

1 ROBBINS ARROYO LLP
 2 BRIAN J. ROBBINS (190264)
 3 KEVIN A. SEELY (199982)
 4 ASHLEY R. RIFKIN (246602)
 5 STEVEN M. MCKANY (271405)
 6 600 B Street, Suite 1900
 7 San Diego, CA 92101
 8 Telephone: (619) 525-3990
 Facsimile: (619) 525-3991
 E-mail: brobbins@robbinsarroyo.com
 kseely@robbinsarroyo.com
 arifkin@robbinsarroyo.com
 smckany@robbinsarroyo.com

9 [Additional Counsel on Signature Page]

10 Attorneys for Plaintiff

11
 12 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

13 KENRIC CLAIBORNE, on Behalf)
 14 of Himself, All Others Similarly)
 15 Situated, and the General Public,)

16 Plaintiff,)

17 v.)

18 CHURCH & DWIGHT CO., INC.,)
 19)

20 Defendant.)

Case No: '17CV0746 L JLB

CLASS ACTION COMPLAINT FOR VIOLATIONS OF:

(1) CAL. BUS. & PROF. CODE §§17200, ET SEQ.;

(2) CAL. BUS. & PROF. CODE §§17500, ET SEQ.;

(3) CAL. CIV. CODE §§1750, ET SEQ.; AND

(4) BREACH OF EXPRESS & IMPLIED WARRANTIES

DEMAND FOR JURY TRIAL

23
 24
 25
 26
 27
 28

1 Plaintiff Kenric Claiborne, on behalf of himself, all others similarly situated,
2 and the general public, by and through his undersigned counsel, hereby sues
3 defendant Church & Dwight Co., Inc. ("C&D"), and alleges the following upon his
4 own knowledge, or where he lacks personal knowledge, upon information and belief,
5 including the investigation of his counsel.

6 **INTRODUCTION**

7 1. California law is clear: Merchandise may be labeled as "Made in the
8 USA" if either: (1) all nondomestic parts constitute no more than 5% of the final
9 wholesale value of the product; or (2) a manufacturer can show that a specific part
10 could not be obtained within the U.S. and that part does not constitute more than
11 10% of the final wholesale value. Otherwise, a manufacturer may not label its
12 products as "Made in U.S.A.," "Made in America," "U.S.A.," or use similar words to
13 convey that its products are made in the United States.

14 2. C&D falsely advertises and markets at least two of its Trojan brand
15 condoms, Magnum Thin Ultrasmooth and Magnum Ecstasy Ultrasmooth
16 (collectively, the "Products") as being "Made in U.S.A." when, in fact, nondomestic
17 parts comprising natural latex used in the Products constitute more than 10% of the
18 Products' final wholesale value.

19 3. Plaintiff brings this action seeking injunctive and monetary relief on
20 behalf of himself, all other similarly-situated California consumers, and the general
21 public, alleging violations of the Unfair Competition Law, California Business &
22 Professions Code sections 17200, *et seq.*; False Advertising Law, *id.* sections 17500,
23 *et seq.*; Consumers Legal Remedies Act, California Civil Code sections 1750, *et*
24 *seq.*; and as well as breaches of express and implied warranties.

25 **JURISDICTION AND VENUE**

26 4. This Court has jurisdiction over this action pursuant to 28 U.S.C.
27 §1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy
28

1 exceeds the sum or value of \$5,000,000 exclusive of interest and costs, at least one
2 member of the class of plaintiffs is a citizen of a state different from C&D. In
3 addition, more than two-thirds of the members of the class reside in states other than
4 the state in which C&D is a citizen and in which this case is filed, and therefore any
5 exceptions to jurisdiction under 28 U.S.C. §1332(d) do not apply.

6 5. Venue is proper in this court pursuant to 28 U.S.C. §1391, because
7 plaintiff resides and suffered injury as a result of defendant's acts in this district,
8 many of the acts and transactions giving rise to this action occurred in this district,
9 defendant conducts substantial business in this district, defendant has intentionally
10 availed itself of the laws and markets of this district, and defendant is subject to
11 personal jurisdiction in this district.

12 **THE PARTIES**

13 6. Plaintiff Kenric Claiborne is a resident of San Diego County, California.

