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

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

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STANLEY SIDDLE and JEF MEEKS, individually)
and on behalf of all those similarly situated,)
Plaintiffs,)
v.)
THE DURACELL COMPANY, BERKSHIRE-)
HATHAWAY, INC., THE PROCTER & GAMBLE)
COMPANY, COSTCO WHOLESALE)
CORPORATION, HOME DEPOT, U.S.A., INC.,)
AMAZON.COM SERVICES, INC.,)
Defendants,)

Case No.
CLASS ACTION COMPLAINT
FOR DAMAGES, RESTITUTION,
INJUNCTIVE AND EQUITABLE
RELIEF
JURY TRIAL DEMANDED

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Representative Plaintiffs STANLEY SIDDLE and JEF MEEKS allege as follows:

INTRODUCTION

1. This is a class action brought by Representative Plaintiffs on behalf of themselves, a California class, and a national class, of all persons who purchased DURACELL’s LED flashlight models 250, 300 or 350, with full sets of Duracell batteries included, distributed by DURACELL’s retail partners including COSTCO, HOME DEPOT, and AMAZON, within the last four years. These flashlights are defective: they rapidly drain batteries in less than 30 days when turned OFF.

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 is 100% owned by its parent holding company, BERKSHIRE-HATHAWAY, INC.,
4 headquartered in Omaha, Nebraska, since completing its purchase of DURACELL on February
5 29, 2016 from PROCTER & GAMBLE (the previous owners of DURACELL since 2005).

6 3. THE DURACELL COMPANY, a.k.a. DURACELL, INC., (dba “DURACELL”) has been
7 distributing DURACELL LED flashlight models 250, model 300, and model 350 since at least
8 2014, (also marketed by DURACELL as “Durabeam Ultra”), with iterations of substantially
9 similar Duracell-branded LED flashlights appearing nationwide in the U.S. market through the
10 present time. All of these LED flashlights were marketed by DURACELL inside sealed single or,
11 more commonly, multi-packs containing three or four flashlights. (*See, e.g. Exhibits 8, 9 and 10*)
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13 4. Each of these sealed retail packages of flashlights have also included a full set of Duracell
14 AAA-size “COPPERTOP Alkaline-Manganese Dioxide” batteries (presently designated as model
15 MN2400), one set for each of the flashlights, all made prominently visible in the clear plastic
16 packaging. Conveniently, these “bonus” sets of Duracell batteries can be immediately installed
17 and used for powering these LED flashlights by the consumers. Duracell AAA batteries are
18 suggested by DURACELL as the best replacement batteries to be purchased for use in these
19 flashlights in the future. Replacement Duracell alkaline AAA batteries, sold separately from
20 Duracell flashlights in many different multi-unit packages, are available from DURACELL retail
21 partners, as well as in wide distribution, at virtually every type of retail outlet in the USA and
22 worldwide. (*See Exhibits 1 and 2*) In addition, COSTCO markets its own “Kirkland” brand AAA
23 alkaline batteries, manufactured for COSTCO by DURACELL, and presently sold by COSTCO in
24 64-packs. (*See Exhibits 3 and 4*)
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26 5. The DURACELL’s LED flashlight models 250, 300 or 350 and potentially similar models
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1 all share a catastrophic design and/or manufacturing defect that rapidly drains the installed
 2 batteries, with power turned OFF, thus rendering these flashlights inoperable until reloaded with
 3 more batteries, as further described below. (Hereinafter these flashlights shall be identified simply
 4 as “*the defective Duracell LED flashlights*” or “*the defective flashlights*,” unless specific
 5 characteristics of certain specific models are being identified and discussed.)

6
 7 6. Certain later variants of Duracell LED flashlights, (e.g. models 380, 500, 1000, 1500) that
 8 may be free of this design and/or manufacturing defect, are henceforth referred to as “*the non-*
 9 *defective Duracell LED flashlights*” unless otherwise specified. (See, e.g. Exhibits 5)

10 7. The packaging and marketing for the defective Duracell LED flashlights promotes the
 11 reliability of these products, assuring consumers that these products are “ideal” for use in
 12 “emergencies” and boasting performance providing light continuously for up to 1 hour and 30
 13 minutes at the high-intensity setting, and up to 7 hours at the low-intensity setting when used with
 14 Duracell batteries. (See Exhibits 8, 9 and 10)

15
 16 8. Duracell flashlight packaging further advise consumers that “*For best performance, use*
 17 *Duracell alkaline batteries*” and to “*Replace all batteries at the same time.*” (Exhibits 8, 9 and 10)

18 9. All Duracell COPPERTOP AAA Alkaline batteries, regardless of how they are packaged
 19 or where they are sold, are represented by DURACELL as having a “*10-year storage lifespan*,”
 20 and/or “*GURANTEED 10 YEARS IN STORAGE*,” and also as being “*the most trusted batteries*
 21 *in the world.*” (See Exhibit 1)

22
 23 10. COSTCO’s own “Kirkland” brand batteries, manufactured for COSTCO by DURACELL,
 24 and sold inside Costco Warehouse stores side by side with replacement Duracell batteries,
 25 advertise the same 10-year storage life. (See Exhibit 3)

26 11. However, **the defective Duracell LED flashlights do not actually have the performance**
 27 **characteristics represented by DURACELL’s promises related to either these flashlights or**
 28

1 **the Duracell batteries:** these flashlights do not provide consumers with the advertised operation
 2 times, and the provided or the replacement Duracell batteries do not have the advertised storage
 3 lifespans when installed in these defective Duracell LED flashlights with power turned OFF.
 4 Instead, these flashlights drain the installed Duracell batteries when stored and not in use.
 5 Specifically, these flashlights are defective in that **they continuously and rapidly drain the**
 6 **installed batteries when their LED lights are switched OFF**, thus causing the batteries stored
 7 inside these flashlights to become fully depleted and dead, in less than 30 days, instead of the 10-
 8 year advertised storage lifespan for the Duracell batteries sold with these flashlights or the
 9 replacement batteries sold separately.
 10

11 12. In contrast, batteries installed in non-defective LED flashlights (made by either
 12 DURACELL or other manufacturers) do not suffer this parasitic power drain defect, and can be
 13 safely stored inside such non-defective flashlights for the advertised battery storage lifespan at
 14 specified reasonable conditions.
 15

16 13. As a result of this inherent and pervasive defect in these Duracell LED flashlights,
 17 consumers who trusted the DURACELL brand and counted on their LED flashlights to work **are**
 18 **being literally left in the dark, just when they need their flashlights most – during critical**
 19 **emergency or even life-and-death situations**, such as power outages, failed or tripped fuses,
 20 home intruder alerts, vehicle breakdowns, or natural disasters like earthquakes, hurricanes,
 21 tornadoes, snow storms, floods, landslides and fires – times of crisis during which having quick
 22 access to a working flashlight can be essential for survival and saving oneself and one's family.
 23 The defective Duracell LED flashlights fail to turn on at all, or they do not provide the expected
 24 high-intensity light for anywhere near the advertised operation times – precisely during the
 25 emergencies these products are marketed as essential and ideal for by DURACELL.
 26

