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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 CHRISTOPHER COLLINS, on behalf of himself
14 and those similarly situated,
15 Plaintiff
16 v.
17 HAIER AMERICA TRADING, LLC and
GENERAL ELECTRIC COMPANY,
18 Defendants.
19

Case No. **C11-02911 HRL**

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

ADR

 ORIGINAL

1 Plaintiff Christopher Collins, by his undersigned attorneys, brings this class action complaint
2 against Haier America Trading, LLC and the General Electric Company. Plaintiff's allegations are
3 based upon personal knowledge as to his own acts and upon information and belief as to all other
4 matters.

5 NATURE OF THE ACTION

6 1. This is a class action against Haier America Trading, LLC ("Haier") and the General
7 Electric Company ("GE") for selling freezers illegally in violation of the energy efficiency
8 standards established by the National Appliance Energy Conservation Act ("NAECA"), codified at
9 42 U.S.C. §§ 6291-6309, and for misrepresenting the energy efficiency of such freezers on the
10 ENERGYGUIDE labels affixed thereto. The "Mislabeled Freezers" include the following models:

11 Haier HMC050

12 Haier HNCM070E

13 Haier HUF205EA

14 GE Model FCM7SU (manufactured by Haier)

15 2. NAECA establishes Federal standards for energy consumption for freezers and other
16 home appliances. The energy consumption standards vary depending on the size and configuration
17 of the freezer. For a 5 cubic-foot compact chest freezer, such as the Haier HMC050, the maximum
18 energy consumption allowed by NAECA is 242 kWh/yr (kilowatt-hours per year). For a 7 cubic-
19 foot compact chest freezer, such as the Haier HNCM070E and GE Model FCM7SU, the maximum
20 energy consumption allowed by NAECA is 279 kWh/yr. For a 20.5 cubic-foot upright freezer with
21 automatic defrost, such as the Haier HUF205EA, the maximum energy consumption allowed by
22 NAECA is 767 kWh/yr. Each of the Mislabeled Freezers consumes more energy than is permitted
23 by these standards.

24 3. Haier and GE affixed ENERGYGUIDE labels to the Mislabeled Freezers that
25 substantially understated their actual energy consumption, and showed energy consumption levels
26 that complied with NAECA. Independent testing later showed those labels were false, and that the
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1 Mislabeled Freezers consumed substantially more energy than what was represented on the
2 EnergyGuide labels.

3 4. Plaintiff Christopher Collins purchased a GE Model FCM7SU freezer on January 22,
4 2010 at a retail store in San Jose, CA 95136. Mr. Collins paid \$150.00 plus \$13.88 in sales tax to
5 purchase this freezer. The energy efficiency standards established by NAECA require this model to
6 consume no more than 279 kWh/yr. Haier and GE marked this freezer with an ENERGYGUIDE
7 label stating it consumed 277 kWh/yr. Independent testing later showed this freezer consumes 442
8 kWh/yr, which exceeds the maximum energy consumption permitted under NAECA by 163
9 kWh/yr. Thus, it was illegal to sell this freezer in the United States.

10 5. If the truth about the energy efficiency of this freezer had been disclosed, Mr. Collins
11 would not have purchased it, and neither Haier nor GE would have been permitted to sell it, since it
12 was illegal to sell this freezer in the United States.

13 6. The truth about the Mislabeled Freezers was uncovered by independent testing
14 conducted by Consumer Reports. A summary of those test results is set forth below:

MODEL	MAXIMUM ENERGY USE PERMITTED BY NAECA	LABELLED ENERGY USE	INDEP- ENDENT TEST RESULTS
HAIER HCM050EC	242*	240	444
HAIER HNCM070E	279	276	442
GE FCM7SUWW	279	277	442
HAIER HUF205EA	767	689	943

25 *All energy use figures are reported in kWh/yr (kilowatt-hours per year).

