

1 **WEXLER WALLACE LLP**
 2 MARK J. TAMBLYN (State Bar No. 179272)
 3 Email: mjt@wexlerwallace.com
 4 NEHA DUGGAL (State Bar No. 251336)
 5 Email: nd@wexlerwallace.com
 455 Capitol Mall, Suite 231
 Sacramento, California 95814
 Telephone: (916) 492-1100
 Facsimile: (916) 492-1124

6 **COLEMAN & EDWARDS, P.C.**
 7 GREGORY F. COLEMAN
 8 Email: gcoleman@colemanedwards.com
 4800 Old Kingston Pike, Suite 120
 Knoxville, Tennessee 37919
 Telephone: 865-247-0080
 Facsimile: 865-247-0081

10 [Additional Counsel Listed on Signature Page]
 11 Attorneys for *Plaintiff*

12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14 ROSANNA JOHNSON on behalf of
 15 herself and all others similarly situated,

16 Plaintiff,

17 v.

18 DIRECT SHOPPING NETWORK, LLC,

19 Defendant.

20 **CV08-07347**
 Case No. _____

VBF (FFMx)

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

CLASS ACTION

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1 Plaintiff Rosanna Johnson (“Plaintiff”) brings this action on behalf of herself
2 and all others similarly situated against Direct Shopping Network, LLC (“DSN” or
3 “Defendant”), based upon personal knowledge as to herself, and as to all other
4 matters, based upon information and belief and the investigation of Plaintiff’s
5 counsel to date, and alleges as follows:

6 INTRODUCTION

7 1. Plaintiff brings this action as a class action on behalf of herself and a
8 Class consisting of all persons or entities who purchased gemstones described by
9 Defendant as green or red “andesine-labradorite” from Defendant from January 1,
10 2003 – the present. Plaintiff brings this action to recover the money that she and
11 the Class spent on gemstones fraudulently advertised and misrepresented by
12 Defendant as being a highly-coveted, extremely rare, all natural, expensive gem.
13 In reality, Defendant has sold to customers throughout the United States low-cost
14 yellow or colorless labradorite that has been given a chemical “facelift.”

15 PARTIES

16 2. Plaintiff Rosanna Johnson is a resident of Auburn, California. Ms.
17 Johnson purchased andesine-labradorite from Defendant during the relevant time
18 period at an approximate cost of \$3,512.00.

19 3. Defendant Direct Shopping Network, LLC is a limited liability
20 company organized under the law of the State of California and with a principal
21 place of business at 1239 S. Glendale Ave., Glendale, CA 91205. Defendant is
22 authorized to do business in California; has sufficient minimum contacts with
23 California; broadcasts a full-time satellite and cable television show from its studio
24 in Glendale, California; promotes and sells its products in California and
25 nationwide on www.dsntv.com; markets, delivers, promotes, and advertises its
26 products to consumers in California and throughout the United States; and/or
27 otherwise has intentionally availed itself of the market in California through the
28 promotion, marketing and sale of its products in California, so as to render the

1 exercise of jurisdiction by this Court permissible under traditional notions of fair
2 play and substantial justice.

3 **JURISDICTION AND VENUE**

4 4. The Court has original jurisdiction over this class action under the
5 Class Action Fairness Act, 28 U.S.C. §1332(d)(2). Plaintiff and members of the
6 putative class have suffered aggregate damages exceeding \$5,000,000, exclusive of
7 interest.

8 5. Venue in this judicial district is proper pursuant to 28 U.S.C.
9 §1391(a)(1) and (2) because Defendant resides in this judicial district and a
10 substantial part of the events or omissions giving rise to the claim occurred in this
11 judicial district. At all relevant times, Defendant was headquartered in California
12 and marketed and sold its products from California to purchasers throughout the
13 United States.

14 **FACTUAL ALLEGATIONS**

15 6. During the class period, Defendant marketed and sold gemstones
16 which it has described as “andesine-labradorite” (the “Gemstones”). According to
17 Defendant, these Gemstones are all natural, among the rarest stones on earth, and
18 the most collectible Gemstones on the planet that have seen incredible
19 appreciation.

