursuant to the California Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, *et seq.*

62. Plaintiffs and Class members are "consumers" within the meaning of Cal. Civ. Code § 1761(d).

63. The sale of New Balance Made in the USA labeled shoes to Plaintiffs and Class members were "transactions" within the meaning of Cal. Civ. Code § 1761(e). The shoes purchased by Plaintiffs and Class members are "goods" within the meaning of Cal. Civ. Code § 1761(a).

64. As alleged herein, New Balance violated the CLRA by falsely labeling and advertising that the products at issue are made in the USA, when in fact, they substantially consist of foreign-made components and/or are derived from foreign labor.

65. New Balance has violated several provisions of the CLRA. Cal. Civ. Code § 1770(a)(4) prohibits using "deceptive representations or designations of geographic origin in connection with goods or services." Cal. Civ. Code § 1770(a)(5) prohibits "[r]epresenting that goods or services have . . . characteristics, ingredients, uses, benefits, or quantities which they do not have . . ." Cal. Civ. Code § 1770(a)(7) prohibits representing "that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. Finally, Cal. Civ. Code § 1770(a)(9)) prohibits "[a]dvertising goods or services with intent not to sell them as advertised."

66. By engaging in the conduct alleged herein, New Balance violated, and continues to violate, sections 1770(a)(4), (5), (7) and (9) of the CLRA.

67. Plaintiffs relied on the misrepresentation that the New Balance Made in the USA labeled shoes that they bought were made in the USA. Plaintiffs would not have purchased the

1 products, or would have paid significantly less for the products, but for New Balance's unlawful
 2 conduct. Consumers were likely to also have relied upon New Balance's deceptive labeling and
 3 advertising when purchasing New Balance Made in the USA labeled shoes. Plaintiffs and Class
 4 members acted reasonably when they purchased New Balance Made in the USA labeled shoes
 5 based on the clear-cut and deceptive representations alleged herein.

6 68. Under Cal. Civ. Code § 1780(a), Plaintiffs and Class members seek injunctive and
 7 equitable relief for New Balance's violations of the CLRA. On December 21, 2016, Plaintiffs sent
 8 a notice letter by certified mail to New Balance of their intent to pursue claims under the CLRA,
 9 and an opportunity to cure, consistent with Cal. Civ. Code § 1782. Concurrent with the filing of
 10 the Complaint, Plaintiffs are filing declarations of venue, consistent with Cal. Civ. Code §
 11 1780(d), attached hereto as Exhibit A.

12 69. Plaintiffs seek injunctive relief only pursuant to the CLRA. If New Balance fails to
 13 take corrective action within 30 days of receipt of the notice letter, Plaintiffs intend to amend the
 14 Complaint to include a request for damages as permitted under Cal. Civ. Code § 1782(d).

15 COUNT III

16 **Violation of the Cal. Bus. & Prof. Code § 17533.7**

17 **(On behalf of Plaintiffs and the Class against New Balance)**

18 70. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
 19 allegations in paragraphs 1 through 69.

20 71. Cal. Bus. & Prof. Code § 17533.7(a) provides:

21 "It is unlawful for any person, firm, corporation or association to sell or offer for
 22 sale in this state any merchandise on which merchandise or on its container there
 23 appears the words 'Made in U.S.A.,' 'Made in America,' 'U.S.A.,' or similar words
 24 if the merchandise or any article, unit, or part thereof, has been entirely or
 25 substantially made, manufactured, or produced outside of the United States."

26 72. New Balance violated, and continues to violate, Cal. Bus. & Prof. Code § 17533.7
 27 by selling and offering to sell merchandise in the State of California with the Made in the USA
 28 label and advertisements as alleged herein. The shoes at issue in this case actually contain
 component parts that are manufactured outside of the United States in violation of California law.

73. Cal. Bus. & Prof. Code § 17533.7(c)(1) permits companies to have a made in the U.S.A. label that are not 100 percent American-made only in limited circumstances – none of which apply here. First, Cal. Bus. & Prof. Code § 17533.7 shall not apply to “merchandise made, manufactured, or produced in the United States that has one or more articles, units, or parts from outside of the United States, if all of the articles, units, or parts of the merchandise obtained from outside the United States constitute not more than 5 percent of the final wholesale value of the manufactured product.” Cal. Bus. & Prof. Code § 17533.7(b).

74. Second, Cal. Bus. & Prof. Code § 17533.7 shall not apply only if the “manufacturer of the merchandise shows that it can neither produce the article, unit, or part within the United States nor obtain the article, unit, or part of the merchandise from a domestic source” and “all of the articles, units, or parts of the merchandise obtained from outside the United States constitute not more than 10 percent of the final wholesale value of the manufactured product.” Cal. Bus. & Prof. Code § 17533.7(c).

75. As alleged herein, New Balance Made in the USA labeled shoes are labeled as Made in the USA when their domestic value is only 70 percent, which undermines the potential exceptions to the application of Cal. Bus. & Prof. Code § 17533.7.

76. On information and belief, the alleged violations of Cal. Bus. & Prof. Code § 17533.7 were done with awareness that the conduct was wrongful. On further information and belief, New Balance committed these acts with full knowledge that the harm alleged herein would accrue to Plaintiffs and the Class.

77. As a direct and proximate result of New Balance’s violations of Cal. Bus. & Prof. Code § 17533.7, Plaintiffs and Class members are entitled to restitution of excess monies paid to New Balance by Plaintiffs and Class members relating to the false Made in the USA claims on the New Balance shoe models referenced herein.

78. Plaintiffs and Class members suffered an injury in fact because their money was taken by New Balance as a result of its false Made in the USA claims.

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79. In prosecuting this action for the enforcement of important rights affecting the public interest, Plaintiffs also request that the Court award reasonable attorneys' fees and costs pursuant to Cal. Code of Civ. Proc. § 1021.5.