26 7. Mr. Collins suffered a loss of money as a result of the illegal sale of the freezer in the
27 amount of the purchase price paid, \$163.88. Mr. Collins also has suffered and continues to suffer
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1 loss of money in the form of increased energy costs. The Association of Home Appliance
 2 Manufacturers (“AHAM”) – which counts both GE and Haier among its members – estimates that
 3 chest freezers have an average useful life of 18 years.¹ The actual energy consumption of the
 4 Mislabeled Freezer purchased by Mr. Collins exceeds the maximum allowed by NAECA by 163
 5 kWh/yr. Over an assumed 18-year life of the freezer, using the average energy retail price for
 6 California in 2010 (14.65 cents / kWh), and assuming energy prices will experience a compound
 7 annual growth rate of 1.552%, Mr. Collins will pay \$607.25 in additional energy costs, over and
 8 above what he would have paid if the refrigerator actually met the maximum energy consumption
 9 standard permitted by NAECA. Mr. Collins will pay \$613.26 in additional energy costs, over and
 10 above what he would have paid if the refrigerator actually met the energy consumption standard
 11 stated on its ENERGYGUIDE label.

12 8. The loss of money in the form of increased energy costs can similarly be calculated
 13 for each model purchased by class members, as illustrated below:

14 15 16 17 MODEL	MAXIMUM ENERGY USE PERMITTED BY NAECA	LABELLED ENERGY USE	INDEP- ENDENT TEST RESULTS	EXCESS ENERGY COSTS OVER NAECA	EXCESS ENERGY COSTS OVER LABEL
18 19 20 21 22 23 24 25 26 27 28 HAIER HCM050EC	242*	240	444	\$ 607.25	\$ 613.26
HAIER HNCM070E	279	276	442	\$ 490.01	\$ 499.02
GE FCM7SUWW	279	277	442	\$ 490.01	\$ 496.02
HAIER HUF205EA	767	689	943	\$ 529.09	\$ 763.57

*All energy use figures are reported in kWh/yr (kilowatt-hours per year).

¹ AHAM’s estimates of the Average Useful Life of Major Home Appliances are available at <http://www.aham.org/industry/ht/a/GetDocumentAction/id/5271> (accessed June 13, 2011).

THE PARTIES

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2 9. Plaintiff Christopher Collins is a citizen of California who resides in San Jose,
3 California. Mr. Collins is a consumer within the meaning of California Civil Code §1761(d) in that
4 he purchased the Mislabeled Freezer “for personal, family or household purposes.”

5 10. Defendant Haier is a New York limited liability company with its principal place of
6 business in New York, New York. Haier is a subsidiary of Haier Group, based in China. Haier is
7 one of the world's leading manufacturers of consumer electronics and home appliances. Haier
8 represents that it is “a leader for room air conditioner, compact refrigerator, and wine cellar sales, as
9 well as a leading force in home appliances, compact laundry, compact freezer and HDTV sales.”
10 Haier manufactures and distributes freezers sold under the brand names Haier, GE, Kenmore,
11 Maytag and Amana.

12 11. Defendant GE is a New York corporation with its principal place of business in
13 Fairfield, Connecticut. The company operates through five segments: Energy, Technology
14 Infrastructure, NBC Universal, Capital Finance and Consumer & Industrial. As part of GE’s
15 Consumer and Industrial Segment, GE sells markets and sells home appliances, including its line of
16 GE branded freezers manufactured by Haier.

JURISDICTION AND VENUE

17
18 12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because
19 there are more than 100 class members and the aggregate amount in controversy exceeds
20 \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a
21 state different from Defendants.

22 13. This Court has personal jurisdiction over Defendants because Defendants conduct
23 substantial business within California, such that Defendants have significant, continuous and
24 pervasive contacts with the State of California. Defendant GE is also registered with the California
25 Secretary of State to conduct business within California.

1 14. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) because a
2 substantial part of the events giving rise to the claims enumerated herein occurred in this judicial
3 District, and Defendants transact significant business throughout this District.

4 15. Pursuant Civil Local Rule 3-2(e), the Federal Courthouse located in San Jose,
5 California is the proper vicinage for this matter because this action arises in Santa Clara County.

6 **CLASS ACTION ALLEGATIONS**

7 16. Plaintiff seeks to represent a class defined as all persons in the United States who
8 purchased a Mislabeled Freezer (hereafter, the "Class"). Excluded from the class are persons or
9 entities that purchased a Mislabeled Freezer for resale, Haier and its subsidiaries and affiliates, and
10 GE and its subsidiaries and affiliates.

