

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

STEVEN LEVINE and SUSAN LEVINE,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a foreign
corporation,

Defendants.

CASE NO:

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

INTRODUCTION

1. Plaintiffs Steven Levine and Susan Levine, by counsel, individually and on behalf of all others similarly situated, bring this Class Action Complaint against Defendant Amazon.com, Inc., (“Defendant” or “Amazon”), and upon information and belief and investigation of counsel, state as follows:

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff Steven Levine is a resident of the state of Florida, residing in Boca Raton, which lies in Palm Beach County.

3. Plaintiff Susan Levine is a resident of the state of Florida, residing in Boca Raton, which lies in Palm Beach County.

4. Defendant Amazon.com, Inc. is a Delaware corporation with principal executive offices in Seattle, Washington.

5. Defendant offered the product at issue for retail sale online.

6. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs and because Plaintiffs and Defendant are residents of different states and/or foreign states.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a), (b) and/or (c), because Plaintiffs suffered injuries as a result of Defendant's acts in this District; a substantial number of the events giving rise to this Complaint occurred in this District; and Defendant is authorized to conduct business in this District and has intentionally availed itself of the laws and markets of this District by conducting business in this District and contracting to supply goods in this District.

8. This Court has personal jurisdiction over Defendant because the events giving rise to this cause of action took place in this District; Defendant has sufficient minimum contacts with this District; and/or otherwise intentionally and purposefully availed itself of the privilege of conducting business in the state of Florida and by placing products into the stream of commerce, including the eclipse glasses at issue in the instant matter, deriving substantial revenue from goods sold and used in the state of Florida; and by advertising its products and establishing retail facilities within the state of Florida. Accordingly, the exercise of personal jurisdiction over Defendant complies with judicial notions of fair play and substantial justice.

BACKGROUND AND NATURE OF THE CASE

9. This is a Class Action Complaint against Amazon for damages and injunctive relief arising from Defendant's violations of Florida law, as well as analogous common and products liability protection laws in each state in which it operates.

10. In addition, Plaintiffs suffered personal injuries and bring a claim for individual physical injuries.

11. Amazon, an American electronic-commerce and cloud-computing company, is the largest Internet retailer by total sales and market capitalization,¹ and is currently valued in excess of \$465 billion dollars.²

12. Amazon operates the Amazon.com website, which offers products for sale through online purchases.

13. Upon information and belief, Amazon offers products for sale online through at least two mechanisms. Amazon can own the products it offers, and then sells, charges customers, and ships these products to purchasers. For a percentage of the sales price, Amazon also offers, sells, charges customers, and ships products on behalf of third-party vendors.

14. Specifically, items that are offered as “Fulfilled by Amazon” are owned by third-party vendors, but are offered for sale on Amazon.com as well as located at and shipped from an “Amazon Fulfillment Center” to Amazon customers. Further, Amazon manages all aspects of these third-party-seller products that are “Fulfilled by Amazon,” including “all customer service and product returns.”³

15. The subject matter of this action involves various solar eclipse glasses (“Eclipse Glasses”) that were marketed, sold, and warranted to the general public by Amazon, which, upon information and belief, were sold both as individual and multi-unit packs.

16. Plaintiffs and members of the proposed classes include purchasers and users of Eclipse Glasses, which were unfit for the purpose for which they were advertised and sold, and were extremely dangerous and/or defective, such that if they were used for their intended

¹ See, <https://en.wikipedia.org/wiki/Amazon.com>, last accessed September 19, 2017.

² See, https://ycharts.com/companies/AMZN/market_cap, last accessed September 19, 2017.

³ See, https://www.amazon.com/gp/help/customer/display.html/ref=help_search_2-18?ie=UTF8&nodid=201910460&qid=1505849314&sr=2-18, last accessed September 19, 2017.

purpose, Plaintiffs would and did suffer from headaches and other physical injuries, including temporary and/or permanent vision loss and/or impairment.

17. Defendant knew or should have known the Eclipse Glasses were defective in design and/or manufacturing; were not fit for their intended and ordinary use; were not merchantable; and failed to perform in accordance with the advertisements, marketing materials and warranties disseminated by Defendant, or with the reasonable expectations of ordinary consumers such as Plaintiffs and the proposed classes.

18. In fact, on its web page entitled “About Product Safety at Amazon,” Amazon provides the following assurance:

The Product Safety Team at Amazon works to protect Amazon customers from risks of injury associated with products offered on Amazon by looking into and taking action on reported safety complaints and incidents.

Product Safety

Amazon monitors the products sold on our website for product safety concerns. In concerning situations, we may remove the product from the website, reach out to sellers and manufacturers for additional information, place relevant warnings on the product detail page, or take other actions depending on the situation.⁴

19. Further, on or about August 12, 2017, Defendant Amazon, “out of an abundance of caution” sent an email to an undisclosed number of Eclipse Glasses purchasers, which, while offering a refund to affected customers, failed to disclose either the “scale of the recall or a public list of offending vendors”⁵ PBS reported that Amazon’s recall email included the following language:

Viewing the sun or an eclipse using any other glasses or filters could result in loss of vision or permanent blindness,” Amazon wrote in its email to impacted customers. “Amazon has not received confirmation from the supplier of your

⁴ See, <https://www.amazon.com/gp/help/customer/display.html?nodeId=565166>. Last accessed September 25, 2017.

⁵ See, <http://www.pbs.org/newshour/rundown/amazon-recalls-potentially-hazardous-solar-eclipse-glasses/>, last accessed September 25, 2017.

order that they sourced the item from a recommended manufacturer. We recommend that you DO NOT use this product to view the sun or the eclipse.⁶

20. However, upon information and belief, Amazon had notice of the defective and unsafe nature of a number of the various Eclipse Glasses sold on Amazon.com well in advance of its August 12, 2017 email recommendation to purchasers not to use the Eclipse Glasses to view the eclipse.

21. Additionally, while Defendant sent the above recall email to Eclipse Glasses purchasers, Amazon took no steps to inform, warn, or otherwise provide notice to any non-purchasing users of the defective and unsafe nature of the various Eclipse Glasses sold on Amazon.com.

22. Upon information and belief, there are still an undisclosed number of Eclipse Glasses which have been sold by Amazon, perhaps numbering in the hundreds of thousands or more, posing a continuing risk to purchasers and users.

23. Upon information and belief, it is as yet unknown how by what means Amazon determined any of the glasses sold by it for viewing the August 2017 TSE were safe for solar viewing.

