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FILED
ALAMEDA COUNTY

OCT 02 2019

CLERK OF THE SUPERIOR COURT

By Asw Deputy

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 11 (For list of additional Plaintiff's counsel,
 12 see Appendix)

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF ALAMEDA

11 PEOPLE OF THE STATE OF CALIFORNIA,
 12
 13 Plaintiff,
 14
 15 vs.
 16 MY PILLOW, INC., a Minnesota Corporation;
 17 DOES 1-10.
 18 Defendants.

Case No.: R619 037519

COMPLAINT FOR EQUITABLE RELIEF,
 INCLUDING AN INJUNCTION,
 RESTITUTION AND CIVIL PENALTIES
 (Bus. & Prof. Code, §§ 17200, et seq.,
 17207 and 17500, et seq.)

[VERIFIED ANSWER REQUIRED
 PURSUANT TO CODE OF CIVIL
 PROCEDURE SECTION 446]

20 Plaintiff, the People of the State of California, appearing through its attorneys: Nancy E.
 21 O'Malley, District Attorney of Alameda County, by Matthew L. Beltramo, Assistant District Attorney;
 22 Lori E. Frugoli, District Attorney of Marin County, by Andres H. Perez, Deputy District Attorney;
 23 Jeannine Pacioni, District Attorney of Monterey County, by Amy Anderson, Deputy District Attorney;
 24 Allison Haley, District Attorney of Napa County, by Patrick Collins, Deputy District Attorney; Todd
 25 Spitzer, District Attorney of Orange County, by Tracy E. Hughes, Senior Deputy District Attorney;

1 Jeffrey F. Rosen, District Attorney of Santa Clara County, by Jennifer Deng, Deputy District Attorney;
2 Jeffrey Rosell, District Attorney of Santa Cruz County, by Douglas Allen, Assistant District Attorney;
3 Stephanie A. Bridgett, District Attorney of Shasta County, by Anand "Lucky" Jesrani, Senior Deputy
4 District Attorney; Krishna Abrams, District Attorney of Solano County, by Diane M. Newman, Deputy
5 District Attorney; and Jill R. Ravitch, District Attorney of Sonoma County, by Matthew T. Cheever,
6 Deputy District Attorney, alleges the following:

7 INTRODUCTION

8 1. This complaint seeks for the second time in three years to hold Defendant MyPillow,
9 Inc., accountable for disseminating false and misleading advertisements related to its principal product,
10 bed pillows. As with the prior action, which resulted in a stipulated judgment and injunction, the
11 advertisements in question here involved health-related claims related to specific disease conditions,
12 such as sleep apnea. And with the prior action, the advertising claims at issue here lack adequate
13 scientific substantiation. To make matters worse, Defendant inaccurately portrayed the sole "study"
14 upon which the new claims were purportedly based, asserting that it was "double-blind" and "placebo-
15 controlled" when, in fact, it was not. These advertising claims directly violated the terms of the prior
16 injunction.

17 THE PARTIES

18 2. The Plaintiff is the People of the State of California (hereinafter "the People" or
19 "Plaintiff"). The People are represented by and through the District Attorneys referenced above. Each
20 of these District Attorneys has authority to bring this case on behalf of the People, pursuant to the
21 Unfair Competition Law (Bus. & Prof. Code §§, 17200, et seq.) and the False Advertising Law (Bus. &
22 Prof. Code, §§ 17500, et seq.), and specifically Business and Professions Code sections 17203, 17204,
23 17206, 17207, 17535 and 17536.

24 3. This suit is brought by the People in the public interest and in order to protect the
25 millions of consumers in the State of California who were and are exposed to Defendants'
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1 advertisements. The People have a substantial state interest in eliminating and preventing the deceptive
2 practices alleged herein, ensuring an honest and fair marketplace, and vindicating the terms of the prior
3 judgment discussed below.

4 4. Defendant My Pillow, Inc., is a Minnesota corporation. It will hereinafter be referred to
5 as "Defendant My Pillow" or simply "My Pillow."

6 5. Defendant My Pillow has a principal place of business located at 343 East 82nd Street,
7 Suite 100, Chaska, MN 55318.

8 6. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES
9 1 through 10, inclusive, and therefore sues those defendants by these fictitious names. Plaintiff alleges
10 that said defendants, and each of them, performed each of the acts alleged below and otherwise aided,
11 abetted, and assisted in each of these acts, with the requisite legal state of mind.

12 7. Defendant My Pillow and Defendants DOES 1-10 shall be referred to collectively as
13 "Defendants."

14 8. Whenever reference is made in this complaint to any act of Defendants, such reference
15 shall be deemed to mean that each defendant's officers, employees, agents, or representatives did,
16 ratified or authorized such act while actively engaged in the management, direction or control of the
17 affairs of said corporate defendant or while acting within the scope and course of their duties.

18 **JURISDICTION AND VENUE**

19 9. This Court has subject matter jurisdiction over this action pursuant to Business and
20 Professions Code section 17203, 17204, 17206, 17207, 17535 and 17536.

21 10. This Court has jurisdiction over Defendants pursuant to Code of Civil Procedure section
22 410.10 because the causes of action alleged herein arise out of business activities that occurred, and
23 advertisements and advertising claims that were disseminated, throughout the State of California,
24 including the counties of Alameda, Napa, Solano, Sonoma, Marin, Monterey, Orange, Santa Clara,
25 Santa Cruz, and Shasta. Further, Defendant made substantial sales of their products to citizens of
26

1 California, including those residing in the counties referenced above, during the period of time at issue.

2 11. Venue is proper in this Court because the violations of law herein alleged occurred
3 within Alameda County (and elsewhere throughout the State of California).

4 **GENERAL ALLEGATIONS**

5 12. Defendants are in the business of developing, manufacturing, packaging, promoting,
6 advertising and selling bedding products, including pillows, marketed under the brand name
7 "MyPillow."

8 13. Defendants promoted, advertised and sold these products throughout the counties of
9 Alameda, Marin, Monterey, Napa, Orange, Santa Clara, Santa Cruz, Shasta, Solano and Sonoma, and
10 elsewhere in the State of California.

