

LAW OFFICES OF RONALD A. MARRON

RONALD A. MARRON (SBN 175650)

ron@consumersadvocates.com

SKYE RESENDES (SBN 278511)

skye@consumersadvocates.com

ALEXIS M. WOOD (SBN 270200)

alexis@consumersadvocates.com

651 Arroyo Drive

San Diego, California 92103

Telephone: (619) 696-9006

Facsimile: (619) 546-6665

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUNICE JOHNSON, individually, on
behalf of all others similarly situated, and
the general public,

Plaintiff,

v.

TRIPLE LEAF TEA INC.;

Defendant.

CASE NO.:
CLASS ACTION

COMPLAINT FOR:

- 1. VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT [CIV. CODE §§ 1750, *et seq.*];**
- 2. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW [BUS. & PROF. CODE §§ 17200, *et seq.*];**
- 3. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW [BUS. & PROF. CODE §§ 17500, *et seq.*];**
- 4. BREACH OF EXPRESS WARRANTY;**
- 5. BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY;**

DEMAND FOR JURY TRIAL

1 Plaintiff EUNICE JOHNSON (“Plaintiff”), by and through her attorneys of record,
2 brings this action on behalf of herself, all others similarly situated, and the general public
3 (“Plaintiff”) against Defendant TRIPLE LEAF TEA INC. (“Triple Leaf” or “Defendant”).
4 Plaintiff alleges the following upon their own knowledge, or where there is no personal
5 knowledge, upon information and belief and the investigation of her counsel:

6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as
8 amended by the Class Action Fairness Act of 2005, as a matter in controversy that exceeds
9 the sum of \$5,000,000.00, exclusive of costs and interest. On information and belief, more
10 than two-thirds of the members of the class are citizens of a state different from the
11 Defendant. This Court has supplemental jurisdiction over the state law claims pursuant to
12 28 U.S.C. § 1367.

13 2. Personal jurisdiction derives from the fact that Defendant Triple Leaf is
14 incorporated in California, maintains its principal place of business in California, and
15 conducts business within the State of California and within this judicial district.

16 3. Venue is proper within this district pursuant to 28 U.S.C. § 1391(b)(2)
17 because many of the acts and transactions occurred in this district and because Defendant:

18 (i) is authorized to conduct business in this district and has intentionally availed itself
19 of the laws and markets within this district through the promotion, marketing, distribution
20 and sale of its products in this district;

21 (ii) does substantial business in this district;

22 (iii) advertises to consumers residing in this district; and

23 (iv) is subject to personal jurisdiction in this district.

24 **PARTIES**

25 4. On information and belief, at all times relevant to this matter Defendant
26 Triple Leaf was a California corporation with its principal place of business located at 20
27 Buena Vista Road, South San Francisco, California 94080.

28 5. At all times relevant herein, Defendant Triple Leaf advertised, marketed,

1 distributed, and sold mixtures of botanicals, in tea bags, for the preparation of herbal teas.
2 In particular, Defendant advertised, marketed and distributed three products, each
3 comprised of senna leaf and Chinese mallow, which Defendant calls “Dieter’s Green Herbal
4 Tea,” “Ultra Slim Herbal Tea,” and “Super Slimming Herbal Tea” (together, “Senna Diet
5 Products” or “Products”), transacting business in this district and throughout the United
6 States.

7 6. Defendant advertised, marketed and distributed the Senna Diet Products in
8 several package sizes, iterations and variations to consumers throughout this district, the
9 state of California and the United States.

10 7. At all times relevant to this matter, Plaintiff Eunice Johnson resided, and
11 continues to reside, in Turlock, California.

12 8. Members of the putative Class reside in California, and other states in the
13 United States.

14 9. During the Class period, Plaintiff Eunice Johnson was exposed to and saw
15 Defendant’s claims about Dieter’s Green tea (the “Product”) on the Product’s packaging,
16 which claimed, *inter alia*, that the Product was effective for weight-loss. Plaintiff
17 purchased the Product in reliance on those packaging claims at either a Price Chopper or
18 Hen House store in the Kansas City, Missouri area, around November of 2012 for
19 approximately \$3.00, and suffered injury in fact as a result of Defendant’s unfair
20 competition as described herein.

21 10. Plaintiff are informed and believe and thereon allege that at all times herein
22 mentioned the Defendant and Defendant’s employees were the agents, servants and
23 employees of the Defendant, acting within the purpose and scope of that agency and
24 employment.

25 **INTRODUCTORY FACTS**

26 11. This is a consumer protection class action lawsuit on behalf of purchasers of
27 Triple Leaf brand products marketed by Defendant as “Dieter’s Green Herbal Tea,” “Ultra
28 Slim Herbal Tea,” and “Super Slimming Herbal Tea” (together, “Senna Diet Products” or

1 “Products”).

2 12. For over ten years, the Senna Diet Products have been and continue to be
3 marketed by the Defendant, Triple Leaf, as weight loss “teas,” which are claimed to be
4 “Herbal Dietary Supplement[s]” that “Offer Traditional Herbal Support While Dieting.”
5 See Exhibits 1 and 2.

6 13. For over ten years, the Senna Diet Products have been and continue to be
7 marketed by Defendant as a means of losing and managing weight.

8 14. The predominant ingredient in Triple Leaf’s Senna Diet Products, however,
9 is senna leaf, a source of the dangerous laxative senna. Senna is the generic descriptor of a
10 heterogenous mixture comprised of highly variable amounts of chemical irritants such as
11 anthraquinone glycosides, free anthraquinones and di-anthrone glycosides (“sennosides”
12 designated A, B, C, and D).¹ Among these constituents, sennosides A and B are responsible
13 for more than 80% of the biological activity of senna leaf², functioning as “stimulant
14 laxatives” by irritating the intestinal lining.

15 15. Senna is described in the United States Pharmacopeia (“USP”) as a crude
16 drug used as laxative and cathartic for the treatment of constipation and for bowel
17 evacuation.³

18 16. But Senna can actually thwart weight loss by slowing the metabolism and
19 causing chronic bloating and constipation. Also, senna may cause abdominal cramps,
20 nausea, fainting, breathing difficulties, fluctuations in body temperature, diarrhea, and even
21 organ failure.⁴

22 _____
23 ¹ V.E. TYLER *et al.*, PHARMACOGNOSY, 65 (Lea and Febiger, 9th ed., 1988).

24 ² A. Stoll & B. Becker, *Sennoside A and B, the Active Principles of Senna*, 7
25 Fortschritte der Chemie Organischer Naturstoffe 248 – 269 (1950).

26 ³ UNITED STATES PHARMACOPEIA 1516-17 (United States Pharmacopeial Convention,
27 24th ed., 2000).

28 ⁴ B. Vanderperren *et al.*, *Acute Liver Failure with Renal Impairment Related to the
Abuse of Senna Anthraquinone Glycosides*, 39(7-8) Ann. Pharmacotherapy, 1353-57
(2005).

1 17. Because the Senna Diet Products contain no weight loss ingredients or fat
2 burners, it is are not an effective treatment for weight loss or appetite suppression and does
3 not in fact work as advertised. Moreover, Senna does not prevent absorptions of calories
4 from food, as it acts to stimulate the large intestine and not the small intestine where
5 nutrient absorption takes place. Accordingly, Senna only effectuates loss of fecal matter
6 and water from the lower bowels, resulting only in dehydration, loss of vital electrolytes
7 and, at times, painful cramping.

8 18. The Senna Diet Products are each labeled as a “Herbal Dietary Supplement”
9 (see Exhibits 1 and 2). Pursuant to the Dietary Supplement Health and Education Act of
10 1994 (“DSHEA”), dietary supplements are “foods” for the purposes of the Food, Drug, and
11 Cosmetic Act (“FDCA”). 21 U.S.C. § 321(ff). Accordingly, the Senna Diet Products are
12 unlawful misbranded foods where Defendant’s product labeling falsely and misleadingly
13 recites that they are effective in managing weight. 21 U.S.C. § 343(a).

14 19. Defendant Triple Leaf conceals from consumers the dangers of consuming its
15 Senna Diet Products.

16 20. Defendant primarily advertises and promotes the Senna Diet Products
17 through labeling claims on the Products’ package. Label descriptions on the Products’
18 packaging, taken as a whole, clearly indicate what the Products are supposed to do and all
19 members of the class were exposed to the Products’ labels as depicted herein because
20 Defendant’s labeling is and was uniform throughout the U.S.

21 21. Like other members of the class, Plaintiff saw, understood, and relied on the
22 “Dieter’s Green Tea” Product’s label, including but not limited to: the false or misleading
23 claims on packages stating that it was a “Dieter’s” tea, offered “Support While Dieting,”
24 and was derived from “time-tested knowledge” possessed by Defendant. (See Exhibits 1, 2
25 and 4.)

26 22. Each of these statements is false and/or misleading because the Product does
27 not provide the advertised benefits but is, in fact, a laxative.
28

1 23. Plaintiff and the class would not have purchased the Products, but for the
2 Products' deceptive labeling claims.

