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14 Attorneys for Plaintiffs

15 UNITED STATES DISTRICT COURT  
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 JONATHAN ROTHSTEIN, on behalf of )  
18 himself and others similarly situated, )

19 Plaintiffs, )

20 v. )

21 THE PROCTER & GAMBLE COMPANY, )  
22 INC., and DOES 1-10 inclusive )

23 Defendants. )

Case No.: **CV11-07403** DSF (PNOX)  
CLASS ACTION COMPLAINT FOR:  
(1) MONEY HAD AND RECEIVED  
(2) FRAUDULENT CONCEALMENT  
(3) BREACH OF EXPRESS WARRANTY  
(4) UNFAIR COMPETITION (Business and Professions Code §17200 et seq.)  
(5) FALSE ADVERTISING (Business and Professions Code §17500 et seq.)  
(6) NEGLIGENT MISREPRESENTATION  
(7) CONSUMER LEGAL REMEDIES ACT (Civil Code §1750 et seq.)  
**JURY TRIAL DEMANDED**

FILED  
11 SEP - 8 PM 3:10  
COURT CLERK  
EUGENE HILLS  
BY: *JP*

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**ORIGINAL**

1 Plaintiff, Jonathan Rothstein, complaining of the above named Defendant, alleges as  
2 follows, which allegations are upon information and belief insofar as they pertain to the conduct  
3 of the Defendant, and personal knowledge as they pertain to Plaintiff and Plaintiff's counsel.

4 **I.**  
5 **INTRODUCTION**

6 1. This is a civil class action brought to redress Defendant's unlawful, unfair, and  
7 fraudulent business acts and practices and deceptive advertising in the marketing and sale of its  
8 Crest toothpaste sold in its "Neat Squeeze" dispenser ("Neat Squeeze") to consumers in the State  
9 of California, and throughout the country.

10 2. Many of the toothpaste lines (e.g. extra whitening, tartar control, etc.) sold by  
11 Defendant were sold in the Neat Squeeze dispenser, some of which were also sold by Defendant  
12 in containers other than in the Neat Squeeze dispenser.

13 3. The benefit of the Neat Squeeze dispenser, as stated on the product's label, is that  
14 there is less mess associated with its use. (See Exhibit 1, picture of a Neat Squeeze dispenser).

15 4. The label goes on to describe how the innovative packaging works, but then fails  
16 to disclose that, due to its defective design, the consumer will be unable to dispense a significant  
17 quantity of toothpaste once the Neat Squeeze fails, as they all inevitably do. On the label's  
18 directions, Defendant explains how to properly dispense toothpaste, and how to know when it is  
19 time to purchase additional toothpaste. It states:

20 "The Neat Squeeze dispenser has a unique inner bag that empties itself as you  
21 squeeze in the middle. When the package gets lighter and is harder to squeeze,  
22 it's time to buy more Crest."

23 5. What Defendant fails to explain is that the full volume of toothpaste will not be  
24 dispensed, no matter how hard the consumer tries to squeeze. Once the dispenser becomes  
25 "lighter" and is "harder to squeeze," it will no longer dispense toothpaste. At this point, the only  
26 way to access the remaining toothpaste is to cut open the packaging with scissors or a knife.  
27 However in doing so, the promise of "Less Mess," the slogan associated with the Neat Squeeze  
28 dispenser, is lost and the package is not designed or intended to be sliced open.

1           6.       Toothpaste sold in the Neat Squeeze dispenser state on the label the net weight of  
2 toothpaste contained in the tube. There is no disclosure that the consumer should expect to  
3 receive significantly less than the amount of toothpaste purchased, which is the amount listed on  
4 the label.

5           7.       Defendant's affirmative representation as to total volume, in conjunction with its  
6 failure to disclose that the dispenser is incapable of dispensing the entire amount, is misleading  
7 and likely to deceive consumers into believing that the entire amount of toothpaste listed is  
8 usable, when that is not in fact the case.

9           8.       In many of the stores where Crest is sold, such as grocery stores, pharmacies and  
10 online, the retailers list the price of toothpaste they sell per ounce to enable consumers to  
11 compare the price of related products, including toothpastes sold in varying quantities.

12           9.       Consumers choosing between toothpastes were, and are mislead as to the price  
13 per ounce of the Crest toothpaste in the Neat Squeeze dispenser as compared with other  
14 toothpastes with similar beneficial characteristics, including toothpaste sold by Defendant in  
15 non-Neat Squeeze dispensers. As a result of the package's failure to dispense the entire quantity  
16 of toothpaste in the container, consumers are deprived of the full value of their purchase.  
17 Instead, the effect to the consumer is that they paid more per ounce of toothpaste than was  
18 advertised.

19           10.      Defendant directly benefits from consumers' premature replacement of toothpaste  
20 since it, a major manufacturer of dental hygiene products, sells more units of toothpaste, whether  
21 in the Neat Squeeze dispenser or other container, than it otherwise would if the entire volume of  
22 toothpaste in the package could be used thus delaying the purchase by a matter of weeks.

**II.  
JURISDICTION AND VENUE**

11. Jurisdiction as to Defendant, The Procter & Gamble Company (“P&G”) in the United States District Court for the Central District of California is proper under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332.