14 7. Defendant C&D is a Delaware corporation with its principal place of
15 business at 500 Charles Ewing Boulevard, Ewing, New Jersey.

16 **FACTS**

17 8. C&D is a major American manufacturer of household products,
18 including the Trojan brand of male condoms. As of 2006, 69% of condoms
19 purchased in United States drugstores were Trojan brand.

20 9. Condoms are most commonly manufactured with latex, either synthetic
21 or natural. Synthetic latex is produced from petrochemicals and can be created
22 anywhere. Natural latex, though, is derived naturally from rubber trees—most
23 commonly the Pará rubber tree (*Hevea brasiliensis*).

24 10. Although natural latex is produced and available in the United States,
25 the country has no significant domestic natural rubber production. Despite that it
26 does not produce any significant amounts of natural rubber, the United States is the
27 single largest rubber consumer, using approximately 20% of the global supply for its
28

1 commercial, medical, transportation, and defense industries, including over \$500
2 million retail value of condoms utilizing imported natural rubber.

3 11. Thus, U.S. manufacturers who desire to utilize natural latex, including
4 condom manufacturers like C&D, depend on foreign imports, most typically from
5 southeast Asian countries, which account for approximately 90% of the world's
6 production.

7 12. About six in every 100 people have an allergy to natural latex. For that
8 reason C&D includes an allergy warning on its manufactured goods that contain
9 natural latex, including the Products, which specifically state that they are made with
10 natural latex.

11 13. However, C&D also claims on the labels of the Products, in a prominent
12 fashion, that they are "Made in U.S.A." Contrary to defendant's representations,
13 however, the Products are wholly, or at least substantially, manufactured with a
14 component—natural latex—that is produced entirely outside of the United States.
15 Notwithstanding that the Products may contain spermicide, lubricant, anesthetics, or
16 other ancillary components, the only substantial component of the Products, and the
17 component that makes the Products effective as a birth control, is the natural latex.

18 14. Average consumers are unaware that natural latex is not produced
19 within the United States and therefore possess no knowledge that the Products,
20 which are claimed to be "Made in U.S.A.," are in fact manufactured with
21 components from outside the United States.

22 15. C&D's misrepresentations were material. Consumers generally believe
23 that "Made in USA" products are of higher quality than their foreign-manufactured
24 counterparts and that they are produced with higher standards, and by American
25 companies and workers. Consumers are willing to pay a higher price for goods
26 produced with American-sourced components and that are genuinely "Made in the
27 U.S.A." Thus, the Products cost more than similar products without misleading
28

1 "Made in U.S.A." claims, and would have cost less absent the false claim.

2 16. C&D is aware of consumer preference for American made products,
3 and therefore employs and has employed a strategic marketing campaign intended to
4 convince consumers that its Products are "Made in U.S.A." in conformity with
5 California law, even though C&D knows its Products do not qualify under California
6 to be labeled as "Made in U.S.A." C&D has been unjustly enriched by falsely
7 claiming that the Products are "Made in U.S.A."

8 **PLAINTIFF'S PURCHASE AND INJURY**

9 17. Beginning in approximately July 2016, plaintiff has purchased the
10 Products on numerous occasions, typically from the AM/PM located at 3296 El
11 Cajon Boulevard, in San Diego, California. In deciding to purchase the Products,
12 plaintiff relied on C&D's claims that the Products are "Made in U.S.A."

13 18. When purchasing the Products, plaintiff was seeking a product that was
14 made in the United States, and relied on the Products' label claim to believe that
15 what he was purchasing was in fact made in the United States.

16 19. The labeling of the Products, however, was misleading, and had the
17 capacity, tendency, and likelihood to confuse or confound plaintiff and other
18 consumers acting reasonably (including the putative class), as described in detail
19 herein.

20 20. Plaintiff acted reasonably in relying on C&D's "Made in U.S.A."
21 claims, which C&D intentionally placed on the Products' labels with the intent to
22 induce consumers into purchasing the Products.

23 21. The Products cost more than similar products without misleading
24 labeling, and would have cost less absent the false and/or misleading "Made in
25 U.S.A." claims.

