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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 San Jose Division**

LISA MARIE DAVISON, individually and on
 behalf of all others similarly situated,

Plaintiff,

v.

Herff Jones, LLC f/k/a Herff Jones, Inc.,

Defendant.

Case No. 5:18-cv-04617

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

- (1) Violations of the Gold Labeling Act of 1976;
- (2) Breach of Contract;
- (3) Breach of Implied Warranty Pursuant to Song-Beverly Consumer Warranty Act;
- (4) Violations of California's Consumer Legal Remedies Act;
- (5) Violations of California's Unfair Competition Law;
- (6) Violations of California's False Advertising Law;
- (7) Fraudulent Misrepresentation

DEMAND FOR JURY TRIAL

Plaintiff Lisa Marie Davison, individually and on behalf of all others similarly situated, and by and through the undersigned counsel, hereby sets forth her claims against Defendant Herff Jones, LLC, formerly known as Herff Jones, Inc., in this consumer class action Complaint.

NATURE OF THE CASE

1
2 1. Plaintiff Lisa Marie Davison (“Plaintiff”), individually and on behalf of all others
3 similarly situated, by and through the undersigned counsel, brings state and federal claims against Herff
4 Jones, LLC, formerly known as Herff Jones, Inc. (“Herff Jones” or “Defendant”) for Herff Jones’
5 wrongful conduct in designing, manufacturing, marketing, and selling class rings to consumers that did
6 not contain the represented gold content. Plaintiff also contends that Herff Jones breached its contracts
7 with customers by providing rings with less gold content than promised in the underlying contracts.

8 2. Plaintiff brings claims against Defendant pursuant to the Gold Labeling Act of 1976, the
9 Song-Beverly Consumer Warranty Act, California Consumer Legal Remedies Act, California Unfair
10 Competition Law, breach of contract, and fraudulent misrepresentation, as well as equitable relief.

JURISDICTION AND VENUE

11
12 3. This District has subject matter jurisdiction over this action under the Class Action
13 Fairness Act because at least one member of the proposed class is a citizen of a different state than Herff
14 Jones, the number of proposed class members exceeds one hundred, and the matter in controversy
15 exceeds the sum or value of \$5,000,000.00 exclusive of interests and costs. 28 U.S.C. § 1332(d)(2)(A).

16 4. This District Court can exercise specific personal jurisdiction over Defendant because
17 Defendant’s activities in California – namely marketing and selling its rings – gave rise to Plaintiff’s
18 claims and the claims of the putative Class.

19 5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(2). A substantial part of
20 the events or omissions giving rise to the claims occurred in this District.

21 6. Intradistrict Assignment: Pursuant to Civil L.R. 3-2(c)-(e) and 3-5, this lawsuit is
22 properly assigned to the San Jose Division because Santa Clara is the county in which the action arises.
23 In particular, Plaintiff Davison purchased her class ring in San Jose, California, which is located in Santa
24 Clara County.

PARTIES

25
26 7. Plaintiff Lisa Marie Davison, a proposed Class and Subclass representative, is an adult
27 citizen of California residing in San Jose, CA.
28

third party supplier, combines it with other metals, and pours the mixture into tree rings to form the class rings.

14. Specifically with respect to gold class rings, Herff Jones stamps the inside of each ring with the initials “HJ” followed by the proportion of gold (“gold content”) in the rings prior to sending the rings to market: 10k, 14k, or 18k.

15. Herff Jones’ own marketing materials state that “the proportion of gold in jewelry is measured in Karats (“K”). [100%] Pure gold is 24K. 18K gold is 18/24K (75%) pure gold. 14K gold is 14/24K [(58%)] pure gold. 10K gold is 10/24 [(or 42%)] pure gold. The remaining parts are comprised of other fine metals.”

1. Choose your metal

For complete metal information, go to: herffjones.com/metals-stones

ALLOYED METALS deliver a beautiful, cost-effective alternative to white and yellow gold.

GOLD: THE ULTIMATE CHOICE and the standard for fine jewelry; gold delivers unmatched richness and brightness.



16. All of Herff Jones’ gold class rings – whether rose gold, white gold, or yellow gold – are marked with a “10K,” “14K,” or “18K” stamp on the inside of the band to indicate that they contain 10/24K of gold, 14/24K of gold, or 18/24K of gold. Gold content can be measured in parts per thousand (“ppt”). 10K rings should contain 416.666667 ppt of gold, 14K rings should contain 583.333333 ppt of gold, and 18K rings should contain 750 ppt of gold.

17. The true gold content of Herff Jones’ class rings is not easily discoverable. Whether a class ring has the advertised amount of gold content cannot be observed by the naked eye, nor would a lay person notice any tell-tale signs that would alert her that the gold content of a ring was less than represented. The only way a Herff Jones customer could discover the true gold content of a class ring is to send the class ring to a qualified laboratory to perform scientific testing.

1 18. Upon information and belief, since at least 2012, Herff Jones has knowingly
2 manufactured yellow, white, and rose gold class rings to contain less gold than indicated by the stamp
3 on the inner band of the class rings, on their marketing material, on their order forms, and on their
4 website.

5 19. Herff Jones does not disclose the actual gold content of its rings, or the discrepancies, to
6 consumers, and continues to make extensive profits as a result.

7 **PLAINTIFF'S ALLEGATIONS**

8 20. Plaintiff Lisa Marie Davison received a communication in April 2014 advising her that
9 graduation announcements, caps and gowns, and class rings would be available for purchase for her
10 graduating class at the University of Phoenix in San Jose, California.

11 21. On May 28, 2014, Plaintiff went to campus to order her class ring. She saw a table filled
12 with advertising material that bore the name Herff Jones. Plaintiff reviewed the advertising material –
13 specifically, brochures with information on the class rings for sale. Plaintiff spoke with a woman at the
14 table who appeared to be a representative of Herff Jones about the content of the brochures. The woman
15 advised Plaintiff about the Herff Jones brochures and provided Plaintiff with an order form that
16 contained the Herff Jones logo, website, and specific division responsible for processing her order. The
17 representative also filled out the part of the form that designates who took the order by selecting “HJ
18 Rep” and signing “CS.”

19 22. After reviewing and relying upon the information provided, Plaintiff placed an order with
20 the Herff Jones representative for a 10K white gold class ring on May 28, 2014.

21 23. Plaintiff paid \$537.22 for the 10K white gold class ring.

22 24. Her order form and payment were directed to the College Division of Herff Jones.

23 25. The inner band of Plaintiff’s class ring is marked with the inscription “10K,” which she
24 understood to represent that the ring was 10K gold.

25 26. Plaintiff did not know or have reason to know about the inferior gold content of her ring
26 until approximately April 2018.

27 27. Plaintiff sent her ring in for testing shortly thereafter – in June of 2018.