27 14. Those consumers fortunate enough to have tested their defective Duracell LED flashlights
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1 a month or so after first installing sets of Duracell batteries in them, discovered that these batteries
 2 had become mostly or fully depleted, thus rendering their LED flashlights nearly or completely
 3 dead – prior to needing to use them in an emergency -- thus alerting such consumers to the need to
 4 replace the prematurely depleted batteries. Millions of consumers, however, may still have no idea
 5 that the defective Duracell LED flashlights they had strategically placed in their homes or vehicles
 6 over the past four years, with a reasonable expectation of Duracell batteries’ 10-year advertised
 7 storage life, have actually long been dead and will not help them in a future emergency.
 8

9 15. Upon discovering that the Duracell batteries installed in their defective Duracell LED
 10 flashlights were fully depleted in less than 30 days, many class members, including Representative
 11 Plaintiffs, foreseeably purchased – and indeed were induced by the DURACELL marketing on the
 12 packaging¹ into purchasing – additional sets of replacement Duracell batteries, as Defendants
 13 expected, and/or should have expected, if not intended.
 14

15 16. Many class members have continued to spend money replacing multiple sets of Duracell
 16 batteries, until they finally realized that it was futile and that the defective Duracell LED
 17 flashlights they had purchased were fatally flawed and would always rapidly drain batteries when
 18 turned OFF, instead of being ready to turn ON and provide reliable bright light during the Duracell
 19 batteries’ advertised storage lifespan of 10 years.
 20

21 17. From late 2014 and to the filing of this Complaint, **consumers from all over the United**
 22 **States reported and complained** about the rapid power drain of the Duracell batteries sold with
 23 and included in the packaging with the defective Duracell LED flashlights, as well as the
 24 subsequently replaced batteries. These complaints, both directly to DURACELL and to its
 25 distribution partners, resolve any doubt that both DURACELL and its distribution partners
 26 including AMAZON, COSTCO and HOME DEPOT at all times since at least late 2014 were fully
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28 ¹ See, e.g. Exhibits 8 and 10, “For best performance, use *Duracell alkaline batteries*” and “*Replace all batteries at the same time.*”

1 aware of the prevalence of this defect. (see Exhibits 14, 15 & 16 containing illustrative reports
 2 from defrauded consumers)

3 18. In fact, Defendants, and all of them, were fully aware, or should have been aware, of this
 4 design or manufacturing defect, as evidenced by the large number of consumer complaints made
 5 via their customer service phone numbers, emails, consumer product reporting and blogger
 6 product review websites, as well as the innumerable public postings on websites maintained by
 7 DURACELL, AMAZON, COSTCO and HOME DEPOT.
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9 19. In the wake of such widespread complaints, Defendants changed the marketing on the
 10 packaging for the subsequent, non-defective models of Duracell flashlights, such as the **models**
 11 **380 and 500**, now stating: “*Eliminates power drain of batteries in off position*” and “**NO**
 12 **BATTERY DRAIN IN OFF POSITION**” -- revealing explicit admissions by the Defendants
 13 of their knowledge of the rapid parasitic battery drain defect in the previous Duracell LED
 14 flashlight models 250, 300, and 350, (See Exhibits 11 and 12) -- and utilizing the known defect in
 15 the 250, 300 and 350 models to further profit by promoting consumer purchases of DURACELL’s
 16 non-defective flashlights from its distribution partners. (See Exhibit 6)²
 17

18 20. Further admissions have been made to customers who suspected that their Duracell LED
 19 flashlights were defective and called the tech support number (888-910-2280, provided on the
 20 packaging and in the user manuals). Once connected to a service center, and after complaining
 21 about the rapid battery drain issue, consumers were informed that **the end caps of their**
 22 **flashlights had defective power switches** and were offered replacement end-caps to be sent free
 23 of charge.
 24

25 21. Despite Defendants’ awareness of this pervasive defect and the feasibility of replacing the
 26 end caps containing the defective power switches, no national recall action has ever been
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28 ² “WHERE TO BUY: Duracell Flashlights are available at the following retailers COSTCO WHOLESALE [and] THE HOME DEPOT”)

1 undertaken, by either DURACELL or its distribution partners, to warn consumers in order to
2 either remove these defective, wasteful and potentially very dangerous Duracell LED flashlights
3 from circulation (in possession of consumers, stocks maintained by the retail distributors, and/or in
4 the secondary re-sale channels, such as eBay, craigslist, etc.), or to replace the defective end caps
5 in these Duracell flashlights.

6
7 22. Instead, these mega-brand corporate Defendants have evidently chosen to maximize their
8 profits and avoid the costs of fixing all the defective flashlights they sold – **at the expense of their**
9 **trusting customers being literally left in the dark**, often in dangerous situations, and/or
10 fraudulently induced into spending money replacing whole sets of batteries that were, and will
11 continue to be, rapidly depleted again and again, providing little or no usable light to their owners.
12 As another damaging result of this pervasive defect, millions and perhaps billions of needlessly
13 drained batteries accumulate in dumps, landfills, or recycling centers, while their otherwise
14 unnecessary manufacturing, packaging and transportation continue to contribute to global
15 warming and natural resource depletion.

16
17 23. By this scheme, DURACELL and its distribution partners have unfairly reaped profits by
18 fraudulently increasing demand for Duracell replacement batteries. Year after year, DURACELL,
19 together with its distribution partners, have marketed at least three different models, in succession,
20 of severely defective LED flashlights – notwithstanding the maelstrom of complaints from their
21 customers, and knowing that previous generations of similar non-Duracell branded products did
22 not have this built-in defect which was virtually effortless to correct with minor engineering and
23 manufacturing changes, at negligible cost to DURACELL.

24
25 24. DURACELL communicates with consumers through several internet websites, such as
26 www.duracell.com/en-us/ and www.youtube.com/user/OfficialDuracell/videos, that contain
27 extensive promotions of safety preparedness -- using Duracell batteries, of course.
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1 25. DURACELL also operates a website dedicated specifically to marketing its flashlights
2 (www.duracellflashlights.com), with an FAQ section (<http://duracellflashlights.com/faq/>) that both
3 misleads consumers about the rapid battery drain defect, and offers them entirely counter-helpful
4 advice, while contradicting well-established safety preparedness practices, as detailed below.
5 Instead of offering its customers replacement of their defective Duracell LED flashlights, or
6 replacement of the defective components inside them, DURACELL's marketing and FAQ
7 answers repeatedly suggest that consumers should instead purchase more Duracell batteries to
8 replace the depleted ones, should their flashlights fail to turn on. (*see Exhibit 7*)

