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19 **UNITED STATES DISTRICT COURT**
 20 **NORTHERN DISTRICT OF CALIFORNIA**

21 MAKINDE PECANHA and SHAUN RAY
 22 BELL, on behalf of themselves and all others
 23 similarly situated,

24 Plaintiffs,

25 v.

26 THE HAIN CELESTIAL GROUP, INC.,

27 Defendant.

Case No.

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.
3 (otherwise referred to as “Defendant”). Plaintiffs make the following allegations based upon
4 information and belief, except as to the allegations specifically pertaining to themselves, which are
5 based on personal knowledge.

6 INTRODUCTION

7 1. This is a class action lawsuit against Defendant 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, Defendant’s
11 products range from herbal teas, offered through their Celestial Seasonings brand, to personal care
12 products through its JĀSÖN® brand. Defendant is headquartered in Lake Success, NY and regards
13 itself as a “leading organic and natural products company.” Defendant’s JĀSÖN® brand was
14 created in 1959 and claims that when it was founded, “being safe and wholesome meant simply
15 avoiding certain chemicals.” Consistent with Defendant’s self-promotion of the JĀSÖN® brand as a
16 leader in natural cosmetics, it claims “the list of synthetics and chemicals the JĀSÖN® brand chooses
17 not to use in formulations is ever expanding, the JĀSÖN® brand also sets the industry standard in
18 safety testing.”

19 3. Defendant’s 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, Defendant manufactures, distributes,
24 advertises and sells 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”).
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1 5. Consistent with Defendant’s 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
10 is 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 Defendant’s 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. Defendant’s 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 Defendant’s 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-](https://www.ftc.gov/news-events/press-releases/2016/04/four-companies-agree-stop-falsely-promoting-their-personal-care)
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 Defendant. Defendant purposefully avails
6 itself of the California consumer market and distributes the Products to hundreds of locations
7 within this County and thousands of retail locations throughout California, where the Products are
8 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. Prior to purchasing the JĀSÖN® deodorant stick, Mr.
25 Pecanha saw and read the front of the product packaging, and relied on the representation and
26 warranty that the product was “natural.” Mr. Pecanha understood that representation to mean that
27 JĀSÖN® deodorant sticks did not contain synthetic chemicals. Mr. Pecanha purchased the
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1 JĀSÖN® deodorant stick at a substantial price premium, and would not have bought the product
2 had he known that the labeling he relied on was false, misleading, deceptive and unfair. Mr.
3 Pecanha would purchase the Products again in the future if Defendant changed the composition of
4 the Products so that they conformed to their “natural” labeling and marketing.

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

15 15. Defendant The Hain Celestial Group, Inc. is a Delaware Limited Liability
16 Corporation that has its principal place of business at 1111 Marcus Avenue #1, Lake Success, New
17 York 11042.

18 16. Defendant produces, markets and distributes various consumer skin care and
19 hygiene products in retail stores across the United States. Among others, those products include
20 JĀSÖN® stick deodorants (the “Products”). Defendant knew that the labeling of the Products is
21 false and misleading to a reasonable consumer, because the Products contain tocopheryl acetate,
22 ethylhexylglycerin, and glycerin, which are inconsistent with the product labeling.

23 **FACTS COMMON TO ALL CAUSES OF ACTION**

24 17. Consumers have become increasingly concerned about the effects of synthetics and
25 chemical ingredients in cosmetic products. As a result, consumers are willing to pay, and have
26 paid, a premium for products labeled “natural” over ordinary products that contain synthetic
27 ingredients.
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1 18. The FTC has warned marketers that the use of the term “natural” may be deceptive:
2 Marketers that are using terms such as natural must ensure that they
3 can substantiate whatever claims they are conveying to reasonable
4 consumers. If reasonable consumers could interpret a natural claim
5 as representing that a product contains no artificial ingredients, then
6 the marketer must be able to substantiate that fact.²

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

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

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

19 22. The front label of every JĀSÖN[®] brand deodorant sticks states prominently in
20 lettering the words “Naturally Fresh,” “Pure Natural Deodorant,” or “Pure Natural Deodorant
21 Stick.”

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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).

