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Attorneys for Plaintiff

14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

17 NAYONNA BREZINSKI, on behalf of
 18 herself and all others similarly situated,

19 Plaintiff,

20 v.

21 GRACO CHILDREN’S PRODUCTS,
 22 INC. and NEWELL BRANDS DTC,
 23 INC.,

24 Defendants.

Case No. 5:20-cv-00347

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Nayonna Brezinski (“Plaintiff”) brings this action on behalf of herself
2 and all others similarly situated against Defendants Newell Brands DTC, Inc.
3 (“Newell”) and Graco Children’s Products, Inc. (“Graco”) (together, “Defendants”)
4 for the manufacture, marketing, and sale of the Graco Little Lounger Rocking Seat,
5 the Graco Duet Glide LX Baby Infant Gliding Swing and Napper/Portable Sleeper,
6 and the Graco DreamGlider Gliding Seat and Sleeper. Plaintiff makes the following
7 allegations pursuant to the investigation of their counsel and based upon information
8 and belief, except as to the allegations specifically pertaining to themselves, which
9 are based on personal knowledge.

10 **NATURE OF THE ACTION**

11 1. This is a class action against Defendants Newell Brands DTC, Inc. and
12 Graco Children’s Products, Inc. for the manufacture and sale of Graco Little Lounger
13 Rocking Seats (the “Little Lounger”), the Duet Glide LX Baby Infant Gliding Swing
14 and Napper/Portable Sleeper (the “Duet Glide”), and the DreamGlider Gliding Seat
15 and Sleeper (the “DreamGlider”) (collectively the “Inclined Sleepers”) all of which
16 were marketed as suitable for infants.

17 2. Infants up to 1 year of age sleep between 16 and 14 hours per day.
18 Newborn infants sleep up to 8 hours during the day.¹ Infants ranging from 3 months
19 to 1-year sleep between 3 to 5 hours during the daytime.

20 3. As such, infant loungers (*i.e.* sleepers) are highly desirable for parents
21 because they are designed to let babies rest comfortably, without the need for a crib
22 or mattress. Because babies sleep more than 50% of the day, parents seek easily
23 transportable sleepers believing that it is safe for the babies to sleep or nap in them
24 while they carry out daily tasks. Defendants designed, manufactured, marketed and
25 sold the Inclined Sleepers to meet this demand.

26 4. Defendants designed, manufactured, distributed, marketed, and sold
27 three nearly identical products, all of which qualify as “sleepers:”

28 ¹ <https://www.stanfordchildrens.org/en/topic/default?id=infant-sleep-90-P02237>

- 1 a. The Little Lounger is an inclined infant “lounge” that is advertised as
2 such. The name “Lounger” is prominently displayed on the boxes in
3 which the Lounges are sold. Additionally, other materials used to
4 promote the Lounges exclaim, “[t]hat this product was designed with
5 your baby’s comfort in mind,” and that “the cushioned deep seat has an
6 adjustable recline so that you can find just the right position for your
7 little one.” Other materials make similar statements about the Little
8 Lounger’s suitability for infants. This marketing was dangerously false
9 and misleading, as the product is not safe for infants.
- 10 b. The Duet Glide is an inclined infant “sleeper” that is advertised as such.
11 The name “Napper” or “Portable Sleeper” has been prominently
12 displayed on the boxes in which the Duet Glide is sold. Additionally,
13 other materials used to promote the Duet Glide exclaim, that “seat
14 conveniently doubles as a portable napper” and that the Duet Glide
15 offers “3 position recline for optimal comfort.” Other materials make
16 similar statements about the Duet Glide’s suitability for infants. This
17 marketing was dangerously false and misleading, as the product is not
18 safe for infants.
- 19 c. Similarly, the DreamGlider is an inclined infant “sleeper” that is
20 advertised as such. The name “Sleeper” is prominently displayed on the
21 boxes in which the DreamGliders are sold. Additionally, other
22 materials used to promote the DreamGliders exclaim, that “the plush
23 and roomy reclining seat makes nap time extra cozy” and that parents
24 can “gently lower the swing seat to create a cozy, reclined sleep space
25 [for] baby.” Other materials make similar statements about the
26 DreamGlider’s suitability for infants. This marketing was dangerously
27 false and misleading, as the product is not safe for infants.
- 28

1 5. The Inclined Sleepers are inherently unsafe and unfit for their intended
2 use. Their use poses a number of serious safety risks that can lead to infant death
3 and injury. By positioning an infant at an incline between 10 and 30 degrees, the
4 Inclined Sleepers significantly increases the risk that the infant’s head will slip into a
5 dangerous position, tilt to constrict the windpipe and/or cause the infant’s face to
6 become pressed against the padded fabric in the lounge and block airflow, which the
7 infant may be unable to correct. This increases the risk of death by asphyxiation.