1 38. The Class and Subclass definitions specifically exclude: (a) all persons who have had their
2 class rings re-purchased or “bought back” by Defendant Herff Jones or its independent sales
3 representatives (whether the buy-back was required by law or was solely pursuant to agreement); (b) any
4 persons or other entities currently related to or affiliated with Defendants; (c) any person, firm, trust,
5 corporation, or other entity who purchased, for resale, from Defendants, or any entity related to or
6 affiliated with Herff Jones, a class ring; (d) any Judge presiding over this action and members of his or
7 her family; and (e) all persons who properly execute and file a timely request for exclusion from the
8 Class.

9 39. *Numerosity*: the Class and Subclass are comprised of tens of thousands of purchasers of
10 class rings located throughout the United States, making joinder impractical. The precise number of Class
11 and Subclass members can be ascertained only through discovery, which includes Defendant’s sales,
12 service, and complaint records. Given the size of the Class and Subclass, the disposition of members’
13 claims through a class action will benefit both the parties and the Court.

14 40. *Ascertainability*: The Class and Subclass are composed of an easily ascertainable, self-
15 identifying set of individuals and entities who purchased a class ring in the United States manufactured
16 by Herff Jones on or after January 1, 2012. Members of the Class and Subclass may also be identified
17 from records maintained by Herff Jones and its agents.

18 41. *Commonality*: The critical questions of law and fact common to the Class and Subclass
19 that will materially advance the litigation include, but are not limited to, the following:

- 20 a. Whether Herff Jones engaged in a practice of manufacturing class rings with actual gold
21 fineness inferior to the indicated gold fineness of the class rings by more than 3/1000th
22 parts;
- 23 b. Whether Herff Jones knew or should have known that its class rings contained less gold
24 content than promised;
- 25 c. Whether members of the Class and Subclass were entitled to be notified about the inferior
26 gold content of the class rings;
- 27 d. Whether Defendant deliberately misrepresented, omitted, or concealed material facts to
28 Plaintiffs and the Class and Subclass members;

e. Whether Herff Jones acted or refused to act on grounds generally applicable to the Class and Subclass, thereby making the award of equitable relief and/or restitution appropriate to the Class and Subclass as a whole;

f. Whether the class rings are unmerchantable or fail of their particular purpose;

g. Whether Plaintiff and Class and Subclass members would have purchased their class rings, or whether they would have paid a lower price for them, had they known of the inferior gold content.

42. *Typicality*: Plaintiff's claims are typical of the claims of the members of the Class and Subclass, as all such claims arise out of Defendant's conduct in designing, manufacturing, warranting, advertising, and selling class rings with inferior gold content.

43. *Adequate Representation*: Plaintiff will fairly and adequately protect the interests of the Class and Subclass and have no interests antagonistic to those of the Class and Subclass. Plaintiff has retained counsel experienced in the prosecution of complex class actions including, but not limited to, consumer class actions involving, *inter alia*, breach of warranties, fraud, misrepresentations, omissions, and violations of consumer protection laws.

44. *Predominance*: This class action is appropriate for certification because questions of law and fact common to Class and Subclass members predominate over questions affecting only individual members.

45. *Superiority*: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Should individual Class and Subclass members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits that would burden the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court. Because the damages suffered by each Class and Subclass member are relatively small compared to the expense and burden of prosecuting this compelling case against a well-financed, billion-dollar

1 corporation, this class action is the only way each Class and Subclass member can redress the harm that
2 Herff Jones caused.

3 46. This lawsuit is maintainable as a class action under Federal Rule of Civil Procedure
4 23(b)(3) because the questions of law and fact common to the members of the Class and Subclass
5 predominate over any questions that affect only individual members, and because the class action
6 mechanism is superior to other available methods for the fair and efficient adjudication of the
7 controversy.

8 47. This lawsuit is maintainable as a class action under Federal Rule of Civil Procedure
9 23(b)(2) because Defendants have acted or refused to act on grounds that are generally applicable to the
10 Class and Subclass members, thereby making final injunctive relief appropriate with respect to the Class
11 and Subclass.

12 **TOLLING OF THE STATUTE OF LIMITATIONS**

13 48. Discovery Rule. Plaintiff's claims accrued upon discovery that the class rings that Herff
14 Jones designed, manufactured, warranted, advertised, and sold class rings with inferior gold content.
15 While Herff Jones knowingly misrepresented the gold content in the class rings and/or omitted the true
16 gold content of the class rings, Plaintiff, as well as Class and Subclass members, could not and did not
17 discover this fact through reasonable diligent investigation unless and until after they had their rings
18 tested by a laboratory independent of Herff Jones.

19 49. Active Concealment Tolling. Any statutes of limitations are tolled by Herff Jones'
20 knowing and active concealment of the fact that class rings did not contain the represented gold content.
21 Herff Jones kept Plaintiff and all Class and Subclass members ignorant of vital information essential to
22 the pursuit of their claims, without any fault or lack of diligence on the part of Plaintiff. The details of
23 Herff Jones' efforts to conceal its above-described unlawful conduct are in its possession, custody, and
24 control, to the exclusion of Plaintiff and the Class and Subclass members. Plaintiff could not reasonably
25 have discovered the fact that her class ring was made of inferior gold content.

26 50. Estoppel. Herff Jones was and is under a continuous duty to disclose to Plaintiff, as well
27 as Class and Subclass members, the true character, quality, and nature of the class rings. At all relevant
28 times, and continuing to this day, Herff Jones knowingly, affirmatively, and actively misrepresented and

omitted the true character, quality, and nature of the class rings. The details of Herff Jones' efforts to conceal its above-described unlawful conduct are in its possession, custody, and control to the exclusion of Plaintiff and Class and Subclass members. Plaintiff and Class and Subclass members reasonably relied upon Herff Jones knowing and/or active misrepresentations and/or omissions. Based on the foregoing, Herff Jones is estopped from relying upon any statutes of limitation in defense of this action.

51. Equitable Tolling. Herff Jones took active steps to misrepresent and/or omit the fact that it wrongfully, improperly, illegally, and repeatedly manufactured, marketed, distributed, and sold the class rings with inferior gold content. The details of Herff Jones' efforts to conceal its above-described unlawful conduct are in its possession, custody, and control, to the exclusion of the Plaintiff and Class and Subclass members. When Plaintiff learned about this material information, she exercised her due diligence by thoroughly investigating the situation, retaining counsel, and pursuing her claims. Herff Jones wrongfully omitted its deceitful acts described above. Should it be necessary, therefore, all applicable statutes of limitation are tolled under the doctrine of equitable tolling.

FIRST CLAIM FOR RELIEF

(Violation of the Gold Labeling Act of 1976,
15 U.S.C. § 291, *et seq.*)

On behalf of Plaintiff Davison and the Class

52. Plaintiff, individually and on behalf of the Class, hereby incorporates each and every allegation as though fully set forth herein.

53. The class rings are "articles of merchandise" within the meaning of the Gold Labeling Act of 1976, 15 U.S.C. § 299(a).