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

5 27. To “*remove the batteries from flashlights when not in use,*” and store them separately, as
 6 the Duracell FAQ web page speciously suggests, Plaintiff putative class members would need to
 7 be able to perform the above described precision tasks at lightning speed, and do so perfectly,
 8 from the first attempt, most likely in complete darkness, even if they might be elderly, partially
 9 disabled, already injured as a result of the emergency they are trying to survive, or trembling in
 10 terror and disoriented during that moment of great danger, like an earthquake, a flash-flood or an
 11 encircling fiery inferno. To be of any help to anyone when disaster strikes, usually without any
 12 warning, it is indisputable that batteries must already be securely installed inside their flashlights
 13 and tested to make sure they work as installed, thereafter remaining full of their advertised power
 14 for the duration of their advertised storage life of 10 years, and thus always ready to be turned ON,
 15 to instantly provide powerful portable LED lighting. This is also fully consistent with the
 16 reasonable expectations of an average reasonable LED flashlight consumer. Advice to the
 17 contrary, offered by DURACELL at the FAQ web pages (and in certain other publications),
 18 constitutes additional fraud, as well as blatant and deliberate endangerment of trusting
 19 DURACELL, COSTCO, HOME DEPOT, and AMAZON customers.
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23 28. All the defective Duracell LED flashlight models are still apparently available for purchase
 24 online at various websites and are being promoted at DURACELL's own website (as of 2019-01-
 25 31, at <http://duracellflashlights.com/products/>), including detailed descriptions of their features
 26 and technical specifications, as well as providing download links for their user manuals (*see*
 27 Exhibits 6 - 12):
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- 1 a. In the CAUTION section of the **model 250** user manual, DURACELL states:
 2 *“Remove batteries from equipment which is not to be used for an extended period*
 3 *of time.”* However, DURACELL fails to define *“an extended period of time”* -- an
 4 ambiguous term which could mean completely different lengths of time to different
 5 consumers: from days to weeks to months or years, up to the advertised shelf life of
 6 Duracell batteries, and thus a legally and practically illusory statement. Most
 7 importantly, as of the filing of this Complaint, **DURACELL still fails to disclose**
 8 **that the Duracell model 250 flashlight has a defect and will start depleting**
 9 **batteries the moment they are installed, even with power turned OFF**, and will
 10 likely fully drain the installed batteries in less than 30 days, thus rendering this
 11 flashlight useless in an emergency, contrary to Duracell advertising.
- 12
- 13 b. In the second CAUTION section of the **model 300** and **350** manuals, DURACELL
 14 states: *“Remove batteries from appliances that will not be used for long periods of*
 15 *time (months or longer),”* which actually precisely means “longer than two (2)
 16 months.” However, **DURACELL fails to disclose that the Duracell model 300**
 17 **and 350 flashlights have a defect and that they will start depleting batteries the**
 18 **moment they are installed, even with the power turned OFF**, and will likely
 19 fully drain the installed batteries in less than 30 days, rather than when installed
 20 *“for long periods of time (months or longer),”* as DURACELL claims in its user
 21 manuals, thus rendering these flashlights useless in an emergency, contrary to
 22 Duracell advertising.
- 23
- 24 c. In the second CAUTION section of the manual for **model 380**, the first of the
 25 newer models known to announce on its packaging that it *“Eliminates power*
 26 *drain of batteries in off position,”* DURACELL again states: *“Remove batteries*
 27 *drain of batteries in off position,”* DURACELL again states: *“Remove batteries*
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1 *from appliances that will not be used for long periods of time (months or*

2 *longer),” which appears to be an erroneous and entirely counter-helpful leftover*

3 *from the older, defective models’ user manuals.*

4 d. Most importantly, despite already having invested in constructing elaborate web
5 pages and a quite popular YouTube channel to promote to consumers, and educate
6 them about all the Duracell batteries and LED flashlights, including those models
7 DURACELL knew to have a battery drain defect, DURACELL still:

8 i. failed to warn current and prospective consumers about the defect;

9 ii. provided either vague or deceptive “cautions” in the applicable user
10 manuals, that would not actually help consumers avoid having their
11 batteries become fully depleted inside their defective Duracell flashlights
12 (while these “cautions” also completely contradicted reasonable safety
13 preparedness practices);

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

18 iv. failed to notify owners of the older defective flashlights, those outside of the
19 stated warranty periods, that they should upgrade and purchase one of the
20 newer Duracell flashlight models that are free of the battery drain defect.

21 29. As previously stated, the actual performance characteristics of defective Duracell LED
22 flashlights are dramatically and catastrophically inferior to those advertised by DURACELL and
23 its retail partners: whole sets of Duracell batteries begin to be needlessly drained, the moment
24 they are installed in these flashlights, and they continue to be drained, when turned OFF, until they
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1 are completely dead, in less than 30 days. Therefore, the only accurate and honest “caution” that
 2 DURACELL could have provided on the related packaging and in their user manuals would have
 3 been: “*These flashlights drain power from batteries the moment they are installed, even with the*
 4 *LED lights turned OFF, and they will fully deplete a set of batteries in less than 30 days.*
 5 *Consumers should remove batteries from these flashlights immediately after each use and store*
 6 *them separately from the flashlights, if they desire to enjoy the 10-year advertised shelf life from*
 7 *Duracell batteries purchased for use with these Duracell LED flashlights.*” Obviously, if such
 8 disclosures were made by DURACELL, consumers would refuse to purchase defective Duracell
 9 LED flashlights.
 10

11 30. In fact, even if these defective Duracell LED flashlights were being given away for free,
 12 they would expose consumers to financial losses and frustration of constantly having to replace
 13 batteries, as well as, at the very least, the great stress whenever these defective flashlights failed to
 14 turn on in an emergency, and very likely other great potential harm in such situations. It would be
 15 like giving away deliberately defective lifejackets to trusting boat owners: if a boat owner or his
 16 passengers have no other lifejackets (because of reliance on the lifejackets as they were marketed),
 17 they would now be more endangered, by being left without a product able to save them when the
 18 boat sinks in a storm. DURACELL not only knows, but actively promotes the notion that one of
 19 the primary reasons consumers should and do desire compact household LED flashlights, is to
 20 have them immediately available, inside homes, backpacks, purses and vehicles, instantly operable
 21 in case of emergencies. This also explains why consumers eagerly purchase LED flashlights in
 22 multi-packs of 3 or 4 units each – to place them in numerous strategic locations around their
 23 homes and their cars – to be ready for use immediately, whenever a disaster might strike.
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25 31. Inability to keep batteries installed inside LED flashlights, without having them rapidly
 26 drain the batteries, **renders such LED flashlights entirely unsuitable for emergency use** – and
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1 fraudulently failing to fulfill the advertised promises on Duracell’s packaging of models like the
 2 **250** (“*Emergency Strobe Light*,” on front), the **300** (“*Compact Size - Ideal for Emergency*
 3 *Situations*,” on back), and the **350** (“*Emergency Strobe Light*,” on front and “*Compact design*
 4 *makes it ideal for home, car, outdoors and emergencies*,” on back). (see Exhibits 8 - 10)