20 7. These claims are false. DSN has not admitted, even though it knew or
21 should have known, that the Gemstones are “heated.” DSN has sold what in
22 reality is nothing more than colorless and yellow common feldspar that was
23 chemically treated to give the Gemstones their color.

24 8. DSN’s actions were in direct contravention to the Federal Trade
25 Commission’s (“FTC”) Guides for the Jewelry, Precious Metals, and Pewter
26 Industries. Available at: <http://www.ftc.gov/bcp/guides/jewel-gd.shtm>. The FTC
27 declares it unfair or deceptive to fail to disclose that a gemstone has been treated
28 when it has a significant effect on the gemstone’s value. 16 C.F.R. §23.22(c). The

1 FTC guidelines also make clear that it is unfair and deceptive to call a gemstone
2 genuine, natural, precious, or real when it is in fact not. 16 C.F.R. §23.24.

3 9. The red and green Gemstones that DSN has sold to consumers greatly
4 resemble Oregon sunstone, a rare feldspar with vivid reddish-orange colors.
5 Oregon sunstone is mined and marketed by American vendors proud of the natural
6 and untreated beauty and value of their rare gemstones, and the only verified
7 known source of such gemstones is Oregon. All-natural Oregon sunstone sells for
8 at least \$100 per carat, usually far more.

9 10. DSN's Gemstones have been given an artificial treatment including
10 heating and/or diffusion of low-value yellow feldspar from China, Mexico,
11 Mongolia, and/or other inexpensive sources.

12 11. DSN knew or should have known that the Gemstones it was selling
13 were nothing more than the mass-produced result of "chemical facelifts" done,
14 upon information and belief, to inexpensive and abundant yellow or colorless
15 labradorite.

16 12. DSN, upon information and belief, obtained its product for pennies
17 per carat and sold it for extraordinary profits. Because the Gemstones came from
18 plentiful low-value yellow feldspar, DSN was able to sell them for great profits.

19 13. DSN touted on national television broadcasts that it was selling a
20 "natural gemstone," and that the Gemstones were "valuable," "out of the ground
21 natural material," "very, very rare," and on the verge of extinction. The following
22 are excerpts from transcripts of sales presentations made for red andesine-
23 labradorite jewelry and loose gemstones on DSN programs:

24 Item # 9818 ... This is one of the most spectacular - This
25 should be a top of the hour - it can't be though, it's too
26 limited ... We have had the opportunity and the pleasure
27 of having a lot of red andesine on this show, however ...
28 This would be one I would highly suggest for anyone
who loves andesine, because, and I have to try not to say
too much, we're very, we have to be very, very careful
about what we say and do not say at this point ... bottom
line is, this will be one of the last chances to get andesine
as we know it, and trust me, I think that this would be a

1 good piece to have, if you can get this material,
2 especially if you don't have one yet, or especially if
3 you've been sitting back and kind of waiting and DSN is
going to be really the primary place to get ... something
the world has not seen ...

4 But, there is something to be said about getting this
5 material while it's here. This material is important
6 because we have the AAAA grade material here at the
7 moment. We got just a very, very few stones while the
8 uprising was happening, politically, in Tibet, and all the
drama was happening, political chaos, more or less, in
that area of the world, in North Asia, in northern China,
in Tibet. It kind of spread throughout the continent, for
the most part.

9 And when all that uprising was happening, the mine
10 owners, whose a very, the entire family we consider a
11 great friend of the network, and that entire family really
12 had to send some of the more valuable material that was
13 intended to be saved, to be handed out, and presented to
14 the world leaders for the Olympics. It, it never happened,
because this material was too valuable to actually have in
Tibet. They had to be sent to the States. Most of it came
right here to DSN. This is one of those stones that's
considered beyond the colors we've even seen in the past
...

