

ORIGINAL
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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13 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF LOS ANGELES

AXE

15 MARINA ABRAMYAN, individually and on
16 behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 ORGANIC LIAISON LLC, a Florida
19 Corporation, ORGANIC LIAISON
20 MANAGEMENT, INC., a Florida Corporation,
21 KIRSTIE ALLEY, an individual, and DOES 1
22 through 100, inclusive,

21 Defendants.

CASE NO.:

BC 48 8 737

CLASS ACTION

COMPLAINT

1. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, et seq. (UNFAIR AND FRAUDULENT PRONGS)
2. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, et seq. (UNLAWFUL PRONG)
3. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17500, et seq.
4. VIOLATION OF CALIFORNIA CIVIL CODE § 1750, et seq. (Consumer Remedies Act)
5. BREACH OF IMPLIED WARRANTY

DEMAND FOR JURY TRIAL

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87/23/12

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1 Marina Abramyan ("Plaintiff"), individually and on behalf of all other similarly situated
2 purchasers (the "Class") of the Kirstie Alley Organic Liaison Weight Loss Program ("Organic
3 Liaison Weight Loss Program") hereby brings this consumer class action against Organic Liaison
4 LLC, Organic Liaison Management, Inc., and Kirstie Alley (collectively, "Organic Liaison" or
5 "Defendants") and Does 1 through 100, inclusive (sometimes collectively referred to herein as
6 "Organic Liaison") to challenge Defendants' violations of California state law and their unlawful
7 and fraudulent business practices and alleges as follows:

8 NATURE OF THE CASE

9 1. This is a class action for injunctive relief, restitution and damages against Organic
10 Liaison for false and misleading advertising of the Organic Liaison Weight Loss Program in
11 violation of California's Consumer Legal Remedies Act ("CLRA") Civil Code Section 1750, *et*
12 *seq.*, California's Unfair Competition Act ("UCL") Business & Professions Code Section 17200, *et*
13 *seq.*, California's False Advertising Law ("FAL") Business & Professions Code Section 17500, *et*
14 *seq.*, and breach of implied warranty.

15 2. The Organic Liaison Weight Loss Program consists of purported weight loss
16 supplements¹ and weight loss instructions that are marketed and distributed nationwide by Organic
17 Liaison and celebrity Kirstie Alley. By this action Plaintiff seeks to halt Organic Liaison's false
18 and misleading advertising claims that the Organic Liaison Weight Loss Program can cause
19 significant weight loss. Indeed, the advertising and marketing for the Organic Liaison Weight Loss
20 Program creates the uniform, false net-impression that the product is an FDA approved weight loss
21 product capable of easily causing significant weight loss and caused Defendant Kirstie Alley to
22 lose a whopping 100 pounds. Defendants falsely market the Organic Liaison Program as a weight-
23 loss aide, and then charge a premium for supplements that are nothing more than run-of-the-mill
24 fiber and calcium supplements. Some of the more blatant claims giving rise to this false net
25 impression include the following claims on the Organic Liaison website:
26

27 ¹ The Organic Liaison Weight Loss Program supplements include: (1) "Rescue Me," an elixir that claims to suppress
28 appetite, increase energy and cleanse the body; (2) "Release Me," a blend of calcium and magnesium that claims to aid
in contraction and relaxation; and (3) "Relieve Me," a formula that claims to cleanse your colon to aid in weight loss.

- 1 a. "I [Kirstie Alley] am proof of its success I lost one hundred pounds on Organic
- 2 Liaison,";
- 3 b. "I've [Kirstie Alley] lost 100lbs and I'm down to a Size 6 and still counting...thanks
- 4 to Organic Liaison!";
- 5 c. "#1 The First USDA Certified Organic Weight Loss Product";
- 6 d. "More Energy";
- 7 e. "I [Kirstie Alley] can assure you that if you follow this program, you'll get healthier,
- 8 lose weight, and not be 'annoyingly' hungry";
- 9 f. "The first USDA certified organic weight-loss product that boosts natural energy";
- 10 g. "Reduces cravings for sugar and carbohydrates to help you lose weight quickly and
- 11 easily";
- 12 h. "Provides a natural energy boost and supports a healthy metabolism for daily
- 13 activity";
- 14 i. "Proven Products: weight loss products and dietary supplements designed to optimize
- 15 your weight-loss results. They help to curb your cravings...boost natural energy";
- 16 j. "Our products help you tackle appetite, give you more natural energy"; and
- 17 k. Images displaying purported "before" and "after" pictures of Defendant Kirstie
- 18 Alley's significant weight loss as a result of the Product.

19 3. Plaintiff also seeks to stop Organic Liaison's deceptive use of Defendant Kirstie
20 Alley's dramatic "before and after" pictures and statements that Organic Liaison caused her to
21 lose 100 pounds. Ms. Alley's weight loss is not due to the Organic Liaison Program, but rather, is
22 the result of an above average exercise regimen and extremely low calorie diet, including her time
23 on the television program "Dancing with the Stars" ("DWTS"), where she spent five to seven
24 hours a day exercising as part of the competition. See Exhibit A.

25 4. Defendants' prominent and repeated use of Defendant Kirstie Alley's weight loss as
26 "proof" that the Organic Liaison Weight Loss Program works and the products are "proven" is
27 nothing more than a healthy deception.

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1 10. This Court has jurisdiction over all causes of action asserted herein pursuant to the
2 California Constitution, Article VI, § 10, because this case is a cause not given by statute to other
3 trial courts. Plaintiff has standing to bring this action pursuant to Business & Professions Code §
4 17200, *et seq.*

5 11. This Court has subject matter jurisdiction over this action pursuant to Bus. & Prof.
6 Code § 17200, *et seq.*, Bus & Prof. Code § 17500, *et seq.*, Civ Code § 1750, *et seq.*, Code of Civil
7 Procedure § 382, and other provisions of the California Code.

8 12. Upon information and belief, Ms. Alley is a resident of California, and Organic
9 Liaison LLC and Organic Liaison Management, Inc., have sufficient minimum contacts with the
10 state of California, and have otherwise intentionally availed themselves of the markets in
11 California through promotion, marketing and sale of their products in the state, such that exercise
12 of jurisdiction by this Court is permissible under traditional notions of fair play and substantial
13 justice.