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

7
 8 *“Storms and natural disasters are **unpredictable**. You never know when one can affect you*
 9 *or someone you love. That’s why Duracell encourages everyone to review the Duracell*
 10 *Emergency Checklist or visit www.Ready.gov. Your Emergency Preparedness kit **could***
 11 *save your life. Make sure it’s packed with plenty of food, water, **flashlights** (and/or*
 12 *lanterns) and plenty of trusted Duracell batteries to outlast the storm. Follow @Duracell*
 13 *on Twitter for real time updates about storms, preparedness, and PowerForward*
 14 *deployments.”*

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

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

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

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

26 Without doubt, these are truly beneficial community outreach programs. However,

27 DURACELL’s stated commitment to save lives rings hollow and remains little more than
 28

1 corporate brand marketing, shamelessly leveraging the devastation experienced by disaster victims
 2 – **unless DURACELL also takes immediate steps to remove from circulation and/or repair**
 3 **every single one of its defective and dangerous LED flashlights.**

4 33. Unfortunately, since 2014 and through the present, these supposedly essential life-saving
 5 Duracell flashlights will, more likely than not, leave DURACELL customers in desperate trouble,
 6 possibly resulting in loss of life. Every day these defective LED flashlights remain in their
 7 possession, they are endangering, rather than helping millions of customers who trusted
 8 DURACELL’s advertised promises, but will end up in the dark during a crisis, with fully or
 9 mostly depleted batteries in their defective Duracell LED flashlights.

10 34. All of the above further confirms that Defendants were fully aware of the battery drain
 11 defects in the Duracell LED flashlights and that they schemed to reap a windfall of profits from
 12 their fully intended effect – to deceptively manipulate loyal customers into needlessly and
 13 repeatedly purchasing replacement Duracell batteries for their “battery-draining” defective
 14 Duracell LED flashlights.

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

24 36. As such, the arrival in the marketplace of these efficient non-Duracell branded LED
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1 flashlights predictably caused a significant decrease in the demand for replacement Duracell
2 batteries, and, therefore, threatened a loss of revenues to DURACELL, as these new flashlights
3 would have to be operated for much longer periods of time before they would deplete the installed
4 sets of batteries. In such a marketplace the introduction of the Duracell-branded LED flashlight
5 models 250, 300 and 350, all containing a rapid battery drain defect, and the removal from retail
6 channels of the previous generation of non-Duracell branded LED flashlight models (free of this
7 defect), evidences a fraudulent scheme by DURACELL and its retail partners to generate a
8 recurring and massively profitable revenue stream from the sales of replacement batteries to their
9 trusting (and ultimately deceived) customers, who purchased the defective Duracell flashlights.

11 37. The timing of the introduction of the defective Duracell LED flashlights into the
12 marketplace also curiously coincided with the August 2014 announcement of the intended spin-off
13 and sale of DURACELL by its multi-brand owner, **PROCTER & GAMBLE (P&G)**, to a top-tier
14 holding company, **BERKSHIRE-HATHAWAY, INC.** Obviously, P&G was highly motivated to
15 pursue business strategies that would maintain and increase the revenues and profits of
16 DURACELL, rather than allowing them to decrease, particularly during the lengthy due-diligence
17 and regulatory approval stage of this publicly announced transaction, in order to secure the swap
18 of the DURACELL corporation for the greatest possible number of shares of P&G from
19 BERKSHIRE-HATHAWAY, INC. on the date of the actual deal closure, February 29, 2016
20 (ultimately for \$52M P&G shares total, valued at \$4.7B, less \$1.8B cash-recap of DURACELL).
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23 38. As a result of DURACELL's knowing and callous misconduct summarized above, the
24 performance of Representative Plaintiff's and class members' Duracell LED flashlight models
25 250, 300 and 350, was and continues to be defective and fatally flawed, leaving Plaintiff class
26 members with dead batteries and no light when they try to use them, often in emergency
27 situations, and/or forcing Plaintiff class members to keep purchasing replacement Duracell
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1 batteries for these defective Duracell LED flashlights on a monthly basis.

2 39. Representative Plaintiffs, on behalf of themselves and all members of each of the
3
4 respective classes, seek damages, interest thereon, restitution, injunctive and other equitable relief,
5
6 reasonable attorneys' fees and costs as a remedy for Defendants' numerous dangerous, unlawful
7
8 and/or deceptive business practices, as detailed herein.

9 JURISDICTION AND VENUE

10 40. Jurisdiction is proper in this Court due to the existence of federal questions of law and
11
12 under the Class Action Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of individual
13
14 class members exceed the sum or value of \$5,000,000.00, exclusive of interest and costs, and this
15
16 is a class action in which members of the Nationwide plaintiff classes are citizens of many, if not
17
18 all states. As Defendants and all of them do substantial business in California, supplemental
19
20 jurisdiction to adjudicate issues pertaining to California state law is proper in this Court under 28
21
22 U.S.C. § 1367.

23 41. Venue is proper in this Court under 28 U.S.C. §1391(b)(2) because the Northern District of
24
25 California is a district where Representative Plaintiffs, and many similarly Plaintiff class members
26
27 situated, purchased Defendants' defective products and thus where a substantial part of the events
28
29 giving rise to the present claims under 28 U.S.C. §1406(a) occurred.

30 REPRESENTATIVE PLAINTIFFS

31 42. Plaintiffs STANLEY SIDDLE and JEF MEEKS are unrelated adult individual residents of
32
33 the State of California, referred to in this Complaint as the "Representative Plaintiffs." Prior to
34
35 discovering the product defects summarized above, Representative Plaintiffs purchased Duracell
36
37 LED flashlight models 250, 300 and/or 350 from Defendants for personal use, including
38
39 specifically for use in emergencies and natural disasters that are quite frequent in California, as

1 advertised being ideal for by the Defendants. These purchases were made within this judicial
2 district, and as the purchasers and owners of these products, the Representative Plaintiffs were
3 damaged by Defendants' conduct, as set forth herein.

4 43. Representative Plaintiffs are, and were at all times relevant herein, members of the
5 National and California classes.

6 44. Representative Plaintiffs bring this action on behalf of themselves, and as a class action,
7 pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all persons similarly
8 situated and proximately damaged by the unlawful conduct described herein.

