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12 **UNITED STATES DISTRICT COURT**
 13
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15 MAKINDE PECANHA and SHAUN RAY
 16 BELL, on behalf of themselves and all others
 17 similarly situated,

18 Plaintiffs,

19 v.

20 THE HAIN CELESTIAL GROUP, INC. and
 21 JĀSÖN NATURAL PRODUCTS, INC.,

22 Defendants.

Case No. 3:17-cv-04517 EMC

**FIRST AMENDED CLASS ACTION
 COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiffs Makinde Pecanha and Shaun Ray Bell (collectively, “Plaintiffs”) bring this action
2 on behalf of themselves and all others similarly situated against The Hain Celestial Group, Inc. and
3 JĀSÖN® Natural Products, Inc. (otherwise referred to as “Defendants”). Plaintiffs make the
4 following allegations based upon information and belief, except as to the allegations specifically
5 pertaining to themselves, which are based on personal knowledge.

6 **INTRODUCTION**

7 1. This is a class action lawsuit against Defendants for selling its JĀSÖN® brand
8 deodorant sticks as “natural” when, in fact, they contain unnatural or synthetic ingredients.

9 2. Created in 1993, The Hain Celestial Group is an American company that focuses on
10 food and personal care products. With a market capitalization of \$2.69 billion dollars, Hain’s
11 products range from herbal teas, offered through their Celestial Seasonings brand, to personal care
12 products through its JĀSÖN® brand. Hain is headquartered in Lake Success, NY and regards itself
13 as a “leading organic and natural products company.” Defendants’ JĀSÖN® brand was created in
14 1959 and claims that when it was founded, “being safe and wholesome meant simply avoiding
15 certain chemicals.” Consistent with Defendants’ self-promotion of the JĀSÖN® brand as a leader in
16 natural cosmetics, they claim “the list of synthetics and chemicals the JĀSÖN® brand chooses not to
17 use in formulations is ever expanding, the JĀSÖN® brand also sets the industry standard in safety
18 testing.”

19 3. Defendants’ JĀSÖN® brand created and continues to maintain a “JĀSÖN® Code of
20 Honor,” which is displayed prominently on its website to further promote and advertise its product
21 line. The JĀSÖN® Code of Honor states, among other things, that JĀSÖN® products contain “safe,
22 gentle and effective ingredients.”

23 4. Among other purportedly “natural” products, Defendants manufacture, distribute,
24 advertise and sell JĀSÖN®’s Unscented (Men and Women), Purifying Tea Tree, Soothing Aloe
25 Vera, Nourishing Apricot, Fragrance Free, and Calming Lavender Deodorant Sticks (collectively,
26 “the Products”).

1 5. Consistent with Defendants’ self-promotion as a leader in natural personal care
2 products, the front packaging of each one of the Products clearly states that it is “Naturally Fresh,”
3 “Pure Natural Deodorant,” “Pure Natural Deodorant Stick,” and/or “Natural Pioneer Since 1959.”

4 6. To reinforce the message that the Products are natural products, the front packaging of
5 every Product displays pictures of leaves and flowers.

6 7. Contrary to the labeling, however, every purportedly natural Product contains
7 tocopheryl acetate, glycerin and ethylhexylglycerin. Tocopherol acetate is a synthetic, inert
8 ingredient which is used pre- and post-harvest as an ingredient in pesticide formulations applied to
9 growing crops or to raw agricultural commodities after harvest. *See* 40 C.F.R. §180.910. Glycerin is
10 a factory-produced texturizer that is created by a complex process, used as a filler and thickening
11 agent. *See* 7 C.F.R. §206.605. A technical evaluation report compiled by the USDA AMS
12 Agricultural Analytics Division for the USDA National Organic Program explains that glycerin is
13 “produced by a hydrolysis of fats and oils” and is listed as a “synthetic (nonagricultural) nonorganic
14 substance.” Ethylhexylglycerin is a synthetic conditioning agent and preservative. It also is an eye
15 irritant and may cause dermatitis when used on people with sensitive skin. In April 2016, the Federal
16 Trade Commission (“FTC”) filed a complaint against a cosmetics manufacturer for representing that
17 its products were “natural” when they contained ethylhexylglycerin. The company agreed to cease
18 marketing the products in question as being “natural.”¹

19 8. Plaintiffs and members of the classes described below paid a premium for
20 Defendants’ Products over comparable products that did not purport to be natural products. Contrary
21 to representations on the Products’ labeling, instead of receiving natural products, consumers receive
22 products with unnatural and/or synthetic ingredients.