8 6. Defendants knew about these risks for as long as they sold the Inclined
9 Sleepers. Among other things: (1) the American Academy of Pediatrics (“AAP”)
10 and other consumer groups repeatedly issued warnings about the serious dangers of
11 inclined sleepers and (2) in April 2019 the Consumer Product Safety Commission
12 (“CPSC”) began working with manufacturers to recall inclined sleepers because of
13 their associated sleeping risks. Despite these recalls and the known risks associated
14 with inclined baby products, Defendants did not issue a recall of the Little Lounger
15 until January 29, 2020, more than nine months after it became public knowledge that
16 inclined sleepers are unsafe for infants. Defendants have not recalled the
17 DreamGlider.

18 7. On January 29, 2020, after warnings from the CPSC and other agencies
19 and groups as described herein, Defendants recalled approximately 111,000 Little
20 Loungers.

21 8. Plaintiff brings claims against Defendants individually and on behalf of
22 a class of similarly situated purchasers of the Little Loungers for (1) fraud; (2) unjust
23 enrichment; (3) breach of express warranty; (4) breach of implied warranty; (5)
24 violation of California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civil Code
25 § 1750, *et seq.*; (6) violation of California’s Unfair Competition Law (“UCL”), Cal.
26 Bus. & Prof. Code §§ 17200, *et seq.*; (7) violation of California’s False Advertising
27 Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500, *et seq.*

PARTIES

1
2 9. Plaintiff Nayonna Brezinski is, and at all times relevant to this action
3 has been, a resident of Moreno Valley, California. On July 10, 2018, Ms. Brezinski
4 purchased Defendants’ Little Lounger Rocking Seat from a Walmart store located in
5 Moreno Valley, California. Before purchasing the Little Lounger, Ms. Brezinski
6 saw, read, and relied on Defendants’ representations that the Little Lounger was
7 suitable for infants. Ms. Brezinski would not have purchased the Little Lounger had
8 she known that there was a significant risk that the Little Lounger was dangerous and
9 unfit to perform its intended purpose.

10 10. Defendant Newell Brands DTC, Inc. is a Delaware corporation with its
11 principal place of business at 6655 Peachtree Dunwoody Road, Atlanta, GA, 30328.
12 Newell manufactures, markets, and distributes the Inclined Sleepers throughout the
13 United States.

14 11. Defendant Graco Children’s Products, Inc. is a Delaware corporation
15 with its principal place of business at 6655 Peachtree Dunwoody Road, Atlanta, GA,
16 30328. Graco Children’s Products is a wholly owned subsidiary of Newell. Graco
17 manufactures, markets, and distributes the Inclined Sleepers throughout the United
18 States.

JURISDICTION AND VENUE

19
20 12. This Court has subject matter jurisdiction over this action pursuant to 28
21 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate
22 amount in controversy exceeds \$5,000,000, exclusive of interest, fees, and costs, and
23 at least one Class member is a citizen of a state different from Defendants.

24 13. This Court has personal jurisdiction over Defendant Newell Brands
25 because Newell conducts substantial business within California such that Defendant
26 has significant, continuous, and pervasive contacts with the State of California.
27 Newell is registered to do business in the State of California.
28

1 14. This Court has personal jurisdiction over Defendant Graco Children’s
2 Products, Inc. because Graco conducts substantial business within California such
3 that Defendant has significant, continuous, and pervasive contacts with the State of
4 California. Graco is registered to do business in the State of California.

5 15. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
6 Defendants do substantial business in this District and a substantial part of the events
7 giving rise to Plaintiff Brezinski’s claims took place within this District.