54. Herff Jones is a "person" within the meaning of the Gold Labeling Act of 1976, 15 U.S.C. § 299(b).

55. The Gold Labeling Act states that "...the actual fineness of...gold or alloy shall not be less by more than three one-thousandth parts than the fineness indicated by the mark stamped." 15 U.S.C. § 295.

56. Testing pursuant to the ASTM E1335 standard performed on samples drawn from Plaintiff's class ring shows that Herff Jones designed, manufactured, marketed, and sold the class rings

1 to Plaintiff and the Class that contained less gold fineness than indicated on the stamp of the ring by more
2 than three one-thousandth parts, or 3 ppt.

3 57. The sample of Plaintiff's ring with the highest gold content contained 399 ppt of gold,
4 which is 17.666 ppt of gold lower than expected, and 14.666 ppt less than permitted under the Gold
5 Labeling Act.

6 58. Samples of additional class rings tested pursuant to ASTM E1335 (as part of counsel's
7 pre-filing investigation) also contained less ppt of gold than permitted by the Gold Labeling Act.

8 59. Plaintiff and the Class seek full compensatory damages allowable by law, compensation
9 for the diminished value of the class rings, the refund of money paid to purchase the class rings, injunctive
10 relief, attorneys' fees and costs, and any other relief to which Plaintiff and the Class may be entitled.

11
12 **SECOND CLAIM FOR RELIEF**

(Breach of Contract)

13 On Behalf of Plaintiff Davison, the Class, or in the alternative, the California Subclass

14 60. Plaintiff, individually and on behalf of the Class, or in the alternative, for the California
15 Subclass, hereby incorporates each and every allegation as though fully set forth herein.

16 61. Plaintiff and the Class, or in the alternative, the California Subclass entered into
17 agreements with Herff Jones to receive class rings that contain a particular gold content in exchange for
18 payment.

19 62. Plaintiff and the Class, or in the alternative, the California Subclass completed order forms
20 that specified the gold content selected and the finish, among other ring characteristics, as well as the
21 payment information and deposit amount for the class ring.

22 63. The hard copy order forms contained the Herff Jones logo and appropriate division of
23 Herff Jones that created the order form. The online order forms also contained the Herff Jones logo,
24 photographs of the different ring styles, explanations of the ring metal qualities and finish, a sample
25 photograph of the ring with all of the specifications, as well as billing and shipping information.

26 64. Herff Jones materials that class ring purchasers may review prior to filling out the order
27 form uniformly explained the different proportions of gold included in 24K, 18K, 14K, and 10K rings
28 sold by Herff Jones.

65. In breach of the contract order forms, Herff Jones did not provide Plaintiff and the Class, or in the alternative, the California Subclass with class rings that contain the gold content specified on the order forms.

66. Herff Jones' breach of contract proximately caused the Plaintiff, the Class and California Subclass to suffer damages in excess of \$5,000,000.

67. Plaintiff and the Class or, in the alternative, the California Subclass, seek full compensatory damages allowable by law, such as the diminished value of the class rings or the refund of money paid to own the class rings, and any other relief to which Plaintiff and the California Subclass may be entitled.

THIRD CLAIM FOR RELIEF

(Breach of Implied Warranty Pursuant to Song-Beverly Consumer Warranty Act,
Cal. Civ. Code §§ 1792 and 1791.1, *et seq.*)
On Behalf of Plaintiff Davison and the California Subclass

68. Plaintiff Davison, individually and for the California Subclass, hereby incorporates every allegation as though fully set forth herein.

69. Plaintiff Davison and Subclass Members are "buyers" within the meaning of the Song-Beverly Consumer Warranty Act, California Civil Code § 1791(a).

70. Herff Jones is a "manufacturer" within the meaning of the Song-Beverly Consumer Warranty Act, California Civil Code § 1791(j).

71. The class rings at issue are "consumer goods" within the meaning of the Song-Beverly Consumer Warranty Act, California Civil Code § 1791(a).

72. The class rings purchased by Plaintiff Davison and the California Subclass included an implied warranty of merchantability within the meaning of the Song-Beverly Consumer Warranty Act, California Civil Code § 1791.1(a).

73. At all relevant times, Herff Jones manufactured, distributed, warranted, and/or sold the class rings.

74. In breach of the implied warranty of merchantability, Herff Jones provided class rings to Plaintiff and the California Subclass that contain less gold than the agreed-upon amount in the

1 purchase order form and indicated amount on the rings' embossments. As a result, the class rings do not
 2 pass without objection among jewelers, are not adequately labeled (or embossed), and do not conform
 3 to the represented karat amount on the embossment.

4 75. As a direct and proximate result of Herff Jones' breach of its implied warranty of
 5 merchantability, Plaintiff and members of the California Subclass suffered an ascertainable loss of
 6 money, property, and/or value of their class rings.

7 76. Plaintiff informed Herff Jones that it had breached its implied warranties in a pre-suit
 8 notice letter dated July 13, 2018. *See Exhibit B.* Herff Jones never responded to Plaintiff's letter.

9 77. Plaintiff Davison and the California Subclass seek full compensatory damages allowable
 10 by law, attorneys' fees, costs, the refund of money paid to own class rings, and any other relief to which
 11 Plaintiffs and the California Subclass may be entitled.

12 13 **FOURTH CLAIM FOR RELIEF**

14 (Violation of California's Consumers Legal Remedies Act,
 15 Cal. Civ. Code § 1750, *et seq.*)
 16 On Behalf of Plaintiff Davison and the California Subclass

17 78. Plaintiff Davison, individually and on behalf of the California Subclass, hereby
 18 incorporates every allegation as though fully set forth herein.

19 79. Defendant Herff Jones, LLC is a "person" as defined by California Civil Code § 1761(c).

20 80. Plaintiff Davison and California Subclass members are "consumers" within the meaning
 21 of California Civil Code § 1761(d) because they purchased their class rings primarily for personal,
 22 family, or household use.

23 81. By concealing the inferior gold content of the class rings from Plaintiff Davison and
 24 prospective California Subclass members, Herff Jones violated California Civil Code § 1770(a), as it
 25 represented that the class rings had characteristics and benefits that they do not have and represented
 26 that the class rings were of a particular standard, quality, or grade when they were of another. *See* Cal.
 27 Civ. Code §§ 1770(a)(5) & (7).

28 82. Herff Jones' unfair and deceptive acts or practices occurred repeatedly in Herff Jones'
 trade or business and were capable of deceiving a substantial portion of the purchasing public.

1 83. Herff Jones knew that the class rings did not contain the gold content paid-for by Plaintiff
2 and the California Subclass and were not suitable for their intended use.

3 84. As a result of their reliance on Herff Jones' misrepresentations and/or omissions and
4 concealment of the gold content in the class rings, owners of the class rings suffered an ascertainable
5 loss of money, property, and/or value of their class rings. Additionally, as a result of the gold content
6 shortage in the rings, Plaintiff Davison and California Subclass Members were harmed and suffered
7 actual damages in that the class rings were never what the consumer paid for.

