

1 **BURSOR & FISHER, P.A.**
 L. Timothy Fisher (State Bar No. 191626)
 2 Joel D. Smith (State Bar No. 244902)
 3 Thomas A. Reyda (State Bar No. 312632)
 1990 North California Blvd., Suite 940
 4 Walnut Creek, CA 94596
 Telephone: (925) 300-4455
 5 Facsimile: (925) 407-2700
 E-Mail: ltfisher@bursor.com
 6 jsmith@bursor.com

7 **BURSOR & FISHER, P.A.**
 8 Scott A. Bursor (State Bar No. 276006)
 888 Seventh Avenue
 9 New York, NY 10019
 Telephone: (212) 989-9113
 10 Facsimile: (212) 989-9163
 11 E-Mail: scott@bursor.com

12 *Counsel for Plaintiff*

13
 14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16
 17 LORI JOHNSON on behalf of herself and
 all others similarly situated,

18
 19 Plaintiff,

20 v.

21 SERGEANT'S PET CARE PRODUCTS,
 INC. d/b/a SENTRY,

22
 23 Defendant.

Case No. 5:18-cv-02426

CLASS ACTION COMPLAINT

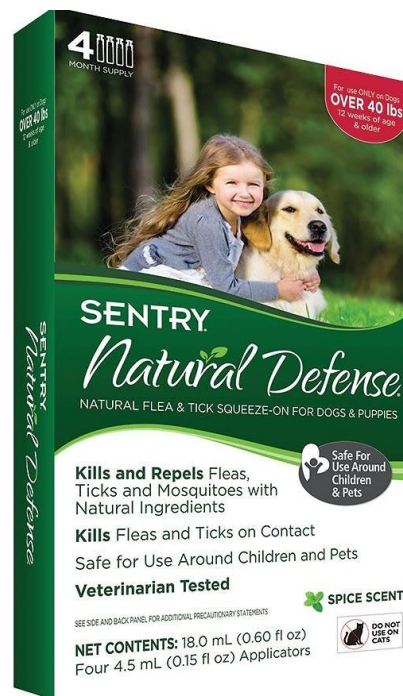
JURY TRIAL DEMANDED

1 Plaintiff Lori Johnson (“Plaintiff”), individually and on behalf of other similarly
2 situated individuals, allege the following Class Action Complaint against defendant
3 Sergeant’s Pet Care Products, Inc. d/b/a Sentry (“Sentry” or “Defendant”) for making,
4 marketing, and distributing various brands of the Sentry Natural Defense, upon
5 personal knowledge as to herself and her own acts and upon information and belief –
6 based upon, *inter alia*, the investigation made by her attorneys – as to all other matters,
7 as follows:

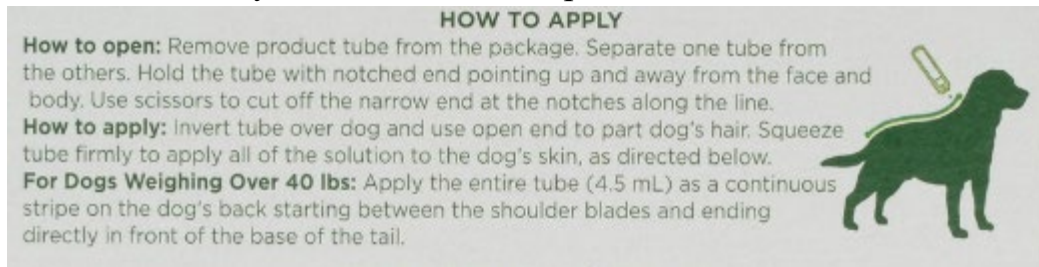
8 INTRODUCTION

9 1. This is a class action on behalf of purchasers of the various brands of
10 Sentry Natural Defense (the “Products” or “Sentry”) in the United States. Sentry is
11 sold as a flea and tick repellent that is “safe to use around children and pets.” In fact,
12 the essential oils that make up the Sentry Products are toxic if ingested or applied
13 directly to the skin and can lead to serious complications.