26 22. If C&D was enjoined from making the "Made in U.S.A." claims, the
27 market demand and price for its Products would drop, as it has been artificially and
28

1 fraudulently inflated due to C&D's use of deceptive labeling.

2 23. Plaintiff paid more for the Products, and would only have been willing
3 to pay less, or unwilling to purchase it at all, absent the misleading "Made in U.S.A."
4 claims complained of herein.

5 24. For these reasons, the Products were worth less than what plaintiff and
6 the members of the Class (as defined herein) paid for them.

7 **CLASS ACTION ALLEGATIONS**

8 25. While reserving the right to redefine or amend the class definition prior
9 to seeking class certification, pursuant to Rule 23 of the Federal Rules of Civil
10 Procedure, plaintiff seeks to represent a Class of all persons in California who, on or
11 after April 13, 2013 (the "Class Period"), purchased, for personal, family, or
12 household use and not for resale or distribution, Trojan Magnum Thin Ultrasmooth
13 Condoms or Trojan Magnum Ecstasy Ultrasmooth Condoms (the "Class").

14 26. The members in the proposed Class are so numerous that individual
15 joinder of all members is impracticable, and the disposition of the claims of all Class
16 members in a single action will provide substantial benefits to the parties and Court.

17 27. Questions of law and fact common to plaintiff and the Class include:

18 (a) whether C&D's "Made in U.S.A." claims are material to
19 reasonable consumers;

20 (b) whether C&D's "Made in U.S.A." claims are false, misleading, or
21 reasonably likely to deceive the public or consumers acting reasonably because the
22 Products are not made in the United States as defined by California law;

23 (c) whether C&D made any statement it knew or should have known
24 was false or misleading;

25 (d) whether C&D's practices were immoral, unethical, unscrupulous,
26 or substantially injurious to consumers;

27

28

1 (e) whether the utility of any of C&D's practices, if any, outweighed
2 the gravity of harm to its victims;

3 (f) whether C&D's conduct violated public policy;

4 (g) whether the consumer injury caused by C&D's conduct was
5 substantial, not outweighed by benefits to consumers or competition, and not one
6 consumers, themselves, could reasonably have avoided;

7 (h) whether C&D's policies, acts, and practices with respect to the
8 Products were designed to, and did result in the purchase and use of the Products by
9 the Class members primarily for personal, family, or household purposes;

10 (i) whether on the labels of the Products there appears the words
11 "Made in U.S.A.," "Made in America," "U.S.A.," or similar words;

12 (j) whether the Products are made, manufactured, or produced with
13 one or more articles, units, or parts from outside of the United States, which
14 constitute more than 5% of the final wholesale value of the manufactured product;

15 (k) whether C&D can demonstrate that it can neither produce the
16 foreign article, unit, or part within the United States, nor obtain the article, unit, or
17 part of the merchandise from a domestic source and, if true, whether all of the
18 articles, units, or parts of the merchandise obtained from outside the United States
19 constitute more than 10% of the final wholesale value of the manufactured product;

20 (l) whether C&D violated California Business & Professions Code
21 section 17533.7 by falsely making the claim that its Products are "Made in U.S.A.";

22 (m) whether C&D represented that the Products have characteristics,
23 uses, or benefits which they do not have, within the meaning of California Civil
24 Code section 1770(a)(5);

25 (n) whether C&D represented that the Products are of a particular
26 standard, quality, or grade, when they were really of another, within the meaning of
27 California Civil Code section 1770(a)(7);

28

1 (o) whether C&D advertised the Products with the intent not to sell
2 them as advertised, within the meaning of California Civil Code section 1770(a)(9);

3 (p) whether C&D represented that the Products have been supplied in
4 accordance with previous representations when they have not, within the meaning of
5 California Civil Code section 1770(a)(16);

6 (q) whether through the challenged labels and advertising, C&D
7 made affirmations of fact or promises, or descriptions of the goods;

8 (r) whether C&D's affirmations of fact or promises, or descriptions
9 of the goods became part of the basis of the bargain for Class members' purchases;

10 (s) whether C&D failed to provide the goods in conformation with
11 its affirmations of fact, promises, and descriptions of the goods;

12 (t) whether C&D's conduct violates state or federal statutes or
13 regulations;

14 (u) the proper amount of damages, including punitive damages;

15 (v) the proper amount of restitution;

16 (w) the proper scope of injunctive relief; and

17 (x) the proper amount of attorneys' fees.

