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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10

11 MILTITA CASILLAS, individually and  
on behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 WINDMILL HEALTH PRODUCTS,  
15 LLC, a New Jersey limited liability  
company; and DOES 1 through 10,  
16 inclusive,

17 Defendants.  
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Case No. 2:18-cv-5484

**CLASS ACTION**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

**JURY TRIAL DEMAND**

## INTRODUCTION

1  
2 1. The average consumer spends a mere 13 seconds making an in-store  
3 purchasing decision, or between 10 to 19 seconds for an online purchase.<sup>1</sup> That  
4 decision is heavily dependent on a product's packaging, and particularly the package  
5 dimensions: "Most of our studies show that 75 to 80 percent of consumers don't even  
6 bother to look at any label information, no less the net weight . . . . Faced with a large  
7 box and a smaller box, both with the same amount of product inside . . . consumers are  
8 apt to choose the larger box because they think it's a better value."<sup>2</sup> This lawsuit  
9 charges Defendant with illegally packaging its Super Greens products in opaque  
10 containers that contain more than 50% empty space. Most consumers purchased the  
11 products without knowing that the containers were substantially empty.

12 2. Miltita Casillas ("Plaintiff"), individually and on behalf of all others  
13 similarly situated, brings this Class Action Complaint for damages, injunctive relief,  
14 and any other available legal or equitable remedies, resulting from the unlawful actions  
15 of Windmill Health Products, LLC ("Defendant") with respect to the packaging of its  
16 Super Greens products. Plaintiff alleges as follows upon personal knowledge as to  
17 herself and her own acts and experiences, and, as to all other matters, upon information  
18 and belief, including investigation conducted by his attorneys.

19 3. Plaintiff purchased Defendant's Super Greens Organic Greens, Fruit &  
20 Vegetable Formula, Delicious Berry flavor product in June 2017 in Norwalk,  
21 California. She purchased the product for the dual purpose of enjoying its contents and  
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24 <sup>1</sup> [http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-](http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-20-second-window.html)  
25 [20-second-window.html](http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-20-second-window.html) (citing the Ehrenberg-Bass Institute of Marketing Science's  
26 report "Shopping Takes Only Seconds...In-Store and Online").

27 <sup>2</sup>[http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/pro-](http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm)  
28 [duct-packaging/overview/product-packaging-ov.htm](http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm) (quoting Brian Wansink,  
professor and director of the Cornell Food and Brand Lab, who studies shopping  
behavior of consumers).

1 determining whether the container was lawfully filled. Plaintiff was surprised when she  
2 opened the product that the container had **more than 50% empty space**, or slack-fill.

3 4. Defendant's conduct violates consumer protection and labeling laws.

#### 4 **JURISDICTION AND VENUE**

5 5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332,  
6 because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a  
7 member of the putative class is a citizen of a different state than Defendant, and the  
8 amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and  
9 costs. See 28 U.S.C. § 1332(d)(2).

10 6. The Court has jurisdiction over the state law claims because they form part  
11 of the same case or controversy under Article III of the United States Constitution.

12 7. The Court has personal jurisdiction over Defendant because its Super  
13 Greens products are advertised, marketed, distributed and sold through the State of  
14 California; Defendant engaged in the wrongdoing alleged in this Complaint throughout  
15 the United States, including in the State of California; Defendant is authorized to do  
16 business in the State of California; and Defendant has sufficient minimum contacts with  
17 the State of California, rendering the exercise of jurisdiction by the Court permissible  
18 under traditional notions of fair play and substantial justice. Moreover, Defendant is  
19 engaged in substantial activity with the State of California.

20 8. Venue is proper in the United States District Court for the Central District  
21 of California pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events  
22 giving rise to the claims occurred within this judicial district, Defendant has marketed  
23 and sold the Super Greens products at issue in this action in this judicial district, and it  
24 conducts business within this judicial district.

#### 25 **PARTIES**

26 9. Plaintiff Miltita Casillas is a citizen of the State of California and resides in  
27 Norwalk, California. Plaintiff purchased a Super Greens Organic Greens, Fruit &  
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1 Vegetable Formula, Delicious Berry flavor product for personal consumption during  
2 the last four years in Norwalk, California.

3 10. Plaintiff is informed and believes, and upon such information and belief  
4 alleges, that Defendant Windmill Health Products, LLC is a New Jersey limited liability  
5 company with its principal place of business located in West Caldwell, New Jersey.  
6 Plaintiff is informed and believes, and upon such information and belief alleges, that  
7 Defendant, at all times relevant, conducted business in the State of California and  
8 within the Central District of California.