23 9. Defendants’ representation that the Products are “natural” is unfair, unlawful, and
24 fraudulent conduct, is likely to deceive members of the public, and continues to this day. As such,
25 Defendants’ practices violate California’s Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et*

26 _____
27 ¹ [https://www.ftc.gov/news-events/press-releases/2016/04/four-companies-agree-stop-falsely-
28 promoting-their-personal-care](https://www.ftc.gov/news-events/press-releases/2016/04/four-companies-agree-stop-falsely-promoting-their-personal-care) (last visited March 21, 2017).

1 *seq.* (“CLRA”), California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*
2 (“UCL”), and California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.*
3 (“FAL”). Plaintiffs also bring claims for fraud, unjust enrichment and breach of express warranty.

4 **JURISDICTION AND VENUE**

5 10. This Court has personal jurisdiction over Defendants. Defendants purposefully
6 avail themselves of the California consumer market and distribute the Products to hundreds of
7 locations within this County and thousands of retail locations throughout California, where the
8 Products are purchased by thousands of consumers every day.

9 11. This Court has original subject-matter jurisdiction over this proposed class action
10 pursuant to 28 U.S.C. § 1332(d), which, under the provisions of the Class Action Fairness Act
11 (“CAFA”), explicitly provides for the original jurisdiction of the federal courts in any class action
12 in which at least 100 members are in the proposed plaintiff class, any member of the plaintiff class
13 is a citizen of a State different from any defendant, and the matter in controversy exceeds the sum
14 of \$5,000,000.00, exclusive of interest and costs. Plaintiffs allege that the total claims of individual
15 members of the proposed Class (as defined herein) are well in excess of \$5,000,000.00 in the
16 aggregate, exclusive of interest and costs.

17 12. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial acts in
18 furtherance of the alleged improper conduct, including the dissemination of false and misleading
19 information regarding the nature, quality, and/or ingredients of the Products, occurred within this
20 District.

21 **PARTIES**

22 13. Plaintiff Makinde Pecanha (“Pecanha”) is a citizen of California, residing in
23 Richmond, California. In or about March 2017, Mr. Pecanha purchased a JĀSÖN® deodorant stick
24 from a Walgreens in Anaheim, California. Mr. Pecanha paid approximately \$5.00 for the JĀSÖN®
25 deodorant stick he purchased. Prior to purchasing the JĀSÖN® deodorant stick, Mr. Pecanha saw
26 and read the front of the product packaging, and relied on the representation and warranty that the
27 product was “natural.” Mr. Pecanha understood that representation to mean that JĀSÖN®
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1 deodorant sticks did not contain synthetic chemicals. Mr. Pecanha purchased the JÄSÖN®
2 deodorant stick at a substantial price premium, and would not have bought the product had he
3 known that the labeling he relied on was false, misleading, deceptive and unfair. Mr. Pecanha
4 would purchase the Products again in the future if Defendants changed the composition of the
5 Products so that they conformed to their “natural” labeling and marketing.

6 14. Plaintiff Shaun Ray Bell (“Bell”) is a citizen of California, residing in San Diego,
7 California. Since 2015, Mr. Bell has made several purchases of Defendants’ JÄSÖN® deodorant
8 sticks in or near San Diego, California. Mr. Bell paid approximately \$5.50 to \$7.50 for the
9 JÄSÖN® deodorant sticks he purchased. Prior to purchasing JÄSÖN® deodorant sticks Mr. Bell
10 read and saw the front of the product packaging, and relied on the representation and warranty that
11 the product was “natural.” Mr. Bell understood these representations to mean that JÄSÖN®
12 deodorant sticks did not contain synthetic chemicals. Mr. Bell purchased JÄSÖN® sticks
13 deodorants at a substantial price premium, and would not have bought the product had he known
14 that the labeling he relied on was false, misleading, deceptive and unfair. Mr. Bell would purchase
15 the Products again in the future if Defendants changed the composition of the Products so that they
16 conformed to their “natural” labeling and marketing.