14 2. Every Sentry Product represents that it is “safe to use around children and
15 pets” and is “Veterinarian Tested.”



1 3. Unfortunately for consumers and their pets, use of the Products exposes
2 pets to the following concentrated essential oils that are present in every Sentry
3 Product: peppermint oil, cinnamon oil, lemongrass oil, clove oil, and thyme oil.¹
4 These essential oils, despite being natural, can be toxic if absorbed through the skin or
5 ingested by pets. Symptoms of essential oil poisoning include: irritation to the skin,
6 vomiting, muscles tremors, and other more serious complications that can lead to
7 organ failure and death. Despite these risks, consumers are directed to apply the
8 Sentry Products directly to the skin of their pets:



13 4. Because of the risks associated with essential oil poisoning, veterinarians
14 routinely warn consumers against using the essential oils contained in the Sentry
15 Products and other similarly formulated products.

16 5. In an article posted on the Veterinary Centers of America website, Dr.
17 Charlotte Flint warns consumers to “[n]ever apply a concentrated essential oil on your
18 pet.”² This is because “only a couple of licks or a small amount on the skin could be
19 harmful to a dog.”

20 6. In an blog post answering the question “Are essential oils really
21 dangerous to pets?,” Dr. Marty Becker identified some of the “essential oils that are
22 toxic to pets are cinnamon, citrus, lemon, pennyroyal, peppermint, pine, sweet birch,
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24 _____
25 ¹ Available at <https://www.sentrypetcare.com/natural-flea-and-tick-protection-for-pets/> (last visited 11/1/2018)

26 ² Dr. Charlotte Flint, *Essential Oil and Liquid Potpourri Poisoning in Dogs*,
27 Veterinarian Centers of America website Magazine; available at
28 <https://vcahospitals.com/know-your-pet/essential-oil-and-liquid-potpourri-poisoning-in-dogs> (last visited 11/1/2018)

1 tea tree, thyme, wintergreen and ylang ylang.”³ Three of these identified essential oils
2 are present in the Sentry Products (cinnamon, peppermint and thyme). Contrary to the
3 directions of the Sentry Products, Dr. Becker goes on to direct pet owners to “[n]ever
4 apply any concentrated essential oil to a pet’s skin.”

5 7. Defendant knows about this issue, as is evidenced by its ambiguous
6 representation that the Product was “Veterinarian Tested.” But Defendant omits the
7 fact that the Products cause essential oil poisoning and are not *recommended* by
8 veterinarians.

9 8. Even worse, Defendant targets consumers who are particularly safety
10 conscious with its representations that the Products are “Natural,” and “safe for use
11 around pets and children.” As the Pet Poison Helpline noted “[w]e have certainly seen
12 an increase in essential oil toxicity in recent years due to the increase in pet owner’s
13 desire to treat more holistically or with natural remedies.”⁴

14 9. While this damage may not be immediately noticeable, and does not
15 manifest every time the Products are used, the Products nonetheless expose every pet
16 on which they are used to a considerable risk of a serious adverse reaction. Simply
17 put, the Products are not fit to be sold as a flea and tick medication and Defendant’s
18 representation that the Products are safe to use around pets and children is false and
19 misleading.

20 10. This is a proposed class action brought by Plaintiff, on behalf of a class of
21 similarly situated individuals, against Defendant for breach of implied warranty, unjust
22 enrichment, fraud, and violations of California consumer protection laws.

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25 ³ Dr. Marty Beck, *Are essential oils really dangerous to pets?* (January 23, 2018);
26 available at [https://www.drmarybecker.com/petconnection/essential-oils-really-](https://www.drmarybecker.com/petconnection/essential-oils-really-dangerous-pets/)
27 [dangerous-pets/](https://www.drmarybecker.com/petconnection/essential-oils-really-dangerous-pets/) (last visited 11/1/2018)

28 ⁴ Jo Marshall CVT, NREMT, *Essential Oils and Dogs*, available at
<https://www.petpoisonhelpline.com/pet-safety-tips/essential-oils-dogs/> (last visited
11/1/2018)

JURISDICTION AND VENUE

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2 11. This Court has personal jurisdiction over Defendant. Defendant
3 purposefully avails itself of the California consumer market and distributes the
4 Products to at least hundreds of locations within this County and thousands of retail
5 locations throughout California, where the Products are purchased by thousands of
6 consumers every week.

