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5 Attorneys for the Representative Plaintiff  
6 And the Plaintiff Class(es)

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 STANLEY F. SIDDLE, individually and on )  
12 behalf of all those similarly situated, )

13 Plaintiffs, )

14 v. )

15 THE DURACELL COMPANY, THE )  
16 PROCTER & GAMBLE COMPANY, )  
17 COSTCO WHOLESALE CORPORATION, )  
TECHNOMATE MANUFACTORY, LTD., )  
PRO-TEK INDUSTRIES, LLC. )

18 Defendants, )

**Case No. 4:19-cv-00568-JD**

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES,  
RESTITUTION, INJUNCTIVE AND  
EQUITABLE RELIEF**

**CLASS ACTION**

**JURY TRIAL DEMANDED**

19  
20 Representative Plaintiff STANLEY F. SIDDLE alleges as follows:

21 **INTRODUCTION**

22 1. This is a class action brought by Representative Plaintiff on behalf of himself, a California  
23 class, and a national class, of all persons who purchased Duracell-branded LED flashlight models  
24 250, 300 or 350, manufactured by DURACELL licensee TECHNOMATE MANUFACTORY,  
25 LTD., packaged with DURACELL batteries included, and distributed by DURACELL's retail  
26 partners including COSTCO, Home Depot, and Amazon, within the last four years. These  
27 flashlights are defective: they rapidly drain batteries in less than 30 days when turned OFF.  
28

1 2. THE DURACELL COMPANY is an American manufacturing company, with principal  
2 executive offices in Chicago, Illinois (and subsidiaries in the United Kingdom (UK) and China).  
3 DURACELL was 100% owned by parent holding company PROCTER & GAMBLE from 2005  
4 until completion of its sale on February 29, 2016 to Berkshire-Hathaway, Inc.

5 3. THE DURACELL COMPANY, a.k.a. DURACELL, INC., (dba “DURACELL”) declares,  
6 and the evidence discovered after the filing of the initial complaint suggests that DURACELL first  
7 entered into a licensing agreement with TECHNOMATE MANUFACTURING, LTD. in early  
8 2013, as a result of their discussions about manufacturing Duracell-branded flashlights in order to  
9 market them, combined with alkaline batteries manufactured by DURACELL, inside packages  
10 specifically designed and labeled for sale at COSTCO. As required by the Lanham Act, 15 U.S.C.  
11 §1051-1127, DURACELL has at all times relevant retained and bore a duty to exercise its rights to  
12 quality control over the design and manufacture of all Duracell-branded flashlights so as to ensure  
13 that all goods bearing the DURACELL mark are of the same quality.

14 4. Since at least January 2014 to the present, all Defendants together have engaged in a  
15 concerted scheme to market and distribute Duracell-branded LED flashlight models 250, model  
16 300, and model 350, (also marketed by Defendants as “Durabeam Ultra”), with iterations of  
17 substantially similar Duracell-branded LED flashlights appearing nationwide in the U.S. market  
18 through the present time. All of these LED flashlights were marketed by Defendants inside sealed  
19 single or, more commonly, multi-packs containing three or four flashlights. (*See, e.g. Exhibits 8,*  
20 *9 and 10*)

21 5. Each of these sealed retail packages of Duracell-branded LED flashlights have also  
22 included a full set of DURACELL AAA-size “COPPERTOP Alkaline-Manganese Dioxide”  
23 batteries (presently designated as model MN2400), one full set for each of the flashlights, all made  
24 prominently visible in the clear plastic packaging. Conveniently, these “bonus” sets of  
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1 DURACELL batteries can be immediately installed and used for powering the enclosed LED  
2 flashlights by the consumers. DURACELL AAA batteries are marketed by Defendants as the best  
3 replacement batteries to be purchased by consumers for use in these flashlights in the future.  
4 Replacement DURACELL alkaline AAA batteries, sold separately from Duracell-branded  
5 flashlights in many different multi-unit packages, are available from DURACELL's retail  
6 partners, as well as in wide retail distribution, at virtually every type of retail and online outlet in  
7 the USA and worldwide. (*See Exhibits 1 and 2*) In addition, COSTCO markets its own  
8 "Kirkland" brand AAA alkaline batteries, (which DURACELL has not disputed were  
9 manufactured by it for COSTCO), and presently sold by COSTCO in 64-packs. (*See Exhibits 3*  
10 *and 4*)

11  
12 6. Nowhere *on* these Duracell-branded LED Flashlights, nor anywhere on the packaging,  
13 does any name other than DURACELL appear -- not the name or existence of any licensee,  
14 manufacturer, or customer service provider other than DURACELL (apart from representing that  
15 these products were "imported by" or alternatively "distributed by" COSTCO, and, on some early  
16 variants an erroneous reference to "Gillette," which has actually not owned DURACELL since  
17 2005, after it's sale to Procter & Gamble, subsequently corrected on the later models). Certainly  
18 nothing on the product packaging, point-of-purchase in-store displays or websites discloses that  
19 anyone other than DURACELL itself is the designer and manufacturer of these flashlights, such  
20 that, at the time of purchase, the objective representation to Plaintiff (as well as any and all  
21 consumers reasonably relying on this representation) is that DURACELL is the manufacturer of  
22 both the Duracell-branded flashlights and the Duracell-branded batteries inside the packages  
23 offered for sale. Similarly, there is no indication on the packaging, or in any of the marketing of  
24 these defective Duracell-branded LED flashlights, that the 888-910-2280 "Customer Service"  
25 phone number provided connects consumers to anyone other than DURACELL (rather than in fact  
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1 to DURACELL licensee's TECHNOMATE MANUFACTORY affiliate in the United States,  
2 PRO-TEK INDUSTRIES, LLC, based in California, who operate a warehousing and shipping  
3 operation and answer mail, while, at the present time, in turn using the help of *American Customer*  
4 *Service*, in Norcross, Georgia, to answer that customer service number, take orders for  
5 replacement defective parts and flashlights, and answer consumer's questions).

6  
7 7. The Duracell-branded LED flashlight models 250, 300 or 350 and potentially similar  
8 models all share a catastrophic and pervasive design and/or manufacturing defect that rapidly  
9 drains the installed batteries, with power turned OFF, thus rendering these flashlights inoperable  
10 until reloaded with more batteries, as further described below. (Hereinafter these flashlights shall  
11 be identified simply as "*the defective Duracell LED flashlights*" or "*the defective flashlights*,"  
12 unless specific characteristics of certain specific models are being identified and discussed.)

13  
14 8. Certain later variants of Duracell-branded LED flashlights, (e.g. models 380, 500, 1000,  
15 1500) marketed by Defendants as being free of this design and/or manufacturing defect, are  
16 henceforth referred to as "*the non-defective Duracell LED flashlights*," unless otherwise specified.  
17 (See, e.g. Exhibits 5)

18  
19 9. The packaging and marketing for the defective Duracell-branded LED flashlights promotes  
20 the reliability of these products, assuring consumers that these products are "**ideal**" for use in  
21 "**emergencies**" and boasting about their performance, specifically the ability to provide light  
22 continuously for up to 1 hour and 30 minutes at the high-intensity setting, and up to 7 hours at the  
23 low-intensity setting, when used with DURACELL AAA alkaline batteries. (See Exhibits 8, 9 and  
24 10)

25  
26 10. Duracell-branded flashlight packaging further advises consumers that "*For best*  
27 *performance, use Duracell alkaline batteries*" and to "*Replace all batteries at the same time.*"  
28 (Exhibits 8, 9 and 10)

1 11. All DURACELL COPPERTOP AAA Alkaline batteries, regardless of how they are  
2 packaged or where they are sold in the US, are represented by DURACELL (as well as by  
3 PROCTER & GAMBLE, in a news release and at their website at least since June 1, 2012) as  
4 having a “*10-year storage lifespan*,” and/or “*GURANTEED 10 YEARS IN STORAGE*,” and also  
5 as being “*the most trusted batteries in the world*.” (See Exhibit 1)  
6

7 12. COSTCO’s own “Kirkland” brand batteries, manufactured for COSTCO by DURACELL,  
8 and sold inside Costco Warehouse stores side by side with replacement DURACELL batteries,  
9 advertise the same 10-year storage life. (See Exhibit 3)

10 13. However, **the defective Duracell-branded LED flashlights do not actually have the**  
11 **performance characteristics represented by Defendants’ promises related to either these**  
12 **Duracell-branded flashlights or the DURACELL batteries:** they do not provide consumers  
13 with the advertised operation times, and both the provided or the replacement DURACELL  
14 batteries do not have the advertised storage lifespans when installed in these defective Duracell-  
15 branded LED flashlights, with power turned OFF. Instead, these flashlights often fail to turn on at  
16 all, or turn on and fade out in seconds, after being stored and not in use for 30 days or less.  
17 Specifically, these flashlights are defective in that **their flawed end caps continuously and**  
18 **rapidly drain electric power when their LED lights are switched OFF**, thus causing the  
19 batteries (Duracell-branded or any other equivalents) inside these flashlights to become fully  
20 depleted and dead, in less than 30 days, instead of the 10-year advertised storage lifespan for the  
21 DURACELL batteries sold with these flashlights or the replacement batteries sold separately.  
22

23 14. In contrast, batteries installed in non-defective LED flashlights do not suffer this parasitic  
24 power drain defect, and can be safely stored inside such non-defective flashlights for the entire  
25 advertised battery-storage lifespan, at specified reasonable storage conditions. It is important to  
26 note that in fact, being stored inside the well-sealed bodies of LED flashlights, at normal room  
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1 | temperatures, is the safest location to store batteries in order to achieve their maximum possible  
2 | storage lifespan, since this method of storage offers protection from humidity and/or condensation  
3 | which can gradually drain the battery charge (unless a particular battery, or multiple batteries, are  
4 | themselves defective and spring a leak - which will introduce moisture into the sealed body of the  
5 | flashlight and gradually drain all the batteries contained therein).