14 13. Venue is proper in this Court pursuant to California Code of Civil Procedure
15 sections 395(a) and 395.5 and Civil Code § 1780(d). Plaintiff resides in Los Angeles County and
16 purchased the Organic Liaison Weight Loss Program in Los Angeles County. Defendants receive
17 substantial compensation from sales in Los Angeles County, and Defendants made numerous
18 misrepresentations which had a substantial effect in Los Angeles County, including, but not
19 limited to, label, and internet advertisements for the Organic Liaison Weight Loss Program.

20 14. Organic Liaison and other out-of-state participants can be brought before this Court
21 pursuant to the provisions of Code of Civil Procedure § 395.5.

PARTIES

22
23 15. Plaintiff is, and at all times relevant hereto was, an individual residing in Los
24 Angeles County, California. Plaintiff purchased the Organic Liaison Weight Loss Program in Los
25 Angeles County. Prior to doing so, Plaintiff relied upon advertising on Defendants' website,
26 www.organicliaison.com, which was prepared and approved by Defendants and their agents and
27 designed to encourage women attempting to lose weight to purchase the Organic Liaison Weight
28 Loss Program. Plaintiff followed the Organic Liaison Weight Loss Program and used the

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1 included supplements as directed, but did not experience any of the benefits Defendants
2 advertised.

3 16. Defendant Organic Liaison LLC is a corporation organized under the laws of the
4 State of Florida. Upon information and belief, Organic Liaison LLC maintains its principal
5 business office at 1515 North University Drive #222, Coral Springs, Florida, 33071-6096.
6 Organic Liaison LLC, directly and through its agents, has substantial contacts with and receives
7 benefits and income from and through the State of California. Upon information and belief,
8 Organic Liaison LLC is the manufacturer and distributor of the Organic Liaison Weight Loss
9 Program, and is the company that created and/or authorized the false, misleading and deceptive
10 advertisements for the Organic Liaison Weight Loss Program.

11 17. Defendant Organic Liaison Management, Inc. is a corporation organized under the
12 laws of the State of Florida. Upon information and belief, Organic Liaison Management, Inc.,
13 maintains its principal business office at 1100 North Osceola Avenue, Clearwater, Florida, 33755.
14 Organic Liaison Management, Inc., directly and through its agents, has substantial contacts with
15 and receives benefits and income from and through the State of California. Upon information and
16 belief, Organic Liaison Management, Inc., is the manufacturer and distributor of the Organic
17 Liaison Weight Loss Program, and is the company that created and/or authorized the false,
18 misleading and deceptive advertisements and/or packaging and labeling for the Organic Liaison
19 Weight Loss Program.

20 18. Defendant Kirstie Alley is an individual and upon information and belief, resides in
21 Los Angeles, California. Ms. Alley is not only the celebrity spokesperson for the Organic Liaison
22 Weight Loss Program, she is also the owner and/or board member of Organic Liaison LLC and
23 Organic Liaison Management, Inc.

24 19. The true names and capacities, whether individual, corporate, associate or otherwise
25 of certain manufacturers, distributors and/or their alter egos sued herein as DOES 1 through 100
26 inclusive are presently unknown to Plaintiff who therefore sues these Defendants by fictitious
27 names. Plaintiff will seek leave of this Court to amend the Complaint to show their true names
28 and capacities when the same have been ascertained. Plaintiff is informed and believes and based

1 thereon alleges that DOES 1 through 100 were authorized to, and did business in Los Angeles
2 County. Plaintiff is further informed and believes and based thereon alleges that DOES 1 through
3 100 were and/or are, in some manner or way, responsible for and liable to Plaintiff for the events,
4 happenings, and damages hereinafter set forth below.

5 20. Plaintiff is informed and believes, and based thereon alleges that at all times relevant
6 herein each of the Defendants was the agent, servant, employee, subsidiary, affiliate, partner,
7 assignee, successor-in-interest, alter ego or other representative of each of the remaining
8 Defendants and was acting in such capacity in doing the things herein complained of and alleged.

9 21. In committing the wrongful acts alleged herein, Defendants planned and participated
10 in and furthered a common scheme by means of false, misleading, and deceptive representations
11 to induce members of the public to purchase the Organic Liaison Weight Loss Program.
12 Defendants participated in the making of such representations in that each did disseminate or
13 cause to be disseminated said misrepresentations.

14 22. Defendants, upon becoming involved with the manufacture, advertising, and sale of
15 the Organic Liaison Weight Loss Program, knew or should have known that the claims about the
16 Program were false, deceptive and misleading. Defendants affirmatively misrepresented the
17 benefits of the Organic Liaison Weight Loss Program in order to convince the public to purchase
18 the Organic Liaison Weight Loss Program, resulting in profits of millions of dollars to
19 Defendants, all to the damage and detriment of the consuming public. Thus, in addition to the
20 wrongful conduct herein alleged as giving rise to primary liability, Defendants further aided and
21 abetted and knowingly assisted each other in breach of their respective duties and obligations as
22 herein alleged.

23 FACTUAL ALLEGATIONS

24 23. According to a September 2002 Federal Trade Commission Staff Report, obesity has
25 reached epidemic proportions, with 6 out of every 10 Americans qualifying as overweight or
26 obese. At the same time, nearly the 29% of men and 44% of women who are trying to lose weight
27 (an estimated 68 million American adults) comprise a huge potential market for sellers of weight-
28 loss products and services. Consumers spent an estimated \$34.7 billion in 2000 on weight-loss

1 27. Throughout the Class period, Defendants have engaged in advertising and marketing
2 utilizing claims that are neither accurate nor supported. Defendants' advertising has been
3 broadcast through a range of media, including television, print and over the internet. These
4 advertisements, including Defendant Alley's media and print interviews in which she boasts about
5 her weight loss as a result of using the Product, are false and misleading.