3 24. Defendant's marketing and promotion of the Products is supported by false
4 and misleading claims containing material omissions concerning the Products' efficacy and
5 supposed mechanism of action. Defendant had a duty to disclose the truth behind the
6 Products' supposed efficacy and mechanism of action, to correct the deception its partial
7 disclosure created in minds of consumers.

8 25. When purchasing the Products, Plaintiff was seeking a product that would
9 help her lose weight and support her diet efforts, as Defendant promised, represented and
10 warranted. Moreover, Plaintiff sought a product that was generally healthy, as the
11 Products' advertising promises a natural means to help lose weight.

12 26. Plaintiff purchased the Product believing it had the qualities she sought,
13 based on the Product's deceptive labeling, but the Product was actually unacceptable to her
14 as it is, in fact, a laxative and not a weight loss aid.

15 27. Moreover, like all reasonable consumers and members of the class, Plaintiff
16 considers a label's compliance with federal law a material factor in their purchasing
17 decisions. Plaintiff is generally aware that the federal government carefully regulates
18 packaged food products and diet supplements and therefore has come to trust that
19 information conveyed on these type of products' labels is truthful, accurate, complete, and
20 fully in accordance and compliance with the law. As a result, Plaintiff trusts she can
21 compare competing products on the basis of their labeling claims, to make a purchasing
22 decision.

23 28. Like all reasonable consumers and members of the class, Plaintiff would not
24 purchase a product she knew was misbranded under federal law, *see* 21 U.S.C. § 343, which
25 the federal government prohibits selling, *id.* § 331, and which carries with its sale criminal
26 penalties, *id.* § 333. Plaintiff could not trust that the label of a product misbranded under
27 the law is truthful, accurate and complete.

28 29. Similarly, like all reasonable consumers and members of the class, Plaintiff

1 would not purchase a product she knew was an illegally marketed new drug for which the
2 FDA has not determined its safety and efficacy.

3 30. In light of the foregoing, reasonable consumers, including Plaintiff and other
4 members of the class, were and are likely to be deceived by Defendant's advertising and
5 marketing practices as detailed herein.

6 31. Further, Plaintiff and the Class purchased the Product instead of competing
7 products based on the false statements and misrepresentations described herein.

8 32. Instead of receiving a product that had the weight loss and diet support
9 advantages advertised, Plaintiff and the Class received a product worth much less, or which
10 was worthless, since the Product not only did not work but causes effects opposite to those
11 advertised.

12 33. Plaintiff and the Class lost money as a result of Defendant's deception in that
13 Plaintiff did not receive what she had paid for.

14 34. Plaintiff and the Class altered their position to their detriment and suffered
15 damages in an amount equal to the amount they paid for the Products.

16 35. Plaintiff bring this action on behalf of herself and all other similarly situated
17 consumers in the United States or, in the alternative, California and states with laws that do
18 not materially differ from California, to halt the dissemination of Defendant's deceptive and
19 false advertising message about the Products, to correct the false and misleading perception
20 it has created in the minds of consumers, and to compensate the Class members wronged by
21 the Defendant's conduct. Plaintiff alleges violations of the Consumers Legal Remedies Act
22 (Cal. Civ. Code §§ 1750, *et seq.*, "CLRA"), Unfair Competition Law (Cal. Bus. & Prof.
23 Code §§ 17200, *et seq.*), False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*),
24 breach of express warranty, and breach of implied warranty.

25 **SPECIFIC FACTUAL ALLEGATIONS**

26 36. Defendant Triple Leaf has used and continues to use labeling, advertising,
27 and the Internet, to market Dieter's Green Herbal Tea, Ultra Slim Herbal Tea and Super
28 Slimming Herbal Tea ("Senna Diet Products" or "Products"), which Defendant claims, *inter*

1 *alia*, are “Chinese Medicinals,” which support or assist in dieting and weight loss and are
2 derived from “time-tested knowledge” held by Defendant.

3 **The Senna Diet Products’ Retail Sales Locations**

4 37. The Senna Diet Products are sold at a variety of retail locations in California
5 and across the United States, including Vons markets and the Vitamin Shoppe.

6 38. In addition, Defendant sells the Senna Diet Products online on a variety of
7 third-party websites, such as amazon.com, vitaminshoppe.com and vitacost.com.

8 **The Composition of the Senna Diet Products**

9 39. The Senna Diet Products, which Defendant purports to be “Herbal Dietary
10 Supplements,” consist of “proprietary herbal blends” of botanicals packed into tea bags.
11 The predominant ingredient of each of the Products’ proprietary blends is a crude senna leaf
12 preparation that contains highly variable amounts of sennosides that act as strong stimulant
13 laxatives when consumed after brewing a tea by steeping the product in hot water.

14 40. Each of the Products also contains a second laxative, Chinese mallow,
15 referred to by Defendant as “Whorled mallow leaf.” (See Exhibit 3.)

16 **Senna is Ineffective for Weight Loss Because it is Active in the Colon and Not in** 17 **the Small Intestine**

18 41. Senna has a laxative effect, but is not a bulk-forming laxative. Bulk-forming
19 laxatives are generally considered safe for regular use. See J. Tack *et al.*, “*Diagnosis and*
20 *Treatment of Chronic Constipation – a European Perspective*,” 23(8) *Neurogastroenterol*
21 *Motil*____697-710 (August 2011), available at [http://onlinelibrary.](http://onlinelibrary.wiley.com/doi/10.1111/j.1365-2982.2011.01709.x/full)
22 [wiley.com/doi/10.1111/j.1365-2982.2011.01709.x/full](http://onlinelibrary.wiley.com/doi/10.1111/j.1365-2982.2011.01709.x/full) (accessed March 4, 2014).

23 42. Senna is a stimulant laxative that stimulates contractions in muscles of the
24 colon to increase bowel movements. G. Staumon, *et al.*, “*Sennosides and Human Colonic*
25 *Motility*,” 36(Suppl 1) *Pharmacology* 49-56 (1988), abstract available at
26 <http://www.ncbi.nlm.nih.gov/pubmed/3285363> (accessed March 3, 2014). Sennosides A
27 and B are themselves inactive until broken down into smaller molecules called anthrones by
28 means of bacterially-derived enzymes present only in the large intestine (colon). P. De

1 Witte P & L. Lemli, “*The Metabolism of Anthranoid Laxatives,*”
2 37 *Hepatogastroenterol.* 601-605 (1990), *abstract available at*
3 <http://www.ncbi.nlm.nih.gov/pubmed/2289777> (accessed March 6, 2014).

4 43. Because of their molecular structure, sennosides A and B are protected
5 against hydrolysis by stomach acid as well as breakdown by the enzymes present in the
6 small intestine. J. Lemli, “*Metabolism of Sennosides—an Overview,*” 36(Suppl. 1)
7 *Pharmacol.* 126-128 (1988), *abstract available at*
8 <http://www.ncbi.nlm.nih.gov/pubmed/3368510> (accessed March 5, 2014.) Senna is thus
9 pharmacologically inactive until it reaches the colon, where it stimulates contractions,
10 causing soft stools and diarrhea. J. Fioramonti, *et al.*, “*Effect of Sennosides on Colon*
11 *Motility in Dogs,*” 36 (Suppl.1) *Pharmacol.* 23-30 (1988), *abstract available at*
12 <http://www.ncbi.nlm.nih.gov/pubmed/3285361> (accessed March 3, 2014) (Senna given
13 before meals caused strong coordinated intestinal contractions localized within the colon.).

14 44. The vast majority of nutrients are absorbed in the small intestine by means of
15 intestinal villi. The colon, on the other hand, lacks villi, therefore little or no nutrient
16 absorption occurs there. As such, real weight-loss cannot occur from Senna because Senna
17 acts to stimulate evacuation of the colon (large intestine) and not the small intestine, thus
18 permitting absorption of calories from food to continue unabated.

19 *The Dangers of Senna*

20 45. **Toxicity.** Senna contains components that are highly toxic. P. Hietala *et al.*,
21 “*Laxative Potency and Acute Toxicity of Some Anthroquinone Derivatives, Senna Extracts*
22 *and Fractions of Senna Extracts,*” 61 *Pharmacol. Toxicol.* 153-156 (1987), *abstract*
23 *available at* <http://www.ncbi.nlm.nih.gov/pubmed/3671329> (accessed March 6, 2014.)

24 46. **Hepatitis.** Long-term use of Senna may lead to hepatitis. U. Beuers *et al.*,
25 “*Hepatitis After Chronic Abuse of Senna,*” 337 *Lancet* 372-373 (1991).

26 47. **Liver failure.** Excessive use of Senna can cause liver failure. Vandeperren
27 *et al.*, “*Acute Liver Failure with Renal Impairment Related to the Abuse of Senna*
28 *Antraquinone Glycosides,*” 39 *Ann. Pharmacother.* 1353-1357 (2005), *abstract available at*

1 <http://www.ncbi.nlm.nih.gov/pubmed/15956233> (accessed March 4, 2014).