9 11. The true names and capacities of the Defendants sued herein as DOES 1  
10 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such  
11 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is  
12 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of  
13 Court to amend this Complaint to reflect the true names and capacities of the DOE  
14 Defendants when such identities become known.

15 12. At all relevant times, each and every Defendant was acting as an agent  
16 and/or employee of each of the other Defendants and was acting within the course  
17 and/or scope of said agency and/or employment with the full knowledge and consent of  
18 each of the Defendants. Each of the acts and/or omissions complained of herein were  
19 alleged and made known to, and ratified by, each of the other Defendants (Windmill  
20 Health Products, LLC and DOE Defendants will hereafter collectively be referred to as  
21 “Defendant”).

## 22 **FACTUAL ALLEGATIONS**

### 23 **California Law Prohibits Non-functional Slack-Fill**

24 13. Many federal and state consumer protection and labeling laws prohibit  
25 illegal and unfair packaging and labeling of products and commodities. In California,  
26 the Fair Packaging and Labeling Act (“CFPLA”) “is designed to protect purchasers of  
27 any commodity within its provisions against deception or misrepresentation. Packages  
28 and their labels should enable consumers to obtain accurate information as to the

1 quantity of the contents and should facilitate value comparisons.” (California Business  
2 & Professions Code § 12601.)

3 14. In this context, the CFPLA provides: “No food containers shall be made,  
4 formed, or filled as to be misleading.” (California Business & Professions Code §  
5 12606.2(b).) “A container that does not allow the consumer to fully view its contents  
6 shall be considered to be filled as to be misleading if it contains nonfunctional slack  
7 fill.” (California Business & Professions Code § 12606.2(c).) Section 12606.2(c)  
8 defines “slack fill” as “the difference between the actual capacity of a container and the  
9 volume of product contained therein.” Similarly, section 12606.2(c) defines  
10 “nonfunctional slack fill” as “the empty space in a package that is filled to substantially  
11 less than its capacity for reasons other than any one or more of the following:

12 (1) Protection of the contents of the package.

13 (2) The requirements of machines used for enclosing the contents of the package.

14 (3) Unavoidable product settling during shipping and handling.

15 (4) The need for the package to perform a specific function, such as where packaging  
16 plays a role in the preparation or consumption of a food, if that function is inherent to  
17 the nature of the food and is clearly communicated to consumers.

18 (5) The fact that the product consists of a food packaged in a reusable container where  
19 the container is part of the presentation of the food and has value that is both significant  
20 in proportion to the value of the product and independent of its function to hold the  
21 food, such as a gift product consisting of a food or foods combined with a container that  
22 is intended for further use after the food is consumed or durable commemorative or  
23 promotional packages.

24 (6) Inability to increase the level of fill or to further reduce the size of the package, such  
25 as where some minimum package size is necessary to accommodate required food  
26 labeling exclusive of any vignettes or other nonmandatory designs or label information,  
27 discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.”  
28 (California Business & Professions Code § 12606.2(c)(1)-(6).)

1 15. None of the above safe-harbor provisions applies to the Super Greens  
 2 products. Defendant intentionally incorporated non-functional slack-fill in its  
 3 packaging of the Super Greens products. As such, the packaging is per se illegal, and  
 4 reliance upon the packaging by absent class members is presumed.

5 **Defendant’s Products Contain Non Functional Slack-Fill**

6 16. Defendant’s Super Greens products are sold in non-transparent containers.  
 7 The containers have significant slack-fill, as described below.

8 17. More than 50% of the interior of the Super Greens product containers,  
 9 which concern the Super Greens Organic Greens, Fruit & Vegetable Formula,  
 10 Delicious Berry flavor product purchased by Plaintiff, is comprised of empty space, or  
 11 non-functional slack fill.





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12 18. The containers (1) do not allow consumers to fully view its contents; and  
13 (2) contains nonfunctional slack fill. As such, the packaging is per se illegal.

14 19. Defendant is selling and will continue to sell the Super Greens products  
15 using these illegal slack-filled containers.

16 22. Defendant's packaging and advertising of the Super Greens products  
17 violate the CFPLA, as set forth above.

18 24. Class Members did not know, and had no reason to know, that the Super  
19 Greens products illegally contained non-functional slack-fill.

20 25. Defendant's product packaging is presumed to be a material factor in  
21 absent Class Members' decisions to purchase the Super Greens products. Based on  
22 Defendant's illegal packaging, there is a presumption that product packaging,  
23 reasonable Class Members expected to receive more Super Greens product than was  
24 actually being sold.