6 **Defendants' Advertising of the Organic Liaison Weight Loss Program**

7 28. In the ultra-competitive market for weight-loss products companies must advertise
8 their products in a way that differentiates their products from thousands of others in the
9 marketplace, and, in turn, induce consumers to ultimately purchase their products.

10 29. In this regard, weight loss supplements have been described as "credence" goods
11 that are known only through the benefits promised by the products' manufacturer and distributor
12 at the time of purchase. See Richard A. Posner, *An Economic Approach to the Law of Evidence*,
13 51 Stan.L.Rev. 1477, 1489 (1999) ("A good is a credence good if the consumer cannot readily
14 determine its quality by inspection or even use, so that he has to take its quality 'on faith.'")
15 Charles J. Walsh and Marc S. Klein, *From Dog Food to Prescription Drug Advertising: Litigating*
16 *False Scientific Establishment Claims Under the Lanham Act*, 22 Section Hall.L.Rev. 389, 399
17 (1992) ("Drugs are true 'credence' goods because they possess qualities that cannot be evaluated
18 through normal use. The assessment of a drug's qualities normally requires complex, time-
19 consuming and costly studies."). Here, consumers aren't even able to read the products labels and
20 ingredients before purchasing since the products are only sold online or over the phone. The only
21 information consumers can find about the Organic Liaison Weight Loss Program are the claims
22 and "facts" provided by Organic Liaison itself.

23 30. Defendants' false and misleading claims that their products are "proven" and
24 "designed to optimize" weight loss are specific establishment claims since they claim to have
25 scientific proof. A statement is an establishment claim where it represents that there is scientific
26 evidence which establishes the truth of the statement.

27 31. Defendants highlight their "PROVEN PRODUCTS" as "[w]eight loss products and
28 dietary supplements designed to optimize your weight-loss results. They help to curb your

1 cravings, replenish your body with vital nutrients and minerals, bossy natural energy, and improve
2 the quality of rest and relaxation while you lose weight.” Defendants fail to point to any support
3 whatsoever let alone any well-controlled, well-conducted, human clinical trials, as to how these
4 products or their accompanying claims are “proven,” though they refer to the “best scientific
5 minds” and purported “experts in science and nutrition.”

6 32. Defendants’ make specific detailed factual assertions without establishing the basis
7 for these claims, such as:

- 8 a. the Organic Liaison Program contains “proven products” that “optimize” weight
9 loss;
- 10 b. the Organic Liaison Program contains products that “reduce cravings” or cause “less
11 cravings” which will help consumers “lose weight quickly and easily;”
- 12 c. the Organic Liaison Program contains products that “boost natural energy” or
13 “boosts energy;”

14 33. Simply, there is no support for Defendants’ claims that the program is an “easy”
15 way to lose a significant amount of weight, and it is false that Ms. Alleys’ dramatic weight loss
16 was the result of using the Organic Liaison Weight Loss Program. There is no evidence to support
17 Defendants’ establishment claims that the “proven products” included in the program increase
18 energy, suppress appetite or aid in weight loss, or that the ingredients in these products have those
19 results.

20 34. The FTC has identified claims of scientific proof and doctor endorsements as
21 common tactics used by weight-loss fraudsters: “[e]ven if they do not purport to be clinically
22 proven, many claim to be the product of years of scientific research...or doctor recommended.”
23 See FTC Staff Report at p.6.

24 35. Organic Liaison claims its products are “proven” but fails to provide any scientific
25 support for these claims, let alone well-controlled, well-conducted human clinical studies that
26 demonstrate the Organic Liaison Weight Loss products provide the advertised benefits.

27 36. Further, Defendants’ prominent use of the claim that the Organic Liaison Program is
28 “the first USDA Certified Organic Weight Loss Product” on organicliaison.com, QVC.com, and

1 on the Product labels, creates a false net impression that the USDA, the government entity that
2 approves certain labeling for products, has certified, approved and even endorsed these
3 supplements as an effective weight loss product. In reality, the USDA has only certified that
4 these supplements may be labeled with the term "organic" and has not evaluated the effectiveness
5 of these supplements as a weight loss product.

6 37. In addition to the above unsupported claims regarding the supplements offered in the
7 Organic Liaison Weight Loss Program, the main draw of Organic Liaison is Ms. Alley's celebrity
8 influence and her dramatic 100 pound weight loss. Ms. Alley is a familiar and popular television
9 and film actress that has publicly battled weight issues for years, even starring in a television
10 show about her weight called "Fat Actress." Ms. Alley's influence in the dietary product
11 marketplace is evident as she was a paid spokesperson for the Jenny Craig Weight Loss Program
12 for three years and "had many weight-loss programs pursuing" her to be their spokesperson. See
13 Exhibit A.

14 38. Ms. Alley reported to have lost 75 pounds while on Jenny Craig from approximately
15 2005 through 2008, and then gained back the 75 pounds she lost on the Jenny Craig program and
16 gained an additional 10 pounds. After gaining 85 pounds Ms. Alley then returned to a rigorous
17 exercise schedule and restricted caloric diet on or about late 2010/early 2011. In various media
18 appearances, Ms. Alley has claimed she lost 60 pounds because of the Organic Liaison Program,
19 before joining DWTS in April 2011. After joining DWTS, Ms. Alley's substantial and dramatic
20 weight loss was well documented in the media and resulted from a restricted calorie diet and five
21 to seven hours a day multiple days a week of vigorous dance training and rehearsals for more than
22 two months. See Exhibit A.

23 39. In peddling the Organic Liaison Program, Ms. Alley attributes her weight loss to the
24 program, but in reality, Ms. Alley's weight loss is due to nothing more than the tried and true
25 concept of diet and exercise. It is commonly known, and indeed a scientific fact, that if you are
26 increasing exercise while decreasing caloric intake, you will lose weight. There is no magic pill
27 or supplement that causes weight loss. Defendants falsely market the Organic Liaison Program as
28 a weight-loss aide, and then charge a premium for supplements that are nothing more than over

1 the counter fiber and calcium supplements that are not miraculous weight loss pills. Indeed, the
2 Organic Liaison Program instructs participants to exercise on a "daily" basis and to follow a
3 "healthy diet" in combination with the supplements that are provided, but these supplements have
4 nothing to do with Ms. Alley's (or anyone else's) weight loss. If any consumer has lost weight
5 while on the Organic Liaison Program it is not because of almost \$90 supplements, it is because
6 of diet and exercise.