6 |  
7 | 15. As a result of this inherent and pervasive defect in these Duracell-branded LED flashlights,  
8 | consumers who trusted the DURACELL brand and counted on their LED flashlights to work **are**  
9 | **being literally left in the dark, just when they need their flashlights most – during critical**  
10 | **emergency or even life-and-death situations**, such as power outages, failed or tripped fuses,  
11 | household fires, home intruder alerts, vehicle breakdowns, or natural disasters like earthquakes,  
12 | hurricanes, tornadoes, snow storms, floods, landslides and fast-moving outdoor fires, or even acts  
13 | of terrorism and riots, domestically and while travelling globally – in any times of crisis during  
14 | which having immediate access to a working flashlight, with batteries holding their full charge,  
15 | can be essential for having a bright light to save oneself and one’s family. The defective Duracell-  
16 | branded LED flashlights fail to turn on at all, or they do not provide the expected high-intensity  
17 | light for anywhere near the advertised operation times – precisely during the emergencies these  
18 | products are marketed and sold as being essential and ideal for by Defendants.

19 |  
20 | 16. Those consumers fortunate enough to have tested their defective Duracell-branded LED  
21 | flashlights a month or so after first installing sets of DURACELL batteries in them, discovered  
22 | that these batteries had become mostly or fully depleted, thus rendering their LED flashlights  
23 | nearly or completely dead – prior to needing to use them in an emergency -- thus alerting such  
24 | consumers to the need to replace the prematurely depleted batteries. Millions of consumers,  
25 | however, still have no idea that the defective Duracell-branded LED flashlights they have  
26 | strategically placed in their homes, places of work or vehicles over the past four years (for  
27 |  
28 |

1 emergency use, with a reasonable expectation of DURACELL batteries' 10-year advertised  
 2 storage life), have actually long been dead and will not help them in the event of an actual  
 3 emergency.

4 17. Upon discovering that the DURACELL batteries installed in their defective Duracell-  
 5 branded LED flashlights were fully depleted in less than 30 days, many class members, including  
 6 Representative Plaintiff, foreseeably purchased – and indeed were induced by the Defendants'  
 7 marketing on the packaging<sup>1</sup> into purchasing – additional sets of replacement DURACELL  
 8 batteries, as Defendants expected, and/or should have expected, if not intended.

10 18. Many class members, including Plaintiff, have continued to spend money replacing  
 11 multiple sets of DURACELL batteries, until they finally realized that it was futile and that the  
 12 defective Duracell-branded LED flashlights they had purchased were fatally flawed and would  
 13 always rapidly drain batteries when turned OFF, instead of being ready to turn ON and provide  
 14 reliable bright portable light during the DURACELL batteries' advertised storage lifespan of 10  
 15 years.

17 19. From 2014 and to the filing of this Complaint, **consumers from all over the United**  
 18 **States reported and complained** about the rapid power drain of the DURACEL batteries sold  
 19 with and included in the packaging with the defective Duracell-branded LED flashlights, as well  
 20 as the subsequently replaced batteries. These complaints, both directly to DURACELL and to its  
 21 manufacturing, customer service, and retail distribution partners, resolve any doubt that  
 22 DURACELL and its manufacturing, customer service and distribution partners including  
 23 TECHNOMATE, PRO-TEK, COSTCO, and many others, at all times since at least 2014, were  
 24 fully aware of the prevalence of this defect. (see Exhibits 14, 15 & 16 containing illustrative  
 25 reports from defrauded consumers)

27  
 28 <sup>1</sup> See, e.g. Exhibits 8 and 10, “For best performance, **use Duracell alkaline batteries**” and “**Replace all batteries at the same time.**”

1 20. In fact, Defendants, and all of them, were fully aware, or should have been aware, of this  
 2 design or manufacturing defect, as evidenced by the large number of consumer complaints made  
 3 via their customer service phone numbers, emails, professional consumer product reporting  
 4 websites and amateur product review websites and online videos, as well as the innumerable  
 5 public postings on websites maintained by COSTCO, Amazon, Home Depot, and others.

6 21. In the wake of such widespread complaints, Defendants (at least DURACELL  
 7 TECHNOMATE and COSTCO specifically, as known at this time) changed the marketing on the  
 8 packaging for the subsequent, non-defective models of Duracell-branded flashlights, such as the  
 9 **models 380 and 500**, now stating: “*Eliminates power drain of batteries in off position,*” as  
 10 well as “*NO BATTERY DRAIN IN OFF POSITION*” -- revealing explicit admissions by  
 11 the Defendants of their knowledge of the rapid parasitic battery drain defect in the previous  
 12 Duracell-branded LED flashlight models 250, 300, and 350, (*See Exhibits 11 and 12*) -- and  
 13 utilizing the known defect in the 250, 300 and 350 models to further profit by promoting  
 14 consumer purchases of Duracell-branded non-defective flashlights (packaged with DURACELL  
 15 batteries) and replacement batteries manufactured by DURACELL and sold through its  
 16 distribution partners. (*See Exhibit 6*)<sup>2</sup>

17 22. Further admissions have been made to customers who suspected that their Duracell-  
 18 branded LED flashlights were defective and called the tech support number (888-910-2280,  
 19 provided on the packaging and in the user manuals). Once connected to a service center, and after  
 20 complaining about the rapid battery drain issue, consumers were informed that **the end caps of**  
 21 **their flashlights had defective power switches** and consumers were offered replacement end-  
 22 caps to be sent free of charge.

23 23. Despite Defendants’ awareness of this pervasive defect and the feasibility of replacing the  
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 28 <sup>2</sup> “WHERE TO BUY: Duracell Flashlights are available at the following retailers COSTCO WHOLESALE [and] THE HOME DEPOT”)

1 end caps containing the defective power switches, no comprehensive notification nor national  
2 recall action has ever been undertaken, by any entity in the chain of distribution, including  
3 PROCTER & GAMBLE, DURACELL, TECHNOMATE, PRO-TEK or COSTCO, Home-Depot,  
4 Amazon, and many others, to warn consumers in order to either remove these defective, wasteful  
5 and potentially very dangerous Duracell-branded LED flashlights from circulation (in possession  
6 of consumers, stocks maintained by the retail distributors, and/or in the secondary re-sale  
7 channels, such as Amazon Marketplace, eBay, craigslist, etc.), or to replace all the defective end  
8 caps in these Duracell-branded LED flashlights.  
9

10 24. Instead, these mega-brand corporate Defendants have evidently chosen to maximize their  
11 profits and avoid the costs of fixing or replacing all the defective flashlights they sold – **at the**  
12 **expense of their trusting customers being literally left in the dark**, often in dangerous  
13 situations, and/or fraudulently induced into spending money on replacing whole sets of batteries  
14 that were, and will continue to be, rapidly depleted again and again, providing little or no usable  
15 light to their owners. As another damaging result of this pervasive defect, millions and perhaps  
16 billions of needlessly drained batteries accumulate in dumps, landfills, or recycling centers, while  
17 their otherwise unnecessary manufacturing, packaging and transportation continue to contribute to  
18 global warming and natural resource depletion.  
19

20 25. By this scheme, PROCTER & GAMBLE, DURACELL, its manufacturing and distribution  
21 partners, have unfairly reaped profits by fraudulently increasing demand for DURACELL  
22 replacement batteries. Year after year, DURACELL, together with its manufacturing and  
23 distribution partners, have marketed at least three different models, in succession, of severely  
24 defective LED flashlights – notwithstanding the maelstrom of complaints from their customers,  
25 and knowing that previous generations of many similar non-Duracell branded products did not  
26 have this built-in defect which was virtually effortless to correct with minor engineering and  
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1 manufacturing changes, at negligible cost to Defendants.

2 26. DURACELL communicates with consumers through several internet websites, such as  
3 [www.duracell.com/en-us/](http://www.duracell.com/en-us/) and [www.youtube.com/user/OfficialDuracell/videos](http://www.youtube.com/user/OfficialDuracell/videos), that contain  
4 extensive promotions of safety preparedness -- using DURACELL batteries, of course.

5 27. DURACELL's website also links to a website operated by its manufacturing licensee  
6 TECHNOMATE dedicated specifically to marketing flashlights ([www.duracellflashlights.com](http://www.duracellflashlights.com)),  
7 with an FAQ section (<http://duracellflashlights.com/faq/>) that both misleads consumers about the  
8 rapid battery drain defect, and offers them entirely counter-helpful advice, while contradicting  
9 well-established safety preparedness practices, as detailed below. Instead of offering its customers  
10 replacement of their defective Duracell-branded LED flashlights, or replacement of the defective  
11 components inside them, Defendant's marketing and FAQ answers repeatedly suggest that  
12 consumers should instead purchase more DURACELL batteries to replace the depleted ones,  
13 should their Duracell-branded flashlights fail to turn on. (*see Exhibit 7*)

14 28. No disclosure to consumers appears anywhere on either the Duracell.com website nor the  
15 duracellflashlights.com website identifying TECHNOMATE as the actual foreign manufacturer,  
16 nor is there any implication that any company other than DURACELL is the manufacturer of these  
17 Duracell-branded flashlights – thus inducing Plaintiff and consumers universally to reasonably  
18 believe that DURACELL manufactured these Duracell-branded flashlights.