18 28. These common questions of law and fact predominate over questions
19 that affect only individual Class members.

20 29. Plaintiff's claims are typical of Class members' claims because they are
21 based on the same underlying facts, events, and circumstances relating to C&D's
22 conduct. Specifically, all Class members, including plaintiff, were subjected to the
23 same misleading and deceptive conduct when they purchased the Products and
24 suffered economic injury because the Products' "Made in U.S.A." claims are false
25 and/or misleading. Absent C&D's business practice of deceptively and unlawfully
26 labeling the Products, plaintiff and Class members would only have been willing to
27 pay less, or unwilling to purchase them at all.

28

1 30. Plaintiff will fairly and adequately represent and protect the interests of
2 the Class, has no interests incompatible with the interests of the Class, and has
3 retained counsel competent and experienced in class action litigation, and
4 specifically in litigation involving false and misleading advertising.

5 31. Class treatment is superior to other options for resolution of the
6 controversy because the relief sought for each Class member is small, such that,
7 absent representative litigation, it would be infeasible for Class members to redress
8 the wrongs done to them.

9 32. C&D has acted on grounds applicable to the Class, thereby making
10 appropriate final injunctive and declaratory relief concerning the Class as a whole.

11 33. As a result of the foregoing, class treatment is appropriate under Rule
12 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure.

13 **COUNT I**

14 **Violations of the Unfair Competition Law,**
15 **Cal. Bus. & Prof. Code §17200, *Et Seq.***

16 34. Plaintiff incorporates by reference and realleges each and every
17 allegation contained above, as though fully set forth herein.

18 35. The Unfair Competition Law ("UCL") prohibits any "unlawful, unfair
19 or fraudulent business act or practice." Cal. Bus. & Prof. Code §17200.

20 36. The acts, omissions, misrepresentations, practices, and non-disclosures
21 of C&D as alleged herein constitute business acts and practices.

22 **Fraudulent**

23 37. A statement or practice is fraudulent under the UCL if it is likely to
24 deceive the public, applying a reasonable consumer test.

25 38. As set forth herein, C&D's claims relating to the Products are likely to
26 deceive reasonable consumers and the public.

27
28

Unlawful

39. The acts alleged herein are "unlawful" under the UCL in that they violate at least the following laws:

(a) the False Advertising Law ("FAL"), California Business & Professions Code sections 17500, *et seq.*;

(b) the Consumers Legal Remedies Act ("CLRA"), California Civil Code sections 1750, *et seq.*;

(c) California's "Made in U.S.A." Law, California Business & Professions Code section 17533.7.

(i) Specifically, California Business & Professions Code section 17533.7 makes it unlawful for any person, firm, corporation, or association to sell or offer for sale in this state any merchandise on which merchandise or on its container there appears the words "Made in U.S.A.," "Made in America," "U.S.A.," or similar words if the merchandise or any article, unit, or part thereof, has been entirely or substantially made, manufactured, or produced outside of the United States.

(ii) California Business & Professions Code section 17533.7 does not apply to merchandise made, manufactured, or produced in the United States that has one or more articles, units, or parts from outside of the United States, if both of the following apply: (A) the manufacturer of the merchandise shows that it can neither produce the article, unit, or part within the United States nor obtain the article, unit, or part of the merchandise from a domestic source; and (B) all of the articles, units, or parts of the merchandise obtained from outside the United

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

States constitute not more than 10% of the final wholesale value of the manufactured product.

(iii) C&D's Products are made from natural latex, which is an article, unit, or part from outside of the United States. Natural latex constitutes more than 10% of the final wholesale value of the Products. For this reason, no exception to California Business & Professions Code section 17533.7 exists for the Products.

(iv) C&D profited from its sale of the falsely, deceptively, and unlawfully advertised Products to unwary consumers.

(v) Plaintiff and Class members are likely to be damaged by C&D's continued deceptive trade practices, as C&D continues to falsely advertise that the Products are "Made in U.S.A." Thus, injunctive relief enjoining this deceptive practice is proper.