25 27. There is no practical reason for the non-functional slack-fill used to  
26 package the Super Greens products.

27 28. As a result of Defendant's illegal packaging, thousands of consumers  
28 purchased the Products and have been damaged by Defendant's illegal conduct.

**CLASS ACTION ALLEGATIONS**

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2 29. Plaintiff brings this action as a class action pursuant to Rule 23 of the  
3 Federal Rules of Civil Procedure on behalf of herself and the following class  
4 (collectively, the “Class” or “Classes”), defined as:

5 **All California residents who made retail purchases of Defendant’s Super**  
6 **Greens products in containers with non-functional slack-fill, as defined by**  
7 **California Business & Professions Code § 12606.2, during the applicable**  
8 **limitations period up to and including final judgment in this action.**

9 30. The proposed Class excludes current and former officers and directors of  
10 Defendant, Members of the immediate families of the officers and directors of  
11 Defendant, Defendant’s legal representatives, heirs, successors, assigns, and any entity  
12 in which it has or has had a controlling interest, and the judicial officer to whom this  
13 lawsuit is assigned.

14 31. Plaintiff reserves the right to revise the Class definition based on facts  
15 learned in the course of litigating this matter.

16 32. The Super Greens products sold by Defendant suffer from illegal product  
17 bottling, labeling and nonfunctional slack-fill.

18 33. Numerosity: This action has been brought and may properly be maintained  
19 as a class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3) of the Federal  
20 Rules of Civil Procedure. While the exact number and identities of other Class  
21 Members are unknown to Plaintiff at this time, Plaintiff is informed and believes that  
22 there are hundreds of thousands of Members in the Class. Based on sales of the Super  
23 Greens products it is estimated that the Class is composed of more than 10,000 persons.  
24 Furthermore, even if subclasses need to be created for these consumers, it is estimated  
25 that each subclass would have thousands of Members. The Members of the Class are so  
26 numerous that joinder of all Members is impracticable and the disposition of their  
27 claims in a class action rather than in individual actions will benefit the parties and the  
28 courts.



1           34. Typicality: Plaintiff's claims are typical of the claims of the Members of  
2 the Class as all Members of the Class are similarly affected by Defendant's wrongful  
3 conduct, as detailed herein.

4           35. Adequacy: Plaintiff will fairly and adequately protect the interests of the  
5 Members of the Class in that she has no interests antagonistic to those of the other  
6 Members of the Class. Plaintiff has retained experienced and competent counsel.

7           36. Superiority: A class action is superior to other available methods for the  
8 fair and efficient adjudication of this controversy. Since the damages sustained by  
9 individual Class Members may be relatively small, the expense and burden of  
10 individual litigation makes it impracticable for the Members of the Class to individually  
11 seek redress for the wrongful conduct alleged herein. Furthermore, the adjudication of  
12 this controversy through a class action will avoid the potentially inconsistent and  
13 conflicting adjudications of the claims asserted herein. There will be no difficulty in the  
14 management of this action as a class action. If Class treatment of these claims were not  
15 available, Defendant would likely unfairly receive thousands of dollars or more in  
16 improper revenue.

17           37. Common Questions Predominate: Common questions of law and fact exist  
18 as to all Members of the Class and predominate over any questions solely affecting  
19 individual Members of the Class. Among the common questions of law and fact  
20 applicable to the Class are:

21           i. Whether Defendant labeled, packaged, marketed, advertised and/or  
22 sold Super Greens products using illegal packaging and labeling;

23           ii. Whether Defendant's actions constitute violations of the CFPLA,  
24 California Business & Professions Code § 12606.2;

25           iv. Whether Defendant's labeling, packaging, marketing, advertising  
26 and/or selling of Super Greens products constituted an unlawful or illegal  
27 practice;

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1 v. Whether Defendant's packaging of the Super Greens products  
2 constituted nonfunctional slack-fill;

3 vi. Whether, and to what extent, injunctive relief should be imposed on  
4 Defendant to prevent such conduct in the future;

5 vii. Whether the Members of the Class have sustained damages as a  
6 result of Defendant's wrongful conduct;

7 viii. The appropriate measure of damages and/or other relief; and

8 ix. Whether Defendant should be enjoined from continuing its unlawful  
9 practices.

10 38. The class is readily definable, and prosecution of this action as a Class  
11 action will reduce the possibility of repetitious litigation. Plaintiff knows of no  
12 difficulty which will be encountered in the management of this litigation which would  
13 preclude his maintenance of this matter as a Class action.