8 85. Herff Jones had a duty to Plaintiff Davison and California Subclass members to disclose
9 the inferior gold content of the class rings because:

- 10 a. Herff Jones was in a superior position to know the true state of facts about the materials
11 used to manufacture the class rings;
- 12 b. Plaintiff Davison and California Subclass members could not reasonably have been
13 expected to learn or discover that their class rings were made of less gold than they had
14 paid for; and
- 15 c. Herff Jones knew that Plaintiff Davison and California Subclass members could not
16 reasonably have been expected to learn of or discover the lesser gold content.

17 86. In purposefully manufacturing rings with less gold content than agreed to by Plaintiffs,
18 and failing to disclose the inferior gold content of the rings, Herff Jones knowingly and intentionally
19 concealed and omitted material facts and breached its duty not to do so.

20 87. The facts about the class rings that Herff Jones concealed from or failed to disclose to
21 Plaintiff Davison and California Subclass members are material in that a reasonable consumer would
22 have considered them important in deciding whether to purchase the class rings or pay less for them.
23 Had Plaintiff Davison and California Subclass members known that the class rings contained less gold
24 than the amount represented, they would not have purchased the class rings or would have paid less for
25 them.

26 88. Plaintiff Davison and California Subclass members are reasonable consumers who do not
27 expect to receive a ring with less than the agreed-upon amount of gold when they purchase a ring for a
28 particular gold content.

89. Plaintiff Davison and California Subclass members would not be able to discover that the class ring contained less gold than promised as the deficiency was not evident or discoverable upon casual inspection.

90. As a result of Herff Jones' conduct, Plaintiff Davison and California Subclass members were harmed and suffered actual damages in that the class rings contain less gold than the amount represented and are worth less than the rings for which Plaintiff and the California Subclass paid. As a direct and proximate result of Herff Jones' unfair or deceptive acts or practices, Plaintiff Davison and California Subclass members suffered and will continue to suffer actual damages.

91. Plaintiff sent Herff Jones a letter on July 13, 2018 by United States Postal Service Certified Mail that provided notice of its violations of the CLRA pursuant to California Civil Code § 1782(a). *See Exhibit B.* Herff Jones has not responded to Plaintiff's letter to date.

92. Therefore, Plaintiff Davison and the California Subclass seek actual damages, restitution, injunctive relief, punitive damages, and any other relief the court deems proper.

FIFTH CLAIM FOR RELIEF

(Violation of California's Unfair Practices Act,

Cal. Bus & Prof. Code § 17200, *et seq.*)

On Behalf of Plaintiff Davison and the California Subclass

93. Plaintiff Davison, individually and on behalf of the California Subclass, hereby incorporates every allegation as though fully set forth herein.

94. Plaintiff Davison is a "person" within the meaning of Cal. Bus & Prof. Code § 17021.

95. Herff Jones is a "person" within the meaning of Cal. Bus & Prof. Code § 17021.

96. Herff Jones' sale of class rings to Plaintiff and the California Subclass that contain less gold than represented and contracted for and its concealment or omission of that fact constitutes "unfair competition," within the meaning of Cal. Bus & Prof. Code § 17200.

97. Reasonable consumers, such as Plaintiff Davison and California Subclass members, do not expect to buy rings that contain less gold than promised at purchase and represented on the product itself.

98. Herff Jones knew the class rings contained less gold content than the content represented

1 to consumers, but concealed the fact from consumers and continued to sell the class rings to consumers
2 at a price point consumers agreed to pay for class rings that contained the represented gold content,
3 rather than the actual gold content.

4 99. In concealing and failing to disclose the gold shortage in the rings, Herff Jones knowingly
5 and intentionally concealed facts material to the purchase of the class rings.

6 100. Herff Jones' acts, conduct and practices were unlawful, in that they constituted:

- 7 a. Violation of the Gold Labeling Act of 1976;
8 b. Violations of the California Consumers Legal Remedies Act; and
9 c. Violations of the Song-Beverly Consumer Warranty Act.

10 101. Herff Jones had a duty to Plaintiff Davison and California Subclass members to disclose
11 the correct gold content in the class rings because:

- 12 a. Herff Jones was in a superior position to know the true facts about the gold content in
13 the class rings; and
14 b. Herff Jones made representations about the quality of the class rings to Plaintiff
15 Davison and the California Subclass at purchase; and

16 102. The facts regarding the gold shortage in class rings that Herff Jones concealed from or
17 failed to disclose to Plaintiff Davison and the California Subclass are material in that a reasonable person
18 would have considered them to be important in deciding whether to purchase the class rings and what
19 to pay for them. Had Plaintiff Davison and California Subclass Members known that the class rings
20 contained less gold than promised, then Plaintiff Davison and California Subclass members would not
21 have purchased class rings or would have paid less for them.

22 103. Upon information and belief, Herff Jones continues to conceal the true gold content of
23 its class rings even after class members began to report problems with the quality of the gold in class
24 rings.

25 104. Herff Jones' conduct was and is likely to deceive consumers. Herff Jones' unfair or
26 deceptive acts or practices occurred repeatedly in Herff Jones' trade or business, and were capable of
27 deceiving a substantial portion of the purchasing public.

28 105. As a result of their reliance on Herff Jones' representations or omissions concerning the

1 gold content in in the class rings, owners of class rings suffered an ascertainable loss of money, property,
2 and/or value of their class rings.

3 106. As a direct and proximate result of Herff Jones' unfair and deceptive practices, Plaintiff
4 Davison and the California Subclass have suffered actual damages.

5 107. Herff Jones has been unjustly enriched and should be required to make restitution to
6 Plaintiff Davison and the California Subclass pursuant to §§ 17203 and 17204 of the Business &
7 Professions Code.

8 108. Plaintiff Davison and the California Subclass seek all remedies available pursuant to
9 §17070, *et seq.* of the Business & Professions Code, including full compensatory damages allowable by
10 law, restitution, appropriate equitable relief including a court order enjoining Herff Jones from
11 continuing to manufacture rings with a lesser gold content than represented, treble damages, attorneys'
12 fees, costs, and any other relief to which Plaintiff and the California Subclass may be entitled

13 14 **SIXTH CLAIM FOR RELIEF**

15 (Violation of California's False Advertising Law,
16 Cal. Bus & Prof. Code § 17500, *et seq.*)

17 On Behalf of Plaintiff Davison and the California Subclass

18 109. Plaintiff Davison, individually and on behalf of the California Subclass, hereby
19 incorporates each and every allegation as though fully set forth herein.

20 110. Plaintiff Davison is a "person" within the meaning of Cal. Bus & Prof. Code § 17506.

21 111. Herff Jones is a "person" within the meaning of Cal. Bus & Prof. Code § 17506.

22 112. Herff Jones' advertising materials that represent the gold content of Plaintiff and the
23 California Subclass' class rings when, in fact, the gold content of the class rings is less than represented
24 constitutes "untrue or misleading" advertising within the meaning of Cal. Bus & Prof. Code § 17500.