15 This is what I was instructed again, part of this meeting
16 that went on for a couple of hours before the show
17 tonight, was about the fact that, any andesine ... as
18 valuable as it is, as coveted as it is, as ... people are
19 trying to get material and willing to spend \$30,000 a
20 carat on this material, we need to get our remaining
21 andesine, which is very little, out the door ... I was
22 instructed to just go ahead ... and to just get them out the
23 door ... trust me, we cannot afford to get this material
24 mixed in with what we've got coming in next week.
25 That's about as much as I can say at this point ... and
26 therefore the prices are going to be really, really low.

27 * * *

28 This stone is probably going to be lucky to make it 4
years. I would say it's highly unlikely that this stone
makes it for four years in existence. Highly unlikely.
Here is your chance ... The entire world is comparing
andesine with tanzanite, except, guess what, andesine is
much more limited than tanzanite ever will be. It's going
to go extinct in a much, much faster way, in a much,
much faster manner ... 4A, out of Tibet ... remember,
we've got to get these andesine's out of here ... get this
stone while you can
...

* * *

1 We have our final quantities. We have been without it
 2 for so long. We might as well send it all out with a bang,
 3 in a big, big way, and make this a statement for the entire
 4 gem world. Ladies and gentleman, let's get started, do
 5 not hesitate to dial in because this is the opportunity of a
 6 lifetime. It's not here. It's not here! It's not anywhere.
 7 It's not out there. It's not in Tibet. You can't go fly
 8 halfway around the world to Asia and go find it. It's not
 9 happenin'! So this is your chance to get it ... If you had
 10 to choose right now, and we love the red, but if you had
 11 to choose, if you could only get one stone and you had to
 12 choose between the red or the blue, the blue's the way to
 go, because of the fact that it is so much more limited,
 simple, simple, simple fact ... gorgeous blue-green
 andesine ... these stones are amazing, aren't they? ... So
 here's what we're doin'. The stones are supposed to be,
 well, you know, you've heard the, you've heard the, I
 want to say rumors, but they're not rumors. You've
 heard the idea that some of these stones are going for
 three and four thousand a carat, wholesale price. It's
 true. They are.

13 14. DSN's aggressive marketing of its Gemstones also included a claim
 14 that andesine-labradorite had been named the "official gemstone of the 2008
 15 Beijing Olympics." DSN also touted it as its most collectable gemstone, making
 16 promises that it would only increase in value because of the multimillion dollar
 17 advertising campaigns that would be associated with the Olympic games, all the
 18 while continuing to emphasize the fact that the stone is natural:

19 And, I'll tell you, in the world of gemstones, there's a lot
 20 of inherent rarity and value in gemstone, right, we know
 21 that ... ladies and gentlemen, what is happening right
 22 now is twofold, because we have a very, very rare stone
 to show you, and you can hear probably our phone bank
 buzzing, because already, this is incredibly popular.

23 * * *

24 There is so few of this stone altogether. It's a natural
 25 feldspar, it's andesine, it's something that, um there have
 26 been articles written all over the place, I'm not supposed
 27 to talk about this much, but I think it's important for you
 28 to know, there have been articles written about some of
 this material that's going for insane amounts of money ...
 it's been going for tens of thousands of dollars per carat.
 Very, very important material. Ladies and gentleman,
 you're getting the important material, indigenous to the
 place where the Olympics are being held. Also the color
 of the lead mascot ... That is the entire symbolic

1 meaning behind naming this stone the official gemstone.
 2 That is why this stone has been selected to commemorate
 3 and to honor the 2008 Beijing Olympic games. Ladies
 4 and gentleman, you want to be on the phone lines very,
 5 very quickly ... This is what you're getting with your
 6 stone ... I'll read it to you very quickly, [reading from
 7 certificate of authenticity] "This natural andesine
 8 gemstone bears the 2008 Beijing Olympic rings,
 9 commemorating the 2008 Beijing Olympic games, held
 10 in Beijing, China." As rare and expensive and popular as
 11 andesine is out in the marketplace right now ... ladies
 12 and gentleman, you need to be on the line for this.