(vi) C&D's conduct caused and continues to cause substantial injury to plaintiff and the other Class members, who have suffered injury in fact as a result of C&D's unlawful conduct.

(vii) Plaintiff, on behalf of himself and the Class also seeks an order for disgorgement and restitution of all monies from the sale of the Products, which were unjustly acquired through violations California Business & Professions Code section 17533.7.

Unfair

40. C&D's conduct with respect to the labeling, advertising, and sale of the Products was unfair because C&D's conduct was immoral, unethical, unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any, does not

1 outweigh the gravity of the harm to its victims.

2 41. C&D's conduct with respect to the labeling, advertising, and sale of the
3 Products was also unfair because it violated public policy as declared by specific
4 constitutional, statutory, or regulatory provisions, including, but not limited to, the
5 FAL.

6 42. C&D's conduct with respect to the labeling, advertising, and sale of the
7 Products was also unfair because the consumer injury was substantial, not
8 outweighed by benefits to consumers or competition, and not one consumers,
9 themselves, could reasonably have avoided.

10 43. C&D profited from its sale of the falsely, deceptively, and unlawfully
11 advertised Products to unwary consumers.

12 44. Plaintiff and Class members are likely to be damaged by C&D's
13 continued deceptive trade practices, as C&D continues to falsely advertise and sell
14 the Products. Thus, injunctive relief enjoining this deceptive practice is proper.

15 45. C&D's conduct caused and continues to cause substantial injury to
16 plaintiff and the other Class members, who have suffered injury in fact as a result of
17 C&D's unlawful conduct.

18 46. In accordance with California Business & Professions Code section
19 17203, plaintiff, on behalf of himself, the Class, and the general public, seeks an
20 order enjoining C&D from continuing to conduct business through unlawful, unfair,
21 and/or fraudulent acts and practices, and to commence a corrective advertising
22 campaign.

23 47. Plaintiff, on behalf of himself and the Class also seeks an order for
24 disgorgement and restitution of all monies from the sale of the Products, which were
25 unjustly acquired through acts of unlawful competition.

26

27

28

COUNT II

**Violations of the False Advertising Law,
Cal. Bus. & Prof. Code §§17500, *Et Seq.***

1
2
3
4 48. Plaintiff incorporates by reference and realleges each and every
5 allegation contained above, as though fully set forth herein.

6 49. Under the FAL, "[i]t is unlawful for any person, firm, corporation or
7 association, or any employee thereof with intent directly or indirectly to dispose of
8 real or personal property or to perform services" to disseminate any statement
9 "which is untrue or misleading, and which is known, or which by the exercise of
10 reasonable care should be known, to be untrue or misleading." Cal. Bus. & Prof.
11 Code §17500.

12 50. As alleged herein, the advertisements, labeling, policies, acts, and
13 practices of C&D relating to the Products misled consumers acting reasonably as to
14 whether the Products are "Made in U.S.A."

15 51. Plaintiff suffered injury in fact as a result of C&D's actions as set forth
16 herein because plaintiff purchased the Products in reliance on C&D's false and
17 misleading marketing claims that the Products are "Made in U.S.A."

18 52. C&D's business practices as alleged herein constitute unfair, deceptive,
19 untrue, and misleading advertising pursuant to the FAL because C&D has advertised
20 the Products in a manner that is untrue and misleading, which C&D knew or
21 reasonably should have known.

22 53. C&D profited from its sales of the falsely and deceptively advertised
23 Products to unwary consumers.

24 54. As a result, pursuant to California Business & Professions Code section
25 17535, plaintiff and the Class are entitled to injunctive and equitable relief,
26 restitution, and an order for the disgorgement of the funds by which C&D was
27 unjustly enriched.
28

1 **COUNT III**

2 **Violations of the Consumer Legal Remedies Act,**
3 **Cal. Civ. Code §§1750, *Et Seq.***

4 55. Plaintiff incorporates by reference and realleges each and every
5 allegation contained above, as though fully set forth herein.

6 56. The CLRA prohibits deceptive practices in connection with the conduct
7 of a business that provides goods, property, or services primarily for personal,
8 family, or household purposes.