11 17. Plaintiff seeks to represent a subclass defined as all Class Members who are
12 California residents or who purchased a Mislabeled Freezer within the State of California (hereafter,
13 the "California Subclass").

14 18. Plaintiff further seeks to represent a subclass defined as all California Subclass
15 members who purchased a Mislabeled Freezer for personal, family or household purposes (hereafter
16 the "California Consumer Subclass").

17 19. Members of the Class, the California Subclass and the California Consumer Subclass
18 are so numerous that their individual joinder herein is impracticable. On information and belief,
19 members of the Class and California Subclass number in the tens of thousands. The precise number
20 of Class and subclass members and their identities are unknown to Plaintiff at this time but will be
21 determined through discovery. Class and subclass members may be notified of the pendency of this
22 action by mail and/or publication through the distribution records of Defendants and third party
23 retailers and vendors.

24 20. Common questions of law and fact exist as to all Class, California Subclass, and
25 California Consumer Subclass members and predominate over questions affecting only individual
26 Class members. Common legal and factual questions include, but are not limited to:

27 (a) Whether the sale of the Mislabeled Freezers was illegal;

1 (b) Whether Haier and GE misrepresented the energy efficiency of the
2 Mislabeled Freezers;

3 (c) whether Class, California Subclass, and California Consumer Subclass
4 members suffered a loss of money or property as a result of the illegal sales;

5 (d) whether Class, California Subclass, and California Consumer Subclass
6 members suffered a loss of money or property as a result of Haier's and GE's misrepresentations
7 concerning the energy efficiency of the Mislabeled Freezers; and

8 (e) whether Class, California Subclass, and California Consumer Subclass
9 members are entitled to damages, restitution, injunctive and/or monetary relief and, if so, the
10 amount and nature of such relief.

11 21. Plaintiff's claims are typical of the claims of Class, California Subclass, and
12 California Consumer Subclass members because Plaintiff and each member of the Class purchased
13 a Mislabeled Freezer, and suffered a loss of money as a result of that purchase.

14 22. Plaintiff is an adequate representative of the Class, California Subclass, and
15 California Consumer Subclass because his interests do not conflict with the interests of the Class,
16 California Subclass, and California Consumer Subclass members he seeks to represent, he has
17 retained competent counsel experienced in prosecuting class actions, and he intends to prosecute
18 this action vigorously. The interests of Class, California Subclass, and California Consumer
19 Subclass members will be fairly and adequately protected by Plaintiff and his counsel.

20 23. The class mechanism is superior to other available means for the fair and efficient
21 adjudication of the claims of Plaintiff and Class, California Subclass, and California Consumer
22 Subclass members. Each individual Class member may lack the resources to undergo the burden
23 and expense of individual prosecution of the complex and extensive litigation necessary to establish
24 Defendants' liability. Individualized litigation increases the delay and expense to all parties and
25 multiplies the burden on the judicial system presented by the complex legal and factual issues of
26 this case. Individualized litigation also presents a potential for inconsistent or contradictory
27 judgments. In contrast, the class action device presents far fewer management difficulties and
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1 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a
2 single court on the issue of Haier's and GE's liability. Class treatment of the liability issues will
3 ensure that all claims and claimants are before this Court for consistent adjudication of the liability
4 issues.

5 COUNT 1

6 **Unjust Enrichment**

7 24. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
8 above as though fully set forth herein.

9 25. Plaintiff brings this claim individually and on behalf of the members of the
10 nationwide Class against defendants Haier and GE.

11 26. "The unjust enrichment claim can be made from common classwide proof."
12 *Westways World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 239 (C.D. Cal. 2003) (certifying a
13 nationwide class where plaintiffs alleged defendants were unjustly enriched through a common
14 scheme.). "Although there are numerous permutations of the elements of the unjust enrichment
15 cause of action in the various states, there are few real differences. In all states, the focus of an
16 unjust enrichment claim is whether the defendant was *unjustly* enriched. At the core of each state's
17 law are two fundamental elements – the defendant received a benefit from the plaintiff and it would
18 be inequitable for the defendant to retain that benefit without compensating the plaintiff. The focus
19 of the inquiry is the same in each state." *In re Mercedes-Benz Tele Aid Contract Litig.*, 257 F.R.D.
20 46, 58 (D.N.J. Apr. 24, 2009), *quoting Powers v. Lycoming Engines*, 245 F.R.D. 226, 231 (E.D. Pa.
21 2007).