8 **COMMON FACTUAL ALLEGATIONS**

9 16. Defendants are some of the world’s most recognized and trusted baby
10 product companies. They tout that “their approach to caregiving stems from a
11 heritage of innovation designed around safety, durability, and the best intentions of
12 loving parents.” Their “number one priority is safety for the children who depend on
13 their products every day.”

14 17. Defendants’ Inclined Sleepers are popular because they combine the
15 features of a rocking seat with the features of an infant sleeper.

16 18. Inclined sleepers “are elevated, intended to be placed on the floor, and
17 are self-supporting. Typically, this design uses a metal frame covered by a fabric
18 insert that contains the occupant. Some frame-type products have a rigid plastic
19 insert under the sleeping surface, and/or extra padding with head positioning
20 cushions. The base may be stationary or allow side-to-side/head-to-toe rocking.
21 This type of product could have a fixed incline or be adjustable. Frame-type
22 products can be intended for use by newborns or infants, or both, depending on the
23 size of the product.”²

24 19. Under the definition described above, the Little Lounger, DreamGlider,
25 and Duet Glide are all inclined sleepers that incline upwards on one end to raise a
26 baby’s head and torso up to between 10 and 30 degrees. The Inclined sleepers are

27 _____
28 ² https://www.cpsc.gov/s3fs-public/SupplementalNoticeofProposedRulemakingforInfantSleepProducts_10_16_2019.pdf (last accessed February 18, 2020).

1 nearly identical in design and all serve identical purpose. As of October 16, 2019,
2 the CPSC was aware of 451 – 59 fatal and 392 nonfatal – incidents relating to infant
3 inclined sleep products that occurred from January 1, 2005 through June 30, 2019.



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11

Left: Little Lounger

Middle: Duet Glide

Right: DreamGlider

12 20. The Inclined Sleepers all feature tabs that parents pull to lift the Inclined
13 Sleepers from a supine position to an inclined position, elevating an infants' head up
14 to a 30-degree angle from the lowest part of the baby's torso. The sleeper also
15 feature multi-point restraints, which are intended to limit the baby's motion at the
16 hips and waist. They also feature hard plastic external shells covered in plush
17 padding upon which the baby is placed. The different models of the Inclined
18 Sleepers share this basic design.

19 21. None of the Inclined Sleepers warn parents that the Inclined Sleepers
20 should be lowered to a horizontal position when infants are asleep.

21 22. The CPSC classifies the Little Lounger as an inclined sleeper.³

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³ <https://www.cpsc.gov/SafeSleep> (last accessed February 18, 2020).

1 inclined sleep products.” As such, Defendants themselves consider the Little
2 Lounger an inclined sleeper.⁴

3 27. In 2019, after the danger of inclined sleepers became public knowledge,
4 Defendants renamed the DreamGlider, quietly removing “& Sleeper” from its name.
5 Defendants did not issue a recall for the product and continued to sell versions of the
6 product with packaging containing the “& Sleeper” title.

7 28. Defendants have not recalled the Duet Glide.

8 **I. Infant Safety And Warnings To Defendants**

9 29. The National Institutes of Health (“NIH”) of the United States
10 Department of Health and Human Services and other federal and national
11 organizations have worked with the AAP, a non-profit group with a membership of
12 66,000 primary care pediatricians, pediatric medical subspecialists and pediatric
13 surgical specialists, to develop safe sleep standards for babies.⁵ Defendants, as
14 manufacturers and marketers of widely sold infant sleepers, are well aware of NIH
15 and AAP standards.

16 30. In 1992, before Defendants introduced the Inclined Sleepers to the U.S.
17 market, the American Academy of Pediatrics (“AAP”) released its recommendation
18 that babies should be placed on their backs to sleep. Subsequently, while deaths from
19 sudden infant death syndrome (SIDS) decreased, infant deaths from other causes
20 including suffocation, entrapment, and asphyxia did not.

21 31. In November 2005, the AAP issued a Policy Statement entitled – *The*
22 *Changing Concept of Sudden Infant Death Syndrome: Diagnostic Coding Shifts,*
23 *Controversies Regarding the Sleeping Environment, and New Variables to Consider*
24

25 _____
26 ⁴ <https://www.cpsc.gov/Recalls/2020/Graco-Recalls-Little-Lounger-Rocking-Seats-to-Prevent-Risk-of-Suffocation> (last accessed February 18, 2020).

