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11 *Attorneys for the Plaintiff*

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES

14 ORGANIC CONSUMERS ASSOCIATION,

15 Plaintiff,

16 v.

17 THE HONEST COMPANY, INC.,

18 Defendant.

NO. **SC125655**

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF FOR
VIOLATIONS OF CALIFORNIA'S
ORGANIC PRODUCTS ACT OF
2003

DEMAND FOR JURY TRIAL

BY FAX

19 Plaintiff The Organic Consumers Association ("The OCA"), a non-profit § 501(c)(3)
20 public interest organization, alleges the following based upon its own personal knowledge and
21 investigation.

22 **INTRODUCTION**

23 1. This is a proposed action against The Honest Co. ("Honest" or "Defendant"), for
24 falsely representing its Premium Infant Formula as "Organic." See Product label and
25 ingredients attached as Exhibit 1; website ordering page attached as Exhibit 2.

26 2. However, Honest's "Organic" Infant Formula is *not* organic, as labeled.
27 Instead, it has synthetic ingredients that are not allowed in organic products by federal law.

1 3. In fact, of the 40 ingredients in the “Organic” Infant Formula, *more than a*
2 *quarter* (11) are synthetic substances that are not allowed in organic products. *See* paragraph
3 40, *infra* (identifying the prohibited ingredients: sodium selenite, taurine, ascorbyl palmitate,
4 calcium pantothenate, choline bitartrate, cholecalciferol, beta-carotene, biotin, dl-alpha
5 tocopherol, inositol, phytonadione). Some of these ingredients are federally regulated as
6 hazardous compounds. At least one of these ingredients is irradiated. Finally, some have not
7 even been assessed as safe for human foods – much less for infant formulas. *See* paragraph 40,
8 *infra*.



25 4. For example, the “Organic” Infant Formula contains sodium selenite (an
26 extremely hazardous and toxic synthetic compound), taurine (a synthetic additive that has been
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1 associated with negative brain and nervous system effects in animals), cholecalciferol (an
2 irradiated substance), and calcium pantothenate (a synthetic compound produced from
3 formaldehyde). See paragraph 40, *infra*.



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12 5. These ingredients in the “Organic” Infant Formula are prohibited from organic
13 formulas under both federal law, the Organic Food Production Act of 1990 (“OFPA”), 7 U.S.C.
14 § 6501 *et seq.*, and under California law, the California Organic Products Act of 2003
15 (“COPA”), Cal. Health & Safety Code § 110810, *et seq.*

16 6. COPA states, in relevant part, that “no product shall be sold as organic . . .
17 unless it . . . consists entirely of products manufactured only from raw or processed agricultural
18 products except . . . nonagricultural substances . . . which are on the national list adopted by the
19 United States Secretary of agriculture pursuant to Section 6517 . . .” Cal. Health & Safety
20 Code § 110820(b).

21 7. The National List specifies which nonagricultural ingredient may be added to
22 organic products. 7 U.S.C. § 6502(12); 7 U.S.C. § 6517. The List is highly specific, allowing
23 no leeway for interpretation. 7 U.S.C. § 6517(b) (“[T]he list . . . shall contain an itemization,
24 by specific use or application, of each synthetic substance permitted.”).

25 8. The “national list adopted by the United States Secretary of agriculture pursuant
26 to Section 6517” is published as 7 C.F.R. § 205.605(b) and is attached as Exhibit 3.

1 9. The eleven ingredients in Honest’s infant formulas are all nonagricultural
2 substances. *See* paragraph 40, *infra*.

3 10. None of the eleven ingredients in Honest’s infant formula appear on the
4 National List. *Compare* Exhibits 1, 2 (listing the ingredients in Honest’s infant formula) *with*
5 Exhibit 3 (the National List).

6 11. Thus, Honest’s infant formula, which is falsely labeled as “organic,” violates
7 COPA. Cal. Health & Safety Code § 110820(b).