17 15. Defendant Hain Celestial Group, Inc. is a Delaware limited liability corporation that
18 has its principal place of business at 1111 Marcus Avenue #1, Lake Success, New York 11042.

19 16. Defendant JÄSÖN® Natural Products, Inc. is a California corporation that has its
20 principal place of business at 1111 Marcus Avenue #1, Lake Success, New York 11042.

21 17. Defendants produce, market and distribute various consumer skin care and hygiene
22 products in retail stores across the United States. Among others, those products include JÄSÖN®
23 deodorant sticks (the “Products”). Defendants knew that the labeling of the Products is false and
24 misleading to a reasonable consumer, because the Products contain tocopheryl acetate,
25 ethylhexylglycerin, and glycerin, which are inconsistent with the product labeling.
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FACTS COMMON TO ALL CAUSES OF ACTION

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2 18. Consumers have become increasingly concerned about the effects of synthetics and
3 chemical ingredients in cosmetic products. As a result, consumers are willing to pay, and have
4 paid, a premium for products labeled “natural” over ordinary products that contain synthetic
5 ingredients.

6 19. The FTC has warned marketers that the use of the term “natural” may be deceptive:
7 Marketers that are using terms such as natural must ensure that they
8 can substantiate whatever claims they are conveying to reasonable
9 consumers. If reasonable consumers could interpret a natural claim
10 as representing that a product contains no artificial ingredients, then
11 the marketer must be able to substantiate that fact.²

12 20. Likewise, the Food and Drug Administration (“FDA”) warns that any “natural”
13 labeling on cosmetic products must be “truthful and not misleading.”³

14 21. The JĀSÖN® brand is manufactured and marketed by Defendants and sold in drug,
15 grocery, and retail stores nationwide. On its website, Defendants underscore the fact that “[T]hey
16 began by making a pact to select only the purest, gentlest ingredients, and put them through a series
17 of rigorous testing procedures that would reflect their high standards. Over the years these tests
18 have grown more rigorous. Just because an ingredient is plant-based doesn’t mean it should go
19 into a personal care product.”⁴

20 22. JĀSÖN® brand deodorant sticks come in 6 varieties, all of which contain tocopheryl
21 acetate, ethylhexylglycerin, and glycerin JĀSÖN®’s Unscented (Men and Women), Purifying Tea
22 Tree, Soothing Aloe Vera, Nourishing Apricot, Fragrance Free, and Calming Lavender Deodorant
23 Sticks.

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25 ² 75 Fed. Reg. 63552, 63586 (Oct. 15, 2010).

26 ³ FDA, Small Business & Homemade Cosmetics: Fact Sheet, *available at*
27 <http://www.fda.gov/Cosmetics/ResourcesForYou/Industry/ucm388736.htm#7>.

28 ⁴ <http://www.jason-personalcare.com/the-jason-story-2> (last visited July 20, 2017).

1 23. The front label of every JÄSÖN® brand deodorant stick states prominently in
2 lettering the words “Naturally Fresh,” “Pure Natural Deodorant,” or “Pure Natural Deodorant
3 Stick.”



18 24. Some of the JÄSÖN® brand deodorant sticks are labeled with the additional phrase
19 “Natural Pioneer Since 1959.”
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25. The JÄSÖN® brand deodorant stick products have been labeled “Naturally Fresh,”
13 “Pure Natural Deodorant,” “Pure Natural Deodorant Stick,” and/or “Natural Pioneer Since 1959,”
14 at all times during the last four years, at least.

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26. Based on the language that appears on the front of each product, Plaintiffs
17 reasonably believed that JÄSÖN® brand deodorant sticks contained only natural ingredients.