9 57. C&D's false and misleading labeling and other policies, acts, and
10 practices described herein were designed to, and did, induce the purchase and use of
11 C&D's Products for personal, family, or household purposes by plaintiff and other
12 Class members, and violated and continue to violate at least the following sections of
13 the CLRA:

14 (a) section 1770(a)(5): representing that goods have characteristics,
15 uses, or benefits which they do not have;

16 (b) section 1770(a)(7): representing that goods are of a particular
17 standard, quality, or grade if they are of another;

18 (c) section 1770(a)(9): advertising goods with intent not to sell them
19 as advertised; and

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

22 58. C&D profited from its sales of the falsely, deceptively, and unlawfully
23 advertised Products to unwary consumers.

24 59. C&D's wrongful business practices regarding the Products constituted,
25 and constitute, a continuing course of conduct in violation of the CLRA.

26 60. On February 1, 2017, plaintiff sent a CLRA section 1782(a) notice to
27 C&D (via U.S. certified mail, return receipt requested), a copy of which is attached
28

1 hereto as Exhibit A. C&D was served with a copy of the letter shortly after plaintiff
2 sent it out.

3 61. C&D failed to provide appropriate relief for its violations of CLRA
4 sections 1770(a)(5), (7), (9) and (16) within thirty days of receipt of plaintiff's
5 notification. In accordance with California Civil Code section 1782(b), plaintiff
6 and the Class are entitled, under CLRA section 1780, to recover and obtain the
7 following relief for C&D's violations of CLRA sections 1770(a)(5),(7), (9) and (16):

- 8 (a) actual damages under CLRA section 1780(a)(1);
- 9 (b) restitution of property under CLRA section 1780(a)(3);
- 10 (c) punitive damages under CLRA section 1780(a)(4) and because
11 C&D has engaged in fraud, malice or oppression;
- 12 (d) attorneys' fees and costs under CLRA section 1780(d); and
- 13 (e) any other relief the Court deems proper under CLRA
14 section 1780(a)(5).

15 62. Plaintiff seeks an award of attorney's fees pursuant to, inter alia,
16 California Civil Code section 1780(e) and California Code of Civil Procedure
17 section 1021.5.

18 **COUNT IV**

19 **Breaches of Express Warranties, Cal. Com. Code §2313(1)**

20 63. Plaintiff incorporates by reference and realleges each and every
21 allegation contained above, as though fully set forth herein.

22 64. Through the Products' label, C&D made affirmations of fact or
23 promises, or description of goods, that, *inter alia*, the Products are "Made in U.S.A."
24 These representations were "part of the basis of the bargain," in that plaintiff and the
25 Class purchased the Products in reasonable reliance on those statements. Cal. Com.
26 Code §2313(1).

27 65. C&D breached its express warranties by selling the Products that are
28

1 not "Made in U.S.A."

2 66. That breach actually and proximately caused injury in the form of the
3 lost purchase price that plaintiff and Class members paid for the Products.

4 67. Plaintiff notified C&D of the breach prior to filing, but C&D failed to
5 rectify the breach.

6 68. As a result, plaintiff seeks, on behalf of himself and other Class
7 members, actual damages arising as a result of C&D's breaches of express warranty.

8 **COUNT V**

9 **Breach of Implied Warranty of Merchantability,**
10 **Cal. Com. Code §2314(2)(f)**

11 69. Plaintiff incorporates by reference and realleges each and every
12 allegation contained above, as though fully set forth herein.

13 70. C&D, through its acts set forth herein, in the sale, marketing, and
14 promotion of the Products, made representations to plaintiff and the Class that,
15 among other things, the Products are "Made in U.S.A."

16 71. C&D 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
18 consumers, an implied warranty that those goods were merchantable.

19 72. However, C&D breached that implied warranty in that the Products are
20 not "Made in U.S.A." as set forth in detail herein.

21 73. As an actual and proximate result of C&D's conduct, plaintiff and the
22 Class did not receive goods as impliedly warranted by C&D to be merchantable in
23 that they did not conform to promises and affirmations made on the container or
24 label of the goods, in violation of California Commercial Code section 2314(2)(f).