13 * * *

14 Do you know also, this is so kind of, of the government
 15 of China to make these available, because they're quite
 16 rare stones. To make these available at an affordable
 17 price ... because I've seen this same material before for
 18 really high prices ... out of the ground, ladies and
 19 gentleman, natural material, it's out of the ground ...

20 * * *

21 [Describing the identification card that comes with the
 22 Olympics commemorative stone ...] Look at this
 23 incredible sheet here, giving you all of this information
 24 ... the stone itself is identified. It cannot be duplicated or
 25 faked or anything. This is a natural gemstone.

26 15. Likewise, on its website Defendant describes the Gemstones as
 27 "Natural Andesine Gemstones ... indigenous to the country of China," selected for
 28 the commemorative 2008 Beijing Olympic stones because of their "origin and
 warm red coloring."

[http://www.dsntv.com/Merchant2/merchant.mvc?Screen=PROD&Store Code=DS
 N&Product Code=5000820](http://www.dsntv.com/Merchant2/merchant.mvc?Screen=PROD&Store_Code=DSN&Product_Code=5000820)

16 16. Testing of the Gemstones reflect that they have been artificially
 17 colorized by surface diffusion of copper and iron and other treatments. In other
 18 words, the "rich greens and reds of both minerals" are only surface-deep and the
 19 gems are not "natural gemstones."

20 17. The FTC's "Guides for the Jewelry, Precious Metals, and Pewter
 21 Industries," at 16 C.F.R. § 23.22, "[i]t is unfair or deceptive to fail to disclose that
 22 a gemstone has been treated if . . . the treatment has a significant effect on the

1 stone's value. The seller should disclose that the gemstone has been treated."
2 According to the FTC's note to § 16 C.F.R. § 23.22, "[t]he disclosures outlined in
3 this section are applicable to sellers at every level of trade" and "where a jewelry
4 product can be purchased without personally viewing the product, (e.g., direct mail
5 catalogs, online services, televised shopping programs) disclosure should be made
6 in the solicitation for or description of the product." During all relevant times,
7 DSN failed to provide these required consumer disclosures.

8 18. Under FTC Guide 16 C.F.R. § 23.1, "[i]t is unfair or deceptive to
9 misrepresent the type, kind, grade, quality, quantity, metallic content, size, weight,
10 cut, color, character, treatment, substance, durability, serviceability, origin, price,
11 value, preparation, production, manufacture, distribution, or any other material
12 aspect of an industry product." DSN violated this provision.

13 19. Under FTC Guide Note 2 to 16 C.F.R. § 23.1, "[t]o prevent deception,
14 any qualifications or disclosures, such as those described in the guides, should be
15 sufficiently clear and prominent." DSN violated this provision.

16 20. Under FTC Guide 16 C.F.R. § 23.2, "[i]t is unfair or deceptive to use,
17 as part of any advertisement, packaging material, label, or other sales promotion
18 matter, any visual representation, picture, televised or computer image, illustration,
19 diagram, or other depiction which, either alone or in conjunction with any
20 accompanying words or phrases, misrepresents the type, kind, grade, quality,
21 quantity, metallic content, size, weight, cut, color, character, treatment, substance,
22 durability, serviceability, origin, preparation, production, manufacture, distribution,
23 or any other material aspect of an industry product." DSN violated this provision.

24 **CLASS ACTION ALLEGATIONS**

25 21. Plaintiff brings this action on behalf of herself and all others similarly
26 situated on behalf of the following class ("Class"):

27 All persons and entities in the United States who
28 purchased Gemstones from Defendant from November 1,
2004 to the present.

1 22. Excluded from the Class is Defendant, its officers, directors, agents,
2 trustees, corporations, trusts, representatives, employees, principals, servants,
3 partners, joint venturers, or entities controlled by the Defendant; business entities
4 for purposes of Plaintiff's claim for relief under the California Consumers Legal
5 Remedies Act, Civil Code §1750, *et seq.*; the Judge assigned to this action, any
6 member of the Judge's immediate family; and counsel for Plaintiff.