24. As a result of Defendant's negligence, false advertising, and false marketing materials, Plaintiffs and members of the proposed class suffered and continue to suffer injuries and damages from Defendant's sale of an unsafe product in violation of Florida law through failing to disclose the dangers of the product as known to Defendant and failing to adequately and fully compensate consumers for the harms suffered, as well as analogous common and products liability protection laws in each state in which they operate.

⁶ *Id.*

GENERAL FACTUAL ALLEGATIONS

25. On August 21, 2017, the entire United States experienced a once-every-two-generations event: a total eclipse of the sun by the earth's moon, also called a Solar Eclipse.⁷ During a Solar Eclipse, the moon moves between the sun and the earth. When the orbital planes of both the sun and the moon are identical, the moon casts a shadow onto the earth.⁸

26. There are three types of Solar Eclipses. The first is a partial Solar Eclipse, which occurs when the orbital planes of the moon and the sun are not in exact alignment. In a partial Solar Eclipse, the sun will appear to have a shadow across a portion of its surface. The second type is an "annular" Solar Eclipse, which happens when the moon is farther away from the earth. During such events, the moon in front of the sun will appear as a dark disk "on top of a larger sun-colored disk."⁹

27. The third category of Solar Eclipse, and the type relevant to the claims alleged herein, is "total" Solar Eclipse. Total Solar Eclipses ("TSE") take place only when the sun, moon and earth align at precisely the same time, and are generally visible only from a small area by those who are in the center of the moon's shadow when it reaches the earth.

28. During a TSE, the moon actually casts two shadows on the earth. The first shadow is known as the "umbra" and is the dark center of the moon's shadow, which gets smaller as it reaches earth. The second shadow is known as the "penumbra," which get larger as it reaches earth. People standing in the penumbra will see a partial eclipse, while those standing in the umbra will see a TSE. All Solar Eclipses only last for a few minutes in any one location.

⁷ See, Solar Eclipse 2017, <https://www.nasa.gov/eclipse2017>, last visited September 25, 2017.

⁸ See, Solar Eclipse 2017, <https://www.nasa.gov/content/eclipses-and-transits-overview>, last visited September, 25 2017.

⁹ *Id.*

Serious eye injury can occur when people view either partial or TSE without certain protective eyewear. Indeed, the NASA website warns of this danger on its Eclipse website.¹⁰

August 21, 2017 TSE

29. The 2017 TSE is reported to have been the most viewed in history.¹¹ Indeed, it has been estimated that nearly half of America's 323 million people watched or viewed the TSE, with an estimated 20 million watching from the totality or umbra.¹²

30. These high 2017-TSE-observer numbers (as opposed to online viewers) are both ominous as well as impressive because watching an eclipse (i.e. staring at the moon's blocking of the sun) without proper eye protection can cause permanent, irreparable eye damage.¹³ The American Academy of Ophthalmology ("AAO") states unequivocally that looking directly at the sun can seriously damage your eyes. The AAO admonishes that "[s]taring at the sun for even a short time without wearing the right eye protection can damage your retina permanently."¹⁴ Even short exposures can cause vision impairment, up to and including blindness, which is known as solar retinopathy.¹⁵ This potential for harm from viewing a TSE is well known to ophthalmologists and optometrists.

31. According to paper published by the Royal College of Ophthalmologists in the United Kingdom, symptoms of solar retinopathy typically show up approximately 12 hours after the viewing event, and can include the following symptoms:

- Blurry vision
- A central blind spot in one or both eyes
- Increased sensitivity to light

¹⁰ *Id.*

¹¹ See, <https://www.vox.com/science-and-health/2017/8/21/16180362/total-solar-eclipse-most-watched-in-history>, last accessed September 25, 2017.

¹² *Id.*

¹³ See, <https://www.aao.org/eye-health/tips-prevention/solar-eclipse-eye-safety>, last accessed September 25, 2017.

¹⁴ *Id.*

¹⁵ *Id.*

- Distorted vision
- Changes in perception of color.¹⁶

Health issues arising from unprotected or improperly protected direct-Solar-Eclipse watching can include “solar keratitis” which is similar to sunburn of the cornea (the front part of the eye) and can cause eye pain and light sensitivity, with symptoms often occurring within 24 hours after exposure.¹⁷

32. The AAO warns on its website that the safe way to look directly at the sun is through special purpose solar filters.¹⁸ This is especially true for looking at the sun directly during a TSE (such the one the nation experienced in August 2017), and irrespective of whether one watches the total solar eclipse from its umbra or penumbra.¹⁹ These solar purpose filters are used in “Eclipse Glasses,” and must meet a stringent worldwide standard known as ISO 12312-2 (2015). Commercially available sunglasses, even with darkest and polarized lenses, do not meet ISO 12312-2 (2015) requirements and are not safe for viewing Solar Eclipses.²⁰ Only those glasses with lenses that meet the very stringent requirements of ISO 12312-2 (2015) are suitable for safe direct-Solar-Eclipse viewing.

33. The popularity of the 2017 TSE created an economic boom for Eclipse Glasses makers. As of July 27, 2017, it was reported that American Paper Optics, located in Bartlett, Tennessee, had produced 37 million Eclipse Glasses, and was expecting to make and sell 100

¹⁶ See, <https://www.cbsnews.com/news/did-the-solar-eclipse-damage-your-eyes-heres-how-to-tell/>, last viewed August 22, 2017

¹⁷ See, https://www.washingtonpost.com/news/to-your-health/wp/2017/08/22/do-your-eyes-hurt-after-the-solar-eclipse-heres-what-you-need-to-know/?utm_term=.311047321af1, last viewed September 25, 2017.

¹⁸ See, <https://www.aao.org/eye-health/tips-prevention/solar-eclipse-eye-safety>, last accessed September 25, 2017.

¹⁹ *Id.*

²⁰ *Id.*

million.²¹ USA Today reported that approximately 10 million Eclipse Glasses manufactured by American Paper Optics were sold to Amazon.²²

34. Amazon was aware of the requirements that would make Eclipse Glasses safe to use for viewing the TSE on August 21, 2017, and that providing defective Eclipse Glasses that did not meet the requisite standards would result in eye injury and vision impairment.

35. Upon information and belief, Amazon negligently advertised, marketed, and distributed defective, unsafe Eclipse Glasses to customers via online sales prior to the August 21, 2017 TSE; Eclipse Glasses did not meet the ISO 122312-2 requisite standards for eye protection and as such were defective.