2 48. **Arthritis and finger “clubbing.”** When anorexics use Senna habitually,
3 they may develop enlarged (“clubbed”) fingertips and arthritis, in addition to the other
4 dangerous side effects of Senna. A.K. Lim *et al.*, “Anorexia Nervosa and Senna Misuse:
5 Nephrocalcinosis, Digital Clubbing and Hypertrophic Osteoarthropathy,” 188 *Med. J.*
6 *Australia* 121-122 (2008).

7 49. **Cancer.** Senna may cause cancer. B.A. van Gorkom *et al.*, “*Review article:*
8 *Anthranoid Laxatives and Their Potential Carcinogenic Effects,*” 13 *Alimentary*
9 *Pharmacol. & Therapeutics* 443-452 (1999), *available at*
10 <http://onlinelibrary.wiley.com/doi/10.1046/j.1365-2036.1999.00468.x/full> (accessed March
11 6, 2014).

12 50. **Laxative Dependency.** Long term chronic use (defined as three or more
13 times a week for one year or more) of stimulant laxatives such as Senna can result in
14 damage to the nerves that control normal function of the colon (large intestine); stimulant
15 laxatives can cause dependence, with a “vicious cycle” of increased use, if the intestinal
16 muscles “forget” how to work on their own. *See* J. Joo, *et al.*, “*Alterations in Colonic*
17 *Anatomy Induced by Chronic Stimulant Laxatives: The Cathartic Colon Revisited,*” 6(4) *J.*
18 *Clin. Gastroenterol.* 283-286 (June 1998), *abstract available at*
19 <http://www.ncbi.nlm.nih.gov/pubmed/9649012>; *see also* Fioramonti, *supra* (Morphological
20 changes in canine colons post-senna administration are consistent with nerve damage.).

21 51. Accordingly, the dangers of Senna are numerous, significant and well-
22 documented in peer-reviewed scientific literature.

23 **Specific Misrepresentations and Deceptive Acts**

24 52. Defendant is fully aware that its Senna Diet Products cause diarrhea;
25 nevertheless they tout it as means of detoxification of the human body, along with other
26 false and misleading claims.

27 **a. Product Names**

28 53. Defendant Triple Leaf chose deceptive names for each of its Senna Diet

1 Products, which are prominently displayed on the front labels of the Products (*see* Exhibits
2 1 and 2) and elsewhere on the Products' retail packaging:

3 a. Dieter's Green. This name misleads consumers to believe this product has
4 ingredients to help one diet or lose weight because it explicitly states that it is a "Dieter's"
5 product.

6 b. Ultra Slim. This name misleads consumers to believe this product has ingredients
7 to help one diet or lose weight as it is formed from the word "Ultra," implying superlative
8 power plus the word "Slim," which expresses the body type desired by dieters.
9 Accordingly, this product name falsely implies that it is highly effective for use by persons
10 desiring to lose weight and become "Slim," whereas in fact Ultra Slim is ineffective for
11 achieving actual weight reduction.

12 c. Super Slimming. This name misleads consumers to believe this product has
13 ingredients to help one diet or lose weight as it is formed from the word "Super," implying
14 superlative power plus the word "Slimming," which expresses the effect desired by dieters.
15 Accordingly, this product name falsely implies that it is highly effective for use by persons
16 desiring to lose weight by means of "Slimming," whereas in fact Super Slimming is
17 ineffective for achieving actual weight reduction.

18 54. Further, the Senna Diet Products falsely and deceptively imply they are
19 useful for dieting but most diets last substantially longer than the limited time period
20 beyond which Senna use becomes increasingly dangerous, as set forth herein.

21 **b. Front Labels (Vertical and Horizontal)**

22 55. Defendant Triple Leaf manufactures its retail package with two different
23 panels of the Products' boxes serving for vertical⁵ or horizontal⁶ display on store shelves.
24 (*See* Exhibits 1 and 2.) These front labels carry false and deceptive statements common to
25 all of Defendant's Senna Diet Products, which are exposed to consumers inspecting the
26 Senna Diet Products on the shelves of retail stores.

27 ⁵ *I.e.*, "portrait" mode.

28 ⁶ *I.e.*, "landscape" mode.

1 there is no evidence that senna is scientifically established to achieve or support weight loss,
2 and in fact, repeated use of laxatives is contraindicated for weight loss.

3 **d. Other Misrepresentation and Material Omissions**

4 60. **Concealment of the dangers of senna.** The dangers of Senna ingestion are
5 well-documented as set forth above.

6 61. The American Herbal Products Association (AHPA) warns against long-term
7 use of senna leaf,⁸ as does the FDA.⁹

8 62. The State of California has established labeling requirements that supersede
9 the AHPA requirement for products sold in California. All dietary supplements that contain
10 stimulant laxatives, including senna leaf as in Defendant's Products, are required to bear the
11 following label: "NOTICE: This product contains Senna. Read and follow directions
12 carefully. Do not use if you have or develop diarrhea, loose stools, or abdominal pain
13 because Senna may worsen these conditions and be harmful to your health. Consult your
14 physician if you have frequent diarrhea or if you are pregnant, nursing, take medication, or
15 have a medical condition." ("Senna Notice.") Title 17, Cal. Code of Regs. §§ 10200 and
16 10750; *see also* 21 C.F.R. § 310.545(a)(8); 58 Fed. Reg. 27636, 27640-27641.

17 63. While the end panel of the Product bears the required Senna Notice in small
18 type (*see* Exhibit 3), the front and sides of the packaging make advertising claims that
19 directly contradict that disclaimer along with the known properties and dangers of repeated
20 or ongoing use of Senna. Accordingly, Defendant's advertising claims are false and
21 misleading in that they conceal the dangers of Senna use.

22
23 ⁸ AHPA recommends that senna leaf products be labeled, "Do not use this product if
24 you have abdominal pain or diarrhea. Consult a healthcare provider prior to use if you
25 are pregnant or nursing. Discontinue use in the event of diarrhea or watery stools. Do
26 not exceed recommended dose. Not for long-term use." *See*
http://www.ahpa.org/Default.aspx?tabid=224#section_stimulant_laxativ. (Viewed
27 October 8, 2013.)

28 ⁹ P. Kurtzweil, "Dieter's Brews Make Tea Time a Dangerous Affair," *FDA Consumer*,
July-August 1997, pp. 6-11.

1 64. **Concealment of the dangers of Chinese mallow.** Chinese mallow (*Malva*
2 *verticillata*), another crude botanical with strong laxative effects, is also a major
3 components of the Products' "proprietary herbal blend." (See Exhibit 3.) One of Chinese
4 mallow's major bio-active components is mucilage, which probably functions as a
5 lubricating laxative.¹⁰

6 65. In addition to its laxative properties, Chinese mallow is also a diuretic.¹¹ Use
7 of diuretics without dietary potassium supplements can lead to hypokalemia (low serum
8 potassium), which may cause heart palpitations, fatigue and muscle spasms.¹²

9 66. In addition to mucilage, Chinese mallow seeds also contain polysaccharides
10 and flavonoids.¹³ Some studies indicate anti-complementary activity is present in
11 polysaccharides isolated from Chinese mallow.¹⁴ Suppression of complement may reduce
12 inflammation but may also suppress immune responses, in particular anti-viral immunity.¹⁵
13 Thus consumption of Chinese mallow could make consumers more vulnerable to influenza
14 and other serious viral health threats.

15 67. Additionally, Chinese mallow consumption can cause significant drops in
16 serum blood sugar levels. While this property has led some researchers to propose
17

18 ¹⁰ See Committee on Herbal Medicine Products, ASSESSMENT REPORT ON LINUM USITATISSIMUM L.,
19 SEMEN, European Medicines Agency, London (October 25, 2006) (a muscilagenous preparation of
20 dried ripe linseeds exhibited lubricant laxative activity and also increased volume of stool); available
21 at [http://www.ema.europa.eu/docs/en_GB/document_library/Herbal_-_](http://www.ema.europa.eu/docs/en_GB/document_library/Herbal_-_HMPC_assessment_report/2010/01/WC500059156.pdf)
22 [_HMPC_assessment_report/2010/01/WC500059156.pdf](http://www.ema.europa.eu/docs/en_GB/document_library/Herbal_-_HMPC_assessment_report/2010/01/WC500059156.pdf). (Retrieved January 11, 2014.)

23 ¹¹ T. Tsarong, TIBETAN MEDICINAL PLANTS, Tibetan Medical Publications, West Bengal (1994).

24 ¹² See <http://www.nlm.nih.gov/medlineplus/ency/article/000479.htm>. (Viewed January 30, 2014.)

25 ¹³ Natural Products Research Institute, Seoul National University, MEDICINAL PLANTS IN THE
26 REPUBLIC OF KOREA, World Health Organization, Manila (1998).

27 ¹⁴ M. Tomoda, *et al.*, *Constituents of the Seed of Malva Verticillata. VIII. Smith*
28 *Degradation of MVS-VI, the Major Acidic Polysaccharide, and Anti-Complementary*
Activity of Products, 40(8) Chem. Pharm. Bull. (Tokyo) 2219-21 (1992).

¹⁵ "Complement is one of the first lines of host defence to be faced and countered by
viruses as they struggle to establish an infection." P. Lachmann & A. Davies,
Complement and Immunity to Viruses, 159 Immunol. Rev. 69-77 (October 1997).

