

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

ANDREW TYLER FOSTER et al.,)	
individually and on behalf of all others)	
similarly situated,)	Lead Case No. 6:15-CV-03519-BCW
)	
Plaintiffs,)	Hon. Brian C. Wimes
)	
v.)	<i>Related Cases:</i>
)	6:16-cv-03109-BCW
L-3 COMMUNICATIONS EOTECH, INC. et)	4:16-cv-00095-BCW
al.,)	4:16-cv-00438-BCW
)	4:16-cv-00439-BCW
Defendants.)	
_____)	/

SECOND CONSOLIDATED AMENDED COMPLAINT

1. This is a class action brought by Plaintiffs on behalf of all consumers in the United States who purchased any of defendants' holographic weapons sights (the "Sights").

2. Holographic weapons sights are devices that are mounted on top of weapons such as rifles to help the shooter make an accurate shot. Defendants have made false and misleading claims that its Sights are rugged, "battle ready and have proven themselves time and again," and "[p]recisely designed and rigorously tested to perform in the most demanding environments" in their marketing, labeling, advertising, packaging and promotional materials. In addition, Defendants represented that EOTech Sights were: (1) capable of operating at temperatures ranging from -40 to 150 degrees Fahrenheit; (2) fogproof; and (3) free of "parallax."

3. In fact, however, EOTech has now admitted that these representations are false.

4. EOTech has admitted that its Sights are materially affected by temperature changes and lose accuracy due to as little as a 20 degree change in temperature.

5. EOTech has also now admitted that EOTech Sights also suffer from "reticle dimming" due to fogging in high humidity conditions and well below the upper range of the purported operating temperatures.

6. EOTech has further admitted that EOTech Sights also exhibit "a varying degree of parallax depending upon operating conditions." Parallax refers to a type of visual distortion and the greater the parallax the greater the discrepancy between the location of the actual target and the point the user is actually aiming at. In fact, the parallax problem is even worse; EOTech sights suffer from parallax regardless of operating conditions. EOTech has recently admitted that there is a significant shift across the view window at any temperature and this effect increase with temperature variations.

7. As a result, EOTech Sights do not possess the durability, reliability or accuracy represented by Defendants.

8. EOTech began manufacturing and marketing holographic weapons sights to military and law enforcement agencies in 1996 and later entered the consumer market. On this basis, Defendants advertised to consumers that they tested EOTech Sights in accordance with military standards to ensure that they met the advertised specifications.

9. Beginning in 2000, Defendants began manufacturing, labeling, marketing, promoting and distributing EOTech Sights for use by recreational shooters and hunters. EOTech has targeted its marketing of EOTech Sights to outdoorsmen, hunters, and consumers seeking rugged and durable sights capable of rapid and precise target acquisition in harsh conditions.

10. On November 25, 2015, Defendants entered into a settlement with the United States Attorney for the Southern District of New York in which they admitted that they knowingly sold defective holographic weapons sights to the U.S. Government from 2007 through 2014. Defendants admitted that EOTech Sights were not accurate within the specified temperature range, exhibited signs of parallax, that the parallax dramatically increased at lower temperatures, and that EOTech Sights exhibit reticle dimming from moisture, i.e., fogging, in high humidity conditions. Defendants also agreed to pay \$25.6 million in settlement of the claims.

11. Only at or near the time of this settlement did Defendants update their website and marketing materials to warn consumers of the defects that were known for nearly a decade.

12. Plaintiffs seek relief in this action individually and on behalf of a nationwide Class and state subclasses (as defined herein) under the federal Magnuson-Moss Warranty Act,

15 U.S.C. § 2301 *et seq.*; state consumer fraud statutes; breaches of express and implied warranties; and unjust enrichment.

THE PARTIES

13. Plaintiffs Andrew Tyler Foster, Steve Fenner, Kent Ward, Staci Dixon Caron and Jesse Rolfes are individuals and residents of the State of Missouri. During the relevant period, these Plaintiffs purchased Defendants' EOTech Sights in the State of Missouri.

14. Mr. Foster purchased an EOTech Sight at The Arms Concierge in 2012 for \$625.

15. Mr. Rolfes has been a hunter and recreational shooter for over thirty years, and owns a custom gun shop. He purchased an EOTech Sight, model 512.A65, from Razorback Armory in Des Peres, Missouri for \$495 in August of 2015.

16. Plaintiff Bruce Gibson is an individual and resident of the State of Arkansas. In 2012 and 2013, Mr. Gibson purchased EOTech Sights from Larue Tactical and Bravo Company in Arkansas.

17. Plaintiff Alan Gibbs is an individual and resident of the State of Arizona. In 2015, Mr. Gibbs purchased two EOTech Sights from Amazon.com.

18. Plaintiff Jason Brooks is a citizen and resident of the State of California who is employed as a patrol sergeant for the Woodland Police Department. In February of 2015, Mr. Brooks purchased an EOTech EXPS3-0 for personal use from RifleGear's retail website for \$629.00. At the time of the purchase, Mr. Brooks was unaware, and in the exercise of reasonable diligence could not have discovered, that EOTech Sights could not properly operate in temperatures from -40 to 150F, were not parallax-free and were not fogproof. Mr. Brooks has complied with the notice requirements of all applicable California Code sections and sent his demand letter to Defendants on January 20, 2016.

19. Plaintiff Chris Drummond is an individual and resident of the State of Colorado. In 2012, Mr. Drummond purchased an EOTech Sight from Sportsman's Warehouse.

20. Plaintiff Kainoa Kaku is an individual and resident of the State of Hawaii. In 2015, Mr. Kaku purchased an EOTech Sight in the State of Hawaii.

21. Plaintiff Travis Young is an individual and resident of the State of Illinois. In 2012, Mr. Young purchased an EOTech Sight from Midway USA in Illinois.

22. Plaintiff Richard Morgan is an individual and resident of the State of Kentucky. In 2014, Mr. Morgan purchased an EOTech Sight from Quantico Tactical in Kentucky.

23. Plaintiff Chris Hammers is an individual and resident of the State of Massachusetts. During the relevant period, Mr. Hammers purchased an EOTech Sight in Massachusetts.

24. Plaintiff Rob Dunkley is an individual and resident of the State of Michigan. During the relevant period, Mr. Dunkley purchased an EOTech Sight from Shupach's Sporting Goods in Michigan.

25. Plaintiff Chad Mingo is an individual and resident of the State of Nevada. In 2012 and 2014, Mr. Mingo purchased EOTech Sights from Optics Planet in Nevada.

26. Plaintiff Jerry Chen is a citizen and resident of the State of Oregon. Mr. Chen purchased an EOTech Sight in 2010 and a second EOTech sight in 2012.

27. Plaintiff Michael Ma is a citizen and resident of the State of Texas. Mr. Ma has purchased multiple EOTech sights over the years with his latest purchase in April of 2014. Mr. Ma has complied with the notice requirements of all applicable Texas Code sections including but not limited to the Texas Deceptive Trade Practices Act and sent his demand letter to defendants on December 9th 2015, including copies to the Texas Attorney General Office of

Consumer Protection.

28. Plaintiff April Smith is an individual and resident of the State of North Carolina. In 2014 or 2015, Ms. Smith purchased an EOTech Sight in North Carolina.

29. Plaintiff Jim Richard is an individual and a resident of the State of Virginia. Mr. Richard has purchased four EOTech Sights since September of 2013.

30. Plaintiff Timothy Braginton is an individual and resident of the State of Nevada. Mr. Braginton purchased an EOTech Sight in Nevada in as early as 2007.

31. Plaintiff Trevor Weir is an individual and resident of the State of Nevada. Mr. Weir purchased an EOTech Sight in Nevada in 2009.

32. Plaintiff Clay Pittman is an individual and resident of the State of Texas. Mr. Pittman purchased an EOTech Sight in Texas in 2012.

33. All of the Plaintiffs relied on EOTech's representations about the accuracy, durability, and specific performance standards of the Sights. At the time of their purchases, Plaintiffs were unaware, and in the exercise of reasonable diligence could not have discovered, that EOTech Sights could not properly operate in temperatures from -40 to 150F, were not parallax-free and were not fogproof. Had Plaintiffs known the truth about the Sights, they would not have purchased them or would not have paid as much as they did for them.

34. Defendant L-3 Communications EOTech, Inc. ("L-3 EOTech") designs, manufactures, and markets holographic weapon sights. L-3 EOTech's principal place of business is at 1201 E. Ellsworth Road, Ann Arbor, Michigan, 48108. Since 2010, L-3 EOTech has been part of the Warrior Systems Division of defendant L-3 Communications Corporation.

35. Defendant L-3 Communications Corporation ("L-3") is the parent company of L-3 EOTech. L-3 is headquartered at 600 Third Avenue, New York, New York, 10016. L-3 is a

publicly traded company registered on the New York Stock Exchange. L-3 had \$10.5 billion in sales in 2015. L-3 is registered to do business in Missouri.

36. From 2005 until 2010, EOTech was a wholly owned subsidiary of L-3. In 2010, as part of a corporate restructuring in connection with L-3's acquisition of Insight Technology, EOTech became part of the Warrior Systems Division of L-3.