22 27. Plaintiff and Class members conferred a benefit on Haier and GE by purchasing the
23 Mislabeled Freezers.

24 28. Haier and GE have been unjustly enriched in retaining the revenues derived from
25 Class members' purchases of the Mislabeled Freezers, which retention under these circumstances is
26 unjust and inequitable because the sale of the Mislabeled Freezers was illegal, and because Haier
27 and GE misrepresented the energy efficiency of the Mislabeled Freezers, and caused the Plaintiff
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1 and Class members to lose money as a result thereof. Plaintiff and Class members suffered a loss of
2 money as a result of Haier's and GE's unjust enrichment because: (a) they would not have
3 purchased the Mislabeled Freezers on the same terms if the true facts concerning their energy
4 consumption had been known; (b) they paid a price premium due to the mislabeling of the freezers
5 as more energy efficient than they actually were; (c) the Mislabeled Freezers did not perform as
6 promised; and (d) Plaintiff and Class members have paid and will continue to pay higher energy
7 costs for as long as they continue to use the Mislabeled Freezers.

8 29. Because Haier's and GE's retention of the non-gratuitous benefit conferred on them
9 by Plaintiff and Class members is unjust and inequitable, Haier and GE must pay restitution to
10 Plaintiff and the Class members for their unjust enrichment, as ordered by the Court.

11 COUNT 2

12 **Intentional Misrepresentation**

13 30. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
14 above as though fully set forth herein.

15 31. Plaintiff brings this claim individually and on behalf of the members of the
16 nationwide Class against defendants Haier and GE.

17 32. Haier and GE willfully, falsely, and knowingly misrepresented material facts relating
18 to the character and quality of the Mislabeled Freezers. These misrepresentations were contained in
19 the ENERGYGUIDE labels Haier and GE affixed to each Mislabeled Freezer, as well as on Haier's
20 and GE's websites, in various media advertising, and point of sale materials disseminated or caused
21 to be disseminated by Haier and GE, and their officers, agents, representatives, servants, or
22 employees of Haier and GE, acting within the line and scope of their authority, so employed by
23 Haier and GE to merchandise and market the Mislabeled Freezers.

24 33. Haier's and GE's representations were made with the intent that the general public,
25 including Plaintiff and Class members, rely upon them. Haier's and GE's representations were
26 made with knowledge of the falsity of such statements, or in reckless disregard of the truth thereof.

1 39. Plaintiff brings this claim individually and on behalf of the members of the
2 nationwide Class against defendants Haier and GE.

3 40. Haier and GE knew at the time of sale that they had falsely reported the results of
4 efficiency testing for the Mislabeled Freezers, and that such freezers did not meet the energy
5 efficiency standards required by federal law or reported on the ENERGYGUIDE labels.

6 41. Haier and GE fraudulently concealed from and/or intentionally failed to disclose to
7 Plaintiff and the Class the actual energy consumption of the Mislabeled Freezers.

8 42. Haier and GE had exclusive knowledge of the false energy efficiency ratings at the
9 time of sale. The defect (excess energy consumption) is latent and not something that Plaintiff or
10 Class members, in the exercise of reasonable diligence, could have discovered independently prior
11 to purchase, because it is not feasible for individual consumers to conduct their own energy
12 efficiency testing prior to purchase.

13 43. Haier and GE had the capacity to, and did, deceive Plaintiff and Class members into
14 believing that they were purchasing freezers that could legally be sold in the United States, and also
15 deceived Plaintiff and Class members about the energy efficiency of the Mislabeled Freezers.

16 44. Haier and GE undertook active and ongoing steps to conceal the defect. Plaintiff is
17 aware of nothing in Haier's and GE's advertising, publicity or marketing materials that discloses the
18 truth about the defect, despite Haier's and GE's awareness of the problem.

19 45. The facts concealed and/or not disclosed by HAIER to Plaintiff and the Class are
20 material facts in that a reasonable person would have considered them important in deciding
21 whether to purchase (or to pay the same price for) a freezer.

22 46. Haier and GE had a duty to disclose a proper estimate of the energy consumption of
23 the Mislabeled Freezers at the time of sale, including on the ENERGYGUIDE label required by
24 federal law.

