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County of San Diego

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

CHARLENE M. JACKSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

~~GENERAL MILLS, INC.~~ a Delaware
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 37-2018-00052079-CU-FR-CTL

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

JURY TRIAL DEMAND

CLASS ACTION COMPLAINT

INTRODUCTION

1. The average consumer spends a mere 13 seconds making an in-store purchasing decision, or between 10 to 19 seconds for an online purchase.¹ That decision is heavily dependent on a product's packaging, and particularly the package dimensions: "Most of our studies show that 75 to 80 percent of consumers don't even bother to look at any label information, no less the net weight Faced with a large box and a smaller box, both with the same amount of product inside . . . consumers are apt to choose the larger box because they think it's a better value."² This lawsuit charges Defendant with intentionally packaging its Annie's HOMEGROWN brand Cereal Products (the "Products") in opaque containers that contain approximately 50% empty space. Most consumers purchased the Products without knowing that the containers were substantially empty.

2. Charlene Murphy ("Plaintiff"), individually and on behalf of all others similarly situated, brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the unlawful and deceptive actions of General Mills, Inc. ("Defendant" or "General Mills") with respect to the packaging of the Products. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

3. Plaintiff purchased Annie's Frosted Oat Flakes Cereal Product manufactured by Defendant in 2016 in Bakersfield, California. In particular, Plaintiff purchased the Product at the Target located on 2901 Ming Avenue, Bakersfield, CA 93304. Plaintiff purchased the Product for the purpose of enjoying its contents by consuming (eating) the food item. Plaintiff was surprised when she opened the item and saw that the container had more than 50% empty space, or slack fill.

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

¹ <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 report "Shopping Takes Only Seconds...In-Store and Online").

² <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).

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JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action. This Court has personal jurisdiction over Defendant because it conducted and continues to conduct substantial business in the State of California.

6. Venue is proper in this Court because Defendant conducts substantial business in this County pursuant to California Civil Code Section 1780(d). *See* Venue Affidavit attached.

PARTIES

7. Plaintiff Charlene Murphy is a citizen of the State of California and resides in Bakersfield, California. Plaintiff purchased the Product in 2016 in Bakersfield, California.

8. Plaintiff is informed and believes, and upon such information and belief alleges, that Defendant General Mills, Inc., is a Delaware corporation which has its principal place of business located in Minneapolis, Minnesota. Plaintiff is informed and believes, and upon such information and belief alleges, that Defendant, at all times relevant, conducted business in the State of California and within the County of San Diego.

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

10. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and/or scope of said agency and/or employment with the full knowledge and consent of each of the Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants (General Mills Inc. and DOE Defendants will hereafter collectively be referred to as "Defendant").

1 FACTUAL ALLEGATIONS

2 California Law Prohibits Non-functional Slack-Fill

3 11. Many federal and state consumer protection and labeling laws prohibit deceptive
4 packaging and labeling of products and commodities. In California, the Fair Packaging and Labeling
5 Act ("CFPLA") "is designed to protect purchasers of any commodity within its provisions against
6 deception or misrepresentation. Packages and their labels should enable consumers to obtain accurate
7 information as to the quantity of the contents and should facilitate value comparisons." (California
8 Business & Professions Code § 12601.)

9 12. In this context, the CFPLA provides: "No food containers shall be made, formed, or filled
10 as to be misleading." (California Business & Professions Code § 12606.2(b).) "A container that does
11 not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if
12 it contains nonfunctional slack fill." (California Business & Professions Code § 12606.2(c).) Section
13 12606.2(c) defines "slack fill" as "the difference between the actual capacity of a container and the
14 volume of product contained therein." Similarly, section 12606.2(c) defines "nonfunctional slack fill"
15 as "the empty space in a package that is filled to substantially less than its capacity for reasons other
16 than any one or more of the following:

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

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

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

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

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

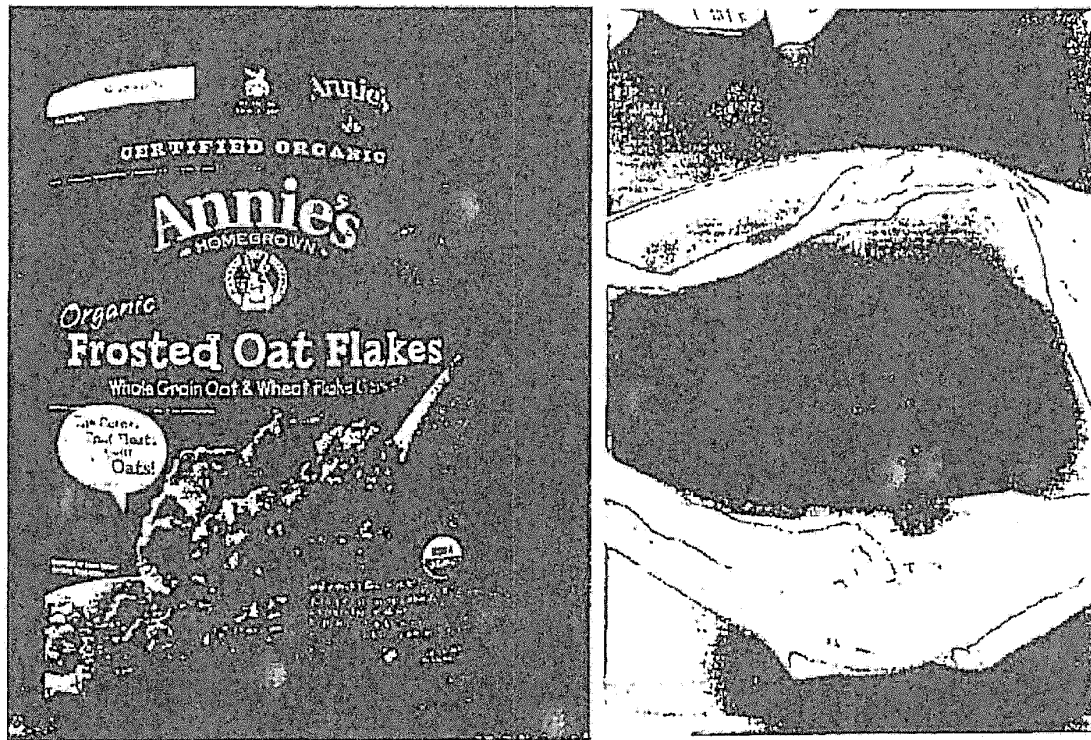
1 (6) Inability to increase the level of fill or to further reduce the size of the package, such as where some
 2 minimum package size is necessary to accommodate required food labeling exclusive of any vignettes
 3 or other nonmandatory designs or label information, discourage pilfering, facilitate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

5 13. None of the above safe-harbor provisions applies to the Products. Defendant
 6 intentionally incorporated non-functional slack-fill in its packaging of the Products. Given the
 7 materiality of the non-functional slack fill to reasonable consumers, the packaging is per se illegal, and
 8 reliance upon the misbranded packaging by absent class members is presumed.

9 **Defendant's Products Contain Non Functional Slack-Fill**

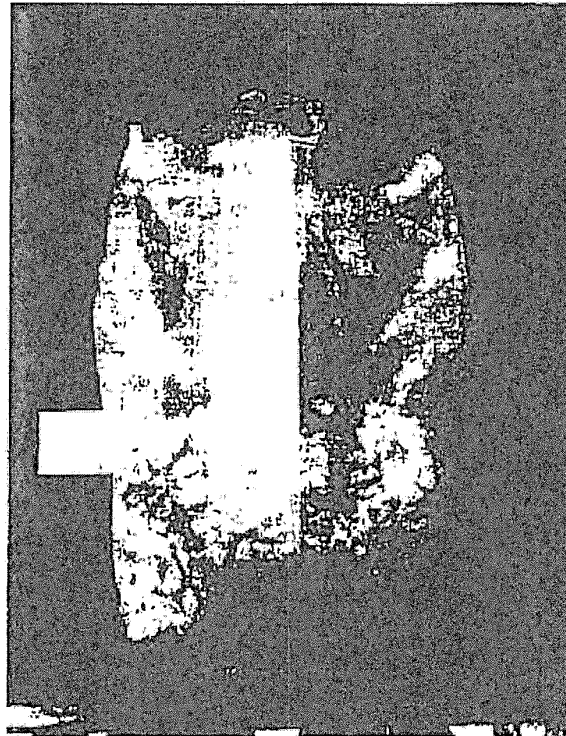
10 14. Defendant's Products are, and at all relevant times was, sold in non-transparent
 11 containers. The containers have significant slack-fill, as described below.