7 40. Further, Organic Liaison's website, QVC and Ms. Alley's promotion of the program
8 fail to disclose that Ms. Alley participated in significantly and substantially more exercise on a
9 regular basis than what is recommended by the program. This is a material omission because a
10 reasonable consumer relying on Ms. Alley's claims that she lost a whopping 100 pounds "thanks
11 to" Organic Liaison would want to know prior to purchasing the Product, that to achieve similar
12 results, one must spend five to seven hours a day exercising. Ms. Alley's weight loss is not the
13 result of the Organic Liaison Weight Loss Program, and her results are not typical of what the
14 average consumer will experience. This material information should be disclosed to consumers.

15 41. The Federal Trade Commission has noted that several of the techniques employed
16 by Defendants amount to false or misleading advertising, such as using false and misleading
17 testimonials and/or endorsements that do not disclose that the speaker followed a different caloric
18 diet or level of physical activity advertised with the product. See e.g. FTC, Dietary supplements:
19 An Advertising Guide for Industry (1998)⁷; and FTC, Guides Concerning Use of Endorsements
20 and Testimonials in Advertising (2009)⁸.

21 42. Defendants' advertisements convey a series of express and implied claims which
22 they know are material to the reasonable consumer and which they intend for consumers to rely
23 upon when choosing to purchase Defendants' products. The advertising and marketing for the
24 Organic Liaison Weight Loss Program creates the uniform, false net-impression that the product
25 is an FDA approved weight loss product capable of easily causing significant weight loss and
26 caused Defendant Kirstie Alley to lose a 100 pounds. Defendants then charge a premium for

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28 ⁷ Accessible at: <http://business.ftc.gov/documents/bus09-dietary-supplements-advertising-guide-industry>.

⁸ Accessible at: <http://www.ftc.gov/opa/2009/10/endortest.shm>.

1 supplements that are nothing more than run-of-the-mill fiber and calcium supplements. Some of
2 the claims giving rise to this false net impression include, but are not limited to, the following all
3 of which appear on Organic Liaison's website, QVC.com and QVC television infomercials:

- 4 a. Ms. Alley lost 100 pounds due primarily to her use of the Organic Liaison Weight
5 Loss Program (rather than from five to seven hours a day of exercise and a
6 substantially restricted caloric intake);
- 7 b. The Organic Liaison Weight Loss Program causes or assists in weight loss;
- 8 c. The Organic Liaison Weight Loss Program causes or creates an "easy" and "quick"
9 way to lose weight;
- 10 d. The Organic Liaison Weight Loss Program causes or assists in substantial weight
11 loss;
- 12 e. The Organic Liaison Weight Loss Program is scientifically designed or proven to
13 cause or assist in substantial weight loss;
- 14 f. The Organic Liaison Weight Loss Program increases energy;
- 15 g. The Organic Liaison Weight Loss Program boosts metabolism;
- 16 h. The Organic Liaison Weight Loss Program suppresses appetite; and
- 17 i. The Organic Liaison Weight Loss Program is a USDA approved weight loss
18 program.

19 43. Unfortunately for consumers, Defendants' advertising is misleading and likely to
20 deceive the average consumer.

21 **Plaintiff's Purchase and Use of Organic Liaison Weight Loss Program**

22 44. Plaintiff purchased the Organic Liaison Weight Loss Program from the Organic
23 Liaison website in September 2011. Prior to her purchase, Plaintiff viewed the QVC television
24 infomercial and reviewed the claims on QVC.com and on the Organic Liaison website and relied
25 on Organic Liaison's advertising, including the claims that: (1) Kirstie Alley lost 100 pounds
26 because of her use of the Organic Liaison Weight Loss Program, (2) the products are "proven" to
27 suppress appetite and increase energy, (3) and the program is an "easy" way to lose a significant
28 amount of weight. Plaintiff followed the program and used the products as directed in connection

1 with diet and exercise. Plaintiff did not lose weight or experience any of the advertised benefits
2 of the program. Plaintiff suffered injury in fact in the amount of the purchase price of the Organic
3 Liaison Weight Loss Program and would not have purchased the product had she known that
4 Defendants' claims about the Organic Liaison Weight Loss Program were false.

5 **CLASS ACTION ALLEGATIONS**

6 45. Plaintiff brings this action on behalf of herself and on behalf of all other persons
7 similarly situated. The Class which Plaintiff seeks to represent are:

8 All persons residing in the State of California who purchased the Organic Liaison
9 Weight Loss Program for personal use and not for resale since July XX, 2008.

10 46. Excluded from the Class are Organic Liaison's officers, directors, and employees,
11 and any individual who received remuneration from Organic Liaison in connection with that
12 individual's use or endorsement of the Organic Liaison Weight Loss Program. Plaintiff reserves
13 the right to amend the Class definition if further investigation and discovery indicates that the
14 Class definition should be narrowed, expanded, or otherwise modified.

15 47. **Ascertainability:** The Organic Liaison Program can only be purchased online
16 through www.organicliaison.com or www.qvc.com, or by calling telephone numbers provided by
17 Organic Liaison or QVC. Thus, all purchasers can easily be identified by Defendants from their
18 own records, since Defendants have a record of all transactions and contact information for class
19 members. Further, because each and every sale is based on the same uniform misrepresentations
20 on these websites and television ads, the class is objectively defined in such a way that individual
21 identification is possible from Defendants' shipping records when it becomes necessary.