JURISDICTION AND VENUE

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

38. This Court also has subject matter jurisdiction under 28 U.S.C. § 1331 because the claims herein arise in part out of violations of federal law.

39. This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

40. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (b) and (c), because: (i) Defendants are actively doing business in this State and subject to personal jurisdiction throughout the State; (ii) Defendants transact business in the State and in the District based on their sales with residents of the District; (iii) upon information and belief Defendants have committed unlawful acts in the District by and through their sales and/or finance practices with residents of this District; and (iv) a substantial part of the events or omissions giving rise to the claim occurred in this District.

SUBSTANTIVE ALLEGATIONS

A. Holographic Weapons Sights

41. A holographic weapon sight, as seen below, superimposes a “reticle,” which is a circle or crosshairs or other symbol that helps the shooter aim, on to the shooter’s view of the target area through the sight.



42. One supposed advantage of a holographic weapon sight is that they generally have much less “parallax” than more traditional “red dot” sights. Parallax refers to the target distortion that occurs when the reticle is not in the center of a traditional scope or when the shooter’s head moves such that they are not looking through the center of the scope.

43. Accordingly, holographic weapons sights are supposed to afford the shooter a larger field of view and increased peripheral vision.

44. Before use, a sight must be configured, or “zeroed,” to ensure that the sight and the trajectory of the projectile meet at a certain range. That is to say, when the shooter zeroes the sight he or she is ensuring the point of aim corresponds to the point of impact of the projectile. A scope’s ability to “maintain zero,” or remain accurate, is critical for an accurate shot, which is the core function of a weapon sight.

B. Defendants’ False And Misleading Marketing Of EOTech Sights

45. EOTech marketed the Sights to hunters, outdoorsmen, current and former military personnel and shooters needing rapid and accurate target acquisition in different conditions.

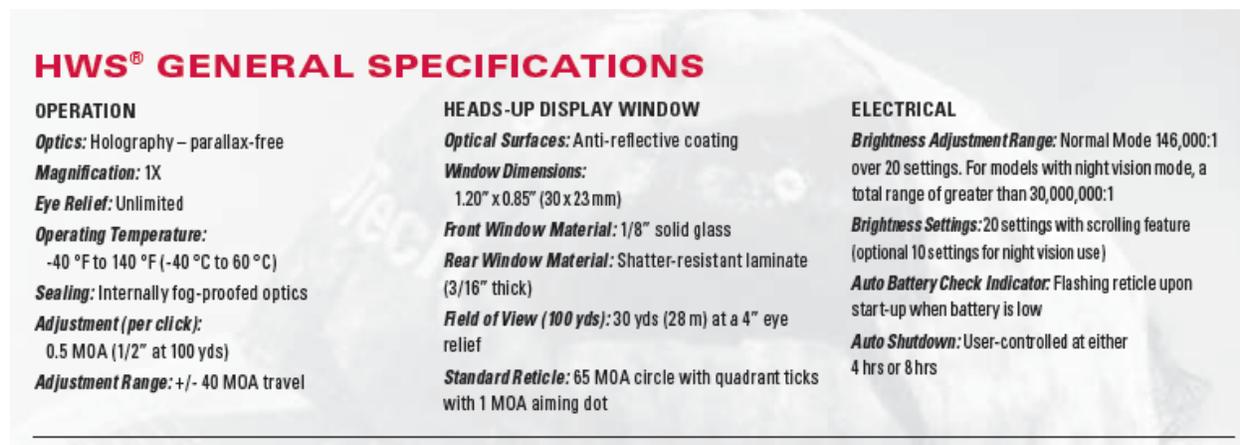
46. Throughout the period relevant to this lawsuit and until very recently, EOTech made three specific performance representations to consumers:

- (a) The Sights could perform in temperatures ranging from -40 degrees to 150 degrees Fahrenheit;
- (b) The Sights were fogproof; and
- (c) The Sights were free from parallax.

47. These representations were contained on EOTech’s website, which stated that the Sights’ operating temperature was -40 degrees to 140 degrees F, that the optics were fogproof, and that the Sights were free from parallax.

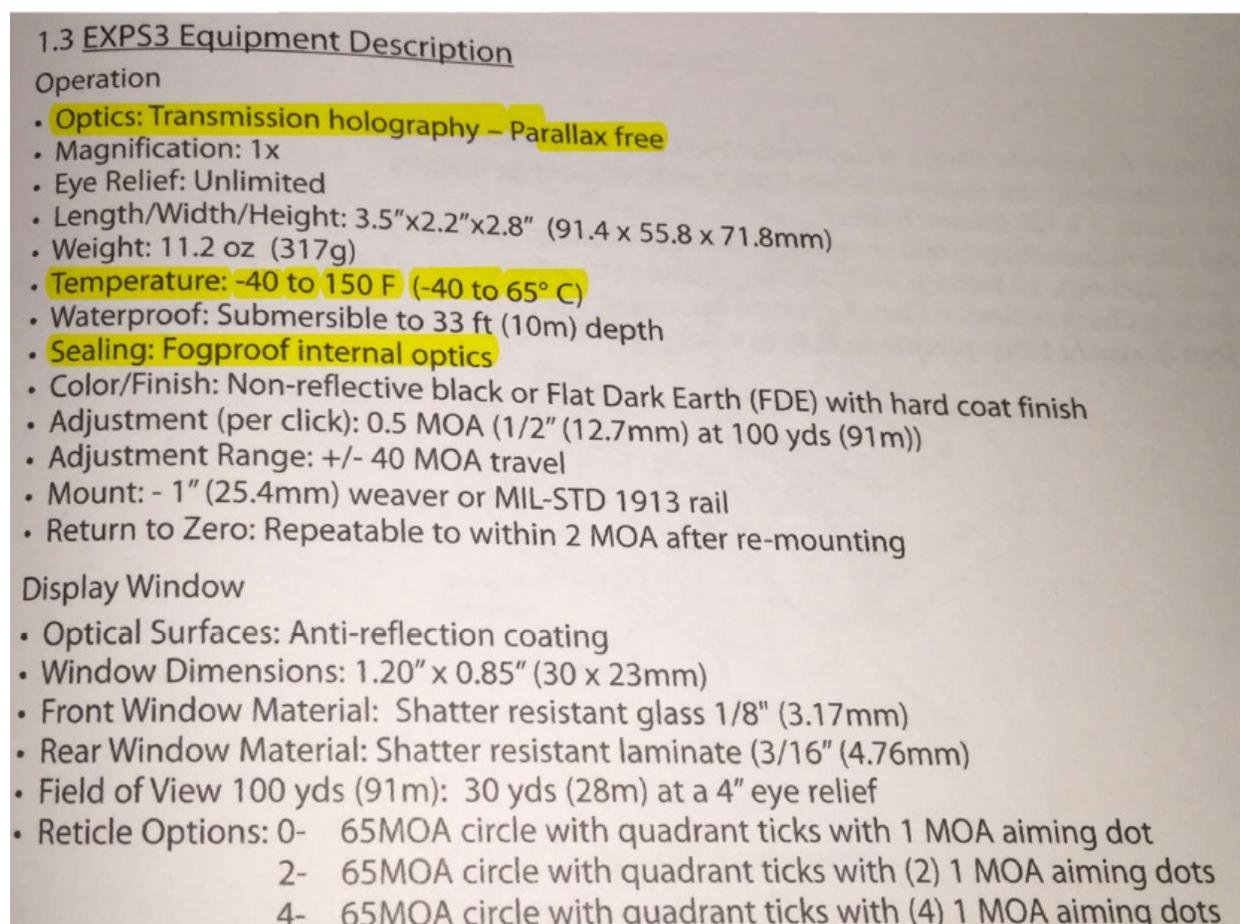
48. After the government settlement, EOTech removed these representations from its website.