27 ⁵ <https://www.nih.gov/news-events/news-releases/federal-agencies-express-support-updatedsafe-infant-sleep-recommendations> (last visited February 18, 2020).
28

1 *in Reducing Risk* – which contained detailed guidelines and recommendations on
2 safe sleep for infants.⁶ These included:

- 3 • “Back to sleep: *Infants should be placed for sleep in a supine position*
4 *(wholly on the back) for every sleep.*” (Emphasis added).
- 5 • “Use a firm sleep surface: *Soft materials or objects . . . should not be*
6 *placed under a sleeping infant.* A firm crib mattress, covered by a sheet,
7 is the recommended sleeping surface.”

8 32. In January 2006, the NIH issued a news release adopting the AAP’s
9 Guidelines.⁷ Among other things, the NIH stated:

10 The [AAP] recently issued updated recommendations for reducing the of
11 SIDS:

- 12 • Always place your baby on his or her back to sleep, for naps and at
13 night
- 14 • Place your baby on a firm sleeping surface, such as on a safety-
15 approved crib mattress, covered by a fitted sheet.

16 33. In October 2011, the AAP issued an updated Policy Statement, which
17 expanded the guidelines and recommendations on safe sleep for babies.⁸ The
18 recommendations stated:

- 19 • Infants should be placed “back to sleep for *every* sleep” in the supine
20 position, wholly on his or her back. “The supine sleeping position does
21 not increase the risk of choking and aspiration in infants, even those
22 with gastro-esophageal reflux.”

24 ⁶ <https://pediatrics.aappublications.org/content/116/5/1245> (last accessed February
25 18, 2020).

26 ⁷ https://www.nichd.nih.gov/newsroom/releases/sids_winter (last accessed February
27 18, 2020).

28 ⁸ <https://pediatrics.aappublications.org/content/128/5/1030> (last accessed February
18, 2020).

- 1 • ***“Elevating the head of the infant's crib while the infant is supine is***
2 ***not recommended.*** It is ineffective in reducing gastroesophageal reflux;
3 in addition, it might result in the infant sliding to the foot of the crib into
4 a position that might compromise respiration.”
- 5 • “Although data to make specific recommendations as to when it is safe
6 for infants to sleep in the prone or side position are lacking, studies that
7 have established prone and side sleeping as risk factors for SIDS
8 include infants up to 1 year of age. Therefore, infants should continue to
9 be placed supine until 1 year of age. Once an infant can roll from
10 supine to prone and from prone to supine, the infant can be allowed to
11 remain in the sleep position that he or she assumes.”
- 12 • “Use a firm sleep surface—A firm crib mattress, covered by a fitted
13 sheet, is the recommended sleeping surface to reduce the risk of SIDS
14 and suffocation.”
- 15 • “A crib, bassinet, or portable crib/play yard that conforms to the safety
16 standards of the Consumer Product Safety Commission...is
17 recommended.”
- 18 • “Soft materials...should not be placed under a sleeping infant.”
- 19 • ***“Sitting devices, such as car safety seats, strollers, swings, infant***
20 ***carriers, and infant slings, are not recommended for routine sleep in***
21 ***the hospital or at home.*** Infants who are younger than 4 months are
22 particularly at risk, because they might assume positions that can create
23 risk of suffocation or airway obstruction.”

24 (Emphasis added).

25 34. On October 24, 2016, the AAP issued a further updated policy
26 statement – *SIDS and Other Sleep-Related Infant Deaths: Updated 2016*
27 *Recommendations for a Safe Infant Sleeping Environment* – reaffirming and further
28

1 developing the guidelines and recommendations on safe sleep for babies.⁹ The
2 recommendations included:

- 3 • “Recommendations for a safe sleep environment include *supine*
4 *positioning, the use of a firm sleep surface, . . . and the avoidance of*
5 *soft bedding*”
- 6 • “[M]anufacturers should follow safe sleep guidelines in their
7 *messaging and advertising.*”
- 8 • “If an infant falls asleep in a sitting device, *he or she should be*
9 *removed from the product and moved to a crib or other appropriate*
10 *flat surface as soon as is safe and practical.*”
- 11 • “*Media and manufacturers should follow safe sleep guidelines in*
12 *their messaging and advertising. . . . Media and advertising messages*
13 *contrary to safe sleep recommendations may create misinformation*
14 *about safe sleep practices.*”

15 (Emphasis added).