25 47. Haier and GE intentionally concealed and/or failed to disclose a proper estimate of
26 the energy consumption of the Mislabeled Freezers for the purpose of inducing Plaintiff and the
27 Class to act thereon.

1 48. Plaintiff and the Class justifiably acted or relied upon the concealed and/or
2 nondisclosed facts to their detriment, as evidenced by their purchase of the Mislabeled Freezers.

3 49. Plaintiff and Class members suffered a loss of money as a result of Haier's and GE's
4 fraudulent concealment and nondisclosure because: (a) they would not have purchased the
5 Mislabeled Freezers on the same terms if the true facts concerning their energy consumption had
6 been known; (b) they paid a price premium due to the mislabeling of the freezers as more energy
7 efficient than they actually were; (c) the Mislabeled Freezers did not perform as promised; and (d)
8 Plaintiff and Class members have paid and will continue to pay higher energy costs for as long as
9 they continue to use the Mislabeled Freezers.

10 **COUNT 4**

11 **Negligent Misrepresentation**

12 50. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
13 above as though fully set forth herein.

14 51. Plaintiff brings this claim individually and on behalf of the members of the
15 nationwide Class against defendants Haier and GE.

16 52. Haier and GE represented that the Mislabeled Freezers were legal for sale in the
17 United States, and that they had been tested and shown to have the levels of energy efficiency
18 indicated on the ENERGYGUIDE labels.

19 53. These representations were material facts that influenced Plaintiff's and Class
20 members' purchase of the Mislabeled Freezers.

21 54. Haier and GE made these representations with the intent to induce Plaintiff and Class
22 members to act upon them purchasing the Mislabeled Freezers.

23 55. At the time Haier and GE made these representations, Haier and GE knew or should
24 have known that these representations were false or made them without knowledge of their truth or
25 veracity.

26 56. Plaintiff and Class members justifiably and detrimentally relied on these
27 representations and, as a proximate result thereof, have and will continue to suffer damages in the
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1 form of lost money from the purchase price and increased energy costs over the life of the
2 Mislabeled Freezers.

3 57. Plaintiff and Class members suffered a loss of money as a result of Haier's and GE's
4 wrongful conduct because: (a) they would not have purchased the Mislabeled Freezers on the same
5 terms if the true facts concerning their energy consumption had been known; (b) they paid a price
6 premium due to the mislabeling of the freezers as more energy efficient than they actually are; (c)
7 the Mislabeled Freezers did not perform as promised; and (d) Plaintiff and Class members have paid
8 and will continue to pay higher energy costs for as long as they continue to use the Mislabeled
9 Freezers.

10 **COUNT 5**

11 **Violation Of California's Unfair Competition Law ("UCL"),**

12 **Business & Professions Code §§ 17200 *et seq.***

13 58. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
14 above as though fully set forth herein.

15 59. Plaintiff brings this claim individually and on behalf of the members of the proposed
16 California Subclass against Defendants Haier and GE.

17 60. Haier and GE are subject to the Unfair Competition Law ("UCL"), Bus. & Prof.
18 Code § 17200, *et seq.* The UCL provides, in pertinent part: "Unfair competition shall mean and
19 include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading
20 advertising."

21 61. Haier and GE violated the "unlawful" prong of the UCL by selling the Mislabeled
22 Freezers in violation of the energy efficiency standards established by the National Appliance
23 Energy Conservation Act ("NAECA"), codified at 42 U.S.C. §§ 6291-6309.

24 62. Haier and GE also violated the "unlawful" prong of the UCL by violating 16 C.F.R.
25 § 305.4(d)(1), which provides:

26 It shall be an unfair or deceptive act or practice in violation of section
27 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), for
28 any manufacturer, distributor, retailer or private labeler to make any
representation in or affecting commerce, in writing (including a

1 representation on a label) ... with respect to the energy use or
2 efficiency ... or the cost of energy consumed by such product, unless
such product has been tested in accordance with such test procedure
and such representation fairly discloses the results of such testing.

3 63. Haier and GE also violated the “unlawful” prong of the UCL by violating 16 C.F.R.
4 § 305.5, which provides that the ENERGYGUIDE labels for residential freezers “must contain the
5 model’s estimated annual energy consumption as determined in accordance with” testing
6 procedures outlined in 10 CFR § 430.23(b).