49. These representations were also made in EOTech’s catalogs. Below is an excerpt from EOTech’s 2014 catalog:



50. These representations were also made by EOTech in point-of-sale literature.

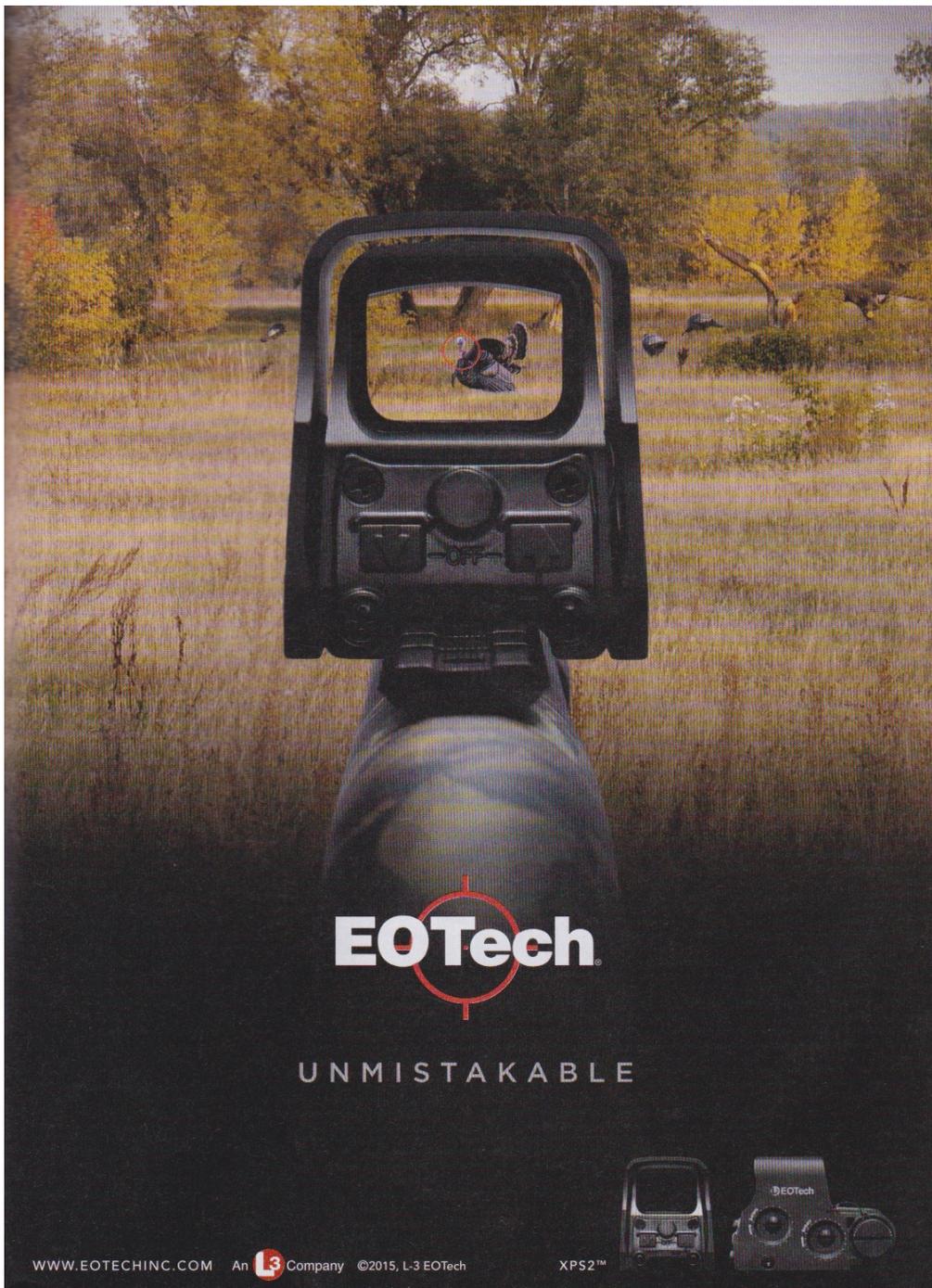
51. In addition, these representations were also contained in the user manuals, which were available on EOTech's website. For example, Mr. Brooks' manual makes typical misrepresentations concerning the temperature range, parallax, and the supposedly fogproof optics:



52. Not surprisingly for a company selling weapon sights, EOTech made frequent and emphatic representations about the Sights' accuracy. EOTech's ads stress the importance of

accuracy, as shown by print ads featuring a hostage situation and hunting, all emphasizing accurate shot placement:





53. EOTech also made representations about the Sights' ability to function in rugged and harsh conditions. Below are advertisements that have been disseminated by EOTech in various media and other publications as well as catalogs.



MODEL 552™

Standardized by the DEA, ATF, and FBI HRT, the Model 552 offers Night Vision-compatible. The AA battery model is the sight of choice by military units like Stryker Brigade, 10th Mountain and 3rd Infantry. It is battle-proven to withstand the abuse that any harsh environment, high-powered weapon platform, or military mission can dish out.

MODEL 553™

Selected by USSOCOM to withstand the demands of our elite fighting forces, the 553 delivers precise accuracy with state-of-the-art holographic sight technology and extreme durability in even the harshest conditions. This Night Vision-compatible sight offers a quick-detach lever and waterproof capability up to 66 ft.

(Note: Certain commercial variants of the MIL-STD-1913 rail specification may not be compatible with the Model 553 mounting assembly)



See page 13 for info.



54. The ads shown above boast that the Sights feature “extreme durability in even the harshest conditions” and are “battle-proven to withstand the abuse that any harsh environment, high-powered weapon platform or military mission can dish out.”

55. Similarly, on its website EOTech currently describes its Model 553 as follows: “Model 553™ was originally created to withstand extreme and rugged situational conditions.”

56. EOTech aggressively uses its military and law enforcement sales as a marketing tool to convince consumers that the sights are accurate and durable.

57. EOTech’s website promotes its Model 552 to sportsmen and hunters as follows: “Model 552 is in use by military forces and government agencies like the DEA, ATF and FBI.”

58. On its website, EOTech currently describes its Model 553 as follows: “Model 553™ was originally created to withstand extreme and rugged situational conditions. The Model 553 is battle-proven and offers features required by U.S. Special Forces to meet the stringent requirements of our elite fighting forces.”

59. In the “Company Profile” section of its website, EOTech also advertised that “USSOCOM awarded EOTech a contract in 2005. Special Operations and the Marine Corps chose the HWS as their standard close combat optic.”

60. These military and law enforcement connections lead consumers to believe that the Sights are of the highest quality, since military and law enforcement have more demanding performance and reliability standards.

C. EOTech’s Representations Were False

61. On November 24, 2015, the United States Attorney for the Southern District of New York filed a claim against EOTech, its parent corporation, L-3 Communications Corp., and its CEO under the False Claims Act on behalf of the Department of Defense, the Federal Bureau of Investigation, and the Department of Homeland Security.

62. In the False Claims Act complaint, the United States alleged EOTech knew at least as far back as 2006 that the Sights could not operate properly in temperatures ranging from

-40 to 150F as represented. The complaint further alleged EOTech knew since at least 2007 that the EOTech Sights suffered from “thermal drift,” or failure to maintain zero, of up to 20 minutes of angle (“MOA”), or 20 inches per one hundred yards, and parallax error at low temperatures, once again contrary to representations made to both the government agencies and consumers.

63. The complaint also alleged that by 2008, EOTech knew their Sights were not fogproof and failed to perform as represented in humid environments and that EOTech knew that the Sights allowed moisture into the optics causing a degradation of the reticle image.

64. The following day, on November 25, 2015, both Defendants entered into a Stipulation and Order of Settlement and Dismissal with the United States Attorney and agreed to pay the U.S. Government \$25.6 million. In the Stipulation, EOTech expressly admitted the following:

- In 2006, EOTech became aware that its sights failed to maintain zero with temperature changes, a condition it referred to as “thermal drift.”
- Beginning in 2011, EOTech conducted testing of sights sold to Crane [the government contracting entity] and found thermal drift of 2 to 6 MOA over temperature variations for its carbine sights and up to 6 to 12 MOA over temperature variations for its grenade launcher and heavy machine gun sights.
- In early 2007, EOTech became aware that its sights were experiencing increasing parallax error in cold temperature. At 32° F, the parallax error was 12 MOA, i.e., 12 inches for every hundred yards, when measured from outside edge to outside edge of the sight; and at 5° F, the error was more than 20 MOA, from outside edge to outside edge.
- In February 2009, EOTech became aware, based on testing a sample of sights, that moisture was entering its sights. When moisture enters a sight, it can cause a dimming of the reticle.
- Reticle dimming can occur more quickly in humid environments. An optic's reticle is necessary to allow the user to acquire a target.

65. EOTech's representations about accuracy and durability and the ability to function in different environments are false and misleading since the Sights lose accuracy when the temperature changes or when the weather becomes too humid.

66. In sum, EOTech admitted that it knew the same EOTech sights sold to the government and consumers could not "maintain zero" in the operating temperature ranges as represented, that EOTech sights suffered from substantial parallax error in the lower ranges of the operating temperatures, and that the EOTech Sights were not fogproof, but in fact suffered from moisture damage in humid environments which caused reticle dimming and prevented the user from acquiring a target.

67. Indeed, the Sights do not even return to zero when they are removed from higher or lower temperatures back to a moderate climate.

68. Recently EOTech has admitted that the parallax issue is always present, regardless of temperature, and is larger than previously disclosed. The parallax distortion is worse when the sight is used in varying temperatures. In fact, EOTech requires new law enforcement purchasers to acknowledge that, among other issues, that the HWS experience a 14 MOA parallax distortion "across the viewing window." This would equate to a shift of up to 14 inches at 100 yards and gets worse as the temperature varies from 71 degrees.

D. EOTech's Representations Were Material

69. The sole purpose of EOTech's rifle sights is to help the shooter make an accurate shot.

70. Recently, on April 3, 2016, the *Washington Post* highlighted how various military units are still using EOTech's defective equipment. Even with the government settlement, those units have not been recalled. EOTech is using this fact to its marketing advantage by claiming the sights are still in use by the military.

71. In the shooting world, both recreational and for hunting and defense, accuracy is of the utmost importance. This has been the case historically and is the case today. Those considered the most knowledgeable or experienced in the firearms community have maintained accuracy to be one of the cardinal tenets of shooting.

