

1 JOHN H. DONBOLI (SBN: 205218)
CAMILLE JOY DECAMP (SBN: 236212)
2 DEL MAR LAW GROUP, LLP
12250 El Camino Real, Suite 120
3 San Diego, CA 92130
Telephone: (858) 793-6244
4 Facsimile: (858) 793-6005

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/14/2016 at 12:24:00 PM
Clerk of the Superior Court
By Christina Villegas, Deputy Clerk

5 Attorneys for Plaintiff Jeff Card, an individual, and on behalf
of all others similarly situated
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8 SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN DIEGO
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10 JEFF CARD, an individual, and on behalf of all)
others similarly situated,)

11 Plaintiff,)

12 vs.)

13 JOE'S JEANS, INC., a California Corporation;)
14 and DOES 1 through 100, inclusive,)

15 Defendants.)
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CASE NO. 37-2015-00021834-CU-BT-CTL

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

- (1) VIOLATION OF BUSINESS & PROFESSIONS CODE SECTIONS 17200 *ET SEQ.* (CALIFORNIA UNFAIR COMPETITION LAW);
- (2) VIOLATION OF BUSINESS AND PROF. CODE SECTION 17200 ET SEQ. (CALIFORNIA UCL BASED ON VIOLATION OF FEDERAL "MADE IN USA" STATUTE/STANDARD);
- (3) VIOLATION OF BUSINESS & PROFESSIONS CODE § 17533.7 (FALSE "Made in U.S.A." CLAIM);
- (4) NEGLIGENT MISREPRESENTATION

"IMAGED FILE"

Dept.: C-65
Judge: Hon. Joan M. Lewis

1 COMES NOW, Plaintiff Jeff Card (“Plaintiff”), as an individual and on behalf of the
2 general public and all others similarly situated, by his undersigned attorneys, alleges as follows:

3 **NATURE OF THE CASE**

4 1. This is a Nationwide class action case brought on behalf of all purchasers of Joe’s
5 Jeans manufactured, distributed, marketed, and/or sold by Joe’s Jeans, Inc. (“Joe’s”) that were
6 labeled as “Made in USA” but that contained foreign-made component parts (hereinafter referred
7 to as “Jeans”). The Jeans are sold at various retail stores throughout the United States, including
8 Nordstrom’s and Bloomingdales. The Jeans are also sold by Joe’s via its website
9 (www.joesjeans.com) directly to consumers throughout the United States.

10 2. As stated by the California Supreme Court in *Kwikset v. Superior Court* (January
11 27, 2011) 51 Cal.4th 310, 328-29:

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13 **Simply stated: labels matter.** The marketing industry is based on
14 the premise that labels matter, that consumers will choose one
15 product over another similar product based on its label and various
16 tangible and intangible qualities they may come to associate with a
17 particular source....In particular, **to some consumers**, the “Made in
18 U.S.A.” label matters. A range of motivations may fuel this
19 preference, from the desire to support domestic jobs, to beliefs
20 about quality, to concerns about overseas environmental or labor
21 conditions, to simple patriotism. The Legislature has recognized
22 the materiality of this representation by specifically outlawing
23 deceptive and fraudulent “Made in America” representations. (§
24 17533.7; see also Civ.Code, § 1770, subd. (a)(4) [prohibiting
25 deceptive representations of geographic origin].) The object of
26 section 17533.7 “is to protect consumers from being misled when
27 they purchase products in the belief that they are advancing the
28 interests of the United States and its industries and workers...

23 3. Through an unlawful, deceptive and unfair course of conduct, Joe’s, and DOES 1
24 through 100 (collectively “Defendants”), manufactured, marketed, and/or sold a variety of Jeans
25 to various consumers throughout the United States with the false designation and representation
26 that Defendants’ Jeans were “Made in USA” during the relevant four year statutory time period.
27 The “Made in USA” label was clearly printed on the product. Contrary to the “Made in USA”
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1 claim, however, the offending Jeans were manufactured or produced from component parts that
2 were manufactured outside of the United States in violation of California law, amongst other
3 state's laws.

4 **PARTIES**

5 4. Plaintiff is an individual residing in San Diego, California.