11 14. Defendants advertise these products through a number of media channels, including but
12 not limited to television, radio, internet, and displays erected inside retail outlets.

13 15. Many of these advertisements tout the alleged health benefits of using Defendants'
14 products, including its pillow products, as more fully described below.

15 **THE 2016 STIPULATED JUDGMENT**

16 16. As noted above, this is the second time in three years that the People have brought a
17 consumer protection action in this Court against My Pillow as result of its advertising practices.

18 17. The first stemmed from an advertising campaign in which My Pillow claimed that its
19 pillow products could "help with" or otherwise improve the symptoms of a variety of disease
20 conditions, including but not limited to fibromyalgia, insomnia, migraines, TMJ (temporomandibular
21 joint disorder), restless leg syndrome, sleep apnea, and snoring.

22 18. This campaign included direct advertising claims, such as "MyPillow. Can Help Sleep
23 Apnea" and "MyPillow can help your TMJ," and accompanying consumer testimonials that made
24 reference to the product's purported effect on these disease conditions.

25 19. The People filed the first action against My Pillow on or about October 26, 2016. (See
26
27

1 *People v. MyPillow, Inc., et al.*, Alameda County Superior Court Docket #HG16836619.

2 20. The complaint alleged that Defendant My Pillow had violated the False Advertising Law
3 (Bus. & Prof. Code, §§ 17500 et seq.) and the Unfair Competition Law (Bus. & Prof. Code, §§ 17200,
4 et seq.) by, among other things:

- 5 a. Making health and wellness claims about MyPillow products that were not supported by
6 competent and reliable scientific evidence. These included claims regarding the effects,
7 efficacy or attributes of MyPillow products on a variety of disease conditions, including
8 fibromyalgia, insomnia, migraines, sleep apnea, snoring, TMJ (temporomandibular joint
9 disorder), and restless leg syndrome and; and
10 b. Failing to disclose a material financial connection between MyPillow and an “official”
11 endorser of Defendant’s products.

12 21. Filed simultaneously with the complaint was a Stipulation for Entry of Final Judgment,
13 attached to which was a proposed copy of the Final Judgment Pursuant to Stipulation (hereinafter
14 “2016 Stipulated Judgment”). The Stipulation was signed both by attorneys for the People and My
15 Pillow, and also by My Pillow’s Chief Executive Officer, Michael Lindell.

16 22. The 2016 Stipulated Judgment was approved and entered by the court on or about
17 October 31, 2016. A file-endorsed copy is attached hereto at Exhibit A, and incorporated by reference
18 herein.¹

19 23. Among other things, the 2016 Stipulated Judgment enjoined My Pillow from: “Making
20 or disseminating...any claim or advertisement...that any pillow product...can affect the structure or
21 function of the human body or cure, mitigate, treat or prevent any DISEASE or symptom thereof
22 unless: [¶] (i) the pillow product in question complies with California Health and Safety Code section
23

24
25 _____
26 ¹ Due to a clerical error, the judgment was entered twice. This error was corrected by the Court (the
27 Honorable Morris Jacobson) by way of an “Order Correcting Docket Regarding Entry of Judgment,”
28 dated November 30, 2016.

1 111550, pertaining to the sale of medical devices; and [¶] at the time of making any such claim or
2 representation, it is true, not misleading, and Defendant already has in its possession and relies on at
3 least one ADEQUATE AND WELL-CONTROLLED HUMAN CLINICAL STUDY conducted on the
4 product or a SUBSTANTIALLY EQUIVALENT DEVICE.”

5 24. The term “DISEASE” was defined to mean: “any damage to an organ, part, structure, or
6 system of the body such that it does not function properly or a state of health leading to such
7 dysfunction, including any mental health disease or disorder, and specifically includes the following
8 non-exclusive list of such diseases: allergies, asthma, anxiety, fibromyalgia, insomnia, restless leg
9 syndrome, spine pain (including cervical pain), *sleep apnea, snoring* or temporal mandibular joint
10 syndrome (TMJ).” (Emphasis added.)

11 25. The term “ADEQUATE AND WELL-CONTROLLED HUMAN CLINICAL STUDY”
12 was defined to mean: “a clinical study conducted on humans that is randomized, *double-blind, placebo-*
13 *controlled*, conducted by persons qualified by training and experience to conduct such study, with
14 statistically significant results as to the claim, advertisement or representation at issue.” (Emphasis
15 added.)

16 26. The 2016 Stipulated Judgment also enjoined My Pillow from violating a number of
17 California statutes, including:

- 18
- 19 a. “California Health and Safety Code section 110400, by delivering in commerce any
20 device that is falsely advertised”;
 - 21 b. “California Health and Safety Code section 111440, by manufacturing, selling,
22 delivering, holding, or offering for sale any device that is misbranded”;
 - 23 c. “California Health and Safety Code section 111445, by misbranding any device”;
 - 24 d. “California Health and Safety Code section 111450, by delivering in commerce any
25 device that is misbranded;” and
 - 26 e. “California Civil Code section 1770(a)(5), by representing that Defendants’ goods or
27

1 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or
2 quantities which they do not have or that Defendants have a sponsorship, approval,
3 statutes, affiliation, or connection which they not have.”

4 27. Finally, the 2016 Stipulated Judgment enjoined My Pillow from relying on any
5 endorsement based on an endorser with whom Defendant had a “material connection” unless Defendant
6 also “disclose[s], clearly and prominently and in visual proximity to any written claim or in temporal
7 proximity to any claim conveyed by voice, any material connection between such user or endorser and
8 any Defendant.” The term “material connection” was defined to mean “any relationship that materially
9 affects the weight or credibility of the ... endorsement and that would not reasonably be expected by
10 consumers, including, but not limited to monetary payments from the endorser to the seller, or from the
11 seller to the endorser, or the provision of goods, services, or other benefits to anyone providing a user
12 testimonial or endorsement.”