22 48. **Numerosity:** Plaintiff does not know the exact number of members of the putative
23 class. Upon information and belief, Plaintiff believes hundreds, if not thousands, of California
24 residents purchased the Organic Liaison Weight Loss Program, either through the Organic
25 Liaison website or through QVC, and that members of the Class are numerous and geographically
26 dispersed throughout California. While the exact number and identities of the Class members are
27 unknown to Plaintiff at this time, due to the repeated airings on QVC, Plaintiff is informed and
28 believes that the total number of Class members will be in the thousands, and that members of the

1 Class are numerous. The exact number of class members can be ascertained through appropriate
2 investigation and discovery. In fact, since the Organic Liaison Weight Loss Program can only be
3 purchased directly from Organic Liaison or QVC, either over the phone or online, and then
4 delivered directly to consumers, Defendants have a record of every purchase made and Class
5 member contact information from shipping records. Joinder of these individuals is impracticable,
6 and the disposition of their claims in a Class Action will benefit the parties and the Court. The
7 Class is sufficiently numerous because hundreds if not thousands of units of the Organic Liaison
8 Weight Loss Program have been sold in the state of California during the Class Period.

9 49. Well-defined Community of Interest: There is a well-defined community of
10 interest in the questions of law and fact involved affecting the parties to be represented. The
11 questions of law and fact common to the Class predominate over questions which may affect
12 individual Class members. Common questions of law and fact include, but are not limited to, the
13 following:

- 14 a. Whether Defendants falsely advertise and represent the benefits of the Organic
15 Liaison Weight Loss Program;
- 16 b. Whether Defendants' advertising of the Organic Liaison Weight Loss Program is
17 misleading and deceptive;
- 18 c. Whether Defendants' advertising of the Organic Liaison Weight Loss Program is
19 misleading, false and/or illegal;
- 20 d. Whether Defendants knew or should have known that the representations were false,
21 misleading and/or deceptive;
- 22 e. Whether Defendants represent to consumers that the Organic Liaison Weight Loss
23 Program has characteristics, uses, benefits or qualities that the program does not have;
- 24 f. Whether Defendants knew or should have known that the Organic Liaison Weight
25 Loss Program does not have the characteristics, uses, benefits or qualities for which
26 Defendants advertised the product;
- 27 g. Whether Defendants advertised the Organic Liaison Weight Loss Program with the
28 intent not to sell it as advertised;

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- h. Whether Defendants' conduct is an unlawful business act or practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- i. Whether Defendants' conduct is a fraudulent business act or practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- j. Whether Defendants' advertising is untrue or misleading within the meaning of Business and Professions Code section 17500, *et seq.*;
- k. Whether Defendants' misrepresentations and omissions concerning the Organic Liaison Weight Loss Program are likely to deceive the reasonable consumer;
- l. The nature and extent of damages and other remedies to which the wrongful conduct of the Defendants entitles the Class members;
- m. Whether the Class is entitled to injunctive relief prohibiting the challenged wrongful practices and enjoining such practices in the future;
- n. Whether the Class is entitled to restitution;
- o. Whether Plaintiff and the Class are entitled to attorneys' fees and expenses, and in what amount; and
- p. Whether Defendants conduct breached implied warranties under California law.

50. **Typicality:** Plaintiff's claims are typical of the claims of the Class, in that Plaintiff and the putative Class members purchased the Organic Liaison Weight Loss Program during the Class period, and all members of the Class were exposed to Defendants' unfair deceptive and misleading representations. Since the Organic Liaison Weight Loss Program is not available at retail and is only available through limited means—directly from Organic Liaison or QVC—by definition, Plaintiff and every class member were exposed to the same uniform false and misleading weight loss claims.

51. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff is a typical purchaser of the Organic Liaison Weight Loss Program and has no conflicts of interest with any member of the proposed Class. Plaintiff has retained competent and experienced counsel in class action and other complex

1 litigation. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf
2 of the Class and Plaintiff's Counsel has the financial resources to do so.

3 52. **Superiority:** Plaintiff and the Class have suffered injury in fact and have lost money
4 as a result of Defendants' false representations, and will continue to suffer harm as a result of
5 Defendants' unlawful and wrongful conduct. A class action is superior to other available methods
6 for fair and efficient adjudication of this controversy. The expense and burden of individual
7 litigation would make it impracticable or impossible for Class members to prosecute their claims
8 individually.

9 53. The trial and litigation of the Class claims are manageable. Individual litigation of
10 the legal and factual issues raised by Defendants' conduct would increase delay and expense to all
11 parties and the court system. The class action device presents far fewer management difficulties
12 and provides the benefits of a single, uniform adjudication, economies of scale, and comprehensive
13 supervision by a single court.

14 54. Defendants have acted on grounds generally applicable to the entire Class, thereby
15 making final injunctive relief appropriate with respect to the Class as a whole. The prosecution of
16 separate actions by individual Class members would create the risk of inconsistent or varying
17 adjudications with respect to individual members of the Class that would establish incompatible
18 standards of conduct for Defendants.

19 55. Absent a class action, Defendants will likely retain the benefits of their wrongdoing
20 without any recourse or compensation to those who have been damaged from Defendants' actions.
21 Because of the small size of the individual Class members' claims, few, if any, Class members
22 could afford to seek legal redress for the wrongs complained of herein. Absent a representative
23 action, the Class members will continue to suffer losses and Defendants will be allowed to continue
24 these violations of law and retain the proceeds of their ill-gotten gains.

25 56. If necessary, notice of this action may be effected to the proposed class through
26 publication, and for the majority, if not all, class members, direct notice may be achieved through
27 use of contact information from Defendants' records.

28

1 FIRST CAUSE OF ACTION

2 FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &
3 PROFESSIONS CODE § 17200, et seq. (Unfair and Fraudulent Conduct Prongs of the Act)

4 (By Plaintiff and the proposed Class against Defendants)

5 57. Plaintiff repeats and realleges the allegations set forth above, and incorporates the
6 same as if set forth herein at length.

7 58. This cause of action is brought pursuant to Business and Professions Code § 17200,
8 *et seq.*, on behalf of a Class consisting of all persons who purchased the Organic Liaison Weight
9 Loss Program in the State of California for personal use and not for resale during the time period
10 July 2008 through the present. Excluded from the Class are Organic Liaison's officers, directors,
11 and employees, and any individual who received remuneration from Organic Liaison in
12 connection with that individual's use or endorsement of the Organic Liaison Weight Loss
13 Program.