19 29. For those consumers who might suspect that their DURACELL batteries are being rapidly  
20 drained inside the defective Duracell-branded LED flashlights, even when they are turned OFF,  
21 Defendants concede in the FAQ section: "*For best battery performance, remove the batteries from*  
22 *the flashlight when not in use.*" (*see Exhibit 7*) However, if consumers were to follow this  
23 suggestion, it would substantially defeat the most important purpose of pocket-sized flashlights for  
24 which they were being marketed and sold – to be instantly available to reliably provide powerful  
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1 light in emergency situations. Plaintiff putative class members have no “advance warning,” of  
2 course, when they face home intrusions, vehicle breakdowns, earthquakes, tornadoes, floods,  
3 landslides, fires or any other unexpected emergencies or disasters. Therefore, they are not  
4 provided with a timely “heads-up” to first find their DURACELL batteries, then find and review  
5 their user manuals to follow all the required steps, including having to unscrew the end caps of  
6 their Duracell-branded LED flashlights and remove the battery holder modules, without dropping  
7 and losing them, then correctly orient the polarity of multiple batteries into the holder module (that  
8 requires each of them to point in a different direction), then slide the battery holder module back  
9 into the flashlight, in the correct direction, and finally align and screw the end cap back on. This  
10 entire process would have to be performed by consumers with limited lighting and likely in total  
11 darkness – before the class member consumers or their family members are able to turn on their  
12 flashlights and get the bright LED light desperately needed to help escape to safety in a natural  
13 disaster or to fix a dangerous problem like having to replace a blown tire on the side of the road at  
14 night. All of this is well understood by Defendants, as discussed further below and evidenced by  
15 Defendants’ own online publications. (*see* Exhibit 13)

18 30. To “*remove the batteries from flashlights when not in use,*” and store them separately, as  
19 the Duracell FAQ web page speciously suggests, Plaintiff putative class members would need to  
20 be able to perform the above described precision tasks at lightning speed, and do so perfectly,  
21 from the first attempt, most likely in complete darkness, even if they might be elderly, partially  
22 disabled, already injured as a result of the emergency they are trying to survive, or trembling in  
23 terror and disoriented during the moment of great danger, like an earthquake, a flash-flood or an  
24 encircling fiery inferno. To be of any help to anyone when disaster strikes, usually without any  
25 warning, it is indisputable that batteries must already be securely installed inside their flashlights  
26 and tested to make sure they work as installed, thereafter remaining full of their advertised power  
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1 for the duration of their advertised storage life of 10 years, and thus always ready to be turned ON,  
 2 to instantly provide powerful portable LED lighting. This is also fully consistent with the  
 3 reasonable expectations of an average reasonable LED flashlight consumer. Advice to the  
 4 contrary, offered at the duracellflashlights.com FAQ web pages (and in certain other publications),  
 5 constitutes additional fraud, as well as blatant and deliberate endangerment of trusting  
 6 DURACELL, COSTCO, Home Depot, and Amazon customers.  
 7

8 31. All the defective Duracell-branded flashlight models still appear available for purchase  
 9 online at various websites and are being promoted through DURACELL's own website with direct  
 10 links to duracellflashlights.com (as of 2019-01-31, at <http://duracellflashlights.com/products/>),  
 11 including detailed descriptions of their features and technical specifications, as well as providing  
 12 download links for their user manuals (see Exhibits 6 - 12):  
 13

14 a. In the CAUTION section of the **model 250** user manual, the website states:

15 *“Remove batteries from equipment which is not to be used for an extended period*  
 16 *of time.”* However, the website fails to define “an extended period of time” -- an  
 17 ambiguous term which could mean completely different lengths of time to different  
 18 consumers: from days to weeks to months or years, up to the advertised shelf life of  
 19 DURACELL batteries, and thus a legally and practically illusory statement. Most  
 20 importantly, as of the filing of this Complaint, **Defendants still fail to disclose that**  
 21 **the Duracell-branded model 250 flashlight has a defect and will start depleting**  
 22 **batteries the moment they are installed, even with power turned OFF**, and will  
 23 likely fully drain the installed batteries in less than 30 days, thus rendering this  
 24 flashlight useless in an emergency, contrary to Duracell advertising.  
 25

26 b. In the second CAUTION section of the **model 300** and **350** manuals, the website  
 27 states: *“Remove batteries from appliances that will not be used for long periods of*  
 28

1            *time (months or longer),*” which actually precisely means “longer than two (2)  
 2            months.” However, the website **fails to disclose that the Duracell-branded**  
 3            **model 300 and 350 flashlights have a defect and that they will likely start**  
 4            **depleting batteries the moment they are installed, even with the power turned**  
 5            **OFF**, and will likely fully drain the installed batteries in less than 30 days, rather  
 6            than when installed “*for long periods of time (months or longer),*” as claimed in the  
 7            user manuals, thus rendering these flashlights useless in an emergency, contrary to  
 8            Defendants’ marketing.

10            c. In the second CAUTION section of the manual for **model 380**, the first of the  
 11            newer models known to announce on its packaging that it “*Eliminates power*  
 12            *drain of batteries in off position,*” the duracellflashlights.com website again  
 13            states: “*Remove batteries from appliances that will not be used for long periods of*  
 14            *time (months or longer),*” which appears to be an erroneous and entirely counter-  
 15            helpful leftover from the older, defective models’ user manuals.

17            d. Most importantly, despite already having invested in constructing elaborate web  
 18            pages and a quite popular YouTube channel to promote to consumers, and educate  
 19            them about all the DURACELL batteries and Duracell-branded LED flashlights,  
 20            including those models Defendants knew to have a battery drain defect, Defendants  
 21            still:

- 23            i. failed to warn current and prospective consumers about the defect;
- 24            ii. provided either vague or deceptive “cautions” in the applicable user  
 25            manuals, that would not actually help consumers avoid having their  
 26            batteries become fully depleted inside their defective Duracell-branded  
 27            flashlights (while these “cautions” also completely contradicted reasonable  
 28

1 safety preparedness practices);

2 iii. failed to proactively offer customers in possession of defective flashlights  
3 still covered by applicable warranty periods with a fix for the battery drain  
4 defect (via a free replacement end cap, or a complete replacement of these  
5 defective flashlights free of charge);

6 iv. failed to notify owners of the older defective flashlights, those outside of the  
7 stated warranty periods, that they should upgrade and purchase one of the  
8 newer Duracell-branded flashlight models that are free of the battery drain  
9 defect.  
10

11 32. The actual performance characteristics of defective Duracell-branded LED flashlights are  
12 dramatically and catastrophically inferior to those advertised by DURACELL and its  
13 manufacturing and retail partners: whole sets of DURACELL batteries begin to be needlessly  
14 drained, the moment they are installed in these flashlights, and they continue to be drained, when  
15 turned OFF, until they are completely dead, in less than 30 days. Therefore, the only accurate and  
16 honest “caution” that Defendants could have provided on the related packaging and in their user  
17 manuals would have been: ***“These flashlights drain power from batteries the moment they are  
18 installed, even with the LED lights turned OFF, and they will fully deplete a set of batteries in  
19 less than 30 days. Consumers should remove batteries from these flashlights immediately after  
20 each use and store them separately from the flashlights, if they desire to enjoy the 10-year  
21 advertised shelf life from DURACELL batteries purchased for use with these Duracell-branded  
22 LED flashlights.”*** Obviously, if such disclosures were made by Defendants, consumers would  
23 refuse to purchase the defective Duracell-branded LED flashlights.  
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26 33. In fact, even if these defective Duracell-branded LED flashlights were being given away  
27 for free, they would expose consumers to financial losses and frustration of constantly having to  
28

1 replace batteries, as well as, at the very least, the great stress whenever these defective flashlights  
 2 failed to turn on in an emergency, and very likely other great potential harm in such situations. It  
 3 would be like giving away deliberately defective lifejackets to trusting boat owners: if a boat  
 4 owner or his passengers have no other lifejackets (because of reliance on the lifejackets as they  
 5 were marketed), they would now be more endangered, by being left without a product able to save  
 6 them when the boat sinks in a storm. Defendants not only know, but actively promote the notion  
 7 that one of the primary reasons consumers should and do desire compact household LED  
 8 flashlights, is to have them immediately available, inside homes, backpacks, purses and vehicles,  
 9 instantly operable in case of emergencies. This also explains why consumers eagerly purchase  
 10 LED flashlights in multi-packs of 3 or 4 units each – to place them in numerous strategic locations  
 11 around their homes and their cars – to be ready for use immediately, whenever a disaster might  
 12 strike.  
 13

14  
 15 34. Inability to keep batteries installed inside LED flashlights, without having them rapidly  
 16 drain the batteries, **renders such LED flashlights entirely unsuitable for emergency use** – and  
 17 fraudulently failing to fulfill the advertised promises on the product packaging of models like the  
 18 **250** (“*Emergency Strobe Light,*” on front), the **300** (“*Compact Size - Ideal for Emergency*  
 19 *Situations,*” on back), and the **350** (“*Emergency Strobe Light,*” on front and “*Compact design*  
 20 *makes it ideal for home, car, outdoors and emergencies,” on back). (see Exhibits 8 - 10)  
 21*

22 35. At DURACELL’s web page [https://www.duracell.com/en-us/program/duracell-](https://www.duracell.com/en-us/program/duracell-powerforward/)  
 23 [powerforward/](https://www.duracell.com/en-us/program/duracell-powerforward/), under the heading **Storm Preparedness**, DURACELL declares: (see Exhibit 13)

24 “*Storms and natural disasters are **unpredictable**. You never know when one can affect you*  
 25 *or someone you love. That’s why Duracell encourages everyone to review the Duracell*  
 26 *Emergency Checklist or visit [www.Ready.gov](http://www.Ready.gov). Your Emergency Preparedness kit **could***  
 27 *save your life. Make sure it’s packed with plenty of food, water, **flashlights** (and/or*  
 28 *lanterns) **and plenty of trusted Duracell batteries** to outlast the storm. Follow @Duracell*  
*on Twitter for real time updates about storms, preparedness, and PowerForward*

1 *deployments.”*

2 Further down that *Storm Preparedness* web page, DURACELL states:

3 *“Natural disasters like hurricanes, tornados and floods are happening more frequently*  
4 *every year, causing power outages for millions of people.”*

5 DURACELL is thus clearly aware that disasters strike without warning and they endanger the  
6 lives of millions of Americans, including DURACELL’s loyal customers. DURACELL then  
7 expresses its highly commendable corporate commitment to help communities in desperate need,  
8 as promoted on their website (and via YouTube videos):

9 *“To assist those in need and to help communities recover, Duracell created the*  
10 *PowerForward program. Since 2011, Duracell PowerForward has been helping affected*  
11 *communities across the country by distributing free Duracell batteries, charging mobile*  
12 *devices, and providing Internet access to those in need so they can connect with family.”*

13 Without doubt, these are truly beneficial community outreach programs. However,  
14 DURACELL’s stated commitment to save lives rings hollow and remains little more than  
15 corporate brand marketing, shamelessly leveraging the devastation experienced by disaster victims  
16 – **unless DURACELL and all of its manufacturing and retail partners also take immediate**  
17 **steps to remove from circulation and/or repair every single one of its defective and**  
18 **dangerous LED flashlights.**

19 36. Unfortunately, since 2014 and through the present, these supposedly essential life-saving  
20 Duracell-branded flashlights will, more likely than not, leave class members in desperate trouble,  
21 possibly resulting in loss of life. Every day these defective LED flashlights remain in their  
22 possession, they are endangering, rather than helping millions of consumers who trusted  
23 DURACELL brand reputation and advertised promises, but will end up in the dark during a crisis,  
24 with fully or mostly depleted batteries in their defective Duracell LED flashlights.