12. P&G is an Ohio corporation with its principle executive offices located in the State of Ohio. P&G advertised, marketed and sold toothpaste in Neat Squeeze dispensers nationwide, including within the State of California. The unlawful, unfair, and fraudulent business acts and practices and false advertising alleged herein have a direct effect on Plaintiff and others similarly situated within the State of California and nationwide.

13. There are believed to be significantly greater than 100 putative class members many of whom are domiciled in states other than Ohio, including Plaintiff.

14. The claims of Plaintiff and putative class members, in the aggregate, exceed \$5,000,000.00, exclusive of costs and interest.

15. Venue in the Central District of California is proper as Defendant P&G does substantial business within the State of California. Plaintiff lives in the Central District and purchased the offending toothpaste in the Central District. (See Exhibit 2, Plaintiff’s Declaration re Venue.) Each of the business acts and practices described herein was performed, in whole or in part, in the State of California, the effects of which had a substantial affect on Plaintiff and similarly situated consumers.

**III.  
PARTIES**

**A. Plaintiff**

16. Plaintiff, Jonathan Rothstein is, and all relevant times was, a resident of the State of California.

17. Plaintiff Rothstein purchased Crest brand Multicare Whitening toothpaste in the Neat Squeeze dispenser from Ralphs grocery store in early 2011. The product label lists the net weight of toothpaste in the dispenser at 5.8 ounces.

1 18. In considering which toothpaste to buy, Plaintiff evaluated, among other things,  
2 the price of the Crest toothpaste in the Neat Squeeze dispenser as compared with other  
3 toothpastes promising similar benefits (e.g. whitening), the volume of toothpaste listed on the  
4 container, as well as the advertised claims of the Neat Squeeze dispenser insofar as it is implied  
5 that the Neat Squeeze works as well as other toothpaste containers with regard to dispensing all  
6 of the toothpaste in the container, but involving less mess.

7 19. Plaintiff used the toothpaste dispenser as directed, squeezing from the middle of  
8 the dispenser. Although the dispenser had not fully emptied, Plaintiff, using the product as  
9 directed, was unable to dispense the remaining toothpaste. Because Plaintiff was unable to  
10 dispense the total volume of toothpaste he purchased and ultimately had to discard the toothpaste  
11 remaining in the dispenser at the point that it would no longer dispense, he overpaid for the  
12 product.

13 **B. Defendant**

14 20. Defendant The Procter & Gamble Company (“P&G”) is an Ohio corporation with  
15 its principle executive offices located at One Procter & Gamble Plaza, Cincinnati, Ohio.  
16 Defendant P&G directly (and through its retail supply network) markets, advertises and sells  
17 Crest toothpaste in the Neat Squeeze dispenser. Crest toothpaste in the Neat Squeeze dispenser  
18 was and is sold in the State of California and nationwide.

19 21. Plaintiff is informed and believe, and based thereon alleges, that Defendant P&G  
20 carried out a scheme to cheat countless consumers out of relatively small amounts of money.  
21 Plaintiff is informed and believe, and based thereon alleges, that P&G intentionally overstated  
22 the volume of toothpaste sold in Neat Squeeze toothpaste with the knowledge that the dispenser  
23 routinely fails to dispense the full amount of toothpaste advertised.  
24

25 **IV.**  
26 **APPLICATION OF CALIFORNIA LAW**

27 22. California law applies to the claims and issues asserted herein on behalf of  
28 California Sub-Class members, as defined below. Plaintiff and similarly situated sub-class

1 members are California residents who seek damages and equitable relief under the laws of the  
2 State of California.

3  
4 **V.**  
5 **CLASS ACTION ALLEGATIONS**

6 23. Plaintiff is seeking to represent a national class and a California sub-class,  
7 defined as follows:

8 **Nationwide Class**

9 All residents of the United States who purchased one or more units of Crest  
10 toothpaste in a Neat Squeeze dispenser at any time during the period from the four  
11 years prior to the filing of the Complaint up to and including the date of trial.  
12 (“Nationwide Class”).

13 **California Sub-Class**

14 All residents of California who purchased one or more units of Crest toothpaste in  
15 a Neat Squeeze dispenser at any time during the period from the four years prior  
16 to the filing of the Complaint up to and including the date of trial. (“California  
17 Sub-Class”).

18 24. This action is brought as a class action and may properly be so maintained  
19 pursuant to the provisions of the Rule 23 of the Federal Rules of Civil Procedure (“FRCP”).  
20 Plaintiff reserves the right to modify the class definition and the class period, or to create  
21 additional sub-classes for resolution of particular issues, based on the results of discovery.

22 **A. Numerosity**

23 25. The potential members of the proposed classes as defined are so numerous that  
24 joinder of all the members of the proposed classes is impracticable. While the precise number of  
25 proposed class members has not been determined at this time, Plaintiff is informed and believes  
26 that at least hundreds of thousands of U.S. consumers, and at least tens of thousands of  
27 California consumers, have purchased and used Crest toothpaste in a Neat Squeeze container  
28 during the Class period. Joinder of all members of the proposed class is not practicable.

29 26. Plaintiff alleges that Defendant’s records would provide information as to the  
30 total number of units sold, and can be further broken down to show the total units sold in

1 California during the statutory period. Defendant's records, in conjunction with the Class  
2 members' records and other sources, can be used to identify Class members.