COUNT IV

Violation of the California Unfair Competition Law

(On behalf of Plaintiffs and the Class against New Balance)

80. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 79.

81. Plaintiffs and Class members are "persons" within the meaning of Cal. Bus. & Prof. Code § 17204.

82. The California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*, defines unfair business competition to include any "unlawful, unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising.

83. A business act or practice is "unfair" under the UCL if the reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims. A business act or practice is "fraudulent" under the UCL if it is likely to deceive members of the consuming public. A business act or practice is "unlawful" under the UCL if it violates any other law or regulation.

84. New Balance has violated the "unfair" prong of the UCL by mislabeling its Made in the USA labeled shoes in order to induce consumers to believe the shoes are American-made when they are not.

85. The business acts and practices alleged herein are unfair because they caused Plaintiffs and Class members to falsely believe that New Balance is offering a product that is superior or more desirable to what they actually received. This deception was likely to have induced reasonable consumers, including Plaintiffs, to buy New Balance Made in the USA labeled shoes, which they otherwise would not have purchased, or would have paid substantially less for such products.

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1 Class members, thereby creating express warranties that these products would conform to New
2 Balance's affirmation of fact, representations, promise, and description.

3 94. New Balance breached its express warranty because its Made in the USA labeled
4 shoes are not made in the USA, but are instead, substantially comprised of foreign-made
5 components. Simply put, the products at issue here do not live up to New Balance's express
6 warranty.

7 95. Plaintiffs were injured as a result of New Balance's breach because they would not
8 have purchased the shoes if they had known that the products did not have the characteristics or
9 qualities as expressly warranted by New Balance, or they would have paid substantially less for
10 the shoes had they been aware of their true quality and characteristics. Similarly, Class members
11 are likely to have reasonably relied upon New Balance's express warranties in purchasing New
12 Balance Made in the USA labeled shoes.

13 COUNT VI

14 **Negligent Misrepresentation**

15 **(On behalf of Plaintiffs and the Class against New Balance)**

16 96. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
17 allegations in paragraphs 1 through 95.

18 97. As alleged herein, New Balance misrepresented that its Made in the USA labeled
19 shoes were made in the USA, when they are substantially comprised of foreign-made components.

20 98. At the time New Balance made these representations, New Balance knew or should
21 have known that these representations were false, or made them without knowledge of their truth
22 or veracity.

23 99. At minimum, New Balance negligently misrepresented and/or negligently omitted
24 material facts about its Made in the USA labeled shoes.

25 100. The negligent misrepresentations and omissions made by New Balance, upon
26 which Plaintiffs and Class members reasonably and justifiably relied, were intended to induce, and
27 actually induced, Plaintiffs and Class members to purchase the shoes at issue.

101. Plaintiffs would not have purchased the product, or would not have purchased the product on the same terms, if the true qualities and characteristics of the shoes had been known to her. Similarly, Class members are likely to have reasonably relied upon New Balance's deceptive labeling and advertising in purchasing New Balance Made in the USA labeled shoes.

102. The negligent actions of New Balance caused harm to Plaintiffs and Class members, who are entitled to damages and other legal and equitable relief as a result.

COUNT VII

Unjust Enrichment and Common Law Restitution

(On behalf of Plaintiffs and the Class against New Balance)

103. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 102.

104. As a result of New Balance's wrongful and deceptive conduct, Plaintiffs and Class members have suffered a detriment while New Balance has received a benefit.

105. New Balance's misleading, inaccurate and deceptive marketing and labeling intentionally cultivates the perception that consumers are being offered a product that they are not. Plaintiffs and Class members were intended to rely upon New Balance's misrepresentations when they purchased New Balance Made in the USA labeled shoes. Plaintiffs and Class members likely would not have purchased New Balance Made in the USA labeled shoes, or would have paid significantly less for the products, if New Balance had not misrepresented the nature of these products.

106. New Balance has received a premium price benefit and/or additional sales from Plaintiffs and Class members as a result of this unlawful conduct.

107. New Balance should not be allowed to retain the premium price profits and/or additional sales generated from the sale of products that were unlawfully marketed, advertised and promoted. Allowing New Balance to retain these unjust profits would offend traditional notions of justice and fair play and induce companies to misrepresent key characteristics of their products in order to increase sales.

//

1 108. Thus, New Balance is in possession of funds that were wrongfully retained from
2 Plaintiffs and Class members that should be disgorged as illegally gotten gains.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiffs, individually and on behalf of the Class, respectfully pray for
5 following relief:

6 1. Certification of this case as a class action on behalf of the Class defined above,
7 appointment of Plaintiffs as Class representatives, and appointment of their counsel as Class
8 counsel;

9 2. A declaration that New Balance's actions, as described herein, violate the claims
10 described herein;

11 3. An award of injunctive and other equitable relief as is necessary to protect the
12 interests of Plaintiffs and the Class, including, *inter alia*, an order prohibiting New Balance from
13 engaging in the unlawful act described above;

14 4. An award to Plaintiffs and the Class of restitution and/or other equitable relief,
15 including, without limitation, restitutionary disgorgement of all profits and unjust enrichment that
16 New Balance obtained from Plaintiffs and the Class as a result of its unlawful, unfair and
17 fraudulent business practices described herein;

18 5. An award to Plaintiffs and their counsel of their reasonable expenses and attorneys'
19 fees;

20 6. An award to Plaintiffs and the Class of pre and post-judgment interest, to the extent
21 allowable; and

22 7. For such further relief that the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and the Class, hereby demand a jury trial with respect to all issues triable of right by jury.