13 THE 2018 “SLEEP STUDY”

14 28. Beginning in approximately November 2018 and continuing through March 2019 at the
15 earliest, Defendants conducted an advertising campaign that was not only false and misleading, but
16 directly violated the terms of the 2016 Stipulated Judgment.

17 29. This new campaign centered around a purportedly scientific study conducted on the
18 MyPillow “classic” pillow. The study was entitled, “**Physicians Identify A Commercially-Available**
19 **Pillow That Objectively Improves Sleep Parameters.** A double-blind randomized controlled trial of a
20 consumer-marketed pillow, using pre and post Sleep EEG monitoring.” Hereinafter, this study shall be
21 referred to as the “Sleep Study”.

22 30. Upon information and belief, the Sleep Study was performed by “Sleep4Life LLC.”

23 31. According to its website, Sleep4Life LLC is a company that conducts sleep testing
24 services for other companies, including skilled nursing facilities.

25 32. The CEO of Sleep4Life LLC is one Simcha Cohen. According to the Sleep Study, Mr.
26
27

1 Cohen “initiated the research by contacting pillow companies in a request to investigate their products
2 to assist elderly institutionalized individuals improve their sleep.”

3 33. The Sleep Study listed a number of co-authors. All of these individuals purport to be
4 medical doctors, with the exception of Mr. Cohen.

5 34. According to the Sleep Study’s authors, its goal was “to study the physiological changes
6 in sleep ... for people sleeping on traditional down pillows versus the foam MyPillow® Classic
7 Pillow.”

8 35. Upon information and belief, the Sleep Study was never published in a medical journal,
9 nor was it ever peer-reviewed.

10 36. Nevertheless, Defendants predicated a new advertising campaign on the Sleep Study.

11 37. This campaign was disseminated through all media channels, including television, radio
12 and the internet.

13 38. For example, in or about December 2018, Defendant My Pillow’s website
14 (www.mypillow.com) featured a webpage touting the purported results of the Sleep Study:
15 www.mypillow.com/study. That dedicated webpage contained a scrolling banner reading: “NEW
16 SLEEP STUDY PROVED: 100% of sleep study participants INCREASED their amount of DEEP
17 SLEEP with MyPillow! 96% of participants experienced LESS SLEEP INTERRUPTIONS! HELPS
18 REDUCE daytime fatigue! HELPS REDUCE snoring! HELPS IMPROVE the QUALITY of your
19 sleep! A large percentage of participants refused to stop using their MyPillow and switch to a down
20 pillow!”
21

22 39. The internet advertisements further stated that the results of the Sleep Study were “based
23 on a double-blind randomized placebo-controlled study comparing study participants’ sleep between
24 their original pillow, MyPillow® Classic pillow, and goose down pillows.”
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1 40. The Sleep Study also featured prominently in video advertisements that were run in late
2 2018 and early 2019. These included advertisements attesting that MyPillow “reduce[d] snoring” and
3 that “96% of positional sleep apnea sufferers reported a reduction in their symptoms.” The following is
4 an example:
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6

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8 **CLINICAL SLEEP STUDY PROVES:**


9 **96%** of positional sleep apnea sufferers
10 reported a reduction in their symptoms


11 **Fall Asleep Faster**

12 **Deep, Uninterrupted Sleep**

13 **Reduce Snoring**

14 **Wake Up Refreshed**

15 

16  **1-800-576-6048**
mypillow.com

17 **USE PROMO CODE**
STUDY21

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1 41. Defendants' video advertisements also attested that the results of the study were "based
2 on a double-blind randomized placebo-controlled study comparing study participants' sleep between
3 their original pillow, MyPillow Classic pillow, and goose down pillows." The following is an example:
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5

6 **CLINICAL SLEEP STUDY PROVES:**
MyPillow Changes & Improves the Quality of Your Sleep

7 **Fewer Sleep Interruptions**

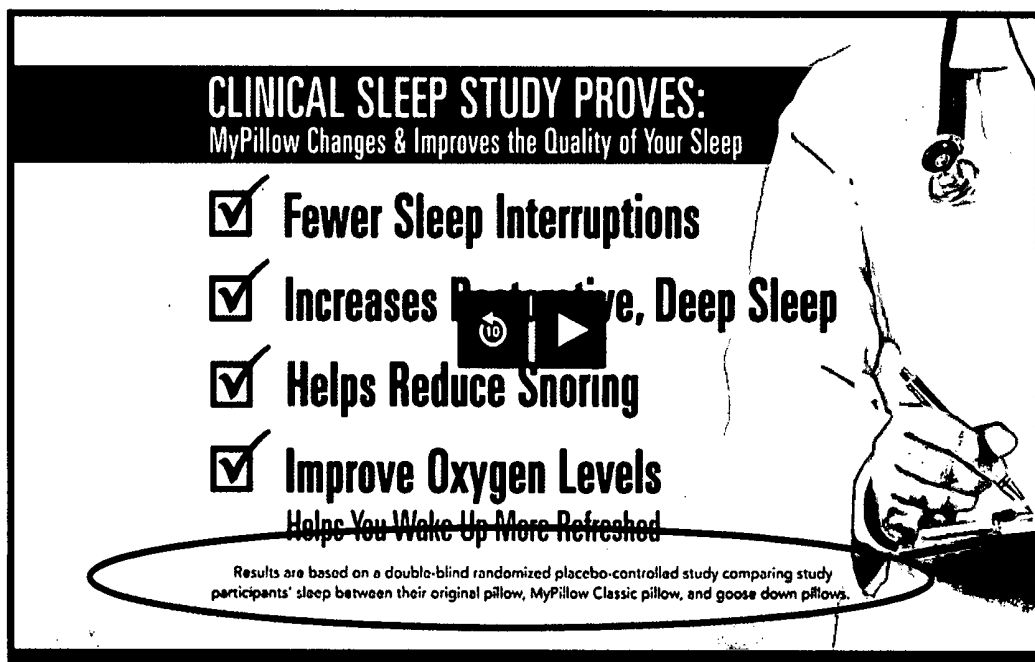
8 **Increases Restorative, Deep Sleep**

9 **Helps Reduce Snoring**

10 **Improve Oxygen Levels**

11 **Helps You Wake Up More Refreshed**

12 Results are based on a double-blind randomized placebo-controlled study comparing study participants' sleep between their original pillow, MyPillow Classic pillow, and goose down pillows.