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23. Some of the JÄSÖN® brand deodorant sticks products are labeled with the additional phrase “Natural Pioneer Since 1959.”



1 that predominate over questions that may affect individual Class members include, but are not
2 limited to the following:

3 a. whether Defendant misrepresented material facts concerning the
4 Products on the label of every product;

5 b. whether Defendant's conduct was unfair and/or deceptive;

6 c. whether Defendant has been unjustly enriched as a result of the
7 unlawful, fraudulent, and unfair conduct alleged in this Complaint such that it
8 would be inequitable for Defendant to retain the benefits conferred upon them
9 by Plaintiffs and the classes;

10 d. whether Defendant breached express warranties to Plaintiffs and the
11 classes;

12 e. whether Plaintiffs and the classes have sustained damages with
13 respect to the common-law claims asserted, and if so, the proper measure of their
14 damages.

15 32. Plaintiffs' claims are typical of those of other class members because Plaintiffs, like
16 all members of the classes, purchased Defendant's Products bearing the natural representations and
17 Plaintiffs sustained damages from Defendant's wrongful conduct.

18 33. Plaintiffs will fairly and adequately protect the interests of the classes and have
19 retained counsel that is experienced in litigating complex class actions. Plaintiffs have no interests
20 which conflict with those of the classes.

21 34. A class action is superior to other available methods for the fair and efficient
22 adjudication of this controversy.

23 35. The prerequisites to maintaining a class action for equitable relief are met as
24 Defendant has acted or refused to act on grounds generally applicable to the classes, thereby
25 making appropriate equitable relief with respect to the classes as a whole.

26 36. The prosecution of separate actions by members of the classes would create a risk of
27 establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For
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1 example, one court might enjoin Defendant from performing the challenged acts, whereas another
2 might not. Additionally, individual actions could be dispositive of the interests of the classes even
3 where certain Class members are not parties to such actions.

4
5 **COUNT I**
6 **Violation Of California’s Consumers Legal Remedies Act (“CLRA”),**
7 **California Civil Code §§ 1750, *et seq.***

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

10 38. Plaintiffs Pecanha and Bell bring this claim individually and on behalf of the
11 members of the proposed California Subclass against Defendant.

12 39. This cause of action is brought pursuant to California’s Consumers Legal Remedies
13 Act, Cal. Civ. Code §§ I750-I785 (the “CLRA”).

14 40. Plaintiffs Pecanha and Bell and the other members of the California Subclass are
15 “consumers,” as the term is defined by California Civil Code § 1761(d), because they bought the
16 Products for personal, family, or household purposes.

17 41. Plaintiffs Pecanha and Bell, the other members of the California Subclass, and
18 Defendant have engaged in “transactions,” as that term is defined by California Civil Code
19 § 1761(e).

20 42. The conduct alleged in this Complaint constitutes unfair methods of competition
21 and unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was
22 undertaken by Defendant in transactions intended to result in, and which did result in, the sale of
23 goods to consumers.

24 43. As alleged more fully above, Defendant has violated the CLRA by falsely
25 representing to Plaintiffs Pecanha and Bell and the other members of the California Subclass that
26 the Products are “natural” when in fact they are made with synthetic ingredients.

27 44. As a result of engaging in such conduct, Defendant has violated California Civil
28 Code § 1770(a)(5), (a)(7) and (a)(9).

1 Products on the same terms if they knew that the Products were made with unnatural and synthetic
2 ingredients (b) they paid a substantial price premium compared to other skin care and hygiene
3 products due to Defendant’s misrepresentations; and (c) the Products do not have the
4 characteristics, uses, or benefits as promised.

5 **COUNT III**

6 **Violation Of California’s False Advertising Law (“FAL”),
7 California Business & Professions Code §§ 17500, *et seq.***

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

10 55. Plaintiffs Pecanha and Bell bring this claim individually and on behalf of the
11 members of the proposed California Subclass against Defendant.

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

19 57. Defendant committed acts of false advertising, as defined by §§17500, *et seq.*, by
20 misrepresenting that the Products are “natural” when they are not.

21 58. Defendant knew or should have known through the exercise of reasonable care that
22 their representations about the Products were untrue and misleading.

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

3 **COUNT IV**

4 **Breach of Express Warranty**

5 60. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
6 paragraphs of this complaint.