7 64. Haier and GE also violated the “unlawful” prong of the UCL by violating
8 California’s False Advertising Law (“FAL”) as described in Count 6, below.

9 65. Haier and GE also violated the “unlawful” prong of the UCL by violating
10 California’s Consumers Legal Remedies Act (“CLRA”) as described in Count 7, below.

11 66. Haier and GE also violated the “unfair” prong of the UCL by violating the policy and
12 spirit of the foregoing laws, and also because the utility of Haier’s and GE’s conduct described
13 herein is significantly outweighed by the gravity of the harms it imposed on consumers, and
14 because Haier’s and GE’s business practices described herein are oppressive, unscrupulous or
15 substantially injurious to consumers.

16 67. Haier and GE also violated the “fraudulent” prong of the UCL by misrepresenting
17 the energy efficiency of the Mislabeled Freezers.

18 68. Plaintiff and California Subclass members suffered lost money or property as a result
19 of these UCL violations because: (a) they would not have purchased the Mislabeled Freezers on the
20 same terms if the true facts concerning their energy consumption had been known; (b) they paid a
21 price premium due to the mislabeling of the freezers as more energy efficient than they actually are;
22 (c) the Mislabeled Freezers did not perform as promised; and (d) Plaintiff and Class members have
23 paid and will continue to pay higher energy costs for as long as they continue to use the Mislabeled
24 Freezers.

COUNT 6

**Violation of California's False Advertising Law ("FAL"),
Business & Professions Code § 17500 *et seq.***

69. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein

70. Plaintiff brings this claim individually and on behalf of the members of the proposed California Subclass against Defendants Haier and GE.

71. Haier and GE violated Business & Professions Code § 17500 by publicly disseminating misleading and false advertisements including information suggesting that the Mislabeled Freezers could legally be sold in the United States, and which significantly underreported the energy consumption of the Mislabeled Freezers.

72. Haier's and GE's misleading and false advertisements were disseminated to increase sales of the Mislabeled Refrigerators.

73. Haier and GE knew or should have known their false advertisements were untrue or misleading.

74. Furthermore, Haier and GE publicly disseminated the false advertisements as part of a plan or scheme and with the intent not to sell the Mislabeled Freezers as advertised.

75. Plaintiff and the members of the California Subclass have suffered harm as a result of these violations of the FAL because: (a) they would not have purchased the Mislabeled Freezers on the same terms if the true facts concerning their energy consumption had been known; (b) they paid a price premium due to the mislabeling of the freezers as more energy efficient than they actually are; (c) the Mislabeled Freezers did not perform as promised; and (d) Plaintiff and Class members have paid and will continue to pay higher energy costs for as long as they continue to use the Mislabeled Freezers.

76. Pursuant to Bus. & Prof. Code § 17500, Plaintiff seeks an order of this Court permanently enjoining Haier and GE from continuing to publicly disseminate misleading and false advertisements as alleged herein. Plaintiff also seeks an order requiring Haier to:

- 1 (a) make full restitution for all monies wrongfully obtained; and
- 2 (b) disgorge all ill-gotten revenues and/or profits.

3 **COUNT 7**

4 **Violation of the Consumer Legal Remedies Act (“CLRA”), Civil Code §§ 1750, *et. seq.***

5 77. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
6 above as though fully set forth herein.

7 78. Plaintiff brings this claim individually and on behalf of the members of the proposed
8 California Consumer Subclass against Defendants Haier and GE.

9 79. Civil Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
10 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not
11 have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she
12 does not have.” Haier and GE violated this provision by implicitly representing that the Mislabeled
13 Freezers could legally be sold in the United States, and also by misrepresenting the energy
14 consumption on the EnergyGuide labels affixed to each of the Mislabeled Freezers.

15 80. Civil Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a
16 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of
17 another.” Haier and GE violated this provision by implicitly representing that the Mislabeled
18 Freezers could legally be sold in the United States, and also by misrepresenting the energy
19 consumption on the EnergyGuide labels affixed to each of the Mislabeled Freezers.