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

16 13. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial
17 acts in furtherance of the alleged improper conduct, including the dissemination of
18 false and misleading information and omissions regarding the Sentry Products,
19 occurred within this District.

PARTIES

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21 14. Plaintiff Lori Johnson is an individual consumer who, at all times
22 material hereto, was a citizen of California. Ms. Johnson purchased several
23 variations of Sentry Natural Defense for her various dogs on an annual basis. Most
24 recently, Ms. Johnson purchased Sentry Natural Defense in April of 2018. In
25 purchasing the Products, Ms. Johnson relied on Defendant’s false, misleading, and
26 deceptive marketing of the Products as a safe flea and tick medication. Had
27 Defendant disclosed that the Products are not fit to be used as a flea and tick
28 medication because they cause essential oil poisoning, Ms. Johnson would have been

1 aware of that and she would not have purchased the Products. Ms. Johnson read and
2 followed the instructions of the Sentry products when applying them to her dogs.
3 After application, one of Ms. Johnson’s dogs experienced essential oil poisoning and
4 was unable to walk. Ms. Johnson took her dog to the emergency after-hours clinic.
5 After scrubbing the area where the Sentry Product was applied, it took two hours
6 until her dog was able to walk without serious muscle tremors.

7 15. Defendant’s misrepresentation that the Products are “safe for use around
8 pets and children” and its failure to disclose that the Products cause essential oil
9 poisoning were immediate causes of Plaintiff Johnson’s decision to purchase the
10 Products. In all reasonable probability, she would not have agreed to purchase the
11 Products, or would have sought materially different terms, had she known that the
12 truth. Defendant’s misrepresentation and omission were substantial factors in,
13 Plaintiff Johnson’s decision to purchase the Sentry Product.

14 16. Plaintiff remains interested in purchasing a safe natural flea and tick
15 repellent and would consider the Sentry Products in the future if Defendant provided
16 a product that would not cause essential oil poisoning.

17 17. Defendant Sergeants Pet Care Products Inc. d/b/a Sentry is incorporated
18 in the State of Michigan, with a principal place of business at Allegan, Michigan.

19 18. Defendant manufactures, markets, and distributes the Products
20 throughout California, and the United States.

21 **CLASS ALLEGATIONS**

22 19. Plaintiff seeks to represent a class defined as all persons in the United
23 States who purchased the Products (the “Class”). Excluded from the Class are
24 persons who made such purchases for purpose of resale.

25 20. Plaintiff also seeks to represent a Subclass of all Class Members who
26 purchased the Products in California (the “California Subclass”).
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1 21. At this time, Plaintiff does not know the exact number of members of
2 the Class and Subclass; however, given the nature of the claims and the number of
3 retail stores in the United States selling the Products, Plaintiff believes that Class and
4 Subclass members are so numerous that joinder of all members is impracticable.

5 22. There is a well-defined community of interest in the questions of law
6 and fact involved in this case. Questions of law and fact common to the members of
7 the Class that predominate over questions that may affect individual Class members
8 include:

- 9 a. whether Defendant misrepresented and/or failed to disclose
10 material facts concerning the Products;
- 11 b. whether Defendant's conduct was unfair and/or deceptive;
- 12 c. whether Defendant has been unjustly enriched as a result of the
13 unlawful, fraudulent, and unfair conduct alleged in this Complaint such that it would
14 be inequitable for Defendant to retain the benefits conferred upon Defendant by
15 Plaintiff and the Class;
- 16 d. whether Defendant breached implied warranties to Plaintiff and
17 the Class;
- 18 e. whether Defendant breached express warranties to Plaintiff and
19 the Class
- 20 f. whether Plaintiff and the Class have sustained damages with
21 respect to the common-law claims asserted, and if so, the proper measure of their
22 damages.