3 **B. Commonality**

4 27. There are questions of law and fact common to the proposed class that  
5 predominate over any questions affecting only individual class members. These common  
6 questions of law and fact include, without limitation:

- 7 a. Whether the Neat Squeeze dispenser is in fact capable of dispensing the volume  
8 of toothpaste listed on the package's label when following the labels' instructions  
9 concerning the use of the dispenser ("squeeze from the middle");
- 10 b. Whether the dispenser's failure to fully dispense the advertised volume of  
11 toothpaste is the result of a defective design;
- 12 c. Whether all Neat Squeeze dispensers sold by Crest, without regard to unique  
13 characteristics of the toothpaste (e.g. whitening), suffer from the same defective  
14 design;
- 15 d. Whether the quantity of toothpaste remaining in the Neat Squeeze dispenser when  
16 it fails is reasonably accessible by other means (e.g. cutting open the package),  
17 and whether the law would require that consumers breach the package before  
18 declaring that, due to waste, the consumer received less than the full value of  
19 his/her purchase;
- 20 e. Whether Defendant's contention that the label was accurate with regard to the  
21 quantity of toothpaste contained in the dispenser would bar recovery by Plaintiff  
22 and all putative class members;
- 23 f. Whether Defendant's knew, should have known, or was reckless in not knowing,  
24 that its Neat Squeeze dispenser, due to defective design, is incapable of  
25 dispensing the total quantity of toothpaste listed on the label;
- 26 g. Whether Defendant knew or should have known about the falsity or misleading  
27 nature of its representation that implied that the full quantity of toothpaste listed  
28 on the label was usable, or whether it was reckless in failing to disclose that a  
substantial quantity of the toothpaste sold is not reasonably retrievable from the  
package;
- h. Whether Defendant's representation as to the quantity of toothpaste sold  
constitutes a material fact that reasonable purchasers would have considered in  
deciding to purchase Crest toothpaste in the Neat Squeeze dispenser;

- 1 i. Whether Defendant's failure to disclose the fact that the Neat Squeeze dispenser  
2 is incapable of dispensing the entire amount of toothpaste in the package is a fact  
3 that a reasonable consumer would have considered in their decision to purchase  
4 the toothpaste, and therefore constitutes a material omission;
- 5 j. Whether Plaintiff and similarly situated class members justifiably relied on  
6 Defendant's representation that the full quantity of toothpaste sold was usable;
- 7 k. Whether Defendant had a duty to correct its representation that the Neat Squeeze  
8 package dispenses less than the full amount of toothpaste sold;
- 9 l. Whether Plaintiff and similarly situated class members were induced by  
10 Defendant's representations to act to their detriment in purchasing Crest  
11 toothpaste in the Neat Squeeze dispenser as opposed to Crest toothpaste in a  
12 different package or another brand of toothpaste altogether;
- 13 m. Whether Defendant's conduct, as set forth herein, violated California's Unfair  
14 Competition Law;
- 15 n. Whether Defendant's conduct, as set forth herein, violated the False Advertising  
16 Law;
- 17 o. Whether Defendant's representation concerning the volume of toothpaste sold in  
18 conjunction with its failure to disclose that the Neat Squeeze package dispenses  
19 less than full volume violates the Consumer Legal Remedies Act;
- 20 p. Whether Defendant advertised the quantity of toothpaste sold in the Neat Squeeze  
21 dispenser with the intent of selling the toothpaste to a consumer knowing that,  
22 because of its defective design, the package would fail and would not dispense the  
23 quantity of toothpaste stated on its label in violation of the Consumer Legal  
24 Remedies Act;
- 25 q. Whether Defendant's active concealment and/or failure to disclose the failure of  
26 the Neat Squeeze dispenser to dispense the full volume of toothpaste sold was  
27 likely to mislead or deceive, and is therefore fraudulent, within the meaning of  
28 California's Unfair Competition law;
- r. Whether Defendant's affirmative misrepresentation and/or failure to disclose the  
shortcomings of the Crest Neat Squeeze dispenser is unfair within the meaning of  
California's Unfair Competition law;
- s. Whether Defendant's violation of the Consumer Legal Remedies Act and breach  
of express warranties is unlawful within the meaning of California's Unfair  
Competition Law;



- 1 t. Whether Defendant's marketing, advertisements and other express representations  
2 of volume sold, and omission with regard to the failure of the dispenser violated  
3 California's False Advertising law;
- 4 u. Whether Plaintiff and similarly situated class members have been damaged and  
5 are entitled to compensatory damages, and the amount of such damages;
- 6 v. Whether Plaintiff and similarly situated class members are entitled to restitution  
7 and if so in what amount, and whether Defendant should be ordered to disgorge ill  
8 gotten profits received from its sale of toothpaste in the Neat Squeeze container  
9 for the benefit of Plaintiff and similarly situated class members.

8 **C. Typicality**

9 28. The claims of the plaintiff are typical of the claims of the proposed classes.  
10 Plaintiff and all members of the proposed class sustained injuries and damages arising out of and  
11 caused by Defendant's unlawful, unfair, and fraudulent business acts and practices and deceptive  
12 advertising in the sale of toothpaste sold in Neat Squeeze dispensers, as alleged herein.

13 **D. Adequacy of Representation**

14 29. Plaintiff will fairly and adequately represent and protect the interests of the  
15 members of the proposed class. Counsel who represent Plaintiff are competent and experienced  
16 in litigating large class actions.

