

1 Tammy B. Webb, SBN 227593
John K. Sherk III, SBN 295838
2 SHOOK, HARDY & BACON L.L.P.
3 One Montgomery, Suite 2700
San Francisco, California 94104
4 Telephone: 415-544-1900
Facsimile: 415-391-0281
5 tbwebb@shb.com
jsherk@shb.com

6
7 *Attorneys for Defendant*
Craft Brew Alliance, Inc.

8 UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10
11 THEODORE BROOMFIELD, et al.,

12 Plaintiffs,

13 v.

14 CRAFT BREW ALLIANCE, INC., et al.

15 Defendants.
16

Case No.: 5:17-cv-01027-BLF

**DEFENDANT CRAFT BREW ALLIANCE,
INC.'S ANSWER TO PLAINTIFFS' FIRST
AMENDED CONSOLIDATED
COMPLAINT**

1 6. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations of Paragraph 6 and, therefore, denies the same.

3 7. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations of Paragraph 7 and, therefore, denies the same.

5 8. CBA denies that an unlawful scheme occurred, that it has overcharged Plaintiffs and
6 other beer consumers, and that Plaintiffs and other consumers suffered any damages. CBA lacks
7 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
8 Paragraph 8 and, therefore, denies the same.

9 **II. JURISDICTION AND VENUE**

10 9. Paragraph 9 states legal conclusions, not allegations of fact, and no response is
11 required. To the extent a response is required, CBA admits this Court has subject matter jurisdiction
12 under 28 U.S.C. § 1332(d)(2)(A). CBA admits that it is a citizen of the State of Oregon and the State
13 of Washington. CBA specifically denies that the action can be maintained as a class action. CBA
14 lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations
15 of Paragraph 9 and, therefore, denies the same.

16 10. Paragraph 10 states legal conclusions, not allegations of fact, and no response is
17 required. To the extent a response is required, CBA admits that it does business in the State of
18 California. CBA specifically denies that the Court has personal jurisdiction over non-California
19 putative class members' claims. CBA lacks knowledge or information sufficient to form a belief as
20 to the remaining allegations of Paragraph 10, and therefore, denies the same.

21 11. Paragraph 11 states legal conclusions, not allegations of fact, and no response is
22 required. To the extent a response is required, CBA admits venue is proper this District.

23 **III. PLAINTIFFS**

24 12. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
25 allegations of Paragraph 12 and, therefore, denies the same.

26 13. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations in the first, third, fourth, and fifth sentences of Paragraph 13 and, therefore, denies the
28

1 same. CBA denies the remaining allegations of Paragraph 13.

2 14. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
3 allegations of Paragraph 14 and, therefore, denies the same.

4 15. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
5 allegations in the first, third, fourth, and fifth sentences of Paragraph 15 and, therefore, denies the
6 same. CBA denies the remaining allegations of Paragraph 15.

7 **IV. DEFENDANTS**

8 16. CBA admits the allegations of Paragraph 16.

9 **V. FACTUAL ALLEGATIONS**

10 17. CBA admits the allegations of Paragraph 17.

11 18. CBA admits that it is a publicly traded company and that, as of the filing of its 2016
12 10-K, it was the sixth largest craft brewing company in the United States. CBA admits that it
13 acquired Kona Brewing Co, Inc. in 2010 and that it operates Red Hook Brewery; Widmer Brothers
14 Brewery; Omission Brewing Company; and Square Mile Cider Company.

15 19. CBA admits that Plaintiffs purport to characterize an unidentified news report. CBA
16 admits that all packaged Kona Brewing Co. Beers are produced in Oregon, Washington state, New
17 Hampshire, and Tennessee. CBA admits that a Kailua-Kona, Hawaii brewery produces draft beer
18 sold in Kona Brewing pubs and elsewhere in Hawaii. CBA denies the remaining allegations of
19 Paragraph 19.

20 20. CBA admits that Plaintiffs purport to characterize certain information from CBA's
21 2016 10-K. CBA admits that it distributes its beer through a distribution agreement with Anheuser-
22 Busch, LLC. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
23 remaining allegations of Paragraph 20 and, therefore, denies the same.