7 23. Subject to additional information obtained through further
8 investigation and discovery, the Class definition may be expanded or narrowed by
9 amendment or amended complaint.

10 24. This action has been brought and may properly be maintained on
11 behalf of the Class proposed above under the criteria of Rule 23 of the Federal
12 Rules of Civil Procedure.

13 25. **Numerosity**: Members of the Class are so numerous that their
14 individual joinder is impracticable. It is estimated that the Class consists of
15 thousands of members. Although the exact number and identity of Class members
16 is unknown to Plaintiff, they can be ascertained from DSN's records. Class
17 members may be notified of the pendency of this action by mail, electronic means,
18 through DSN's own television networks, and (if deemed necessary or appropriate
19 by the Court) by published notice.

20 26. **Existence and predominance of common questions**. Common
21 questions of law and fact exist as to all members of the Class and predominate over
22 questions affecting only individual Class members. These common questions
23 include:

- 24 a. whether Defendant falsely advertised the Gemstones;
25 b. whether the Gemstones were artificially enhanced to show
26 colors that they did not originally have;

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- 1 c. whether the artificially enhanced Gemstones have the same
- 2 value as gemstones that authentically and originally have the
- 3 color qualities;
- 4 d. whether Defendant used false, misleading, and/or deceptive
- 5 statements or representations in selling the Gemstones;
- 6 e. whether Defendant's actions with respect to the sale and
- 7 marketing of the Gemstones were unconscionable;
- 8 f. whether Defendant represented that Gemstones had
- 9 characteristics, ingredients, uses, or benefits that they did not
- 10 have, in violation of California Civil Code § 1770(a)(5);
- 11 g. whether Defendant represented that Gemstones were of a
- 12 particular standard, quality, or grade that they were not, in
- 13 violation of California Civil Code § 1770(a)(7);
- 14 h. whether Defendant advertised Gemstones with the intent not to
- 15 sell it as advertised in violation of California Civil Code §
- 16 1770(a)(9);
- 17 i. whether Defendant is subject to liability for violating the
- 18 Consumers Legal Remedies Act, California Civil Code § 1750
- 19 *et seq.*;
- 20 j. whether Defendant has violated the Unfair Competition Law,
- 21 California Business and Professions Code § 17200 *et seq.*;
- 22 k. whether Defendant has violated the False Advertising Law,
- 23 California Business and Professions Code § 17500 *et seq.*;
- 24 l. whether Plaintiff and class members are entitled to an award of
- 25 compensatory, statutory and punitive damages pursuant to
- 26 California Civil Code § 1780(a);
- 27 m. whether Defendant has been unjustly enriched as a result of its
- 28 sales of the Gemstones; and

1 n. whether the Class is entitled to an award of restitution;

2 27. Defendant's defenses, to the extent that any such defenses apply, are
3 applicable generally to Plaintiff and the entire Class and are not distinguishable as
4 to proposed Class members.

5 28. **Typicality**: Plaintiff is a member of the Class and her claims are
6 typical of the claims of the Class. Plaintiff and all Class members purchased the
7 Gemstones at issue, were injured by the same wrongful acts and practices alleged
8 herein.

9 29. **Adequacy**: Plaintiff will fairly and adequately represent and protect
10 the interests of the Class, and does not have interests that are antagonistic to or in
11 conflict with those she seeks to represent. Plaintiff has retained counsel who have
12 considerable experience in the prosecution of consumer class actions and other
13 complex litigation, and Plaintiff intends to prosecute this action vigorously.

14 30. **Superiority**: A class action is superior to all other methods available
15 for both fair and efficient adjudication of the rights of each Class member. In view
16 of the complexity of the issues and the expense that an individual plaintiff would
17 incur if he or she attempted to obtain relief from a large corporation such as the
18 Defendant in this action, the separate claims of individual class members or joinder
19 of individual members of the class is impractical because the claims are monetarily
20 insufficient to support separate actions. Because of the size of the individual Class
21 members' claims, few, if any, Class members could afford to seek legal redress for
22 the wrongs described in this Complaint.