9 45. Within the relevant claim period, Representative Plaintiffs purchased Duracell LED
10 flashlight models 250, 300 and/or 350, packaged complete with Duracell alkaline batteries, in
11 sealed packaging advertising the expected battery performance times, at various Costco
12 Warehouse stores.
13

14 46. At the time of these purchases, and when subsequently returning to COSTCO
15 stores, Representative Plaintiffs also observed Duracell and Kirkland replacement AAA battery
16 multi-packs being displayed and promoted in large pallets, strategically located right next to the
17 pallets of Duracell LED flashlights, with both battery brands advertising in large, clear and bold
18 lettering a "*10-year storage life.*"
19

20 47. Representative Plaintiffs properly installed the Duracell batteries into each flashlight,
21 and confirmed initially that the flashlights appeared to perform as represented. They then
22 stored these flashlights at normal ambient room temperatures, each one switched OFF,
23 with batteries installed and ready for use in the event of a future emergency or any other,
24 ordinary utilization for the purpose of having efficient and powerful portable LED lighting.
25

26 48. To Representative Plaintiffs' surprise and dismay, within less than 30 days, they
27
28

1 discovered that every one of the Duracell LED flashlights they had purchased failed to turn
2 on when they tried to use them. Upon removal from the flashlights and further inspection,
3 the Duracell batteries from every one of these flashlights were completely drained.
4 Representative Plaintiffs confirmed with a small voltage meter and/or battery tester that all
5 the Duracell batteries that had come packaged with the flashlights were in fact dead or
6 nearly dead, even though Representative Plaintiffs never kept them turned on, other than
7 for very short periods of time.
8

9
10 49. Quite perplexed by this outcome, and relying on DURACELL's advertising on the
11 flashlight packaging, its brand name reputation, as well as Representative Plaintiffs' belief in
12 the truth of DURACELL marketing on the battery packaging, advertising these batteries as
13 having a *10-year storage life*, they purchased additional fresh Duracell and/or Kirkland
14 brand AAA alkaline batteries from Defendants (sold in large multi-packs), which they then
15 installed into each of the flashlights and stored them, as before, for future use.
16

17 50. However, just as the first time, Representative Plaintiffs discovered that again,
18 approximately a month later, each and every one of the Duracell LED flashlights failed to
19 turn on and the installed batteries were dead or nearly dead upon testing.
20

21 51. Importantly, prior to purchasing Duracell LED flashlights, Representative Plaintiffs
22 had previously purchased and/or used similar LED flashlights, without the DURACELL
23 brand name. These LED flashlights were purchased from retailers including Defendants
24 (and COSTCO specifically) and they were of substantially similar design, build,
25 appearance, functionality and packaging – but were not marketed under the DURACELL
26 brand name. Representative Plaintiffs still own and regularly use some of these non-
27
28

1 Duracell brand LED flashlights to the present day, and all of these LED flashlights have
 2 performed nominally, with Duracell and/or other brand name batteries, including Costco's
 3 Kirkland brand, installed in them – always turning on and reliably providing powerful
 4 beams of light after multiple years of storage, with no evidence of battery drain.
 5

6 52. Therefore, wondering if perhaps Representative Plaintiffs had purchased the
 7 Duracell LED flashlights from a “bad batch,” they returned to COSCTO looking for
 8 replacement flashlights and purchased them, only to subsequently discover that these
 9 replacement Duracell flashlights also all had the same exact defect and drained the
 10 provided Duracell batteries in 30 days or less.
 11

12 53. Upon subsequently returning to COSTCO, Representative Plaintiffs eventually
 13 came across and examined the packaging of the Duracell LED flashlight **model 380**, and at a
 14 later time **model 500**, and they discovered that on their packaging DURACELL stated:
 15
 16 *“Eliminates power drain of batteries in off position”* and *“NO BATTERY DRAIN IN*
 17 *OFF POSITION”* – thus implicitly acknowledging the previous design and/or
 18 manufacturing defects, the feasibility of their resolution, and representing their correction.
 19

20 DEFENDANTS

21 54. **THE DURACELL COMPANY**, also known as DURACELL, INC., is an American
 22 manufacturing company, with principal executive offices in Chicago, Illinois (with subsidiaries in
 23 the United Kingdom (UK) and China), that produces batteries and smart power systems, with
 24 annual revenue in 2015 of \$2 billion.
 25

26 55. **BERKSHIRE-HATHAWAY, INC.**, is an American multinational conglomerate holding
 27 company headquartered in Omaha, Nebraska, and at all times relevant since February 29, 2016
 28

1 was, the owner of THE DURACELL COMPANY. BERKSHIRE-HATHAWAY is the seventh
2 largest company in the S&P 500 index, and the third largest public company in the world
3 according to the Forbes Global 2000 list and formula, with cash and cash-equivalent holdings as
4 of the end of 2017 at \$116 billion.

5 **56. THE PROCTER & GAMBLE COMPANY**, (P&G) is an American multi-national
6 consumer goods corporation headquartered in Cincinnati, Ohio. In 2014, P&G recorded \$83.1
7 billion in sales. On November 14, 2014, BERKSHIRE-HATHAWAY announced it would acquire
8 DURACELL from PROCTOR & GAMBLE for \$4.7 billion in an all-stock swap deal, which
9 ultimately closed on February 29, 2016.

11 **57. COSTCO WHOLESALE CORPORATION**, headquartered in Issaquah, Washington, is
12 an American multinational corporation operating a chain of membership-only warehouse clubs,
13 trading as “COSTCO.” It is ranked #15 on the Fortune 500 rankings of the largest United States
14 corporations by revenue. As of November 2018, COSTCO is the second largest retailer in the
15 world after Walmart, operating 766 warehouses (including 533 in the United States and Puerto
16 Rico, 100 in Canada, 39 in Mexico, 28 in the United Kingdom, 26 in Japan, 15 in South Korea, 13
17 in Taiwan, 10 in Australia, 2 in Spain, 1 in Iceland, and 1 in France), with 2018 revenues of
18 \$141.6 billion.

20 **58. HOME DEPOT U.S.A., INC.**, headquartered in Atlanta, Georgia, is the largest home
21 improvement retailer in America, selling tools, construction related products and services across
22 the United States in all 50 states, the District of Columbia, Canada, and Mexico. Home Depot is
23 ranked #23 on the Fortune 500 rankings with revenue topping \$100 billion in 2018.

25 **59. AMAZON.COM, SERVICES INC.**, doing business as AMAZON and headquartered in
26 Seattle, Washington, is a multinational e-commerce, cloud computing and artificial intelligence
27 company. AMAZON is the most valuable public company in the world, with revenue in 2017 in
28

1 excess of \$177.8 billion.

2 60. Notwithstanding Defendants’ awareness of the parasitic battery drain defect in the
3 Duracell LED flashlights, Defendants conspired together and/or acted in concert with each other in
4 their respective capacities, to proceed with producing, marketing, distributing and selling the
5 defective Duracell LED flashlights to consumers, and inducing consumers to then needlessly and
6 repeatedly purchase Duracell and/or other replacement batteries and thereby violating the rights of
7 Representative Plaintiffs and all putative class members by concealing this defect from consumers,
8 to retain the ill-gotten profits from their unfair business practices, as further detailed below.
9

10
11 **CLASS ACTION ALLEGATIONS**

12 61. Representative Plaintiffs bring this action pursuant to the provisions of Rules 23(a), (b)(2)
13 and (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and the following
14 class/subclass(es), collectively, the “classes”:
15

- 16 a. National DURACELL LED Flashlights Class “All persons who resided in the
17 United States (including its Territories and the District of Columbia) and purchased
18 Duracell LED flashlight models 250, 300 or 350, from DURACELL, COSTCO,
19 HOME DEPOT, or AMAZON, during the relevant claim period.”
20 b. California DURACELL LED Flashlights Class “All persons who resided in the
21 state of California and purchased defective Duracell LED flashlights, in the state of
22 California from DURACELL, COSTCO, HOME DEPOT, or AMAZON, during
23 the relevant claim period.”