8 12. Ingredients may be added to the National List only if the National Organic
9 Standards Board (“NOSB”) votes by a two-thirds majority to add the ingredient to the List.¹

10 13. However, when the NOSB was petitioned to add taurine, ascorbyl palmitate, and
11 beta-carotene to the National List, the Board *denied* the petitions, and *specifically* denied them
12 from organic infant formula. *See* paragraph 40, *infra*; Exhibit 4 (NOSB Formal
13 Recommendation denying taurine from being added to the National List for use in infant
14 formulas), Exhibit 5 (NOSB Formal Recommendation denying ascorbyl palmitate from being
15 added to the National List for use in infant formulas), Exhibit 6 (NOSB Formal
16 Recommendation denying beta-carotene from being added to the National List for use in infant
17 formulas).

18 14. Cal. Health & Safety Code § 111910 permits “any person [to] bring an action in
19 superior court . . . [for] a temporary or permanent injunction restraining any person from
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21 ¹ The OFPA does not permit any other person, program, or committee to amend the
22 National List. *See* 7 U.S.C. §§ 6517-6518.

23 Even if the NOSB votes to add the ingredient to the list, the ingredient is not permitted
24 in organic products until and unless the Secretary of the U.S. Department of Agriculture
25 consults with the Secretary of Health and Human Services and the Administrator of the
26 Environmental Protection Agency, the Secretary confirms that the substance meets the
27 requirements of 7 U.S.C. § 6517(c)(2), and the Secretary satisfies the notice-and-comment and
publication procedures under 7 U.S.C. § 6517(c)(1)(C). Unless all these requirements are
satisfied, the ingredient is not permitted by the National List, and cannot be added to a product
labeled as “organic.” *See* 7 U.S.C. §§ 6517-6518; Cal. Health & Safety Code § 110820(b); *id.*
§ 110811.

1 violating any provision of” COPA. Because these nonagricultural substances are not on the
2 National List, they are not allowed in organic products under COPA. Cal. Health & Safety
3 Code § 110820(b). Plaintiff, the Organic Consumers Association, brings this action to stop
4 Honest from continuing to unlawfully label its infant formula as organic.

5 **PARTIES**

6 15. The OCA is a national § 501(c)(3) organization based in Finland, Minnesota and
7 is the only organization in the United States focused exclusively on promoting the views and
8 interests of the nation’s millions of organic and socially responsible consumers. The OCA’s
9 network members include both businesses and individual consumers, and its mission includes
10 the preservation of strict organic standards.

11 16. The OCA maintains a presence in California, including in Los Angeles County,
12 and by filing this Complaint, consents to this Court’s jurisdiction over it.

13 17. The OCA was formed in 1998 in the wake of backlash by organic consumers
14 against the U.S. Department of Agriculture’s controversial proposed national regulations for
15 organic food. Through the OCA’s (Safeguard Organic Standards) Campaign, as well as the
16 work of its allies in other organizations, the organic community over the last eight years has
17 been able to mobilize hundreds of thousands of consumers to pressure the USDA and organic
18 companies to preserve strict organic standards.

19 18. In its public education, network building, and mobilization activities, the OCA
20 works with a broad range of public interest organizations to challenge industrial agriculture,
21 corporate globalization, and inspire consumers to “Buy Local, Organic, and Fair Made.” The
22 OCA’s website, publications, research, and campaign staff provide an important service for
23 hundreds of thousands of consumers and community activists every month. Its media team
24 provides background information, interviews, and story ideas to television and radio producers
25 and journalists on a daily basis.

26 19. Thus, the OCA’s focus is on representing the views and interests of consumers
27 seeking organic products by educating consumers on food safety, industrial agriculture, genetic

1 engineering, corporate accountability, and environmental sustainability issues. The OCA uses
2 funds it raises to educate consumers, increasing their awareness and knowledge of the
3 agricultural production of organic foods, and to protect the environment by regenerating
4 organic and sustainable agriculture. The OCA also uses its funds and member base to pressure
5 food companies to adopt honest labeling practices, to the benefit of consumers.

6 20. The OCA has worked diligently to promote truthful advertising and the accurate
7 labeling of consumer goods, including organic infant formulas. In addition to publishing a
8 number of articles that educate consumers about infant formulas, the OCA has participated in
9 the National Organic Standards Board process, submitting comments from its members in
10 opposition to the use of synthetic ingredients, including those used in organic infant formulas.

11 21. Through its activities, the OCA has expended significant funds to ensure that
12 infant formula marketed as organic actually is organic, to educate consumers about the meaning
13 of “organic” as applied to infant formula, and to keep synthetic ingredients, like those in
14 Honest’s “Organic” Infant Formula, off the National List.