6 5. On information and belief, Defendant Joe's Jeans, Inc. is a corporation with its
7 principle place of business located in California (as per the California Secretary of State website
8 its principle place of business is 2340 S. Eastern Avenue, Commerce, CA 90040). Joe's can be
9 served in California via its registered agent for service of process: CSC – Lawyers Incorporating
10 Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833.

11 6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein
12 as DOES 1-100, inclusive; therefore, Plaintiff sues these defendants by such fictitious names.
13 Plaintiff is informed and believes that each of the fictitious named defendants are legally
14 responsible in some manner for the occurrences herein alleged, assisted in and about the wrongs
15 complained herein by providing financial support, advice, resources or other assistance. Plaintiff
16 will amend the complaint to allege their true names and capacities when ascertained.

17 7. Plaintiff is informed and believes that all defendants were agents, servants and
18 employees of their co-defendants, and in doing the things hereinafter mentioned, were acting
19 within the scope of their authority as such agents, servants and employees with the permission
20 and consent of their co-defendants.

21 **JURISDICTION AND VENUE**

22 8. This Court has jurisdiction in this matter because Defendants routinely transact
23 business in San Diego County.

24 9. Venue in this Court is proper pursuant to Code of Civil Procedure §§ 395 and
25 395.5 and Business & Professions Code §§ 17203 and 17204 because Defendants do business in
26 San Diego County and Plaintiff's transaction took place in San Diego County.

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1 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

2 10. Plaintiff incorporates herein each and every allegation contained in paragraphs 1
3 through 9, inclusive, as though fully set forth herein.

4 11. During the relevant four year statutory time period, Defendants manufactured,
5 marketed, and/or sold Jeans with a “Made in USA” label.

6 12. Contrary to the “Made in USA” claim, however, the Jeans were made,
7 manufactured or produced with component parts that are manufactured outside of the United
8 States. On information and belief, the Jeans are made with foreign-made buttons, rivets, zipper
9 assembly, thread, and/or fabric in violation of California, Federal, and other-state’s law.

10 13. Not only did Defendants market and represent to consumers that their Jeans were
11 “Made in USA,” but Defendants concealed the true country of origin of their “Made in USA”
12 labeled Jeans to the general public throughout the United States. The disclosure of this
13 information was necessary in order to make Defendants’ representation not misleading.
14 Defendants possess superior knowledge of the true facts which were not disclosed, thereby
15 tolling the running of any applicable statute of limitations.

16 14. Consumers are particularly vulnerable to these deceptive and fraudulent practices.
17 Most consumers possess very limited knowledge of the likelihood that products, including the
18 component parts therein, claimed to be made in the United States are in fact made in foreign
19 countries. This is a material factor in many individuals’ purchasing decisions, as they believe
20 they are supporting American companies and American jobs.

21 15. Consumers generally believe that “Made in USA” products are of higher quality
22 than their foreign-manufactured counterparts. Due to Defendants’ scheme to defraud the market,
23 members of the general public were fraudulently induced to purchase Defendants’ products.
24 California and Federal laws are designed to protect consumers from this type of false
25 representation and predatory conduct. Defendants’ scheme to defraud consumers is ongoing and
26 will victimize consumers each and every day until altered by judicial intervention.

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THE PLAINTIFF TRANSACTION

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2 16. In or around June 2014, Plaintiff purchased a pair of Joe’s jeans from a local retail
3 store in San Diego. At the time of purchase, the product itself was marked with a “Made in
4 USA” label when it was in fact comprised of component parts made outside of the United States.

5 17. Accordingly, Defendants were not entitled to lawfully make a “Made in USA”
6 representation because California law requires 100% U.S.-made component parts within a
7 product to qualify for a “Made in USA” or “Made in USA” country of origin designation (as it
8 relates to selling in California).

9 18. When Plaintiff, and Class Members, purchased Jeans from Defendants, they saw
10 and relied upon the unqualified “Made in USA” representation to make their purchasing
11 decisions, which is typical of most consumers throughout the United States, and they were
12 deceived as a result of Defendants’ actions. These purchasing decisions were supported by the
13 “Made in USA” representation made by Defendants, which is absent from many of Defendants’
14 competitors (that are made in Mexico or Pakistan). Plaintiff believed at the time he purchased
15 the Jeans that he was in fact supporting American jobs and the American economy.