17 **E. Predominance of Common Issues**

18 30. Questions of law or fact common to class members predominate over any  
19 questions affecting only individual members.

20 **F. Superiority of Class Action**

21 31. A class action is superior to other available means for the fair and efficient  
22 adjudication of this controversy. Individual joinder of all proposed class members is not  
23 practicable. Each member of the proposed class has been damaged and is entitled to recovery by  
24 reason of Defendant's unlawful, unfair and fraudulent business acts and practices and deceptive  
25 advertising in the marketing and sale of toothpaste sold in Neat Squeeze dispensers.

26 32. Class action treatment will allow those similarly situated persons to litigate their  
27 claims in the manner that is most efficient and economical for the parties and the judicial system.  
28

1 Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered  
2 in the management of this action that would preclude its maintenance as a class action.

3  
4 **VI.**  
5 **FIRST CLAIM FOR RELIEF**  
6 **MONEY HAD AND RECEIVED**  
7 **(ON BEHALF OF PLAINTIFF AND ALL CLASSES)**

8 33. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
9 paragraphs as if fully set forth herein.

10 34. As a result of the conduct described above, Defendant has been and may continue  
11 to be unjustly enriched at the expense of Plaintiff and similarly situated consumers. Specifically,  
12 Defendant's unlawful, unfair, and fraudulent conduct has enabled Defendant to sell more units of  
13 toothpaste to Plaintiff and others thereby unjustly enriching Defendant.

14 35. Defendant received the money from Plaintiff and proposed class members who  
15 purchased Crest toothpaste with the expectation that the dispenser would function properly and  
16 dispense the full quantity of toothpaste. Because only a portion of the purchased toothpaste can  
17 be dispensed, Plaintiff and proposed class members have not received the benefit of the purchase  
18 money. Plaintiff estimates that he was not able to dispense as much as 20% of the toothpaste  
19 from the dispenser. At the retail price of approximately \$4.49 (listed as the retail price at  
20 Walgreens in Encino, California on 8/18/11), Plaintiff and class members therefore are owed  
21 20% of the retail price, or 90 cents per item purchased, to account for the quantity of unusable  
22 toothpaste that they purchased. Defendant has not returned any of the money it received to  
23 Plaintiff or similarly situated consumers.

24 36. It would be unjust and inequitable to allow Defendant to retain its ill-gotten  
25 profits and therefore should be required to disgorge profits unlawfully obtained.  
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**VII.**  
**SECOND CLAIM FOR RELIEF**  
**FRAUDULENT CONCEALMENT**  
**(ON BEHALF OF PLAINTIFF AND ALL CLASSES)**

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37. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

38. Defendant knew at all material times that its Neat Squeeze dispenser was defective and incapable of dispensing the full quantity of toothpaste sold in the container.

39. This fact was not known to Plaintiff and other similarly situated consumers at the time of purchase.

40. Defendant had a duty to disclose the above known material facts because Defendant knew that these material facts were unknown to Plaintiff and other consumers, because Defendant was in a superior position of knowledge with regard to its product, and because Defendant chose to make certain representations, which without disclosure of the package failure, mislead consumers who purchased Neat Squeeze with regard to the volume of usable toothpaste.

41. Defendant's knowledge that the Neat Squeeze dispenser was defective and would fail to dispense the full amount of toothpaste purchased, coupled with its knowledge that Plaintiff and other similarly situated consumers rely heavily on the accuracy of the information on a product label, creates a legal obligation on Defendant to disclose that the a significant amount of toothpaste will be unusable when the Neat Squeeze package fails.

42. Plaintiff and other similarly situated consumers were unaware of the above facts and would not have purchased toothpaste in a Neat Squeeze dispenser if they were told that they would be unable to use a significant amount of toothpaste in the container.

43. Plaintiff and other similarly situated consumers reasonably relied and continue to rely on the accuracy of Defendant's product label.

44. Defendant intentionally concealed and/or suppressed the above facts with the intent to defraud Plaintiff and similarly situated consumers.

1 45. Defendant's omission was the proximate or direct cause of consumers'  
2 overpayment per ounce when purchasing the toothpaste in the Neat Squeeze dispenser rather  
3 than in some other properly functioning dispenser.

4 46. Defendant's fraudulent concealment of the above fact has caused damage to  
5 Plaintiff and class members who have purchased one or more units of the offending toothpaste.

6  
7 **VIII.**  
8 **THIRD CLAIM FOR RELIEF**  
9 **BREACH OF EXPRESS WARRANTY**  
10 **(ON BEHALF OF PLAINTIFF AND ALL CLASSES)**

11 47. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
12 paragraphs as if fully set forth herein.

13 48. As set forth above, all units of Crest Neat Squeeze toothpaste were mislabeled as  
14 a result of the inherent defect of the Neat Squeeze dispenser to fully dispense the entire amount  
15 of toothpaste purchased.

16 49. The mislabeled toothpaste and the failure to disclose that not all toothpaste  
17 purchased could be used, was not known to Plaintiff or class members, and could not have been  
18 known at the time of purchase.

19 50. Had Plaintiff and others known of the defect resulting in the inability to use all of  
20 the quantity of toothpaste purchased, consumers would not have purchased toothpaste in Neat  
21 Squeeze dispensers, or at least would have paid less.

22 51. As a direct and proximate result of Defendant's breach of its express warranty,  
23 Plaintiff and other similarly situated consumers have sustained damages in an amount to be  
24 determined at trial.