24 21. CBA admits that Plaintiffs purport to characterize CBA's 2016 10-K. CBA admits
25 that, as of December 21, 2016, Anheuser-Busch, LLC owned approximately 31.5% of Craft Brew
26 Alliance, Inc. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
27 remaining allegations of Paragraph 21 and, therefore, denies the same.

28

1 22. CBA admits the allegations of Paragraph 22.

2 23. CBA denies the allegations of Paragraph 23.

3 24. CBA denies the allegations of Paragraph 24.

4 25. CBA denies the allegations of Paragraph 25.

5 26. CBA denies the allegations of Paragraph 26, including all allegations in
6 subparagraphs 26(a)-(e).

7 27. CBA denies the allegations of Paragraph 27.

8 28. CBA denies the allegations of Paragraph 28.

9 29. CBA admits that Long Board Island Lager refers to longboard surfing. CBA lacks
10 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
11 Paragraph 29 and, therefore, denies the same.

12 30. CBA admits that the current packaging is as described in the allegations of Paragraph
13 30. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
14 allegations of Paragraph 30 and, therefore, denies the same.

15 31. CBA admits that the current packaging is as described in the allegations of Paragraph
16 31. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
17 allegations of Paragraph 31 and, therefore, denies the same.

18 32. CBA denies the allegations of Paragraph 32.

19 33. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
20 allegations of Paragraph 33 and, therefore, denies the same.

21 34. CBA admits that the current packaging is as described in the allegations of Paragraph
22 34. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
23 allegations of Paragraph 34 and, therefore, denies the same.

24 35. CBA admits that the current packaging is as described in the allegations of Paragraph
25 35. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
26 allegations of Paragraph 35 and, therefore, denies the same.

27 36. CBA admits that the current packaging is as described in the allegations of Paragraph
28

1 36. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
2 allegations of Paragraph 36 and, therefore, denies the same.

3 37. CBA denies the allegations of Paragraph 37.

4 38. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
5 allegations of Paragraph 38 and, therefore, denies the same.

6 39. CBA admits that the current packaging is as described in the allegations of Paragraph
7 39. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
8 allegations of Paragraph 39 and, therefore, denies the same.

9 40. CBA admits that the current packaging is as described in the allegations of Paragraph
10 40. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
11 allegations of Paragraph 40 and, therefore, denies the same.

12 41. CBA admits that the current packaging is as described in the allegations of Paragraph
13 41. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
14 allegations of Paragraph 41 and, therefore, denies the same.

15 42. CBA denies the allegations of Paragraph 42.

16 43. CBA admits the allegations of Paragraph 43.

17 44. CBA admits that the current packaging is as described in the allegations of Paragraph
18 44. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
19 allegations of Paragraph 44 and, therefore, denies the same.

20 45. CBA admits that the current packaging is as described in the allegations of Paragraph
21 45. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
22 allegations of Paragraph 45 and, therefore, denies the same.

23 46. CBA admits that the current packaging is as described in the allegations of Paragraph
24 46. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
25 allegations of Paragraph 46 and, therefore, denies the same.

26 47. CBA denies the allegations of Paragraph 47.

27 48. CBA admits the allegations of Paragraph 48.

28

1 49. CBA admits the allegations of Paragraph 49.

2 50. CBA admits that the current packaging is as described in the allegations of Paragraph
3 50. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
4 allegations of Paragraph 50 and, therefore, denies the same.

5 51. CBA admits that the current packaging is as described in the allegations of Paragraph
6 51. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
7 allegations of Paragraph 51 and, therefore, denies the same.

8 52. CBA denies the allegations of Paragraph 52.

9 53. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
10 allegations of Paragraph 53 and, therefore, denies the same.

11 54. CBA admits the allegations of Paragraph 54.

12 55. CBA admits that the current packaging is as described in the allegations of Paragraph
13 55. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
14 allegations of Paragraph 55 and, therefore, denies the same.