13

14

15 **Results are based on a double-blind randomized placebo-controlled study comparing study**

16 **participants' sleep between their original pillow, MyPillow Classic pillow, and goose down pillows**

17

18 42. The purportedly clinical basis for these advertising claims was emphasized in audio
19 tracks that overlaid these video ads. In one advertisement, for example, the CEO of My Pillow, Michael
20 Lindell, states: "Sleep is one of the most important things for your health. And I've always said that
21 MyPillow is one of the most important things to your sleep. *And now a recent clinical sleep study*
22 *proved it.*" (Emphasis added.)

23

24 43. Upon information and belief, advertisements that referenced or relied upon the Sleep
25 Study were broadcast in radio spots purchased by My Pillow.

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1 **A. The Sleep Study Was Neither “Placebo-Controlled” nor “Double-Blind”**

2 44. Advertisements regarding the Sleep Study were false and misleading in a number of
3 material ways. For example, the study was not “placebo-controlled.” Due to the purported refusal of
4 some participants to switch to a “placebo” pillow, the authors of the study explicitly stated that they
5 “were not including any comparative results between MyPillow and the placebo.”

6 45. The Sleep Study also was not “double-blind.” A double-blind study is one in which
7 neither the participants nor the administrators know who is receiving a particular treatment. The classic
8 example of a double-blind study is one involving pharmaceuticals, in which neither the participant nor
9 the administrator knows which pill is the drug being tested and which is the placebo.

10 46. In the Sleep Study, by contrast, the “treatments” in question were two completely
11 distinguishable products: the MyPillow pillow, which is a stuffed with foam, and a goose down pillow,
12 which was (presumably) stuffed with feathers. Unlike a true double-blind scenario, both the
13 administrators of and the participants in the Sleep Study would readily know which “treatment” they
14 were using, as foam-stuffed pillows and down-stuffed pillows feel and weigh differently. This
15 common-sense fact is borne out by the Sleep Study itself, which claimed that “many participants
16 refused to switch to down placebo pillows” – if true, an obvious sign that the participants could tell the
17 difference between the two products.
18

19 47. In or about January 2019, after being confronted with the fact that the Sleep Study was
20 not actually “double-blind” or “placebo-controlled,” Defendants changed the description of the Study to
21 read as follows: “Results are based on a blind clinical study comparing study participants’ sleep
22 between their original pillow and My Pillow Classic pillow.” However, even this revised description
23 was false and misleading; the Sleep Study was not “blind” to participants, who would obviously know
24 the difference between their original pillows and the foam-stuffed MyPillow product.

25 48. Because the Sleep Study was not “double-blind” or “placebo-controlled” it did not
26 qualify as a “ADEQUATE AND WELL-CONTROLLED HUMAN CLINICAL STUDY” under the
27

1 terms of the 2016 Stipulated Judgment. (See Exhibit A, at p. 3, lines 13-17.)

2 49. Because the Sleep Study did not qualify as an “ADEQUATE AND WELL-
3 CONTROLLED HUMAN CLINICAL STUDY,” the 2016 Stipulated Judgment barred Defendants
4 from using that study as a basis for any claim the MyPillow product could “cure, mitigate, treat or
5 prevent,” any disease condition, including specifically “sleep apnea” and “snoring.”

6 50. Thus, the advertising claims that referenced either sleep apnea and/or snoring were in
7 direct violation of the terms of the 2016 Stipulated Judgment.

8 51. Upon information and belief, Defendants described the Sleep Study as “place-
9 controlled” and “double-blind” (when it was neither) in an attempt to appear compliant with the terms
10 of the 2016 Stipulated Judgment.

11 **B. Failure to Disclose Material Connections**

12 52. The Sleep Study was solely funded by Defendant My Pillow.

13 53. Upon information and belief, this funding was paid to Sleep4Life LLC, the company
14 that conducted the Sleep Study.

15 54. However, nowhere was this payment clearly and conspicuously disclosed by Defendants
16 in their advertisements referencing the Sleep Study.

17 55. As set forth in the FTC’s “Guides Concerning Use of Endorsements and Testimonials in
18 Advertising (16 C.F.R. § 255, et seq.), the weight consumers place on the reported results of a scientific
19 study “could be materially affected by knowing the advertiser had funded the project.” (16 C.F.R §
20 255.5.) Thus, an advertiser “should clearly and conspicuously disclose” the payment it has made to any
21 research group.

22 56. Defendants’ failure to clearly and conspicuously disclose its funding of the Sleep Study
23 rendered the advertisements false and misleading under California law.

24 **C. Other False and Materially Misleading Aspects of the Sleep Study**

25 57. In addition to the issues describe above, the Sleep Study and the advertising campaign it
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1 supported were also false and misleading in other ways:

- 2 a. As set forth above, Defendants' advertisements claimed that "100% of sleep study
3 participants INCREASED their amount of DEEP SLEEP with MyPillow!" This claim
4 was false and misleading, because the study did not so find. Indeed, midway through the
5 Sleep Study advertising campaign, Defendants changed this claim to say merely that
6 there was a "Significant increase in amount of sleep...."
- 7 b. Defendants' advertisements also claimed that "96% of participants experienced LESS
8 SLEEP INTERRUPTIONS!" This figure ("96%") appears to have come from that
9 portion of the Sleep Study addressed to "apnea hypopnea index," not "sleep
10 interruptions." Moreover, to the extent these and other advertising claims that reference
11 "96%" were actually referring to sleep apnea, the portion of the study addressed to this
12 condition went on to say that "33% of the participants showed an adverse effect:
13 *increased hypopnic episodes.*"² (Emphasis added.) This contrary finding was not
14 disclosed in any of the advertisements in question.