14 59. Business and Professions Code § 17200, et seq., prohibits any "unfair, deceptive,
15 untrue or misleading advertising." For the reasons discussed above, Defendants have engaged in
16 unfair, untrue and misleading advertising in violation of Business and Professions Code § 17200.

17 60. As alleged herein, Plaintiff has standing to pursue this claim as Plaintiff has suffered
18 injury in fact and has lost money or property as a result of Defendants' actions. Specifically,
19 Plaintiff purchased the Organic Liaison Weight Loss Program from the Organic Liaison website
20 for personal use, believing it would be an easy way to lose weight. Prior to purchasing the
21 Organic Liaison Program, Plaintiff relied upon the false representations referenced at ¶¶ 2, 31-32,
22 and 42, which appear on Organic Liaison's website (and are mirrored by the QVC advertising of
23 the Organic Liaison Weight Loss Program on QVC.com and QVC infomercials). Plaintiff used
24 the Organic Liaison Weight Loss Program as directed and it did not work as advertised. Plaintiff
25 would not have purchased the Organic Liaison Weight Loss Program had she known that
26 Defendants' claims about the program were false.

27 61. As alleged in the preceding paragraphs, the acts, omissions, misrepresentations,
28 practices and non-disclosures constitute "unfair" practices within the meaning of California

1 Business & Professions Code § 17200.

2 62. Defendants' business practices, as alleged herein, are unfair because: (1) the injury
3 to the consumer is substantial; (2) the injury is not outweighed by any countervailing benefits to
4 consumers or competition; and (3) consumers could not reasonably have avoided the information
5 because Defendants misled the consuming public by means of the claims made with respect to
6 the Organic Liaison Weight Loss Program as set forth herein, and there were reasonably available
7 alternatives to further Defendants' legitimate business interests, other than the conduct described
8 herein.

9 63. Defendants' business practices as alleged herein are fraudulent because they are
10 likely to deceive consumers into believing that the Organic Liaison Weight Loss Program has
11 benefits that it does not have.

12 64. In addition, Defendants' use of various forms of advertising media to advertise, call
13 attention to or give publicity to the sale of goods or merchandise which are not as represented in
14 any manner, constitutes unfair competition, unfair, deceptive, untrue or misleading advertising,
15 and an unlawful business practice within the meaning of Business & Professions Code §§ 17531
16 and 17200. Further, Defendants' advertisements have deceived and are likely to continue
17 deceiving the consuming public, in violation of Business & Professions Code § 17500.

18 65. Plaintiff and the Class were misled into purchasing the Organic Liaison Weight Loss
19 Program by Defendants' deceptive conduct described herein. Defendants' misrepresentations and
20 omissions were uniform and would be considered material to the average consumer.

21 66. There were reasonably available alternatives to further Defendants' legitimate
22 business interests, other than the conduct described herein.

23 67. All of the conduct alleged herein occurs and continues to occur in Defendants'
24 business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct
25 repeated on thousands of occasions daily.

26 68. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiff and the
27 members of the Class seek an order of this Court enjoining Defendants from continuing to
28 engage, use, or employ their practice of advertising the sale and use of the Organic Liaison

1 Weight Loss Program. Likewise, Plaintiff and the members of the Class seek an order requiring
2 Defendants to disclose such misrepresentations, and additionally request an order awarding
3 Plaintiff restitution of the money wrongfully acquired by Defendants by means of responsibility
4 attached to Defendants' failure to disclose the existence and significance of said
5 misrepresentations.

6 **SECOND CAUSE OF ACTION**

7 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &**
8 **PROFESSIONS CODE § 17200, et seq. (Unlawful Conduct Prong of the Act)**

9 **(By Plaintiff and the proposed Class against Defendants)**

10 69. Plaintiff repeats and realleges the allegations set forth above, and incorporates the
11 same as if set forth herein at length.

12 70. This cause of action is brought pursuant to Business and Professions Code § 17200,
13 *et seq.*, on behalf of a Class consisting of all persons who purchased the Organic Liaison Weight
14 Loss Program in the State of California for personal use and not for resale since July XX, 2008.
15 Excluded from the Class are Organic Liaison's officers, directors, and employees, and any
16 individual who received remuneration from Organic Liaison in connection with that individual's
17 use or endorsement of the Organic Liaison Weight Loss Program.

18 71. In the advertising of the Organic Liaison Weight Loss Program, Defendants make
19 false and misleading statements regarding the benefits and the efficacy of the program as set forth
20 above at ¶¶ 2, 31-32 and 36.

21 72. As alleged in the preceding paragraphs, the acts, omissions, misrepresentations,
22 practices and non-disclosures constitute illegal and unlawful business practices within the
23 meaning of California Business & Professions Code § 17200.

24 73. Defendants have unlawfully marketed, advertised and sold the Organic Liaison
25 Weight Loss Program in violation of sections 1770(a)(2), 1770(a)(5), and 1770(a)(9) of the
26 Consumer Legal Remedies Act, Civil Code § 1750, et seq.; and Business & Professions Code §
27 17500.

28 74. Plaintiff and the Class were misled into purchasing the Organic Liaison Weight Loss

1 Program by Defendants' deceptive conduct described herein.

2 75. There were reasonably available alternatives to further Defendants' legitimate
3 business interests, other than the conduct described herein.

4 76. All of the conduct alleged herein occurs and continues to occur in Defendants'
5 business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct
6 repeated on thousands of occasions daily.

7 77. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiff and the
8 members of the Class seek an order of this Court enjoining Defendants from continuing to
9 engage, use, or employ their practice of advertising the sale and use of the Organic Liaison
10 Weight Loss Program. Likewise, Plaintiff and the members of the Class seek an order requiring
11 Defendants to disclose such misrepresentations, and additionally request an order awarding
12 Plaintiff restitution of the money wrongfully acquired by Defendants by means of responsibility
13 attached to Defendants' failure to disclose the existence and significance of said
14 misrepresentations.

15 78. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' false
16 representations. Indeed, Plaintiff purchased the Organic Liaison Weight Loss Program because of
17 Defendants' claims that she could lose significant weight easily, even as much as 100 pounds, like
18 Ms. Alley. Plaintiff would not have purchased the Organic Liaison Weight Loss Program if she
19 had known that the claims and advertising as described herein were false.