15 56. CBA admits that the current packaging is as described in the allegations of Paragraph
16 56. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
17 allegations of Paragraph 56 and, therefore, denies the same.

18 57. CBA denies the allegations of Paragraph 57.

19 58. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
20 allegations of Paragraph 58 and, therefore, denies the same.

21 59. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
22 allegations of Paragraph 59 and, therefore, denies the same.

23 60. CBA denies the allegations of Paragraph 60.

24 61. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
25 allegations of Paragraph 61 and, therefore, denies the same.

26 62. CBA admits that the current packaging is as described in the allegations of Paragraph
27 62. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
28

1 allegations of Paragraph 62 and, therefore, denies the same.

2 63. CBA admits that the current packaging is as described in the allegations of Paragraph
3 63. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
4 allegations of Paragraph 63 and, therefore, denies the same.

5 64. CBA denies the allegations of Paragraph 64.

6 65. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
7 allegations of Paragraph 65 and, therefore, denies the same.

8 66. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
9 allegations of Paragraph 66 and, therefore, denies the same.

10 67. CBA denies the allegations of Paragraph 67.

11 68. CBA admits the allegations of Paragraph 68.

12 69. CBA admits that the current packaging is as described in the allegations of Paragraph
13 69. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
14 allegations of Paragraph 69 and, therefore, denies the same.

15 70. CBA admits that the current packaging is as described in the allegations of Paragraph
16 70. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
17 allegations of Paragraph 70 and, therefore, denies the same.

18 71. CBA admits that the current packaging is as described in the allegations of Paragraph
19 71. CBA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
20 allegations of Paragraph 71 and, therefore, denies the same.

21 72. CBA denies the allegations of Paragraph 72.

22 73. CBA denies the allegations of Paragraph 73.

23 74. CBA denies the allegations of Paragraph 74.

24 75. The quote cited by Plaintiffs speaks for itself, and CBA denies the remaining
25 allegations, conclusions, characterizations, implications or speculation of Paragraph 75 related to the
26 third quarter 2016 earnings call.

27 76. The quote cited by Plaintiffs speaks for itself, and CBA denies the remaining
28

1 allegations, conclusions, characterizations, implications or speculation of Paragraph 76 related to the
2 fourth quarter 2014 earnings call.

3 77. The quote cited by Plaintiffs speaks for itself, and CBA denies the remaining
4 allegations, conclusions, characterizations, implications or speculation of Paragraph 77.

5 78. CBA's SEC filings speak for themselves, and CBA denies the remaining allegations,
6 conclusions, characterizations, implications or speculation of Paragraph 78.

7 79. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
8 allegations of Paragraph 79 and, therefore, denies the same.

9 80. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
10 allegations of Paragraph 80 and, therefore, denies the same.

11 81. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations of Paragraph 81 and, therefore, denies the same.

13 82. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
14 allegations of Paragraph 82 and, therefore, denies the same.

15 83. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
16 allegations of Paragraph 83 and, therefore, denies the same.

17 84. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
18 allegations of Paragraph 84 and, therefore, denies the same.

19 85. The quote cited by Plaintiffs speaks for itself and was made prior to the relevant class
20 period. CBA denies the remaining allegations, conclusions, characterizations, implications or
21 speculation of Paragraph 85.

22 86. CBA denies that it does not use water from Hawaii in brewing the Kona Brewing Co.
23 Beers. CBA denies that the water used to make the Kona Brewing Co. Beers all comes from the
24 continental United States. CBA admits that it uses water at the site of the brewery (e.g., from
25 Oregon, Washington, Tennessee, and New Hampshire).

26 87. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations of Paragraph 87 and, therefore, denies the same.

28

1 88. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations of Paragraph 88 and, therefore, denies the same.

3 89. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations in the first part of the first sentence of Paragraph 89 and, therefore, denies the same.
5 CBA denies the remaining allegations of Paragraph 89.

6 90. CBA denies the allegations of Paragraph 90.

7 91. CBA denies the allegations of Paragraph 92.