DATED: December 22, 2016

SCHNEIDER WALLACE COTTRELL
KONECKY & WOTKYNs LLP

By: 

JASON H. KIM

Figure 1

The advertisement features a dark, textured background with a faint image of a person's face. The headline 'MADE IN AMERICA MATTERS' is in large, bold, white, italicized capital letters. Below it, a paragraph of white text reads: 'New Balance always has, and always will be, committed to making shoes in the U.S. Join us and the thousands of other American Makers who understand that making things here matters.' In the center, there is a small graphic of the American flag with the text 'MADE IN THE USA' and a vertical line next to a white rectangular button with the text 'LEARN MORE'. At the bottom, another paragraph of white text states: 'We're proud to be the only major company to make or assemble more than 4 million pairs of athletic footwear per year in the USA, which represents a limited portion of our US sales. Where the domestic value is at least 70%, we label our shoes Made in the USA.'

Figure 2

MADE IN US AND UK (82)

SORT BY

- ☐ FEATURED
 ☐ NEW ARRIVALS
☐ MOST POPULAR
 ☐ PRICE (LOW-HIGH)
☐ PRICE (HIGH-LOW)

FILTER BY

Gender

Men Women

Categories

Men's Made in USA Women's Made in USA Men's Made in UK Sneakers

Women's Made in UK

Size/Width

Please make a single selection for each of the above filters to see available sizes and widths.

MADE IN USA SNEAKERS

We're proud to be the only major company to make or assemble more than 4 million pairs of athletic footwear per year in the USA, which represents a limited portion of our sales. Where the domestic value is at least 70%, we label our shoes Made in the USA.



New Balance 990v4
\$164.99



New Balance 990v4
\$164.99



997 New Balance
\$209.99



1300 New Balance
\$199.99



Figure 3

Like Message Share More

About
Always in Beta

<http://www.twitter.com/newbalance>
<http://www.instagram.com/newbalance>

Company Overview
New Balance began as a Boston-based arch support company in the early 1900's, developed into a specialized shoe manufacturer in the 1970's, and has grown to become a leading global athletic products company. Today New Balance is a family of brands including New Balance, Dunham, PF Flyers, Aravon, Warrior and Brine.

Since the days of selling arch supports to police officers and waiters, New Balance has been a brand concerned with meeting the needs of the everyday athlete. Part of producing superior footwear and athletic apparel is manufacturing it to fit all widths and sizes, because a better fit produces better performance.

To ensure the best fitting, best performing shoes and apparel, we focus on improving our technology and production methods. A big part of that is maintaining five manufacturing facilities here in the United States where we continue to produce shoes and apparel that meet the standards we've employed for more than 100 years. We have also remained committed to a core set of values that include integrity, teamwork and total customer satisfaction.

In 2013, 1 out of every 4 pairs of shoes we sold in the USA was made or assembled here. Where domestic value is at least 70%, we label our shoes "Made in the USA."

Home
About
Posts
Videos
Photos
Locations
Events
Likes
Instagram feed
New Balance Email Sign-Up