1 compounds from Chinese mallow as an anti-diabetic treatment,¹⁶ it makes Chinese mallow
2 hazardous to the health of consumers who are already taking conventional diabetes
3 medications. In these patients, Chinese mallow can lead to dangerous drops in blood sugar
4 (hypoglycemia).¹⁷

5 68. Accordingly, Defendant's advertising of the Products misleads consumers
6 where it does not warn them against the dangers of Chinese mallow in that the consumption
7 of teas made from crude preparations of Chinese mallow cannot be considered safe for
8 consumers.

9 **Defendant's Constructive and Actual Knowledge**

10 69. Notwithstanding Defendant's false and deceptive weight-loss claims, FDA has
11 approved Senna for use as a "digestive aid" only. See 21 C.F.R. § 310.545 (8)(ii); see also
12 63 Fed. Reg. 33592 (June 19, 1998) (grouping Senna with other stimulant laxatives).
13 Accordingly, Defendant is charged with constructive knowledge that the only proper claims
14 for Senna-containing products are as laxatives. Moreover, Defendant has demonstrated
15 actual knowledge that Senna is properly claimed as a laxative by Defendant's marketing of
16 its "Herbal Laxative" product (see Exhibit 5) which also contains the same active
17 ingredient, Senna, as contained in Defendant's Senna Diet Products.

18 **Exceptions to Statutes of Limitations**

19 70. **Fraudulent concealment.** At all relevant times, and as far back as 1998,
20 Defendant was both constructively and actually aware that Senna was approved by the FDA
21 for use as a "digestive aid" and as a laxative, and not for weight loss. See 21 C.F.R. §
22 310.545(8)(ii); see also 63 Fed. Reg. 33592 (June 19, 1998). Therefore, at all relevant
23 times Defendant had a duty to inform consumers that the Senna Diet Products were
24

25 ¹⁶Y. Jeong & C. Song, *Antidiabetic Activities of Extract from Malva Verticillata Seed*
26 *Via the Activation of AMP-Activated Protein Kinase*, 21(9) J. Microbiol. Biotechnol.
27 921-29 (2011).

28 ¹⁷ See <http://www.webmd.com/vitamins-supplements/ingredientmono-1150-CHINESE%20MALLOW.aspx>. (Viewed January 15, 2014.)

1 laxatives and were ineffective and not approved for weight loss, but Defendant knowingly
2 concealed that fact from members of the putative class herein. Accordingly, the fraudulent
3 concealment exception tolls the statute of limitations on all claims herein.

4 71. **Delayed discovery.** Additionally, or in the alternative, because the Senna
5 Diet Products recited Defendant's false and misleading claims, members of the class could
6 not discover, nor had reason to discovery that the Senna Diet Products were ineffective and
7 not approved for weight loss, and the delayed discovery exception postpones accrual of the
8 limitations period for all members of the putative class.

9 72. **Continuing violation.** Additionally, or in the alternative, because
10 Defendant's misrepresentations and deception continues up to the present, the continuing
11 violation exception tolls all applicable statutes of limitations for all members of the putative
12 class until Defendant's unlawful advertising and labeling is corrected.

13 *Sherman Law Allegations*

14 73. Sherman Food, Drug, and Cosmetic Law ("Sherman Law," located at Cal.
15 Health & Safety Code §§ 109875-111915). The Sherman Law is explicitly authorized by
16 the federal Food, Drug, and Cosmetic Act ("FDCA"). 21 U.S.C. § 343-1.

17 74. The Sherman Law imposes identical requirements to the federal FDCA,
18 including the FDCA's food labeling requirements. See Cal. Health & Safety Code §
19 110100.

20 75. Under the FDCA and the Sherman Law, dietary supplements such as the
21 Senna Diet Products are classified as "foods." 21 U.S.C. § 321(ff). A food shall be deemed
22 to be misbranded if its labeling is false or misleading in any particular. 21 U.S.C. § 343(a);
23 Cal. Health & Safety Code § 110660.

24 76. A dietary supplement is a product that contains a dietary ingredient, such as a
25 vitamin, mineral or herb, which is intended to supplement the diet. 21 U.S.C. §
26 324(ff)(1)(C). Diet supplements, however, are also misbranded if their labeling is false or
27 misleading in any particular.

28 77. Language uniformly present on the Products claims that each of the Products

1 “provides herbal support while dieting.” See Exhibits 1 & 2. The most prominent
2 structure/function claims on Defendant’s packaging are inherent in the names of the Senna
3 Diet Products themselves: Dieter’s Green, Ultra Slim and Super Slimming, in and of
4 themselves and taken together with the “herbal support while dieting” claim all constitute
5 claims that the Senna Diet Products are effective for weight loss or long-term sustained
6 weight loss, i.e., claims that the Products alter the structure or function of the human body.

7 78. Notwithstanding Defendant’s claims, Senna does not effectuate actual weight
8 loss, for the reasons set forth elsewhere herein, i.e., because it effectuates evacuation of the
9 lower bowel only, without interfering with nutrient (and calorie) absorption that occurs
10 exclusively in the small intestine. Thus any weight lost by the user is temporary and
11 attributable to loss of fecal material due to loose stools caused by Senna and loss of fluids
12 caused by Senna’s diuretic effects.

13 79. Accordingly, the weight-loss structure/function claims recited on the
14 packaging of the Senna Diet Products are false and misleading, and the Products are
15 unlawful misbranded foods and diet supplements as set forth above. 21 U.S.C. § 321(ff);
16 21 U.S.C. § 343(a); Cal. Health & Safety Code § 110660.

17 80. The Products’ packages all recite claims of “Support While Dieting” and
18 prominently display product names (Dieter’s Green, Ultra Slim and Super Slimming) that
19 constitute claims that the Products are effective for weight management. These claims are
20 false and misleading as set forth herein.

21 81. These false and misleading claims make the Products, and each of them,
22 misbranded foods under the FDCA, which are accordingly unlawful under the California
23 Sherman Law. *Id.*; Cal. Health & Safety Code §§ 110100, 110105, 110110, 110111.

24 **Reliance and Injury**

25 82. Defendant’s marketing and promotion of Dieter’s Green Herbal Tea, Ultra
26 Slim Herbal Tea, and Super Slimming Herbal Tea (“Senna Diet Products” or “Products”)
27 was supported by false and misleading claims containing material omissions and
28 misrepresentations.

1 83. When purchasing the Products, Plaintiff and the class were seeking products
2 that would provide the benefits, and possessed the efficacy and characteristics, as Defendant
3 marketed, promised, represented and warranted.

4 84. Plaintiff read and relied on the following deceptive claims by Defendant
5 concerning the Products:

- 6 • “Dieter’s Green Tea”
- 7 • “Herbal Support While Dieting”
- 8 • “The Chinese system of herbology has been recorded in ancient texts which are
9 studied and employed even today.”
- 10 • “time-tested knowledge . . . passed down from generation to generation over the
11 centuries.”

12 85. Each of these statements is false and/or misleading for the reasons set forth
13 herein and Defendant’s marketing and promotion is misleading, false, and contains material
14 omissions concerning the Product’s efficacy and supposed mechanism of action.

15 86. Plaintiff and the class purchased the Products believing they had the qualities
16 they sought, based on the Products’ deceptive labeling and marketing, but the Products were
17 actually unacceptable to them as they did not possess the benefits, efficacy, and
18 characteristics advertised.

19 87. In purchasing the Products, Plaintiff and members of the putative class
20 reasonably relied upon the various representations Defendant made on the Products’
21 packaging and its prevalent advertising campaign, including online advertising, as described
22 herein.

23 88. At all times relevant herein, Defendant had a duty to disclose additional
24 and/or complete, accurate information to purchasing consumers, to correct all
25 misunderstandings its omissions and misrepresentations created in the minds of those
26 consumers.

27 89. Absent the misrepresentations and omissions described herein, which were
28 and are material to the average consumer, Plaintiff and class members would not have

1 purchased the Products.

2 90. When purchasing the Products, Plaintiff and Class members were seeking
3 products that would provide the benefits and had the endorsements, proof of efficacy, and
4 characteristics that Defendant marketed, promised, represented and warranted.

5 91. Plaintiff and Class members purchased the Products believing they had the
6 qualities represented on the Products' labeling, but the Products were actually unacceptable
7 to them, as they did not possess the benefits, endorsements, proof, and characteristics as
8 advertised.

9 92. Moreover, like all reasonable consumers and members of the Class, Plaintiff
10 consider a label's compliance with federal law a material factor in their purchasing
11 decisions. Plaintiff is generally aware the federal government carefully regulates OTC
12 products and therefore have come to trust that information conveyed on packaged OTC
13 product labels is truthful, accurate, complete, and fully in accordance and compliance with
14 the law. As a result, Plaintiff trusts she can compare competing products on the basis of
15 their labeling claims, to make a purchasing decision.