15 22. As a result of Honest’s unfair business practices and COPA violations, the OCA
16 has suffered injury in fact and has lost money or property.

17 23. The OCA brings this action on behalf of the general public, and on behalf of its
18 members who actively seek and wish to purchase organic products and are deceived by
19 Honest’s mislabeled “Organic” Infant Formula.

20 24. Defendant The Honest Co. is a Delaware corporation with its principal place of
21 business in Santa Monica, California. Honest markets, sells, and distributes its products,
22 including the “Organic” Infant Formula, from California and throughout California.

23 **JURISDICTION AND VENUE**

24 25. This Court has personal jurisdiction over the parties in this case. The OCA
25 maintains a presence in the District of Columbia and, by filing this Complaint, consents to this
26 Court having personal jurisdiction over it.

1 HONEST INGREDIENTS

2 We're honestly committed to using only USDA
3 certified organic and non-GMO (genetically
4 engineered) ingredients because the healthiest
5 foods are grown *without* toxic pesticides,
6 antibiotics, radiation-processing, hormones,
7 insecticides, steroids, or genetic modification. The
8 more we demand and consume pure, healthy
9 ingredients, the more it will become the norm. Isn't
10 that what families deserve?



11 Honest Co. Website, Feeding Philosophy, available at
12 <https://www.honest.com/feeding/philosophy> (last visited February 18, 2016), and attached as
13 Exhibit 7.

14 31. Not only does Honest recognize its obligation to be truthful, but it goes a step
15 further with regard to its infant formulas, promising “radical transparency:”

16 With a name like The Honest Company, the obligation—and
17 expectation—to be transparent may not seem so radical. When it
18 comes to Honest Feeding, however, your right to know represents
19 a revolution in the marketplace. The integrity of our brand
20 compels us to change the status quo of secrecy in this category to
21 remain honestly accountable and radically transparent.

22 Exhibit 7.

23 32. Until approximately 2015, Honest’s products could be purchased only through
24 its website. The page from which consumers could purchase Honest’s “Organic” Infant
25 Formula further promised not only that the product was “organic,” but that it was “honestly
26 organic.” Exhibit 2. Honest further promised, “Our organic infant formula is carefully
27 modeled after breast milk, and meticulously blended using non-GMO (genetically engineered),
naturally-derived, organic and other high-quality ingredients, sourced from trusted organic
farms to help ensure pure, safe, and quality goodness,” and that it was “Honestly Free” of
“radiation processing.” *Id.*

1 33. The product labels repeat the online representations. On the front label of the
2 “Organic” Infant Formula, Honest promises the product is “ORGANIC” and is “[n]utritionally
3 complete using quality ingredients; [s]ourced from trusted organic farms.” Exhibit 1.

4 34. Like Honest’s online representations, the product labels further promise:

5 **Premium Organic Nutrition** Our ingredients abide by the strict
6 criteria of the USDA certified organic program to ensure high
7 quality sourcing.

8 **Quality Matters** We chose only high quality organic ingredients
9 and formulate without GMOs (genetically engineered
10 ingredients) and are Honestly Free of added growth hormones,
11 gluten, added clabors, added colors, and radiation processing.

12 Exhibit 1 at 2 (emphasis in original).

13 35. All the product label representations are repeated and showcased on the
14 “Organic Infant Formula” product webpage, where consumers purchase the product. *See*
15 Exhibit 2.

16 36. All Honest’s label, website, and other advertising that claims the infant formula
17 is “organic” is unlawful under COPA. Cal. Health & Safety Code § 110815.

18 **HONEST FALSELY REPRESENTS THAT ITS “ORGANIC”**
19 **INFANT FORMULA IS ORGANIC**

20 37. Honest falsely represented that its “Organic” Infant Formula is organic by
21 prominently labeling the product packages as “ORGANIC” and repeatedly representing the
22 product as “ORGANIC” on its product page on Honest.com, from which Plaintiff and other
23 consumers purchase the product. Exhibits 1, 2.