12 15. More than 50% of the interior of the Products' containers are comprised of empty space,
 13 or non-functional slack-fill as shown below.



- 5 -

CLASS ACTION COMPLAINT



16. The following Annie's Products have slack-fill issues:

Table 1: The Products

Annie's Cocoa Bunnies	Annie's Cinnabunnies
Annie's Berry Bunnies	Annie's Frosted Oat Flakes

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

18. Defendant is selling and will continue to sell the Products using these illegal slack-filled containers.

1 29. Plaintiff reserves the right to revise the Class definition based on facts learned in the
2 course of litigating this matter.

3 30. The Products sold by Defendant suffer from illegal product bottling, labeling and
4 nonfunctional slack-fill.

5 31. This action has been brought and may properly be maintained as a class action against
6 Defendant. While the exact number and identities of other Class Members are unknown to Plaintiff at
7 this time, Plaintiff is informed and believes that there are hundreds of thousands of Members in the
8 Class. Based on sales of the Products it is estimated that the Class is composed of more than 10,000
9 persons. Furthermore, even if subclasses need to be created for these consumers, it is estimated that each
10 subclass would have thousands of Members. The Members of the Class are so numerous that joinder of
11 all Members is impracticable and the disposition of their claims in a class action rather than in individual
12 actions will benefit the parties and the courts.

13 32. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all
14 members of the Class as all Members of the Class are similarly affected by Defendant's wrongful
15 conduct, as detailed herein.

16 33. Plaintiff will fairly and adequately protect the interests of the Members of the Class in
17 that she has no interests antagonistic to those of the other Members of the Class. Plaintiff has retained
18 experienced and competent counsel.

19 34. A class action is superior to other available methods for the fair and efficient adjudication
20 of this controversy. Since the damages sustained by individual Class Members may be relatively small,
21 the expense and burden of individual litigation makes it impracticable for the Members of the Class to
22 individually seek redress for the wrongful conduct alleged herein. Furthermore, the adjudication of this
23 controversy through a class action will avoid the potentially inconsistent and conflicting adjudications
24 of the claims asserted herein. There will be no difficulty in the management of this action as a class
25 action. If Class treatment of these claims were not available, Defendant would likely unfairly receive
26 thousands of dollars or more in improper revenue.

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1 35. Common questions of law and fact exist as to all Members of the Class and predominate
2 over any questions solely affecting individual Members of the Class. Among the common questions of
3 law and fact applicable to the Class are:

4 i. Whether Defendant labeled, packaged, marketed, advertised and/or sold the
5 Products using illegal packaging and labeling;

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

8 iii. Whether Defendant omitted and/or represented that its Products have quantities
9 that they do not have;

10 iv. Whether Defendant's labeling, packaging, marketing, advertising and/or selling
11 of the Products constituted a fraudulent, unfair, or unlawful business act or practice and whether
12 Defendant engaged in unfair, deceptive, untrue or misleading advertising;

13 v. Whether Defendant's packaging of the Products constituted nonfunctional slack-
14 fill;

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

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

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

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

21 36. The class is readily definable, and prosecution of this action as a Class action will reduce
22 the possibility of repetitious litigation. Plaintiff knows of no difficulty which will be encountered in the
23 management of this litigation which would preclude her maintenance of this matter as a Class action.

24 37. The prosecution of separate actions by Members of the Class would create a risk of
25 establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally,
26 individual actions may be dispositive of the interest of all Members of the Class, although certain Class
27 Members are not parties to such actions.
28

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

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

7 48. Plaintiff and the Class relied upon the size of the Products' packaging in making their
8 purchases of the Products. In addition, given the materiality of Defendant's misrepresentations, absent
9 Class Members are entitled to a presumption of reliance.

10 49. Plaintiff and the Class lost money as a result of Defendant's actions because: (a) they
11 would not have purchased the Products on the same terms absent Defendant's illegal conduct as set
12 forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a
13 higher price for the Defendant's Products due to Defendant's misrepresentations; and (c) Defendant's
14 Products did not have the quantities as represented.