16 93. Like all reasonable consumers and members of the Class, Plaintiff would not
17 purchase an OTC product she knew was misbranded under federal law (21 U.S.C. § 352)
18 which the federal government prohibits selling (§ 331), and which carries with its sale
19 criminal penalties (§ 333). *See also* Cal. Health & Safety Code §§ 110100, 110105,
20 110110, 110111. Plaintiff could not trust that the label of a product misbranded under
21 federal law is truthful, accurate and complete. In fact, the Defendant was promoting the
22 Products in violation of the FDCA, making the Products misbranded under California's
23 Sherman Law.

24 94. Similarly, like all reasonable consumers and Class members, Plaintiff would
25 not purchase an OTC product they knew was an illegally marketed new drug for which the
26 FDA has not determined its safety and efficacy.

27 95. In light of the foregoing, reasonable consumers, including Plaintiff and other
28 Class members, were and are likely to be deceived by Defendant's advertising and

1 marketing practices as detailed herein.

2 96. Plaintiff and the Class will be exposed to the Products' false, deceptive, and
3 unlawful labeling claims in the future when they visit a retail store for weight management
4 products unless Defendant agrees, or is enjoined, to change the Products' labeling in
5 response to Plaintiff's claims as set forth herein and in Plaintiff's notice letters.

6 97. Plaintiff and other Class members purchased the Products instead of
7 competing products based on the false statements, misrepresentations and omissions
8 described herein.

9 98. Instead of receiving a product that had the benefits, advantages,
10 endorsements, proof, and characteristics as advertised, Plaintiff and other Class members
11 received a product worth much less, or which was worthless, since the Products do not
12 work; causes no effect or effects reverse of that advertised; and did not possess the
13 characteristics, benefits, endorsements, and proof of efficacy, as advertised by Defendant.

14 99. At all times relevant herein, Defendant had a duty to disclose additional
15 information to purchasing consumers, to correct all misunderstandings their omissions and
16 misrepresentations created in the minds of those consumers.

17 100. Absent the misrepresentations and omission described herein, which were
18 and are material to an average consumer, Plaintiff and other consumers would not have paid
19 what they did for the Products.

20 101. Plaintiff and the Class lost money as a result of Defendant's deception in that
21 Plaintiff and the Class did not receive what they had paid for.

22 102. Plaintiff and the Class altered their position to their detriment and suffered
23 damages in an amount equal to the amount they paid for the Products over the class period.

24 **CLASS ACTION ALLEGATIONS**

25 103. Plaintiff brings this action on behalf of herself and all others similarly
26 situated (the "Class") in accordance with Rule 23(a), (b)(2), and (b)(3) of the Federal Rules
27 of Civil Procedure and seeks certification of the following Class against Defendant:

28 All persons who purchased, on or after April 4, 2010 Defendant's Senna Products (in

1 all packaging sizes and iterations) in the United States for personal or household use.
2 Excluded from the Class are Defendant, its employees, parents, subsidiaries, affiliates,
3 officers and directors, and those who purchased the Products for the purpose of resale.

4 *Or, in the alternative,*

5 All persons who purchased, on or after April 4, 2010 Defendant's Senna Products (in
6 all packaging sizes and iterations) in California and states with laws similar to California,
7 for personal or household use. Excluded from the Class are Defendant, its employees,
8 parents, subsidiaries, affiliates, officers and directors, and those who purchased the Products
9 for the purpose of resale.

10 104. The proposed Class is so numerous that individual joinder of all its members
11 is impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff
12 believes the total number of Class members is at least in the tens of thousands of persons in
13 the State of California and in the hundreds of thousands of persons in the United States.
14 While the exact number and identities of the Class members are unknown at this time, such
15 information can be ascertained through appropriate investigation, discovery or Class
16 definition. The disposition of the claims of the Class members in a single class action will
17 provide substantial benefits to all parties and to the Court.

18 105. Pursuant to Rule 23(b)(2), Defendant has acted or refused to act on grounds
19 generally applicable to the Class, thereby making final injunctive relief or corresponding
20 declaratory relief and damages as to their Products appropriate with respect to the Class as a
21 whole. Retrospective injunctive relief would seek a recall of the Products' false, deceptive
22 and unlawful labeling and benefit the Class equally and as a whole. Prospective injunctive
23 relief would ensure that Class members are only exposed to lawful, truthful and non-
24 misleading advertising of the Products in the future, which will also benefit each member of
25 the Class in equal but indivisible measure. In particular, Defendant has misrepresented or
26 failed to disclose the true nature of the Products being marketed and distributed, as detailed
27 herein, through misrepresentations and omissions on the labeling, by which Defendant acted
28 and refused to act on grounds generally applicable to the Class as a whole.

1 106. There is a well-defined community of interest in the questions of law and fact
2 involved affecting the Plaintiff and the Class and these common questions of fact and law
3 include, but are not limited to, the following:

4 107. Questions of law and fact common to Plaintiff and the Class include:

5 a. Whether Defendant contributed to, committed, and/or are responsible for the
6 conduct alleged herein;

7 b. Whether Defendant's conduct constitutes the violations of law alleged herein;

8 c. Whether Defendant acted willfully, recklessly, negligently, or with gross
9 negligence in the violations of law alleged herein; and

10 d. Whether Class members are entitled to compensatory, injunctive, and other
11 equitable relief.

12 108. By purchasing Defendant's Products, all Class members were subjected to
13 the same wrongful conduct.

14 109. Absent Defendant's deceptive claims, Plaintiff and Class members would not
15 have purchased Defendant's Products.

16 110. Plaintiff's claims are typical of the Class's claims. Plaintiff will fairly and
17 adequately protect the interests of the Class, have no interests that are incompatible with the
18 interests of the Class, and have retained counsel competent and experienced in class
19 litigation.

20 111. The Class is sufficiently numerous, as it includes thousands of individuals
21 who purchased Defendant's Products throughout the United States during the Class Period.

22 112. Class representation is superior to other options for the resolution of the
23 controversy. The relief sought for each Class member is small. Absent the availability of
24 class action procedures, it would be infeasible for Class members to redress the wrongs
25 done to them.

26 113. Defendant has acted on grounds applicable to the Class, thereby making
27 appropriate final injunctive relief or declaratory relief concerning the Class as a whole.

28 114. Questions of law and fact common to the Class predominate over any

1 questions affecting only individual members.

2 115. Class treatment is appropriate under FRCP 23(a), and both 23(b)(2) and
3 23(b)(3). Plaintiff do not contemplate class notice if the Class is certified under FRCP
4 23(b)(2), which does not require notice. Plaintiff contemplates notice via publication if the
5 Class is certified under FRCP 23(b)(3) or if the Court determines Class notice is required
6 notwithstanding that notice is not required under FRCP 23(b)(2). Plaintiff will, if notice is
7 required, confer with Defendant and seek to present the Court with a stipulation and
8 proposed order on the details of a Class notice plan.

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **For Violations of the Consumers Legal Remedies Act**

12 **Civil Code §§ 17500, et seq.**

13 **[On Behalf of Plaintiff and the Class and Against the Defendant]**

14 116. Plaintiff repeat, re-allege and incorporate by reference each and every
15 allegation contained above as if fully set forth herein.

16 117. At all times relevant herein, there was in full force and effect the Consumers
17 Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (the “Consumers Legal
18 Remedies Act”) and similar deceptive practice acts in other states. Plaintiff are consumers
19 as defined by Civil Code § 1761(d). The Products are goods within the meaning of Civil
20 Code § 1761(a).

21 118. Defendant violated and continues to violate the Consumers Legal Remedies
22 Act by engaging in the following practices proscribed by § 1770(a), in transactions with
23 Plaintiff and the Class which were intended to result in, and did result in, the sale of the
24 Products:

- 25 (a) Advertising that the Products are effective for weight loss when they are not;
- 26 (b) Representing that the Products have characteristics, uses or benefits which they do
27 not have;
- 28 (c) Representing that the Products are of a particular standard, quality or grade when

1 they are of another;

2 (d) Advertising the Products with intent not to sell them as advertised;

3 (e) Representing that the Products have been supplied in accordance with a previous
4 representation when they are not;

5 (f) Engaging in conduct that creates a likelihood of confusion or misunderstanding.

6 119. The Defendant's representations amount to false and/or deceptive acts or
7 practices in violation of the Consumers Legal Remedies Act.

8 120. Defendant's actions described herein similarly violated the consumer
9 protection statutes in effect in every state in which Defendant or their affiliates do business.

10 121. Defendant violated the Consumers Legal Remedies Act, and similar
11 provisions in the Consumers Legal Remedies Acts of other jurisdictions within the United
12 States, by making the representations, claims and nondisclosures for the Products, as
13 described herein, when it knew, or should have known, that the representations and
14 advertisements were incomplete, false and misleading.

15 122. Plaintiff and other members of the Class relied upon the Defendant's material
16 misrepresentations as to the quality and attributes of the Products.

17 123. Plaintiff and other members of the Class were likely to be deceived by
18 Defendant's representations about the quality and attributes of the Products, including but
19 not limited to the purported ability of the Senna Diet Products to cause weight loss.

20 124. Plaintiff and other Class members would not have purchased the Products
21 had they known Defendant's claims were misleading, unfounded or untrue, and the true
22 nature of the Products, causing them injury in fact in the form of the lost purchase price for
23 the Products.

