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19 NEW BALANCE ATHLETICS, INC.

20 UNITED STATES DISTRICT COURT
21 SOUTHERN DISTRICT OF CALIFORNIA

22 SHEILA DASHNAW, WILLIAM
23 MEIER, and SHERRYL JONES,
24 individually, and on behalf of all others
25 similarly situated,

26 Plaintiffs,

27 v.

28 NEW BALANCE ATHLETICS, INC., a
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 3:17-cv-00159-L-JLB

CLASS ACTION

**DEFENDANT NEW BALANCE
ATHLETICS, INC.'S FIRST
AMENDED ANSWER TO THE
FIRST AMENDED COMPLAINT**

JURY TRIAL DEMANDED

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO**
2 **THE PLAINTIFFS:**

3 In answer to the Plaintiffs’ First Amended Complaint (“FAC”) in this matter,
4 defendant New Balance Athletics, Inc. (“New Balance”) states as follows:

5 1. New Balance admits that it has sold hundreds of thousands of shoes to
6 consumers in California, and has clearly and conspicuously qualified to all
7 consumers that New Balance shoes are labelled “Made in the USA” when the
8 domestic value is at least 70%. New Balance denies the remaining allegations in
9 paragraph 1 of the FAC.

10 2. New Balance admits that has clearly and conspicuously qualified that
11 shoes are labelled “Made in the USA” when the domestic value is at least 70%.
12 New Balance denies the remaining allegations in paragraph 2 of the FAC.

13 3. New Balance admits that its shoes are sold to California consumers at
14 retail stores and online. New Balance denies the remaining allegations in paragraph
15 3 of the FAC.

16 4. New Balance denies the allegations in paragraph 4 of the FAC.

17 5. Paragraph 5 of the FAC states legal conclusions to which no response
18 is required. To the extent that any response is required, New Balance denies the
19 allegations in paragraph 5 of the FAC.

20 6. New Balance denies the allegations in paragraph 6 of the FAC.

21 7. New Balance admits that it is a citizen of the Commonwealth of
22 Massachusetts and the State of Delaware. New Balance is without sufficient
23 information to form a belief about the remaining allegations in paragraph 7 of the
24 FAC and therefore denies such allegations.

25 8. Paragraph 8 of the FAC states legal conclusions to which no response
26 is required. New Balance specifically denies that any wrongdoing has taken place in
27 the State of California.

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1 9. New Balance is without sufficient information to form a belief about
2 the veracity of the allegations contained in paragraph 9 of the FAC and therefore
3 denies such allegations.

4 10. New Balance is without sufficient information to form a belief about
5 the veracity of the allegations contained in paragraph 10 of the FAC and therefore
6 denies such allegations.

7 11. New Balance is without sufficient information to form a belief about
8 the veracity of the allegations contained in paragraph 11 of the FAC and therefore
9 denies such allegations.

10 12. New Balance is without sufficient information to form a belief about
11 the veracity of the allegations contained in paragraph 12 of the FAC and therefore
12 denies such allegations.

13 13. New Balance denies that this action can be brought as a class action,
14 and therefore denies the allegations in paragraph 13 of the FAC.

15 14. New Balance admits that it is a multi-billion dollar shoe company
16 based in Massachusetts, that it sells many shoes using truthful, qualified, non-
17 misleading statements and information regarding the manufacturing of New Balance
18 shoes that occurs in the United States, and that some of those shoes are sold in
19 California. New Balance denies the remaining allegations in paragraph 14 of the
20 FAC.

21 15. New Balance admits that its shoes are sold to California consumers at
22 New Balance-owned and third party retail stores and online. New Balance denies
23 the remaining allegations in paragraph 15 of the FAC.

24 16. New Balance admits that the dissemination of truthful, qualified, non-
25 misleading statements and information regarding the manufacturing of New Balance
26 shoes that occurs in the United States is a part of New Balance's marketing on
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1 multiple channels. New Balance denies the remaining allegations in paragraph 16
2 of the FAC.

3 17. New Balance admits that the dissemination of truthful, qualified, non-
4 misleading statements regarding the manufacturing of New Balance shoes that
5 occurs in the United States is a part of New Balance's marketing on multiple
6 channels, including on-line. New Balance refers to the Company Overview section
7 of its website for the true and accurate content contained thereon. New Balance
8 denies the remaining allegations in paragraph 17 of the FAC.