25 **IX.**  
26 **FOURTH CAUSE OF ACTION**  
27 **UNFAIR, MISLEADING AND DECEPTIVE BUSINESS PRACTICES**  
28 **PURSUANT TO BUSINESS & PROFESSIONS CODE §17200**  
**(ON BEHALF OF PLAINTIFF & CALIFORNIA SUB-CLASS MEMBERS ONLY)**

52. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
paragraphs as if fully set forth herein.

1           53. This is a Representative Private Attorney General Action and Class Action for  
2 Unfair Business Practices. Plaintiff, on behalf of himself, the general public, and others similarly  
3 situated, bring this claim pursuant to California’s Unfair Competition Law, CAL. BUS. AND PROF.  
4 CODE §17200, *et seq.* The conduct of Defendant as alleged in this Complaint has been and  
5 continues to be unfair, unlawful, and/or fraudulent, and is therefore harmful to Plaintiff,  
6 proposed class members, competitors, and the general public. Plaintiff seeks to enforce important  
7 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

8           54. Plaintiff is a “person” within the meaning of Business and Professions Code §  
9 17204, and therefore has standing to bring this claim for restitution and other appropriate  
10 equitable relief.

11           55. Defendant, by marketing, promoting, distributing, and ultimately selling  
12 toothpaste in Neat Squeeze dispensers, either knew or in the exercise of reasonable care, should  
13 have known that its conduct was misleading and deceptive and therefore in violation of § 17200  
14 *et seq.* of the Business and Professions Code.

15           56. Defendant a engaged in unlawful business practices by violating the Consumer  
16 Legal Remedies Act, CAL. CIV. CODE § 1750 *et seq.*; and by engaging in conduct, as alleged  
17 herein, that breaches the express warranties.

18           57. Defendant engaged in unfair business practices by, among other things:

- 19           a. Engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or  
20 substantially injurious to Plaintiff and other members of the California Sub-Class;  
21           b. Engaging in conduct that undermines or violates the stated policies underlying the  
22 CLRA, which seeks to protect consumers against unfair and sharp business practices and  
23 to promote a basic level of honesty and reliability in the marketplace; and  
24           c. Engaging in conduct that causes a substantial injury to consumers, not outweighed  
25 by any countervailing benefits to consumers or to competition, which the consumers  
26 could not have reasonably avoided.  
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1 58. P&G engaged in fraudulent business practices by engaging in conduct that was  
2 and is likely to deceive consumers acting reasonably under the circumstances.

3 59. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and  
4 others similarly situated reasonably relied on the Defendant's representations of material fact that  
5 the full amount of toothpaste indicated on the package's label was usable. Plaintiff and Class  
6 Members have been damaged and are entitled to restitution in a sum as may be proven.

7 60. Pursuant to the Business and Professions Code, this Court should make such  
8 orders or judgments, including the appointment of a receiver, as may be necessary to disgorge  
9 Defendant of ill gotten profits which may be necessary to restore to Plaintiff and proposed class  
10 members with the value of toothpaste that the dispenser fails to dispense.

11  
12 **X.**  
13 **FIFTH CAUSE OF ACTION**  
14 **UNTRUE OR MISLEADING ADVERTISING**  
15 **PURSUANT TO BUSINESS & PROFESSIONS CODE §17500**  
16 **(ON BEHALF OF PLAINTIFF & CALIFORNIA SUB-CLASS MEMBERS ONLY)**

17 61. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
18 paragraphs as if fully set forth herein.

19 62. At all times herein mentioned, Defendant marketed, advertised, promoted,  
20 distributed, and ultimately sold Crest toothpaste in Neat Squeeze dispensers to customers  
21 throughout California with a misleading label that misrepresents the amount of usable toothpaste.

22 63. Since at least four years prior to the filing of the Complaint and continuing to the  
23 present, Defendant has sold toothpaste in Neat Squeeze dispensers to the public, including  
24 Plaintiff and other Californians.

25 64. The advertisement concerning the volume of toothpaste was included on the  
26 package label as well as online at P&G's website and on the websites of Amazon, eBay, and  
27 others that sell merchandise to the public.  
28



1 This assertion was made without any reasonable ground for believing that the dispenser, which is  
2 inherently defective, would dispense the full amount of toothpaste.

3 70. The material misrepresentation and corresponding omission, contained on the  
4 package, were negligently made to Plaintiff and all others similarly situated.

5 71. Defendant intended to induce reliance upon this material misrepresentation to  
6 influence the purchasing decisions of Plaintiff and all others similarly situated. Defendant knew  
7 that Plaintiff and other similarly situated consumers relied on the accuracy of the information  
8 contained on a product's label.

9 72. Plaintiff and the proposed class members justifiably relied upon Defendant's  
10 representation of quantity.

11 73. As a result of Defendant's negligent misrepresentations, Plaintiff and all others  
12 similarly situated were harmed as Plaintiff and others overpaid for the Crest toothpaste when  
13 taking into account the adjusted price per ounce.

14 74. Defendant acted as described above, with a conscious disregard of the rights of  
15 Plaintiff and others similarly situated in clear violation of California Law and resulted in  
16 oppression, and/or malice constituting despicable conduct under California Civil Code § 3294  
17 entitling Plaintiff to punitive damages in an amount appropriate to punish or make an example of  
18 Defendant.