15 58. The Sleep Study was also executed in a highly flawed manner. For example, the
16 participants were all taken from one age-group (adults over 50 years old), one location (Brooklyn, New
17 York) and one ethnic group (Russians), all without any articulated scientific rationale. In addition, there
18 was a "high dropout rate" – 55% of the participants dropped out. Another eight percent were excluded
19 for other reasons. None of these deficits were disclosed in Defendants' advertising.

20 59. As a result of these (and other) flaws, the Sleep Study was neither a competent nor
21 reliable basis for any of the advertising claims made about it, rendering all such advertisements false
22 and misleading.

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25
26 ² "Hypopnea" is a blockage of the airway.

1 reasonably should have known were untrue or misleading, as prohibited by Business & Professions
2 Code section 17500. Such statements included but are not limited to all of the claims set forth in
3 Paragraphs 28 through 65, above.

4 68. As a result of these violations, Defendants are subject to civil penalties, pursuant to
5 Business & Professions Code section 17536, and to injunctive relief and the payment of restitution,
6 pursuant to Business & Professions Code section 17535.

7
8 **SECOND CAUSE OF ACTION**
9 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**
10 **(Unfair Competition)**

11 69. Plaintiff realleges and incorporates by reference Paragraphs 1 through 68 of this
12 Complaint as though fully set forth herein.

13 70. Beginning at an exact date which is unknown to the People, but within four years prior
14 to the filing of this complaint, Defendants engaged in a course of conduct that constituted acts of unfair
15 competition, as defined by Business & Professions Code section 17200, by committing the following
16 acts and violations of law:

- 17 a. Disseminating unfair, deceptive, untrue or misleading advertising;
- 18 b. Violating the following California laws:
- 19 i. Business & Professions Code section 17500, as set forth in the First Cause of
20 Action;
- 21 ii. Health & Safety Code section 110400, by delivering into commerce a medical
22 device that was falsely advertised;
- 23 iii. Health & Safety Code section 111440, by selling or offering to sell a medical
24 device that is misbranded;
- 25 iv. Health & Safety Code section 111445, by misbranding a medical device;
- 26 v. Health & Safety Code section 111450, by delivering into commerce a medical
27 device that is misbranded;

1 vi. Civil Code section 1770(a)(5), by representing that goods or services have
2 sponsorship, approval, characteristics, ingredients, uses, benefits or quantities
3 which they do not have.

4 71. As a result of this conduct, Defendants are subject to civil penalties, pursuant to
5 Business & Professions Code section 17206, and to injunctive relief and the payment of restitution,
6 pursuant to Business & Professions Code sections 17203 and 17204.

7
8 **THIRD CAUSE OF ACTION**
9 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17207**
10 **(Violation of Injunction)**

11 72. Plaintiff realleges and incorporates by reference Paragraphs 1 through 71 of this
12 Complaint as though fully set forth herein.

13 73. Beginning at an exact date which is unknown to the People, but within four years prior
14 to the filing of this complaint, Defendants violated Business & Professions Code section 17207(a), by
15 violating the injunctive terms of the 2016 Stipulated Judgment. These violations include:

- 16 a. “making or disseminating ... directly or indirectly ... a claim or advertisement that
17 any pillow product, including but not limited to any pillow marketed or sold under the
18 trade name ‘MyPillow,’ can affect the structure or function of the human body or cure,
19 mitigate, treat, or prevent any DISEASE or symptom thereof,” without “complying with
20 California Health and Safety Code section 111550, pertaining to the sale of medical
21 devices” and without having in its possession an ‘ADEQUATE AND WELL-
22 CONTROLLED HUMAN CLINICAL STUDY’ conducted on the product or a
23 ‘SUBSTANTIALLY EQUIVALENT DEVICE.’” (Ex. A, 2016 Stipulated Judgment,
24 Par. 5.A., at pp. 2-3)³;
- 25 b. Violating the provisions of Health and Safety Code sections 110400, 111440, 111445

26 ³ The capitalized terms have the meanings set forth in the 2016 Stipulated Judgment and quoted above.

1 and 111450 (See Ex. A, 2016 Stipulated Judgment, Par. 5.B., at p. 3); and

2 c. Violating the provisions of Civil Code section 1770(a)(5). (See Ex. A, 2016 Stipulated
3 Judgment, Par. 5.C., at p. 3.)

4 74. Upon information and belief, the violations described above were intentional. Among
5 other things, My Pillow's current chief executive officer signed the stipulation for entry of judgment
6 and therefore had actual knowledge of the terms of the 2016 Stipulated Judgment. In addition, the
7 judgment explicitly required that it be distributed to "current principals, officers, directors and
8 managers ... and to all personnel, agents and representatives having primary authority over sales,
9 advertising or policy responsibility with respect to the subject matter" of the Judgment. Further, the use
10 of the terms "placebo-controlled" and "double-blind" made it appear as if the Sleep Study, and the
11 advertisements it gave rise to, complied with the 2016 Stipulated Judgment, when they did not.

12 75. The violations described above were of a continuing nature, as set forth in Business &
13 Professions Code section 17207(a).

14 76. Defendants are subject to civil penalties, pursuant to Business & Professions Code
15 section 17207(a) for each day in which the conduct occurred.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, the People pray for relief as follows:

18 77. For a preliminary and permanent injunction, pursuant to Business & Professions Code
19 sections 17203, 17204, and 17535, restraining and enjoining Defendants, from making, disseminating,
20 or causing to be made or disseminated any false or misleading statements as set forth in the First Cause
21 of Action, above, or from engaging in or performing, directly or indirectly, any acts of unfair
22 competition as set forth in the Second Cause of Action, above.

23 78. That Defendants be ordered to pay a civil penalty of up to \$2,500.00 for each act of false
24 advertising and/or unfair competition, pursuant to Business and Professions Code sections 17206 and
25 17536.
26

1 79. That Defendant be ordered to pay a civil penalty of up to \$6,000.00 for each act in
2 violation of Business and Professions Code sections 17207(a) and for each day in which a continuing
3 violation occurred.

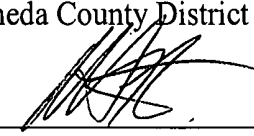
4 80. That Defendants be ordered to pay restitution as required under law.