16 19. Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by
17 Defendants as a result of Defendants’ false “Made in USA” claim set forth on the offending
18 product (through its customary retail channels). Furthermore, he suffered an “injury in fact” by
19 paying for something he believed was genuinely manufactured in the USA, when it was not.

20 20. On information and belief, the Jeans at issue in this litigation were manufactured
21 with substandard foreign-made parts that are of inferior quality to their U.S.-manufactured
22 counterparts. Essentially, the Jeans are not worth the purchase price paid. Class Members are
23 entitled to monetary damages or restitution (the specific measure of which is the realm of expert
24 testimony).

25 21. U.S.-made component parts are subject to strict regulatory requirements, such as
26 environmental, labor, and safety standards. Foreign-made component parts are not subject to the
27 same U.S. manufacturing standards and are inherently of lower quality than their U.S.-made
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1 counterparts. Moreover, foreign-made component parts are less reliable and durable than their
2 U.S.-made counterparts. As such, the offending Jeans, made with foreign-made component parts
3 (yet unlawfully labeled “Made in USA”), are of inferior quality, less reliable, and fail more
4 often.

5 22. Plaintiff and Class Members were undoubtedly injured as a result of Defendants’
6 false “Made in USA” representations that are at issue in this litigation.

7 **CLASS ALLEGATIONS**

8 23. Plaintiff brings this action on behalf of himself as an individual and on behalf of
9 all other persons similarly situated in the United States who purchased Defendants’ Jeans.
10 Specifically excluded from the class are any persons who have a controlling interest in
11 Defendants, any of Defendants’ parent companies, subsidiaries, and Defendants’ officers,
12 directors, managers, shareholders and members of their immediate families, and their heirs,
13 successors and assigns (the “Class”), pursuant to Code of Civil Procedure § 382 and Business &
14 Professions Code § 17200 *et seq.* The class also does not include any persons who previously
15 filed suit against Defendants for similar violations of California law and/or the Hon. Judge
16 presiding over this matter and his or his judicial staff.

17 24. All causes of action herein have been brought and may properly be maintained as
18 a class action pursuant to the provisions of Code of Civil Procedure § 382 because there is a
19 well-defined community of interest in the litigation and the proposed class is easily
20 ascertainable:

21 a. Numerosity: On information and belief, the Class is so numerous that the
22 individual joinder of all members would be impracticable. The exact number and identities of
23 the members of the Class are readily ascertainable from the records in Defendants’ possession or
24 that of its retail customers.

25 b. Common Questions Predominate: Common questions of law and fact
26 exist as to all members of the Class, and those questions clearly predominate over any questions
27 that might affect members individually. These common questions of law and fact include, for
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1 example, whether Defendants violated Business & Professions Code § 17533.7 by
2 misrepresenting the country of origin of the Jeans because component parts within the product
3 are manufactured outside the United States and whether Defendants' actions in this regard
4 constitute an unfair, unlawful, or fraudulent business practice pursuant to Business & Professions
5 Code § 17200 *et seq.*

6 c. Typicality: On information and belief, Plaintiff's claims are typical of the
7 claims of the members of the Class. Plaintiff and all members of the Class sustained damages
8 arising out of Defendants' common course of conduct complained herein.

9 d. Adequacy: Plaintiff will fairly and adequately protect the interests of the
10 members of the Class because Plaintiff has no interests which are adverse to the interests of
11 absent class members and because Plaintiff has retained counsel who possesses significant
12 litigation experience regarding violations of consumer statutes.

13 e. Superiority: A class action is superior to other available means for the fair
14 and efficient adjudication of this controversy since individual joinder of all members would be
15 impracticable. Class action treatment will permit a large number of similarly situated persons to
16 prosecute their common claims in a single forum simultaneously, efficiently and without the
17 unnecessary duplication of effort and expense that numerous individual actions would engender.
18 Furthermore, since most class members' individual claims for damages are likely to be modest,
19 the expenses and burdens of litigating individual actions would make it difficult or impossible
20 for individual members of the Class to redress the wrongs done to them. An important public
21 interest will be served by addressing the matter as a class action, substantial economies to the
22 litigants and to the judicial system will be realized and the potential for inconsistent or
23 contradictory judgments will be avoided.