20 **THIRD CAUSE OF ACTION**

21 **FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &**

22 **PROFESSIONS CODE § 17500, et seq.**

23 **(By Plaintiff and the proposed Class against Defendants)**

24 79. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs,
25 and incorporates the same as if set forth herein at length.

26 80. This cause of action is brought pursuant to Business and Professions Code § 17500,
27 *et seq.*, on behalf of a Class consisting of all persons who purchased the Organic Liaison Weight
28 Loss Program in the State of California for personal use and not for resale since July XX, 2008.

1 Excluded from the Class are Organic Liaison's officers, directors, and employees, and any
2 individual who received remuneration from Organic Liaison in connection with that individual's
3 use or endorsement of the Organic Liaison Weight Loss Program.

4 81. In their advertising of the Organic Liaison Weight Loss Program, Defendants made
5 false and misleading statements regarding the benefits and the efficacy of the program and fail to
6 make material disclosures concerning the program, all as set forth above.

7 82. Defendants are aware that the claims they make about the Organic Liaison Weight
8 Loss Program are false, misleading, without basis and unreasonable.

9 83. Defendants engaged in the deceptive conduct alleged hereinabove, which included
10 deceptive and untrue representations regarding the Organic Liaison Weight Loss Program,
11 representations made to induce the public to purchase the products.

12 84. In its marketing and advertising, Defendants make knowingly false and misleading
13 statements regarding the uses and benefits of the Organic Liaison Weight Loss Program.

14 85. As alleged in the preceding paragraphs, the misrepresentations by Defendants of the
15 material facts detailed above constitutes an unfair and fraudulent business practice within the
16 meaning of California Business & Professions Code § 17200.

17 86. There were reasonably available alternatives to further Defendants' legitimate
18 business interests, other than the conduct described herein.

19 87. All of the conduct alleged herein occurs and continues to occur in Defendants'
20 business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct
21 repeated on hundreds if not thousands of occasions daily.

22 88. Plaintiff and the Class were misled into purchasing the Organic Liaison Weight Loss
23 Program by Defendants' deceptive conduct and misleading advertising as alleged hereinabove.

24 89. Plaintiff and the Class were misled and, because the misrepresentations and
25 omissions were uniform and material, presumably believed that the Organic Liaison Weight Loss
26 Program has benefits which it does not.

27 90. In addition, Defendants' use of various forms of advertising media to advertise, call
28 attention to or give publicity to the sale of goods or merchandise which are not as represented

1 constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, and an
2 unlawful business practice within the meaning of Business & Professions Code §§ 17531 and
3 17200. Further, Defendants' advertisements have deceived and are likely to continue deceiving
4 the consuming public, in violation of Business & Professions Code § 17500.

5 91. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' false
6 representations. Indeed, Plaintiff purchased the Organic Liaison Weight Loss Program because of
7 Defendants' claims that she could lose significant weight easily, even as much as 100 pounds, like
8 Ms. Alley. Plaintiff would not have purchased the Organic Liaison Weight Loss Program if she
9 had known that the claims and advertising as described herein were false.

10 92. Plaintiff and the Class have suffered injury in fact and have lost money as a result of
11 Defendants' false representations. Indeed, Plaintiff purchased the Organic Liaison Weight Loss
12 Program because of the claims made by Defendants on the Organic Liaison website. Plaintiff
13 would not have purchased the Organic Liaison Weight Loss Program if she had known that the
14 advertising as described herein was false.

15 **FOURTH CAUSE OF ACTION**

16 **VIOLATION OF CALIFORNIA CIVIL CODE § 1750, et seq.**

17 **(By Plaintiff and the proposed Class against Defendants)**

18 93. Plaintiff repeats and realleges the all allegations of the previous paragraphs, and
19 incorporates the same as if set forth herein at length.

20 94. Plaintiff brings this claim under *Civil Code* § 1750, *et seq.*, the Consumer Legal
21 Remedies Act, on behalf of herself and a Class consisting of all persons who purchased the
22 Organic Liaison Weight Loss Program in the State of California for personal use and not for
23 resale since July XX, 2009. Excluded from the Class are Organic Liaison's officers, directors,
24 and employees, and any individual who received remuneration from Organic Liaison in
25 connection with that individual's use or endorsement of the Organic Liaison Weight Loss
26 Program.

27 95. The Consumer Class consists of thousands of persons, the joinder of whom is
28 impracticable.

1 96. By a letter dated December 1, 2011, Plaintiff advised Defendants of their false and
2 misleading claims pursuant to California Civil Code Section 1782(a). See Exhibit B.

3 97. By a letter dated February 14, 2012, Defendant Kirstie Alley and Defendants
4 Organic Liaison LLC, and Organic Liaison Management Inc., through their counsel, Robert J.
5 Becerra, responded to Plaintiff's Civil Code Section 1782(a) letter. See Exhibit C.

6 98. As alleged hereinabove, Plaintiff has standing to pursue this claim as Plaintiff has
7 suffered injury in fact and has lost money as a result of Defendants' actions as set forth herein.
8 Specifically, prior to the filing of this action, Plaintiff viewed Defendants' false and misleading
9 claims on the Organic Liaison website and believing the claims to be true, purchased the Organic
10 Liaison Weight Loss Program for her own personal use. She has used the Organic Liaison
11 Weight Loss Program, but the products have not worked as advertised and were worthless to her
12 as a weight-loss aid. Had Plaintiff known that the Product would not help her lose weight and
13 that diet and exercise alone were the cause of Kirstie Alley's weight loss, she would not have
14 expended money (nearly \$200) on these bogus weight loss supplements.

15 99. Plaintiff has concurrently filed the declaration of venue required by *Civil Code* §
16 1780(d).

17 100. There are questions of law and fact common to the class, which questions are
18 substantially similar and predominate over questions affecting the individual members, including
19 but not limited to: (a) whether Defendants represented that the Organic Liaison Weight Loss
20 Program has characteristics, benefits, uses or quantities which it does not have; (b) whether the
21 existence, extent and significance of the major misrepresentations and material omissions
22 regarding the purported benefits, characteristics and efficacy of the Organic Liaison Weight Loss
23 Program violate the Act; and (c) whether Defendants knew or should have known of the existence
24 of these misrepresentations.