72. As Sergeant Evan Marshall, formerly of the Detroit Police Department, a firearms instructor for the U.S. Army, the Federal Air Marshals and various narcotics raid teams has stated, “The three most important components of stopping power are bullet placement, bullet placement and bullet placement.”

73. For hunters, accuracy is crucial for the humane taking of game. For example, the vital zone of a moose is approximately 20 inches. Given the 20 MOA drift of the EOTech Sights, a hunter taking a shot at 100 yards could fire at the exact center of the vital zone of a moose necessary for a humane shot and still miss by ten inches to one side or the other. Smaller game or increased ranges only magnifies this effect.

74. EOTech’s 2014 catalog emphasizes the importance of the “parallax-free” representation and contrasts it with typical, less expensive, red-dot sights:

Parallax-Free

- **EOTech-** By using flat glass the HWS is parallax-free across the entire viewing window. The user’s eye does not need to be centered in the window of the sight for it to maintain accuracy. Point of aim and point of impact are maintained regardless of the operator’s head position.
- **Typical Red Dot-** Using concave glass, typical red dots are only parallax-free in the center of the viewing window. Parallax error, or dot shift, occurs if the shooter acquires a target in all other areas of the window.

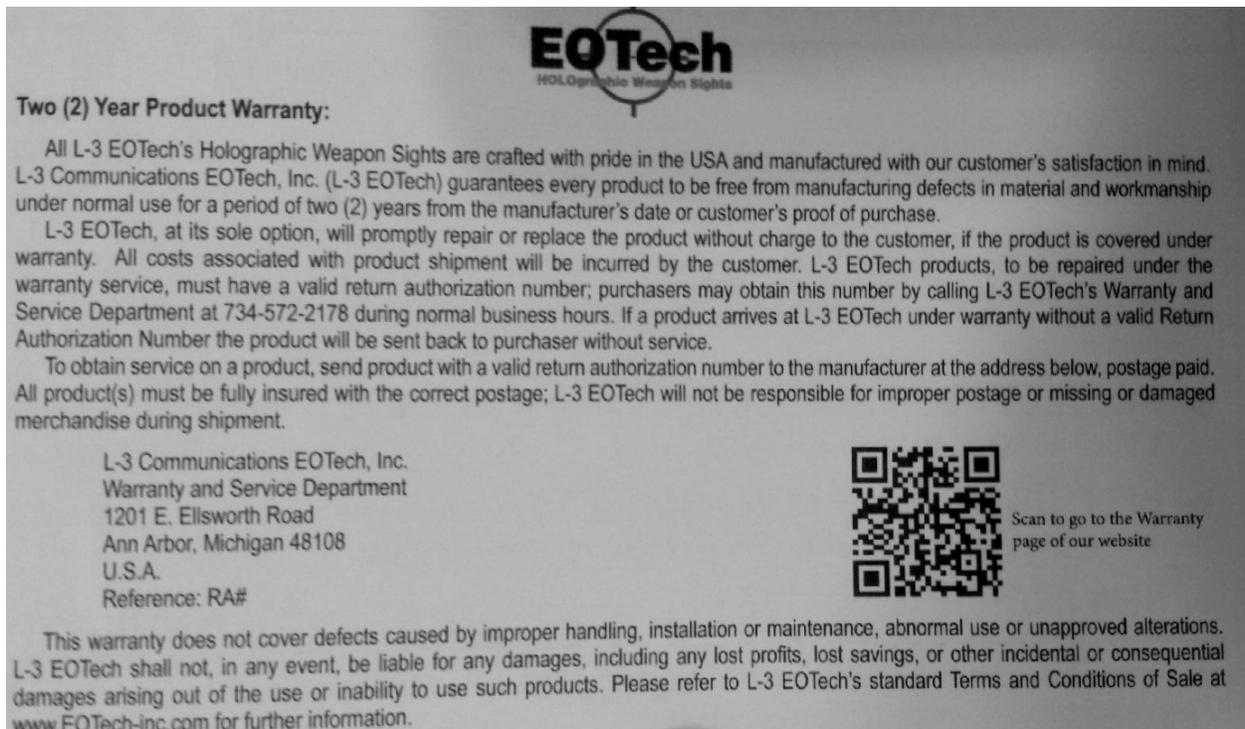
75. The difference between a sight that is truly parallax-free and one that is not is similar to looking at an object through a pane of optically neutral glass as opposed to looking at

an object through water. With the neutral glass the object is on the exact same plane but when looking through the water the apparent position of the object is shifted.

76. EOTech's misrepresentations that EOTech Sights were accurate, function properly in operating temperatures from -40 to 150 F, are parallax free and fogproof, and can function in extreme conditions were material and pertain to the quality, durability, functionality and value of the Sights. Plaintiffs and members of the Class purchased a product that they would not have purchased or would not have paid as much for if the EOTech Sights had been marketed or advertised accurately.

E. EOTech Provides a Written Warranty

77. Below is a copy of the warranty found on the Sights' packaging:



78. On EOTech's website there is/was further warranty information:



Holographic Weapon Sights Warranty Information

Two (2) Year Product Warranty:

All EOTech Holographic Weapon Sights are crafted with pride in the USA and manufactured with our customer's satisfaction in mind. EOTech guarantees every product to be free from manufacturing defects in material and workmanship under normal use for a period of two (2) years from the manufacturer's date or customer's proof of purchase.

EOTech, at its sole option, will promptly repair or replace the product without charge to the customer, if the product is covered under warranty. All costs associated with product shipment will be incurred by the customer. EOTech products, to be repaired under the warranty service, must have a valid return authorization number; purchasers may obtain this number by submitting a Return Authorization Request Online at www.eotechinc.com/raform.php. If you do not have access to a computer, you may call EOTech for assistance. Products that arrive at EOTech without a valid Return Authorization Number the product will be sent back to purchaser without service.

Once you receive the RMA# , send product to the manufacturer at the address below, postage paid. All product(s) must be fully insured with the correct postage; EOTech will not be responsible for improper postage or missing or damaged merchandise during shipment.

This warranty does not cover defects caused by improper handling, installation or maintenance, abnormal use or unapproved alterations. EOTech shall not, in any event, be liable for any damages, including any lost profits, lost savings, or other incidental or consequential damages arising out of the use or inability to use such products. Please refer to EOTech's standard Terms and Conditions of Sale at www.eotechinc.com for further information.

How to Return Products for Repair

See instructions on the [holographic weapon sights parts and repair](#) page of the website.

79. EOTech made an implied warranty of merchantability to consumers that the Sights were capable of performing in accordance with their intended use.

80. Defendants were on notice of the defects in the Sights at least as early as 2006 for the failure to maintain zero in temperature changes and 2009 for the failure of the Sights to keep moisture out.

F. EOTech Conceals The Defects

81. The issues complained of here have long been known to EOTech. However, the Defendants actively worked to conceal them.

82. EOTech's development of the HWS went through many iterations, but at all stages there were issues with thermal drift. The first generation Sights utilized a single laser and

due to thermal drift, were not brought to market. This led to the development of a different system incorporating two lasers.

83. With the new two-laser system, in order to control windage and elevation of the point of impact of the HWS, EOTech designed grating to tilt to adjust the point of impact vertically and horizontally. However, little testing was done to ensure that the grating itself moved in a consistent way when exposed to varying environmental stimuli including temperature. In addition to the thermal drift due solely to heating of the firearm itself during sustained fire, there was additional environmental temperature-based thermal drift.

84. This testing was done prior to the release of the first HWS entering the market.

85. EOTech's first generation Sights, sold until phased out in 1998, had a per-unit cost of more than \$110 at its lowest production cost. EOTech marketed the Sights through Bushnell under the Bushnell name but also sold its own branded units to consumers through its own distribution channels including Jerry's, Ellett Brothers and Cabela's.

86. During the first generation run, Bushnell ordered approximately 10,000 units and EOTech quickly discovered there was negative marginal profit. EOTech decided the cost and parts count was too high and developed a second generation of holographic weapons Sights in the late 1990s with the "core goal" of lowering the per unit cost. EOTech was able to lower the price point to below \$90 per unit with these modifications. It was these Sights in which the defects complained of herein began to manifest to an even greater extent.

87. The first generation sights contained approximately 150 parts. The second generation units had a reduced parts count of approximately 100 – 105 parts.

88. The performance characteristics of the HWS were established in the HWS equipment description document internally referred to as "The Bible."

89. EOTech failed to conduct appropriate testing on the second generation Sights before placing them on the market. Often, the testing was as informal as having employees from the marketing department go to a local quarry and shoot rifles equipped with the Sights.

90. Most notably, EOTech's Dr. Tony Tai and his engineering team tested the units only for function across the temperature ranges but failed to test to see whether point of impact and point of aim were identical across the advertised temperature extremes the units were certified to operate. This was done despite the known thermal drift issues that had been previously identified.

91. In January of 2007, the Norwegian Defense Material Command ("NDMC") was considering purchasing 17,000 Sights from EOTech. The NDMC performed tests on the Sights and determined that they did not operate properly in cold weather. The NDMC shared these findings with EOTech. The NDMC told EOTech that the defect was the sole reason EOTech would not be awarded the contract to purchase rifle sights.