24 FIRST CAUSE OF ACTION

25 (Violation of Business & Professions Code § 17200 *et seq.* Against All Defendants)

26 25. Plaintiff realleges and incorporates herein by reference all of the allegations
27 contained in Paragraphs 1 through 25, inclusive, of this complaint as though fully set forth
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1 herein.

2 26. Business & Professions Code § 17200 *et seq.* provides that unfair competition
3 means and includes “any unlawful, unfair or fraudulent business act or practice and unfair,
4 deceptive, untrue or misleading marketing.”

5 27. By and through their conduct, including the conduct detailed above, Defendants
6 engaged in activities which constitute unlawful, unfair, and fraudulent business practices
7 prohibited by Business & Professions Code § 17200 *et seq.* Beginning at an exact date unknown
8 as yet and continuing up through the present, Defendants committed acts of unfair competition,
9 including those described above, by engaging in a pattern of “unlawful” business practices,
10 within the meaning of Business & Professions Code § 17200 *et seq.*, by manufacturing,
11 distributing, marketing, and/or selling products with a false country of origin designation and
12 violating Business & Professions Code § 17533.7 by falsely claiming that the products
13 referenced herein are “Made in USA” when they are in fact made with component parts
14 manufactured outside of the United States.

15 28. Beginning at an exact date unknown as yet and continuing up through the present,
16 Defendants committed acts of unfair competition that are prohibited by Business & Professions
17 Code § 17200 *et seq.* Defendants engaged in a pattern of “unfair” business practices that violate
18 the wording and intent of the statutes, by engaging in practices that threaten an incipient
19 violation of law, or violate the policy or spirit of laws because its effects are comparable to or the
20 same as a violation of the law by manufacturing, distributing, and marketing products with a
21 false country of origin designation and violating Business & Professions Code § 17533.7 by
22 falsely claiming that the products referenced herein are "Made in USA" when they are in fact
23 made with component parts manufactured outside of the United States.

24 a. Alternatively, Defendants engaged in a pattern of “unfair” business
25 practices that violate the wording and intent of the statutes, by engaging in practices that are
26 immoral, unethical, oppressive or unscrupulous, the utility (if any) of which conduct is far
27 outweighed by the harm done to consumers and public policy by manufacturing, distributing,
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1 marketing, and advertising products with the false claim that the products referenced herein are
2 “Made in USA.”

3 b. Alternatively, Defendants engaged in a pattern of “unfair” business
4 practices that violate the wording and intent of the statutes, by engaging in practices wherein: (1)
5 the injury to the consumer was substantial; (2) the injury was not outweighed by any
6 countervailing benefits to consumers or competition; and (3) the injury was of the kind that the
7 consumers themselves could not reasonably have avoided by manufacturing, distributing,
8 marketing, and advertising products with the false claim that the products referenced herein are
9 “Made in USA.”

10 29. Beginning at an exact date unknown as yet and continuing up through the present,
11 Defendants committed acts of unfair competition, including those described above, prohibited by
12 Business & Professions Code § 17200 *et seq.* by engaging in a pattern of “fraudulent” business
13 practices within the meaning of Business & Professions Code § 17200 *et seq.*, by manufacturing,
14 distributing, marketing, and/or selling products with a false country of origin designation and
15 violating Business & Professions Code § 17533.7 by falsely claiming that the products
16 referenced herein are “Made in USA.”

17 30. Defendants engaged in these unlawful, unfair and fraudulent business practices
18 for the primary purpose of collecting unlawful and unauthorized monies from Plaintiff and all
19 others similarly situated, thereby unjustly enriching Defendants.

20 31. As a result of the repeated violations described herein, Defendants received
21 unearned commercial benefits at the expense of their competitors and the public.

22 32. Defendants’ unlawful, unfair and fraudulent business practices present a
23 continuing threat to the public in that Defendants continues to engage in unlawful conduct.

24 33. Such acts and omissions are unlawful and/or unfair and/or fraudulent and
25 constitute a violation of Business & Professions Code § 17200 *et seq.* Plaintiff reserves the right
26 to identify additional violations by Defendants as may be established through discovery.

27 34. As a direct and legal result of their unlawful, unfair and fraudulent conduct
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1 described herein, Defendants have been and will be unjustly enriched by the receipt of ill-gotten
2 gains from customers, including Plaintiff, who unwittingly provided their money to Defendants
3 based on Defendants' fraudulent country of origin designation.