24 125. Pursuant to section 1782 *et seq.* of the Consumers Legal Remedies Act,
25 Plaintiff Johnson notified Defendant in writing by certified mail of the particular violations
26 of § 1770 of the Act as to the Product and demanded that Defendant rectify the problems
27 associated with the actions detailed above and give notice to all affected consumers of its
28 intent to so act. Defendant's wrongful business practices regarding the Product constituted,

1 and constitute, a continuing course of conduct in violation of the Consumers Legal
2 Remedies Act since Defendant is still representing that the Product have characteristics,
3 uses, benefits, and abilities which are false and misleading, and have injured and continue to
4 injure Plaintiff and the Class. A copy of Plaintiff’s letter is attached as Exhibit 6 hereto.

5 126. Pursuant to California Civil Code § 1780(a), Plaintiff and the Class seek an
6 order of this Court enjoining the Defendant from continuing to engage in unlawful, unfair,
7 or deceptive business practices and any other act prohibited by law; awarding Plaintiff and
8 the Class restitution and disgorgement; and awarding Plaintiff and the Class damages and
9 punitive damages, and attorney’s fees and costs.

10 **SECOND CAUSE OF ACTION**

11 **Violation of California Business & Professions**

12 **Code Section 17200 et seq. (Unfair Competition Law)**

13 **[On Behalf of Plaintiff and the Class and Against the Defendant]**

14 127. Plaintiff repeat, re-allege and incorporate by reference each and every
15 allegation contained above as if fully set forth herein.

16 128. Business & Professions Code Section 17200 prohibits any “unlawful, unfair
17 or fraudulent business act or practice and unfair, deceptive, untrue or misleading
18 advertising.” For the reasons discussed above, Defendant has engaged in “unlawful”
19 business acts or practices by, among other things, making misrepresentations and omissions
20 of material facts, as set forth more fully above, and violating, among other statutes, Civil
21 Code §§ 1572, 1573, 1709, 1710, 1711, 1770, Business & Professions Code § 17500, *et*
22 *seq.*, Health & Safety Code § 109875, *et seq.*, and the common law.

23 129. The acts, omissions, misrepresentations, practices, and non-disclosures of
24 Defendant as alleged herein constitute “unlawful” business acts and practices in that
25 Defendant’s conduct violates the False Advertising Law, the Consumer Legal Remedies
26 Act, and the Sherman Law. Defendant’s deceptive statements with regards to their Products
27 described herein violate 21 U.S.C. § 343(a), which deems food (including nutritional
28 supplements) misbranded when the label contains a statement that is “false or misleading in

1 any particular”; and Defendant’s conduct is further “unlawful” because it violates the
2 California Sherman Law, see Cal. Health & Safety Code § 109875-111915 (specifically, §§
3 110095, 110100, 110105, 110110, 110111, 110115, 110422 *et seq.*, 110660 *et seq.*), which
4 incorporates the identical provisions of the FDCA.

5 130. Defendant’s actions described herein similarly violated the consumer
6 protection statutes and statutes prohibiting unfair, unlawful or deceptive business acts or
7 practices in effect in every state in which Defendant or their affiliates do business, and the
8 common law of those states.

9 131. Plaintiff and the Class reserve the right to allege other violations of law
10 which constitute other unlawful business acts or practices. Such conduct is ongoing and
11 continues to this date.

12 132. Defendant’s acts, omissions, misrepresentations, practices and non-
13 disclosures as alleged herein also constitute “unfair” business acts and practices within the
14 meaning of Business & Professions Code Section 17200, *et seq.*, and similar statutory
15 provisions in other jurisdictions within the United States, in that their conduct is
16 substantially injurious to consumers, offends public policy, and is immoral, unethical,
17 oppressive, and unscrupulous because the gravity of the conduct outweighs any alleged
18 benefits attributable to such conduct. Plaintiff allege violations of consumer protection,
19 unfair competition and truth in advertising laws resulting in harm to consumers. Plaintiff
20 assert violations of the public policy of engaging in false and misleading advertising, unfair
21 competition and deceptive conduct towards consumers. There were reasonably available
22 alternatives to further Defendant’s legitimate business interests, other than the conduct
23 described herein.

24 133. Defendant’s claims, nondisclosures and misleading statements, as more fully
25 set forth above, were also false, misleading and/or likely to deceive the consuming public
26 within the meaning of Business & Professions Code Section 17200 as to “fraudulent”
27 conduct, and similar provisions protecting consumers in other jurisdictions within the
28 United States. Defendant’s labeling, website and other advertisements, as described herein,

1 were false, deceptive, and/or likely to deceive a reasonable consumer because Defendant is
2 marketing weight loss teas and tablets when, in reality, the Products have no weight loss
3 properties, and/or have less weight loss properties than claimed, and/or because Defendant's
4 omitted material information from the Products' advertising as described herein, such that if
5 Plaintiff and members of the Class had known those material facts, they would not have
6 purchased the Products.

7 134. Plaintiff and the Class were exposed to Defendant's advertising as alleged
8 herein.

9 135. Defendant's conduct caused and continues to cause substantial injury to
10 Plaintiff and members of the Class. Plaintiff suffered injury in fact as a result of
11 Defendant's unfair conduct, in the form of the lost purchase price of the Product, which she
12 purchased after being exposed to Defendant's advertising statements, as described herein.

13 136. Defendant's conduct caused and continues to cause substantial injury to
14 Plaintiff and the other members of the Class. Plaintiff and the Class continue to be exposed
15 to Defendant's false and/or misleading advertising every time they shop for dietary
16 supplements and encounter Defendant's false or deceptive advertising on store shelves.
17 Defendant's competitors will also continue to suffer from Defendant's unfair or deceptive
18 business conduct if injunctive relief is not afforded.

19 137. Defendant has thus engaged in unlawful, unfair and fraudulent business acts
20 and practices and false advertising, entitling Plaintiff and the Class to injunctive relief
21 against Defendant, as set forth in the Prayer for Relief.

22 138. Pursuant to Business & Professions Code Section 17203, Plaintiff and the
23 Class seek an order requiring Defendant to immediately cease such acts of unlawful, unfair
24 and fraudulent business practices and requiring Defendant to engage in a corrective
25 advertising campaign.

26 139. Plaintiff and the Class members are likely to be damaged by Defendant's
27 deceptive trade practices, as Defendant continues to disseminate misleading advertising and
28 engage in conduct that violates the UCL. Thus, injunctive relief enjoining this deceptive

1 practice is proper.

2 140. Plaintiff and the Class also seek an order for the disgorgement and restitution
3 of all monies from the sale of Defendant’s Products, which were unjustly acquired through
4 acts of unlawful, unfair, and/or fraudulent competition.

5 **THIRD CAUSE OF ACTION**

6 **Violations of California Business and Professions**

7 **Code Section 17500 et seq. (False Advertising Law)**

8 **[On Behalf of Plaintiff and the Class and Against the Defendant]**

9 141. Plaintiff repeats, realleges and incorporates by reference each and every
10 allegation contained above as if fully set forth herein.

11 142. Plaintiff has standing to pursue this claim as Plaintiff suffered injury in fact
12 as a result of Defendant’s actions as set forth herein. Specifically, prior to the filing of this
13 action, Plaintiff purchased the Product in reliance upon Defendant’s marketing claims.
14 Plaintiff used the Product as directed, but the Product did not work as advertised, nor
15 provide any of the promised benefits.

16 143. Defendant’s business practices as alleged herein constitute unfair, deceptive,
17 untrue, and misleading advertising pursuant to California Business and Professions Code
18 section 17500, *et seq.* because Defendant has advertised their Products in a manner that is
19 untrue and misleading, or that Defendant knew was untrue or misleading, or omitted
20 material information from their advertising which Defendant had a duty to disclose.

21 144. Defendant’s wrongful business practices have caused injury to Plaintiff and
22 the Class, in the form of the lost purchase price of the Products. Plaintiff and the Class
23 purchased the Products after being exposed to Defendant’s false or deceptive advertising
24 claims, as described herein.

25 145. Defendant’s conduct caused and continues to cause substantial injury to
26 Plaintiff and the other members of the Class. Plaintiff and the Class continue to be exposed
27 to Defendant’s false and/or misleading advertising every time they shop for dietary
28

1 supplements and encounter Defendant's false or deceptive advertising on store shelves.
2 Defendant's competitors will also continue to suffer from Defendant's unfair or deceptive
3 business conduct if injunctive relief is not afforded.

4 146. Pursuant to section 17535 of the California Business and Professions Code,
5 Plaintiff and the Class seek an order of this Court enjoining Defendant from continuing to
6 engage in deceptive business practices, false advertising, and any other act prohibited by
7 law, including those set forth in this Complaint.

8 147. Plaintiff and the Class also seek an order for the disgorgement and restitution
9 of all monies from the sale of Defendant's Products, which were unjustly acquired through
10 acts of unlawful, unfair, and/or fraudulent competition.