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27. The phrase “Naturally Fresh,” “Pure Natural Deodorant,” “Pure Natural Deodorant
Stick,” and/or “Natural Pioneer Since 1959” are representations to a reasonable consumer that
JÄSÖN® brand deodorant sticks contain only natural ingredients. The phrase is misleading to a
reasonable consumer because JÄSÖN® brand deodorant sticks actually contain unnatural and
synthetic ingredients.

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28. Based on the language that appears on the front of each product, Plaintiffs Pecanha
and Bell reasonably believed that JÄSÖN® brand deodorant sticks contained only natural ingredients.

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29. Defendants knew that consumers will pay more for a product labeled “natural,” and
intended to deceive Plaintiffs and putative class members by labeling JÄSÖN® brand deodorant
sticks as purportedly natural products.

CLASS ALLEGATIONS

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2 30. Plaintiffs seek to represent a class defined as all persons in the United States who
3 purchased the Products during the class period (the “Class”). Excluded from the Class are
4 Defendants, their affiliates, employees, officers and directors, persons or entities that purchased the
5 Products for resale, and the Judge(s) assigned to this case.

6 31. Plaintiffs Pecanha and Bell also seek to represent a Subclass of all persons in
7 California who purchased the Products during the class period (the “California Subclass”).
8 Excluded from the California Subclass are Defendants, their affiliates, employees, officers and
9 directors, persons or entities that purchased the Products for resale, and the Judge(s) assigned to
10 this case.

11 32. There is a well-defined community of interest in the questions of law and fact
12 involved in this case. Questions of law and fact common to the members of the putative classes
13 that predominate over questions that may affect individual Class members include, but are not
14 limited to the following:

- 15 a. whether Defendants misrepresented material facts concerning the Products
16 on the label of every product;
 - 17 b. whether Defendants’ conduct was unfair and/or deceptive;
 - 18 c. whether Defendants have been unjustly enriched as a result of
19 the unlawful, fraudulent, and unfair conduct alleged in this Complaint such that it
20 would be inequitable for Defendants to retain the benefits conferred upon them by
21 Plaintiffs and the classes;
 - 22 d. whether Defendants breached express warranties to Plaintiffs and the
23 classes;
 - 24 e. whether Plaintiffs and the classes have sustained damages with
25 respect to the common-law claims asserted, and if so, the proper measure of their
26 damages.
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1 33. Plaintiffs' claims are typical of those of other class members because Plaintiffs, like
2 all members of the classes, purchased Defendants' Products bearing the natural representations and
3 Plaintiffs sustained damages from Defendants' wrongful conduct.

4 34. Plaintiffs will fairly and adequately protect the interests of the classes and have
5 retained counsel that is experienced in litigating complex class actions. Plaintiffs have no interests
6 which conflict with those of the classes.

7 35. A class action is superior to other available methods for the fair and efficient
8 adjudication of this controversy.

9 36. The prerequisites to maintaining a class action for equitable relief are met as
10 Defendants have acted or refused to act on grounds generally applicable to the classes, thereby
11 making appropriate equitable relief with respect to the classes as a whole.

12 37. The prosecution of separate actions by members of the classes would create a risk of
13 establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. For
14 example, one court might enjoin Defendants from performing the challenged acts, whereas another
15 might not. Additionally, individual actions could be dispositive of the interests of the classes even
16 where certain Class members are not parties to such actions.

17 **COUNT I**

18 **Violation Of California's Consumers Legal Remedies Act ("CLRA"),**
19 **California Civil Code §§ 1750, *et seq.***

20 38. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
21 paragraphs of this complaint.

22 39. Plaintiffs Pecanha and Bell bring this claim individually and on behalf of the
23 members of the proposed California Subclass against Defendants.

24 40. This cause of action is brought pursuant to California's Consumers Legal Remedies
25 Act, Cal. Civ. Code §§ 1750-1785 (the "CLRA").

26 41. Plaintiffs Pecanha and Bell and the other members of the California Subclass are
27 "consumers," as the term is defined by California Civil Code § 1761(d), because they bought the
28 Products for personal, family, or household purposes.