36. Amazon's August 12, 2017 email "recall" was tragically too little, too late. Its email notification was insufficient to timely apprise customers of the defective nature of their glasses, and resulted in Plaintiffs and members of the proposed class using defective Eclipse Glasses to view the August 21, 2017 TSE without knowing that the glasses were unfit for their intended purpose.

37. Upon information and belief, many Eclipse Glasses sold by Amazon were sold in packs of 3 and 20 or more, and distributed to non-purchasing individuals, who never received a warning email. Notwithstanding Amazon's woefully inadequate email notification, any and all users of Eclipse Glasses were subjected to unreasonable and foreseeable risks of severe and permanent eye injury due to the negligence of Amazon.

INDIVIDUAL PLAINTIFFS' ALLEGATIONS

38. On or about August 4, 2017, Plaintiff Steven Levine purchased from Amazon a three-pack of Eclipse Glasses, which were delivered to his home in Boca Raton, Florida on or

²¹ See, <https://www.usatoday.com/story/tech/science/2017/07/27/solar-eclipse-2017-business-booming-makers-glasses/517129001/>, last accessed September 25, 2017.

²² *Id.*

August 5, 2017. Plaintiff Steven Levine gave one pair of the Eclipse Glasses to his wife, Plaintiff Susan Levine, and one pair to a family member. Both Plaintiffs used the Eclipse Glasses to view the TSE on August 21, 2017, and did not view the eclipse during any time without wearing the Eclipse Glasses.

39. Upon information and belief, Plaintiffs did not receive notice of the recall or warning notice from Amazon.

40. Upon information and belief, Plaintiffs did not receive a refund of the purchase price of the Eclipse Glasses sold to them by Amazon.

41. Within 24 hours following the TSE, both Plaintiffs began to experience pain and discomfort, including blurry, distorted vision and color perception impairment.

42. As a direct and proximate result of Defendant's conduct in selling and distributing unsafe Eclipse Glasses, Plaintiffs and the classes have suffered a significant increased risk of injury or disease, requiring an award of the cost of a program for medical monitoring for the early detection of such eye injury, disease or disease resulting from exposure to the sun caused by Defendant's unsafe Eclipse Glasses. Reasonable medical procedures exist for the early detection of eye injury, disease process and disease caused by unsafe exposure to the sun resulting from exposure to the sun from Defendant's unsafe Eclipse Glasses. Early detection of injury, disease or disease process resulting from exposure to the sun caused by Defendant's unsafe Eclipse Glasses will benefit Plaintiffs and Class Members.

43. Plaintiffs and members of the proposed classes have or will experience varying degrees of eye injury ranging from temporary discomfort to permanent blindness.

CLASS ACTION ALLEGATIONS

44. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as permitted by Federal Rule of Civil Procedure 23(a), (b)(1), (b)(2), (b)(3) and (c)(4). Plaintiffs are informed and believe that there are at least thousands in the proposed Class. The proposed **Nationwide Class** consists of:

All persons throughout the United States who, on or before August 21, 2017, purchased or used unsafe Eclipse Glasses from Amazon.com for viewing of the August 21, 2017 Total Solar Eclipse.

45. The proposed **Florida Subclass** consists of:

All residents of Florida who, on or before August 21, 2017, purchased or used unsafe Eclipse Glasses from Amazon.com for viewing of the August 21, 2017 Total Solar Eclipse.

Collectively, the Nationwide Class and the Florida Subclass are referred to as the **Class or Classes**.

46. Excluded from the Class are the following:

- a. Defendant and any entities in which Defendant has controlling interest;
- b. Any entities in which Defendant's officers, directors, or employees are employed and any of the legal representatives, heirs, successors, or assigns of Defendant;
- c. The Judge to whom this case is assigned and any member of the Judge's immediate family and any other judicial officer assigned to this case;
- d. All persons or entities that properly execute and timely file a request for exclusion from the class;
- e. Any attorneys representing the Plaintiffs or the class.

47. Plaintiffs reserve the right to modify or amend the definition of the proposed class if discovery and further investigation reveals that the class should be expanded, divided into additional subclasses, or modified in any way.

48. A class action is the proper form to bring Plaintiffs' claims. The potential Class is so large that joinder of all members would be impracticable. Additionally, there are questions of law or fact common to the Class, the claims or defenses of the representative parties are typical of the claims or defenses of the class, and the representative parties will fairly and adequately protect the interests of the Class.

49. This action satisfies all requirements of FRCP 23(a), (b)(1), and (b)(3), including numerosity, commonality, typicality, adequacy, predominance, and superiority.

50. **Numerosity and Ascertainability:** the Class is so numerous that joinder of all members is impracticable. While the exact number is unknown at this time, it is generally ascertainable by appropriate discovery, and based upon the Defendant's sales volume, communications with customers, and other information, it is reasonable to presume that the members of the Class are so numerous that joinder of all members is impracticable. Moreover, information in Defendant's records will establish or assist in establishing the names and addresses of Class Members and the size of the Classes. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court.

51. **Commonality:** the claims made by Plaintiffs meet the commonality requirement because they present shared questions of law and fact, and resolving these questions will resolve the class-wide litigation. Resolution of common questions of law and fact will not turn on the individual behavior of members of the Class, but on the Defendant's standardized conduct. These shared questions predominate over individual questions, and they include, without limitation:

- a. Whether the Eclipse Glasses were unsafe and/or defective;

- b. Whether Defendant knew or should have known the Eclipse Glasses were unsafe and/or defective;
- c. Whether Defendant had a duty to distribute and sell the Eclipse Glasses such that they were neither defective, nor unreasonably dangerous when used as intended;
- d. Whether Defendant owed a duty to inspect the Eclipse Glasses it distributed to Plaintiffs and members of the class;
- e. Whether Defendant inspected the Eclipse Glasses before marketing and distributing those to Plaintiffs and members of the class;
- f. Whether Defendant's inspection of any glasses sold on the Amazon.com website for the purpose of viewing the August 21, 2017 Total Solar Eclipse was adequate;
- g. Whether Defendant failed to adequately warn purchasers and users of Eclipse Glasses of the defective nature of the glasses;
- h. Whether Defendant owed duties to Plaintiffs and the proposed Classes, the scope of those duties, and if they breached those duties;
- i. Whether Defendant made warranties to Plaintiffs and the proposed Classes, the scope of those warranties, and if they breached those warranties;
- j. Whether Defendant owed a duty to warn all purchasers of any Eclipse Glasses sold by Amazon on its website to not use them for viewing solar eclipses;
- k. Whether Defendant's efforts to recall of the Eclipse Glasses and/or prevent use of the Eclipse Glasses were non-existent or otherwise inadequate;
- l. Whether Defendant's conduct constitutes violation of the law asserted herein;
- m. The extent of damages caused by Defendant's acts and omissions, and whether Plaintiffs and the proposed Class are entitled to injunctive or declaratory relief.