23 31. To process individual cases would also increase the expense and delay
24 to Class members, the Defendant, and the Court. By contrast, proceeding with this
25 matter by means of a class action will avoid case management difficulties and
26 provide multiple benefits to the parties, including efficiency, economy of scale,
27 unitary adjudication with consistent results and equal protection of the rights of
28

1 each Class member, all by way of the comprehensive and efficient supervision of
2 the litigation by a single Court.

3 32. The proposed class is readily definable, and prosecution of Plaintiff's
4 claims as a class action will eliminate the possibility of repetitious litigation and
5 will provide redress for claims too small to support the expense of individual,
6 complex litigation. Absent a class action, class members will continue to suffer
7 losses, Defendant's violations of law will be allowed to proceed without a full, fair,
8 judicially supervised remedy, and Defendant will retain sums received as a result
9 of its wrongdoing. A class action therefore provides a fair and efficient method for
10 adjudicating this controversy.

11 33. The prosecution of separate claims by individual class members
12 would create a risk of inconsistent or varying adjudications with respect to
13 thousands of individual class members, which would, as a practical matter, dispose
14 of the interests of the class members not parties to those separate actions or would
15 substantially impair or impede their ability to protect their interests and enforce
16 their rights.

17 34. Defendant has acted or refused to act on grounds generally applicable
18 to the Class, thereby making appropriate final and injunctive relief with respect to
19 members of the Class as a whole.

20 35. Defendant benefited from the sale of the Gemstones to Plaintiff and
21 the Class, and the benefit to Defendant can be identified from the sale and the
22 monies received from the Gemstone purchasers. All or a portion of this benefit
23 retained by Defendant is money in which Plaintiff and the Class have an ownership
24 interest. Plaintiff and the Class have suffered injury in fact and lost money as a
25 result of Defendant's conduct described herein.

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FIRST CLAIM FOR RELIEF
(For Violations of the Consumers Legal Remedies Act
Cal. Civ. Code §§1750, et seq. ("CLRA"))

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36. Plaintiff realleges and hereby incorporates all preceding paragraphs as if they were fully set forth herein.

37. Defendant is a "person" within the meaning of Civil Code section 1761(c) and 1770.

38. Plaintiff and the Class are "consumers" within the meaning of Civil Code sections 1761(d) and 1770.

39. The subject Gemstones are "goods" within the meaning of Civil Code section 1761(a) and 1770.

40. Plaintiff and the Class' purchase of a Gemstone from Defendant constitutes a "transaction" within the meaning of Civil Code sections 1761(e) and 1770.

41. Defendant's acts, practices, representations, omissions, and courses of conduct with respect to the promotion, marketing, distribution, and sale of its Gemstones violates section 1770 of the CLRA in that:

- a. In violation of section 1770(a)(2) of the CLRA, Defendant "misrepresent[ed] the source, sponsorship, approval, or certification of goods;"
- b. In violation of section 1770(a)(3) of the CLRA, Defendant "misrepresent[ed] the affiliation, connection, or association with, or certification by, another;"
- c. In violation of section 1770(a)(4) of the CLRA, Defendant "us[ed] deceptive representations or designations of geographic origin in connection with goods;
- d. In violation of section 1770(a)(5) of the CLRA, Defendant "represent[ed] that goods . . . have sponsorship, approval,

- 1 characteristics, ingredients, uses, benefits, or quantities which
2 they do not have;”
- 3 e. In violation of section 1770(a)(7) of the CLRA, Defendant
4 represented that goods are of a particular standard, quality or
5 grade when they are of another;
- 6 f. In violation of section 1770(a)(9) of the CLRA, Defendant
7 advertised goods with the intent not to sell them as advertised;
8 and
- 9 g. In violation of section 1770(a)(16) of the CLRA, Defendant
10 represented that the transaction was supplied in accordance with
11 a previous representation when it has not.