Figure 4



Figure 5

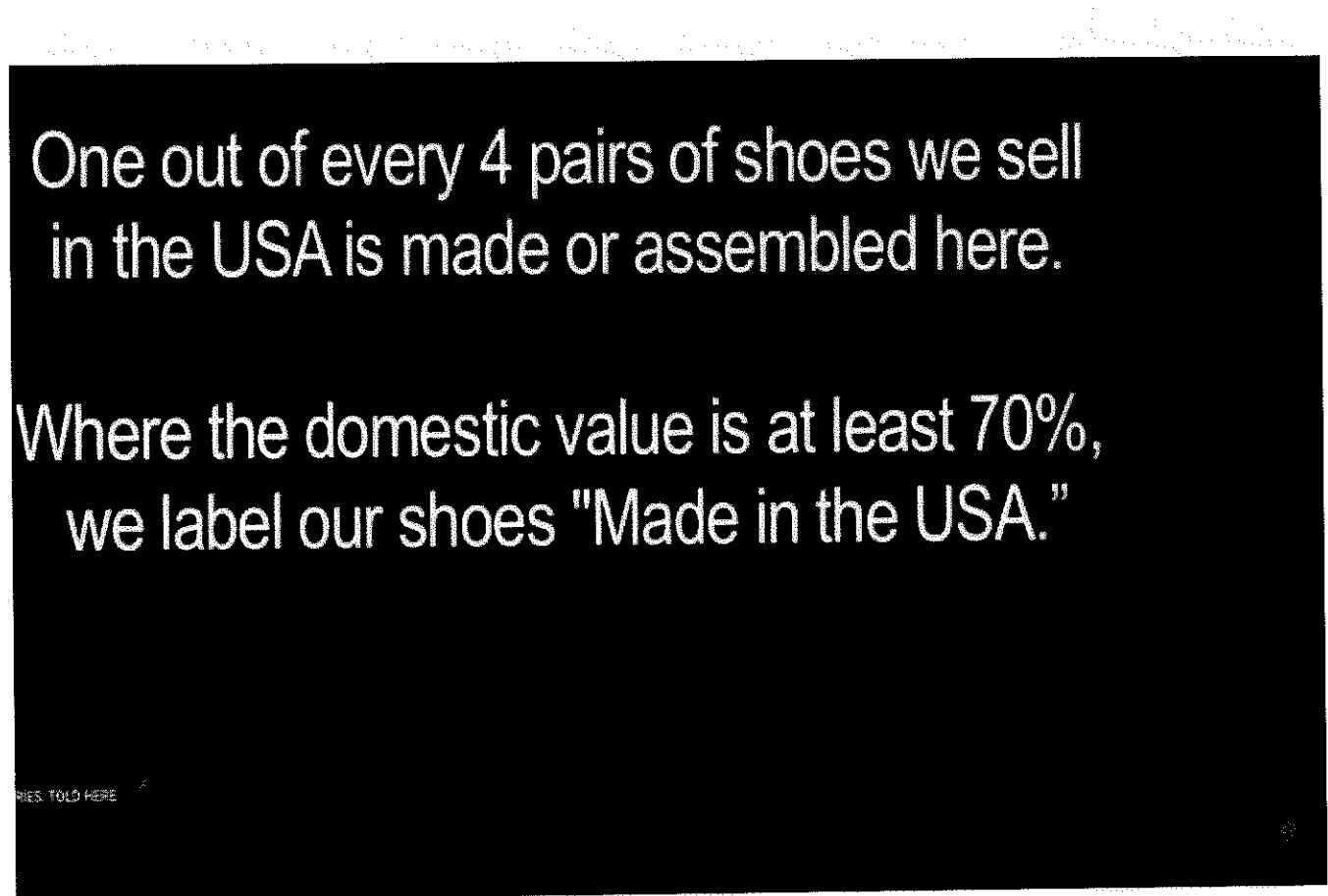


Figure 6

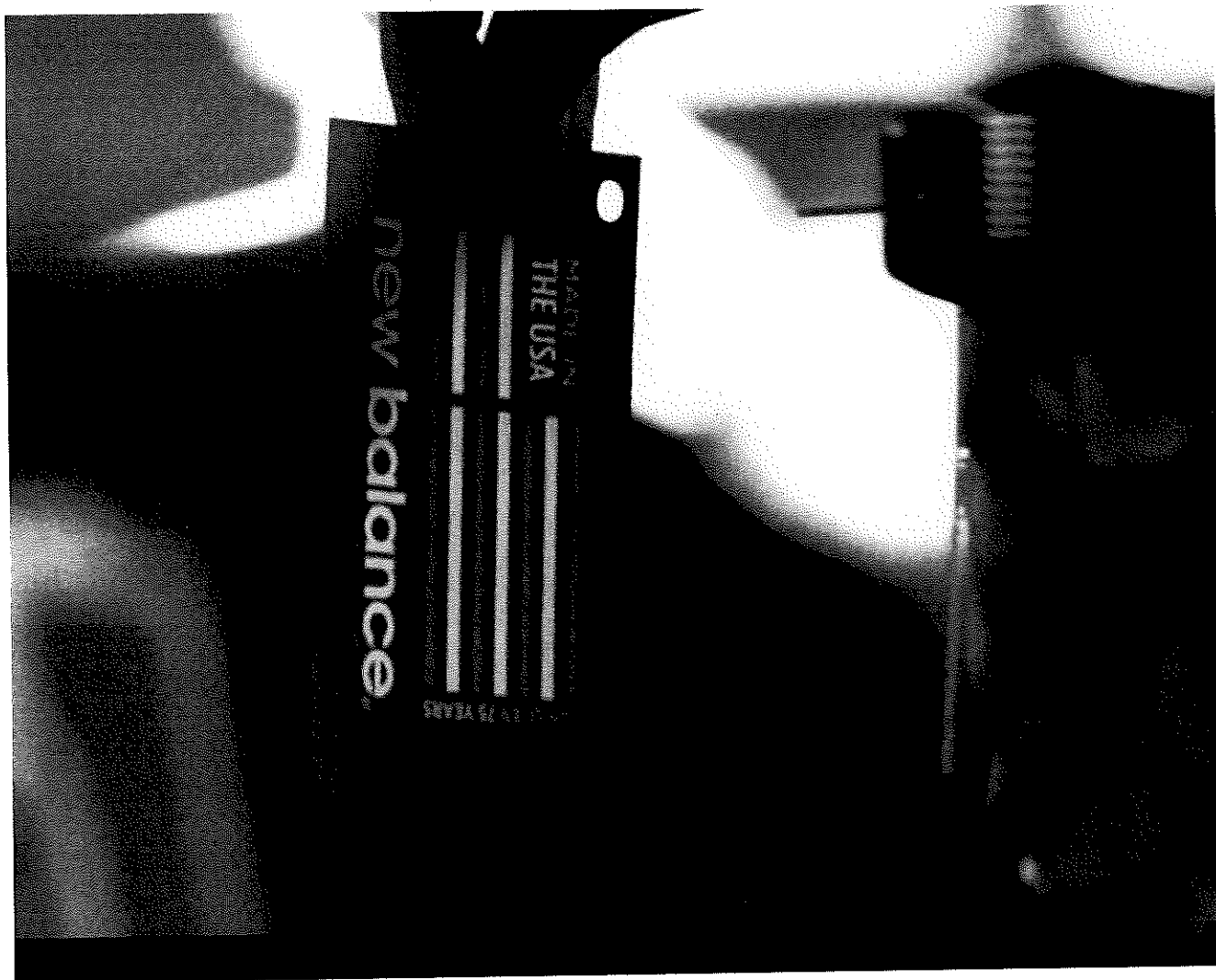