52. **Typicality:** Plaintiffs' claims are typical of those of the other Class members because Plaintiffs, like every other Class member, have been damaged by Defendant's negligent and/or reckless conduct because Plaintiffs incurred losses and injuries relating to the purchase or use of Eclipse Glasses in that they did not get the benefit of the bargain and get what they paid for. Further, the factual bases of Defendant's misconduct are common to all Class members and represent a common thread of misconduct resulting in injury to all Class members.

53. The claims of the Class Representative Plaintiffs are furthermore typical of other Class members because Plaintiffs make the same claims as other class members. Plaintiffs have interest in seeking compensation from Defendant for injuries suffered due to the purchase of defective Amazon Eclipse Glasses.

54. **Adequacy:** Plaintiffs will fairly and adequately represent and protect the interests of the Class because Plaintiffs have no disabling conflicts of interest that would be antagonistic to those of the other Class members. Plaintiffs seek no relief that is antagonistic or adverse to the members of the Class and the damages Plaintiffs suffered are typical of other Class members. Further, Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions, including actions involving unfair, false, misleading, and deceptive advertising. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class, and have the financial resources to do so.

55. **Superiority:** Class litigation is an appropriate method for fair and efficient adjudication of the claims involved as Plaintiffs and Class Members have all suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. Class action treatment is superior to all other available methods for the fair and efficient adjudication of the controversy alleged herein: it will permit a large number of Class members to

prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that hundreds of individual actions would require. Class action treatment will permit the adjudication of relatively modest claims by certain Class members, who could not individually afford to litigate their claims against Defendant Amazon, one of the largest online retailers in the world. Further, even for those Class members who could afford to litigate such a claim, it would remain an economically impractical alternative. Class action treatment will achieve one the primary purpose of the class action mechanism, enhancing the efficacy of private actions by permitting citizens to combine their limited resources to achieve a more powerful litigation posture.

56. The nature of this action and the nature of Florida law and consumer protection and product liability laws available to Plaintiffs and the Class members make the use of the class action device a particularly efficient and appropriate procedure to afford relief to Plaintiffs and the Class members for the wrongs alleged for the following reasons: 1) otherwise, Defendant would necessarily gain an unconscionable advantage as they would be able to exploit and overwhelm the limited resources of each individual Class member with superior financial and legal resources; 2) the costs of individual suits could unreasonably consume the amounts that would be recovered; 3) proof of a common course of conduct by which Plaintiffs were exposed to an inherently defective and extremely dangerous product resulting in injuries and damages is representative of that experienced by Class members and will establish the right of each member of the Class to recover on the cause of action alleged; and 4) individual actions would create a risk of inconsistent results and would be unnecessary and duplicative of this litigation.

57. Class-wide declaratory, equitable, and injunctive relief is appropriate pursuant to Rule 23(b)(1) and/or (b)(2) because Defendant has acted on grounds that apply generally to the

Class, and inconsistent adjudications with respect to Defendant's liability would establish incompatible standards and substantially impair or impede the ability of Class members to protect their interests. Class-wide relief assures fair, consistent, and equitable treatment and protection of all Class members, as well as uniformity and consistency in Defendant's duties to perform corrective action.

COUNT I – VIOLATION OF FDUTPA

58. Plaintiffs reallege and incorporate Paragraphs 1 through 43 as if fully set forth herein.

59. Plaintiffs assert this cause of action on behalf of themselves and both the Florida and Nationwide Classes.

60. Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§ 501.201, *et seq.*, declares unlawful "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practice in the conduct of any trade or commerce." *Id.* § 501.201.

61. Plaintiffs and the Classes are "consumers" as defined by Florida Statute §501.203(7), and the subject transactions are "trade or commerce" as defined in Florida Statute §501.203(8).

62. Defendant violated and continues to violate FDUTPA by engaging in the described unconscionable, deceptive, unfair acts or practice proscribed by Florida Statute §501.201, *et seq.* Defendants practices were likely to, and did in fact, deceive and mislead members of the public, including consumers acting reasonably under the circumstances, to their detriment. These practices include, but are not limited to, Defendant's use of false or misleading representations or omissions of material fact in connection with the marketing, advertising,

promotion, and sale of Eclipse Glasses to consumers.

63. Defendant has engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of its trade and commerce by, *inter alia*, offering and selling Eclipse Glasses that were advertised as being certified as ISO Standard 12312-2 (2015) compliant and safe for viewing a TSE, but were, in fact, not certified as compliant with ISO Standard 12312-2 (2015), and were defective, unfit, and unsafe for viewing solar eclipses.

64. Plaintiffs dispute the adequacy, timeliness, and efficacy of any and all notice, refund and/or recall efforts implemented by Defendant. The inadequacy of Defendant's efforts to recall the defective Eclipse Glasses resulted in foreseeable and preventable harm to customers including Plaintiffs.

65. In connection with the sale of the defective product to Plaintiffs, Defendant, through its employees, agents and representatives, violated the Florida Unfair Trade Practices Act by engaging in unfair or deceptive acts or practices, failing to disclose the dangerous design and/or manufacturing defect of the product, and failing to adequately and fully compensate Plaintiffs.

66. As a direct and proximate result of unfair and/or deceptive acts or practices, Plaintiffs were damaged and suffered injuries resulting from the dangerous design and/or manufacturing defect of the product described herein.

67. Privity existed between purchasing Plaintiffs and Defendant.

68. By reason of such violations and pursuant to the Florida Deceptive and Unfair Trade Practices Act, Plaintiffs are entitled to recover all of the monies paid for the defective products, to be compensated for the lost value arising out of the use of the product, and to

recover any and all consequential damages recoverable under the law including, but not limited to, exposure to a dangerous and defective product, medical expense, both past and future lost wages, and other losses.

69. Plaintiffs are entitled to equitable relief, including restitutionary disgorgement of monies unfairly, deceptively and/or unlawfully collected by Defendant and an injunction prohibiting Defendant from engaging in the same or similar practices described herein in the future.