8 92. CBA denies the allegations of Paragraph 92.

9 93. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
10 allegations in the first, second, and third sentences of Paragraph 93 and, therefore, denies the same.
11 CBA denies the remaining allegations of Paragraph 93.

12 94. CBA denies the allegations of Paragraph 94.

13 95. CBA lacks knowledge or information sufficient to form a belief as to the truth of the
14 allegations in the first, second, and third sentences of Paragraph 95 and, therefore, denies the same.
15 CBA denies the remaining allegations of Paragraph 95.

16 **VI. CLASS ACTION ALLEGATIONS**

17 96. CBA admits that Plaintiffs are attempting to bring a class action lawsuit. CBA denies
18 the remaining allegations of Paragraph 96. CBA specifically denies that this action can be
19 maintained as a class action under Rule 23 of the Federal Rule of Civil Procedure.

20 97. CBA admits that Plaintiffs seek to exclude the entities and persons from their
21 proposed class definition. CBA denies the remaining allegations of Paragraph 97 and specifically
22 denies that this action can be maintained as a class action under Rule 23 of the Federal Rule of Civil
23 Procedure.

24 98. Paragraph 98 states legal conclusions, not allegations of fact, and no response is
25 required.

26 99. Paragraph 99 states legal conclusions, not allegations of fact, and no response is
27 required. To the extent a response is required, CBA lacks knowledge or information sufficient to
28

1 form a belief as to the truth of the allegations of Paragraph 99 and, therefore, denies the same. CBA
2 specifically denies that this action can be maintained as a class action under Rule 23 of the Federal
3 Rule of Civil Procedure.

4 100. Paragraph 100 states legal conclusions, not allegations of fact, and no response is
5 required. To the extent a response is required, CBA admits that for the end year 2016, it shipped
6 397,400 barrels of Kona brand beer. CBA admits that Kona Brewing Co Beers are sold across
7 California and the United States. CBA denies the remaining allegations of Paragraph 103 and
8 specifically denies that the action can be maintained as a class action under Rule 23 of the Federal
9 Rule of Civil Procedure.

10 101. The allegations of Paragraph 101, including subparagraphs 101(a)-(g), state legal
11 conclusions, not allegations of fact, and no response is required. To the extent a response is required,
12 CBA denies the allegations of Paragraph 101. CBA specifically denies that the action can be
13 maintained as a class action under Rule 23 of the Federal Rule of Civil Procedure.

14 102. Paragraph 102 states legal conclusions, not allegations of fact, and no response is
15 required. To the extent a response is required, CBA denies the allegations of Paragraph 102. CBA
16 specifically denies that the action can be maintained as a class action under Rule 23 of the Federal
17 Rule of Civil Procedure and that any Plaintiff or any putative class member has been harmed or
18 sustained injury.

19 103. Paragraph 103 states legal conclusions, not allegations of fact, and no response is
20 required. To the extent a response is required, CBA denies the allegations of Paragraph 103. CBA
21 specifically denies that the action can be maintained as a class action under Rule 23 of the Federal
22 Rule of Civil Procedure.

23 104. Paragraph 104 states legal conclusions, not allegations of fact, and no response is
24 required. To the extent a response is required, CBA denies the allegations of Paragraph 104. CBA
25 specifically denies that the action can be maintained as a class action under Rule 23 of the Federal
26 Rule of Civil Procedure.

27 105. Paragraph 105 states legal conclusions, not allegations of fact, and no response is
28

1 required. To the extent a response is required, CBA denies the allegations of Paragraph 105. CBA
2 specifically denies that the action can be maintained as a class action under Rule 23 of the Federal
3 Rule of Civil Procedure.

4 106. Paragraph 106 states legal conclusions, not allegations of fact, and no response is
5 required. To the extent a response is required, CBA denies the allegations of Paragraph 106. CBA
6 specifically denies that the action can be maintained as a class action under Rule 23 of the Federal
7 Rule of Civil Procedure.