5 81. That the People recover its costs of suit herein.

6 82. That the People be given such other and further relief as the nature of this case may
7 require and this Court deems proper to fully and successfully dissipate the effects of the unlawful and
8 unfair acts complained of in this complaint.

9
10 Date: October 1, 2019

Nancy E. O'Malley
Alameda County District Attorney

11
12 By: 
13 Matthew L. Beltramo
14 Assistant District Attorney and on
15 behalf of the District Attorney's Offices
16 listed on the next page

*Attorneys for Plaintiff, the People of the
State of California*

APPENDIX

The following additional counsel represent Plaintiff, the People of the State of California, in this action:

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Exhibit A

RLS
14140481
FILED
ALAMEDA COUNTY
OCT 31 2016
CLERK OF THE SUPERIOR COURT
By Dwanda Harris
Deputy

1 NANCY E. O'MALLEY
District Attorney of Alameda County
2 Matthew L. Beltramo, Deputy District Attorney
(State Bar No. 184796)
3 7677 Oakport Street, Suite 650
4 Oakland, CA 94621
Telephone: (510) 383-8600
5 Facsimile: (510) 383-8615

6 Attorneys for Plaintiff
7 *(For additional Plaintiff's counsel, see Attachment 1*
8 *to Stipulation for Entry of Final Judgment)*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF ALAMEDA

11 PEOPLE OF THE STATE OF CALIFORNIA,
12 Plaintiff,
13 vs.
14 MY PILLOW, INC., a Minnesota Corporation;
and MY PILLOW DIRECT, LLC, a Minnesota
15 Limited Liability Company
16 Defendants.

Case No.: **HC16-836619**

FINAL JUDGMENT PURSUANT TO
STIPULATION

17
18 Plaintiff, the People of the State of California, appears through its attorneys: Nancy E. O'Malley,
19 District Attorney of Alameda County, by Matthew L. Beltramo, Deputy District Attorney; Edward S.
20 Berberian, District Attorney of Marin County, by Andres H. Perez, Deputy District Attorney; Dean Flippo,
21 District Attorney of Monterey County, by John Hubanks, Deputy District Attorney; Gary Lieberstein,
22 District Attorney of Napa County, by Patrick Collins, Deputy District Attorney; Tony Rackauckas, District
23 Attorney of Orange County, by Tracy E. Hughes, Deputy District Attorney; Jeffrey F. Rosen, District
24 Attorney of Santa Clara County, by Francisca B. Allen, Deputy District Attorney; Jeffrey Rosell, District
25 Attorney of Santa Cruz County, by Douglas Allen, Assistant District Attorney; Stephen S. Carlton, District
26 Attorney of Shasta County, by Anand "Lucky" Jesrani, Senior Deputy District Attorney; Krishna Abrams,
27 District Attorney of Solano County, by Diane M. Newman, Deputy District Attorney; and Jill R. Ravitch,
28

1 District Attorney of Sonoma County, by Matthew T. Cheever, Deputy District Attorney.

2 Defendant, My Pillow, Inc., a Minnesota corporation with a registered address of 343 East 82nd
3 Street #102, Chaska, MN 55318, and Defendant My Pillow Direct, LLC, a Minnesota limited liability
4 company with a registered address of 343 East 82nd Street #102, Chaska, MN 55318 (hereinafter,
5 collectively, "Defendants" or "My Pillow"), appear through their attorneys, Beshada and Farnese, LLP, by
6 Peter Farnese, Esquire.

7 Plaintiff and Defendants (the "Parties") have stipulated that this Final Judgment Pursuant to
8 Stipulation (herein the "Stipulated Final Judgment") may be entered without trial or adjudication of any
9 issue of fact or law. The Parties enter this Final Judgment pursuant to a settlement of certain disputed
10 claims between them as alleged in the Complaint for purposes of avoiding litigation. Nothing in this Final
11 Judgment shall be construed as an admission or denial by Defendants of any fact, issue of law or violations
12 of law alleged generally or specifically in the Complaint.

13 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

14 1. The Stipulated Final Judgment has been reviewed by this Court and is found to have been
15 entered in good faith and to be, in all respects, just, reasonable, equitable and adequate to protect the public
16 from the occurrence in the future of the conduct alleged in the Complaint.

17 2. Unless otherwise stated, all obligations imposed upon Defendants by the terms of this
18 Stipulated Final Judgment are ordered pursuant to sections 17200, et seq., and 17500, et seq., of the
19 California Business and Professions Code, including sections 17203, 17206, and 17535.

20 3. The Parties waive the right to appeal this Final Judgment both as to form and content.

21 **JURISDICTION**

22 4. This civil enforcement action is brought by Plaintiff in the public interest under the laws of
23 the State of California. As Defendants have offered for sale and/or sold products throughout the State of
24 California, including Alameda County, the Alameda County Superior Court ("Court") has jurisdiction of
25 the subject matter hereof and of the Parties hereto.

26 **APPLICABILITY**

27 5. This Stipulated Final Judgment is applicable to Defendants and to their agents, servants,
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1 employees, representatives, officers, directors, managers, subsidiaries, successors and assigns, and to any
2 and all persons, employees, corporations, and other entities who are acting in concert or participating with
3 Defendants, with actual or constructive notice of this judgment. The Stipulated Final Judgment also
4 applies to Defendants to the extent they are controlling marketing, selling or distributing products through
5 licensees, franchisees or distributors, or in connection with a licensing agreement or product distribution
6 agreement. Whenever the term "Defendants" is used herein, it shall be understood and defined as
7 described above.

8 6. Nothing in this Stipulated Final Judgment shall excuse the Defendants from meeting any
9 more stringent requirements which may be imposed hereinafter by changes in applicable and legally
10 binding legislation, regulations, ordinances and/or permits.

11 DEFINITIONS

12 7. The following phrases in this Stipulated Final Judgment have the meaning set forth below:

13 A. "ADEQUATE AND WELL-CONTROLLED HUMAN CLINICAL STUDY"

14 means a clinical study conducted on humans that is randomized, double-blind, placebo-controlled,
15 conducted by persons qualified by training and experience to conduct such study, with statistically
16 significant results as to the claim, advertisement or representation at issue.