20 81. Civil Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not to
21 sell them as advertised.” Haier and GE violated this provision by implicitly representing that the
22 Mislabeled Freezers could legally be sold in the United States, and also by misrepresenting the
23 energy consumption on the EnergyGuide labels affixed to each of the Mislabeled Freezers.

24 82. Plaintiff and the California Consumer Subclass members suffered injuries caused by
25 Defendants’ misrepresentations because: (a) they would not have purchased the Mislabeled Freezers
26 on the same terms if the true facts concerning their energy consumption had been known; (b) they
27 paid a price premium due to the mislabeling of the Mislabeled Freezers; (c) the Mislabeled Freezers
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1 did not perform as promised; and (d) Plaintiff and the California Consumer Subclass members have
2 paid and will continue to pay higher energy costs for as long as they continue to use the Mislabeled
3 Freezers.

4 83. Plaintiff and California Consumer Subclass members suffered lost money or
5 property as a result of these UCL violations because: (a) they would not have purchased the
6 Mislabeled Freezers on the same terms if the true facts concerning their energy consumption had
7 been known; (b) they paid a price premium due to the mislabeling of the freezers as more energy
8 efficient than they actually are; (c) the Mislabeled Freezers did not perform as promised; and (d)
9 Plaintiff and Class members have paid and will continue to pay higher energy costs for as long as
10 they continue to use the Mislabeled Freezers.

11 84. On June 13, 2011, prior to the filing of this Complaint, a CLRA notice letter was
12 mailed to Haier and GE which complies in all respects with California Civil Code § 1782(a).
13 Plaintiff sent each Defendant a letter *via* certified mail, return receipt requested, advising both Haier
14 and GE that they are in violation of the CLRA and must correct, repair, replace or otherwise rectify
15 the goods alleged to be in violation of § 1770. Defendants were further advised that in the event
16 that the relief requested has not been provided within thirty (30) days, Plaintiff would amend their
17 Complaint to include a request for monetary damages pursuant to the CLRA. To date, Defendants
18 have not responded to Plaintiff's CLRA notice letter.

19 **PRAYER FOR RELIEF**

20 85. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,
21 seeks judgment against Defendants, as follows:

- 22 a. For an order certifying the nationwide Class, the California Subclass and the
23 California Consumer Subclass under Rule 23 of the Federal Rules of Civil
24 Procedure and naming Plaintiff as Class Representative and his attorneys as
25 Class Counsel to represent the Class members;
- 26 b. For an order declaring that Defendants' conduct violates the statutes
27 referenced herein;
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- c. For an order finding in favor of Plaintiff, the Class, the California Subclass, and the California Consumer Subclass on all counts asserted herein;
- d. For an order awarding compensatory, treble, and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For injunctive relief as pleaded or as the Court may deem proper; and
- h. For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury of all issues so triable.

Dated: June 14, 2011.

Respectfully submitted,

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Attorneys for Plaintiff

1 I, Christopher Collins, declare as follows:

2 1. I am a plaintiff in this action and a citizen of the State of California. I have personal
3 knowledge of the facts herein and, if called as a witness, I could and would testify competently
4 thereto.

5 2. The Complaint filed in this action is filed in the proper place for trial under Civil
6 Code Section 1780(d) in that defendants Haire and GE do business in Santa Clara County and a
7 substantial portion of the transaction complained of occurred in Santa Clara County within the
8 Northern District of California. I purchased a GE Model FCM7SU freezer in San Jose, California
9 on January 22, 2010. I was not aware when I made this purchase that the sale of this freezer was
10 illegal under federal law. This freezer was marked with an ENERGYGUIDE label stating its
11 energy usage was rated at 277 kWh/yr, which is less than the 279 kWh/yr maximum permitted by
12 federal law. The energy efficiency, as stated on the ENERGYGUIDE label, was a substantial
13 factor influencing my decision to purchase this freezer. I would not have purchased the freezer if I
14 had known that its actual energy use was nearly 60% higher than stated on the label, because I did
15 not want to incur hundreds of dollars in additional energy costs. I certainly would not have
16 purchased the freezer if I had known that the sale violated federal law. If I had not been exposed to
17 the false representations on the ENERGYGUIDE label, I would not have purchased this freezer.

18 I declare under the penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct, executed on June 13, 2011 at San Jose, California.

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22 _____
23 Christopher Collins
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