Figure 7



Figure 8



Figure 9

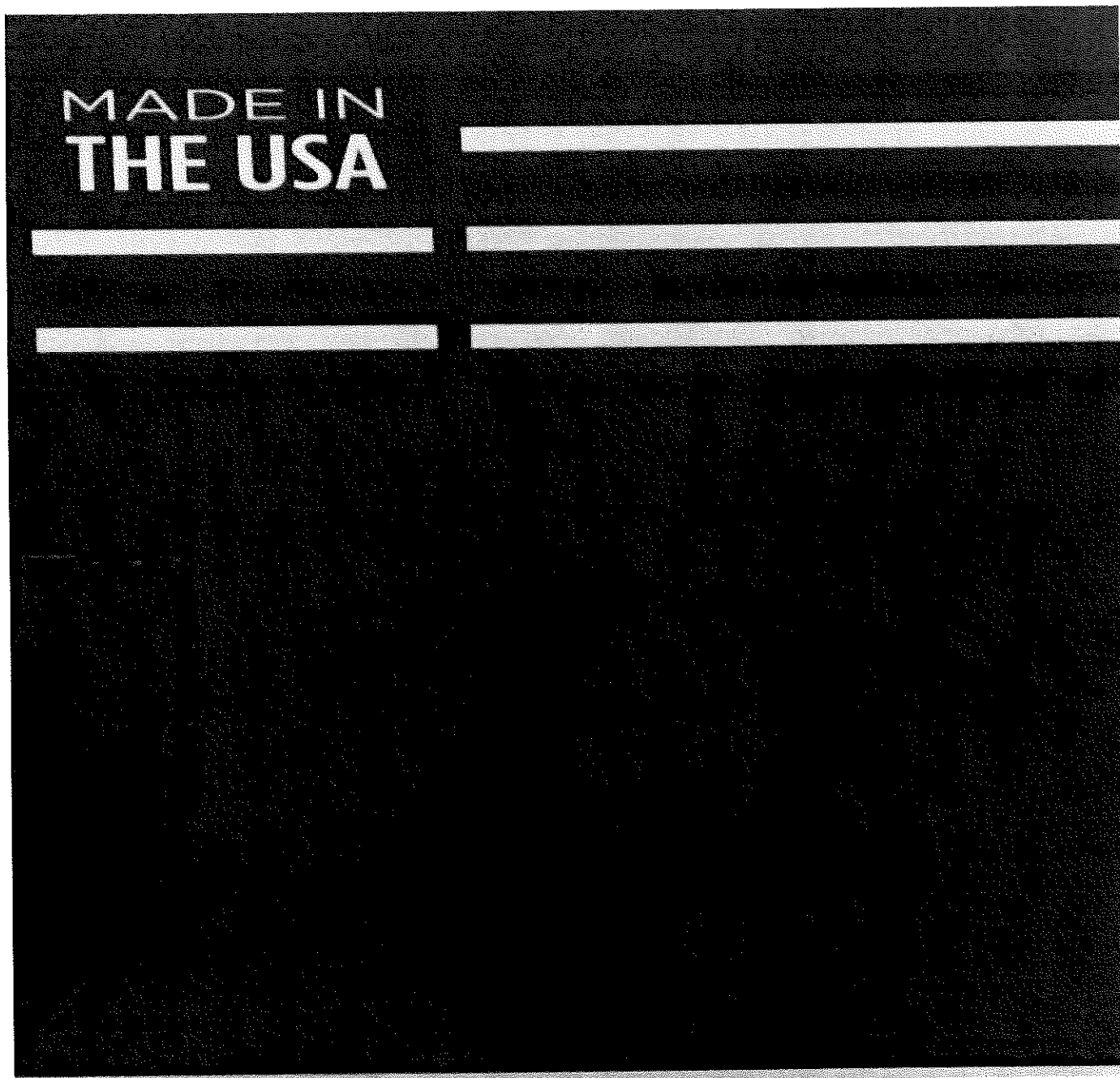
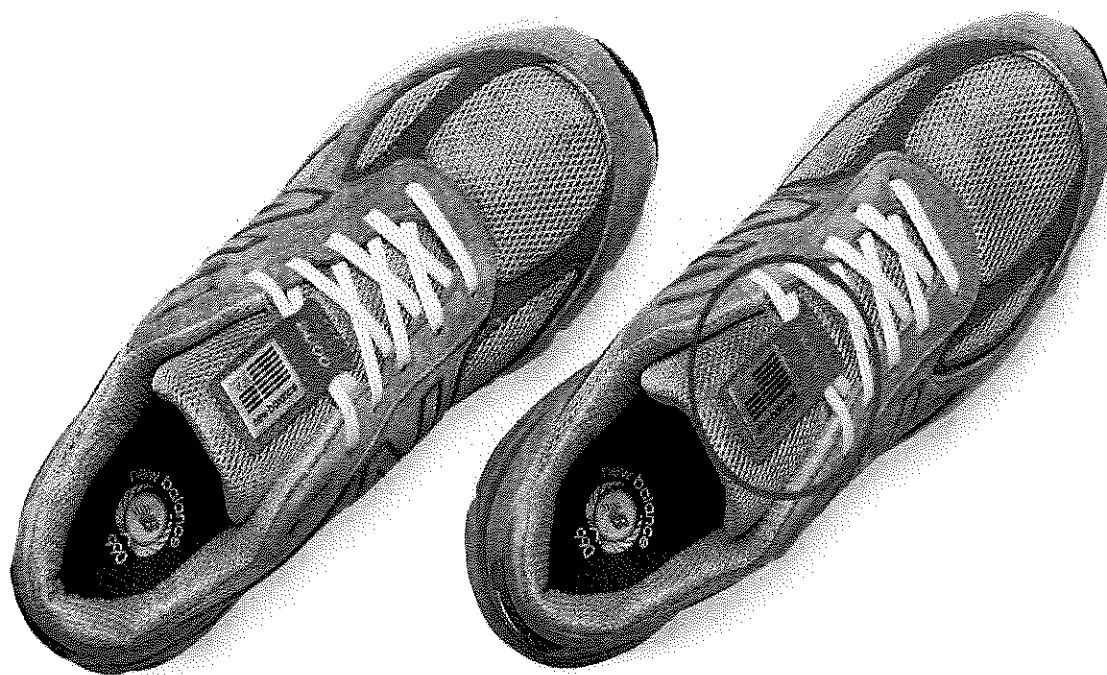