15 50. On or about October 11, 2018, prior to filing this action, Plaintiff sent a CLRA notice
16 letter to Defendant which complies with California Civil Code 1782(a). Plaintiff sent General Mills,
17 Inc., individually and on behalf of the proposed Class, a letter via Certified Mail, advising Defendant
18 that it is in violation of the CLRA and demanding that it cease and desist from such violations and make
19 full restitution by refunding the monies received therefrom.

20 51. Wherefore, Plaintiff seeks injunctive relief for Defendant's violations of the CLRA. If
21 Defendant fails to take the corrective action detailed in Plaintiff's CLRA letter within thirty days of the
22 date of the letter, then Plaintiff will seek leave to amend her complaint to add a claim for damages under
23 the CLRA.

24 SECOND CAUSE OF ACTION

25 VIOLATION OF THE UNFAIR COMPETITION LAW

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

27 52. The foregoing paragraphs are alleged herein and are incorporated herein by reference.
28

53. Plaintiff brings this claim individually and on behalf of the Members of the Class for Defendant's violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* (the "UCL").

54. The UCL provides, in pertinent part: "[U]nfair competition shall mean and include unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising"

55. Defendant violated California law because the Products are packaged in containers made, formed or filled as to be misleading and that contain non-functional slack-fill and because they are intentionally packaged to prevent the consumer from being able to fully see their contents.

"Unlawful" Prong

56. Defendant's business practices, described herein, violated the "unlawful" prong of the UCL by violating the CFPLA, California Business & Professions Code § 12601 *et seq.*

57. Specifically, Defendant violated section 12606.2(b) and (c) of the Business and Professions Code by packaging the Products in nonconforming type containers. Said non-conforming packages contained extra space by volume, in the interior of the container. The extra space provided no benefit to the contents of the packaging and misled consumers. In addition, Defendant packaged the Products in containers made, formed, or filled as to be misleading to a potential customer as to the actual size and filling of the package with Defendant's Products.

"Unfair" Prong

58. Defendant's business practices, described herein, violated the "unfair" prong of the UCL in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits. Defendant's advertising is of no benefit to consumers. The public policy is tethered to a specific statutory provision. *See* Cal. Bus. & Prof. Code §§ 12606.2(b) and (c).

"Fraudulent" Prong

59. Defendant violated the "fraudulent" prong of the UCL, by misleading Plaintiff and the Class to believe that the Products contained more content than it actually contained and that such

1 packaging and labeling practices were lawful, accurate, true, and not intended to deceive or mislead
2 consumers.

3 60. Plaintiff and the Class Members are not sophisticated experts about the corporate
4 branding, labeling, and packaging practices of the Products. Plaintiff and the Class acted reasonably
5 when they purchased the Products based on their belief that Defendant's representations were true and
6 lawful.

7 61. Plaintiff and the Class lost money as a result of Defendant's UCL violations because: (a)
8 they would not have purchased the Products on the same terms absent Defendant's illegal conduct as
9 set forth herein, or if the true facts were known concerning Defendant's representations; (b) they paid a
10 higher price for the Defendant's Products due to Defendant's misrepresentations; and (c) Defendant's
11 Products did not have the quantities as represented.

12 62. The conduct of Defendant as set forth above demonstrates the necessity for granting
13 injunctive relief restraining such and similar acts of unfair competition pursuant to California Business
14 and Professions Code. Unless enjoined and restrained by order of the court, Defendant will retain the
15 ability to, and may engage in, said acts of unfair competition, and misleading "advertising." As a result,
16 Plaintiff and the Class are entitled to injunctive and monetary relief in the form of restitution under Cal.
17 Bus. & Prof. Code § 17203.

18 63. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
19 specified herein by suing on behalf of herself and other similarly-situated Class Members. Plaintiff's
20 success in this action will enforce important rights affecting the public interest. Plaintiff will incur a
21 financial burden in pursuing this action in the public interest. An award of reasonable attorneys' fees
22 to Plaintiff is thus appropriate pursuant to California Code of Civil Procedure § 1021.5.