11 **FOURTH CAUSE OF ACTION**

12 **Breach of Express Warranty**

13 **[On Behalf of Plaintiff and the Class and Against the Defendant]**

14 148. Plaintiff repeats, realleges and incorporates by reference each and every
15 allegation contained above as if fully set forth herein.

16 149. On the Products' labels (*see* Exhibits 1 - 4), Defendant expressly warranted
17 that the Products were effective, proper, and safe for their intended use. Defendant made
18 affirmations of fact or promises, or description of goods, which were "part of the basis of
19 the bargain," in that Plaintiff and the Class purchased the Products in reasonable reliance on
20 the Products' labeling statements. Cal. Com. Code §2313(1); *see also Zwart v. Hewlett-*
21 *Packard Co.*, 2011 WL 3740805 (N.D. Cal., Aug. 23, 2011) (holding that online assertions
22 can create warranties). Specifically, Defendant asserted the Product was a "Dieter's Green
23 Tea," "Ultra Slim Herbal Tea," and "Super Slimming Herbal Tea" each of which would
24 "Offer . . . Herbal Support While Dieting," which constituted express warranties.

25 150. Defendant breached the express warranties with Plaintiff and the Class by not
26 selling the Products that provided the benefits described above, and that breach actually and
27 proximately caused injury in the form of the lost purchase price for the Products.

28 151. As a result of Defendant's breach of their warranties, Plaintiff and the Class

1 have been damaged in the amount of the purchase price of the Products they purchased.

2 **FIFTH CAUSE OF ACTION**

3 **Breach of Implied Warranty of Merchantability**

4 **Cal. Com. Code §§ 2314(1), 2314(2)(f)**

5 **[On Behalf of Plaintiff and the Class and Against the Defendant]**

6 152. Plaintiff repeats, realleges and incorporates by reference each and every
7 allegation contained above as if fully set forth herein.

8 153. Defendant, in its sale, marketing and promotion of its Products, and the acts
9 and omissions as set forth herein, made representations to Plaintiff and the Class in the form
10 of statements and representations on the Products’ labels. *See* Exhibits 1 - 4. Specifically,
11 Defendant asserted the Product was a “Dieter’s Green Tea,” “Ultra Slim Herbal Tea,” and
12 “Super Slimming Herbal Tea” each of which would “Offer . . . Herbal Support While
13 Dieting,” which constituted express warranties.

14 154. Plaintiff and the Class purchased the Products manufactured, advertised and
15 sold by Defendant.

16 155. Defendant is a merchant with respect to the goods of this kind which were
17 sold to Plaintiff and the Class, and there was in the sale to Plaintiff and other consumers an
18 implied warranty that those goods were merchantable.

19 156. However, Defendant breached that warranty implied in the sale of goods, in
20 that the Products did not provide the purported benefits, as set forth in detail herein.

21 157. As a result of Defendant’s conduct, Plaintiff and the Class did not receive
22 goods as impliedly warranted by Defendant to be merchantable in that they did not conform
23 to the promises and affirmations made on the container or label of the goods.

24 158. Plaintiff and Class have sustained damages as a proximate result of the
25 foregoing breach of implied warranty in an amount to be determined at trial.

26 **PRAYER FOR RELIEF**

27 Wherefore, Plaintiff, on behalf of herself, all others similarly situated, and the
28 general public, pray for a judgment against Defendant on each cause of action:

1 A. For an order declaring this action to be a proper Class Action and requiring
2 Defendant to bear the costs of class notice;

3 B. For an order awarding declaratory and injunctive relief as permitted by law or
4 equity, including enjoining Defendant from continuing the unlawful practices as set forth
5 herein;

6 C. For an order awarding restitution and disgorgement of Defendant’s revenues to
7 Plaintiff and the proposed Class members;

8 D. For an order compelling Defendant to engage in a corrective advertising campaign
9 to inform the public concerning the true nature of the Products;

10 E. For an order awarding damages, and punitive damages, to Plaintiff and the Class
11 against Defendant, as provided by statute or applicable law;

12 F. For an order awarding attorneys’ fees and costs to Plaintiff;

13 G. For an order providing for all other such equitable relief as may be just and proper.

14 **JURY DEMAND**

15 Plaintiff hereby demands a trial by jury on all issues so triable.

16
17 DATED: April 4, 2014

/s/ Ronald A. Marron
RONALD A. MARRON

**THE LAW OFFICES OF RONALD A.
MARRON**

RONALD A. MARRON

SKYE RESENDES

ALEXIS M. WOOD

651 Arroyo Drive

San Diego, California 92103

Telephone: (619) 696-9006

Facsimile: (619) 564-6665

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

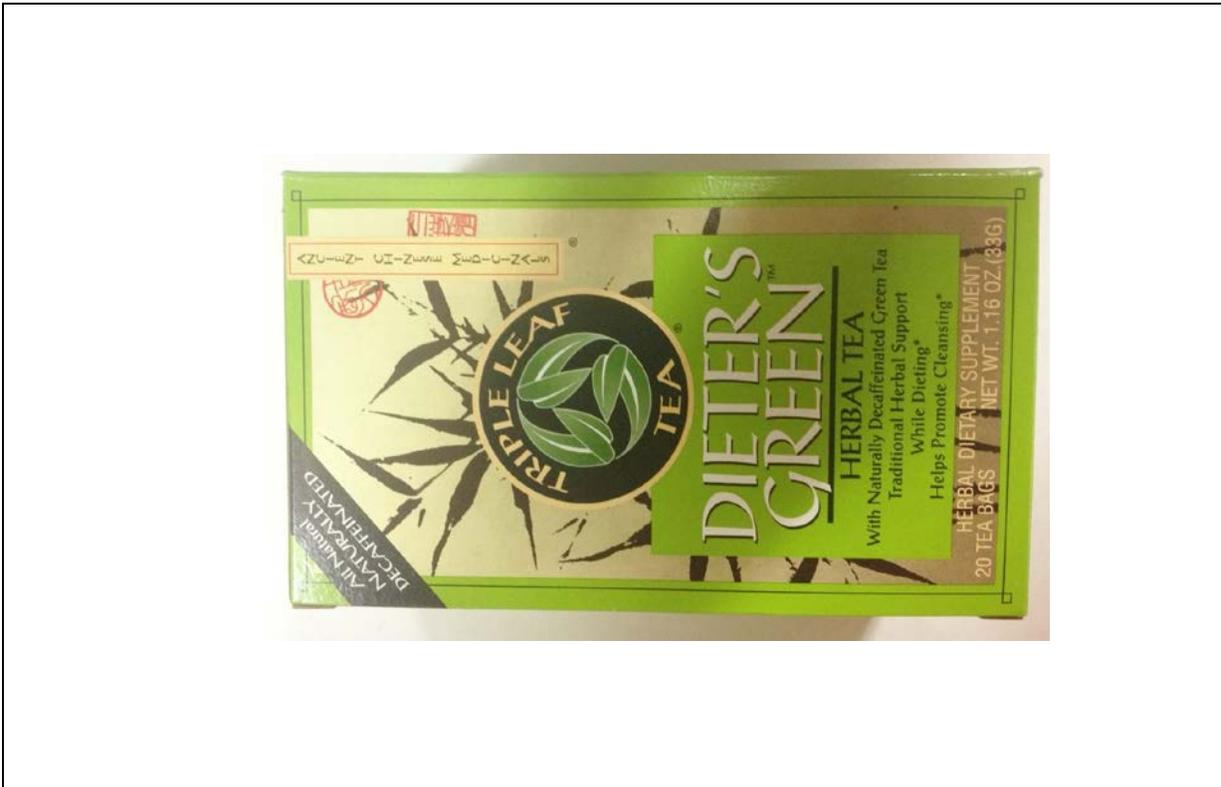
Triple Leaf Senna Diet Products, Front Panels, Horizontal Orientation



EXHIBIT 2

Triple Leaf Senna Diet Products, Front Panels, Vertical Orientation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



EXHIBIT 3

Triple Leaf Senna Diet Products, Side Panels

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



EXHIBIT 4

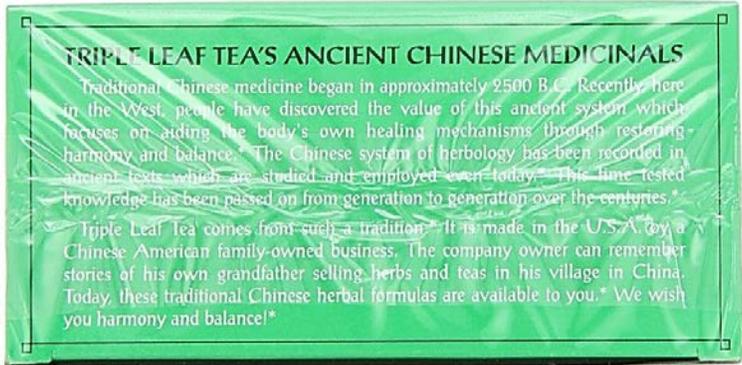
Triple Leaf Senna Diet Products, Bottom Panels