9 18. New Balance admits that the dissemination of truthful, qualified, non-
10 misleading statements regarding the manufacturing of New Balance shoes that
11 occurs in the United States is a part of New Balance's marketing on multiple
12 channels, including on-line. New Balance refers to its website for the true and
13 accurate content contained thereon. New Balance denies the remaining allegations
14 in paragraph 18 of the FAC.

15 19. New Balance admits that the dissemination of truthful, qualified, non-
16 misleading statements regarding the manufacturing of New Balance shoes that
17 occurs in the United States is a part of New Balance's marketing on multiple
18 channels, including on-line. New Balance refers to its Facebook page for the true
19 and accurate content contained thereon. New Balance denies the remaining
20 allegations in paragraph 19 of the FAC.

21 20. New Balance admits that it has disseminated truthful, qualified, non-
22 misleading information regarding the manufacturing of New Balance shoes that
23 occurs in the United States on YouTube and refers to those videos for the true and
24 accurate content contained therein. New Balance denies the remaining allegations
25 in paragraph 20 in the FAC.

26 21. New Balance admits that it has disseminated truthful, qualified, non-
27 misleading information regarding the manufacturing of New Balance shoes that
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1 occurs in the United States on YouTube and refers to those videos for the true and
2 accurate content contained therein. New Balance denies the remaining allegations
3 in paragraph 21 in the FAC.

4 22. New Balance admits that it has disseminated truthful, qualified, non-
5 misleading information regarding the manufacturing of New Balance shoes that
6 occurs in the United States on YouTube and refers to those videos for the true and
7 accurate content contained therein. New Balance denies the remaining allegations
8 in paragraph 22 in the FAC.

9 23. New Balance admits that it has disseminated truthful, qualified, non-
10 misleading information regarding the manufacturing of New Balance shoes that
11 occurs in the United States on YouTube and refers to those videos for the true and
12 accurate content contained therein. New Balance denies the remaining allegations
13 in paragraph 23 in the FAC.

14 24. New Balance admits that the dissemination of truthful, qualified, non-
15 misleading statements regarding the manufacturing of New Balance shoes that
16 occurs in the United States is a part of New Balance's marketing through multiple
17 channels. New Balance denies the remaining allegations in paragraph 24 of the
18 FAC.

19 25. New Balance admits that it disseminates truthful, qualified, non-
20 misleading statements regarding the manufacturing of New Balance shoes that
21 occurs in the United States in connection with the packaging and labelling of its
22 products. New Balance denies the remaining allegations in paragraph 25 of the
23 FAC.

24 26. New Balance admits that it disseminates truthful, qualified, non-
25 misleading statements regarding the manufacturing of New Balance shoes that
26 occurs in the United States in connection with the packaging and labelling of its
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1 products. New Balance denies the remaining allegations in paragraph 26 of the
2 FAC.

3 27. New Balance admits that it disseminates truthful, qualified, non-
4 misleading statements regarding the manufacturing of New Balance shoes that
5 occurs in the United States in connection with the packaging and labelling of its
6 products. New Balance denies the remaining allegations in paragraph 27 of the
7 FAC.

8 28. New Balance admits that it disseminates truthful, qualified, non-
9 misleading statements regarding the manufacturing of New Balance shoes that
10 occurs in the United States in connection with the packaging and labelling of its
11 products. New Balance denies the remaining allegations in paragraph 28 of the
12 FAC.

13 29. New Balance admits that it disseminates truthful, qualified, non-
14 misleading statements regarding the manufacturing of New Balance shoes that
15 occurs in the United States in connection with the packaging and labelling of its
16 products. New Balance denies the remaining allegations in paragraph 29 of the
17 FAC.

18 30. New Balance admits that it disseminates truthful, qualified, non-
19 misleading statements regarding the manufacturing of New Balance shoes that
20 occurs in the United States in connection with multiple models of its shoes on its
21 website, and refers to its website for those true and accurate statements. New
22 Balance denies the remaining allegations in paragraph 30 of the FAC.