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

28 63. This action has been brought and may properly be maintained as a class action under
Federal Rule of Civil Procedure Rule 23 because there is a well-defined community of interest in
the litigation, and membership in the proposed classes is easily ascertainable:

- 1 a. Numerosity: A class action is the only available method for the fair and efficient
2 adjudication of this controversy. The members of the Plaintiff classes are so
3 numerous that joinder of all members is impractical, if not impossible.
4 Representative Plaintiffs are informed and believe and, on that basis, allege that
5 the total number of class members is in the millions of individuals. Membership
6 in the classes will be determined by analysis of Defendants' records;
- 7 b. Commonality: The Representative Plaintiffs and the class members share a
8 community of interests in that there are numerous common questions and issues
9 of fact and law which predominate over questions and issues solely affecting
10 individual members, including, but not necessarily limited to:
- 11 i. Whether Defendants had a duty to have disclosed to consumers the parasitic
12 battery drain when the defective Duracell LED flashlights are turned OFF;
 - 13 ii. Whether Defendants failed to disclose or concealed material information
14 concerning the parasitic battery drain when the defective Duracell LED
15 flashlights are turned OFF;
 - 16 iii. Whether Defendants breached any express or implied warranties;
 - 17 iv. Whether Defendants engaged in fraud;
 - 18 v. Whether Defendants' conduct and business practices violate the Consumer
19 Legal Remedies Act ("CLRA") California Civil Code §§1750, *et seq.*;
 - 20 vi. Whether Defendants' conduct and business practices violate the Unfair
21 Competition Law ("UCL") California Civil Code §§17200, *et seq.*;
 - 22 vii. Whether Defendants' conduct and business practices constituted deceptive
23 trade practices;
 - 24 viii. The total number of defective Duracell LED flashlights purchased by
25 consumers during the relevant claim period through DURACELL directly,
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and from each of DURACELL’s partner retailers including COSTCO, HOME DEPOT and AMAZON;

ix. The total number of Duracell replacement batteries purchased by consumers during the relevant claim period through DURACELL directly, and from each of DURACELL’s partner retailers including COSTCO, HOME DEPOT and AMAZON to replace batteries drained by the defective Duracell LED flashlights, when they were turned OFF;

x. The profits realized from consumers’ purchases of the defective Duracell LED flashlights by DURACELL, its parent companies, PROCTER & GAMBLE CORPORATION and subsequently BERKESHIRE-HATHAWAY, INC., and each of its partner retailers including COSTCO, HOME DEPOT and AMAZON;

xi. Whether Representative Plaintiffs and class members are entitled to relief, the amount and nature of such relief, including injunctive relief and/or restitution.

c. Typicality: The Representative Plaintiffs’ claims are typical of the claims of the Plaintiff classes. Representative Plaintiffs and all members of the Plaintiff classes sustained economic damages arising out of and caused by Defendants’ common course of conduct in violation of law, as alleged herein.

d. Adequacy of Representation: The Representative Plaintiffs in this class action are adequate representatives of each of the Plaintiff classes in that the Representative Plaintiffs have the same interest in the litigation of this case as class members, are committed to vigorous prosecution of this case and have retained competent counsel who is experienced in conducting class action litigation of this nature. The

1 Representative Plaintiffs are not subject to any individual defenses unique from
 2 those conceivably applicable to other class members or the classes in their entirety.
 3 The Representative Plaintiffs anticipate no management difficulties in this
 4 litigation.

5 e. Superiority of the Class Action procedure: Since the damages suffered by
 6 individual class members, while not inconsequential, may be relatively small, the
 7 expense and burden of individual litigation by each member makes or may make it
 8 impractical for members of the Plaintiff classes to seek redress individually for the
 9 wrongful conduct alleged herein. Should separate actions be brought or be required
 10 to be brought, by each individual member of the Plaintiff classes, the resulting
 11 multiplicity of lawsuits would cause undue hardship and expense for the Court and
 12 the litigants. The prosecution of separate actions would also create a risk of
 13 inconsistent rulings which might be dispositive of the interests of other class
 14 members who are not parties to the adjudications and/or may substantially impede
 15 their ability to adequately protect their interests.
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19 COMMON FACTUAL ALLEGATIONS

20 64. THE DURACELL COMPANY caused the defective Duracell LED flashlights to be
 21 designed, manufactured, and distributed directly or indirectly through DURACELL's retail
 22 partners, including COSTCO, HOME DEPOT and AMAZON during the relevant claim period.

23 65. On information and belief, millions of defective Duracell LED flashlights have been
 24 purchased directly from DURACELL and through DURACELL's retail partners, including
 25 COSTCO, HOME DEPOT and AMAZON by consumers in California and throughout the United
 26 States within the claim period.
 27

28 66. Additionally, as a proximate result of the parasitic battery drain when the defective

1 Duracell LED flashlights were turned OFF, consumers who purchased these defective flashlights,
 2 were further induced by DURACELL’s marketing appearing on the packaging of these products
 3 stating, “*For best performance, use Duracell alkaline batteries,*” to thereafter purchase more
 4 Duracell replacement batteries from DURACELL directly and through DURACELL’s retail
 5 partners, including COSTCO, HOME DEPOT and AMAZON within the relevant claim period.

6 67. Packaging on Duracell replacement batteries boldly stating, “**GUARANTEED 10 YEARS**
 7 **IN STORAGE,**” sold by DURACELL and through DURACELL’s retail partners, including
 8 COSTCO, HOME DEPOT and AMAZON, further foreseeably induced consumers including
 9 Representative Plaintiffs and Plaintiff putative class members to purchase Duracell replacement
 10 batteries as a proximate and predictable result of the parasitic battery drain when the defective
 11 Duracell LED flashlights were stored with their power turned OFF.
 12

13 68. Consumers, including Representative Plaintiffs and Plaintiff putative class members who
 14 purchased the Duracell replacement batteries as a proximate result of the parasitic battery drain
 15 when the defective Duracell LED flashlights, reasonably believed these representations pertaining
 16 to the expected battery storage life and battery operational life (depending on the applied LED
 17 brightness settings) would be true when the batteries installed in their defective Duracell LED
 18 flashlights were stored with power turned OFF.
 19

20 69. Despite the reasonable expectations of consumers, including Representative Plaintiffs and
 21 Plaintiff putative class members, as detailed above, Defendants knew and/or should have known--
 22 and yet refused to timely disclose—that the Duracell LED flashlight models 230, 300 and 350
 23 were and are defective, including, but not limited to, defects in their design and manufacturing
 24 which cause(d) them to rapidly drain the batteries with power turned OFF.
 25

26 70. Indeed, as early as 2014, numerous consumers, including Plaintiff putative class members,
 27 experienced and/or reported the parasitic battery drain defect present in the Duracell LED
 28

1 flashlight models 250, 300 and 350.