92. In February of 2007, EOTech conducted its own tests which confirmed the Norwegians' findings. These were the first comprehensive and adequate tests that EOTech performed on the Sights. EOTech produced a report on these findings a few months later.

93. A major selling point of the Sights was an extremely small aiming dot coupled with a large ring, which enabled rapid target acquisition at both long and short range. The defects compromised the functionality of the scope and any market advantage.

94. Upon confirming the defects discovered by the NDMC, EOTech kept the knowledge of the defects within a very tight circle. Besides the Norwegians, only the Dutch and Canadian Ministries of Defense were notified of the defect.

95. No American customers were notified.

96. At the time, the group within L-3 that EOTech was part of, headed by Group President Chris Bade, was under a great deal of pressure to perform. EOTech was one of four divisions within the Group headed by Mr. Bade, but it was the only profitable one.

97. Immediately after the failure to obtain the Norwegian contract, EOTech management told its employees not to disclose the defect to any of EOTech's distributors, retailers, representatives or customers; indeed, no one outside EOTech was to be told.

98. Upon information and belief, this policy continued until the defects were exposed in 2015.

CLASS ACTION ALLEGATIONS

99. Plaintiffs bring this class action on behalf of themselves and all other similarly situated consumers in the United States. The proposed Class includes all individuals who purchased one or more EOTech Sights in the United States (the "Class") from 2004 until the present (the "Class Period"). Excluded from the Class are assigned judges and members of their families within the first degree of consanguinity, Defendants, and their subsidiaries, affiliates, officers, and directors.

100. Plaintiffs also bring this class action on behalf of themselves and subclasses consisting of consumers in the following states: Arkansas, Arizona, California, Colorado, Hawaii, Illinois, Kentucky, Massachusetts, Michigan, Missouri, Nevada, Oregon, and Texas (the "State Subclasses"). Excluded from the Classes are assigned judges and members of their immediate families, and Defendants, and their subsidiaries, affiliates, officers, and directors.

101. The requirements of Federal Rule of Civil Procedure 23 are satisfied for the Class and all State Subclasses.

102. The proposed Class and Subclasses are so numerous that individual joinder of all their members is impracticable. On information and belief, members of the Class and Subclasses number in the thousands. The precise number of Class members and their identities are unknown to Plaintiffs at this time but will be ascertained through appropriate discovery. Class members may be notified of the pendency of this action by mail, publication and/or through the records of Defendants and third party retailers and vendors.

103. There are many common questions of law and fact affecting Plaintiffs and Class Members. Common legal and factual questions include, but are not limited to:

- (a) whether Defendants advertised or marketed EOTech Sights in a way that was false or misleading;
- (b) whether Defendants' statements about the operating temperature range of the Sights were false or misleading;
- (c) whether Defendants' statements about the Sights being free of parallax were false or misleading;
- (d) whether Defendants' statements about the Sights being fogproof were false or misleading;
- (e) whether Defendants' statements about the accuracy and durability and the ability of the Sights to function in varied and harsh environments were false or misleading;
- (f) whether, by the misconduct set forth in this complaint, Defendants have engaged in unfair, fraudulent or unlawful business practices;
- (g) whether Defendants' conduct was committed knowingly or intentionally;

- (h) whether Defendants breached their express warranties made to Plaintiffs and Class Members;
- (i) whether Defendants breached their implied warranties made to Plaintiffs and the Class Members.;
- (j) whether Defendants' conduct violates the Magnuson-Moss Act;
- (k) whether Defendants' conduct constitutes violations of the state laws asserted herein;
- (l) whether Defendants were unjustly enriched by their conduct;
- (m) whether Class Members suffered an ascertainable loss as a result of the Defendants' misrepresentations; and
- (n) whether, as a result of Defendants' misconduct as alleged herein, Plaintiffs and Class members are entitled to restitution, injunctive and/or monetary relief and, if so, the amount and nature of such relief.

104. Plaintiffs' claims are typical of the claims of the proposed Class and Subclasses because Plaintiffs and Class Members were harmed in the same manner by the same conduct. Plaintiffs and Class Members have all sustained economic injury arising out of Defendants' violations of common and statutory law as alleged herein.

105. Plaintiffs will fairly and adequately represent and protect the interests of the Class and Subclasses. Their interests do not conflict with the interests of the Class and Subclasses they seek to represent, they have retained counsel competent and experienced in prosecuting class actions, and they intend to prosecute this action vigorously.

106. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Plaintiffs and Class Members. Given the relatively small amount of

individual damages at stake, individual litigation is not practicable. Individual Class members will not wish to undertake the burden and expense of individual cases. In addition, individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system. Individualized litigation also presents the potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

107. Questions of law and fact common to the Class and Subclasses predominate over any questions affecting only individual Class Members. Injuries sustained by Plaintiffs and Class Members flow, in each instance, from a common nucleus of operative facts, i.e., Defendants' misrepresentations and the actual capabilities of the Sights. In each case, Defendants deceived Plaintiffs and Class Members as to the accuracy, durability, and specifications of the Sights. The resolution of these central issues will be the focus of the litigation and predominate over any individual issues.

COUNT I
(For Violation of the Magnuson-Moss Warranty Act)

108. Plaintiffs and Class Members reallege and incorporate by reference each allegation set forth above.

109. EOTech Sights are consumer products as defined in 15 U.S.C. § 2301(1).

110. Plaintiffs and Class Members are consumers as defined in 15 U.S.C. § 2301(3).

111. At all relevant times, Defendants were suppliers and warrantors as defined in 15 U.S.C. § 2301(4) and (5).

112. The amount in controversy of each individual's claim is more than the sum or value of twenty-five (\$25) dollars.

113. In connection with the sale of EOTech Sights, Defendants issued written warranties as defined in 15 U.S.C. § 2301(6), which expressly warranted that EOTech Sights could operate in temperatures from -40 to 150F, were parallax-free and were fogproof. In fact, EOTech Sights suffered from thermal drift, could not maintain zero at lower temperatures, suffered parallax error, and suffered from reticle dimming or fogging in higher humidity.

114. Defendants' breached the express written warranties stating that EOTech Sights could operate in temperatures from -40 to 150F, were parallax free and were fogproof. Defendants thus violated the statutory rights of Plaintiffs and Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*, thereby damaging Plaintiffs and Class Members.

COUNT II
(Breach of Express Warranty)

115. Plaintiffs and Class Members re-allege and incorporate by reference each allegation set forth above.

116. EOTech expressly warranted that the Sights could operate in temperatures from -40 to 150F, were parallax-free and were fogproof. EOTech also warranted that the Sights were accurate and durable.

117. EOTech breached this warranty because none of those statements are true.

118. Plaintiffs and the Class Members were injured as a direct and proximate result of the breach because they would not have purchased EOTech Sights if they had known the truth, or would not have a paid a premium for them, and because the Sights did not have the quality or characteristics promised.

119. Plaintiffs and the Class have sustained damages due to Defendants' breaches of their express warranties in an amount to be determined at trial.

COUNT III
(Breach of Implied Warranty)

120. Plaintiffs and Class Members re-allege and incorporate by reference each allegation set forth above.

121. EOTech made implied representations to consumers that the Sights were accurate and durable.

122. EOTech breached these implied warranties because the Sights suffered from thermal drift, parallax error, and fogging. As a result of EOTech's conduct, consumers did not receive Sights that were merchantable or fit for their intended purpose.

123. Plaintiffs and the Class have sustained damages due to Defendants' breaches of their implied warranties in an amount to be determined at trial.

COUNT IV
(Unjust Enrichment)

124. Plaintiffs and Class Members re-allege and incorporate by reference each allegation set forth above.

125. Plaintiff and Class Members conferred a benefit on EOTech by purchasing EOTech Sights. Defendants were aware of this benefit, and at the same time aware of the undisclosed defects the Sights.

126. EOTech has been unjustly enriched in retaining the revenues derived from Class Members' purchases of EOTech Sights, which retention under these circumstances is unjust and inequitable because EOTech misrepresented that EOTech Sights could operate in temperatures from -40 to 150F, were parallax free and were fogproof when in fact they were not, which caused injuries to Plaintiff and Class Members because (a) they would not have purchased the EOTech Sights on the same terms if the true facts concerning their operation and construction

had been known; or (b) they paid a price premium due to Defendants' false, misleading and deceptive representations concerning EOTech Sights.

127. Because EOTech's retention of the benefit conferred on it by Plaintiff and Class members is unjust and inequitable, EOTech must pay restitution to Plaintiff and the Class members for its unjust enrichment.

COUNT V

(Unfair and Deceptive Acts and Practices Under The Various State Laws In Which Class Members Reside, If The Court Eventually Determines That The Laws Of A Consumers' Residence Apply To Defendants' Wrongful, Unfair, And Deceptive Acts)

128. Plaintiffs and the Class Members re-allege and incorporate by reference each allegation set forth above and further allege as follows.