23 23. Plaintiff's claims are typical of those of the Class because Plaintiff, like
24 all members of the Class, purchased, in a typical consumer setting, Defendant's
25 product and Plaintiff sustained damages from Defendant's wrongful conduct.
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1 24. Plaintiff will fairly and adequately protect the interests of the Class and
2 have retained counsel that is experienced in litigating complex class actions.

3 Plaintiff has no interests which conflict with those of the Class or the Subclass.

4 25. A class action is superior to other available methods for the fair and
5 efficient adjudication of this controversy.

6 26. The prerequisites to maintaining a class action for equitable relief are
7 met as Defendant has acted or refused to act on grounds generally applicable to the
8 Class and the Subclass, thereby making appropriate equitable relief with respect to
9 the Class and the Subclass as a whole.

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

16 **CAUSES OF ACTION**

17 **COUNT I**

18 **(Unfair and Deceptive Acts and Practices In Violation of the California**
19 **Consumers Legal Remedies Act) (Injunctive Relief Only)**

20 28. Plaintiff incorporates by reference and re-allege herein all paragraphs
21 alleged above.

22 29. Plaintiff Johnson brings this cause of action on behalf of herself and
23 members of the California Subclass.

24 30. This cause of action is brought pursuant to California’s Consumers
25 Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the “CLRA”).
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1 31. Ms. Johnson and the other members of the California Subclass are
2 “consumers,” as the term is defined by California Civil Code § 1761(d), because they
3 bought the Products for personal, family, or household purposes.

4 32. Ms. Johnson, the other members of the California Subclass, and
5 Defendant have engaged in “transactions,” as that term is defined by California Civil
6 Code § 1761(e).

7 33. The conduct alleged in this Complaint constitutes unfair methods of
8 competition and unfair and deceptive acts and practices for the purpose of the
9 CLRA, and the conduct was undertaken by Defendant in transactions intended to
10 result in, and which did result in, the sale of goods to consumers.

11 34. As alleged more fully above, Defendant has violated the CLRA by
12 marketing the Sentry Products as a flea and tick medication but failing to inform
13 consumers that it is not fit to be used as a flea and tick medication because it causes
14 essential oil poisoning.

15 35. As a result of engaging in such conduct, Defendant has violated
16 California Civil Code § 1770(a)(5) and (a)(7).

17 36. Plaintiff Johnson seeks to enjoin the sale of the Sentry Products, or to
18 require Defendant to disclose the risk of essential oil poisoning and to prohibit
19 representation that the Products are “safe for use around pets and children.”

20 37. CLRA § 1782 NOTICE. On November 8, 2018, a CLRA demand letter
21 was sent to Defendant via certified mail that provided notice of Defendant’s
22 violation of the CLRA and demanded that within thirty (30) days from that date,
23 Defendant correct, repair, replace or other rectify the unlawful, unfair, false and/or
24 deceptive practices complained of herein. The letter also stated that if Defendant
25 refused to do so, a complaint seeking damages in accordance with the CLRA would
26 be filed. If Defendant fails to comply with the letter. Plaintiff intends to amend this
27 Complaint, on behalf of herself and all other members of the California Subclass, to
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1 seek compensatory damages, punitive damages, and restitution of any ill-gotten
2 gains due to Defendant's acts and practices in addition to the injunctive relief
3 identified above.

4 **COUNT II**

5 **(Violation California's Unfair Competition Law)**

6 38. Plaintiff incorporates by reference and re-allege herein all paragraphs
7 alleged above.

8 39. Plaintiff Johnson brings this cause of action on behalf of herself and
9 members of the California Subclass.

10 40. By committing the acts and practices alleged herein, Defendant has
11 violated California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§
12 17200-17210, as to the California Subclass, by engaging in unlawful, fraudulent, and
13 unfair conduct.