16 35. On October 16, 2019, the CPSC issued a Draft Supplemental Notice of
17 Rulemaking with respect to inclined infant sleep products which “proposes to limit
18 the seat back angle for sleep to 10 degrees or less, and to change the scope of the
19 standard to cover products intended for infant sleep that are not already addressed by
20 another standard.”¹⁰ This would have the effect of banning the Inclined Sleepers
21 because it places the infant to sleep at angles between 10 and 30 degrees. The
22 Supplemental Notice of Rulemaking further disclosed that 59 infant fatalities were
23 reported to the CPSC in connection with inclined infant sleep products.

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25 ⁹ <https://pediatrics.aappublications.org/content/138/5/e20162938> (last accessed
26 February 18, 2020). Although issued on October 24, 2016, the recommendations are
dated November 2016.

27 ¹⁰ <https://www.cpsc.gov/s3fs-public/SupplementalNoticeofProposedRulemaking>
28 [forInfantSleepProducts_10_16_2019.pdf](https://www.cpsc.gov/s3fs-public/SupplementalNoticeofProposedRulemaking) (last accessed February 18, 2020).

1 36. The Inclined Sleepers are not cribs or mattresses. They feature raised
2 soft padding and can be positioned to an angle similar to that of a car seat or carrier.
3 Simply put, they are unsafe under AAP and NIH Guidelines.

4 37. Despite these numerous warnings, Defendants marketed and sold the
5 Inclined Sleepers, which position infants at varying levels of incline, in restraints,
6 and on soft padded material, as a suitable sleeping environment for infants.

7 38. Further, Although Defendants knew of the AAP's warning that
8 "manufacturers should follow safe sleep guidelines in their messaging and
9 advertising," and advertising messages contrary to safe sleep recommendations may
10 create misinformation about safe sleep practices," Defendants continued to market
11 and sell the Inclined Sleepers as suitable for infants.

12 **II. The Inadequate and Belated Recall**

13 39. On January 29, 2020, more than three months after the CPSC issued its
14 notice of rulemaking, Defendant issued the first, and only, recall for its Inclined
15 Sleepers (the "Recall") The recall was limited to the Little Lounger. To date,
16 Defendant has not recalled the Duet Glide or the DreamGlider.

17 40. In the recall notice, Defendants stated that the recall was initiated
18 because "*Infant fatalities have been reported with other manufacturers' inclined*
19 *sleep products*, after infants rolled from their back to their stomach or side, or under
20 other circumstances."¹¹ (Emphasis added).

21 41. However, product recalls have a notoriously low level of participation.
22 This recall is designed to be no different. Defendants' Recall is cumbersome,
23 inconvenient, restrictive, and confusing to the general public. Parents who own the
24 product must submit an online form to initiate the recall process and receive a recall
25 kit. When parents receive the recall kit, they are required to cut out a portion of the
26 product padding and mail it back to Graco.

27 ¹¹ [https://www.cpsc.gov/Recalls/2020/graco-recalls-little-lounger-rocking-seats-to-](https://www.cpsc.gov/Recalls/2020/graco-recalls-little-lounger-rocking-seats-to-prevent-risk-of-suffocation)
28 [prevent-risk-of-suffocation](https://www.cpsc.gov/Recalls/2020/graco-recalls-little-lounger-rocking-seats-to-prevent-risk-of-suffocation) (last accessed February 18, 2020).

1 42. Defendants have been on notice of the risks associated with the Inclined
2 Sleepers for years and did nothing about it. The Recall is insufficient because it is
3 calculated to ensure as few returns as possible.

4 **III. Defendants’ Deceptive Advertising and Marketing**

5 43. Despite their knowledge of the AAP’s guidelines and consumer groups’
6 recommendations that babies sleep supine, that their heads not be elevated, that they
7 sleep on a firm surface without soft materials, and that inclined sitting devices such
8 as car seats, strollers, swings, infant carriers, and infant slings are not recommended
9 for routine sleep, that the parents should be warned to remove their infants from
10 inclined sleepers if they fall sleep, Defendants have marketed – and in the case of the
11 DreamGlider and Duet Glider – continue to market the Inclined Sleepers as suitable
12 for infants.