25 37. All of the above further confirms that Defendants were fully aware of the battery drain  
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28

1 defects in the Duracell LED flashlights and that they conspired together to reap a windfall of  
2 profits from their fully intended effect – to deceptively manipulate loyal consumers into needlessly  
3 and repeatedly purchasing replacement DURACELL batteries for their “battery-draining”  
4 defective Duracell-branded LED flashlights.

5 38. It is also remarkable that DURACELL’s retail distribution partners were previously  
6 already successfully selling large volumes of non-Duracell-branded compact LED flashlights that  
7 were free of defects, for many years (sold in single or multi-packs, marketed and packaged  
8 similarly to the later Duracell-branded models, and sometimes including complete, ready-to-use  
9 sets of DURACELL batteries), and these non-Duracell branded flashlights were marketed along  
10 side with heavily-promoted multi-packs of DURACELL batteries. These compact non-Duracell  
11 branded LED flashlights were much cheaper, brighter and much more efficient than the previous  
12 generation of non-LED flashlights that used incandescent or halogen light bulbs – which drained  
13 batteries many times faster when in use, compared to the efficient new LED modules.

14 39. As such, the arrival in the marketplace of these efficient non-Duracell branded LED  
15 flashlights predictably caused a significant decrease in the demand for replacement DURACELL  
16 batteries, and, therefore, threatened a loss of revenues to DURACELL, as these new flashlights  
17 would have to be operated for much longer periods of time before they would deplete the installed  
18 sets of batteries. In such a marketplace the introduction of the Duracell-branded LED flashlight  
19 models 250, 300 and 350, all containing a rapid battery drain defect, and the removal from retail  
20 channels of the previous generation of non-Duracell branded LED flashlight models (free of this  
21 defect), evidences a fraudulent scheme by DURACELL, its manufacturing and retail partners, to  
22 generate a recurring and massively profitable revenue stream from the sales of replacement  
23 batteries to their trusting (and ultimately deceived) customers, who purchased the defective  
24 Duracell-branded flashlights.  
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1 40. The timing of the introduction of the defective Duracell-branded LED flashlights into the  
 2 marketplace also curiously coincided with the August 2014 announcement of the intended spin-off  
 3 and sale of DURACELL by its multi-brand owner, **PROCTER & GAMBLE (P&G)**, to a top-tier  
 4 holding company, Berkshire-Hathaway, Inc.. Obviously, P&G was highly motivated to pursue  
 5 business strategies that would maintain and increase the revenues and profits of DURACELL,  
 6 rather than allowing them to decrease, particularly during the lengthy due-diligence and regulatory  
 7 approval stage of this publicly announced transaction, in order to secure the swap of the  
 8 DURACELL corporation for the greatest possible number of shares of P&G from Berkshire-  
 9 Hathaway, Inc. on the date of the actual deal closure, February 29, 2016 (ultimately for \$52M  
 10 P&G shares total, valued at \$4.7B, less \$1.8B cash-recap of DURACELL by P&G).  
 11

12 41. In contrast to DURACELL's current holding company Berkshire-Hathaway's apparently  
 13 mere passive role as DURACELL's owner/investor, PROCTER & GAMBLE not only profited  
 14 from placing these defective products in the stream of commerce, but played an active role in the  
 15 marketing enterprise: from P&G press releases promoting Duracell as early as 2007<sup>3</sup> and 2012,<sup>4</sup> to  
 16 the award-winning P&G television and online-video advertising in 2014,<sup>5</sup> to the online videos  
 17 created by P&G to promote Duracell and its products (e.g. "*Birth of an Icon: DURACELL*,"<sup>6</sup> and  
 18  
 19

20 <sup>3</sup> **P&G News Release**, October 2, 2007, "Trusted Everywhere" ad featuring **Duracell** Rechargeables.  
 21

22 <sup>4</sup> **P&G News Release**, June 1, 2012, Volker Kuhn, general manager for Duracell North America, "We  
 23 know that consumers typically don't spend a large amount of time thinking about batteries. But...it's  
 24 important that Duracell is recognized as a power solution they can trust. Whether...a natural disaster occurs  
 25 and a flashlight needs to work...Duracell's up to 10-year guarantee means that you will always have  
 26 access to power when you need it – even if your batteries have been in storage for years." Exhibit 17

27 <sup>5</sup> Duracell ad featuring deaf NFL Seahawk Derrick Coleman viewed more than 22 million times on  
 28 YouTube earned 2014 Corporate Leadership Award awarded to **Procter & Gamble**.

<sup>6</sup> *Birth of an Icon: DURACELL* at <https://www.youtube.com/watch?v=oBxDeFQeLLU>: "The people behind the CopperTop haven't stopped helping ensure our consumers power to their devices at all times. Although **Duracell** may only have **joined the P&G family in 2005, this brand, like so many other P&G brands**, was born and raised on innovation and meeting consumers' needs. And whether its starting up a new toothbrush or **using a flashlight to light up the night** to search for monsters under the bed, **Duracell's**

1 “*The Duracell Effect*”<sup>7</sup>, published on P&G’s YouTube channel. Exhibit 18 )

2 42. As a result of Defendants’ knowing and callous misconduct summarized above, the  
3 performance of Representative Plaintiff’s and class members’ Duracell-branded LED flashlight  
4 models 250, 300 and 350, was and continues to be defective and fatally flawed, leaving Plaintiff  
5 class members with dead batteries and no light when they try to use them, often in emergency  
6 situations, and/or forcing Plaintiff class members to keep purchasing replacement DURACELL  
7 batteries for these defective Duracell-branded LED flashlights on a monthly basis.  
8

9 43. Representative Plaintiff, on behalf of himself and all members of each of the respective  
10 classes, seek damages, interest thereon, restitution, injunctive and other equitable relief, reasonable  
11 attorneys’ fees and costs as a remedy for Defendants’ numerous dangerous, unlawful and/or  
12 deceptive business practices, as detailed herein.  
13

#### 14 JURISDICTION AND VENUE

15 44. Jurisdiction is proper in this Court due to the existence of federal questions of law and  
16 under the Class Action Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of individual  
17 class members exceed the sum or value of \$5,000,000.00, exclusive of interest and costs, and this  
18 is a class action in which members of the Nationwide plaintiff classes are citizens of many, if not  
19 all states. As Defendants and all of them do substantial business in California, supplemental  
20 jurisdiction to adjudicate issues pertaining to California state law is proper in this Court under 28  
21 U.S.C. § 1367.  
22

23 45. Venue is proper in this Court under 28 U.S.C. §1391(b)(2) because the Northern District of  
24  
25 reliability is ready to power these everyday moments around the world” [at 2:33-3:20]

26 <sup>7</sup> *The Duracell Effect* at <https://www.youtube.com/watch?v=FTvZT-seC4g>: “All of us at **P&G** and  
27 **Duracell** believe that seemingly ordinary acts can have extraordinary impact in life. See how a selfless  
28 gesture of kindness helped **light up the darkest hour in the lives of thousands of people**. And gave them  
the strength to power up and power forward.”

1 California is a district where Representative Plaintiff, and many similarly Plaintiff class members  
 2 situated, purchased Defendants' defective products and thus where a substantial part of the events  
 3 giving rise to the present claims under 28 U.S.C. §1406(a) occurred.  
 4

5  
 6 **REPRESENTATIVE PLAINTIFF**

7 46. Plaintiff STANLEY SIDDLER is an adult resident of the State of California, referred to in  
 8 this Complaint as the "Representative Plaintiff." Prior to discovering the product defects  
 9 summarized above, Representative Plaintiff purchased Duracell-branded LED flashlight models  
 10 250, 300 and/or 350 from COSTCO for personal use, including specifically for use in emergencies  
 11 and natural disasters that are quite frequent in California, as advertised as being ideal for  
 12 emergencies by the Defendants. These purchases were made within this judicial district, and as  
 13 the purchaser and owner of these products, the Representative Plaintiff was damaged by  
 14 Defendants' conduct, as set forth herein.  
 15

16 47. Additionally, after discovering the defect in these Duracell-branded flashlights,  
 17 Representative Plaintiff reported personally, or had the defect reported on his behalf, to Berkshire-  
 18 Hathaway, DURACELL, TECHNOMATE, COSTCO, Home Depot and Amazon in June 2018,  
 19 and again in March 2019 to Berkshire-Hathaway, PROCTER & GAMBLE, DURACELL,  
 20 TECHNOMATE, PRO-TEK, COSTCO, Home Depot, Amazon, and Diversified Repackaging  
 21 Corporation. Responses to these notices were returned on "Technomate Manufactory" letterhead  
 22 by Mike Shapiro from Pro-Tek Industries on June 14, 2018, and from Home Depot by email on  
 23 June 8, 2018.  
 24

25 48. Furthermore, after having reported the parasitic battery drain in the defective Duracell-  
 26 branded LED flashlights models 250, 300 and 350, in June 2018 and March 2019, reasonably  
 27 expecting Defendants to have taken corrective action to resolve the defect, and seeking to confirm  
 28

1 whether Defendants had in fact taken corrective action to resolve the defect, Representative  
2 Plaintiff purchased through his counsel on his behalf, on or about April 1, 2019, Duracell-branded  
3 LED model 350 flashlights from Home Depot, Amazon (Marketplace) and Amazon (Prime). The  
4 **Home Depot** purchase was shipped enclosing a **homedepot.com** order confirmation with a return  
5 address on the package from *Michael Shapiro, Pro-Tek Industries, 16708 Parkside Avenue,*  
6 *Cerritos, CA 90703* (notably the model 350 3-pack packaging, labeled “Imported by COSTCO”);  
7 the **Amazon.com Prime** purchased model 350 4-pack packaging stated “Distributed by  
8 COSTCO” and arrived without a return address label nor an enclosed order confirmation, while  
9 the **Amazon Marketplace** purchased model 350 4-pack packaging also stated “Distributed by  
10 COSTCO” and was shipped enclosing an Amazon Marketplace order confirmation, with a return  
11 address on the package from “**Ippy’s Hobbies.com**, 685 Herman Road, Jackson, NJ 08527.”  
12

13  
14 49. Representative Plaintiff is, and was at all times relevant herein, a member of the National  
15 and California classes.

16 50. Representative Plaintiff brings this action on behalf of himself, and as a class action,  
17 pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all persons similarly  
18 situated and proximately damaged by the unlawful conduct described herein.