70. Pursuant to the Florida Deceptive and Unfair Trade Practices Act, Plaintiffs are entitled to actual damages, attorneys' fees and costs of this suit.

COUNT II – VIOLATION OF STATE CONSUMER PROTECTION STATUTES

71. Plaintiffs reallege and incorporate Paragraphs 1 through 43 as if fully set forth herein.

72. Plaintiffs assert this cause of action on behalf of themselves and the Nationwide Class.

73. Defendant engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the state consumer protection statutes listed below. The direct and proximate result of Defendant's misrepresentations and unlawful course of conduct was the inducement of Plaintiffs and members of the Class to purchase unsafe and/or defective Eclipse Glasses from Defendant.

74. In connection with the sale of the defective product to both Plaintiffs and members of the Nationwide Class, Defendant, through its employees, agents and representatives, violated state consumer protection statutes by engaging in unfair or deceptive acts or practices,

failing to disclose the unsafe and/or defective design and/or misbranding of the product, and failing to adequately and fully compensate consumers.

75. Plaintiffs dispute the adequacy, timeliness, and efficacy of any and all refund and/or recall efforts implemented by Defendant. The inadequacy of Defendant's efforts to recall the defective Eclipse Glasses resulted in foreseeable and preventable harm to customers including Plaintiffs.

76. Defendant intended that Plaintiffs and members of the proposed Nationwide Class would rely on their materially deceptive practices; and that Plaintiffs and members of the proposed class would purchase Eclipse Glasses from Defendant as a consequence of the deceptive practices, including Defendant's false advertising, misrepresentations and omissions of material facts, including, but not limited to, the safety of the product for its intended use. Plaintiffs and members of the proposed Class were deceived by Defendant's misrepresentations, which constitute unfair and deceptive acts and practices.

77. As a direct and proximate result of unfair and/or deceptive acts or practices, Plaintiffs and members of the proposed Nationwide Class suffered an ascertainable loss, in that they paid for a product that they would not have purchased had Defendant not engaged in unfair and deceptive conduct. Plaintiffs were damaged and suffered injuries resulting from the dangerous design and/or misbranding and false advertising of the product described herein. This injury is of the type the state consumer protection statutes were designed to prevent and directly results from Defendant's conduct.

78. Under the statutes listed herein to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices, Defendant is the supplier, advertiser,

and seller that is subject to liability for unfair, deceptive, fraudulent, and unconscionable consumer sales practices.

79. By engaging in the foregoing conduct, Defendant violated the following States'

Unfair and Deceptive Trade Practices and Consumer Fraud Laws:

- a. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Alaska Stat. § 45.50.471, *et seq.*;
- b. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ariz. Rev. Stat. § 44-1522, *et seq.*;
- c. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ark. Code Ann. § 4-88-101, *et seq.*;
- d. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*;
- e. Defendant has engaged in unfair competition or unfair or deceptive acts or practices or have made false representations in violation of Colo. Rev. Stat. § 6-1-105, *et seq.*;
- f. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42-110b, *et seq.*;
- g. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Del. Code Ann. tit. 6, § 2511, *et seq.*;
- h. Defendant has engaged in unfair competition or unfair or deceptive acts or practices or made false representations in violation of D.C. Code Ann. § 283901, *et seq.*;
- i. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ga. Code Ann. §10-1-392, *et seq.*;
- j. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480, *et seq.*;
- k. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Idaho Code Ann. § 48-601, *et seq.*;
- l. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ind. Code Ann. § 24-5-0.5-1, *et seq.*;

- m. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Kan. Stat. § 50-623, *et seq.*;
- n. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ky. Rev. Stat. Ann. § 367.110, *et seq.*;
- o. Defendant has engaged in unfair competition or unfair deceptive acts or practices in violation of La. Stat. Ann. § 51:1401, *et. seq.*;
- p. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Me. Rev. Stat. tit. 5 § 207, *et seq.*;
- q. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Md. Code, Com. Law § 13-101, *et seq.*;
- r. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Mass. Gen. L. Ch. 93A, *et seq.*;
- s. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Mich. Stat. § 445.901, *et seq.*;
- t. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Minn. Stat. § 8.31, *et seq.*;
- u. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Mo. Rev. Stat. § 407.010, *et seq.*;
- v. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Mont. Code § 30-14-101, *et seq.*;
- w. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Neb. Rev. Stat. § 59-1601, *et seq.*;
- x. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Nev. Rev. Stat. § 598.0903, *et seq.*;
- y. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.H. Rev. Stat. § 358-A: 1, *et seq.*;
- z. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.M. Stat. § 57-12-1, *et seq.*;
- aa. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*;

- bb. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*;
- cc. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.D. Cent. Code § 51-15-01, *et seq.*;
- dd. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ohio Rev. Stat. § 1345.01, *et seq.*;
- ee. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Okla. Stat. 15 § 751, *et seq.*;
- ff. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Or. Rev. Stat. § 646.605, *et seq.*;
- gg. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of 73 Pa. Cons. Stat. § 201-1, *et seq.*;
- hh. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of 6 R.I. Gen Laws § 6-13.1-1, *et seq.*;
- ii. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of S.D. Codified Laws § 37-24-1, *et seq.*;
- jj. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Tenn. Code Ann. § 47-18-101, *et seq.*;
- kk. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Tex. Bus. & Com. Code § 17.41, *et seq.*;
- ll. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Utah Code § 13-11-1, *et seq.*;
- mm. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Vt. Stat. Ann. Tit. 9 § 2451, *et seq.*;
- nn. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Va. Code Ann. § 59.1-196, *et seq.*;
- oo. Defendants has engaged in unfair competition or unfair or deceptive acts or practices in violation of Wash. Rev. Code § 19.86.010, *et seq.*;
- pp. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-101, *et seq.*;

qq. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Wis. Stat. § 100.18, *et seq.*; and

rr. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Wyo. Stat.. Ann. § 40-12-101, *et seq.*

80. As a direct and proximate result of Defendant's wrongful conduct as alleged herein, Plaintiffs and members of the Nationwide Class are entitled to, where applicable, compensatory damages, treble damages were available, attorneys' fees and costs of this suit.