8 **VII. CAUSES OF ACTION**

9 **COUNT I-VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**
10 **("CLRA")**

11 107. CBA incorporates by reference its responses to Paragraphs 1-106 as if fully set forth
12 in this Paragraph 107.

13 108. CBA admits that Plaintiffs are attempting to bring a class action lawsuit. CBA denies
14 the remaining allegations of Paragraph 108 and specifically denies that the action can be maintained
15 as a class action under Rule 23 of the Federal Rules of Civil Procedure.

16 109. Paragraph 109 states legal conclusions, not allegations of fact, and no response is
17 required. To the extent a response is required, CBA denies the allegations of Paragraph 109.

18 110. Paragraph 110 states legal conclusions, not allegations of fact, and no response is
19 required. To the extent a response is required, CBA denies the allegations of Paragraph 110.

20 111. Paragraph 111 states legal conclusions, not allegations of fact, and no response is
21 required. To the extent a response is required, CBA denies the allegations of Paragraph 111.

22 112. Paragraph 112 states legal conclusions, not allegations of fact, and no response is
23 required. To the extent a response is required, CBA denies the allegations of Paragraph 112.

24 113. Paragraph 113 states legal conclusions, not allegations of fact, and no response is
25 required. To the extent a response is required, CBA denies the allegations of Paragraph 113.

26 114. Paragraph 114 states legal conclusions, not allegations of fact, and no response is
27 required. To the extent a response is required, CBA denies the allegations of Paragraph 114.

28 115. CBA denies the allegations of Paragraph 115.

1 116. CBA denies the allegations of Paragraph 116.

2 117. CBA denies the allegations of Paragraph 117.

3 118. Paragraph 118 states legal conclusions, not allegations of fact, and no response is
4 required. To the extent a response is required, CBA denies the allegations of Paragraph 118.

5 119. Paragraph 119 states legal conclusions, not allegations of fact, and no response is
6 required. To the extent a response is required, CBA lacks knowledge or information sufficient to
7 form a belief as to the truth of the allegations of Paragraph 119 and, therefore, denies the same.

8 **COUNT II-VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW (“UCL”)**

9 120. CBA incorporates by reference its responses to Paragraphs 1-119 as if fully set forth
10 in this Paragraph 120.

11 121. CBA admits that Plaintiffs are attempting to bring a class action lawsuit. CBA denies
12 the remaining allegations of Paragraph 121 and specifically denies that the action can be maintained
13 as a class action under Rule 23 of the Federal Rules of Civil Procedure.

14 122. Paragraph 122 states legal conclusions, not allegations of fact, and no response is
15 required. To the extent a response is required, CBA denies the allegations of Paragraph 122.

16 123. Paragraph 123 states legal conclusions, not allegations of fact, and no response is
17 required. To the extent a response is required, CBA denies the allegations of Paragraph 123.

18 124. CBA denies the allegations of Paragraph 124.

19 125. CBA denies the allegations of Paragraph 125.

20 126. Paragraph 126 states legal conclusions, not allegations of fact, and no response is
21 required. To the extent a response is required, CBA denies the allegations of Paragraph 126.

22 127. CBA denies the allegations of Paragraph 127.

23 128. CBA denies the allegations of Paragraph 128.

24 129. Paragraph 129 states legal conclusions, not allegations of fact, and no response is
25 required. To the extent a response is required, CBA denies the allegations of Paragraph 129.

26 130. CBA denies the allegations of Paragraph 130.

27 131. CBA denies the allegations of Paragraph 131.

28

1 132. Paragraph 132 states legal conclusions, not allegations of fact, and no response is
2 required. To the extent a response is required, CBA denies the allegations of Paragraph 132.

3 **COUNT III-VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW ("FAL")**

4 133. CBA incorporates by reference its responses to Paragraphs 1-132 as if fully set forth
5 in this Paragraph 133.

6 134. CBA admits that Plaintiffs are attempting to bring a class action lawsuit. CBA denies
7 the remaining allegations of Paragraph 134 and specifically denies that the action can be maintained
8 as a class action under Rule 23 of the Federal Rules of Civil Procedure.