17 B. "DISEASE" means any damage to an organ, part, structure, or system of the body
18 such that it does not function properly or a state of health leading to such dysfunctioning, including
19 any mental health disease or disorder, and specifically includes the following non-exclusive list of
20 such diseases: allergies, asthma, anxiety, fibromyalgia, insomnia, restless leg syndrome, spine pain
21 (including cervical pain), sleep apnea, snoring, or temporal mandibular joint syndrome (TMJ).

22 C. "SUBSTANTIALLY EQUIVALENT DEVICE" shall have the same meaning set
23 forth in section 513(i) of the Food Drug and Cosmetic Act (21 U.S.C. § 360c(i)).

24 INJUNCTIVE RELIEF

25 8. Defendants shall be and are hereby permanently enjoined and restrained, pursuant to
26 California Business & Professions Code sections 17203, 17204 and 17535, from doing, directly or
27 indirectly, any of the following within California:
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A. Making or disseminating, or assisting others in making or disseminating, directly or indirectly, expressly or by implication, any claim or advertisement, including any claim or advertisement made through the use of a product name, endorsement, depiction, illustration, labeling or label, consumer testimonial, expert endorsement or other product endorsement, that any pillow product, including but not limited to any pillow marketed or sold under the trade name "MyPillow," can affect the structure or function of the human body or cure, mitigate, treat, or prevent any DISEASE or symptom thereof, unless:

- i. the pillow product in question complies with California Health and Safety Code section 111550, pertaining to the sale of medical devices; and
- ii. at the time of making any such claim or representation, it is true, not misleading, and Defendant already has in its possession and relies on at least one ADEQUATE AND WELL-CONTROLLED HUMAN CLINICAL STUDY conducted on the product or a SUBSTANTIALLY EQUIVALENT DEVICE.

To the extent such claims are made by third-parties and appear on social media accounts affiliated with Defendant (including Facebook), Defendant shall remove such statements as soon as it becomes aware of them.

B. Violating the provisions of any of the following statutes: California Health and Safety Code section 110400, by delivering in commerce any device that is falsely advertised; California Health and Safety Code section 111440, by manufacturing, selling, delivering, holding, or offering for sale any device that is misbranded; California Health and Safety Code section 111445, by misbranding any device; and/or California Health and Safety Code section 111450, by delivering in commerce any device that is misbranded;

C. Violating the provisions of California Civil Code section 1770(a)(5), by representing that Defendants' goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that Defendants have a sponsorship, approval, status, affiliation, or connection which they do not have;

1 D. Making and/or disseminating any claim or representation, directly or indirectly,
2 about any user or endorser of any pillow product unless Defendants disclose, clearly and
3 prominently and in visual proximity to any written claim or in temporal proximity to any claim
4 conveyed by voice, any material connection between such user or endorser and any Defendant. For
5 purposes of this Section, a "material connection" shall mean any relationship that materially affects
6 the weight or credibility of the user testimonial or endorsement and that would not reasonably be
7 expected by consumers, including, but not limited to monetary payments from the endorser to the
8 seller, or from the seller to the endorser, or the provision of goods, services, or other benefits to
9 anyone providing a user testimonial or endorsement.

10 E. Advertising in any media, including but not limited to television, radio, print,
11 Internet or product labels, that any product is an "official" product (or words to that effect) of any
12 foundation, non-profit organization or other trade group ostensibly devoted to the study of sleep or
13 sleep conditions. In order to give sufficient time for full compliance, Defendants shall have until
14 January 31, 2017, to come into compliance with the provisions of Paragraphs 8.D. and 8.E. of this
15 Final Judgment.

16 9. Nothing in this Stipulated Final Judgment shall be construed as:

17 A. Permitting or allowing Defendants to market, advertise, distribute or sell a "medical
18 device" as that term is used in 21 U.S.C. Section 321(h) in violation of the federal statutes, rules or
19 regulations pertaining thereto;

20 B. Permitting or allowing Defendants to engage in any violation of law, including any
21 false advertisement, that occurs, takes place or exists as of the time of entry of judgment or at any
22 time thereafter; and

23 C. Relieving Defendants of the obligation to follow any applicable law or statute not
24 referenced herein.

25 10. Any amended statute, or regulation, successor statute or regulation or renumbered statute or
26 regulation will have the same force and effect as the statutes and regulations cited in this Final Judgment.
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MONETARY RELIEF

11. Pursuant to Business and Professions Code sections 17203, 17206, 17535 and 17536, Defendants shall make monetary payments in this matter is as set forth below:

A. Restitution: As Defendant My Pillow, Inc., has previously agreed to pay restitution to California consumers in connection with an independent and uncoordinated class action lawsuit styled *Amiri v. My Pillow, Inc.* (San Bernardino Superior Court Docket #CIVDS 1606479, filed Apr. 26, 2016), the Court therefore orders that additional restitution in this matter shall take the form of *cy pres* in the amount of one hundred thousand dollars (\$100,000.00). Said restitution shall be paid to non-profit organizations that provide or support overnight sleeping accommodations to those in need of assistance, including the homeless and those who are victims of domestic violence, as set forth in Schedule A, attached hereto. Defendants shall issue separate cashier checks payable to each recipient organization in the respective amounts set forth therein. The checks shall be delivered via overnight mail or hand delivery to Deputy District Attorney Matthew Beltramo no later than five (5) business days after the date of entry of this Final Judgment.

B. Civil Penalties: Defendants are hereby jointly and severally ordered pursuant to Business & Professions Code sections 17206 and 17536, to pay civil penalties in the total amount of nine hundred ninety-five thousand dollars (\$995,000.00). Civil penalties shall paid in the form of cashier's check, money order or trust fund check and shall made payable to the "Marin County District Attorney's Office," which office shall distribute the payment in equal amounts between the District Attorney offices representing the People in this action, in accordance with Business and Professions Code section 17206 and Government Code Section 26506. The cashier's check or money order shall be delivered via hand delivery or overnight mail to Deputy District Attorney Matthew Beltramo no later than there (3) business days after the date this judgment is entered.