24 38. This representation is false. The products are not organic. In fact, the
25 “Organic” Infant Formula contains ingredients that COPA does not permit in organic products.
26 Exhibits 1, 2. Cal. Health & Safety Code § 110820(b); 7 U.S.C. § 6510, 6517; 7 C.F.R.
27 § 205.605.

 39. Honest’s “Organic” Infant Formula is thus not “organic” under state and federal
law, and labeling it as such is unlawful under COPA.

1 40. Specifically, Honest’s “Organic” Infant Formulas contain the following
2 ingredients, all of which are not permitted in organic products:

3 a. ***Sodium Selenite*** is a hazardous substance. *See, e.g.*, 40 C.F.R. §§ 116.4,
4 302.4. The FDA allows it to be added to animal feed, 21 C.F.R. § 573.920, but it has never
5 been determined it to be safe to be added to foods for human consumption. Even at very low
6 doses, animal studies show it has negative effects on the respiratory, gastrointestinal,
7 cardiovascular, and metabolic systems, negatively impacts the liver, and has negative broad
8 systemic effects. It is not permitted to be added to products labeled as “organic.” 7 C.F.R.
9 §§ 205.105(c), 205.605 (the “National List”); Cal. Health & Safety Code § 110820.

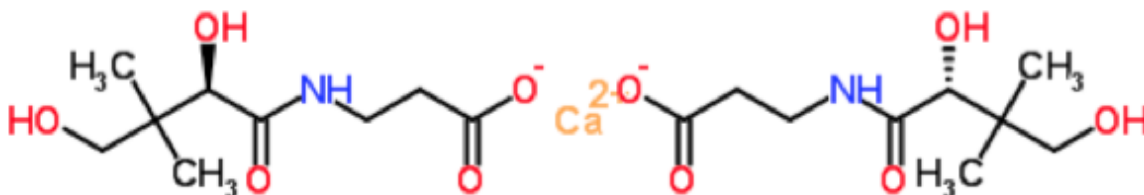
10 Nonetheless, Honest has added sodium selenite to the “Organic” Infant Formula. Exhibits 1, 2.

11 b. ***Taurine***, a.k.a. 1, 2-aminoethanesulfonic acid, is not permitted in
12 products labeled as “organic.” 7 C.F.R. §§ 205.105(c), 205.605; Cal. Health & Safety Code
13 § 110820(b). In fact, the National Organic Standards Board (“NOSB”) specifically rejected
14 applications to permit taurine to be added to organic products. *See Exhibit 4.* Even at very low
15 doses, animal studies show the ingredient negatively impacts the brain and nervous system,
16 metabolism, and cardiovascular system. Commercially available taurine is synthetically
17 produced by reacting ethylene oxide with aqueous sodium bisulfate, reacting aziridine with
18 sulfurous acid, or reacting monoethanolamine, sulfuric acid, and sodium sulfite. The FDA has
19 not affirmed taurine to be safe in foods. Nonetheless, Honest has added it to the “Organic”
20 Infant Formula. Exhibits 1, 2.

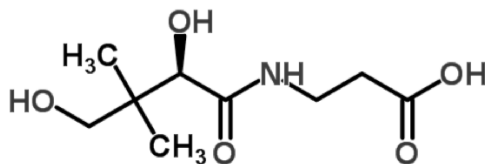
21 c. ***Ascorbyl palmitate*** is a chemical preservative. 21 C.F.R. § 182.3149. It
22 is not permitted in organic products. 7 C.F.R. §§ 205.105(c), 205.605; Cal. Health & Safety
23 Code § 110820. Nonetheless, Honest adds ascorbyl palmitate to its so-called “Organic” Infant
24 Formula, despite the fact that the NOSB specifically rejected applications to permit ascorbyl
25 palmitate to be added to such products. *See Exhibit 5.* Ascorbyl palmitate is prepared by
26 condensing palmitoyl chloride and ascorbic acid in the presence of a dehydrochlorinating agent
27 such as pyridine. It can also be produced by esterifying ascorbic acid with sulfuric acid, and

1 then with palmitic acid. Other patented processes use dimethylformamide, dimethyl sulfoxide,
2 or hydrogen fluoride instead of sulfuric acid.