19  
20 **XII**  
21 **SEVENTH CAUSE OF ACTION**  
22 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT**  
23 **PURSUANT TO CIVIL CODE § 1750 ET SEQ.**  
24 **(ON BEHALF OF PLAINTIFF & CALIFORNIA SUB-CLASS MEMBERS ONLY)**

25 75. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
26 paragraphs as if fully set forth herein.

27 76. Defendant P&G is a "person" as defined by Civil Code § 1761(c).

28 77. Plaintiff and proposed class members are "consumers" within the meaning of  
Civil Code § 1761(d).



1           78. Crest toothpaste in the Neat Squeeze dispenser that Defendant marketed,  
2 advertised, promoted, distributed, and sold is a “good” within the meaning of Civil Code §  
3 1761(a).

4           79. Defendant violated the Consumer Legal Remedies Act (“CLRA”) by  
5 misrepresenting and/or actively concealing the quantity of usable toothpaste accounting for the  
6 Neat Squeeze dispenser’s shortcomings. These misrepresentations were material and were made  
7 in violation of the CLRA include the following:  
8

- 9           a. Representing that goods or services have sponsorship, approval,  
10 characteristics, ingredients, uses, benefits, or quantities which they  
do not have (§ 1770(a)(5));
- 11           b. Advertising goods or services with the intent not to sell them as  
12 advertised (§ 1770(a)(9));

13           80. The facts that Defendant misrepresented and/or concealed are material in that a  
14 reasonable consumer would have considered both price and quantity to be important factors in  
15 deciding whether or not to purchase Crest toothpaste in a Neat Squeeze dispenser. At the  
16 inflated price per ounce, taking into account only the usable quantity, Plaintiff and others may  
17 have chosen differently.

18           81. The material facts were misrepresented and/or concealed to induce Plaintiff and  
19 others to purchase the Crest toothpaste.

20           82. Defendant had a duty to disclose the defect in the Neat Squeeze dispenser for  
21 various reasons, including that:

- 22           a. The defect’s existence is contrary to Defendant’s representations and  
23 consumers’ expectations
- 24           b. Defendant’s concealment of the defect and/or Defendant’s failure to disclose  
25 the defect was likely to deceive reasonable consumers;
- 26           c. Defendant intentionally concealed the defect with the intent to defraud  
27 consumers;  
28

- 1 d. Defendant's concealment of the defect harmed the Plaintiff and other Class  
2 members.
- 3 e. Defendant was in a superior position to know the true state of facts about the  
4 defect.
- 5 f. Plaintiff and the California Sub-Class Members could not reasonably have  
6 been expected to learn or discover about the defect.
- 7 g. Defendant knew that Plaintiff and the California Sub-Class Members could  
8 not reasonably have been expected to learn or discover the defect.

9  
10 83. In failing to disclose the defect, Defendant has knowingly and intentionally  
11 concealed material facts and breached its duty not to do so.

12 84. Pursuant to the provisions of CAL. CIV. CODE § 1780, Plaintiff will seek an  
13 order enjoining Defendant from the unlawful practices described herein, a declaration that  
14 Defendant's conduct violates the CLRA, and attorneys' fees and costs of litigation.

15 85. Plaintiff and the California Sub-Class members suffered damage as a direct and  
16 proximate result of Defendant's conduct in violation of the CLRA, as evidenced by their  
17 purchase of the subject toothpaste.

18 86. Plaintiff has sent a letter to Defendant under Civil Code § 1781 and will amend  
19 this complaint if and when the time for Defendant to correct the violations of the CLRA has  
20 expired to add a prayer for relief under the CLRA. (Exhibit 3, letter sent to Defendant pursuant  
21 to CLRA.)

22 **RELIEF REQUESTED**

23 WHEREFORE, Plaintiff prays for the following relief:

- 24 1. For compensatory damages equal to the value of the unusable toothpaste paid for  
25 by Plaintiff and each class member;
- 26 2. For restitution including an order disgorging profits obtained by Defendant for the  
27 wrongful acts alleged herein;
- 28 3. For injunctive relief;

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- 4. For attorneys' fees pursuant to California Code of Civil Procedure § 1021.5, or other legal basis as may be proven;
- 5. For costs of suit; and
- 6. For such other relief as the court may deem appropriate.

**DEMAND FOR JURY TRIAL**

7. Plaintiff hereby demands trial of all claims by jury to the extent authorized by law.

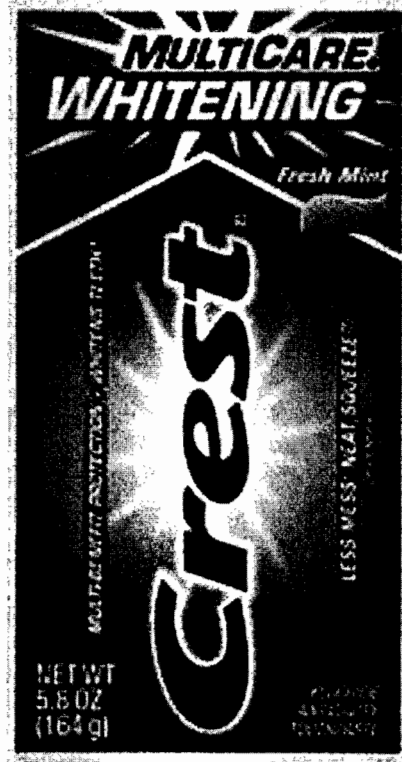
DATED: September 8, 2011

LEVINE LAW GROUP, APC

By:   
\_\_\_\_\_  
BRIAN LEVINE  
Attorneys for Plaintiffs

CADDELL & CHAPMAN  
MICHAEL A. CADDELL  
CYNTHIA B. CHAPMAN  
CORY S. FEIN  
Attorneys for Plaintiffs