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dieter's Green



Ultra Slim



Super Slimming

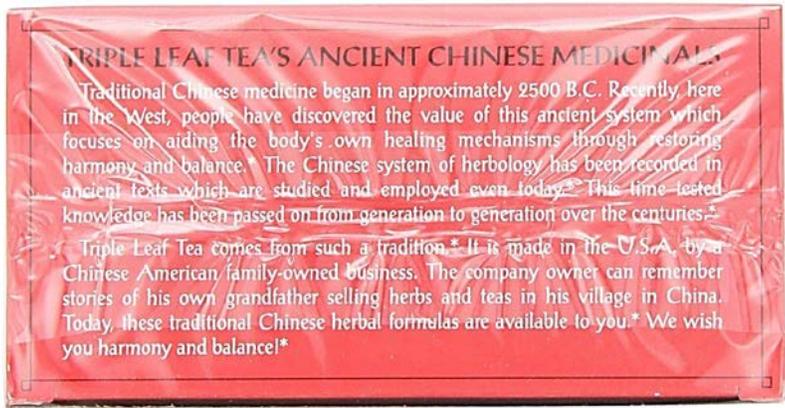


EXHIBIT 5

Triple Leaf Herbal Laxative Product

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

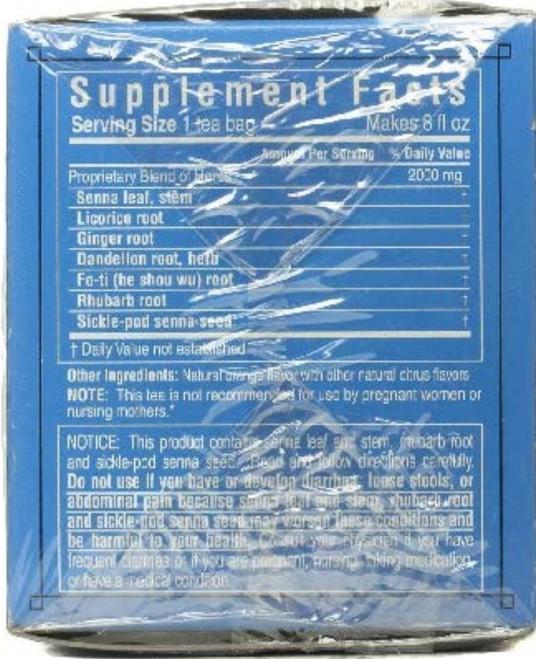


EXHIBIT 6

CLRA Letter

**LAW OFFICES OF
RONALD A. MARRON**

A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, CA 92108

Tel: 619.696.9006
Fax: 619.564.6665

February 21, 2014

VIA CERTIFIED MAIL (receipt acknowledgment with signature requested)

Triple Leaf Tea, Inc.
Attn: Legal Department
20 Buena Vista Rd
South San Francisco, CA 94080

Triple Leaf Tea, Inc.
Agent For Service Of Process
Vincent Lam
434 North Canal Street, Unit 5
South San Francisco, CA 94080

RE: *NOTICE: Violations of the California Consumer Legal Remedies Act and Duty to Preserve Evidence*

Dear Sir or Madam,

PLEASE TAKE NOTICE that this letter constitutes notice under the California Consumer Legal Remedies Act, ("CLRA"), California Civil Code Section 1750, *et seq.*, (the "ACT") — pursuant specifically to Civil Code Section 1782 — notifying **Triple Leaf Tea Inc.** (collectively, "YOU" and "YOUR") of violations of the Act and of our demand that YOU remedy such violations within thirty (30) days from your receipt of this letter.

This firm represents Eunice Johnson, who purchased Dieter's Green Tea, (hereafter, the "Product") in either a Price Chopper or Hen House store in the Kansas City, Missouri area, around November of 2012. Ms. Johnson was exposed to and saw YOUR claims about the Product, purchased the Product in reliance on those claims, and suffered injury in fact as a result of YOUR false and misleading advertising.

YOU falsely advertise and market the Product by putting false and misleading claims on the label, including the Product's name itself – "Dieter's Green" – and "Herbal Support While Dieting," which conveys YOUR intended message that the Product is effective for dieter's and in achieving long-lasting weight loss.

CLRA Demand Letter
Page 2

In fact, the Product is nothing more than Chinese Mallow¹, a laxative (which YOU claim to be a “stimulant laxative”) combined with senna leaf (“Senna”), another stimulant laxative. The Product has no weight loss characteristics, it is not effective for weight loss or appetite suppression and therefore does not work as advertised.

Moreover, Chinese (“Whorled”) Mallow can cause dangerous drops in blood sugar levels (hypoglycemia) that can trigger life-threatening complications in persons with certain medical conditions such as diabetes.

Senna can actually thwart weight loss by slowing the metabolism and causing chronic bloating and constipation. Also, Senna may cause abdominal cramps, nausea, fainting, breathing difficulties, fluctuations in body temperature and even organ failure.

Further, stimulant laxatives such as Mallow and Senna can lead to dependence, such that a person needs a stimulant laxative in order to have the bowel movements they used to have normally, without the use of a stimulant laxative. Therefore, it is false and misleading to claim that the Product “promote[s] cleansing and digestion” because repeated use retards cleansing and digestion.

Additionally, your suggestion that it is safe for consumers to “gradually increase the strength [of the tea made from the Product]” is misleading, because persons will become dependent upon the Product, as a stimulant laxative, to have a normal bowel movement, resulting in substantial discomfort and the detrimental consequences of severe constipation if use of the Product is discontinued.

The Product also recommends the use of YOUR Detox tea and Super Slimming tea, which are both falsely and deceptively advertised in a similar manner. We further note that the Product’s package insert promotes several teas that are unlawful under the federal Food, Drug and Cosmetic Act and California’s state law equivalent – the Sherman Law (see Cal. Health & Safety Code §§ 109875, et seq.), by advertising teas for “Blood Pressure” relief, “Sugar Balance,” and “Cholesterid – Helps Maintain Normal Cholesterol Levels.” Because these teas (and perhaps others) recommend their use for disease conditions, they are unlawful in the absence of a new drug application. See, e.g., 21 U.S.C. §§ 355(a)-(b); 21 C.F.R. § 101.93(g).

A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence would not have discovered the violations alleged herein because YOU actively and purposefully concealed the truth regarding YOUR products or services.

In addition to the violations previously identified, please take further notice that YOUR Product’s claims constitute a breach of express and implied warranties. Absent YOUR compliance with YOUR obligations under such warranties and cure of said breach (see 15 U.S.C. §§ 2301, et seq.), our client intends to pursue a class action with this regard.

¹ Described in YOUR advertising as “Whorled Mallow.”

CLRA Demand Letter
Page 3

In conclusion, YOUR material misrepresentations are deceiving customers into purchasing YOUR Product under the representation the Product provides weight loss and weight management benefits, when in fact it does not.

Please be advised that the alleged unfair methods of competition or unfair or deceptive acts or practices in violation of the CLRA include, but are not necessarily limited to:

§ 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.

§ 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another.

§ 1770(a)(9): advertising goods with intent not to sell them as advertised.

§ 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

YOU have failed to honor your consumer protection obligations. Based upon the above, demand is hereby made that YOU conduct a corrective advertising campaign and destroy all misleading and deceptive advertising materials and products.

Please be advised that your failure to comply with this request within thirty (30) days may subject you to the following remedies, available for violations of the CLRA, which will be requested in the class action complaint on behalf of our clients and all other similarly-situated U.S. residents:

- (1) The actual damages suffered;
- (2) An order enjoining you for such methods, acts or practices;
- (3) Restitution of property (when applicable);
- (4) Punitive damages;
- (5) Any other relief which the court deems proper; and
- (6) Court costs and attorneys' fees.

Additionally, I remind you of your legal duty to preserve all records relevant to such litigation. See, e.g., *Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D. 162, 175 (S.D.N.Y. 2004); *Computer Ass'n Int'l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages, and laboratory records that related to the formulation and marketing of YOUR products will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your product account) to preserve all such relevant information.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLRA Demand Letter
Page 4

In addition, California Civil Code Section 1780 (b) provides in part that: "Any consumer who is a **senior citizen or a disabled person**, as defined in subdivision (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedied specified therein, up to **five thousand dollars (\$5,000)**..." [emphasis added].

I look forward to YOU taking corrective action. Thank you for your time and consideration in this matter.

Sincerely,

LAW OFFICES OF RONALD A. MARRON

/s/ Ronald A. Marron
RONALD A. MARRON

*Counsel for Eunice Johnson,
and all others similarly situated*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
EUNICE JOHNSON, individually on behalf of all others similarly situated, and the general public

DEFENDANTS
TRIPLE LEAF TEA, INC.

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Mateo
(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number)
LAW OFFICES OF RONALD A. MARRON
651 Arroyo Drive, San Diego, California 92103
619.696.9006

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 US Government Plaintiff
2 US Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF DEF
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Civ. Code §§1750; Bus.&Prof. Code §§17200 and 17500
Brief description of cause:
CLRA; UCL; FAL; Breach of Express Warranty; and Breach of Implied Warranty of Merchantability

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/04/2014 SIGNATURE OF ATTORNEY OF RECORD /s/ Ronald A. Marron

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.