13 44. Defendants’ deceptive advertising of the Inclined Sleepers takes two
14 primary forms: online and in-store. Online advertising appears on the Graco website
15 as well as other websites where the product was sold (such as Amazon.com). In
16 store advertising appears in the numerous stores where the Inclined Sleepers are sold.

17 45. Defendants’ deceptive advertising of the Inclined Sleepers starts with
18 their names: “Lounge,” “Sleeper,” and “Portable Sleeper.” By naming the products
19 as such, Defendants misled consumers into believe that the products are safe and
20 suitable for babies to sleep. A reasonable consumer would assume that the Inclined
21 Sleepers’ designs are consistent with the applicable guidelines and recommendations
22 about how babies should be safely placed to sleep. As described above, the Inclined
23 Sleepers are unfit for use as infant sleepers.

24 46. The marketing statements conflict with the AAP’s Guidelines and
25 recommendations, and those of other infant sleep experts.

26 47. For example, Defendants’ statements that the Little Lounger “has
27 multiple recline positions, so that it’s easy to find the right position for baby’s
28 comfort” is in contrast to the AAP’s guidelines and recommendations that babies

1 sleep supine and that their heads not be elevated. The DreamGlider features a
2 similar claim, stating that the “seat reclines with an easy, one-hand motion, giving
3 your baby a safe and comfortable spot to rest without having to be moved from the
4 swing.” The Duet Glider claims that the “seat conveniently doubles as a portable
5 napper,” with “3 position recline for optimal comfort.”

6 48. Defendants’ statement that the Little Lounger has “comfortable, plush
7 fabric” is also contrary to the AAP’s guideline and recommendation that soft
8 materials should not be placed under a sleeping infant. Defendants make similar
9 claims regarding the DreamGlider, stating that the “cozy seat combined with plush
10 body support and a three-position recline offers optimal comfort for baby.” The
11 Duet Glider also includes these claims stating that the product has “plush softgoods
12 with full body support for added comfort.”

13 49. Further, Graco has sponsored reviews of the Inclined Sleepers,
14 perpetuating the claim that the Inclined Sleepers are suitable for infant sleep. For
15 example, in September 2013, one paid reviewer stated that the Little Lounger would
16 be perfect for “sleeping, resting, rocking, and vibrating” and that they used the Little
17 Lounger “in place of a bassinet.” Another sponsored review from November 2013
18 claimed that the Little Lounger “is what the baby will sleep in at night.”

19 50. Defendants’ deceptive marketing of the products as suitable for infant
20 “lounging or sleeping” is material to consumers’ decisions to purchase and/or own
21 the Inclined Sleepers, because it causes consumers to reasonably believe the product
22 is safe. Defendants should not have marketed, and should not be marketing, the
23 Inclined Sleepers as suitable for infants. Alternatively, Defendants should have
24 disclosed in their marketing statements that using the products for sleep is dangerous
25 and contrary to medical guidelines and recommendations because this information
26 would be material to a consumer’s decision as to whether to purchase and/or own the
27 Inclined Sleepers.

28

1 51. Defendants’ deceptive marketing of the Inclined Sleepers, as suitable
2 for infant “lounging or sleeping” when its use as such conflicts with the applicable
3 medical guidelines and recommendations not only exposed Class members’ infants
4 to serious risk of injury and even death, but it also induced consumers who would
5 not have otherwise purchased the Inclined Sleepers to purchase it, to own, and/or pay
6 a higher price than they would have otherwise paid for the product were it not false
7 or misleadingly advertised.

8 52. Defendants’ marketing has led consumers of the Inclined Sleepers to
9 believe that the products have been tested, comply with all applicable regulations and
10 laws, and are fit for their intended use.

11 53. Defendants profited enormously from their failure to disclose the risk of
12 the Inclined Sleepers to consumers, and from their affirmative statements
13 representing that the Inclined Sleepers are suitable for infants.

14 **CLASS REPRESENTATION ALLEGATIONS**

15 54. Plaintiff Brezinski seeks to represent a class defined as all persons in the
16 United States who purchased the Inclined Sleepers from February 25, 2016 to the
17 present (the “Class”). Excluded from the Class are persons who made such
18 purchases for purpose of resale.