9 135. Paragraph 135 states legal conclusions, not allegations of fact, and no response is
10 required. To the extent a response is required, CBA denies the allegations of Paragraph 135.

11 136. CBA denies the allegations of Paragraph 136.

12 137. CBA denies the allegations of Paragraph 137.

13 138. CBA denies the allegations of Paragraph 138.

14 139. Paragraph 139 states legal conclusions, not allegations of fact, and no response is
15 required. To the extent a response is required, CBA denies the allegations of Paragraph 139.

16 **COUNT IV-COMMON LAW FRAUD**

17 140. CBA incorporates by reference its responses to Paragraphs 1-139 as if fully set forth
18 in this Paragraph 140.

19 141. CBA admits that Plaintiffs are attempting to bring a class action lawsuit. CBA denies
20 the remaining allegations of Paragraph 141 and specifically denies that the action can be maintained
21 as a class action under Rule 23 of the Federal Rules of Civil Procedure.

22 142. CBA denies the allegations of Paragraph 142.

23 143. CBA denies the allegations of Paragraph 143.

24 144. CBA denies the allegations of Paragraph 144.

25 145. CBA denies the allegations of Paragraph 145.

26 146. CBA denies the allegations of Paragraph 146.

27 147. CBA denies the allegations of Paragraph 147.

28

COUNT V- INTENTIONAL MISREPRESENTATION

1 148. CBA incorporates by reference its responses to Paragraphs 1-147 as if fully set forth
2 in this Paragraph 148.

3 149. CBA admits that Plaintiffs are attempting to bring a class action lawsuit. CBA denies
4 the remaining allegations of Paragraph 149 and specifically denies that the action can be maintained
5 as a class action under Rule 23 of the Federal Rules of Civil Procedure.

6 150. CBA denies the allegations of Paragraph 150.

7 151. CBA denies the allegations of Paragraph 151.

8 152. CBA denies the allegations of Paragraph 152.

9 153. CBA denies the allegations of Paragraph 153.

10 154. CBA denies the allegations of Paragraph 154.

11 155. CBA denies the allegations of Paragraph 155.

COUNT VI- NEGLIGENT MISREPRESENTATION

12
13 156. CBA incorporates by reference its responses to Paragraphs 1-155 as if fully set forth
14 in this Paragraph 156.

15 157. CBA admits that Plaintiffs are attempting to bring a class action lawsuit. CBA denies
16 the remaining allegations of Paragraph 157 and specifically denies that the action can be maintained
17 as a class action under Rule 23 of the Federal Rules of Civil Procedure.

18 158. CBA denies the allegations of Paragraph 158.

19 159. CBA denies the allegations of Paragraph 159.

20 160. CBA denies the allegations of Paragraph 160.

21 161. CBA denies the allegations of Paragraph 161.

22 162. CBA denies the allegations of Paragraph 162.

23 163. CBA denies the allegations of Paragraph 163.

COUNT IX- QUASI CONTRACT/UNJUST ENRICHMENT/RESTITUTION

24
25 164. CBA incorporates by reference its responses to Paragraphs 1-163 as if fully set forth
26 in this Paragraph 164.

27 165. CBA admits that Plaintiffs are attempting to bring a class action lawsuit. CBA denies
28

1 the remaining allegations of Paragraph 165 and specifically denies that the action can be maintained
2 as a class action under Rule 23 of the Federal Rules of Civil Procedure.

3 166. CBA denies the allegations of Paragraph 166.

4 167. CBA denies the allegations of Paragraph 167.

5 168. CBA denies the allegations of Paragraph 168.

6 169. CBA denies the allegations of Paragraph 169.

7 170. CBA denies the allegations of Paragraph 170.

8 CBA is not required to respond to Plaintiffs' Prayer for Relief, but to the extent such a
9 response is deemed required, CBA denies Plaintiffs and/or the purported Class Members are entitled
10 to the relief requested in the "WHEREFORE" clause following Paragraph 170, or to any relief
11 whatsoever. CBA further responds that Plaintiffs' prayer for injunctive relief has been dismissed
12 such that no injunctive relief may be sought.