3 d. **Calcium pantothenate** is synthetically prepared from isobutyraldehyde,
4 a synthetic flavoring substance and toxic chemical, 21 C.F.R. § 184.1212, 40 C.F.R. § 372.65,
5 and formaldehyde, a hazardous substance, 40 C.F.R. § 116.4, via 1,1-dimethyl-2-hydroxy-
6 propionaldehyde and pantolactone, 21 C.F.R. § 184.1212. It is not allowed in organic products.
7 See 7 C.F.R. §§ 205.105(c), 205.605; Cal. Health & Safety Code § 110820. Nonetheless,
8 Honest has added it to the “Organic” Infant Formula. Exhibits 1, 2. Calcium pantothenate
9 ($C_{18}H_{32}CaN_2O_{10}$), represented graphically as follows:



15 Calcium pantothenate is not the same substance as vitamin B5 ($C_9H_{17}NO_5$), represented
16 graphically as follows:



21 e. **Choline bitartrate** is a synthetic substance produced by the reaction of
22 trimethylamine with ethylene oxide followed by treatment with tartaric acid. Trimethylamine
23 and tartaric acid are both hazardous substances. 40 C.F.R. § 116.4. Choline bitartrate is not the
24 same substance as choline, an ingredient permitted in organic non-milk-based infant formulas.
25 Choline bitartrate ($C_9H_{19}NO_7$) is a synthetic variation of choline ($C_5H_{14}NO$), a nutrient
26 naturally found in grains, nuts, and beans. It is not allowed in organic foods. See 7 C.F.R.
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1 §§ 205.105(c), 205.605; Cal. Health & Safety Code § 110820. Nonetheless, Honest has added
2 it to its milk-based “Organic” Infant Formula. Exhibits 1, 2.

3 f. **Cholecalciferol** is also a synthetic compound. 7 C.F.R. § 205.601.
4 Cholecalciferol can be produced from fish liver oils, but Honest’s labels do not indicate that
5 any ingredient was derived from seafood. The other method of production requires ultraviolet
6 irradiation of ergosterol isolated from yeast and related fungi and purified by crystallization, or
7 ultraviolet irradiation of 7-dehydrocholesterol produced from cholesterol. *See* 21 C.F.R.
8 § 184.1950(a). Irradiated substances like cholecalciferol are not allowed in organic products.
9 *See* 7 C.F.R. § 205.105(f); Cal. Health & Safety Code § 110820. Nonetheless, Honest has
10 added it to its “Organic” Infant Formula. Exhibits 1, 2.

11 g. **Beta-carotene** is not allowed in organic products. 7 C.F.R.
12 §§ 205.105(c), 205.605; Cal. Health & Safety Code § 110820. Nonetheless, Honest adds beta-
13 carotene to its so-called “Organic” Infant Formula, despite the fact that the NOSB specifically
14 rejected applications to permit beta-carotene to be added to such products. *See* Exhibit 6.

15 h. **Biotin**, which is synthetically produced from fumaric acid, a hazardous
16 substance. Biotin is not permitted in milk-based organic infant formulas. 7 C.F.R. § 205.605;
17 21 C.F.R. § 107.100; Cal. Health & Safety Code § 110820. Nonetheless, Honest adds it to its
18 milk-based infant formula. Exhibit 1, 2.

19 i. **Dl-alpha tocopherol** is not permitted in organic foods. It is synthetically
20 produced by condensing racemic isophytol with trimethyl hydroquinone. *See* 21 C.F.R.
21 § 184.1890; 7 C.F.R. §§ 205.105(c), 205.605(b) (permitting tocopherols derived only from
22 rosemary extracts or vegetable oils); Cal. Health & Safety Code § 110820. Dl-alpha tocopherol
23 is a mixture of stereoisomers of 2,5,7,8-tetramethyl-2-(4',8',12'-trimethyl-tridecyl)-6-
24 chromanol. *See* 21 C.F.R. § 184.1890. The substance has approximately half the vitamin
25 activity of natural vitamin E. The FDA has limited the use of dl-alpha tocopherols “while the
26 agency concludes the general evaluation of all food uses of tocopherols,” 21 C.F.R.
27 § 184.1890(c).