14 41. Defendant has violated the UCL's proscription against engaging in
15 *unlawful* conduct as a result of its violations of the CLRA, Cal. Civ. Code §
16 1770(a)(5) and (a)(7) as alleged above.

17 42. Defendant's acts and practices described above also violate the UCL's
18 proscription against engaging in fraudulent conduct.

19 43. As more fully described above, Defendant's misleading marketing,
20 advertising, packaging, and labeling of the Products is likely to deceive reasonable
21 consumers.

22 44. Defendant's acts and practices described above also violate the UCL's
23 proscription against engaging in *unfair* conduct.

24 45. Ms. Johnson and the other California Subclass members suffered a
25 substantial injury by virtue of buying the Sentry Products that they would not have
26 purchased absent Defendant's unlawful, fraudulent, and unfair marketing,
27 advertising, packaging, and labeling or by virtue of paying an excessive premium
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1 price for the unlawfully, fraudulently, and unfairly marketed, advertised, packaged,
2 and labeled product.

3 46. There is no benefit to consumers or competition from deceptively
4 marketing and labeling the Sentry Products.

5 47. Plaintiff and the other California Subclass members had no way of
6 reasonably knowing that the Sentry Products they purchased were not as marketed,
7 advertised, packaged, or labeled. Thus, they could not have reasonably avoided the
8 injury each of them suffered.

9 48. The gravity of the consequences of Defendant's conduct as described
10 above outweighs any justification, motive, or reason therefore, particularly
11 considering the available legal alternatives which exist in the marketplace, and such
12 conduct is immoral, unethical, unscrupulous, offends established public policy, or is
13 substantially injurious to Ms. Johnson and the other members of the California
14 Subclass.

15 49. Defendant's violations of the UCL continue to this day.

16 50. Pursuant to California Business and Professional Code § 17203,
17 Plaintiff and the California Subclass seek an order of this Court that includes, but is
18 not limited to, an order requiring Defendant to:

- 19 (a) provide restitution to Ms. Johnson and the other California
20 Subclass members;
- 21 (b) disgorge all revenues obtained as a result of violations of the
22 UCL; and
- 23 (c) pay Ms. Johnson and the California Subclass' attorney's fees and
24 costs.

25 **COUNT III**

26 **(Fraud)**

27 53. Plaintiff hereby incorporates by reference the allegations contained in
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1 all preceding paragraphs of this complaint.

2 54. Plaintiff brings this claim individually and on behalf of the members of
3 the Class and California Subclass against Defendant.

4 55. As discussed above, Defendant not only failed to disclose to class
5 members that use of the Sentry Products could cause essential oil poisoning, but
6 represented to Plaintiff and the Class that the Products were “safe for use around pets
7 and children.”

8 56. The false and misleading representations and omissions were made with
9 knowledge of their falsehood.

10 57. The false and misleading representations and omissions were made by
11 Defendant, upon which Plaintiff and members of the Class and California Subclass
12 reasonably and justifiably relied, and were intended to induce and actually induced
13 Plaintiff and Class members to purchase Sentry Products.

14 58. The fraudulent actions of defendant caused damage to Plaintiff and
15 members of the Class, who are entitled to damages and other legal and equitable
16 relief as a result.

17 **COUNT IV**

18 **(Unjust Enrichment)**

19 59. Plaintiff incorporates by reference and re-allege each and every
20 allegation set forth above as though fully set forth herein.

21 60. Plaintiff brings this claim individually and on behalf of members of the
22 Class and Subclass against Defendant.

23 61. Plaintiff and Class members conferred benefits on Defendant by
24 purchasing the Sentry Products.

25 62. Defendant has knowledge of such benefits.

26 63. Defendant has been unjustly enriched in retaining the revenues derived
27 from Plaintiff’s and Class members’ purchases of Sentry Products. Retention of
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1 those moneys under these circumstances is unjust and inequitable because Defendant
2 failed to disclose that the Sentry Products cause essential oil poisoning and is unfit to
3 be used as a facial scrub.