25 113. Plaintiff Davison and California Subclass Members are reasonable consumers who do
26 not expect their class rings to contain less gold content than advertised in Herff Jones' marketing
27 materials and order forms.

28 114. Herff Jones knew the class rings contained less gold content than advertised.

115. In concealing and failing to disclose the lesser gold content of the class rings, Herff Jones

1 knowingly and intentionally concealed material facts about the class rings.

2 116. Herff Jones had a duty to manufacture rings containing the gold content represented to
3 and purchased by Plaintiff Davison and California Subclass Members or disclose the actual gold content
4 because:

5 a. Herff Jones was in a superior position to know the true facts about the gold content in
6 class rings; and

7 b. Herff Jones made representations about the quality of the class rings to Plaintiff
8 Davison and the California Subclass at purchase.

9 117. The facts regarding the inferior gold content of the class rings that Herff Jones concealed
10 from or failed to disclose to Plaintiff Davison and the California Subclass are material in that a
11 reasonable person would have considered them to be important in deciding whether to purchase class
12 rings of a particular represented gold content and even whether to purchase the class rings altogether.
13 Had Plaintiff Davison and California Subclass Members known that the class rings contained less gold
14 than promised, then Plaintiff Davison and California Subclass Members would not have purchased the
15 class rings or would have paid less for them.

16 118. Upon information and belief, Herff Jones continues to conceal the inferior gold content
17 in the class rings even after Class Members began to report problems.

18 119. As a result of their reliance on Herff Jones' concealment, omissions, and/or
19 misrepresentations, purchasers of the class rings suffered an ascertainable loss of money, property,
20 and/or value of their class rings. Additionally, as a result of the inferior gold content of the class rings,
21 Plaintiff Davison and California Subclass Members were harmed and suffered actual damages in that
22 the class rings do not conform to what was promised and are worth substantially less.

23 120. As a direct and proximate result of Herff Jones' unfair and deceptive practices, Plaintiff
24 Davison and the California Subclass have suffered and will continue to suffer actual damages.

25 121. Plaintiff Davison and the California Subclass seek all remedies available pursuant to
26 §17535 of the Business & Professions Code, including a court order enjoining Herff Jones' continued
27 misrepresentations about the gold content in its rings, restitution, and any other relief to which Plaintiff
28 and the California Subclass may be entitled.

SEVENTH CLAIM FOR RELIEF

(Fraudulent Misrepresentation)

On behalf of Plaintiff and the California Subclass

122. Plaintiff, individually and for the California Subclass, hereby incorporates every allegation as though fully set forth herein.

123. Through its marketing material and pricing sheets, Herff Jones represented to Plaintiff and the California Subclass prior to their purchases that their class rings contained a particular amount of gold.

124. By confirming Plaintiffs and the California Subclass' order of rings of a particular gold content in its order form, Herff Jones continued to represent that their class rings contained a particular amount of gold at purchase.

125. Herff Jones continued to represent to Plaintiff and the California Subclass that their class rings contained a certain amount of gold upon delivery, vis a vis its embossment of the karat content on the ring.

126. In fact, the class rings purchased by Plaintiff and the California Subclass, contained less gold than the amount represented by Herff Jones and contracted for by Plaintiff and the California Subclass.

127. Herff Jones knew that its representations as to the gold content of the class rings was false at the time Herff Jones made its representations. Herff Jones knew that the class rings in the advertisements and the class rings ordered by Plaintiff and the California Subclass contained or would contain less gold than represented and agreed-upon. Herff Jones knew its representations were false because it manufactures, markets, and sells the class rings.

128. Herff Jones made its representations recklessly and without regard for the truth.

129. Herff Jones intended for Plaintiff and the California Subclass to rely on its misrepresentations to increase its profits.

130. Plaintiff and the California Subclass reasonably relied on these false representations before and after purchase of the class rings.

131. The gold content in the class rings is material to the reasonable consumer, including Plaintiff and the California Subclass. The gold content sets the price differences between identical rings.

132. Herff Jones' fraudulent misrepresentations about and concealment of the gold content in

1 class rings directly and proximately caused injury to Plaintiff and the California Subclass, who received
2 rings of lesser gold content than they purchased.

3 133. Had Plaintiff Davison and California Subclass members known that the class rings
4 contained less gold than the amount represented, they would not have purchased the class rings or would
5 have paid less for them.

6 134. Plaintiff and the California Subclass seek full compensatory damages allowable by law,
7 the diminished value of the class rings, the refund of money paid for all class rings, and punitive
8 damages, and appropriate equitable relief including injunctive relief and restitution, and any other relief
9 to which Plaintiff and the California Subclass, may be entitled, including attorneys' fees and costs.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for a
13 judgment against Herff Jones as follows:

14 A. For an order certifying the Class and/or California Subclass, appointing Plaintiff as a
15 representative of the Class and California Subclass, and appointing the law firms representing Plaintiff
16 as counsel for the Class and California Subclass;

17 B. For an injunction requiring Herff Jones to disclose its practice of designing and
18 manufacturing class rings with less gold content than promised to consumers and requiring Herff Jones
19 to stop its practice of manufacturing class rings with less gold than represented;

20 C. For compensatory, actual, punitive damages and/or restitution of all funds acquired by
21 Herff Jones from Plaintiff and the California Subclass as a result of Herff Jones' unlawful, unfair,
22 deceptive and unconscionable practices described herein.

23 D. Payment of costs and expenses of suit herein incurred;

24 E. Both pre-and post-judgment interest on any amounts awarded;

25 F. Payment of reasonable attorneys' fees, costs, and expert fees; and

26 G. Such other and further relief as the Court may deem proper.
27
28

DEMAND FOR JURY TRIAL

Plaintiff, the Class, and the California Subclass hereby demand trial by jury of all issues triable by right.

Dated: November 8, 2018

Respectfully submitted:

/s/ Alex R. Straus

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Alex R. Straus (SBN 321366)
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8 *Attorneys for Plaintiffs*
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DECLARATION OF ROBERT AHDOOT

I, Alex R. Straus, declare as follows:

1. I am an attorney with the law firm of Ahdoot & Wolfson, PC, counsel for Plaintiff Lisa Marie Davison (“Plaintiff”) in the above-captioned action. I am admitted to practice law in California and before this Court, and I am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Venue is proper in this Court because Plaintiff suffered injuries as a result of acts by Defendants Herff Jones, LLC and Herff Jones, Inc. (“Defendants”) in this District, including Plaintiff’s purchase of the subject class ring from Defendants in this District. Defendant does business in this District and the transaction at issue, or a substantial portion thereof, took place in this District.

3. Plaintiff is a resident of San Jose, California, in Santa Clara County.

4. Defendants are Indiana entities (a limited liability company and a corporation, respectively) doing business in California with their principal place of business located at 4501 West 62nd Street, Indianapolis, Indiana 46268.