23 **THIRD CAUSE OF ACTION**

24 **VIOLATIONS OF CALIFORNIA'S FALSE ADVERTISING LAW**

25 **(Cal. Bus. & Prof. Code § 17500, *et seq.*)**

26 64. The foregoing paragraphs are alleged herein and are incorporated herein by reference.
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1 65. Plaintiff brings this claim individually and on behalf of the Members of the Class for
2 Defendant's violations of California's False Advertising Competition Law, Cal. Bus. & Prof. Code §
3 17500, *et seq.* (the "FAL").

4 66. Under the FAL, the State of California makes it "unlawful for any person to make or
5 disseminate or cause to be made or disseminated before the public in this state . . . in any advertising
6 device . . . or in any other manner or means whatever, including over the Internet, any statement,
7 concerning . . . personal property or services, professional or otherwise, or performance or disposition
8 thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care
9 should be known, to be untrue or misleading."

10 67. Defendant engaged in a scheme of offering the Products misbranded for sale to Plaintiff
11 and the Class Members by way of packaging the Products in containers made, formed or filled as to be
12 misleading and which contain nonfunctional slack-fill. Such practice misrepresented the content and
13 quantity of the misbranded Products. Defendant's advertisements were made in California and come
14 within the definition of advertising as contained in Bus. & Prof Code §§ 17500, *et seq.* in that the
15 products' packaging was intended as inducements to purchase Defendant's Products. Defendant knew
16 its conduct was unauthorized, inaccurate, and misleading.

17 68. Defendant violated California law because the Products are packaged in containers made,
18 formed or filled as to be misleading and which contain non-functional slack-fill and because they are
19 intentionally packaged to prevent the consumer from being able to fully see their contents.

20 69. Defendant violated Section 17500, *et seq.* by misleading Plaintiff and the Class to believe
21 that the Products' packaging contains more product than it, in fact, contains, as described herein.

22 70. Defendant knew or should have known, through the exercise of reasonable care that the
23 Products were and continues to be misbranded, and that its representations about the quantities of the
24 Products were untrue and misleading.

25 71. Plaintiff and the Class Members lost money as a result of Defendant's FAL violations
26 because: (a) they would not have purchased the Products on the same terms absent Defendant's illegal
27 conduct as set forth herein, or if the true facts were known concerning Defendant's representations; (b)
28 they paid a higher price for the Products due to Defendant's misrepresentations; and (c) the Products

1 did not have the benefits, or quantities as promised, and as a result the Class is entitled to monetary and
2 injunctive relief.

3 **PRAYER FOR RELIEF**

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

5 (A) For an Order determining that this action may be maintained as a class action, and
6 certifying the Class as requested herein;

7 (B) For an Order declaring that Defendant's conduct violated the CLRA, Cal. Civ. Code
8 § 1750, *et seq.*, and awarding (i) injunctive relief, (ii) actual damages, (iii) punitive damages,
9 (iv) costs of suit, and (iii) reasonable attorneys' fees;

10 (C) For an Order declaring that Defendant's conduct violated the UCL, Cal. Bus. & Prof.
11 Code § 17200 *et seq.*, and FAL, Cal. Bus. & Prof. Code § 17500 *et seq.*, and awarding (i)
12 injunctive relief, (ii) restitution, (iii) prejudgment and post judgment interest; (iv) exemplary
13 and/or punitive damages pursuant to Cal. Civ. Code § 3294, (v) costs of suit, and (iv) reasonable
14 attorneys' fees pursuant to, *inter alia*, Cal. Code Civ. Proc § 1021.5;

15 (D) For injunctive relief as pleaded or as the Court may deem proper;

16 (E) For an order of restitution and all other forms of equitable monetary relief, as pleaded;

17 (F) For compensatory damages in amounts to be determined by the Court and/or jury;

18 (G) For punitive damages;

19 (H) For prejudgment interest on all amounts awarded;

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

23 (J) For such other and further relief as the Court deems just and proper.

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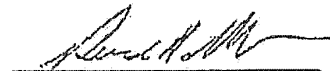
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DEMAND FOR TRIAL BY JURY

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

Date: October 12, 2018

Respectfully submitted,



Ronald A. Marron

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