12 42. Defendant engaged in these unfair and/or deceptive acts and practices
13 with the intent that they result, and which did result, in the sale of the Gemstones
14 to Plaintiff and the Class.

15 43. In purchasing the Gemstones from Defendant, Plaintiff and the Class
16 reasonably believed and/or depended on the material false and/or misleading
17 information provided by, or omitted, by Defendant with respect to the value,
18 quality, and gemological make-up of the Gemstones. In other words, Defendant
19 induced Plaintiff and the Class to purchase the Gemstones through the acts and
20 omissions alleged herein.

21 44. Upon information and belief, under California Civil Code section
22 1755, to the extent that Defendant may be found to be “the owners or employees of
23 any advertising medium, including, but not limited to, newspapers, magazines,
24 broadcast stations, billboards and transit ads, by whom any advertisement in
25 violation of this title is published or disseminated,” said Defendant had knowledge
26 of the deceptive methods, acts or practices declared to be unlawful by Section
27 1770.

28

- 1 a. Engaging in conduct, negligent or otherwise, where the utility
2 of that conduct to the public is significantly outweighed by the
3 gravity of the harm they impose on Plaintiff and other members
4 of the Class;
- 5 b. Engaging in conduct, negligent or otherwise, that is immoral,
6 unethical, oppressive, unscrupulous or substantially injurious to
7 Plaintiff and other members of the Class;
- 8 c. Engaging in conduct, negligent or otherwise, that undermines
9 or violates the stated policies underlying the CLRA, which
10 seeks to protect consumers from unfair and sharp business
11 practices and to promote a basic level of honesty and reliability
12 in the marketplace, as well as the policies underlying the
13 common law.

14 52. Defendant engaged in unlawful business practices by violating the
15 CLRA, California Civil Code sections 1750 *et seq.*, California's False Advertising
16 Law, Business & Professions Code sections 17500 *et seq.*, the FTC Guide for the
17 Jewelry, Precious Metals, and Pewter Industries, 16 C.F.R. sections 23.22 *et seq.*,
18 and common law against unjust enrichment.

19 53. Defendant engaged in fraudulent business practices by engaging
20 conduct, negligent or otherwise, that was and is likely to deceive a reasonable
21 consumer and presents a continued likelihood of harm and deception to members
22 of the Class.

23 54. Plaintiff and the Class have suffered harm as a proximate result of the
24 negligent and/or wrongful conduct of the Defendant as alleged herein, and
25 therefore bring this claim for restitution and disgorgement. Plaintiff and the Class
26 have suffered injury in fact and have lost money, in that they purchased Gemstones
27 they otherwise would not have, paid more for Gemstones than they otherwise
28 would, and are left with Gemstones of diminished value. Meanwhile, Defendant

1 sold more Gemstones than it otherwise could have and charged inflated prices for
2 those Gemstones, unjustly enriching itself thereby.

3 55. In purchasing the Gemstones from Defendant, Plaintiff and the Class
4 reasonably believed and/or depended on the material false and/or misleading
5 information provided by Defendant, negligently or otherwise, with respect to the
6 value, quality, and gemological make-up of the Gemstones. In other words,
7 Defendant induced Plaintiff and the Class to purchase the Gemstones through the
8 acts and omissions alleged herein.

9 56. Pursuant to Business and Professions Code sections 17200 and 17203,
10 Plaintiff, on behalf of herself and the Class, seeks an order of this Court enjoining
11 the Defendant from continuing to sell and market the Gemstones to the public
12 without fully disclosing their true characteristics. Plaintiff and the Class are further
13 entitled to, and pray for, restitution of all monies paid in connection with
14 Defendant's unconscionable sale of the Gemstones.