1 j. **Inositol** is prohibited from milk-based infant formulas, such as Honest’s
2 “Organic” Infant Formula. *See* 7 C.F.R. §§ 205.105(c), 205.605; 21 C.F.R. § 107.100; Cal.
3 Health & Safety Code § 110820. According to the USDA, nonsynthetic production methods of
4 inositol are not available on a commercial scale. It is produced by extracting phytic acid
5 (inositol-hexaphosphate) from plants such as corn or rice by soaking in a dilute acid solution,
6 such as hydrochloric acid or sulfuric acid, creating phytin (inositol-hexaphosphate salt). The
7 phytin is synthetically converted to inositol by hydrolysis with a strong sulfuric acid solution,
8 and then purified with a reagent like barium to remove the sulfuric acid, phosphoric acid, and
9 calcium or magnesium sulfate. Alternatively, it can be prepared from phytin using ammonium
10 salts such as ammonium sulfate, ammonium chloride, ammonium nitrate, ammonium acetate,
11 or ammonium phosphate for hydrolysis.

12 k. **Phytonadione** is 2-methyl-3-phytyl-1, 4-naphthoquinone, synthetically
13 produced from 2-methyl-1,4-naphthoquinone and phytol, or from the partial syntheses from
14 menadione and phytol, using a pi-allylic nickel(I) complex. It is not permitted in organic
15 products. 7 C.F.R. §§ 205.105(c), 205.605; Cal. Health & Safety Code § 110820.
16 Phytonadione is not the same substance as phylloquinone, the nutrient (arguably) permitted in
17 organic infant formulas. *See* 21 C.F.R. § 107.100.

18 **THE REPRESENTATIONS ARE UNLAWFUL**

19 41. Honest’s conduct deceived and/or was likely to deceive the public. Consumers
20 were deceived into believing that the “Organic” Infant Formula was organic, as labeled.

21 42. It is a violation of the COPA to label as “organic” Honest’s Infant Formula –
22 which contains non-agricultural and synthetic ingredients that are not permitted in organic
23 products. 7 U.S.C. §§ 6510, 6517, 7 C.F.R. § 205.605 (the “National List”); Cal. Health &
24 Safety Code § 110820(b). Thus, Honest’s labeling and marketing of its infant formula
25 constitutes a violation of COPA. Cal. Health & Safety Code § 110890.
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CAUSE OF ACTION

**(Violations of the California Organic Products Act of 2003
Relief Pursuant to California Health & Safety Code § 111910)**

43. The OCA is a “person” within the meaning of Cal. Health & Safety Code § 111910.

44. Honest has violated and continues to violate the provisions of COPA, Cal. Health & Safety Code § 110820, as described above.

45. Cal. Health & Safety Code § 111910(a) provides for injunctive relief for any violation of COPA and affords standing to “any person” to enforce such violations. That Section provides, in part:

any person may bring an action in superior court pursuant to this section and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of Article 7 (commencing with Section 110810) of Chapter 5.

Id. That Section further provides that actions for injunctive relief to remedy violations of COPA are not subject to all of the same restrictions as other actions for injunctive relief.

Specifically,

the person shall not be required to allege facts necessary to show, or tending to show, lack of adequate remedy at law, or to show, or tending to show, irreparable damage or loss, or to show, or tending to show, unique or special individual injury or damages.

Id.

46. The OCA is thus entitled to both preliminary and permanent injunctive relief to restrain Honest’s violations of COPA. Cal. Health & Safety Code § 111910(a).

Wherefore, the OCA prays for judgment against Honest, as set forth hereafter.

PRAYER FOR RELIEF

WHEREFORE, the OCA demands judgment against Honest providing such relief as follows:

A. Pursuant to Cal. Health & Safety Code § 111910(a), an order preliminarily and permanently enjoining Honest from selling its infant formula as “organic”;

1 B. Pursuant to Cal. Health & Safety Code § 111910(b), an order requiring Honest
2 to pay the OCA's reasonable attorneys' fees;

3 C. Pursuant to Cal. Health & Safety Code § 111915, any civil penalties authorized;
4 and

5 D. That the Court grant such other and further relief as may be just and proper.

6 **JURY TRIAL DEMANDED**

7 The OCA hereby demands a trial by jury on any issue so triable.

8 RESPECTFULLY SUBMITTED AND DATED this 4th day of April, 2016.

9 TERRELL MARSHALL LAW GROUP PLLC

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