# Exhibit 1



© 2005 P&G

# Exhibit 2

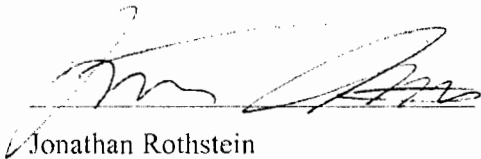
**VENUE DECLARATION FOR CALIFORNIA CONSUMERS**  
**LEGAL REMEDIES ACT**

I, Jonathan Rothstein, do hereby declare and state as follows:

1. I am the Plaintiff named in *Rothstein v. The Procter & Gamble Co., Inc., et al.*. Pursuant to Cal. Civ. Code § 1780(d), I make this declaration in support of Plaintiff's Class Action Complaint and the claim therein for relief under Cal. Civ. Code § 1780(a). I have personal knowledge of the facts stated herein and, if necessary, could competently testify thereto.

2. This action for relief under Cal. Civ. Code § 1780(a) has been commenced in a county that is a proper place for trial of this action because the Defendant does business in the Central District of California and because the transaction, my purchase of the toothpaste at issue, occurred in Los Angeles County, within the Central District of California.

This declaration is signed under penalty of perjury under the laws of the State of California this   0   day of September 2011.

  
Jonathan Rothstein

# Exhibit 3



# Levine Law Group, APC

15760 Ventura Boulevard, Suite 2030  
Encino, California 91436  
Phone: (818) 990-3400 | Fax: (818) 855-8040  
E-Mail: brian@llglaw.com

September 7, 2011

VIA US MAIL  
CERTIFIED, RETURN RECEIPT REQUESTED  
CERTIFIED NO.: 7010 1870 0000 6064 1582

The Procter & Gamble Company  
One Procter & Gamble Plaza  
Cincinnati, Ohio 45202

Re: NOTICE AND DEMAND LETTER CONCERNING CREST NEAT SQUEEZE TOOTHPASTE

To Whom It May Concern:

This letter constitutes notice under California's Consumer Legal Remedies Act, *Civil Code* § 1750, *et seq.* ("CLRA"), pursuant to *Civil Code* § 1782, notifying Procter & Gamble ("P&G") of violations of the CLRA and of our demand that P&G correct defects in its Neat Squeeze container and refund the amount of the purchase price associated with the amount of unusable toothpaste. On behalf of himself and all other consumers who have purchased Crest Neat Squeeze toothpaste, including but not limited to, all California purchasers, Plaintiff hereby demands that within thirty (30) days of receipt of this letter, Crest refund to consumers the amount of unusable toothpaste purchased by California residents.

The undersigned counsel represents Jonathan Rothstein, a California resident, who purchased Crest Neat Squeeze toothpaste and who, as a result of the neat squeeze container, was unable to dispense the full amount of toothpaste that he purchased as represented on the container. Mr. Rothstein's experience with the neat squeeze container is not unique. The Crest website contains numerous consumer complaints about the failure of the neat squeeze container to dispense the full amount of toothpaste advertised. Because of the inherent defect in the container, Mr. Rothstein and all other consumers who purchased Crest toothpaste in a neat squeeze container have not received the benefit of their bargain. Mr. Rothstein's claim under the CLRA is brought on behalf of a California subclass (a subset of a national class) defined as:

All purchasers of Crest Neat Squeeze toothpaste within the State of California (the "Class")

Please be advised that P&G's alleged acts in connection with the marketing and sales of Crest Neat Squeeze toothpaste constitute unfair and deceptive methods of competition and violate the CLRA, including, without limitation, the following provisions:

1. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have (*Cal. Civ. Code* § 1770(a)(5)); and
2. Advertising goods or services with intent not to sell them as advertised (*Cal. Civ. Code* § 1770(a)(9));

On behalf of Mr. Rothstein and the Class, we demand that P&G, within thirty (30) of receipt days of this letter, correct the packaging defect inherent in the neat squeeze container to allow it to dispense the full amount of toothpaste purchased, or correct the packaging to reflect the amount of product that can be extracted from the container via normal use. We further demand that P&G refund the 1/5 of the purchase retail price to all members of the Class. Failure to respond as requested herein within thirty (30) days of receipt will be considered a denial of the claim.

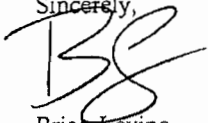
Please be advised that P&G's failure to comply with this request within thirty (30) days of receipt of this letter may subject it to the following remedies available under the CLRA:

1. Actual damages;
2. An order enjoining P&G from deceptive, misleading and unfair acts and practices;
3. Restitution and/or disgorgement of profits;
4. Punitive damages;
5. Court costs and attorneys' fees, including expert costs;
6. Any and all other relief which the court deems appropriate.