Figure 10



New Balance 990v4



Figure 11



○○○●

New Balance 990v4

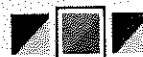
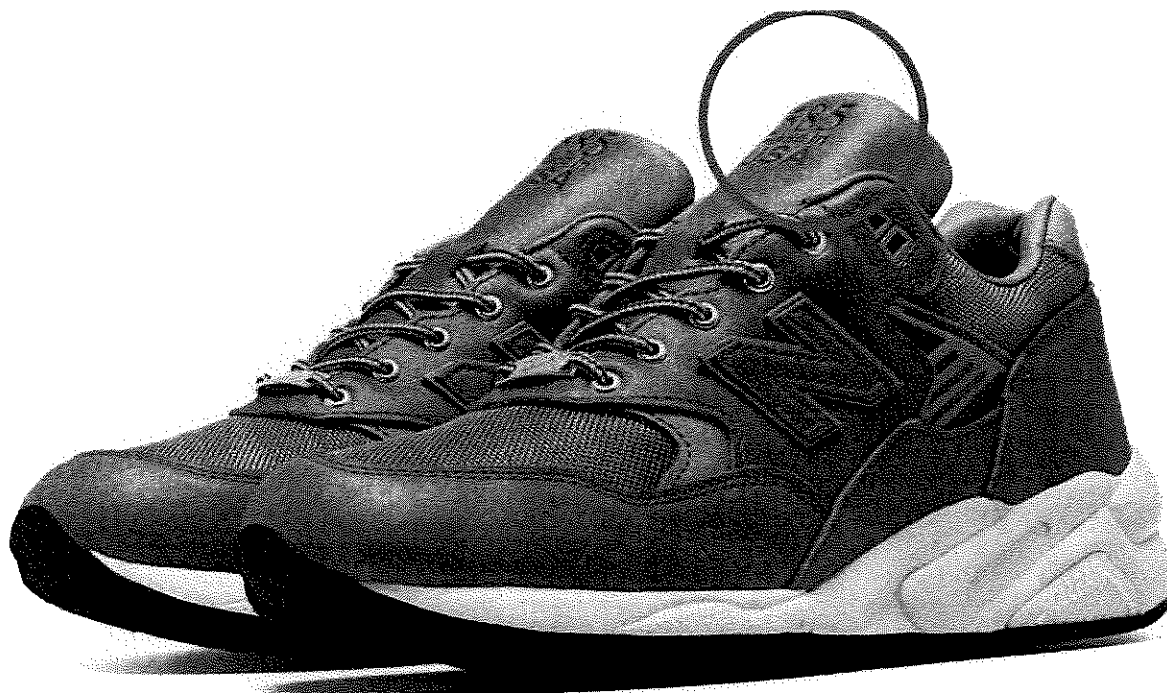


Figure 12



● ○ ○ ○

585 Danner x NB

\$359.99



Color: Brown

Figure 13



○ ○ ● ○ ○

997 Age of Exploration

\$209.99



Color: Grey with Orange

Figure 14



○ ● ○ ○

Pink Ribbon 990v4



Figure 15



○ ○ ○ ○ ● ○

006 Connoisseur Retro Ski



EXHIBIT A

DECLARATION OF SHEILA DASHNAW

I, Sheila Dashnaw, hereby declare:

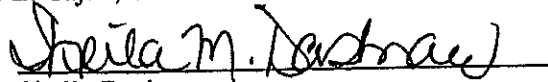
1. I am the Named Plaintiff in the above-entitled action. I am a competent adult over eighteen years of age and I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently thereto.

2. I am a citizen of the United States and California. I am a resident of the County of San Diego in the State of California.

3. The transaction that forms the basis of my claims asserted in this case – namely, my purchase of a pair of New Balance shoes – took place at a store located in the County of San Diego.

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

Executed on December 9, 2016 at El Cajon, California.


Sheila Dashnaw

DECLARATION OF WILLIAM MEIER

I, William Meier, hereby declare:

1. I am the Named Plaintiff in the above-entitled action. I am a competent adult over eighteen years of age and I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently thereto.

2. I am a citizen of the United States and California. I am a resident of the County of San Diego in the State of California.

3. The transaction that forms the basis of my claims asserted in this case – namely, my purchase of a pair of New Balance shoes – took place at a store located in the County of San Diego.

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

Executed on December 9, 2016 at El Cajon, California.

William C. Meier
William Meier

DECLARATION OF SHERRYL JONES

I, Sherryl Jones, hereby declare:

1. I am the Named Plaintiff in the above-entitled action. I am a competent adult over eighteen years of age and I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently thereto.

2. I am a citizen of the United States and California. I am a resident of the County of Los Angeles in the State of California.

3. The transaction that forms the basis of my claims asserted in this case – namely, my purchase of a pair of New Balance shoes – took place at a store located in the County of Los Angeles.

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

Executed on December 5, 2016 at Los Angeles, California.

Sherryl Jones

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jason H. Kim (SBN 220279) Schneider Wallace Cottrell Konecky & Wotkins LLP 2000 Powell Street, Suite 1400 Emeryville, CA 94608 TELEPHONE NO.: 415-421-7000 FAX NO.: 415-421-7105 ATTORNEY FOR (Name): Sheila Dashnaw, William Meier, Sherryl Jones		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 12/27/2016 at 01:44:01 PM Clerk of the Superior Court By Tamara Parra, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, California 92101 BRANCH NAME: Hall of Justice		
CASE NAME: Dashnaw, et al. v. New Balance Athletics, Inc.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		CASE NUMBER: 37-2016-00045461-CU-AT-CTL
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: Judge Richard E. L. Strauss DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input checked="" type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	--	---

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 7-FAL, CLRA, B&P 17533.7, B&P 17200, Warranty, Neg. Misrep., Restitution
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 22, 2016
 Jason H. Kim

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

New Balance Athletics, Inc., a corporation; and DOES 1 through 50,
inclusive

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

Sheila Dashnaw, William Meier, and Sherryl Jones, individually, and on
behalf of all others similarly situated