7 61. Plaintiffs bring this claim individually and on behalf of the proposed Class,
8 California Subclass against Defendant.

9 62. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,
10 expressly warranted that the Products are “natural.”

11 63. Defendant’s express warranties, and its affirmations of fact and promises made to
12 Plaintiffs and the Class regarding the Products, became part of the basis of the bargain between
13 Defendant and Plaintiffs and the Class, thereby creating an express warranty that the Products
14 would conform to those affirmations of fact, representations, promises, and descriptions.

15 64. The Products do not conform to the express warranty because they contain
16 ingredients that are unnatural and synthetic.

17 65. As a direct and proximate cause of Defendant’s breach of express warranty,
18 Plaintiffs and Class members have been injured and harmed because: (a) they would not have
19 purchased the Products on the same terms if they knew the truth about the Products’ unnatural
20 ingredients; (b) they paid a substantial price premium based on Defendant’s express warranties;
21 and (c) the Products do not have the characteristics, uses, or benefits as promised.

22 66. On May 30, 2017, Plaintiff Bell mailed a notice letter to Defendant consistent with
23 Cal. Com. Code § 2607(3)(a) and U.C.C. 2-607(3)(A), and Defendant received the letter on June 16,
24 2017. The letter was sent on behalf of Bell and all other persons similarly situated.

25 **COUNT V**

26 **Unjust Enrichment**

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

1 **PRAYER FOR RELIEF**

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

- 4 A. For an order certifying the nationwide Class and California Subclass under Rule 23
5 of the Federal Rules of Civil Procedure; naming Plaintiffs as Class and Subclass
6 representatives; and naming Plaintiffs’ attorneys as Class Counsel representing the
7 Class and Subclass members;
- 8 B. For an order finding in favor of Plaintiffs, the nationwide Class and the California
9 Subclass on all counts asserted herein;
- 10 C. For an order awarding statutory, compensatory, treble, and punitive damages in
11 amounts to be determined by the Court and/or jury;
- 12 D. For injunctive relief enjoining the illegal acts detailed herein;
- 13 E. For prejudgment interest on all amounts awarded;
- 14 F. For an order of restitution and all other forms of equitable monetary relief;
- 15 G. For an order awarding Plaintiffs their reasonable attorneys’ fees and expenses and
16 costs of suit.

17 **JURY TRIAL DEMANDED**

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

19 Dated: August 8, 2017

20 Respectfully submitted,

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

22 By: /s/ L. Timothy Fisher
23 L. Timothy Fisher

24 L. Timothy Fisher (State Bar No. 191626)
25 Joel D. Smith (State Bar No. 244902)
26 Yeremey O. Krivoshey (State Bar No. 295032)
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1 Dated: August 8, 2017

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2 By: /s/ Reuben D. Nathan
3 Reuben D. Nathan

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10 Attorneys for Plaintiffs

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CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, L. Timothy Fisher, declare as follows:

1. I am counsel for Plaintiffs, and I am a partner at Bursor & Fisher, P.A. I make this declaration to the best of my knowledge, information, and belief of the facts stated herein.

2. The complaint filed in this action is filed in the proper place for trial because defendant Hain Celestial Group, Inc. does substantial business in this District including the sale of the products at issue in this case.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on August 4, 2017 at Walnut Creek, California.



L. Timothy Fisher

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MAKINDE PECANHA and SHAUN RAY BELL, on behalf of themselves and all others similarly situated.

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

(c) Attorneys (Firm Name, Address, and Telephone Number) L. Timothy Fisher (191626) Bursor & Fisher, P.A. 1990 N. California Blvd., Suite 940 Walnut Creek, CA 94596

DEFENDANTS

THE HAIN CELESTIAL GROUP, INC.

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship options: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business in This State, Incorporated and Principal Place of Business in Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation-Transfer, 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC section 1332(d). Brief description of cause: Defendant made false statements regarding its "natural" products

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) [X] SAN FRANCISCO/OAKLAND [] SAN JOSE [] EUREKA-MCKINLEYVILLE

DATE: 08/08/2017

SIGNATURE OF ATTORNEY OF RECORD: /s/ L. Timothy Fisher