19 51. Within the relevant claim period, in reliance on the representations made on the product  
20 packaging, Representative Plaintiff purchased Duracell-branded LED flashlight models 250,  
21 300 and/or 350, packaged complete with DURACELL alkaline batteries, in sealed  
22 packaging advertising the expected battery performance times, at various COSTCO  
23 Warehouse stores on multiple occasions between 2015 and 2019, and in 2019, through his  
24 counsel, on-line from Home Depot at **homedepot.com** and from Amazon at **Amazon.com**.  
25

26 52. At the time of these purchases, and when subsequently returning to COSTCO  
27 stores, Representative Plaintiff also observed DURACELL and Kirkland replacement AAA  
28

1 battery multi-packs being displayed and promoted in large pallets, strategically located right next  
2 to the pallets of Duracell-branded LED flashlights, with both battery brands advertising in large,  
3 clear and bold lettering a “*10-year storage life.*”

4 53. Representative Plaintiff properly installed the DURACELL batteries into each  
5 Duracell-branded flashlight, and confirmed initially that the flashlights appeared to  
6 perform as represented. Plaintiff then stored these flashlights at normal ambient room  
7 temperatures, each one switched OFF, with batteries installed and ready for use in the  
8 event of a future emergency or any other, ordinary utilization for the purpose of having  
9 efficient and powerful portable LED lighting.  
10  
11

12 54. To Representative Plaintiff’s surprise and dismay, within less than 30 days, he  
13 discovered that every one of the Duracell-branded LED flashlights he had purchased failed  
14 to turn on when he tried to use them. Upon removal from the flashlights and further  
15 inspection, the DURACELL batteries from every one of these flashlights were completely  
16 drained. Representative Plaintiff confirmed with a small voltage meter and/or battery  
17 tester that all the DURACELL batteries that had come packaged with the flashlights were  
18 in fact dead or nearly dead, even though Representative Plaintiff never kept them turned  
19 on, other than for very short periods of time.  
20  
21

22 55. Quite perplexed by this outcome, and relying on Defendants’ advertising on the  
23 Duracell-branded flashlight packaging, DURACELL’s brand name reputation, as well as  
24 Representative Plaintiff’s belief in the truth of DURACELL marketing on the battery  
25 packaging (advertising these batteries as having a *10-year storage life*), he purchased  
26 additional fresh DURACELL and/or Kirkland brand AAA alkaline batteries from  
27 COSTCO (sold in large multi-packs), which he then installed into each of the flashlights  
28

1 and stored them, as before, for future use.

2 56. However, just as the first time, Representative Plaintiff discovered that again,  
3 approximately a month later, each and every one of the Duracell-branded LED flashlights  
4 failed to turn on and the installed batteries were dead or nearly dead upon testing.  
5

6 57. Notably, prior to purchasing the Duracell-branded LED flashlights, Representative  
7 Plaintiff had previously purchased and/or used similar LED flashlights, without the  
8 DURACELL brand name. These LED flashlights were purchased from retailers including  
9 COSTCO and were of substantially similar design, build, appearance, functionality and  
10 packaging – but were not marketed under the DURACELL brand name. Representative  
11 Plaintiff still owns and regularly uses some of these non-Duracell brand LED flashlights to  
12 the present day, and all of these LED flashlights have performed normally, with  
13 DURACELL and/or other brand name batteries, including Costco’s Kirkland brand,  
14 installed in them – always turning on and reliably providing powerful beams of light after  
15 multiple years of storage, with no evidence of battery drain.  
16  
17

18 58. Therefore, wondering if perhaps Representative Plaintiff had purchased the  
19 Duracell-branded LED flashlights from a “bad batch,” he returned to COSTCO looking for  
20 replacement flashlights and purchased them, only to subsequently discover that these  
21 replacement Duracell-branded flashlights also all had the same exact defect and drained  
22 the provided DURACELL batteries in 30 days or less.  
23

24 59. Upon subsequently returning to COSTCO, Representative Plaintiffs examined the  
25 packaging of the Duracell-branded LED flashlight **model 380**, and at a later time **model 500**,  
26 and discovered that the packaging on these later Duracell-branded flashlights stated:  
27  
28

1 “*Eliminates power drain of batteries in off position*” and “*NO BATTERY DRAIN IN*  
 2 *OFF POSITION*” – thus implicitly acknowledging the previous design and/or  
 3 manufacturing defects, the feasibility of their resolution, and representing their correction.  
 4

### 5 DEFENDANTS

6 60. **THE DURACELL COMPANY**, also known as DURACELL, INC., is an American  
 7 manufacturing company, with principal executive offices at 181 W. Madison Street, Suite 4400, in  
 8 Chicago, Illinois (with subsidiaries in the United Kingdom (UK) and China), that produces  
 9 batteries and smart power systems, with annual revenue in 2015 reportedly of \$2 billion.  
 10 DURACELL’s arrangements for the manufacture and sale of the defective Duracell-branded LED  
 11 flashlights models 250, 300 and 350 far exceeded the passive role of merely licensing its  
 12 trademark, to include retention of authority and exercise of control by DURACELL, as well as  
 13 DURACELL’s active engagement in the marketing of these defective products. DURACELL’s  
 14 active involvement and control is illustrated in its “*Corrective Action Plan for Defective Products*  
 15 *and Product Recall Process*” (an apparently standard module in DURACELL’s licensing  
 16 agreements) attached hereto as **Exhibit 19**, incorporating DURACELL’s involvement in the  
 17 quality control process. DURACELL’s integrated involvement in the marketing and sale of the  
 18 defective LED flashlights is illustrated in the co-packaging of DURACELL-manufactured  
 19 batteries with the TECHNOMATE-manufactured flashlights; DURACELL’s participation,  
 20 review and approval of the product packaging (including the use of its trademark) -- with no  
 21 references of any kind to TECHNOMATE, nor any disambiguation of *batteries* versus *flashlights*  
 22 as having different actual manufacturers; DURACELL’s official *duracell.com* website’s direct  
 23 links to the marketing of the Duracell-branded flashlights and retail partners where they can be  
 24 purchased, absent any disclosure of their manufacturer being anyone other than DURACELL; and  
 25 specific and extensive representations at the *duracellflashlights.com* website, deliberately  
 26  
 27  
 28

1 | disguising any distinction between DURACELL batteries and DURACELL flashlights, while  
 2 | making absolutely no mention, whatsoever, about the existence of TECHNOMATE, or it being  
 3 | the actual manufacturer of DURACELL-branded flashlights.<sup>8</sup>

4 |       **61. THE PROCTER & GAMBLE COMPANY**, (P & G) is an American multi-national  
 5 | consumer goods corporation headquartered at 1 Procter & Gamble Plaza, in Cincinnati, Ohio. In  
 6 | 2014, P&G recorded \$83.1 billion in sales. On November 14, 2014, Berkshire-Hathaway  
 7 | announced it would acquire DURACELL from P & G for \$4.7 billion in an all-stock swap deal,  
 8 | which ultimately closed on February 29, 2016. PROCTER & GAMBLE, however, exceeded its  
 9 | role as a mere holding company insulated from liability for the unfair business practices of  
 10 | DURACELL described herein, by failing to keep the business practices of DURACELL separate  
 11 | from itself, and performing an active role in DURACELL’s marketing enterprise, from multiple  
 12 | P&G press releases promoting Duracell, to P&G award-winning advertising in 2014 engaging 22  
 13 | million consumers, to YouTube videos P&G created and published on behalf of DURACELL, to  
 14 | leverage the consumer trust in P&G brand to sell more Duracell-branded products.

17 |       **62. COSTCO WHOLESALE CORPORATION**, headquartered at 999 Lakeside Drive in  
 18 | Issaquah, Washington, is an American multinational corporation operating a chain of membership-  
 19 | only warehouse clubs, trading as “COSTCO.” It is ranked #15 on the Fortune 500 rankings of the  
 20 | largest United States corporations by revenue. As of November 2018, COSTCO is the second  
 21 | largest retailer in the world after Walmart, operating 766 warehouses (including 533 in the United  
 22 | States and Puerto Rico, 100 in Canada, 39 in Mexico, 28 in the United Kingdom, 26 in Japan, 15  
 23 | in South Korea, 13 in Taiwan, 10 in Australia, 2 in Spain, 1 in Iceland, and 1 in France), with

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26 | <sup>8</sup> “**Dependability** is synonymous with the Duracell name. Since 1964, **people have counted on**  
 27 | **Duracell’s** batteries and quality products to help power their lives and **make them feel safer and more**  
 28 | **secure. Duracell LED Flashlights are no exception.** Browse through our lineup of the best portable  
 lighting products designed for durability and priced with value in mind.”

1 | 2018 revenues of \$141.6 billion. COSTCO's participation in the distribution of these defective  
2 | Duracell-branded flashlights far exceeded that of a mere passive retailer, beginning with its  
3 | discussions in 2013 with DURACELL and TECHNOMATE about the manufacture of the  
4 | Duracell-branded flashlights packaged with DURACELL batteries for COSTCO, and including  
5 | COSTCO's active involvement in the design and creation of the packaging for the Duracell-  
6 | branded flashlights and batteries, specifically identifying COSTCO as the Importer and Distributor  
7 | of these products, with a product ID unique and specific to COSTCO, appearing in multiple  
8 | languages with addresses in multiple countries, including the United States (Seattle, Washington),  
9 | Canada, Mexico, the United Kingdom, Spain, Iceland, France, Japan, Korea, Taiwan and  
10 | Australia. Indeed, the packaging of these Duracell-branded flashlights sold through COSTCO's  
11 | competitors, Home Depot and Amazon, further evidence COSTCO's significant involvement in  
12 | the chain of design, marketing and distribution of the defective flashlights.  
13 |  
14 |

15 |       **63. TECHNOMATE MANUFACTORY, LTD**, (referred to herein as TECHNOMATE) is a  
16 | manufacturing company, headquartered at 13/F, Efficiency House, 35 Tai Yau Street, San Po  
17 | Kong, Kowloon, Hong Kong, with manufacturing facilities located at No. 116, Shang Bei Road,  
18 | Tian Tou Bei Chong Villiage, Heng Li Town, Dong Guan City, Guangdong, China, and operating  
19 | in the United State's through its California-based affiliate PRO-TEK INDUSTRIES, LLC.  
20 | TECHNOMATE identifies itself on its website as being "currently one of the biggest  
21 | manufacturers of Aluminum LED flashlights in the industry." TECHNOMATE partnered with  
22 | DURACELL, COSTCO and PRO-TEK in creating the Duracell-branded flashlights' chain of  
23 | marketing and distribution to Plaintiff and the class member consumers.  
24 |

25 |       **64. PRO-TEK INDUSTRIES, LLC.**'s California Secretary of State filings identify its  
26 | principal office to be 5453 E. Centralia Street, Long Beach, California, whose agent for service of  
27 | process is registered as Philip A. Toomey at 841 Apollo Street, Suite 450, El Segundo, California,  
28 |

1 90245. PRO-TEK participated in the design and creation of the packaging for the Duracell-  
 2 branded flashlights and batteries, specifically identifying PRO-TEK's phone number as the  
 3 "Customer Service for North America" for these Duracell-branded defective flashlights.