4 35. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by
5 Defendants as a result of Defendants' false "Made in USA" claims set forth on the Jeans.

6 36. Plaintiff and Class Members were undoubtedly injured as a result of Defendants'
7 false "Made in USA" representations that are at issue in this litigation.

8 37. In prosecuting this action for the enforcement of important rights affecting the
9 public interest, Plaintiff seeks the recovery of attorneys' fees pursuant to Code of Civ. Procedure
10 § 1021.5, which is available to a prevailing plaintiff who wins relief for the general public.

11 **SECOND CAUSE OF ACTION**

12 **(Violation of Business and Professions Code Section 17200 *et seq.* Against All Defendants**
13 **for Violation of Federal "Made in USA" Statute/Standard)**

14 38. Plaintiffs re-allege and incorporate herein by reference all of the allegations
15 contained in Paragraphs 1 through 38, inclusive, of this complaint as though fully set forth
16 herein.

17 39. Business and Professions Code Section 17200 *et seq.* provides that unfair
18 competition means and includes "any unlawful, unfair or fraudulent business act or practice and
19 unfair, deceptive, untrue or misleading marketing."

20 40. Beginning at an exact date unknown as yet and continuing up through the present
21 Defendants committed acts of unfair competition, including those described above, by engaging
22 in a pattern of "unlawful" business practices, within the meaning of Business and Professions
23 Code Section 17200 *et seq.*, by manufacturing, distributing, marketing, and/or selling products
24 in violation of the federal "Made in USA" statute/standard governing "Made in USA" claims (15
25 U.S.C. § 45a) by falsely claiming that the products referenced herein are "Made in USA" when
26 they are in fact were not entitled to such representation because they contain more than a *de*
27 *minimis* amount of foreign made component parts.

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2 It is unlawful for any person, firm, corporation or association to sell or
3 offer for sale in this State any merchandise on which merchandise or on its
4 container there appears the words "Made in USA" "Made in America,"
5 "U.S.A.," or similar words when the merchandise or **any article, unit, or
part thereof**, has been entirely or substantially made, manufactured, or
6 produced outside of the United States. (Emphasis added).

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17 51. As stated by the California Supreme Court in *Kwikset v. Superior Court*:

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19 **Simply stated: labels matter.** The marketing industry is based on the
20 premise that labels matter, that consumers will choose one product over
21 another similar product based on its label and various tangible and
22 intangible qualities they may come to associate with a particular
23 source....In particular, to some consumers, the "Made in U.S.A." label
24 matters. A range of motivations may fuel this preference, from the desire
25 to support domestic jobs, to beliefs about quality, to concerns about
26 overseas environmental or labor conditions, to simple patriotism. The
27 Legislature has recognized the materiality of this representation by
28 specifically outlawing deceptive and fraudulent "Made in America"
representations. (§ 17533.7; see also Civ.Code, § 1770, subd. (a)(4)
[prohibiting deceptive representations of geographic origin].) The object
of section 17533.7 "is to protect consumers from being misled when they
purchase products in the belief that they are advancing the interests of the
United States and its industries and workers...

17 52. Defendants violated Business & Professions Code § 17533.7 by manufacturing,
18 selling and/or offering to sell merchandise in the State of California and throughout the United
19 States with the "Made in USA" label as fully set forth herein. The Jeans in this case contain
20 component parts that are manufactured outside of the United States.

21 53. It is alleged on information and belief that Defendants' violations of Business &
22 Professions Code § 17533.7 was done with awareness of the fact that the conduct alleged was
23 wrongful and were motivated solely for increased profit. It is also alleged on information and
24 belief that Defendants did these acts knowing the harm that would result to Plaintiff and that
25 Defendants did these acts notwithstanding that knowledge.

26 54. As a direct and proximate result of Defendants' violations of Business &
27 Professions Code § 17533.7, Plaintiff and Class members are entitled to restitution of excess
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1 monies paid to Defendants by Plaintiff and Class members relating to the false “Made in USA”
2 claims on Defendants’ Jeans.