23 31. New Balance admits that it disseminates truthful, qualified, non-
24 misleading statements regarding the manufacturing of New Balance shoes that
25 occurs in the United States in connection with multiple models of its shoes on its
26 website, and refers to its website for those true and accurate statements. New
27 Balance denies the remaining allegations in paragraph 31 of the FAC.

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1 32. New Balance believes that truthful information regarding the use of
2 domestic manufacturing should be available to the public to allow for informed
3 purchasing decisions. New Balance is without sufficient information to form a
4 belief regarding the truth of the remaining allegations in paragraph 32, and therefore
5 denies those allegations.

6 33. New Balance believes that truthful information regarding the use of
7 domestic manufacturing should be available to the public to allow for informed
8 purchasing decisions. New Balance denies the remaining allegations in paragraph
9 33 of the FAC.

10 34. New Balance admits that its website contains pricing information
11 regarding certain of its shoes and refers to that pricing information for its true and
12 accurate content. New Balance denies the remaining allegations in paragraph 34 of
13 the FAC.

14 35. New Balance admits that it disseminates truthful, qualified, non-
15 misleading statements regarding the manufacturing of New Balance shoes that
16 occurs in the United States. New Balance admits that, as it discloses to consumers,
17 certain materials used in some domestically manufactured shoes are imported from
18 outside of the United States, including from some countries in Asia. New Balance
19 denies the remaining allegations contained in paragraph 35 of the FAC.

20 36. New Balance admits the allegations in paragraph 36 of the FAC.

21 37. New Balance denies the allegations contained in paragraph 37 of the
22 FAC.

23 38. New Balance is without sufficient information to form a belief
24 regarding the truth of the allegations in paragraph 38 of the FAC and therefore
25 denies them.

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1 39. New Balance is without sufficient information to form a belief
2 regarding the truth of the allegations in paragraph 39 of the FAC and therefore
3 denies them.

4 40. New Balance is without sufficient information to form a belief
5 regarding the truth of the allegations in paragraph 40 of the FAC and therefore
6 denies them.

7 41. New Balance denies the allegations in paragraph 41 of the FAC.

8 42. New Balance denies the allegations in paragraph 42 of the FAC.

9 43. Paragraph 43 of the FAC states legal conclusions to which no response
10 is required. To the extent that a response is required, New Balance denies the
11 allegations in paragraph 43 of the FAC.

12 44. Paragraph 44 of the FAC states legal conclusions to which no response
13 is required. To the extent that a response is required, New Balance denies the
14 allegations in paragraph 44 of the FAC.

15 45. Paragraph 45 of the FAC states legal conclusions to which no response
16 is required. To the extent that a response is required, New Balance denies the
17 allegations in paragraph 45 of the FAC.

18 46. New Balance denies the allegations in paragraph 46 of the FAC.

19 47. New Balance denies the allegations in paragraph 47 of the FAC.

20 48. New Balance denies the allegations in paragraph 48 of the FAC.

21 49. New Balance denies the allegations in paragraph 49 of the FAC.

22 50. New Balance denies the allegations in paragraph 50 of the FAC.

23 51. New Balance denies the allegations in paragraph 51 of the FAC.

24 52. New Balance denies the allegations in paragraph 52 of the FAC.

25 53. New Balance denies the allegations in paragraph 53 of the FAC.

26 54. New Balance denies the allegations in paragraph 54 of the FAC.

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1 55. New Balance incorporates by reference its responses to the allegations
2 contained in paragraphs 1 through 55 of the FAC.

3 56. Paragraph 56 of the FAC states legal conclusions to which no response
4 is required. To the extent that any response is required, New Balance denies the
5 allegations in paragraph 56 of the FAC.

6 57. New Balance denies the allegations in paragraph 57 of the FAC.

7 58. New Balance denies the allegations in paragraph 58 of the FAC.

8 59. New Balance denies the allegations in paragraph 59 of the FAC.

9 60. New Balance denies the allegations in paragraph 60 of the FAC.

10 61. Paragraph 61 of the FAC states legal conclusions to which no response
11 is required. To the extent that any response is required, New Balance denies the
12 allegations in paragraph 61 of the FAC.

13 62. New Balance incorporates by reference its responses to the allegations
14 contained in paragraphs 1 through 61 of the FAC.