25 101. The policies, acts, and practices heretofore described were intended to result in the
26 sale of the Organic Liaison Weight Loss Program to the consuming public, particularly self-
27 conscious women seeking to combat weight issues, and violated and continues to violate §
28

1 1770(a) (5) of the Act by representing that the Organic Liaison Weight Loss Program has
2 characteristics, benefits, uses or quantities which it does not have.

3 102. Defendants fraudulently deceived Plaintiff and the Class by representing that the
4 Organic Liaison Weight Loss Program has certain characteristics, benefits, uses and qualities
5 which it does not have (i.e., suppresses appetite, increases energy and aids in significant weight
6 loss). In doing so, Defendants intentionally misrepresented material facts creating the uniform,
7 false net-impression that the product is an FDA approved weight loss product capable of easily
8 causing significant weight loss and caused Defendant Kirstie Alley to lose a whopping 100
9 pounds. Defendants falsely market the Organic Liaison Program as a weight-loss aide, and then
10 charge a premium for supplements that are worthless in causing weight loss. Defendants also
11 intentionally concealed material facts from Plaintiff and the Class, specifically, that Ms. Alley's
12 dramatic 100 pound weight loss was due to a significantly reduced caloric diet and 5 to 7 hours a
13 day of exercise and not because she was using the Organic Liaison Weight Loss Program. Said
14 misrepresentations and concealment were done with the intention of deceiving Plaintiff and the
15 Class and depriving them of their legal rights and money.

16 103. Defendants knew that the Organic Liaison Weight Loss Program cannot cause
17 and/or assist consumers with significant weight loss by increasing energy or suppressing appetite
18 as represented in Defendants' advertisements on the Organic Liaison website and on QVC
19 television and online advertisements.

20 104. Defendants' actions as described hereinabove were done with conscious disregard of
21 Plaintiff's rights and Defendants have acted wantonly and maliciously in their concealment of the
22 same.

23 105. Defendants' wrongful business practices constituted, and constitute, a continuing
24 course of conduct in violation of the CLRA since Defendants are still representing that its
25 products have characteristics and abilities which the products do not have, and have thus injured
26 Plaintiff and the Class.

27 106. As a direct and proximate result of Defendants' unlawful, unfair, fraudulent and
28 deceptive business practices and/or false representations and omissions concerning material facts,

1 Plaintiff and the Class have suffered injury in fact and have lost money.

2 **FIFTH CAUSE OF ACTION**

3 **BREACH OF IMPLIED WARRANTY**

4 **(By Plaintiff and the proposed Class against Defendants)**

5
6 107. Plaintiff repeats and realleges the all allegations of the previous paragraphs, and
7 incorporates the same as if set forth herein at length.

8 108. The Organic Liaison Weight Loss Program was sold with the with the implied
9 warranty of merchantability in that the product would pass without objection in the trade, is fit for
10 the ordinary purpose for which it is used, is adequately contained, packaged, and labeled, and
11 conforms to the promises or affirmations of fact made during advertisements for the Product on
12 Defendants' website and on QVC. The Organic Liaison Weight Loss Program does not meet the
13 foregoing criteria since it does not perform as advertised.

14 109. The Organic Liaison Weight Loss Program was sold with the implied warranty of
15 fitness in that Defendants had reason to know of the particular purpose for which the product was
16 required –weight loss– and Plaintiff and the putative class members relied upon Defendants' skill
17 and judgment to furnish suitable goods. The Organic Liaison Weight Loss Program is not
18 suitable for the purpose for which it was required and sold. The product does not allow
19 consumers to easily lose significant amounts of weight as advertised and thus Defendants'
20 breached an implied warranty.

21 110. The defects in the Organic Liaison Weight Loss Program are inherent in the product
22 and thus existed prior to the delivery of the product to Plaintiff and the putative Class members.

23 111. Plaintiff provided Defendants with notice of her warranty claim, on behalf of herself
24 and the putative Class members, by virtue of the notice letter sent to Defendants on February 14,
25 2012. Defendants have failed to fulfill their warranty obligations despite said notice.

26 112. Plaintiffs and the putative Class members have incurred damages as described
27 herein as a direct and proximate result of the worthless product and Defendants' breach of the
28 implied warranties, in that Plaintiff and the putative Class have paid the purchase price for a

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1 product that is worthless. Plaintiff, on behalf of herself and the putative class members, has
2 requested that Defendants correct its advertising and Defendants have refused. Plaintiff and the
3 putative Class members are entitled to refund of the purchase price of the product, consequential
4 and incidental damages, costs and expenses, including attorney's fees.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, on behalf of herself and on behalf of the members of the Class
7 defined herein, prays for judgment and relief on all Causes of Action as follows:

- 8 A. An order certifying that the action may be maintained as a Class Action;
9 B. An order enjoining Defendants from pursuing the policies, acts, and practices
10 complained of herein and requiring Defendants to pay restitution to Plaintiff and all
11 members of the Class;
12 C. Actual damages;
13 D. Punitive damages;
14 E. Pre-judgment interest from the date of filing this suit;
15 F. Reasonable attorneys' fees;
16 G. Costs of this suit; and
17 H. Such other and further relief as the Court may deem necessary or appropriate.

18 DATED: July 20, 2012

MILSTEIN ADELMAN, LLP

19
20 By: 

Gillian L. Wade
Stephanie Mazcpa

21
22 [®]Attorneys for Plaintiff,
Marina Abramyan and the Proposed Class

23 KABATECK BROWN KELLNER LLP
24 Brian S. Kabateck
25 Evan M. Zucker

26 Attorneys for Plaintiff,
27 Marina Abramyan and the Proposed Class


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JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all triable issues.

DATED: July 20, 2012

MILSTEIN ADELMAN, LLP

By: 
Gillian L. Wade
Stephanic Mazepa

Attorneys for Plaintiff,
Marina Abramyan and the Proposed Class

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