13 **CBA'S REQUEST FOR JURY TRIAL**

14 CBA hereby demands a trial by jury on all issues triable by jury.

15 **CBA'S AFFIRMATIVE DEFENSES**

16 In addition to the foregoing denials, CBA alleges and asserts the following affirmative
17 defenses applicable to each and every allegation and each and every count contained in the
18 Complaint, and without assuming any burden of pleading or proof that would otherwise rest on
19 Plaintiffs, states:

20 **FirstAffirmative Defense**

21 The Complaint fails to state facts constituting any cause of action.

22 **SecondAffirmative Defense**

23 Plaintiffs lack standing to assert the claims alleged in the Complaint.

24 **ThirdAffirmative Defense**

25 All or part of the claims that Plaintiffs assert are barred by the doctrines of estoppel, laches,
26 unclean hands, waiver and/or acquiescence.

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

Fourth Affirmative Defense

All or part of the claims that Plaintiffs assert are barred by the applicable statute(s) of limitations and repose.

Fifth Affirmative Defense

Plaintiffs' claims should be denied, in whole or in part, because Plaintiffs failed to mitigate their alleged damages.

Sixth Affirmative Defense

Plaintiffs' claims are barred by the doctrines of actual and/or implied consent and/or ratification.

Seventh Affirmative Defense

Plaintiffs' claims are barred to the extent they would be unjustly enriched by any recovery.

Eighth Affirmative Defense

All or part of the claims that Plaintiffs assert should be denied because Plaintiffs cannot recover disgorgement of benefits and/or profits.

Ninth Affirmative Defense

Plaintiffs' claims fail to qualify as claims that can be brought as a class action under Rule 23 of the Federal Rules of Civil Procedure.

Tenth Affirmative Defense

If Plaintiffs sustained damages, which CBA specifically denies, Plaintiffs' claims are barred, in whole or in part, because the conduct, actions, or omissions of other persons or entities, over which CBA had no control, caused or contributed to Plaintiffs' alleged damages.

Eleventh Affirmative Defense

Plaintiffs' claims for equitable relief are barred due to the existence of adequate remedies at law.

Twelfth Affirmative Defense

Plaintiffs have not been damaged, and CBA's conduct did not cause, proximately cause, solely cause, or solely-proximately cause the damages and/or injuries Plaintiffs claim, if any.

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

Thirteenth Affirmative Defense

Plaintiffs have failed to plead their claims with sufficient particularity.

Fourteenth Affirmative Defense

The relief Plaintiffs seek is barred, in whole or in part, because the conduct complained of is not unlawful, unfair, fraudulent, deceptive, untrue or misleading.

Fifteenth Affirmative Defense

To the extent Plaintiffs seek exemplary or punitive damages, Plaintiffs fail to allege facts sufficient to entitle Plaintiffs to an award of exemplary or punitive damages.

Sixteenth Affirmative Defense

To the extent Plaintiffs seek exemplary or punitive damages, their claims are barred by the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution and the California Constitution. To the extent Plaintiffs seek exemplary or punitive damages, CBA specifically incorporates by reference all standards and/or limitations regarding the determination and enforceability of exemplary or punitive damage awards that arise in the decisions of *BMW of N. Am. v. Gore*, 517 U.S. 559(1996), *Cooper Industries, Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424 (2001), and *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

Seventeenth Affirmative Defense

If Plaintiffs sustained injuries or damages as alleged, which CBA denies, their injuries or damages were the result of intervening and/or superseding causes, and not as a result of acts or omissions of CBA.

Eighteenth Affirmative Defense

All or part of the claims that Plaintiffs assert are barred in whole or in part because they lack any ascertainable loss of money or property.

Nineteenth Affirmative Defense

All or part of the claims that Plaintiffs assert are barred in whole or in part by the First Amendment of the United States Constitution that protects, among other things, CBA's right to promote and advertise the products at issue.