15 63. Paragraph 63 of the FAC states legal conclusions to which no response
16 is required. To the extent that any response is required, New Balance denies the
17 allegations in paragraph 63 of the FAC.

18 64. Paragraph 64 of the FAC states legal conclusions to which no response
19 is required. To the extent that any response is required, New Balance denies the
20 allegations in paragraph 64 of the FAC.

21 65. Paragraph 65 of the FAC states legal conclusions to which no response
22 is required. To the extent that any response is required, New Balance denies the
23 allegations in paragraph 65 of the FAC.

24 66. New Balance denies the allegations in paragraph 66 of the FAC.

25 67. New Balance denies the allegations in paragraph 67 of the FAC.

26 68. New Balance denies the allegations in paragraph 68 of the FAC.

27 69. New Balance denies the allegations in paragraph 69 of the FAC.

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1 70. Paragraph 70 of the FAC states legal conclusions to which no response
2 is required. To the extent that any response is required, New Balance denies the
3 allegations in paragraph 70 of the FAC.

4 71. Paragraph 71 of the FAC states legal conclusions to which no response
5 is required. To the extent that any response is required, New Balance denies the
6 allegations in paragraph 71 of the FAC.

7 72. Paragraph 72 of the FAC states legal conclusions to which no response
8 is required. To the extent that any response is required, New Balance denies the
9 allegations in paragraph 72 of the FAC.

10 73. New Balance incorporates by reference its responses to the allegations
11 contained in paragraphs 1 through 72 of the FAC.

12 74. Paragraph 74 of the FAC states legal conclusions to which no response
13 is required. To the extent that any response is required, New Balance denies the
14 allegations in paragraph 74 of the FAC.

15 75. New Balance denies the allegations in paragraph 75 of the FAC.

16 76. Paragraph 76 of the FAC states legal conclusions to which no response
17 is required. To the extent that any response is required, New Balance denies the
18 allegations in paragraph 76 of the FAC.

19 77. Paragraph 77 of the FAC states legal conclusions to which no response
20 is required. To the extent that any response is required, New Balance denies the
21 allegations in paragraph 77 of the FAC.

22 78. New Balance denies the allegations in paragraph 78 of the FAC.

23 79. New Balance denies the allegations in paragraph 79 of the FAC.

24 80. New Balance denies the allegations in paragraph 80 of the FAC.

25 81. New Balance denies the allegations in paragraph 81 of the FAC.

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1 82. Paragraph 82 of the FAC states legal conclusions to which no response
2 is required. To the extent that any response is required, New Balance denies the
3 allegations in paragraph 82 of the FAC.

4 83. New Balance incorporates by reference its responses to the allegations
5 contained in paragraphs 1 through 82 of the FAC.

6 84. Paragraph 84 of the FAC states legal conclusions to which no response
7 is required. To the extent that any response is required, New Balance denies the
8 allegations in paragraph 84 of the FAC.

9 85. Paragraph 85 of the FAC states legal conclusions to which no response
10 is required. To the extent that any response is required, New Balance denies the
11 allegations in paragraph 85 of the FAC.

12 86. Paragraph 86 of the FAC states legal conclusions to which no response
13 is required. To the extent that any response is required, New Balance denies the
14 allegations in paragraph 86 of the FAC.

15 87. New Balance denies the allegations in paragraph 87 of the FAC.

16 88. New Balance denies the allegations in paragraph 88 of the FAC.

17 89. New Balance denies the allegations in paragraph 89 of the FAC.

18 90. New Balance denies the allegations in paragraph 90 of the FAC.

19 91. New Balance denies the allegations in paragraph 91 of the FAC.

20 92. New Balance denies the allegations in paragraph 92 of the FAC.

21 93. Paragraph 93 of the FAC states legal conclusions to which no response
22 is required. To the extent that any response is required, New Balance denies the
23 allegations in paragraph 93 of the FAC.

24 94. New Balance incorporates by reference its responses to the allegations
25 contained in paragraphs 1 through 93 of the FAC.

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1 95. Paragraph 95 of the FAC states legal conclusions to which no response
2 is required. To the extent that any response is required, New Balance denies the
3 allegations in paragraph 95 of the FAC.

4 96. Paragraph 96 of the FAC states legal conclusions to which no response
5 is required. To the extent that any response is required, New Balance denies the
6 allegations in paragraph 96 of the FAC.