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

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

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

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16 **FIRST CLAIM FOR RELIEF**
17 **FRAUD/FRAUDULENT CONCEALMENT**
18 (*for the California and National Classes*)

19 74. Representative Plaintiffs incorporate in this cause of action every allegation of the
20 preceding paragraphs, with the same force and effect as though fully set forth herein.

21 75. Representative Plaintiffs, on behalf of themselves and all purchasers of defective Duracell
22 LED flashlights as described herein, allege that Defendant DURACELL made false statements of
23 fact (i.e. that these Duracell flashlights would be ready for use in an emergency, and that Duracell
24 batteries would provide advertised run times after being stored inside these flashlights during their
25 stated storage life), that Defendants knew these statements were false at the time they made them
26 (because of the known parasitic battery drain designed into these flashlights), that the statements
27 were made to induce the plaintiffs to purchase the defective flashlights and to induce them to
28

1 depend upon their reliability, and that Plaintiffs and the Plaintiff putative class members were
2 damaged when the defective flashlights did not work as described, and were all further damaged
3 when they had to buy more and more Duracell batteries to power these defective flashlights as
4 they repeatedly fully drained Duracell (and/or other brand) batteries in 30 days or less.

5 76. Representative Plaintiffs, on behalf of all purchasers of Duracell LED flashlights as
6 described herein, alleges that COSTCO, HOME DEPOT, AMAZON and any/all other similarly
7 situated retail partners of DURACELL, made or displayed false statements of fact (i.e. that these
8 flashlights would be ready in an emergency, etc.), that Defendants knew the statements were false
9 because of the numerous complaints COSTCO, HOME DEPOT, and AMAZON had received
10 from consumers directly, and as broadly posted on public internet sites, that Defendants continued
11 to advertise, stock, market, and sell defective Duracell LED flashlights, knowing they were indeed
12 defective, and those actions were taken to induce the Plaintiffs and all those similarly situated (the
13 Plaintiff putative class members) to purchase these defective flashlights, and to induce them to
14 depend upon their reliability, and that Plaintiffs and the Plaintiff putative class members were
15 damaged when these defective flashlights did not work as described, and when Plaintiffs and the
16 Plaintiff putative class members had to buy more and more replacement Duracell (and/or other
17 brand) batteries to power these defective flashlights, as they repeatedly fully drained these
18 replacement batteries in 30 days or less.

19 77. At all relevant times herein, Defendants individually and collectively omitted material facts
20 and/or made misrepresentations of material facts to Representative Plaintiffs and Plaintiff putative
21 class members regarding the true nature and scope of the parasitic battery drain inherent in the
22 defect Duracell LED flashlights. Defendants knew those material omissions and/or material
23 misrepresentations of facts were false or misleading when nondisclosed or made.

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

5 79. Misleading “cautions” issued by DURACELL endangered consumers and mislead them to
6 not adhere to the best safety practices, i.e. store batteries inside flashlights, such that they would
7 be instantly ready for use in an emergency.
8

9 80. Defendants made these misrepresentations of material facts and concealed the material
10 facts alleged herein intentionally and/or recklessly, so as to induce reliance thereupon.

11 81. Representative Plaintiffs and Plaintiff putative class members would have acted differently
12 had the falsity of the misrepresentations and/or omitted facts been disclosed to them.

13 82. As a direct and proximate result of Defendants’ misrepresentation, concealment, and
14 suppression of material facts, Representative Plaintiffs and Plaintiff putative class members have
15 sustained damage by bearing the cost of repeatedly purchasing replacement batteries for the
16 defective Duracell LED flashlights due to the parasitic battery drain, and/or purchasing
17 replacement defective and/or non-defective Duracell LED flashlights with Duracell batteries
18 included.
19

20 83. The total amount of damages suffered by Representative Plaintiffs and Plaintiff putative
21 class members will be proven at trial. Further, Representative Plaintiffs and Plaintiff putative class
22 members are entitled to and hereby seek rescission, interest, costs of suit, attorneys' fees and/or
23 other relief the court deems appropriate.
24

25 84. Finally, at all times herein mentioned, Defendants intended to cause or acted with reckless
26 disregard of the probability of causing damage to Representative Plaintiffs and Plaintiff putative
27 class members, and because Defendants are guilty of oppressive, fraudulent and/or malicious
28

1 conduct, Representative Plaintiffs and Plaintiff putative class members are entitled to an award of
 2 exemplary or punitive damages against Defendants in an amount adequate to deter such conduct in
 3 the future.

4 **SECOND CLAIM FOR RELIEF**
 5 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**
 6 **(California Civil Code §1750, *et seq.*)**
 7 **(for the California Class Only)**

8 85. Representative Plaintiffs incorporate in this cause of action every allegation of the
 9 preceding paragraphs, with the same force and effect as though fully set forth herein.

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

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

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

23 89. By engaging in the conduct alleged above, Defendants violated California Civil Code
 24 §1770 by, *inter alia*, misrepresenting and concealing the nature and scope of the parasitic battery
 25 drain defect as Representative Plaintiffs and California putative class members bore the cost of
 26 multiple sets of replacement Duracell batteries, and/or purchasing replacement flashlights, and/or
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1 otherwise incurred damages.

2 90. By concealing the parasitic battery drain inherent in the defect Duracell LED flashlights
3 from the Representative Plaintiffs and the Plaintiff putative California class members, Defendants
4 misrepresented that these LED flashlights and the replacement Duracell batteries therefore have
5 particular characteristics, uses and benefits or qualities, and are of a particular standard, quality or
6 grade, in violation of Civil Code § 1770.
7

8 91. By engaging in the conduct alleged herein, Defendants also advertised and have continued
9 to advertise goods with the intent not to sell them as advertised, in violation of California Civil
10 Code §1770(a)(9).

11 92. Pursuant to §1782 of the CLRA, written notices were sent to each of the Defendants
12 regarding its violations of the CLRA, thereby providing Defendants with an opportunity to correct
13 or otherwise rectify the problems alleged herein within 30 days of receipt of that notice.
14

15 93. Representative Plaintiffs, on behalf of themselves and the Plaintiff putative California
16 class, now seeks this Court's Order requiring Defendants to, *inter alia*: (a) cease violating the
17 CLRA by modifying the defective Duracell LED flashlights not yet sold to the consumers in a
18 manner that prevents these flashlights from suffering the parasitic battery drain issue when they
19 are turned OFF, (b) notify California putative class members that the rapid parasitic battery drain
20 in the previously purchased defective Duracell LED flashlights is the result of design and/or
21 manufacturing defects, and (c) provide California putative class members with new Duracell
22 batteries for the defective Duracell LED flashlights, free of charge, for the life of the affected
23 flashlights, or, in the alternative, replace these defective Duracell LED flashlights (or their
24 defective components, i.e end caps), such that consumers will no longer experience parasitic
25 battery drain or be exposed to the danger of having their trusted-brand LED flashlights fail to turn
26 on and provide reliable light in the event of emergencies, such as natural disasters, which Duracell
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28

1 had promoted these products to be specifically ideally suited and purchased for.