COMPLIANCE

12. For the purpose of securing compliance with the terms of this Stipulated Final Judgment,

1 Defendants are hereby ordered and mandated to do all of the following:

2 A. Defendants shall create, maintain and make available to any representative of the
3 People for inspection and copying, within fifteen (15) days of any written request to do so, the
4 following:

5 i. all written documents from or correspondence with the Food and Drug
6 Administration regarding any approval for use or exemption described in paragraph 8(A)(i),
7 above;

8 ii. all ADEQUATE AND WELL-CONTROLLED HUMAN CLINICAL
9 STUDIES for the types of claims described above. Each such ADEQUATE AND
10 WELL-CONTROLLED HUMAN CLINICAL STUDY shall contain the date of its
11 inclusion in this file, and shall be maintained for at least five (5) years from the date of its
12 inclusion in this file; and

13 iii. A file that contains all tests, reports, studies, surveys, demonstrations,
14 information or other evidence in Defendants' possession or control, if any, that contradict,
15 qualify or call into question any claim or representation made and/or disseminated for any
16 of Defendants' products, or that contradict, qualify or call into question the basis upon
17 which Defendants relied on such claim or representation, including but not limited to
18 complaints from consumers and complaints or inquiries from governmental organizations.
19 For each such item, the date of its inclusion in the file shall be noted, and such item shall be
20 maintained for at least five (5) years from the date of its inclusion in this file.

21 B. Within thirty (30) days of the date of the entry of this Stipulated Final Judgment,
22 Defendants shall provide a copy of this Final Judgment to each of their current principals, officers,
23 directors and managers, affiliates, subsidiaries and to all personnel, agents and representatives
24 having primary authority over sales, advertising or policy responsibility with respect to the subject
25 matter of this Final Judgment and shall obtain from each such person a legible signed written
26 acknowledgment indicating that he or she has received a copy of this Final Judgment, read it,
27 understood its terms, and agreed to fully abide by all of its terms. Defendants shall provide written
28

1 verification of such acknowledgments to the People within fifteen (15) days of any written request
2 to do so;

3 C. For a period of five (5) years after entry of this Stipulated Final Judgment,
4 Defendants shall provide a copy of this Final Judgment to each of their future principals, officers,
5 directors and managers, future affiliates, future subsidiaries, and to all future personnel, agents and
6 representatives having primary authority over sales, advertising or policy responsibility with
7 respect to the subject matter of this judgment within ten (10) days after the person commences his
8 or her responsibilities. Defendants shall obtain from each such person a legible signed written
9 acknowledgment indicating that he or she received a copy of this Stipulated Final Judgment, read it,
10 understood its terms, and agreed to fully abide by all of its terms. Defendants shall maintain and
11 upon request make available, within fifteen (15) days of receipt of a written request, to
12 representatives of the People for inspection and copying, all such legible signed written
13 acknowledgments.

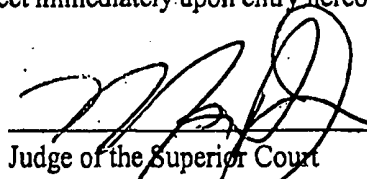
14 **JURISDICTION RETAINED**

15 13. Jurisdiction is retained for the purposes of enabling any party to this Stipulated Final
16 Judgment to apply to the Court at any time for such order or directions as may be necessary or appropriate
17 for the construction of or carrying out of this Stipulated Final Judgment, for the modification or termination
18 of any of the injunctive provisions thereof, for the enforcement of compliance therewith, or for the
19 punishment of violations thereunder.

20 **EFFECT AND ENTRY**

21 14. This Final Judgment shall take effect immediately upon entry hereof.

22
23 DATED: 10/31/16

24 By: 
Judge of the Superior Court

25 **MORRIS JACOBSON**

SCHEDULE A: NON-PROFIT SHELTERS

Name of Shelter (Payee)	Address	EIN	Amount
Homeward Bound of Marin	1385 N. Hamilton Parkway Novato, CA 94949	68-0011405	\$10,000
Safe Alternatives to Violent Environments Inc.	1900 Mowry Ave, Suite 201 Fremont, CA 94538	94-2520559	\$10,000
Shasta Women's Refuge (d/b/a One Safe Place)	2280 Benton Drive, Suite A Redding, CA 96003	94-2663045	\$10,000
Napa Emergency Women's Services	1141 Pear Tree Lane, Suite 220 Napa, CA 94558	94-2745889	\$10,000
Safequest Solano	1049 Union Ave, Suites B & C Fairfield, CA 94533	94-2853669	\$10,000
Asian Americans for Community Involvement of Santa Clara County (d/b/a Asian Women's Home)	2400 Moorpark Ave San Jose, CA 95128	94-2292491	\$2,000
Maitri	PO Box 697 Santa Clara, CA 95052	94-3132087	\$2,000
Young Women's Christian Association of Silicon Valley	375 South Third Street San Jose CA 95112	94-1186196	\$2,000
Community Solutions for Children Families and Individuals	16264 Church Street, Suite 103, Morgan Hill, CA 95037	23-7351215	\$2,000
Next Door Solutions to Domestic Violence	234 E Gish Rd #200 San Jose, CA 95112	94-2420708	\$2,000
Community Action Partnership of Sonoma County	141 Stony Circle, Suite # 210 Santa Rosa, CA 95401	94-1648949	\$10,000
Mercy House Living Centers (d/b/a Mercy House)	P.O. Box 1905 Santa Ana, CA 92702	33-0315864	\$10,000
Pass The Word Ministry (d/b/a We Help Homeless Women)	P.O. Box 2674 Monterey, CA 93942	45-2534088	\$10,000
Walnut Avenue Family and Women's Center	303 Walnut Ave Santa Cruz, CA 95060	94-1186197	\$5,000
Monarch Services Inc.	1509 Seabright Ave. C-1, Santa Cruz, CA 95062	94-2462783	\$5,000

Total: \$100,000