7 97. New Balance denies the allegations in paragraph 97 of the FAC.

8 98. New Balance denies the allegations in paragraph 98 of the FAC.

9 99. New Balance incorporates by reference its responses to the allegations
10 contained in paragraphs 1 through 98 of the FAC.

11 100. New Balance denies the allegations in paragraph 100 of the FAC.

12 101. New Balance denies the allegations in paragraph 101 of the FAC.

13 102. New Balance denies the allegations in paragraph 102 of the FAC.

14 103. New Balance denies the allegations in paragraph 103 of the FAC.

15 104. New Balance denies the allegations in paragraph 104 of the FAC.

16 105. New Balance denies the allegations in paragraph 105 of the FAC.

17 106. New Balance incorporates by reference its responses to the allegations
18 contained in paragraphs 1 through 105 of the FAC.

19 107. New Balance denies the allegations in paragraph 107 of the FAC.

20 108. New Balance denies the allegations in paragraph 108 of the FAC.

21 109. New Balance denies the allegations in paragraph 109 of the FAC.

22 110. New Balance denies the allegations in paragraph 110 of the FAC.

23 111. New Balance denies the allegations in paragraph 111 of the FAC.

24 112. New Balance denies that the allegations contained in the FAC give rise
25 to any right to relief by Plaintiffs.

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1 **AFFIRMATIVE DEFENSES**

2 **FAILURE TO STATE A CLAIM**

3 The FAC fails to state a claim upon which relief can be granted because,
4 among other reasons, New Balance makes truthful, qualified, non-misleading claims
5 regarding the domestic manufacturing of its shoes as acknowledged on the face of
6 the FAC.

7 **FIRST AMENDMENT**

8 Cal. Bus. & Prof. Code § 17533.7 violates the First Amendment to the
9 Constitution of the United States of America.

10 In addition, application of Cal. Bus. & Prof. Code § 17533.7 in the manner
11 advanced by Plaintiffs to prohibit truthful, non-misleading commercial speech
12 would violate the First Amendment to the Constitution of the United States of
13 America.

14 **DORMANT COMMERCE CLAUSE**

15 Application of Cal. Bus. & Prof. Code §§ 17500 *et seq.* and 17533.7; and Cal.
16 Civ. Code § 1750 *et seq.* in the manner advanced by Plaintiffs to prohibit truthful,
17 non-misleading commercial speech would violate the dormant commerce clause of
18 the United States Constitution.

19 **LACHES**

20 The FAC is barred by the doctrine of laches.

21 **UNCLEAN HANDS**

22 The FAC is barred by the doctrine of unclean hands.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, New Balance demands a trial by jury of all issues raised by the pleadings which are triable by jury.

Dated: April 20, 2017

Respectfully submitted,

By: s/ Garrett K. Sakimae
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8 *Attorney for Defendant*
9 NEW BALANCE ATHLETICS, INC.

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 SHEILA DASHNAW, WILLIAM
13 MEIER, and SHERRYL JONES,
14 individually, and on behalf of all others
15 similarly situated,

16 Plaintiffs,

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18 NEW BALANCE ATHLETICS, INC., a
19 corporation; and DOES 1 through 50,
20 inclusive,

21 Defendants.

Case No. 3:17-cv-00159-L-JLB

**PROOF OF SERVICE FOR
DEFENDANT NEW BALANCE
ATHLETICS, INC.'S FIRST
AMENDED ANSWER TO FIRST
AMENDED COMPLAINT**

Judge: Honorable M. James Lorenz
Courtroom: 5B

1 **PROOF OF SERVICE**

2 The undersigned hereby certifies that a true and correct copy of the above and
3 foregoing document has been served on April 20, 2017 to all counsel of record who
4 are deemed to have consented to electronic service via the Court’s CM/ECF system
5 per Civ. L.R. 5.4(d). Any other counsel of record will be served by electronic mail
6 and certified U.S. Mail.

7 I declare under penalty of perjury under the laws of the United States of
8 America that the above is true and correct. Executed on April 20, 2017, in San
9 Diego, California.

10
11 Dated: April 20, 2017

Respectfully submitted,

12
13 By: s/ Garrett K. Sakimae
14 Garrett K. Sakimae