2
3 **THIRD CLAIM FOR RELIEF**
4 **BREACH OF STATUTORY EXPRESS WARRANTY**
5 **(Magnuson-Moss Warranty Act, 15 U.S.C. §2301, *et seq.*)**
6 **(for the California and National Classes)**

7 94. Representative Plaintiffs incorporate in this cause of action every allegation of the
8 preceding paragraphs, with the same force and effect as though fully set forth herein.

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

11 96. Defendants are each a “supplier” and “warrantor” within the meaning of 15 U.S.C.
12 §§2301(4)-(5).

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

15 98. Each of Defendants’ warranties is a “written warranty” within the meaning of 15 U.S.C.
16 §§2301(6).

17 99. Defendants breached the warranty by, *inter alia*:

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

26 100. Defendants’ breach of warranty deprived Representative Plaintiffs and millions of
27 Plaintiff putative class members of the benefits of their bargains.

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

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

2 103. Defendants have had a reasonable opportunity to cure their breach of written
3 warranty, and failed to do so.

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

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

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

14 106. Representative Plaintiffs incorporate in this cause of action every allegation of the
15 preceding paragraphs, with the same force and effect as though fully set forth herein.

16 107. Defendants warranted that each of the Duracell LED flashlight models 250, 300
17 and 350, was free of defects when it sold these products to Representative Plaintiffs and class
18 members.

19 108. This warranty became part of the basis of the bargain. Accordingly, Defendants'
20 warranty is an express warranty.

21 109. Defendants breach this warranty by, *inter alia*:

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

1 110. Defendants were on notice of the defects *vis-à-vis* direct complaints from Plaintiff
 2 putative class members, the internet message boards and product support forums maintained by
 3 Defendants, and from published product reviews on countless websites.
 4

5 111. As a direct and proximate result of Defendants' breach of express warranty,
 6 Representative Plaintiffs and Plaintiff putative class members sustained damages and losses in an
 7 amount to be determined at trial. Further, Representative Plaintiffs and Plaintiff putative class
 8 members are entitled to and hereby seek rescission, interest, costs of suit, attorneys' fees and/or
 9 other relief the Court deems appropriate.
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11 **FIFTH CLAIM FOR RELIEF**
 12 **UNFAIR BUSINESS PRACTICES PURSUANT TO THE UNFAIR COMPETITION ACT**
 13 *(for the California Class Only)*

14 112. Representative Plaintiffs incorporate in this cause of action every allegation of the
 15 preceding paragraphs, with the same force and effect as though fully set forth herein.

16 113. Representative Plaintiffs and California putative class members bring this cause of
 17 action, seeking equitable and statutory relief to stop the misconduct of Defendants, as complained
 18 of herein, and seeking restitution from Defendants for the unfair, unlawful and fraudulent business
 19 practices described herein.

20 114. The knowing conduct of Defendants, as alleged herein, constitutes an unlawful
 21 and/or fraudulent business practice, as set forth in California Business & Professions Code §§
 22 17200-17208 (the "UCL"). Such violations include, but are not necessarily limited to fraudulent
 23 and deceitful conduct and violations of California Civil Code §§ 1709-1711 and the Consumer
 24 Legal Remedies Act, California Civil Code §§ 1770(a)(5), (a)(7), and (a)(9).
 25

26 115. Defendants' knowing violations of the UCL continue to this day.

27 116. Defendants' knowing failure to adopt policies in accordance with and/or adhere to
 28

1 these laws, all of which are binding upon and burdensome to Defendants' competitors, engenders
 2 an unfair competitive advantage for Defendants, thereby constituting an unfair business practice,
 3 as set forth in California Business & Professions Code §§ 17200-17208

4 117. By engaging in these unlawful business practices, Defendants have enjoyed an
 5 advantage over their competition and a resultant disadvantage to the public and California class
 6 members for the entire four year claim period set forth in Business & Professions Code §17208.
 7

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

12 119. Defendants have clearly established a policy of accepting a certain amount of
 13 collateral damage, as represented by the damages to Representative Plaintiffs and California class
 14 members herein alleged, as incidental to its business operations, rather than accept the alternative
 15 costs of full compliance with fair, lawful and honest business practices ordinarily borne by
 16 responsible competitors of Defendants and as set forth in legislation and the judicial record.
 17

18 120. Representative Plaintiffs and California putative class members request that this
 19 Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing
 20 these unfair, unlawful, and/or deceptive practices and to restore to Representative Plaintiffs and
 21 California class members any money Defendants acquired by unfair competition, including
 22 restitution and/or restitutionary disgorgement, as provided in California Business & Professions
 23 Code § 17200, *et seq.*; and for such other relief set forth below.
 24

25
 26 **REQUEST FOR RELIEF**

27 **WHEREFORE**, the Representative Plaintiffs, on behalf of themselves and each member of the
 28 proposed National and California classes, respectfully request that this Court enter judgment in

1 their favor and for the following specific relief against Defendants, and each of them, jointly and
2 separately, as follows:

3 1. That the Court declare, adjudge, and decree that this action is a proper class action
4 and certify each of the proposed classes and/or any other appropriate subclasses under F.R.C.P.
5 Rule 23 (b)(1), (b)(2), and/or (b)(3), including appointment of Representative Plaintiffs' counsel
6 as Class Counsel;

7
8 2. For an award to Representative Plaintiffs and members of both classes of compensatory
9 and special damages in an amount to be proven at trial;

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

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

15
16 5. For equitable relief enjoining Defendants from engaging in the wrongful conduct alleged
17 herein;

18 6. That the Court enjoin DURACELL from engaging in its current “plausible deniability
19 cover” for the wrongful conduct alleged herein (*i.e.* using their websites and other publications to
20 promote misleading “cautions” that dangerously contradict the best safety practices, by instructing
21 consumers to remove and store batteries outside the defective Duracell LED flashlights).
22 Consumers *should* in fact store batteries safely installed inside their non-defective LED
23 flashlights, thus making them instantly ready for use during emergencies, and consumers should
24 also test their flashlights, as well as remove and inspect the batteries approximately once per year,
25 and then replace the installed batteries during the last year of their advertised shelf life.
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- 7. For interest on the amount of any and all economic losses, at the prevailing legal rate;
- 8. For an award of punitive and/or exemplary damages, in an amount sufficient to deter such conduct in the future;
- 9. For an award of reasonable attorneys' fees;
- 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 Plaintiffs and members of each of the Plaintiff classes hereby demand trial by jury on all issues triable of right by jury.

Respectfully submitted,



DATED: January 31, 2019

By: _____

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