25 74. Plaintiff notified C&D of the breach prior to filing, but C&D failed to
26 rectify the breach.

27 75. As a result, plaintiff seeks, on behalf of himself and other Class
28

1 members, actual damages arising as a result of C&D's breaches of implied warranty.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, plaintiff, on behalf of himself, all others similarly situated,
4 and the general public, prays for judgment against C&D as to each and every count,
5 and the following remedies:

6 A. An order declaring this action to be a proper class action, appointing
7 plaintiff as class representative, and appointing undersigned counsel as class counsel;

8 B. An order requiring C&D to bear the cost of class notice;

9 C. An order enjoining C&D from using any challenged labeling or
10 marketing claim that is found to be false, misleading, or unlawful;

11 D. An order compelling C&D to conduct a corrective advertising
12 campaign;

13 E. An order compelling C&D to destroy all misleading and deceptive
14 advertising materials, and the Products' labels;

15 F. An order requiring C&D to pay restitution to restore all funds acquired
16 by means of any act or practice declared by this Court to be an unlawful, unfair, or
17 fraudulent business act or practice, or untrue or misleading advertising;

18 G. An award of attorneys' fees and costs;

19 H. An order requiring C&D to pay statutory, compensatory, and punitive
20 damages where permitted by law;

21 I. Pre- and post-judgment interest; and

22 J. Any other and further relief that Court deems necessary, just, or proper.

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

JURY DEMAND

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

Dated: April 13, 2017

ROBBINS ARROYO LLP
BRIAN J. ROBBINS
KEVIN A. SEELY
ASHLEY R. RIFKIN
STEVEN M. MCKANY

/s/Brian J. Robbins

BRIAN J. ROBBINS

600 B Street, Suite 1900
San Diego, CA 92101
Telephone: (619) 525-3990
Facsimile: (619) 525-3991
E-mail: brobbins@robbinsarroyo.com
kseely@robbinsarroyo.com
arifkin@robbinsarroyo.com
smckany@robbinsarroyo.com

THE LAW OFFICE OF JACK
FITZGERALD, PC
JACK FITZGERALD
TREVOR M. FLYNN
MELANIE PERSINGER
Hillcrest Professional Building
3636 Fourth Avenue, Suite 202
San Diego, CA 92103
Telephone: (612) 692-3840
Facsimile: (612) 362-9555
E-mail: jack@jackfitzgeraldlaw.com
trevor@jackfitzgeraldlaw.com
melanie@jackfitzgeraldlaw.com

Attorneys for Plaintiff

1149427

Kenric Claiborne, on Behalf of Himself, All Others Similarly
Situated, and the General Public v. Church & Dwight Co., Inc.

Class Action Complaint

Exhibit List

Exhibit:	Description	Page Nos.:
A	CLRA Notice dated February 1, 2017	1-3

Exhibit A



600 B Street, Suite 1900
San Diego, CA 92101
619.525.3990 phone
619.525.3991 fax
www.robbsinarroyo.com

February 1, 2017

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Matthew T. Farrell, President and
Chief Executive Officer
CHURCH & DWIGHT CO., INC.
500 Charles Ewing Boulevard
Ewing, NJ 08628

Re: CLRA Notice Concerning Trojan

Dear Mr. Farrell:

We represent Kenric Claiborne. Pursuant to California Consumers Legal Remedy Act ("CLRA"), California Civil Code sections 1750, *et seq.*, (specifically, sections 1770(a)(5), (7), (9) and (16)), Mr. Claiborne, on behalf of himself and all other similarly situated citizens of the state of California, through his undersigned counsel, hereby notifies you that Church & Dwight Co., Inc.'s ("C&D" or the "Company") practices in promoting numerous products¹ as having been "Made in U.S.A." violates the CLRA as set forth in more detail below.

We believe you are already aware of this issue based on previously filed lawsuits and knowledge of the actual components in the Products. We demand that C&D rectify the violations of the CLRA within thirty days of receipt of this letter.