COUNT III – VIOLATIONS OF UNIFORM DECEPTIVE TRADE PRACTICES ACTS

81. Plaintiffs reallege and incorporate Paragraphs 1 through 43 as if set forth fully herein.

82. Plaintiffs assert this claim for violations of the Uniform Deceptive Trade Practices Act ("UDTPA"), which prohibits "[r]epresenting that goods ... have sponsorship, approval, characteristics, ... uses, [or] benefits ... that they do not have," on behalf of all Nationwide Class members who reside in the twenty-three states who have enacted these provisions of the UDTPA.

83. Defendant engaged in deceptive trade practices in violation of the twenty-three state consumer protection statutes that incorporate the provisions of the UDTPA quoted above by, *inter alia*, failing to provide a product free from inherent defect; failing to properly warn consumers of the inherent dangers of the product; inadequately testing the product before placing the product into interstate commerce; failing to provide a product that would meet the reasonable expectations of the ordinary consumer as to its safety. The Eclipse Glasses were under the exclusive control of Defendant prior to sale and Defendant had a duty to warn purchasers of the dangers posed by the product in an effective manner.

84. Plaintiffs dispute the adequacy, timeliness, and efficacy of any and all refund

and/or recall efforts implemented by Defendant. The inadequacy of Defendant's efforts to recall the defective Eclipse Glasses resulted in foreseeable and preventable harm to customers including Plaintiffs.

85. The kinds of harms that befell Plaintiffs and members of the proposed Nationwide Class were foreseeable results of the defects in the product as alleged herein. Neither Plaintiffs nor members of the proposed Nationwide Class had any reason to know, prior to or at the time of purchase, or at any time prior to their injuries, that the Eclipse Glasses were defective, harmful and dangerous to consumers.

86. Defendant has violated the deceptive trade practices statutes of the following states that incorporate the provisions of the UDTPA quoted above, as follows:

- a. Defendant has engaged in deceptive trade practices in violation of Ala. Code § 8-19-5, *et seq.*;
- b. Defendant has engaged in deceptive trade practices in violation of Alaska Stat. § 45.50.471, *et seq.*;
- c. Defendant has engaged in deceptive trade practices in violation of Cal. Civ. Code § 1770, *et seq.*;
- d. Defendant has engaged in deceptive trade practices in violation of Del. Code tit. 6 § 2532, *et seq.*;
- e. Defendant has engaged in deceptive trade practices in violation of Ga. Code Ann. §§ 10-1-372, *et seq.*, 10-1-393, and 26-2-29 *et seq.*;
- f. Defendant has engaged in deceptive trade practices in violation of Haw. Rev. Stat. § 481A-3, *et seq.*;
- g. Defendant has engaged in deceptive trade practices in violation of Idaho Code § 48-603, *et seq.*;
- h. Defendant has engaged in deceptive trade practices in violation of 815 Ill. Comp. Stat. § 510/2, *et seq.*;
- i. Defendant has engaged in deceptive trade practices in violation of Me. Rev. Stat. Ann. Tit. 10 § 1212, *et seq.*;

- j. Defendant has engaged in deceptive trade practices in violation of Mich. Comp. Laws Ann. § 445.903, *et seq.*;
- k. Defendant has engaged in deceptive trade practices in violation of Minn. Stat. Ann. § 325D.44, *et seq.*;
- l. Defendant has engaged in deceptive trade practices in violation of Miss. Code Ann. § 75-24-5, *et seq.*;
- m. Defendant has engaged in deceptive trade practices in violation of Neb. Rev. Stat. §§ 81-2,285, *et seq.* and 87-302, *et seq.*;
- n. Defendant has engaged in deceptive trade practices in violation of N.H. Rev. Stat. § 358-A:2, *et seq.*;
- o. Defendant has engaged in deceptive trade practices in violation of N.M. Stat. Ann. § 57-12-2, *et seq.*;
- p. Defendant has engaged in deceptive trade practices in violation of Ohio Rev. Code § 4165.02, *et seq.*;
- q. Defendant has engaged in deceptive trade practices in violation of Or. Rev. Stat. § 646.608, *et seq.*;
- r. Defendant has engaged in deceptive trade practices in violation of 10 Penn. Stat. § 162.15, *et seq.* and 73 Penn. Stat. § 201-2, *et seq.*;
- s. Defendant has engaged in deceptive trade practices in violation of R.I. Gen. Laws § 6-13-1.1 *et seq.*;
- t. Defendant has engaged in deceptive trade practices in violation of Tenn. Code Ann. § 47-18-104, *et seq.*;
- u. Defendant has engaged in deceptive trade practices in violation of Tex. Bus. & Comm. Code § 17.46, *et seq.*;
- v. Defendant has engaged in deceptive trades practices in violation of Utah Code § 13-11a-3, *et seq.*;
- w. Defendant has engaged in deceptive trade practices in violation of W.Va. Code § 46A-6-102, *et seq.*

87. As a direct and proximate result of Defendant's wrongful conduct as alleged

herein, Plaintiffs and members of the Nationwide Class are entitled to compensatory damages,

treble damages, attorneys' fees and costs of this suit as permitted by applicable state law.

COUNT IV – NEGLIGENCE

88. Plaintiffs reallege and incorporate Paragraphs 1 through 43 as if fully set forth herein.

89. Plaintiffs assert this cause of action on behalf of themselves and both the Florida and Nationwide Classes.

90. Defendant owed a duty of care to Plaintiffs and the proposed Classes to distribute and sell the Eclipse Glasses in such a way that they were neither defective nor unreasonably dangerous when used as intended; to inspect and ensure the glasses that it provided were in fact safe; to warn of any post-sale defects discovered in its products; and to recall dangerous products. Defendant owed a duty to Plaintiffs and members of the proposed Classes as purchasers and users to use reasonable care to provide true, reliable, and safe information regarding the Eclipse Glasses. Defendant undertook a duty to reasonably communicate about the safety of the glasses to Plaintiffs and the Classes.

91. Defendant knew that viewing the August 21, 2017 TSE without proper eye protection would result in eye injuries and permanent blindness to Plaintiffs and members of the proposed Classes, particularly in light of the extensive the media coverage prior to and surrounding the August 21, 2017 TSE.

92. Defendant knew or had reason to know that Plaintiffs and the proposed Classes, as consumers and members of the general public for whom the Eclipse Glasses alleged herein were placed into interstate commerce, would be likely to use the Eclipse Glasses in the manner described herein.

93. Defendant knew or reasonably should have known of the danger associated with the manner and circumstances of Plaintiffs and the proposed Classes' foreseeable use of the Eclipse Glasses alleged herein, which danger would not be obvious to the general public.