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/27/2016 at 01:44:01 PM

Clerk of the Superior Court
By Tamara Parra, Deputy Clerk

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court, County of San Diego

330 West Broadway, San Diego, CA 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jason H. Kim (SBN 220279); 2000 Powell Street, Suite 1400, Emeryville CA 94608; (415) 421-7100

CASE NUMBER:
(Número del Caso): 37-2016-00045481-CU-AT-CTL

DATE: 12/28/2016
(Fecha)

Clerk, by
(Secretario)

Tamara Parra
T. Parra

, Deputy
(Adjunto)

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

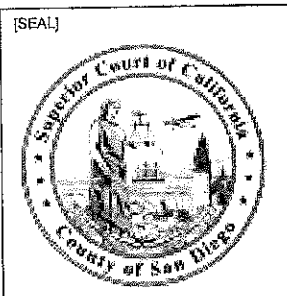
NOTICE TO THE PERSON SERVED: You are served

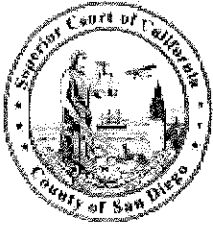
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):





SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2016-00045461-CU-AT-CTL CASE TITLE: Dashnaw vs New Balance Athletics Inc [E-FILE]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO		FOR COURT USE ONLY
STREET ADDRESS:	330 West Broadway	
MAILING ADDRESS:	330 West Broadway	
CITY, STATE, & ZIP CODE:	San Diego, CA 92101-3827	
BRANCH NAME:	Central	
PLAINTIFF(S): Shella Dashnaw et.al.		
DEFENDANT(S): New Balance Athletics Inc		
SHORT TITLE: DASHNAW VS NEW BALANCE ATHLETICS INC [E-FILE]		
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)		CASE NUMBER: 37-2016-00045461-CU-AT-CTL

Judge: Richard E. L. Strauss

Department: C-75

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- ☐ Mediation (court-connected) ☐ Non-binding private arbitration
- ☐ Mediation (private) ☐ Binding private arbitration
- ☐ Voluntary settlement conference (private) ☐ Non-binding judicial arbitration (discovery until 15 days before trial)
- ☐ Neutral evaluation (private) ☐ Non-binding judicial arbitration (discovery until 30 days before trial)
- ☐ Other (specify e.g., private mini-trial, private judge, etc.): _____

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

JUDGE OF THE SUPERIOR COURT

Dated: 12/28/2016

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7075	
PLAINTIFF(S) / PETITIONER(S): Sheila Dashnaw et.al.	
DEFENDANT(S) / RESPONDENT(S): New Balance Athletics Inc	
DASHNAW VS NEW BALANCE ATHLETICS INC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2016-00045461-CU-AT-CTL

CASE ASSIGNMENT

Judge: Richard E. L. Strauss

Department: C-75

COMPLAINT/PETITION FILED: 12/27/2016

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	08/04/2017	10:00 am	C-75	Richard E. L. Strauss

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order 051414 at www.sdcourt.ca.gov for guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See Local Rule 5.1.8

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Todd Schneider, 158253 Schneider Wallace Cottrell Konecky Wotkyns LLP 2000 Powell Street, Suite 1400 Emeryville, CA 94608 TELEPHONE NO.: (415) 421-7100 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 01/11/2017 at 12:35:00 PM Clerk of the Superior Court By E-Filing, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, San Diego County 330 W. Broadway San Diego, CA 92101-3409	
PLAINTIFF/PETITIONER: Sherryl Jones DEFENDANT/RESPONDENT: New Balance Athletics, Inc.	CASE NUMBER: 37-2016-00045461-CU-AT-CTL
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.: 101315

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action. **BY FAX**
2. I served copies of: Civil Case Cover Sheet, Class Action Complaint, Summons, Notice of Case Assignment, Notice re Alternative Dispute Resolution Information, Stipulation to Use Alternative Dispute Resolution, Notice of Confirmation of Electronic Filing

3. a. Party served: New Balance Athletics, Inc., a corporation

b. Person Served: CT Corporation System - Person Authorized to Accept Service of Process

4. Address where the party was served: 818 West Seventh Street, 930
Los Angeles, CA 90017

5. I served the party

- a. by **personal service**. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 12/29/2016 (2) at (time): 3:00PM

6. The "Notice to the Person Served" (on the summons) was completed as follows:

d. on behalf of:

New Balance Athletics, Inc., a corporation
under: CCP 416.10 (corporation)

7. Person who served papers

- a. Name: Jimmy Lizama
b. Address: One Legal - 194-Marin
504 Redwood Blvd #223
Novato, CA 94947

c. Telephone number: 415-491-0606

d. The fee for service was: \$ 0.00

e I am:

- (3) registered California process server.
(i) Employee or independent contractor.
(ii) Registration No.: 4553
(iii) County: Los Angeles

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.
Date: 01/03/2017

Jimmy Lizama

(NAME OF PERSON WHO SERVED PAPERS)

(SIGNATURE)

Code of Civil Procedure, § 417.10

EXHIBIT B

1 Garrett K. Sakimae (SBN 288453)
sakimae@fr.com

2 FISH & RICHARDSON P.C.
3 12390 El Camino Real
San Diego, CA 92130
4 Telephone: (858) 678-5070
Facsimile: (858) 678-5099

5 *Attorney for Defendant*
6 NEW BALANCE ATHLETICS, INC.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 SHEILA DASHNAW, WILLIAM MEIER, and
11 SHERRYL JONES, individually, and on behalf
of all others similarly situated,

12 Plaintiffs,

13 v.