3 55. Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by
4 Defendants as a result of Defendants’ false “Made in USA” claims set forth on the Jeans.
5 Furthermore, he suffered an “injury in fact” by paying for something he believed was genuinely
6 manufactured in the USA, when it was not. See also Paragraphs 16-22 herein.

7 56. Plaintiff and Class Members were undoubtedly injured as a result of Defendants’
8 false “Made in USA” representations that are at issue in this litigation.

9 57. In prosecuting this action for the enforcement of important rights affecting the
10 public interest, plaintiff seeks to recover attorneys’ fees pursuant to Code of Civil Procedure
11 § 1021.5, which is available to a prevailing plaintiff who wins relief for the general public.

12 **FOURTH CAUSE OF ACTION**

13 **(For Negligent Misrepresentation Against All Defendants)**

14 58. Plaintiff re-alleges and incorporates herein by reference each and every allegation
15 contained in Paragraphs 1 through 58, as though set forth in full.

16 59. During the relevant statutory time period, Defendants made false “Made in USA”
17 country of origin designations to Plaintiff and Class Members as it pertains to the sale of the
18 Jeans.

19 60. The representation that Defendants’ Jeans were “Made in USA” was false as
20 defined by California law. The true facts are that Defendants sold “Made in USA” labeled Jeans
21 with foreign-made component parts in violation of California and federal law.

22 61. When Defendants made the representations set forth above, they had no
23 reasonable grounds for believing them to be true.

24 62. Defendants made the representations with the intention of inducing Plaintiff and
25 Class Members to act in reliance upon these representations in the manner hereafter alleged, or
26 with the expectation that they would so act.

27 63. Plaintiff and Class Members, at the time the representations were made by
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1 Defendants, and at the time Defendants took the actions herein alleged, were ignorant of the
2 falsity of the representations and believed them to be true. In reliance on these representations,
3 Plaintiff and Class Members were induced to and did pay monies to purchase Defendants'
4 products.

5 64. Had Plaintiff and Class Members known the actual facts, they would not have
6 taken such action. Furthermore, Plaintiff and other consumers throughout the United States had
7 no reason to believe that Defendants would act otherwise than as to rely on the "Made in USA"
8 country of origin designation.

9 65. Without knowledge, Plaintiff and Class Members acted on the false country of
10 origin designation and purchased products they did not truly want. Had Plaintiff and Class
11 Members known the actual facts, they would not have taken such action.

12 66. As a proximate result of the fraudulent conduct of Defendants as herein alleged,
13 Plaintiff and Class Members paid monies to Defendants, through Defendants' regular retail sales
14 channels, to which Defendants are not entitled, and have been damaged in an amount to be
15 proven at trial.

16 67. Plaintiff and Class Members seek damages, prejudgment interest, and reasonable
17 attorneys' fees (pursuant to Code of Civil Procedure § 1021.5) and costs as will be determined at
18 time of trial.

19 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, as follows:

20 **PRAYER**

- 21 1. Damages according to proof;
- 22 2. For a judgment declaring this action to be a proper class action;
- 23 3. A declaration that Defendants violated the provisions of California Business &
24 Professions Code § 17200 *et seq.*;

25 4 Pursuant to Business & Professions Code § 17204 and pursuant to the equitable
26 powers of this Court, a judgment enjoining Defendants, their subsidiaries, affiliates, and their
27 successors, agents, servants, officer, directors, employees, and all persons, acting in concert with
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1 them, directly or indirectly, from engaging in conduct violative of Business & Professions Code
2 § 17200 *et seq.* as more fully described above;

3 5. Pursuant to Business & Professions Code § 17204, a judgment requiring
4 Defendants to provide adequate restitution to restore all persons in interest, including all Class
5 Members, with all monies acquired by means of Defendants' unfair competition;

6 6. Plaintiff's reasonable attorneys' fees as it relates to all causes of action pursuant
7 to Code of Civil Procedure § 1021.5;

8 7. For costs of suit incurred herein;

9 8. For prejudgment interest as allowed by law; and

10 9. For such other and further relief as this Court finds just, equitable and proper,
11 including, but not limited to, the remedy of disgorgement.

12 Dated: February 29, 2016

DEL MAR LAW GROUP, LLP

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14 By: 

15 John H. Donboli
16 Camille Joy DeCamp
17 Attorneys for Jeff Card, an individual, and on
18 behalf of all others similarly situated
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