129. As the choice of law question cannot be conclusively addressed at this point in the litigation, Plaintiffs state the following alternative causes of action under the laws of the states of residence of Class Members, if it is later determined by the Court that the choice of law rules require the application of these state laws.

130. The practices discussed above, including, but not limited to, Defendants' undisclosed defects, all constitute unfair competition or unfair, unconscionable, deceptive, fraudulent, or unlawful acts or business practices in violation of the state consumer protection statutes listed in ¶¶ 127 – 179 below.

131. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Alaska Statutes § 45.50.471, *et seq.* In particular, Alaska law provides:

(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful. (b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts: . . . (4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ; . . . (6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; . . . (8) advertising goods or services with intent

not to sell them as advertised; . . . (11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services; (12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged; . . . (15) knowingly making false or misleading statements concerning the need for parts, replacement, or repair service . . .

Alaska Stat. § 45.50.471.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Alaska Statutes Annotated § 45.50.471.

132. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Arizona Revised Statutes § 44-1521, *et seq.* Particularly, Arizona law prohibits “[t]he act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.” Ariz. Rev. Stat. Ann. § 44-1522(A). By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Arizona Revised Statute Annotated § 44-1522(A).

133. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Arkansas Code Annotated § 4-88-101, *et seq.* In particular, Arkansas law provides:

Deceptive and unconscionable trade practices made unlawful and prohibited by this chapter include, but are not limited to, the following: (1) Knowingly making a false representation as to the characteristics, ingredients, uses, benefits, alterations, source, sponsorship, approval, or certification of goods or services or

as to whether goods are original or new or of a particular standard, quality, grade, style, or model; . . . (3) Advertising the goods or services with the intent not to sell them as advertised; . . . (10) Engaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade. . . .

Ark. Code Ann. § 4-88-107.

Arkansas law further provides,

“[w]hen utilized in connection with the sale or advertisement of any goods, services, or charitable solicitation, the following shall be unlawful: (1) The act, use, or employment by any person of any deception, fraud, or false pretense; or (2) The concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission.”

Ark. Code Ann. § 4-88-108.

By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants violated Arkansas Code Annotated §§ 4-88-107, 4-88-108.

134. Defendants are subject to the Unfair Competition Law (“UCL”), California Bus. & Prof. Code §§ 17200 *et seq.* The UCL provides in pertinent part: “Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising . . .” Defendants’ conduct, as described herein, violated the “unlawful” prong of the UCL. Defendants’ conduct, as described herein, also violated the “fraudulent” prong of the UCL. Defendants’ acts, omissions, misrepresentations, practices, and non-disclosures as alleged herein constitute “unfair” business acts and practices under the UCL. Defendants’ conduct offends public policy against false advertising. Defendants’ conduct is also immoral, unethical, and unscrupulous because it seeks to capitalize on consumer’s desire for an accurate weapon sight through false and misleading representations. Further, the injuries suffered by the California Subclass outweigh any conceivable benefit to consumers or competition that may derive from Defendants’ conduct.

135. Defendants have violated the Consumers Legal Remedies Act (the “CLRA”), Calif. Civ. Code §§ 1750 *et seq.* Defendants violated and continue to violate the CLRA by engaging in the following practices proscribed by Section 1770(a) in its transactions with members of the California Subclass, which were intended to result in, and did result in, the sale of EOTech Sights:

- a. §1770(a)(2) and (3) – misrepresenting that the Sights had the approval, certification, affiliation, connection and/or association with the military and law enforcement agencies;
- b. CLRA § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have;
- c. CLRA § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another; and
- d. CLRA § 1770(a)(9): advertising goods with the intent not to sell them as advertised.

136. Defendants violated the above provisions by representing EOTech Sights could operate in temperatures from -40 to 150 degrees Fahrenheit, were parallax free and were fogproof when in fact, EOTech Sights suffered from thermal drift, could not maintain zero at lower temperatures, suffered parallax error, and suffered from reticle dimming or fogging in higher humidity. Defendants also touted their military contracts to consumers while at the time knowingly supplying the military with defective sights. Defendants also represented that the Sights were able to operate in a variety of harsh environments. Defendants’ false and misleading representations were designed to, and did induce the purchase of EOTech Sights for personal use by the California Subclass members, in violation the CLRA.

137. Defendants have engaged in unfair competition or unfair or deceptive acts or practices or have made false representations in violation of Colorado Revised Statutes § 6-1-101, *et seq.* In particular, Colorado law provides:

A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person: . . . (e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith; . . . (g) Represents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another; . . . (i) Advertises goods, services, or property with intent not to sell them as advertised; . . . (u) Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction

Colo. Rev. Stat. § 6-1-105.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Colorado Revised Statutes § 6-1-105.

138. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of the General Statutes of Connecticut § 42-110a, *et seq.* In particular, Connecticut law provides that “[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Conn. Gen. Stat. § 42-110b(a). By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated the General Statutes of Connecticut § 42-110b.

139. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Delaware Code Annotated Title 6, § 2511, *et seq.* In particular, Delaware law provides that “[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is an unlawful practice.” Del. Code Ann.

tit. 6, § 2513(a). By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Delaware Code Annotated Title 6, § 2513(a).

140. Defendants have engaged in unfair competition or unfair or deceptive acts or practices or made false representations in violation of District of Columbia Code § 28-3901, *et seq.* Particularly, District of Columbia law provides:

It shall be a violation of this chapter, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to: (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . . (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another; (e) misrepresent as to a material fact which has a tendency to mislead; . . . (f) fail to state a material fact if such failure tends to mislead; . . . (h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered

D.C. Code § 28-3904.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated District of Columbia Code § 28-3904.

141. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Florida Statutes § 501.201, *et seq.* In particular, Florida law provides, “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” Fla. Stat. § 501.204(1). By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Florida Statutes § 501.204(1).

142. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Georgia Code Annotated §10-1-390, *et seq.* In particular, Georgia law provides:

(a) A person engages in a deceptive trade practice when, in the course of his business, vocation, or occupation, he: . . . (5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ; . . . (7) Represents that goods or services are of a particular standard, quality, or grade or that goods are of a particular style or model, if they are of another; . . . (9) Advertises goods or services with intent not to sell them as advertised.

Ga. Code Ann. § 10-1-372.

Georgia law further provides:

(a) Unfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce are declared unlawful. (b) By way of illustration only and without limiting the scope of subsection (a) of this Code section, the following practices are declared unlawful: . . . (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ; . . . (7) Representing that goods or services are of a particular standard, quality, or grade or that goods are of a particular style or model, if they are of another; . . . (9) Advertising goods or services with intent not to sell them as advertised . . .

Ga. Code Ann. § 10-1-393(a).

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Georgia Code Annotated §§ 10-1-372, 10-1-393(a).

143. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Hawaii Revised Statutes § 480-1, *et seq.* In particular, Hawaii law provides, "(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful." Haw. Rev. Stat. § 480-2. Hawaii law further provides:

(a) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person: . . . (5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ; . . . (7) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; . . . (9) Advertises goods or

services with intent not to sell them as advertised; . . . (12) Engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

Haw. Rev. Stat. § 481A-3.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Hawaii Revised Statutes §§ 480-2, 481A-3.

144. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Idaho Code Annotated § 48-601, *et seq.* In particular, Idaho law provides:

The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is: . . . (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ; . . . (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; . . . (9) Advertising goods or services with intent not to sell them as advertised; . . . (17) Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer

Idaho Code Ann. § 48-603.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Idaho Code Annotated § 48-603.

145. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 815 Illinois Compiled Statutes 505/1, *et seq.* In particular, Illinois law provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the 'Uniform Deceptive Trade Practices Act', approved August 5, 1965, [footnote] in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. . . .

815 Ill. Comp. Stat. 505/2.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated 815 Illinois Compiled Statutes 505/2.

146. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Indiana Code § 24-5-0.5-1, *et seq.* In particular, Indiana law provides:

(a) The following acts or representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts: (1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have. (2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not. . . . (11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

Ind. Code § 24-5-0.5-3.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Indiana Code § 24-5-0.5-3.

147. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of IOWA CODE § 714.16, *et seq.*

148. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Kansas Statutes Annotated § 50-623, *et seq.* In particular, Kansas law provides:

(a) No supplier shall engage in any deceptive act or practice in connection with a consumer transaction; (b) Deceptive acts and practices include, but are not limited to, the following, each of which is hereby declared to be a violation of this act, whether or not any consumer has in fact been misled: (1) Representations made knowingly or with reason to know that: (A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have; . . . (D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation; . . . (F) property or services has uses, benefits or characteristics unless the supplier relied upon and possesses a reasonable basis

for making such representation; or (G) use, benefit or characteristic of property or services has been proven or otherwise substantiated unless the supplier relied upon and possesses the type and amount of proof or substantiation represented to exist; (2) the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact; (3) the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact

Kan. Stat. Ann. § 50-626.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Kansas Statutes Annotated § 50-626.

149. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Kentucky Revised Statutes Annotated § 367.110, *et seq.* In particular, Kentucky law provides, “(1) Unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. (2) For the purposes of this section, unfair shall be construed to mean unconscionable.” Ky. Rev. Stat. Ann. § 367.170. By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Kentucky Revised Statutes Annotated § 367.170.

150. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Louisiana Revised Statutes Annotated § 51:1401, *et seq.* Particularly, Louisiana law provides, “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” La. Rev. Stat. Ann. § 51:1405A. By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Louisiana Revised Statutes Annotated § 51:1405A.

151. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Maine Revised Statutes Annotated Title 5, § 205-A, *et seq.* In particular, Maine law provides, “Unfair methods of competition and unfair or deceptive acts or practices in

the conduct of any trade or commerce are declared unlawful.” Me. Rev. Stat. Ann. tit. 5, § 207. By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated Maine Revised Statutes Annotated Title 5, § 207.

152. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Maryland Code Annotated, Commercial Law § 13-101, *et seq.* In particular, Maryland law provides:

Unfair or deceptive trade practices include any: (1) False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers; (2) Representation that: (i) Consumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have; . . . or . . . (iv) Consumer goods, consumer realty, or consumer services are of a particular standard, quality, grade, style, or model which they are not; (3) Failure to state a material fact if the failure deceives or tends to deceive; . . . (5) Advertisement or offer of consumer goods, consumer realty, or consumer services: (i) Without intent to sell, lease, or rent them as advertised or offered; . . . (9) Deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection with: (i) The promotion or sale of any consumer goods, consumer realty, or consumer service

Md. Code Ann., Com. Law § 13-301.

By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated Maryland Code Annotated, Commercial Law § 13-301.

153. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of the General Laws of Massachusetts Chapter 93A, § 1, *et seq.* In particular, Massachusetts law provides, “(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” Mass. Gen. Laws Ch. 93A, § 2. By engaging in the practices discussed above,

including, but not limited to, including, but not limited to, Defendants' undisclosed defects, Defendants have violated the General Laws of Massachusetts Chapter 93A, § 2.

154. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Michigan Compiled Laws § 445.901, *et seq.* In particular, Michigan law provides:

(1) Unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as follows: . . . (c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have (e) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. . . . (g) Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented. . . . (s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer. . . . (bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is. . . . (cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

Mich. Comp. Laws § 445.903.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Michigan Compiled Laws § 445.903.

155. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Minnesota Statutes § 8.31, *et seq.* In particular, Minnesota law provides:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person: . . . (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ; . . . (7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; . . . (9) advertises goods or services with intent not to sell them as advertised; . . . or (13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

Minn. Stat. § 325D.44, sub. 1.

Minnesota law further provides:

Any person, firm, corporation, or association who, with intent to sell or in anywise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

Minn. Stat. § 325F.67.

Minnesota law provides as well that

“[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined”

Minn. Stat. § 325F.69, sub. 1.

By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated Minnesota Statutes §§ 325D.44, sub. 1, 325F.67, 325F.69, sub. 1.

156. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of MISS. CODE ANN. § 75-24-3, *et seq.*

157. The Missouri Merchandising Practices Act broadly prohibits false, fraudulent or deceptive merchandising practices. Mo. Rev. Stat. § 407.020. At all relevant times, Defendants’ sales or distribution of EOTech Sights was a “sale” as defined by Section 407.010 because such sale or distribution constituted a sale, lease, offer for sale or lease, or attempt to sell or lease

merchandise for cash or on credit. At all relevant times, Defendants' manufacturing, marketing, advertising, sales and/or distribution of EOTech Sights was an "advertisement" as defined by Section 407.010 because such manufacturing, marketing, advertising, sales or distribution constituted an attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise.

158. In connection with the sale or advertisement of EOTech Sights, Defendants failed to disclose that EOTech Sights suffered from thermal drift, could not maintain zero at lower temperatures, suffered parallax error, and suffered from reticle dimming or fogging in higher humidity. Defendants knew that the omissions and representations concerning EOTech Sights would be reasonably equated to performance. As such, Defendants' acts and omissions as alleged constitute violations of Section 407.020. As a direct and proximate result of Defendants' acts and omissions, Missouri consumers suffered damages and ascertainable losses in amounts to be determined at trial, by paying more for EOTech Sights than they would have, or by not purchasing EOTech Sights at all, if the true facts were known.

159. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Montana Code Annotated § 30-14-101, *et seq.* In particular, Montana law provides, "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful." Mont. Code Ann. § 30-14-103. By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Montana Code Annotated § 30-14-103.

160. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Nebraska Revised Statutes § 59-1601, *et seq.* In particular, Nebraska

law provides, “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce shall be unlawful.” Neb. Rev. Stat. § 59-1602. Nebraska law further provides:

(a) A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, he or she: . . . (5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ; . . . (9) Advertises goods or services with intent not to sell them as advertised; . . . (c) This section does not affect unfair trade practices otherwise actionable at common law or under other statutes of this state.

Neb. Rev. Stat. § 87-302.

By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated Nebraska Revised Statutes §§ 59-1602, 87-302.

161. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Nevada Revised Statutes § 598.0903, *et seq.* Nevada law provides in particular:

A person engages in a “deceptive trade practice” if, in the course of his business or occupation, he: . . . 5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith. . . . 7. Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he knows or should know that they are of another standard, quality, grade, style or model. . . . 9. Advertises goods or services with intent not to sell or lease them as advertised. . . . 15. Knowingly makes any other false representation in a transaction. . . .

Nev. Rev. Stat. § 598.0915.

By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated Nevada Revised Statutes § 598.0915.

162. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of New Hampshire Revised Statutes Annotated § 358-A:1, *et seq.*

Particularly, New Hampshire law provides:

It shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state. Such unfair method of competition or unfair or deceptive act or practice shall include, but is not limited to, the following: . . . V. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ; . . . VII. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; . . . IX. Advertising goods or services with intent not to sell them as advertised

N.H. Rev. Stat. Ann. § 358-A:2.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated New Hampshire Revised Statutes Annotated § 358-A:2.

163. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of New Jersey Statutes Annotated § 56:8-1, *et seq.*

Particularly, New Jersey law provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice

N.J.S.A. § 56:8-2.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated New Jersey Statutes Annotated § 56:8-2.

164. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of New Mexico Statutes § 57-12-1, *et seq.* In particular, New Mexico law provides:

D. “unfair or deceptive trade practice” means an act specifically declared unlawful pursuant to the Unfair Practices Act, a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by a person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead any person and includes: . . . (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have . . . ; . . . (7) representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another; . . . (14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive; . . . E. “unconscionable trade practice” means an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services . . . : (1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or (2) results in a gross disparity between the value received by a person and the price paid.

N.M. Stat. § 57-12-2.

By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated New Mexico Statutes § 57-12-2.

165. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of New York General Business Law § 349, *et seq.* In particular, New York law provides, “Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.” N.Y. Gen. Bus. Law § 349. By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated New York General Business Law § 349.

166. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of North Carolina General Statutes § 75-1.1, *et seq.* In particular, North

Carolina law provides, “Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.” N.C. Gen. Stat. § 75-1.1(a). By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated North Carolina General Statutes § 75-1.1(a).

167. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of North Dakota Century Code § 51-15-01, *et seq.* In particular, North Dakota law provides:

The act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice.

N.D. Cent. Code § 51-15-02.

By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated North Dakota Century Code § 51-15-02.

168. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Ohio Revised Code Annotated § 1345.01, *et seq.* In particular, Ohio law provides, “No supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction. Such an unfair or deceptive act or practice by a supplier violates this section whether it occurs before, during, or after the transaction.” Ohio Rev. Code Ann. § 1345.02(a). By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated Ohio Revised Code Annotated § 1345.02(a).

169. Defendants have engaged in unfair competition or unfair or deceptive acts or practices or made false representations in violation of Oklahoma Statutes Title 15, § 751, *et seq.*

In particular, Oklahoma law provides:

As used in the Oklahoma Consumer Protection Act: . . . 13. “Deceptive trade practice” means a misrepresentation, omission or other practice that has deceived or could reasonably be expected to deceive or mislead a person to the detriment of that person. Such a practice may occur before, during or after a consumer transaction is entered into and may be written or oral; 14. “Unfair trade practice” means any practice which offends established public policy or if the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. . . .

Okla. Stat. Tit. 15, § 752.

Oklahoma law further provides:

A person engages in a practice which is declared to be unlawful under the Oklahoma Consumer Protection Act, Section 751 *et seq.* of this title, when, in the course of the person’s business, the person: . . . 5. Makes a false representation, knowingly or with reason to know, as to the characteristics, ingredients, uses, benefits, alterations, or quantities of the subject of a consumer transaction . . . ; . . . 7. Represents, knowingly or with reason to know, that the subject of a consumer transaction is of a particular standard, style or model, if it is of another; 8. Advertises, knowingly or with reason to know, the subject of a consumer transaction with intent not to sell it as advertised; . . . 20. Commits an unfair or deceptive trade practice as defined in Section 752 of this title

Okla. Stat. Tit. 15, § 753.