4 64. Because Defendant's retention of the non-gratuitous benefits conferred
5 on it by Plaintiff and Class members is unjust and inequitable, Defendant must pay
6 restitution to Plaintiff and the Class members for their unjust enrichment, as ordered
7 by the Court.

8 **COUNT V**

9 **(Breach of the Implied Warranty of Merchantability)**

10 65. Plaintiff incorporates by reference and re-allege each and every
11 allegation set forth above as though fully set forth herein.

12 66. Plaintiff brings this claim individually and on behalf of members of the
13 Class and Subclass against Defendant

14 67. Defendant, as the designer, manufacturer, marketer, distributor, and/or
15 seller, impliedly warranted that that the Sentry Products are merchantable as flea and
16 tick medication.

17 68. Defendant breached the warranty implied in the contract for the sale of
18 the Sentry Products because it could not "pass without objection in the trade under
19 the contract description," the goods were not "of fair average quality within the
20 description," the goods were not "adequately contained, packaged, and labeled as the
21 agreement may require," and the goods did not "conform to the promise or
22 affirmations of fact made on the container or label." *See* U.C.C. § 2-314(2) (listing
23 requirements for merchantability). As a result, Plaintiff and Class members did not
24 receive the goods as impliedly warranted by Defendant to be merchantable.

25 69. Plaintiff and Class members purchased the Sentry Products in reliance
26 upon Defendant's skill and judgment in properly packaging and labeling Sentry
27 Products.

1 57. Plaintiff and the Class members were injured as a direct and proximate
2 result of Defendant's breach because: (a) they would not have purchased the
3 Products on the same terms if the truth concerning Defendant's Products had been
4 known; (b) they paid a price premium due to Defendant's misrepresentations about
5 the Products; and (c) the Products did not perform as promised.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff demands judgment on behalf of herself and members
8 of the Class and California Subclass as follows:

- 9 A. For an order certifying the nationwide Class and the California
10 Subclass under Rule 23 of the Federal Rules of Civil Procedure
11 and naming Plaintiff as representative of the Class and Subclass
12 and Plaintiff's attorneys as Class Counsel to represent the Class
13 and Subclass members;
- 14 B. For an order declaring that Defendant's conduct violates the
15 statutes referenced herein;
- 16 C. For an order finding in favor of Plaintiff, the nationwide Class,
17 and the Subclass on all counts asserted herein;
- 18 D. For compensatory, statutory, and punitive damages in amounts to
19 be determined by the Court and/or jury;
- 20 E. For injunctive relief enjoining the illegals acts detailed herein;
- 21 F. For prejudgment interest on all amounts awarded;
- 22 G. For an order of restitution and all other forms of equitable
23 monetary relief;
- 24 H. For an order awarding Plaintiff and the Class and Subclass their
25 reasonable attorneys' fees and expenses and costs of suit.

26 **JURY TRIAL DEMANDED**

27 Plaintiff demands a trial by jury on all claims so triable.
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Dated: November 9, 2018

Respectfully submitted,

BURSOR & FISHER, P.A.

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

L. Timothy Fisher (State Bar No. 191626)
Joel D. Smith (State Bar No. 244902)
Thomas A. Reyda (State Bar No. 312632)
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com
 jsmith@bursor.com

BURSOR & FISHER, P.A.
Scott A. Bursor (State Bar No. 276006)
888 Seventh Avenue
New York, NY 10019
Telephone: (212) 989-9113
Facsimile: (212) 989-9163
E-Mail: scott@bursor.com

Counsel for Plaintiff

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

I, L. Timothy Fisher, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and a member of the bar of this Court. I am a partner at Bursor & Fisher, P.A., counsel of record for Plaintiff Lori Johnson in this action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would competently testify thereto under oath.

2. Plaintiff Lori Johnson resides in Chino, California and purchased the products at issue there. Accordingly, the Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that a substantial portion of the events alleged in the Complaint occurred in the Central District of California.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed at Walnut Creek, California this 15th day of November, 2018.

/s L. Timothy Fisher
L. Timothy Fisher