1 42. Plaintiffs Pecanha and Bell, the other members of the California Subclass, and
2 Defendants have engaged in “transactions,” as that term is defined by California Civil Code
3 § 1761(e).

4 43. The conduct alleged in this Complaint constitutes unfair methods of competition
5 and unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was
6 undertaken by Defendants in transactions intended to result in, and which did result in, the sale of
7 goods to consumers.

8 44. As alleged more fully above, Defendants have violated the CLRA by falsely
9 representing to Plaintiffs Pecanha and Bell and the other members of the California Subclass that
10 the Products are “natural” when in fact they are made with synthetic ingredients.

11 45. As a result of engaging in such conduct, Defendants have violated California Civil
12 Code § 1770(a)(5), (a)(7) and (a)(9).

13 46. On May 30, 2017, Plaintiff Bell mailed a notice letter to Defendant Hain Celestial
14 Group, Inc. consistent with California Civil Code § 1782(a), and Hain received the letter on June
15 16, 2017. The letter was sent on behalf of Bell and all other persons similarly situated.

16 47. On September 13, 2017, Plaintiffs Bell and Pecanha mailed a notice letter to
17 Defendant JĀSÖN® Natural Products, Inc. consistent with California Civil Code § 1782(a), and
18 JĀSÖN® received the letter on September 18, 2017. The letter was sent on behalf of Plaintiffs
19 Bell and Pecanha and all other persons similarly situated.

20 48. Accordingly, pursuant to California Civil Code § 1780(a)(3), Plaintiffs Pecanha
21 and Bell, on behalf of themselves and all other members of the California Subclass, seek injunctive
22 relief, compensatory damages, punitive damages, and restitution of any ill-gotten gains due to
23 Defendants’ acts and practices.

24 **COUNT II**
25 **Violation Of California’s Unfair Competition Law (“UCL”),**
26 **California Business & Professions Code §§ 17200, et seq.**

27 49. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
28 paragraphs of this complaint.

1 58. California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*,
2 makes it “unlawful for any person to make or disseminate or cause to be made or disseminated
3 before the public in this state, ... in any advertising device ... or in any other manner or means
4 whatever, including over the Internet, any statement, concerning ... personal property or services,
5 professional or otherwise, or performance or disposition thereof, which is untrue or misleading and
6 which is known, or which by the exercise of reasonable care should be known, to be untrue or
7 misleading.”

8 59. Defendants committed acts of false advertising, as defined by §§17500, *et seq.*, by
9 misrepresenting that the Products are “natural” when they are not.

10 60. Defendants knew or should have known through the exercise of reasonable care that
11 their representations about the Products were untrue and misleading.

12 61. Defendants’ actions in violation of §§ 17500, *et seq.* were false and misleading such
13 that the general public is and was likely to be deceived. Plaintiffs Pecanha and Bell and the
14 California Subclass lost money or property as a result of Defendants’ FAL violations because: (a)
15 they would not have purchased the Products on the same terms if they knew that the Products were
16 made with unnatural and synthetic ingredients; (b) they paid a substantial price premium compared
17 to other skin care and hygiene products due to Defendants’ misrepresentations; and (c) the Products
18 do not have the characteristics, uses, or benefits as promised.

19 **COUNT IV**

20 **Breach of Express Warranty**

21 62. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
22 paragraphs of this complaint.

23 63. Plaintiffs bring this claim individually and on behalf of the proposed Class,
24 California Subclass against Defendants.

25 64. Defendants, as the designers, manufacturers, marketers, distributors, and/or sellers,
26 expressly warranted that the Products are “natural.”

27 65. Defendants’ express warranties, and its affirmations of fact and promises made to
28 Plaintiffs and the Class regarding the Products, became part of the basis of the bargain between

1 Defendants and Plaintiffs and the Class, thereby creating an express warranty that the Products
2 would conform to those affirmations of fact, representations, promises, and descriptions.

3 66. The Products do not conform to the express warranty because they contain
4 ingredients that are unnatural and synthetic.