4 65. Notwithstanding Defendants' awareness of the parasitic battery drain defect in the  
 5 Duracell-branded LED flashlights, Defendants conspired together and acted in concert with each  
 6 other in their respective capacities, to proceed with the concept, design, manufacture, production,  
 7 marketing, distribution and sales of the defective Duracell-branded LED flashlights to consumers,  
 8 and inducing consumers to then needlessly and repeatedly purchase DURACELL and/or other  
 9 replacement batteries, thereby violating the rights of Representative Plaintiff and all putative class  
 10 members by concealing this defect from consumers, to pocket the ill-gotten profits from their  
 11 unfair business practices, as further detailed below.  
 12

### 13 CLASS ACTION ALLEGATIONS

14  
 15  
 16 66. Representative Plaintiff brings this action pursuant to the provisions of Rules 23(a), (b)(2)  
 17 and (b)(3) of the Federal Rules of Civil Procedure, on behalf of himself and the following  
 18 class/subclass(es), collectively, the "classes":

- 19 a. National DURACELL-branded Flashlights Class "All retail consumers who  
 20 resided in the United States (including its Territories and the District of Columbia)  
 21 and purchased Duracell-branded LED flashlight models 250, 300 or 350, during the  
 22 relevant claim period."  
 23 b. California DURACELL-branded Flashlights Class "All retail consumers who  
 24 resided in the state of California and purchased defective Duracell-branded LED  
 25 flashlight models 250, 300 or 350, during the relevant claim period."

26 67. Defendants, their officers, directors and employees, as well as the Judge(s) assigned to this  
 27 matter, the jury in this case and the members of their immediate families and Representative  
 28 Plaintiffs' counsel's law firm(s) are excluded from each of the Plaintiff classes.

68. This action has been brought and may properly be maintained as a class action under

1 Federal Rule of Civil Procedure Rule 23 because there is a well-defined community of interest in  
2 the litigation, and membership in the proposed classes is easily ascertainable:

- 3 a. Numerosity: A class action is the only available method for the fair and efficient  
4 adjudication of this controversy. The members of the Plaintiff classes are so  
5 numerous that joinder of all members is impractical, if not impossible.  
6 Representative Plaintiffs are informed and believe and, on that basis, allege that  
7 the total number of class members is in the millions of individuals. Membership  
8 in the classes will be determined by analysis of Defendants' records;
- 9 b. Commonality: The Representative Plaintiffs and the class members share a  
10 community of interests in that there are numerous common questions and issues  
11 of fact and law which predominate over questions and issues solely affecting  
12 individual members, including, but not necessarily limited to:
- 13 i. Whether Defendants had a duty to have disclosed to consumers the parasitic  
14 battery drain when the defective Duracell-branded flashlights are turned  
15 OFF;
  - 16 ii. Whether Defendants failed to disclose or concealed material information  
17 concerning the parasitic battery drain when the defective Duracell-branded  
18 flashlights are turned OFF;
  - 19 iii. Whether Defendants breached any express or implied warranties;
  - 20 iv. Whether Defendants engaged in fraud;
  - 21 v. Whether Defendants' conduct and business practices violate the Consumer  
22 Legal Remedies Act ("CLRA") California Civil Code §§1750, *et seq.*;
  - 23 vi. Whether Defendants' conduct and business practices violate the Unfair  
24 Competition Law ("UCL") California Civil Code §§17200, *et seq.*;
  - 25 vii. Whether Defendants' conduct and business practices constituted deceptive  
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- trade practices;
- viii. The total number of Duracell-branded flashlights models 250, 300 and 350 purchased by retail consumers during the relevant claim period;
  - ix. The total number of the Duracell-branded flashlights models 250, 300 and 350 sold to retail consumers in the United States by COSTCO;
  - x. The total number of the Duracell-branded flashlights models 250, 300 and 350 sold to retail consumers in the United States by DURACELL through its website;
  - xi. The total number of the Duracell-branded flashlights models 250, 300 and 350 sold to retail consumers in the United States by TECHNOMATE through its website;
  - xii. The total number of DURACELL replacement batteries estimated to have been purchased by consumers during the relevant claim period to replace batteries drained by the defective Duracell-branded LED flashlights, when they were turned OFF;
  - xiii. The liability of each of the named Defendants for their participation in the chain of distribution, and the merits of any defenses to liability uniquely available to each named Defendant;
  - xiv. The profits realized from consumers' purchases of the defective Duracell-branded flashlights by each of the Defendants;
  - xv. Whether Representative Plaintiff's and class members are entitled to relief, the amount and nature of such relief, including injunctive relief and/or restitution.
- c. Typicality: The Representative Plaintiff's claims are typical of the claims of the

1 Plaintiff classes. Representative Plaintiff's and all members of the Plaintiff classes  
2 sustained economic damages arising out of and caused by Defendants' common  
3 course of conduct in violation of law, as alleged herein.

- 4 d. Adequacy of Representation: The Representative Plaintiff in this class action is an  
5 adequate representative of each of the Plaintiff classes in that the Representative  
6 Plaintiff has the same interest in the litigation of this case as class members, is  
7 committed to vigorous prosecution of this case and has retained competent counsel  
8 who is experienced in conducting class action litigation of this nature. The  
9 Representative Plaintiff is not subject to any individual defenses unique from those  
10 conceivably applicable to other class members or the classes in their entirety. The  
11 Representative Plaintiff anticipates no management difficulties in this litigation.  
12
- 13 e. Superiority of the Class Action procedure: Since the damages suffered by  
14 individual class members, while not inconsequential, may be relatively small, the  
15 expense and burden of individual litigation by each member makes or may make it  
16 impractical for members of the Plaintiff classes to seek redress individually for the  
17 wrongful conduct alleged herein. Should separate actions be brought or be required  
18 to be brought, by each individual member of the Plaintiff classes, the resulting  
19 multiplicity of lawsuits would cause undue hardship and expense for the Court and  
20 the litigants. The prosecution of separate actions would also create a risk of  
21 inconsistent rulings that might be dispositive of the interests of other class members  
22 who are not parties to the adjudications and/or may substantially impede their  
23 ability to adequately protect their interests.  
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28

COMMON FACTUAL ALLEGATIONS

1  
2 69. Defendants collectively and individually each participated in causing the defective  
3 Duracell-branded LED flashlights models 250, 300 and 350 to be designed, manufactured, co-  
4 packaged with DURACELL batteries, marketed, distributed and sold to retail consumers during  
5 the relevant claim period.

6  
7 70. On information and belief, millions of these defective Duracell-branded LED flashlights  
8 models 250, 300 and 350, have been purchased by retail consumers in California and throughout  
9 the United States within the claim period.

10 71. Additionally, as a proximate result of the parasitic battery drain when the defective  
11 Duracell-branded LED flashlights models 250, 300 and 350 were turned OFF, consumers who  
12 purchased these defective flashlights, were further induced by Defendants' marketing appearing  
13 on the packaging of these products stating, "***For best performance, use Duracell alkaline***  
14 ***batteries,***" to thereafter purchase more DURACELL replacement batteries within the relevant  
15 claim period.

16  
17 72. Packaging on DURACELL replacement batteries boldly stating, "***GUARANTEED 10***  
18 ***YEARS IN STORAGE,***" sold by Defendants further foreseeably induced consumers including  
19 Representative Plaintiff and Plaintiff putative class members to purchase DURACELL  
20 replacement batteries as a proximate and predictable result of the parasitic battery drain when  
21 these defective Duracell-branded LED flashlights were stored with their power turned OFF.  
22

23 73. Consumers, including Representative Plaintiff and Plaintiff putative class members who  
24 purchased the DURACELL replacement batteries as a proximate result of the parasitic battery  
25 drain inherent in the defective Duracell-branded LED flashlights, reasonably believed these  
26 representations pertaining to the expected battery storage life and battery operational life  
27 (depending on the applied LED brightness settings) would be true when the batteries installed in  
28

1 their defective Duracell-branded LED flashlights were stored with power turned OFF.

2 74. Despite the reasonable expectations of consumers, including Representative Plaintiff and  
 3 Plaintiff putative class members, as detailed above, Defendants knew and/or should have known--  
 4 and yet refused to timely disclose—that the Duracell-branded LED flashlight models 230, 300 and  
 5 350 were and are defective, including, but not limited to, defects in their design and manufacturing  
 6 which cause(d) them to rapidly drain the batteries with power turned OFF.  
 7

8 75. Indeed, as early as 2014, numerous consumers, including Plaintiff putative class members,  
 9 experienced and/or reported the parasitic battery drain defect present in the Duracell-branded LED  
 10 flashlight models 250, 300 and 350.

11 76. Specifically, Defendants and each of them were put on notice through complaints made to  
 12 their respective customer service departments, as well as public internet postings by consumers,  
 13 including Plaintiff putative class members, describing the parasitic battery drain design and/or  
 14 manufacturing defect in the Duracell-branded LED flashlight model 250 (*see Exhibit 14*).

15 77. Similarly, Defendants and each of them were put on notice through complaints made to  
 16 their respective customer service departments, as well as public internet postings by consumers,  
 17 including Plaintiff putative class members, describing the parasitic battery drain design and/or  
 18 manufacturing defect in the Duracell-branded LED flashlight model 300 (*see Exhibit 15*).