It continues to provide:

A. A person engages in a deceptive trade practice when in the course of business, vocation, or occupation, the person: . . . 5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits or quantities of goods or services or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith; . . . 7. Represents that goods or services are a particular standard, quality, or grade, or that goods are a particular style or model, if they are another; . . . C. The deceptive trade practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other statutes of this state.

Okla. Stat. Tit. 78, § 53.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Oklahoma Statutes Titles 15, §§ 752 and 753, 78, § 53.

170. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Oregon Revised Statutes § 646.605, et seq. In particular, Oregon law provides, "A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person: (1) Employs any unconscionable tactic in connection with the sale, rental or other disposition of real estate, goods or services" Or. Rev. Stat. § 646.607.

Oregon law further provides:

A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person does any of the following: . . . (e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have (g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another. . . . (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any known material defect or material nonconformity. (u) Engages in any other unfair or deceptive conduct in trade or commerce.

Or. Rev. Stat. § 646.608.

By engaging in the practices discussed above, including, but not limited to, Sling Media's undisclosed display of its own unsolicited advertising content to users of its Slingboxes during normal use and the appropriation of Class members' Slingboxes in connection with these practices, Defendant has violated Oregon Revised Statutes §§ 646.607, 646.608.

171. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of 73 Pennsylvania Statutes Annotated Title 73, § 201-1, et seq. In particular, Pennsylvania law provides:

(4) "Unfair methods of competition" and "unfair or deceptive acts or practices" mean any one or more of the following: . . . (v) Representing that goods or

services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have . . . ; . . . (vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another; . . . (ix) Advertising goods or services with intent not to sell them as advertised; . . . (xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

Pa. Stat. Ann. Tit. 73, § 201-2.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Pennsylvania Statutes Annotated Title 73, § 201-2.

172. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Rhode Island General Laws § 6-13.1-1, *et seq.* In particular, Rhode Island law provides:

As used in this chapter: . . . (6) "Unfair methods of competition and unfair or deceptive acts or practices" means any one or more of the following: (v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . ; . . . (vii) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; . . . (ix) Advertising goods or services with intent not to sell them as advertised; . . . (xii) Engaging in any other conduct that similarly creates a likelihood of confusion or of misunderstanding; (xiii) Engaging in any act or practice that is unfair or deceptive to the consumer; (xiv) Using any other methods, acts or practices which mislead or deceive members of the public in a material respect; . . . (xvii) Advertising claims concerning safety, performance, and comparative price unless the advertiser, upon request by any person, the consumer council, or the attorney general, makes available documentation substantiating the validity of the claim . . .

R.I. Gen. Laws § 6-13.1-1.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Rhode Island General Laws § 6-13.1-1.

173. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of South Carolina Code Annotated § 39-5-10, *et seq.* In particular, South

Carolina law provides, “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. . . .” S.C. Code Ann. § 39-5-20. By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated South Carolina Code Annotated § 39-5-20.

174. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of South Dakota Codified Laws § 37-24-1, et seq. In particular, South Dakota law provides:

It is a deceptive act or practice for any person to: (1) Knowingly and intentionally act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby.

S.D. Codified Laws § 37-24-6(1).

By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated South Dakota Codified Laws § 37-24-6(1).

175. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Tennessee Code Annotated § 47-18-101, et seq. In particular, Tennessee law provides:

(b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part . . . (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have . . . ; . . . (7) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another; . . . (9) Advertising goods or services with intent not to sell them as advertised; . . . (21) Using statements or illustrations in any advertisement which create a false impression of the grade, quality, quantity, make, value, age, size, color, usability or origin of the goods or services offered, or which may otherwise misrepresent the goods or services in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised goods or services to other goods or services; . . . (27)

Engaging in any other act or practice which is deceptive to the consumer or to any other person

Tenn. Code Ann. § 47-18-104.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Tennessee Code Annotated § 47-18-104.

176. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* Specifically General Motors has violated the following sections of the Texas Deceptive Trade Practices Act ("DTPA"):

Tex. Bus. & Com. Code §17.50(1): the use or employment of a false, misleading, or deceptive acts or practices as defined in §17.46(b)(5), §17.46(b)(7), §17.46(b)(20), and §17.46(b)(24) of the DTPA that were detrimentally relied upon by Plaintiffs and each member of the Texas Class; and

Tex. Bus. & Com. Code §17.50(3): an unconscionable action or course of action as defined by §17.45(5).

TEX. BUS. & COM. CODE ANN. § 17.41.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Texas Business & Communication Code Annotated § 17.41.

177. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Utah Code Annotated § 13-11-1, *et seq.* In particular, Utah law provides:

(1) A deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during, or after the transaction. (2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally: (a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not; (b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not; . . . (e) indicates that the subject of a consumer transaction

has been supplied in accordance with a previous representation, if it has not; . . .
(j) . . . (ii) fails to honor a warranty or a particular warranty term

Utah Code Ann. § 13-11-4.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Utah Code Annotated § 13-11-4.

178. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Vermont Statutes Annotated Title 9, § 2451, *et seq.* In particular, Vermont law provides, "(a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful." Vt. Stat. Ann. tit. 9, § 2453. By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Vermont Statutes Annotated Title 9, § 2453.

179. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Virginia Code Annotated § 59.1-196, *et seq.* In particular, Virginia law provides:

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful: . . . 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits; 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model; 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class"; 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised. . . .
14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction

Va. Code Ann. § 59.1-200.

By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated Virginia Code Annotated § 59.1-200.

180. Defendants have engaged in unfair competition or unfair, deceptive or fraudulent acts or practices in violation of Washington Revised Code. § 19.86.010, *et seq.* Particularly, Washington law provides, “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” Wash. Rev. Code § 19.86.020. By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated Washington Revised Code § 19.86.020.

181. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of West Virginia Code § 46A-6-101, *et seq.* In particular, West Virginia law provides:

(7) “Unfair methods of competition and unfair or deceptive acts or practices” means and includes, but is not limited to, any one or more of the following: . . . (E) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have . . . ; . . . (G) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model if they are of another; . . . (I) Advertising goods or services with intent not to sell them as advertised; . . . (L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding; . . . (M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby

W. Va. Code § 46A-6-102.

By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated West Virginia Code § 46A-6-102.

182. Defendants have engaged in unfair competition or unfair, deceptive, or fraudulent acts or practices in violation of Wisconsin Statutes § 100.20, *et seq.* Particularly, Wisconsin law provides, “Methods of competition in business and trade practices in business shall be fair.

Unfair methods of competition in business and unfair trade practices in business are hereby prohibited.” Wis. Stat. § 100.20(1). By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated Wisconsin Statutes § 100.20(1).

183. Defendants have engaged in unfair competition or unfair, deceptive, or fraudulent acts or practices in violation of Wyoming Statutes Annotated § 40-12-101, *et seq.* In particular, Wyoming law provides:

(a) A person engages in a deceptive trade practice unlawful under this act when, in the course of his business and in connection with a consumer transaction, he knowingly: (i) Represents that merchandise has a source, origin, sponsorship, approval, accessories or uses it does not have; . . . (iii) Represents that merchandise is of a particular standard, grade, style or model, if it is not; . . . (x) Advertises merchandise with intent not to sell it as advertised; . . . or . . . (xv) Engages in unfair or deceptive acts or practices.

Wyo. Stat. Ann. § 40-12-105.

By engaging in the practices discussed above, including, but not limited to, Defendants’ undisclosed defects, Defendants have violated Wyoming Statutes Annotated § 40-12-105.

184. Plaintiffs and members of the Class have been injured by reason of Defendants’ unfair and deceptive acts and practices in regard to its sale of the EOTech Sights without proper disclosure, without which consumers would not have bought the sights or would have been unwilling to pay the price they, in fact, purchased them for. These injuries are of the type that the above state consumer protection statutes were designed to prevent and are the direct result of Defendants’ unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, pray the Court issue judgment against Defendants, as follows:

A. For an order certifying the nationwide Class and state subclasses under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as Class Representatives and their attorneys as Class Counsel;

B. For an order declaring that EOTech's conduct violates the statutes and common law referenced herein;

C. For an order finding in favor of the Plaintiffs, the nationwide Class, and the state subclasses on all counts asserted herein;

D. For an order awarding actual, compensatory, and punitive damages in amounts to be determined by the Court and/or jury;

E. For an order of restitution and all other forms of equitable monetary relief;

F. For injunctive relief as pleaded or as the Court may deem proper;

G. For any such equitable relief as the Court shall deem just and proper;

H. For any attorney fees available under any state or federal statute or common law;

I. For any punitive and/or exemplary damages, including but not limited to trebling, available under any state or federal statutory or common law;

J. For any penalty or other type of civil damages or award under any state or federal statute

K. For prejudgment interest on all amounts awarded; and

L. For an order awarding Plaintiffs and the Class and Subclasses their attorneys' fees and expenses and costs of suit.

JURY DEMAND

Plaintiffs demand a trial by jury on all causes of action and issues so triable.

Dated: September 19, 2016

By: /s/ Craig Heidemann

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 2016, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF system, which will send notifications of such filing to the CM/ECF participants registered to receive service in this matter.

By: /s/ Craig Heidemann
Craig Heidemann

Attorney for Plaintiff