14 NEW BALANCE ATHLETICS, INC., a
15 corporation; and DOES 1 through 50, inclusive,

16 Defendants.
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Case No. 37-2016-00045461-CU-AT-CTL

CLASS ACTION

**DEFENDANT NEW BALANCE
ATHLETICS, INC.'S NOTICE OF FILING
NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(B)**

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO THE**
2 **PLAINTIFFS:**

3 **PLEASE TAKE NOTICE** that on January 26, 2017, defendant New Balance Athletics,
4 Inc. filed a Notice of Removal of this action with the United States District Court for the Southern
5 District of California. A true and correct copy of said Notice of Removal is attached as Exhibit A.

6 **PLEASE TAKE FURTHER NOTICE** that the filing of said Notice of Removal with the
7 United States District Court for the Southern District of California, together with the service and
8 filing of a copy of said Notice of Removal with this Court, effects the removal of this action to the
9 federal court, and this Court “shall proceed no further unless and until the case is remanded.” 28
10 U.S.C. § 1446(d).

11 Dated: January 26, 2017

Respectfully submitted,

FISH & RICHARDSON P.C.

By: s/ Garrett K. Sakimae

Garrett Sakimae (SBN 288453)
sakimae@fr.com
FISH & RICHARDSON P.C.
12390 El Camino Real
San Diego, CA 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

NEW BALANCE ATHLETICS, INC.

PROOF OF SERVICE

I am employed in the County of San Diego. My business address is Fish & Richardson P.C., 12390 El Camino Real, San Diego, California 92130. I am over the age of 18 and not a party to the foregoing action. I am readily familiar with the business practice at my place of business for sending email messages, for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On January 26, 2017, I caused a copy of the **DEFENDANT NEW BALANCE ATHLETICS, INC.'S NOTICE OF FILING NOTICE REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(B) (DIVERSITY JURISDICTION)** to be served on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

THE WAND LAW FIRM
Aubty Wand
400 Corporate Pointe, Suite 300
Culver City, California 90230
Telephone: (310) 590-4503
Facsimile: (310) 590-4596
awand@wandlawfirm.com

Attorney for Plaintiffs
SHEILA DASHNAW, WILLIAM
MEIER, and SHERRYL JONES,

SCHNEIDER WALLACE COTTRELL
KONECKY & WOTKYN LLP
Todd M. Schneider
Jason H. Kim
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105

Attorneys for Plaintiffs
SHEILA DASHNAW, WILLIAM MEIER,
and SHERRYL JONES,

☐ **MAIL
SERVICE**

Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.

☒ **FEDERAL
EXPRESS:**

Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by Federal Express.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct. Executed on January 26, 2017, at San Diego, California.

s/Garrett K. Sakimae
Garrett K. Sakimae

Sheryl Garko (*Pro Hac Vice to be filed*)
garko@fr.com

David Hosp (*Pro Hac Vice to be filed*)
hosp@fr.com

FISH & RICHARDSON P.C.
1 Marina Park Dr.
Boston, MA 02210
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

Garrett K. Sakimae (SBN 288453)
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FISH & RICHARDSON P.C.
12390 El Camino Real
San Diego, CA 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

Attorneys for Defendant
NEW BALANCE ATHLETICS, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SHEILA DASHNAW, WILLIAM
MEIER, and SHERRYL JONES,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

NEW BALANCE ATHLETICS, INC., a
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. '17CV159 L JLB

**DECLARATION OF GARRETT K.
SAKIMAE IN SUPPORT OF
NOTICE OF REMOVAL UNDER 28
U.S.C. § 1441(b) (DIVERSITY
JURISDICTION)**

1 I, Garrett K. Sakimae, declare as follows:

2 1. I am an attorney at law licensed to practice in all the Courts of the State
3 of California and admitted to practice in the Superior Court of California. I am an
4 attorney in the law firm of Fish & Richardson P.C., counsel of record for Defendant
5 New Balance Athletics, Inc. ("New Balance"). If called to testify to the following, I
6 could do so truthfully, competently and of my own personal knowledge.

7 2. Attached to the Notice of Removal as Exhibit A is a true and correct copy of
8 all process, pleadings, and orders, including the Summons and Complaint, served on
9 New Balance in *Dashnaw v. New Balance Athletics, Inc.*, Case No. 37-2016-
10 00045461-CU-AT-CTL, Superior Court of California for the County of San Diego.

11 3. Attached to the Notice of Removal as Exhibit B is a true and correct copy of
12 the Notice of Filing of Notice of Removal that New Balance intends to file today in
13 the Superior Court of California for the County of San Diego.

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

16 Executed on January 26, 2017, in San Diego, California.

17 /s/ Garrett K. Sakimae
18 Garrett K. Sakimae
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PROOF OF SERVICE

I am employed in the County of San Diego. My business address is Fish & Richardson P.C., 12390 El Camino Real, San Diego, California 92130. I am over the age of 18 and not a party to the foregoing action. I am readily familiar with the business practice at my place of business for sending email messages, for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On January 26, 2017, I caused a copy of the **DECLARATION OF GARRETT K. SAKIMAE IN SUPPORT OF NOTICE OF REMOVAL UNDER 28 U.S.C. § 1441(b) (DIVERSITY JURISDICTION)** to be served on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

THE WAND LAW FIRM
Aubty Wand
400 Corporate Pointe, Suite 300
Culver City, California 90230
Telephone: (310) 590-4503
Facsimile: (310) 590-4596
awand@wandlawfirm.com

Attorney for Plaintiffs
SHEILA DASHNAW, WILLIAM
MEIER, and SHERRYL JONES,

SCHNEIDER WALLACE COTTRELL
KONECKY & WOTKYNs LLP
Todd M. Schneider
Jason H. Kim
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105

Attorneys for Plaintiffs
SHEILA DASHNAW, WILLIAM
MEIER, and SHERRYL JONES,

☐ **MAIL
SERVICE**

Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.

☒ **FEDERAL
EXPRESS:**

Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by Federal Express.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct. Executed on January 26, 2017, at San Diego, California.

s/ Garrett K. Sakimae
Garrett K. Sakimae