19 78. Additionally, Defendants and each of them were put on notice through complaints made to  
 20 their respective customer service departments, as well as public internet postings by consumers,  
 21 including Plaintiff putative class members, describing the parasitic battery drain design and/or  
 22 manufacturing defect in the Duracell-branded LED flashlight model 350 (*see Exhibit 16*).

23  
 24  
 25  
 26 **FIRST CLAIM FOR RELIEF**  
**FRAUD/FRAUDULENT CONCEALMENT**  
 27 (*for the California and National Classes*)

28 79. Representative Plaintiff incorporates in this cause of action every allegation of the

1 preceding paragraphs, with the same force and effect as though fully set forth herein.

2 80. Representative Plaintiff, on behalf of himself and all purchasers of the Duracell-branded  
3 LED flashlights models 250, 300 and 350 as described herein, allege that Defendants each  
4 materially participated in the making of false statements of fact, specifically each concealing the  
5 material fact that these flashlights sold with the DURACELL batteries were not made by  
6 DURACELL but rather by a foreign licensee TECHNOMATE MANUFACTORY, LTD. with  
7 “customer support in North America” provided not by DURACELL, but by PRO-TEK  
8 INDUSTRIES, LLC., in addition to the following affirmative false representations by:

- 10 a. PROCTER & GAMBLE, that Duracell-branded flashlights would be ready for use  
11 in an emergency, and that DURACELL batteries would provide advertised run  
12 times after being stored inside these flashlights during their stated storage life;
- 14 b. THE DURACELL COMPANY, that Duracell-branded flashlights would be ready  
15 for use in an emergency, and that DURACELL batteries would provide advertised  
16 run times after being stored inside these flashlights during their stated storage life,  
17 and knowingly concealing the material fact of the parasitic battery drain when the  
18 defective Duracell-branded LED flashlights were turned OFF;
- 19 c. TECHNOMATE MANUFACTORY, LTD, that Duracell-branded flashlights  
20 “design makes it ideal for...emergencies,” falsely representing that these flashlights  
21 would be ready for use in an emergency, and that the DURACELL batteries would  
22 provide advertised run times after being stored inside these flashlights during their  
23 stated storage life, and knowingly concealing the material fact of the parasitic  
24 battery drain when the defective Duracell-branded LED flashlights were turned  
25 OFF,  
26  
27 d. COSTCO WHOLESALE CORPORATION, that Duracell-branded flashlights  
28

1 “design makes it ideal for...emergencies” falsely representing that these flashlights  
 2 would be ready for use in an emergency, and that the DURACELL batteries would  
 3 provide advertised run times after being stored inside these flashlights during their  
 4 stated storage life, and knowingly concealing the material fact of the parasitic  
 5 battery drain when the defective Duracell-branded LED flashlights were turned  
 6 OFF,  
 7

- 8 e. PRO-TEK INDUSTRIES, LLC., that Duracell-branded flashlights “design makes it  
 9 ideal for...emergencies” falsely representing that these flashlights would be ready  
 10 for use in an emergency, and that the DURACELL batteries would provide  
 11 advertised run times after being stored inside these flashlights during their stated  
 12 storage life).

13 81. Defendants and each of them individually knew that the concealment of the identity of the  
 14 actual manufacturer of the Duracell-branded flashlights was material to the consumer class  
 15 members, and that the foregoing affirmative statements were false at the time they made them  
 16 (because of the known parasitic battery drain defect present in these flashlights), that the  
 17 statements were made to induce the plaintiffs to purchase the defective flashlights and to induce  
 18 them to depend upon their reliability, and that Representative Plaintiff and the Plaintiff putative  
 19 class members were damaged when the defective flashlights did not work as described, and were  
 20 all further damaged when they had to buy more and more DURACELL batteries to power these  
 21 defective flashlights as they repeatedly fully drained Duracell (and/or other brand) batteries in 30  
 22 days or less  
 23  
 24

25 82. Representative Plaintiff, on behalf of all purchasers of Duracell-branded LED flashlights  
 26 as described herein, alleges that COSTCO, Home Depot, Amazon and the on-line retail points-of-  
 27 sale operated by DURACELL, TECHNOMATE, PRO-TEK, if not similarly situated retail  
 28

1 partners of DURACELL and TECHNOMATE, made or displayed false statements of fact (i.e. that  
2 these flashlights would be ready in an emergency, as set forth above), that Defendants knew the  
3 statements were false because of the numerous complaints from consumers who had purchased the  
4 Duracell-branded LED flashlights models 250, 300 and 350 received from consumers directly by  
5 Defendants and/or as broadly posted on public internet sites, that Defendants continued to  
6 manufacture, distribute, market, and sell these defective Duracell-branded LED flashlights,  
7 knowing they were indeed defective, and those actions were taken to induce the Plaintiff and all  
8 those similarly situated (the Plaintiff putative class members) to purchase these defective Duracell-  
9 branded flashlights, and to induce them to depend upon their reliability, and that Plaintiff and the  
10 Plaintiff putative class members were damaged when these defective flashlights did not work as  
11 described, and when Plaintiff and the Plaintiff putative class members had to buy more and more  
12 replacement DURACELL (and/or other brand) batteries to power these defective flashlights, as  
13 they repeatedly fully drained these replacement batteries in 30 days or less.

16 83. At all relevant times herein, Defendants individually and collectively omitted the material  
17 facts as specifically set forth above and/or made the specific misrepresentations of material facts  
18 set forth above as to each named Defendant to the Representative Plaintiff and Plaintiff putative  
19 class members regarding the true nature and scope of the parasitic battery drain inherent in the  
20 defect Duracell LED flashlights. Defendants knew those material omissions and/or material  
21 misrepresentations of facts were false or misleading when nondisclosed or made.

23 84. Defendants knowingly concealed the material fact of the parasitic battery drain when the  
24 defective Duracell-branded LED flashlights were turned OFF, and they continued to make the  
25 material misrepresentation of fact guaranteeing that installed replacement batteries would last for  
26 10-years when stored, knowing that when stored inside the defective Duracell-branded LED  
27 flashlights with power turned OFF, the batteries would be fully depleted in 30 days or less.  
28

1 85. Misleading “cautions” issued on or accessed through the DURACELL and  
2 TECHNOMATE websites also endangered consumers by misleading them to not adhere to the  
3 best safety practices, i.e. storing batteries inside flashlights, with power turned off, such that they  
4 would be instantly ready for use in an emergency.

5 86. Defendants made these misrepresentations of material facts and concealed the material  
6 facts alleged herein intentionally and/or recklessly, so as to induce reliance thereupon.  
7

8 87. Representative Plaintiff and Plaintiff putative class members would have acted differently  
9 had the falsity of the misrepresentations and/or omitted facts been disclosed to them.

10 88. As a direct and proximate result of Defendants’ misrepresentation, concealment, and  
11 suppression of the foregoing material facts, Representative Plaintiff and Plaintiff putative class  
12 members have sustained damage by bearing the cost of repeatedly purchasing replacement  
13 batteries for the defective Duracell-branded LED flashlights due to the parasitic battery drain,  
14 and/or purchasing replacement defective and/or non-defective Duracell LED flashlights with  
15 DURACELL batteries included.  
16

17 89. The total amount of damages suffered by Representative Plaintiff and Plaintiff putative  
18 class members will be proven at trial. Further, Representative Plaintiff and Plaintiff putative class  
19 members are entitled to and hereby seek rescission, interest, costs of suit, attorneys' fees and/or  
20 other relief the court deems appropriate.  
21

22 90. Finally, at all times herein mentioned, Defendants intended to cause or acted with reckless  
23 disregard of the probability of causing damage to Representative Plaintiff and Plaintiff putative  
24 class members, and because Defendants are guilty of oppressive, fraudulent and/or malicious  
25 conduct, Representative Plaintiff and Plaintiff putative class members are entitled to an award of  
26 exemplary or punitive damages against Defendants in an amount adequate to deter such conduct in  
27 the future.  
28

**SECOND CLAIM FOR RELIEF**  
**VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**  
**(California Civil Code §1750, et seq.)**

*(for the California Class Only against DURACELL, TECHNOMATE and COSTCO only)*

91. Representative Plaintiff incorporates in this cause of action every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

92. This claim for relief is brought pursuant to the CLRA (the Consumer Legal Remedies Act, California Civil Code §§1750, et al.). Representative Plaintiffs and the California putative class members are "consumers," as that term is defined by Civil Code §1761(d) because they bought the Duracell-branded LED flashlights models 250, 300 and 350, and replacement DURACELL batteries therefor, for personal, family, or household purposes.

93. Representative Plaintiff and the California putative class members have engaged in a "transaction" with these Defendants, as that term is defined by Civil Code §1761(e).

94. These Defendants' conduct constitutes an unfair method of competition and unfair and deceptive acts and practices under the CLRA, and were undertaken in transactions intended to result in, and which in fact resulted in, the sale of goods to consumers – namely, to repeatedly sell replacement DURACELL batteries to consumers who previously purchased the defective Duracell-branded LED flashlights, and/or sell replacement flashlights for these defective flashlights (which in turn might have also been defective).

95. By engaging in the conduct alleged above, these Defendants violated California Civil Code §1770 by, *inter alia*, misrepresenting and concealing the nature and scope of the parasitic battery drain defect as Representative Plaintiff and California putative class members bore the cost of multiple sets of replacement DURACELL batteries, and/or purchasing replacement flashlights, and/or otherwise incurred damages.

96. By concealing the parasitic battery drain inherent in the defective Duracell-branded LED flashlights from the Representative Plaintiff and the Plaintiff putative California class members,

1 these Defendants misrepresented that these LED flashlights and the replacement DURACELL  
2 batteries therefore have particular characteristics, uses and benefits or qualities, and are of a  
3 particular standard, quality or grade, in violation of Civil Code § 1770.

4 97. By engaging in the conduct alleged herein, these Defendants also advertised and have  
5 continued to advertise goods with the intent not to sell them as advertised, in violation of  
6 California Civil Code §1770(a)(9).  
7

8 98. Pursuant to §1782 of the CLRA, written notices were sent to each of these Defendants  
9 regarding its violations of the CLRA, thereby providing these Defendants with an opportunity to  
10 correct or otherwise rectify the problems alleged herein within 30 days of receipt of that notice.