94. Plaintiffs dispute the adequacy, timeliness, and efficacy of any and all refund and/or recall efforts implemented by Defendant. The inadequacy of Defendant's efforts to recall the defective Eclipse Glasses resulted in foreseeable and preventable harm to customers including Plaintiffs.

95. Defendant breached its duties by selling and distributing Eclipse Glasses that were unsafe and/or defective, misbranded, and unfit for their intended use, resulting in physical injury, including, but not limited to, temporary and/or permanent blindness.

96. As a direct and proximate result of the Defendant's acts and/or omissions, Plaintiffs and members of the proposed class have suffered injuries, damages, and losses as alleged in this Complaint.

97. Defendant's acts and/or omissions were intentional, fraudulent, malicious, or reckless and, thereby, Plaintiffs and members of the proposed Classes are entitled to an award of exemplary and punitive damages in an amount to be proven at trial.

COUNT V – NEGLIGENT MISREPRESENTATION

98. Plaintiffs reallege and incorporate Paragraphs 1 through 43 as if fully set forth herein.

99. Plaintiffs assert this cause of action on behalf of themselves and both the Florida and Nationwide Classes.

100. Defendant gave false information that the Eclipse Glasses it advertised, marketed, distributed, and sold to customers were safe and effective for their intended use.

101. Plaintiffs and the proposed Classes relied upon Defendant's express and implied representations that the Eclipse Glasses were safe for use in viewing the TSE on August 21, 2017.

102. It was reasonable for Plaintiffs and the Classes to rely on the representations communicated by Defendant as to the safety and efficacy of the Eclipse Glasses, and Plaintiffs and the proposed Classes relied on Defendant's representations and advertisements.

103. As a result of Plaintiffs' reliance on Defendant's representations, Plaintiffs and the proposed Classes observed the August 21, 2017 TSE, believing it was safe to use the unsafe and/or defective Eclipse Glasses provided by Defendant, resulting in increased, dangerous exposure to the sun during the TSE.

104. As a direct and proximate result of Plaintiffs' and the Classes' reliance on Defendant's negligent misrepresentations, Plaintiffs and members of the proposed Classes have suffered and will continue to suffer injuries and damages, including but not limited to those identified herein. Accordingly, Defendant is liable to Plaintiffs and members of the proposed Classes for compensatory damages.

COUNT VI – NEGLIGENT FAILURE TO WARN

105. Plaintiffs reallege and incorporate Paragraphs 1 through 43 as if fully set forth herein.

106. Plaintiffs assert this cause of action on behalf of themselves and both the Florida and Nationwide Classes.

107. Defendant knew or should have known that the Eclipse Glasses it advertised, marketed, distributed, and sold to Plaintiffs, and were used by members of the proposed Classes, were not safe for the protection of their eyes while viewing the TSE on August 21, 2017.

108. Defendant failed to warn Plaintiffs and the members of the proposed Classes that the Eclipse Glasses they purchased were in fact unsafe and/or defective for the protection of their eyes while viewing the TSE.

109. Plaintiffs dispute the adequacy, timeliness, and efficacy of any and all notice, refund and/or recall efforts implemented by Defendant. The inadequacy of Defendant's efforts to recall the defective Eclipse Glasses resulted in foreseeable and preventable harm to customers including Plaintiffs.

110. As a direct and proximate result of Defendant's failure to warn of the unsafe and/or defective nature of the Eclipse Glasses Defendant advertised, marketed, distributed and sold to customers, Plaintiffs and members of the proposed Classes have suffered and will continue to suffer injuries and damages as described herein. Accordingly, Defendant is liable to Plaintiffs and class members for compensatory and other damages.

COUNT VII – BREACH OF WARRANTY

111. Plaintiffs reallege and incorporate Paragraphs 1 through 43 as if fully set forth herein.

112. Plaintiffs assert this cause of action on behalf of themselves and both the Florida and Nationwide Classes.

113. Defendant by and through the sale of the Eclipse Glasses, warranted to consumers and/or foreseeable users, such as Plaintiffs and members of the proposed Classes, that the Eclipse Glasses were fit for their ordinary, intended and foreseeable use.

114. Plaintiffs and members of the proposed Classes used the Eclipse Glasses in the ordinary, intended, and foreseeable manner, in which the product was to be used in reliance on said warranties.

115. Eclipse Glasses were unsafe and/or defective and/or unfit for their ordinary, intended, and foreseeable use, rendering them unreasonably dangerous in breach of said warranties.

116. Defendant's breach of these warranties includes, but is not limited to:

- a. The failure of the Eclipse Glasses;
- b. The failure to inspect and ensure the Eclipse Glasses were safe for their intended use;
- c. The failure to provide adequate warnings concerning the unsafe and defective nature of the Eclipse Glasses once discovered by Defendant;
- d. The failure to provide adequate and effective communications to customers concerning the unsafe and defective nature of the Eclipse Glasses once discovered by Defendant, and improper marketing;
- e. The failure to adequately and effectively communicate the recall to customers and users so as to avoid the foreseeable danger and subsequent injury as a result of using the unsafe and defective Eclipse Glasses; and
- f. The failure to protect foreseeable users of the Eclipse Glasses from the dangers present in the intended and foreseeable use of the Eclipse Glasses, which dangers were known by Defendant.

117. Plaintiffs further allege that the breaches of warranties include:

- a. That Defendant knew or should have known of the unsafe, defective and dangerous condition of the Eclipse Glasses;

- b. That Defendant knew or should have known the Eclipse Glasses posed significant risks if used as intended by foreseeable users beyond that understood or contemplated by the ordinary reasonable consumer;
- c. That Defendant placed on the market and in the stream of commerce Eclipse Glasses that were unfit for their intended use and purpose; and
- d. That Defendant placed on the market and in the stream of commerce Eclipse Glasses that were not safe for the purpose for which they were sold.

118. Plaintiffs and members of the proposed Classes have incurred damages as a direct and proximate result of Defendant's defective product and Defendant's breach of warranty, in that purchasing Plaintiffs in the proposed Classes have paid the purchase price for the unmerchantable product.

119. Plaintiffs and members of the proposed Classes suffered injuries and the manner by which they occurred was foreseeable to Defendant, as Defendant possessed actual, superior knowledge about the condition of the Eclipse Glasses and knew or should have known that the glasses would injure customers if used in the manner intended.