14 39. The prerequisites to maintaining a class action for injunctive relief or  
15 equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to  
16 act on grounds generally applicable to the Class, thereby making appropriate final  
17 injunctive or equitable relief with respect to the Class as a whole.

18 40. The prerequisites to maintaining a class action for injunctive relief or  
19 equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common  
20 to the Class predominate over any questions affecting only individual Members; and a  
21 class action is superior to other available methods for fairly and efficiently adjudicating  
22 the controversy.

23 41. The prosecution of separate actions by Members of the Class would create  
24 a risk of establishing inconsistent rulings and/or incompatible standards of conduct for  
25 Defendant. Additionally, individual actions may be dispositive of the interest of all  
26 Members of the Class, although certain Class Members are not parties to such actions.

27 42. Defendant's conduct is generally applicable to the Class as a whole and  
28 Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole. As

1 such, Defendant’s systematic policies and practices make declaratory relief with respect  
2 to the Class as a whole appropriate.

3 **CAUSE OF ACTION**

4 **VIOLATION OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT,**

5 **Cal. Civ. Code § 1750, *et seq.***

6 43. Plaintiff realleges and incorporates herein by reference the allegations  
7 contained in all preceding paragraphs, and further alleges as follows:

8 44. Plaintiff brings this claim individually and on behalf of the Class for  
9 Defendant’s violations of California’s Consumer Legal Remedies Act (“CLRA”), Cal.  
10 Civ. Code 1761(d).

11 45. Plaintiff and the Class Members are consumers who purchased the Super  
12 Greens products for personal, family or household purposes. Plaintiff and the Class  
13 Members are “consumers” as that term is defined by the CLRA in Cal. Civ. Code §  
14 1761(d).

15 46. The Super Greens products that Plaintiff and other Class Members  
16 purchased from Defendant were “goods” within the meaning of Cal. Civ. Code §  
17 1761(a).

18 47. Defendant’s actions, representations, and conduct have violated, and  
19 continue to violate the CLRA, because they extend to transactions that intended to  
20 result, or which have resulted in, the sale of goods to consumers.

21 48. Defendant violated California law because the Super Greens products are  
22 packaged in containers made, formed or filled to contain illegal non-functional slack-  
23 fill.

24 49. California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5),  
25 prohibits “Misrepresenting that goods or services have sponsorship, approval,  
26 characteristics, ingredients, uses, benefits, or quantities which they do not have or that a  
27 person has a sponsorship, approval, status, affiliation, or connection which he or she  
28 does not have.” By engaging in the conduct set forth herein, Defendant violated and

1 continues to violate Section 1770(a)(5) of the CLRA, because Defendant’s conduct  
2 constitutes illegal and unlawful competition.

3 50. Cal. Civ. Code § 1770(a)(9) further prohibits “[a]dvertising goods or  
4 services with intent not to sell them as advertised.” By engaging in the conduct set  
5 forth herein, Defendant violated and continues to violate Section 1770(a)(9), because  
6 Defendant’s conduct constitutes illegal and unfair methods of competition.

7 52. Given the materiality of Defendant’s misrepresentations, absent Class  
8 Members are entitled to a presumption of reliance.

9 53. Plaintiff and the Class suffered injuries caused by Defendant because the  
10 Super Greens products did not have the quantities as promised and were unlawfully  
11 packaged.

12 54. On or about July 20, 2017, prior to filing this action, Plaintiff sent a CLRA  
13 notice letter to Defendant which complies with California Civil Code 1782(a). Plaintiff  
14 sent Windmill Health Products LLC, individually and on behalf of the proposed Class,  
15 a letter via Certified Mail, advising Defendant that it is in violation of the CLRA and  
16 demanding that it cease and desist from such violations and make full restitution by  
17 refunding the monies received therefrom. A true and correct copy of the letter is  
18 attached hereto as Exhibit 1.

19 55. Wherefore, Plaintiff seeks injunctive relief for these violations of the  
20 CLRA.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for relief and judgment against Defendant as  
23 follows:

24 (A) For an Order certifying the Class pursuant to Federal Rule of Civil  
25 Procedure 23, appointing Plaintiff as class representatives, and designating  
26 Plaintiff’s counsel as counsel for the Class;

27 (B) For an Order declaring that Defendant’s conduct violated the CLRA,  
28 Cal. Civ. Code § 1750, et seq.;

1 (C) For injunctive relief as pleaded or as the Court may deem proper;

2 (D) For an order of restitution and all other forms of equitable monetary  
3 relief, as pleaded;

4 (E) For compensatory damages in amounts to be determined by the Court  
5 and/or jury;

6 (F) For punitive damages;

7 (G) For prejudgment interest on all amounts awarded;

8 (H) For an Order awarding Plaintiff and the Class their reasonable  
9 attorneys' fees and expenses and costs of suit as pleaded pursuant to, *inter alia*,  
10 Cal. Civ. Code § 1780(e) and Cal. Civ. Proc. Code § 1021.5; and

11 (I) For such other and further relief as the Court deems just and proper.