11 99. Representative Plaintiff, on behalf of himself and the Plaintiff putative California class,  
12 now seeks this Court's Order requiring these Defendants to, *inter alia*: (a) cease violating the  
13 CLRA by modifying the defective Duracell-branded LED flashlights not yet sold to the consumers  
14 in a manner that prevents these flashlights from suffering the parasitic battery drain issue when  
15 they are turned OFF, (b) notify California putative class members that the rapid parasitic battery  
16 drain in the previously purchased defective Duracell-branded LED flashlights is the result of  
17 design and/or manufacturing defects, and (c) provide California putative class members with new  
18 DURACELL batteries for the defective Duracell-branded LED flashlights, free of charge, for the  
19 life of the affected flashlights, or, in the alternative, replace these defective Duracell-branded LED  
20 flashlights (or their defective components, i.e end caps), such that consumers will no longer  
21 experience parasitic battery drain or be exposed to the danger of having their trusted-brand LED  
22 flashlights fail to turn on and provide reliable light in the event of emergencies, such as natural  
23 disasters, which DURACELL had promoted these products to be specifically ideally suited and  
24 purchased for.  
25  
26  
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**THIRD CLAIM FOR RELIEF**  
**BREACH OF STATUTORY EXPRESS WARRANTY**  
**(Magnuson-Moss Warranty Act, 15 U.S.C. §2301, et seq.)**  
*(for the California and National Classes)*

100. Representative Plaintiff incorporates in this cause of action every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

101. Representative Plaintiff and the Plaintiff putative class members are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301(3).

102. Defendants are each a “supplier” and “warrantor” within the meaning of 15 U.S.C. §§2301(4)-(5).

103. The defective Duracell-branded LED flashlights, are “consumer products” within the meaning of 15 U.S.C. §§2301(1).

104. Each of Defendant’s warranties is a “written warranty” within the meaning of 15 U.S.C. §§2301(6).

105. Defendants breached the warranty by, *inter alia*:

- a. Selling the Duracell-branded LED flashlight models 250, 300 and 350, with defective designs and/or defective manufacturing such that they would drain the batteries within 30 days or less while normally installed in the flashlights with power turned OFF;
- b. Warranting that DURACELL batteries were “*Guaranteed for 10 years in storage*” despite knowledge that the defective Duracell-branded LED flashlights would, in fact, drain these DURACELL batteries within 30 days or less, whenever Duracell batteries are stored in these flashlights with power turned OFF.

106. Defendants’ breach of warranty deprived Representative Plaintiff and millions of Plaintiff putative class members of the benefits of their bargains.

107. The amount in controversy in this action exceeds \$50,000, exclusive of interest and costs.

108. There are more than 100 members each of the proposed classes/subclasses.

109. Defendants have had a reasonable opportunity to cure their breach of written

1 warranty, and failed to do so.

2 110. As a direct and proximate result of Defendants' breach of express warranty,  
3 Representative Plaintiff and the Plaintiff putative class members sustained damages and other  
4 losses in an amount to be determined at trial.

5 111. Further, Representative Plaintiff and Plaintiff putative class members are entitled to  
6 and hereby seek rescission, interest, costs of suit, attorneys' fees and/or other relief the court  
7 deems appropriate.  
8

9 **FOURTH CLAIM FOR RELIEF**  
10 **BREACH OF EXPRESS WARRANTY**  
11 *(for the California and National Classes)*

12 112. Representative Plaintiff incorporates in this cause of action every allegation of the  
13 preceding paragraphs, with the same force and effect as though fully set forth herein.

14 113. Defendants warranted that each of the Duracell-branded LED flashlight models  
15 250, 300 and 350, was free of defects when it sold these products to Representative Plaintiffs and  
16 class members.

17 114. This warranty became part of the basis of the bargain. Accordingly, Defendants'  
18 warranty is an express warranty.

19 115. Defendants breached this warranty by, *inter alia*:

- 20 a. Knowingly concealing the material fact of the parasitic battery drain in the  
21 defective Duracell-branded LED flashlights when they are stored under normal  
22 conditions with power turned OFF, and  
23 b. Making the material misrepresentation of fact guaranteeing that DURACELL  
24 replacement batteries would last for 10-years when stored, knowing that when they  
25 are stored, for future use in an emergency, as advertised by Defendants and as  
26 would be reasonably expected by the consumers, inside the defective Duracell-  
27 branded LED flashlights with power turned OFF, these DURACELL batteries  
28 would be depleted completely in 30 days or less.

116. Defendants were on notice of the defects *vis-à-vis* direct complaints from Plaintiff  
putative class members, the internet message boards and product support forums maintained by

1 Defendants, and from published product reviews on countless websites.

2 117. As a direct and proximate result of Defendants' breach of express warranty,  
3 Representative Plaintiff and Plaintiff putative class members sustained damages and losses in an  
4 amount to be determined at trial. Further, Representative Plaintiff and Plaintiff putative class  
5 members are entitled to and hereby seek rescission, interest, costs of suit, attorneys' fees and/or  
6 other relief the Court deems appropriate.  
7

8 **FIFTH CLAIM FOR RELIEF**  
9 **UNFAIR BUSINESS PRACTICES PURSUANT TO THE UNFAIR COMPETITION ACT**  
10 *(for the California Class Only)*

11 118. Representative Plaintiff incorporates in this cause of action every allegation of the  
12 preceding paragraphs, with the same force and effect as though fully set forth herein.

13 119. Representative Plaintiff and California putative class members bring this cause of  
14 action, seeking equitable and statutory relief to stop the misconduct of Defendants, as complained  
15 of herein, and seeking restitution from Defendants for the unfair, unlawful and fraudulent business  
16 practices described herein.

17 120. The knowing conduct of Defendants, as alleged herein, constitutes an unlawful  
18 and/or fraudulent business practice, as set forth in California Business & Professions Code §§  
19 17200-17208 (the "UCL"). Such violations include, but are not necessarily limited to fraudulent  
20 and deceitful conduct and violations of California Civil Code §§ 1709-1711 and the Consumer  
21 Legal Remedies Act, California Civil Code §§ 1770(a)(5), (a)(7), and (a)(9).  
22

23 121. Defendants' knowing violations of the UCL continue to this day.

24 122. Defendants' knowing failure to adopt policies in accordance with and/or adhere to  
25 these laws, all of which are binding upon and burdensome to Defendants' competitors, engenders  
26 an unfair competitive advantage for Defendants, thereby constituting an unfair business practice,  
27 as set forth in California Business & Professions Code §§ 17200-17208  
28

1 123. By engaging in these unlawful business practices, Defendants have enjoyed an  
 2 advantage over their competition and a resultant disadvantage to the public and California class  
 3 members for the entire four-year claim period set forth in Business & Professions Code §17208.

4 124. Defendants' knowing failure to adopt policies in accordance with and/or adhere to  
 5 these laws, all of which are binding upon and burdensome to Defendants' competitors, engenders  
 6 an unfair competitive advantage for Defendants, thereby constituting an unfair business practice,  
 7 as set forth in California Business & Professions Code §§ 17200-17208.

9 125. Defendants have clearly established a policy of accepting a certain amount of  
 10 collateral damage, as represented by the damages to Representative Plaintiff and California class  
 11 members herein alleged, as incidental to its business operations, rather than accept the alternative  
 12 costs of full compliance with fair, lawful and honest business practices ordinarily borne by  
 13 responsible competitors of Defendants and as set forth in legislation and the judicial record.

15 126. Representative Plaintiff and California putative class members request that this  
 16 Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing  
 17 these unfair, unlawful, and/or deceptive practices and to restore to Representative Plaintiff and  
 18 California class members any money Defendants acquired by unfair competition, including  
 19 restitution and/or restitutionary disgorgement, as provided in California Business & Professions  
 20 Code § 17200, *et seq.*; and for such other relief set forth below.

22 **REQUEST FOR RELIEF**

23 **WHEREFORE**, the Representative Plaintiff, on behalf of himself and each member of the  
 24 proposed National and California classes, respectfully requests that this Court enter judgment in  
 25 Plaintiff's favor and for the following specific relief against Defendants, and each of them, jointly  
 26 and separately, as follows:  
 27

28 1. That the Court declare, adjudge, and decree that this action is a proper class action

1 and certify each of the proposed classes and/or any other appropriate subclasses under F.R.C.P.  
2 Rule 23 (b)(1), (b)(2), and/or (b)(3), including appointment of Representative Plaintiff’s counsel  
3 as Class Counsel;

4 2. For an award to Representative Plaintiff and members of both classes of compensatory  
5 and special damages in an amount to be proven at trial;

6 3. That Defendants be found to have made negligent misrepresentations and/or material  
7 omissions of fact to the Representative Plaintiffs and members of both classes;

8 4. [*For the California class only*]: That the Court enjoin Defendants, ordering them to  
9 cease and desist from unlawful activities in further violation of California Business and  
10 Professions Code § 17200, *et seq.*;

11 5. For equitable relief enjoining Defendants from engaging in the wrongful conduct alleged  
12 herein;

13 6. That the Court enjoin Defendants from engaging in their current “plausible deniability  
14 cover” for the wrongful conduct alleged herein (*i.e.* using their websites and other publications to  
15 promote misleading “cautions” that dangerously contradict the best safety practices, by instructing  
16 consumers to remove and store batteries outside the defective Duracell-branded LED flashlights).  
17 Consumers *should* in fact store batteries safely installed inside their non-defective LED  
18 flashlights, thus making them instantly ready for use during emergencies, and consumers should  
19 also test their flashlights, as well as remove and inspect the batteries approximately once per year,  
20 and then replace the installed batteries during the last year of their advertised shelf life.

21 7. For interest on the amount of any and all economic losses, at the prevailing legal rate;

22 8. For an award of punitive and/or exemplary damages, in an amount sufficient to deter  
23 such conduct in the future;

24 9. For an award of reasonable attorneys' fees;

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10. For costs of suit and any and all other such relief as the Court deems just and proper;  
11. For all other Orders, findings, and determinations identified and sought in this

Complaint.

**JURY DEMAND**

Representative Plaintiff and members of each of the Plaintiff classes hereby demand trial  
by jury on all issues triable of right by jury.

Respectfully submitted,



DATED: May 1, 2019

By: \_\_\_\_\_

TIMOTHY P. RUMBERGER, Esq.  
Law Offices of Timothy P. Rumberger Law  
Counsel for Representative Plaintiff  
and Class Counsel for all putative Class Members