120. Plaintiffs and members of the proposed Classes are entitled to an award of damages for their injuries, to a refund of the purchase price paid for the product, consequential and incidental damages, costs and expenses, including attorney fees, an injunction prohibiting Defendants from continuing such practices, and all other relief this Court deems appropriate.

COUNT VIII – RULE 23(B)(2) INJUNCTIVE RELIEF

121. Plaintiffs reallege and incorporate Paragraphs 1 through 43 as if fully set forth herein.

122. In addition to or in the alternative to the above, Plaintiffs, individually and on behalf of the proposed Classes, bring this class action under Rule 23(b)(2) because Defendant

has acted or refused to act on grounds that apply generally to the Classes as a whole, such that final injunctive relief is appropriate with respect to the Classes as a whole.

123. Such injunctive relief includes, but is not limited to, the implementation and funding of a medical monitoring program for the Plaintiffs and the Classes for the early detection of eye injury, disease process and disease resulting from exposure to the sun caused by Defendant's unsafe Eclipse Glasses; an order requiring Defendant to cease and desist from engaging in the unlawful, unfair, and/or deceptive practices alleged in the Complaint; and injunctive relief to remedy Defendant's past conduct.

COUNT IX – UNJUST ENRICHMENT

124. Plaintiffs reallege and incorporate Paragraphs 1 through 43 as if fully set forth herein.

125. Plaintiffs assert this cause of action on behalf of themselves and both the Florida and Nationwide Classes.

126. The purchasing Plaintiffs and purchasing members of the proposed Classes conferred a monetary benefit on Defendant. Specifically, Plaintiffs and members of the proposed Classes purchased products, Eclipse Glasses, from Defendant and provided Defendant with payment.

127. Defendant knew that Plaintiffs and members of the proposed Classes conferred a benefit on Defendant, and Defendant profited from the purchases.

128. As described above, Defendant sold Eclipse Glasses to Plaintiffs and members of the proposed Classes even though the glasses were defective and were not safe for the purpose for which it was sold. Defendant failed to disclose the nature of the defect at the point of sale or properly warn of the defect after the sale.

129. If Plaintiffs and members of the proposed Classes had known that the Eclipse Glasses were defective and not safe for the purpose of viewing the TSE, they would not have purchased or used the Eclipse Glasses from Defendant.

130. Under the circumstances, it would be unjust for Defendant to be permitted to retain any of the benefits that Plaintiffs and members of the proposed Classes conferred on it.

131. The retention by Defendant of these wrongfully obtained profits would violate the fundamental principles of justice, equity, and good conscience.

132. Plaintiffs and members of the proposed Classes are entitled under the laws of their respective states to restitution of the profits unjustly obtained by Defendant, plus interest.

133. Defendant should be compelled to disgorge into a common fund or constructive trust, for the benefit of Plaintiffs and members of the proposed Classes, the proceeds that it unjustly received from them. In the alternative, Defendant should be compelled to refund the amounts that Plaintiffs and members of the proposed Classes paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and members of the proposed Classes pray for relief and judgment against Defendant, as follows:

- a. For an order certifying the proposed Classes, appointing Plaintiffs and counsel to represent the proposed Classes and notice to the proposed Classes to be paid by Defendant;
- b. For damages suffered by Plaintiffs and the proposed Classes;
- c. For restitution to Plaintiffs and members of the proposed Classes of all monies wrongfully obtained by Defendant;
- d. For injunctive relief requiring Defendant to cease and desist from engaging in the unlawful, unfair, and/or deceptive practices alleged in the Complaint;
- e. An order awarding declaratory relief, retrospective and prospective injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the

- unlawful practices as set forth herein, and injunctive relief to remedy Defendant's past conduct;
- f. For Plaintiffs' reasonable attorneys' fees, as permitted by law;
 - g. For Plaintiffs' costs incurred;
 - h. For pre-judgment and post-judgment interest at the maximum allowable rate on any amounts awarded; and,
 - i. For such other and further relief that this Court deems just and proper under equity or law, including the award of punitive damages.

JURY DEMAND

Plaintiffs demand a trial by jury on all counts so triable.

Dated: September 28, 2017

Respectfully Submitted,

/s/ Steven W. Teppler

Steven W. Teppler

FBN: 14787

Brittany R. Ford*

FBN: 0117718

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Counsel for Plaintiffs and the Class

**awaiting Order of Admission*

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS STEVEN LEVINE and SUSAN LEVINE, individually, et. al. **DEFENDANTS** AMAZON.COM, INC., a foreign corporation

(b) County of Residence of First Listed Plaintiff Palm Beach County, FL (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant King County, WA (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Steven W. Tepler (Abbott Law Group, P.A.) 2929 Plummer Cove Road, Jacksonville, FL 32223 904-292-1111

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) **III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input type="checkbox"/> Citizen of This State	<input checked="" type="checkbox"/> 1 PTF	<input type="checkbox"/> 1 DEF	<input type="checkbox"/> 4 PTF	<input type="checkbox"/> 4 DEF
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<input type="checkbox"/> Citizen of Another State	<input type="checkbox"/> 2 PTF	<input type="checkbox"/> 2 DEF	<input type="checkbox"/> 5 PTF	<input checked="" type="checkbox"/> 5 DEF
		<input type="checkbox"/> Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 PTF	<input type="checkbox"/> 3 DEF	<input type="checkbox"/> 6 PTF	<input type="checkbox"/> 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only) **Click here for: Nature of Suit Code Descriptions**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander		PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans)	<input type="checkbox"/> 350 Motor Vehicle	LABOR	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	SOCIAL SECURITY	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Mgmt Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 480 Consumer Credit
<input checked="" type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Med Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 495 Securities/Commodities/Exchange
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
		<input type="checkbox"/> 791 Empl Ret Inc Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS			<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS	FEDERAL TAX SUITS	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 870 Taxes (U S Plaintiff or Defendant)	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 510 Motions to Vacate Sentence		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 444 Amer w/Disabilities - Employment	Other:		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 445 Amer w/Disabilities - Other	<input type="checkbox"/> 530 General	IMMIGRATION	
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 462 Naturalization Application	
		<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 465 Other Immigration Actions	
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Reremanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE: **DOCKET NUMBER:**

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(a); diversity jurisdiction

LENGTH OF TRIAL via 12 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND** \$5,000,000.00 **CHECK YES only if demanded in complaint:** **JURY DEMAND:** Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE: September 28, 2017 SIGNATURE OF ATTORNEY OF RECORD: 

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.