I declare under penalty of perjury under the laws of the United States and the State of California this 8th day of November, 2018 in Los Angeles, California that the foregoing is true and correct.

/s/ Alex R. Straus
Alex R. Straus

EXHIBIT A

University of Phoenix

SELECT RING STYLE OPTIONS

Historically, Gold is the jeweler's "metal of choice". Its color, shine, weight and molding characteristics are unequaled in nature.

Herff Jones proudly presents its professionally-alloyed Golds, and for selected ring styles, White Ultrium®, a silver-colored stainless metal.

RING STYLE



METAL QUALITY

[Learn More](#)[Examples](#)

- | | |
|-------------------|------------|
| ● 10K Yellow Gold | \$847.00 |
| ● 14K Yellow Gold | \$1,117.00 |
| ● 18K Yellow Gold | \$1,393.00 |
| ● 10K White Gold | \$847.00 |
| ● 14K White Gold | \$1,117.00 |
| ● 18K White Gold | \$1,393.00 |
| ● White Ultrium® | \$339.00 |
| ● Extreme Silver | \$477.00 |
| ● Crimson Gold | \$847.00 |



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 [Your Sales Rep](#) |
 [Customer Service](#)

[Home](#) >
 [Ring Style](#) >
 [Ring Options](#) >
 [Stone Options](#) >
 [Side Options](#) >
 [Review Ring](#)
Price: \$0.00

University of Phoenix

SELECT RING STYLE OPTIONS

Historically, Gold is the jeweler's "metal of choice". Its color, shine, weight and molding characteristics are unequalled in nature.

Herff Jones provides the selected ring style metal.

RING STYLE

10K Gold

- The most common and lowest cost gold alloy.
- 41.67% or 10/24th's pure gold

14K Gold

- Fine pieces of jewelry, such as your custom-made College Ring, are traditionally crafted from 14K gold. This karat-quality gold alloy is the ideal choice for your ring.
- 58.33% or 14/24th's pure gold

\$847.00
 \$1,117.00
 \$1,393.00
 \$847.00
 \$1,117.00
 \$1,393.00
 \$339.00
 \$477.00
 \$847.00

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[Price: \\$0.00](#)

University of Phoenix

SELECT RING STYLE OPTIONS

Historically, Gold is the jeweler's "metal of choice". Its color, shine, weight and molding characteristics are unequaled in nature.

Herff Jones provides the selected ring style metal.

RING STYLE

18K Gold

- The most precious gold jewelry alloy.
- 75% or 18/24th's pure gold

White Ultrium®

- Choose White Ultrium® if you prefer a non-precious silver-colored stainless steel ring.

Extreme Silver

- An alloy that contains 54% silver, 25% palladium and 3% platinum along with other metals.

\$847.00
\$1,117.00
\$1,393.00
\$847.00
\$1,117.00
\$1,393.00
\$339.00
\$477.00
\$847.00

[Click here to close](#)

Your Herff Jones High School Class Ring Catalog

IT'S

ABOUT

YOU.



HERFF JONES®

It's your story.
Tell it.™



INSIDE: Affordable payment plans ■ Men's and Women's collections ■ 1000's of design possibilities

METALS

QUALITY AND FINISH.
PALMSIDE.
ENGRAVING OPTIONS.

1. Choose your metal

For complete metal information, go to: herffjones.com/metals-stones

ALLOYED METALS deliver a beautiful, cost-effective alternative to white and yellow gold.

GOLD: THE ULTIMATE CHOICE and the standard for fine jewelry; gold delivers unmatched richness and brightness.



Extreme Silver Alloy®

A precious white metal affordably priced. Alloy contains 54% silver, 25% palladium, and 3% platinum along with other metals

Extreme AuRista®

A precious yellow metal affordably priced. Alloy contains 19% gold, 17% silver, and 8% palladium along with other metals

Ultrium®

A non-precious jeweler's alloy offering strength and value.

White Gold

10K, 14K, 18K

Yellow Gold

10K, 14K, 18K

Crimson Gold®

10K

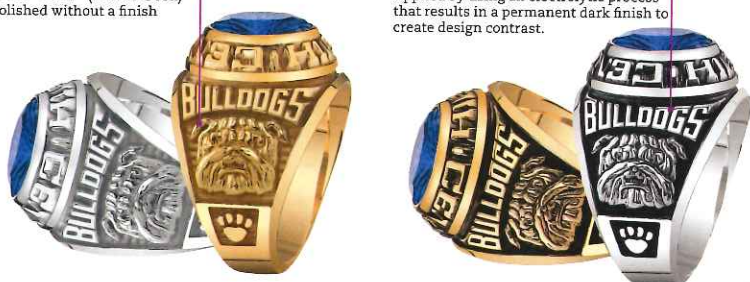
Karat Facts The proportion of gold in jewelry is measured in Karats (K). Pure gold is 24K. 18K gold is 18/24 (75%) pure gold. 14K gold is 14/24 pure gold. 10K gold is 10/24 pure gold. The remaining parts are comprised of other fine metals.

2. Choose your finish

Natural Finish (Alloyed Metals) or **Gold-on-Gold™** (Karat Gold)
Highly polished without a finish applied.

Antique Finish

(All Metals)
Applied by using an electrolytic process that results in a permanent dark finish to create design contrast.



Metal Finishes Herff Jones takes the extra step of electrolytically bonding metal finishes to its rings to give you a permanent, lasting finish that highlights the detail of your ring.

3. Palmside options

Hand-Sculptured

Etched for a unique texture

Polished

Buffed to a smooth shine



4. Engraving options

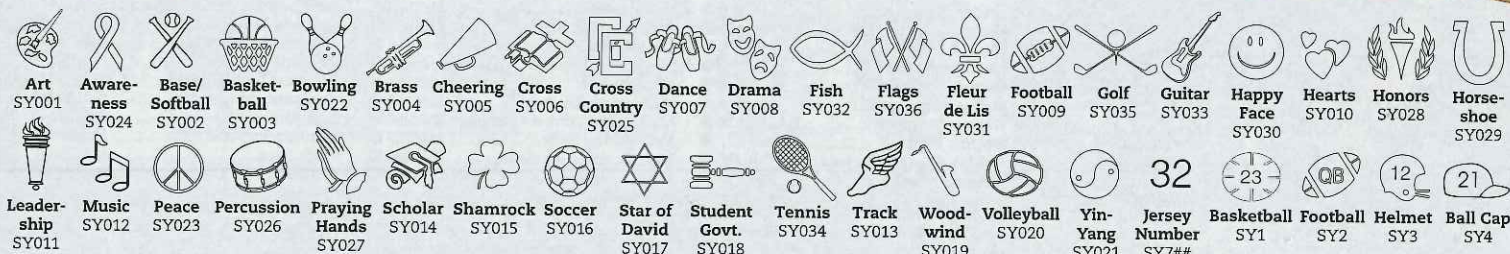
Tell more of your story with inner band engraving.