Claim Summary

This matter involves unfair business practices by C&D in the marketing and sale of the Products. According to C&D, the Products were "Made in U.S.A." However, under California law, a product cannot be labeled as "Made in the USA" if all the nondomestic parts constitute more than 5% of the final wholesale value of the product. C&D's Products are made wholly or substantially of natural latex, a product that is produced entirely outside of the United States. Natural latex is the only substantive component of the Products. Mr. Claiborne paid premiums for the Products based on the promise that they are made in the U.S.A.

C&D's conduct violates California state law, including the CLRA, California Civil Code sections 1750, *et seq.*, California's False Advertising Law, California Business & Professions Code sections 17500, *et seq.*, California Commercial Code sections 2313 and 2314. In particular, C&D's conduct violates, among other potentially applicable provisions, California Civil Code section 1770(a):

¹ The products include, at a minimum, Trojan Magnum Thin Ultrasmooth and Magnum Ecstasy Ultrasmooth (collectively, the "Products").

CLRA Notice Concerning Trojan

February 1, 2017

Page 2

(5) Representing goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.

* * *

(7) Representing goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

* * *

(9) Advertising goods or services with intent to not sell them as advertised.

* * *

(14) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.

* * *

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

Remedy for Unlawful Activity

On behalf of Mr. Claiborne and all other similarly affected persons, we request C&D cease such conduct and undertake the following actions to resolve the issues raised by this letter. To satisfy all applicable statutory and common law provisions, whether in tort or in contract, we request C&D commits to undertake all of the following:

1. Identify all affected customers in addition to Mr. Claiborne;
2. Advise all such persons of the right upon request to a full, complete, and timely refund of the purchase price of any falsely advertised products, including interest; and
3. Reimburse any associated expenditures and interest incurred on all such sums, costs, and reasonable attorneys' fees.

C&D's failure to comply with this request within thirty days from the date of this letter may subject C&D to additional damages, restitution, and injunctive relief claims under relevant statutory law. The additional relief sought may include \$1,000 per person as provided under California Civil Code sections 1780 and 1782, exemplary damages, plus any other relief as may be appropriate.

CLRA Notice Concerning Trojan

February 1, 2017

Page 3

Please note an individual offer will not avoid potential suit or liability, even if accepted individually by Mr. Claiborne. California law prohibits defendants from "picking off the representative plaintiff" because any proffered relief "must be granted to the entire class." *Watkins v. Wachovia Corp.*, 172 Cal. App. 4th 1576, 1590 n.15 (2009); *see also Kagan v. Gibraltar Sav. & Loan Ass'n*, 35 Cal. 3d 582, 593 (1984). Thus, to avoid unnecessary litigation, it is in all parties' interests for C&D to take immediate action to address this problem.

This notice also serves as a demand to cure breaches of express and implied warranties, and to comply with all agreements and covenants of good faith and fair dealing created by C&D's warranties, advertisements, offers, and agreements or as established by law. The requested relief applies to all such claims to the extent required by California or other applicable law.

Evidence Preservation

Mr. Claiborne hereby places C&D on notice to immediately preserve, and not to destroy, any evidence, documents, or materials, including all electronic or electronically-stored information, that may be relevant (or lead to the discovery of relevant or admissible evidence) concerning the claims summarized above. Relevant evidence, created in electronic form subsequent to the date of delivery of this letter, should also be retained and not destroyed. Mr. Claiborne requests that C&D take whatever steps are appropriate to preserve such evidence.

Please have your legal counsel contact us with any questions or response.

Sincerely,



Leonid Kandinov

cc: Jack Fitzgerald, Esq. (via e-mail)

JS 44 (Rev. 12/12)

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
 Kenric Claiborne, on Behalf of Himself, All Others Similarly Situated, and the General Public

DEFENDANTS
 Church & Dwight Co., Inc.

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

County of Residence of First Listed Defendant Mercer County, NJ
 (IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Robbins Arroyo LLP
 600 B Street, Suite 1900, San Diego, CA 92101
 (619) 525-3990

Attorneys (If Known)

'17CV0746 L JLB

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

- 1 U.S. Government Plaintiff
- 2 U.S. 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)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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):
Class Action Fairness Act, 28 U.S.C. §1332(d)(2)(A)
 Brief description of cause:
Consumer Class Action Complaint

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: 04/13/2017 SIGNATURE OF ATTORNEY OF RECORD: s/Brian J. Robbins

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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.