12  
13 Date: June 20, 2018

Respectfully submitted,

14 PACIFIC TRIAL ATTORNEYS  
15 A Professional Corporation

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17 By: /s/Scott J. Ferrell  
18 Scott J. Ferrell  
19 Attorneys for Plaintiff  
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**DEMAND FOR TRIAL BY JURY**

Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Date: June 20, 2018

Respectfully submitted,

PACIFIC TRIAL ATTORNEYS  
A Professional Corporation

By: /s/Scott J. Ferrell  
Scott J. Ferrell  
Attorneys for Plaintiff

# EXHIBIT 1



July 20, 2017

**SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Windmill Health Products LLC  
10 Henderson Drive  
West Caldwell, NJ 07006  
**Attention: Legal Department**

***Re: Violations of California Civil Code § 1782 et seq.***

Ladies and Gentlemen:

This law firm has been retained to prosecute a class action lawsuit against you for violation of the Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.* (“CLRA”). As relevant here, the CLRA prohibits unfair and unlawful methods of competition and unfair business practices. This includes packaging products in containers containing non-functional slack-fill or empty space.

As shown below, you have packaged your products in containers containing non-functional slack-fill or empty space. This amounts to a clear, ongoing, and unequivocal violation of the CLRA. Accordingly, you are liable to my client and to the putative class for substantial monetary damages. This letter serves as notice and demand for corrective action within thirty (30) days as further described below.

**1. My Client Purchased A Product Containing Non-Functional Slack-Fill.**

My client recently purchased Super Greens Organic Greens in a large, opaque bottle. Upon opening the bottle, my client learned that the Product contained significant empty space or “slack-fill”; indeed, the package was over fifty percent (50%) empty.<sup>1</sup> It appears that you have intentionally packaged this product in non-transparent containers with non-functional slack fill; this allows you to increase sales, charge a premium price, and unfairly capture market share.

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<sup>1</sup> Upon request, we can provide you with photographic evidence of the packaging disparity.

4100 NEWPORT PLACE DRIVE, SUITE 800 NEWPORT BEACH, CA 92660



Windmill Health Products LLC

July 20, 2017

Page 2



**2. My Client and Each Class Member Are Entitled to Statutory Minimum Damages of \$1,000.00 Per Violation From You.**

“The CLRA allows for restitutionary and injunctive relief, as well as compensatory and punitive damages and attorney fees.” *Broberg v. Guardian Life Ins. Co. of Am.*, 171 Cal. App. 4th 912, 923–924, 90 Cal. Rptr. 3d 225 (2009). Under the CLRA, “in no case shall the total award of damages in a class action be less than one thousand dollars (\$1,000).” Cal. Civ. Code § 1780(a)(1). Thus, if you are found liable for violations of the CLRA, at a minimum, the class would be entitled to damages of \$1,000 for each violation. *See Pickman v. American Exp. Co.*, No. C 11-05326 WHA, 2012 WL 258842, at \*2 (N.D. Cal. Jan. 27, 2012).

**3. Conclusion**

We respectfully request on behalf of our client and the class that you (1) cease and desist from continued sale any products containing non-functional slack-fill; (2) initiate corrective action; and (3) refund the purchase price of all products. If you decline we intend to file a class action lawsuit upon expiration of the aforesaid thirty (30) day period. If you believe that any of the assertions in this letter are inaccurate or would like to discuss a confidential pre-filing resolution of this case, I urge you to retain counsel to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Scott Ferrell'.

Scott J. Ferrell, Esq.  
For Pacific Trial Attorneys  
A National Litigation Firm

SJF/mkj

# EXHIBIT 2


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I, Miltita Casillas, declare as follows:

1. I am a Plaintiff in this action, and am a citizen of the State of California. I have personal knowledge of the facts herein and, if called as a witness, I could and would testify competently thereto.

2. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper place for trial under Civil Code Section 1780(d) in that San Diego County is a county in which Defendants are doing business.

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

  
\_\_\_\_\_  
Miltita Casillas