This letter also serves as notice that the acts and practices set forth above also constitute violations of California's Unfair Competition law, *Business and Professions Code* § 17200, *et seq.*, and California's False Advertising law, *Business and Professions Code* § 17500, *et seq.*

Please advise the undersigned immediately if P&G disputes the effectiveness of this notice under *Civil Code* § 1782(a)(2).

Sincerely,



Brian Levine  
Levine Law Group, APC

Enclosures:

cc: Cory Fein, Esq.  
Caddell & Chapman  
1331 Lamar, Suite 1070  
Houston, TX 77010-3027

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself )  
JONATHAN ROTHSTEIN, on behalf of himself and others similarly situated,  
DEFENDANTS  
THE PROCTER & GAMBLE COMPANY, INC., and DOES 1-10  
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  
Brian Levine, Esq., Levine Law Group, APC  
15760 Ventura Boulevard, Suite 2030, Encino, California 91436  
Tel: (818) 990-3400 | Fax (818) 855-8040  
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)  
 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)  
 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)  
III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)  
Citizen of This State PTF DEF  1  1 Incorporated or Principal Place of Business in this State PTF DEF  4  4  
Citizen of Another State  2  2 Incorporated and Principal Place of Business in Another State  5  5  
Citizen or Subject of a Foreign Country  3  3 Foreign Nation  6  6

IV. ORIGIN (Place an X in one box only.)  
 1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from another district (specify):  6 Multi-District Litigation  7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND:  Yes  No (Check 'Yes' only if demanded in complaint.)  
CLASS ACTION under F.R.C.P. 23:  Yes  No MONEY DEMANDED IN COMPLAINT: \$ In excess of \$5,000,000.00

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
Diversity jurisdiction under the Class Action Fairness Act. [28 U.S.C. § 1332(d)]

VII. NATURE OF SUIT (Place an X in one box only.)  
OTHER STATUTES:  400 State Reapportionment  410 Antitrust  430 Banks and Banking  450 Commerce/ICC Rates/etc.  460 Deportation  470 Racketeer Influenced and Corrupt Organizations  480 Consumer Credit  490 Cable/Sat TV  810 Selective Service  850 Securities/Commodities/Exchange  875 Customer Challenge 12 USC 3410  890 Other Statutory Actions  891 Agricultural Act  892 Economic Stabilization Act  893 Environmental Matters  894 Energy Allocation Act  895 Freedom of Info. Act  900 Appeal of Fee Determination Under Equal Access to Justice  950 Constitutionality of State Statutes  
CONTRACT:  110 Insurance  120 Marine  130 Miller Act  140 Negotiable Instrument  150 Recovery of Overpayment & Enforcement of Judgment  151 Medicare Act  152 Recovery of Defaulted Student Loan (Excl. Veterans)  153 Recovery of Overpayment of Veteran's Benefits  160 Stockholders' Suits  190 Other Contract  195 Contract Product Liability  196 Franchise  210 Land Condemnation  220 Foreclosure  230 Rent Lease & Ejectment  240 Torts to Land  245 Tort Product Liability  290 All Other Real Property  
REAL PROPERTY  
TORTS:  310 Airplane  315 Airplane Product Liability  320 Assault, Libel & Slander  330 Fed. Employers' Liability  340 Marine  345 Marine Product Liability  350 Motor Vehicle  355 Motor Vehicle Product Liability  360 Other Personal Injury  362 Personal Injury-Med Malpractice  365 Personal Injury-Product Liability  368 Asbestos Personal Injury Product Liability  462 Naturalization Application  463 Habeas Corpus-Alien Detainee  465 Other Immigration Actions  
TORTS:  370 Other Fraud  371 Truth in Lending  380 Other Personal Property Damage  385 Property Damage Product Liability  422 Appeal 28 USC 158  423 Withdrawal 28 USC 157  441 Voting  442 Employment  443 Housing/Accommodations  444 Welfare  445 American with Disabilities - Employment  446 American with Disabilities - Other  440 Other Civil Rights  
BANKRUPTCY  
CIVIL RIGHTS  
PRISONER PETITIONS:  510 Motions to Vacate Sentence  530 General Habeas Corpus  535 Death Penalty  540 Mandamus/Other  550 Civil Rights  555 Prison Condition  610 Agriculture  620 Other Food & Drug  625 Drug Related Seizure of Property 21 USC 881  630 Liquor Laws  640 R.R. & Truck  650 Airline Regs  660 Occupational Safety /Health  690 Other  
FORFEITURE / PENALTY  
LABOR:  710 Fair Labor Standards Act  720 Labor/Mgmt. Relations  730 Labor/Mgmt. Reporting & Disclosure Act  740 Railway Labor Act  790 Other Labor Litigation  791 Empl. Ret. Inc. Security Act  
PROPERTY RIGHTS  
SOCIAL SECURITY  
FEDERAL TAX SUITS

CV11-07403

FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_  
AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

ORIGINAL

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes  
If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case?  No  Yes  
If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.  
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

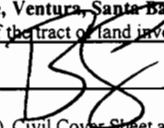
- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.  
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Hamilton County, Ohio

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.  
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Plaintiff's claims arose in Los Angeles County Putative class members' claims arose in all counties in the Central District	Putative class members' claims also arose in every judicial district in the United States

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties  
**Note: In land condemnation cases, use the location of the tract of land involved**

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date September 9, 2011

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

**Key to Statistical codes relating to Social Security Cases:**

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))