5 67. As a direct and proximate cause of Defendants' breach of express warranty,
6 Plaintiffs and Class members have been injured and harmed because: (a) they would not have
7 purchased the Products on the same terms if they knew the truth about the Products' unnatural
8 ingredients; (b) they paid a substantial price premium based on Defendants' express warranties;
9 and (c) the Products do not have the characteristics, uses, or benefits as promised.

10 68. On May 30, 2017, Plaintiff Bell mailed a notice letter to Defendant Hain Celestial
11 Group, Inc. consistent with Cal. Com. Code § 2607(3)(a) and U.C.C. 2-607(3)(A), and Defendant
12 received the letter on June 16, 2017. The letter was sent on behalf of Bell and all other persons
13 similarly situated.

14 69. On September 13, 2017, Plaintiffs Bell and Pecanha mailed a notice letter to
15 Defendant JĀSÖN® Natural Products, Inc. consistent with Cal. Com. Code § 2607(3)(a) and
16 U.C.C. 2-607(3)(A), and JĀSÖN® received the letter on September 18, 2017. The letter was sent
17 on behalf of Plaintiffs Bell and Pecanha and all other persons similarly situated.

18 **COUNT V**
19 **Unjust Enrichment**

20 70. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
21 paragraphs of this complaint.

22 71. Plaintiffs bring this claim individually and on behalf of the proposed Class,
23 California Subclass against Defendants.

24 72. Plaintiffs and class members conferred benefits on Defendants by purchasing the
25 Products.

26 73. Defendants have been unjustly enriched in retaining the revenues derived from
27 Plaintiffs' and class members' purchases of the Products. Retention of those monies under these
28 circumstances is unjust and inequitable because of Defendants' misrepresentations about the

1 Products, which caused injuries to Plaintiffs and members of the classes because they would not
2 have purchased the Products if the true facts had been known.

3 74. Because Defendants’ retention of the non-gratuitous benefits conferred on it by
4 Plaintiffs and Class members is unjust and inequitable, Defendants must pay restitution to Plaintiffs
5 and Class members for their unjust enrichment, as ordered by the Court.

6 **COUNT VI**

7 **Fraud**

8 75. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
9 paragraphs of this complaint.

10 76. Plaintiffs bring this claim individually and on behalf of the proposed Class,
11 California Subclass against Defendants.

12 77. As discussed above, Defendants provided Plaintiffs and Class members with false or
13 misleading material information about the Products by representing that they are “natural.”
14 Defendants made that misrepresentation knowing it was false.

15 78. Defendants’ misrepresentations, upon which Plaintiffs and class members
16 reasonably and justifiably relied, were intended to induce and actually induced Plaintiffs and class
17 members to purchase the Products.

18 79. Defendants’ fraudulent actions harmed Plaintiffs and class members, who are
19 entitled to damages and other legal and equitable relief as a result.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs demand judgment on behalf of themselves and members of the
22 Class, California Subclass as follows:

- 23 A. For an order certifying the nationwide Class and California Subclass under Rule 23
24 of the Federal Rules of Civil Procedure; naming Plaintiffs as Class and Subclass
25 representatives; and naming Plaintiffs’ attorneys as Class Counsel representing the
26 Class and Subclass members;
- 27 B. For an order finding in favor of Plaintiffs, the nationwide Class and the California
28 Subclass on all counts asserted herein;

- 1 C. For an order awarding statutory, compensatory, treble, and punitive damages in
2 amounts to be determined by the Court and/or jury;
- 3 D. For injunctive relief enjoining the illegal acts detailed herein;
- 4 E. For prejudgment interest on all amounts awarded;
- 5 F. For an order of restitution and all other forms of equitable monetary relief;
- 6 G. For an order awarding Plaintiffs their reasonable attorneys' fees and expenses and
7 costs of suit.

8 **JURY TRIAL DEMANDED**

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

10 Dated: October 20, 2017

Respectfully submitted,

11 **BURSOR & FISHER, P.A.**

12 By: /s/ L. Timothy Fisher
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20 Dated: October 20, 2017

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