Spirit Symbols

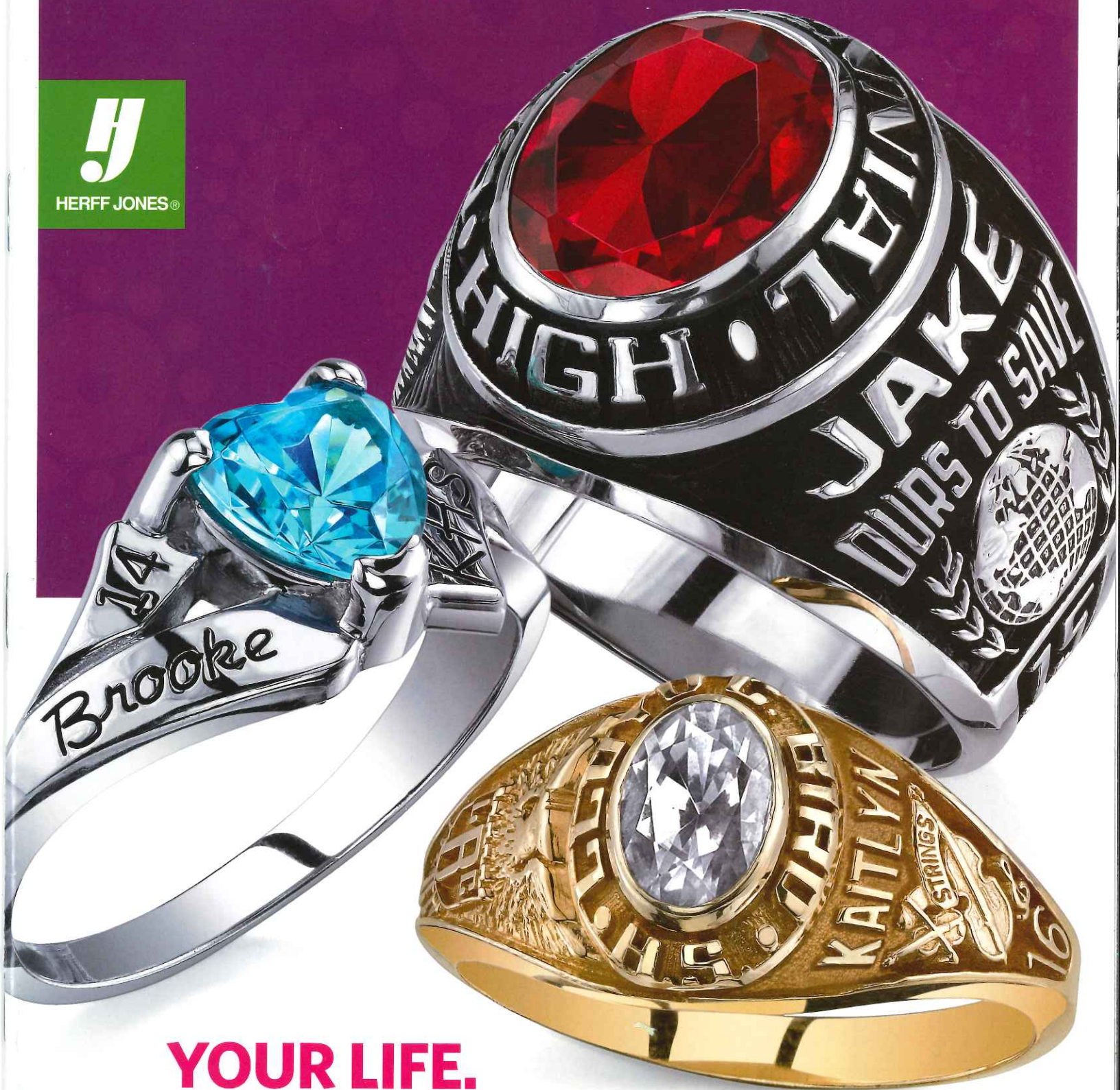
Not available in all collections and sizes.

Spirit Symbol



Customize with your jersey number or position.

HERFF JONES CLASS RINGS



YOUR LIFE.
YOUR STORY.
YOUR RING.

Metals

QUALITY AND FINISH PALMSIDE ENGRAVING OPTIONS

For complete metal information, go to: herffjones.com/metals-stones

1. Choose your metal

Best strength & value



Ultrium®
A non-precious jeweler's alloy.

Best cost-effective gold alternative



Extreme AuRista®
Contains 19% gold, 17% silver, and 8% palladium plus other metals



Extreme Silver Alloy®
Contains 54% silver, 25% palladium, and 3% platinum plus other metals

Best unmatched lustre, richness and brightness.



Yellow Gold
10K, 14K, 18K



White Gold
10K, 14K, 18K



Crimson Gold®
10K

Karat Facts Pure gold is 24K. For example, 10K gold is 10/24 pure gold. The remaining parts are other precious metals.

2. Choose your finish

Natural Finish
Highly polished for a brilliant shine.



Antique Finish
A permanent dark background to create design contrast.



3. Palmside options

Hand-Sculptured
Etched for a unique texture



Polished
Buffed smooth



4. Engraving options The finishing personal touch

Kyle Michael Gray

Full name block

KMG

Block initials

Kyle Gray

Signature

Kyle Michael Gray

Full name script

KMG

Script initials

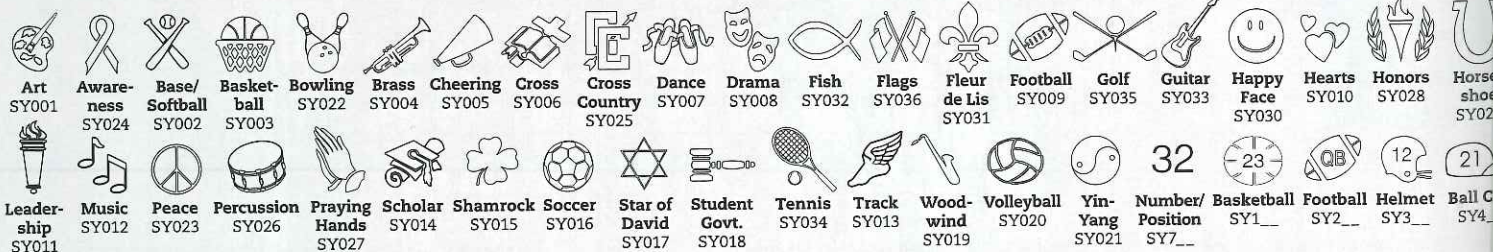


Spirit Symbol



● Metal contains no nickel.

SPRIT SYMBOLS Add a Spirit Symbol to any name engraving option. Not available in all collections and sizes.



— Customize with your jersey number or position.



Welcome To Herff Jones Orlando, Florida

FAQ

SHOP CATALOG

REGISTER AN ACCOUNT

MAKE A PAYMENT

CLASS RINGS

VIEW PRINT CATALOGS

CONTACT US

LOGIN

You Are Here: [Home](#) [Class Rings](#) [Ring Quality](#)

Class Rings - Ring Quality

Metal Choices

Herff Jones class rings are available in an array of metal choices.