15 57. Plaintiff further requests an order awarding Plaintiff and the Class
16 restitution and disgorgement of profits acquired by Defendant by means of such
17 unlawful acts and practices, so as to deter Defendant and to rectify Defendant's
18 unfair and unlawful practices and to restore any and all monies to Plaintiff and the
19 Class, which are still retained by Defendant, plus interest and attorneys' fees and
20 costs pursuant to, *inter alia*, Code of Civil Procedure section 1021.5.

21 **THIRD CLAIM FOR RELIEF**
22 **(For Violations of California's False Advertising Law**
23 **Cal. Bus. & Prof. Code §§17500, *et seq.*)**

24 58. Plaintiff realleges and hereby incorporates all preceding paragraphs as
25 if they were fully set forth herein.

26 59. Plaintiff and the Class have suffered injury in fact and lost money
27 and/or property, including but not limited to monies unlawfully, unfairly and
28 fraudulently obtained through the Defendant's sale of the Gemstones.

1 revenues by which it became unjustly enriched at Plaintiff and members of the
2 proposed class's expense.

3 67. Defendant was aware and had knowledge of the benefit it was
4 receiving as a result of its unlawful, unfair, deceptive, and wrongful acts and
5 omissions, as hereinabove alleged, and has enjoyed the benefit of their financial
6 gains, to the detriment and at the expense of Plaintiff and the Class.

7 68. Under the circumstances alleged herein, it would be unfair and
8 inequitable for Defendant to retain the profits it has unjustly obtained at the
9 expense of the Plaintiff and the class.

10 69. Accordingly, Plaintiff seeks an order establishing Defendant as
11 constructive trustees of the profits that served to unjustly enrich them, together
12 with interest during the period in which Defendants have retained such funds, and
13 requiring Defendant to disgorge those funds to Plaintiff and members of the
14 proposed class in a manner to be determined by the Court.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, on behalf of herself and as representative of all
17 other persons similarly situated, prays for judgment against Defendant, as follows:

18 1. For an order certifying the class under Rule 23 of the Federal Rules of
19 Civil Procedure, appointing Plaintiff, and counsel, to represent the class;

20 2. For an award of restitution, disgorgement and/or other equitable relief
21 as the Court deems proper;

22 3. For a permanent injunction prohibiting Defendant from engaging in
23 the unlawful and deceptive acts, practices and conduct described herein;

24 4. For an award of reasonable attorneys' fees and costs of suit, including
25 expert witness fees;

26 5. For an award of pre- and post-judgment interest on any amounts
27 awarded at the maximum legal rate; and

28 6. For any and all other relief the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action for all the claims so triable.

Dated: November 5, 2008

Respectfully Submitted,

WEXLER WALLACE LLP



Mark J. Tamblyn

Neha Duggal
455 Capitol Mall, Suite 231
Sacramento, CA 95814
Telephone: (916) 492-1100
Facsimile: (916) 492-1124

Gregory F. Coleman
COLEMAN & EDWARDS, P.C.
4800 Old Kingston Pike, Suite 120
Knoxville, TN 37919
Telephone: (865) 247-0080
Facsimile: (865) 247-0081

Kenneth A. Wexler
Edward A. Wallace
Annabel M. Nesbitt
WEXLER WALLACE LLP
35 W. Monroe St., Suite 3300
Chicago, Ill. 60603
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

as those if Plaintiff, individually
itself of the proposed Class

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DECLARATION OF ROSANNA JOHNSON PURSUANT TO CALIFORNIA CIVIL CODE § 1780(C)


I, Rosanna Johnson, declare as follows:

1. I submit this declaration pursuant to section 1780(c) of the California Consumer Legal Remedies Act. I have personal knowledge of the matters set forth below and if called as a witness could and would be competent to testify thereto.

2. I am a resident of Placer County, California.

3. Defendant Direct Shopping Network, LLC is a California company that is doing business in California, including Los Angeles County. A substantial portion, if not the entirety, of the transactions between myself and Defendant also occurred in California and, specifically, in Los Angeles County.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on November 5, 2008 in Auburn, California.


ROSANNA JOHNSON