The main metal choices available are:

Yellow Gold

Ultrium

White Gold

Extreme Aurista

Extreme Silver Alloy™

Sterling Silver

Not all ring styles are available in all metals.



More About Class Rings

[Overview](#)
[Class Ring Program](#)
[Customer Satisfaction Program](#)
[Ring Care](#)
[Warranty](#)
[Ring Quality](#)
[BUILD YOUR RING NOW!](#)

Gold - The proportion of gold in jewelry is measured in Karats (K). Pure gold is 24K. 18K gold is 18/24 (75%) pure gold. 14K gold is 14/24 pure gold. 10K gold is 10/24 pure gold. The remaining parts are comprised of other fine metals. Yellow Gold is available in 10K, 14K, and 18K for all ring styles.

White Gold is available in 10K, 14K, and 18K for all ring styles.

Extreme Silver Alloy™ - Alloy that contains silver, palladium, and platinum along with other metals.

Ultrium® - Non-precious metal alloy.

Extreme Aurista - Alloy consisting of gold, silver, and palladium along with other metals.

METAL QUALITYCLOSE

Gold

The proportion of gold in jewelry is measured in Karats (K).
24K is pure gold.

18K is 18/24 pure gold.*
14K is 14/24 pure gold.*
10K is 10/24 pure gold.*



White, Yellow & Crimson Gold*
(Crimson is 10k only)



Ultrium®*
A non-precious jeweler's alloy



Extreme AuRista®*
19% gold
17% silver
8% palladium



Extreme Silver Alloy®*
54% silver
25% palladium
3% platinum

* The remaining parts are comprised of other fine metals.

EXHIBIT B



WHITFIELD BRYSON
& MASON LLP
ATTORNEYS AT LAW

John C. Whitfield + # ◊
Daniel K. Bryson +
Gary E. Mason > ^ *
Scott C. Harris + ◻
Matthew E. Lee + ◻
Caroline Ramsey Taylor + ◻ ◊
Natasha C. Camenisch + ◊
Jeremy R. Williams +

Patrick M. Wallace +
Danielle L. Perry +
Jennifer S. Goldstein > ^
J. Hunter Bryson +
Katie C. Stauffer ◊
Charles A. Schneider >
Martha B. Schneider > ^
Roger N. Braden + ^

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Fax: 202.429.2294
www.wbmlp.com

State Bar Admissions:
KY + DC > NC + FL ◻ TN ◊
NY ^ MD ^ IL ^ MO # CA ^
Of Counsel ^

July 13, 2018

VIA CERTIFIED MAIL

Herff Jones, LLC
Herff Jones, Inc.
c/o Corporation Service Company
135 North Pennsylvania Street
Suite 1610
Indianapolis, IN, 46204

Re: NOTICE PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1782

PLEASE TAKE NOTICE that we represent Lisa Marie Davison and a potential putative class of those who purchased a Herff Jones class ring in the United States. We are writing this letter to notify you, pursuant to the California Consumer Legal Remedies Act ("CLRA"), the California Civil Code section 1750 *et seq.*, and specifically, sections 1782 (a)(1) and (2), that Herff Jones, LLC and Herff Jones, Inc. (collectively, "Herff Jones") have violated section 1770 of the CLRA by representing that their class rings have "sponsorship, approval, *characteristics*, ingredients, uses, *benefits*, or *quantities*" that they do not have.

In particular, Herff Jones has wrongfully designed, manufactured, marketed, and sold millions of class rings to high school and college graduates that did not contain the represented gold content. Herff Jones customers select the specifications they want included in the ring, including gold specifications, which according to Herff Jones' marketing materials, is measured in Karats ("K"). Herff Jones' management then knowingly instructs employees to input less gold content into the class rings than the amount paid for by its customers. Herff Jones has never disclosed the actual gold content of its rings, and continues to make hundreds of millions of dollars in profit as a result.

Lisa Marie Davison is a California citizen residing in Santa Clara County, and is a "consumer" as defined by California Civil Code § 1761(d). On May 28, 2014, Davison purchased a 10K gold class

ring, marked with the inscription "10K" on the inner band of the ring. Before she purchased the ring, Davison was never informed of, or aware of, the discrepancies in the actual gold content of the ring.

If Herff Jones had disclosed the inferior gold content of its rings, Davison would not have purchased the ring, or would have paid significantly less for the ring. Davison was denied material information in relation to her purchase and has suffered a loss as a result of the discrepancy.

Herff Jones took active steps to misrepresent and/or omit the fact that it wrongfully, improperly, illegally, and repeatedly manufactured, marketed, distributed, and sold class rings to millions of high school and college graduates with inferior gold content. Herff Jones' conduct constitutes the following violations of section 1770:

1. Herff Jones represented that the class rings had characteristics, benefits, or quantities which they did not have (§ 1770(a)(5));
2. Herff Jones has falsely represented that the class rings were of a particular standard, quality, or grade when they are of another (§1770(a)(7));
3. Herff Jones advertised the class rings with the intent not to sell them as advertised (§1770(a)(9));
4. Herff Jones represented that a transaction confers or involves rights, remedies, or obligations which it does not have or involve (§1770(a)(14)); and
5. Herff Jones represented that its class rings have been supplied in accordance with a previous representation when they have not (§1770(a)(16)).

In an attempt to resolve the concerns caused by the deficiencies of gold content in the class rings, and pursuant to section 1782 of the CLRA, based on the foregoing, our client hereby demands that within thirty (30) days of receiving this letter, Herff Jones:

1. Notify all persons residing in California who purchased a Herff Jones class ring about the deficiency in gold content;
2. Cease and desist from further deceptive advertisement, manufacturing, distribution, and sales practices with respect to all the class rings;
3. Pay any and all costs of replacing the class rings with class rings containing the correct gold content;
4. Reimburse any and all individuals residing in California who currently own a Herff Jones class ring for all expenses incurred, including the diminished value of the class rings or a full refund of the purchase.
5. Provide monetary compensation, plus interest, to all individuals who own a Herff Jones class ring in California who have been damaged as a result of Herff Jones' conduct alleged herein.

Further, we are notifying you that Herff Jones has breached its contract with owners of the class rings as well as its implied warranties, and is in violation of statutes, including but not limited to, the Gold Labeling Act of 1976, 15 U.S.C. § 291, *et seq.*, and the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*

Unless Herff Jones takes such action as demanded above within thirty (30) days of receipt of this letter, we intend to bring suit for damages pursuant to the CLRA on behalf of all Herff Jones class ring owners in the United States.

If you have any questions regarding this notice and demand, please contact me.

Sincerely,

A handwritten signature in blue ink that reads "Gary Mason" followed by a stylized flourish.

Gary E. Mason
Whitfield Bryson & Mason LLP
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Suite 305
Washington, DC 20019
(202) 640-1160
gmason@wbmlp.com