19 55. Plaintiff Brezinski also seeks to represent a subclass of all Class
20 Members who purchased the Inclined Sleepers in the State of California (the
21 “California Subclass”).

22 56. Members of the Class and California Subclass are so numerous that
23 their individual joinder herein is impracticable. On information and belief, members
24 of the Class and California Subclass number in the tens or hundreds of thousands.
25 The precise number of Class Members and their identities are unknown to Plaintiff at
26 this time but may be determined through discovery. Class Members may be notified
27 of the pendency of this action by mail and/or publication through the distribution
28 records of Defendants and third-party retailers and vendors.

1 57. There is a well-defined community of interest in the questions of law
2 and fact involved in this case. Questions of law and fact common to the members of
3 the Class that predominate over questions that may affect individual Class members
4 include, but are not limited to:

- 5 a. whether Defendants misrepresented and/or failed to disclose
6 material facts concerning the Products;
7 b. whether Defendants' conduct was unfair and/or deceptive;
8 c. whether Defendants have been unjustly enriched as a result of the
9 unlawful conduct alleged in this Complaint such that it would be
10 inequitable for Defendants to retain the benefits conferred upon
11 Defendants by Plaintiff and the Class;
12 d. whether Plaintiff and the Class have sustained damages with
13 respect to the common law claims asserted, and if so, the proper
14 measure of their damages.

15 58. Plaintiff's claims are typical of those of the Class because Plaintiff, like
16 all members of the Class, purchased, in a typical consumer setting, Defendants'
17 Inclined , and Plaintiff sustained damages from Defendants' wrongful conduct.

18 59. Plaintiff will fairly and adequately protect the interests of the Class and
19 Subclass and has retained counsel that is experienced in litigating complex class
20 actions. Plaintiff has no interests which conflict with those of the Class or the
21 Subclass.

22 60. A class action is superior to other available methods for the fair and
23 efficient adjudication of this controversy.

24 61. The prosecution of separate actions by members of the Class and the
25 Subclass would create a risk of establishing inconsistent rulings and/or incompatible
26 standards of conduct for Defendants. For example, one court might enjoin
27 Defendants from performing the challenged acts, whereas another might not.
28 Additionally, individual actions could be dispositive of the interests of the Class and

1 the Subclass even where certain Class or Subclass members are not parties to such
2 actions.

3 **COUNT I**
4 **(Fraud)**

5 62. Plaintiff incorporates by reference and re-alleges herein all paragraphs
6 alleged above.

7 63. Plaintiff brings this claim individually and on behalf of the members of
8 the proposed Class and Subclass against Defendants.

9 64. This claim is based on fraudulent representations and omissions
10 concerning the safety of consumers who use the Inclined Sleepers. As discussed
11 above, Defendants failed to disclose that the risks associated with the intended use of
12 the Inclined Sleepers, or that the risks were substantially likely to manifest through
13 the customary and intended use of the Inclined Sleepers. Defendants also
14 represented the Inclined Sleepers as safe for infants, which they were not.

15 65. The false and misleading representations and omissions were made with
16 knowledge of their falsehood. Defendants are nationwide children's product
17 distributors who knew of reports of the Inclined Sleepers' dangerous nature.
18 Nonetheless, Defendants continued to sell their worthless and dangerous Inclined
19 Sleepers to unsuspecting consumers.

20 66. The false and misleading representations and omissions were made by
21 Defendants, upon which Plaintiff and members of the proposed Class and Subclass
22 reasonably and justifiably relied, and were intended to induce and actually induced
23 Plaintiff and members of the proposed Class and California Subclass to purchase the
24 Inclined Sleepers.

25 67. The fraudulent actions of Defendants caused damage to Plaintiff and
26 members of the proposed Class and Subclass, who are entitled to damages and other
27 legal and equitable relief as a result.
28

COUNT II
(Unjust Enrichment)

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2 68. Plaintiff incorporates by reference and re-alleges herein all paragraphs
3 alleged above.

4 69. Plaintiff brings this claim individually and on behalf of the members of
5 the proposed Class and Subclass against Defendants.

6 70. Plaintiff and Class members conferred benefits on Defendants by
7 purchasing the Inclined Sleepers.

8 71. Defendants have been unjustly enriched in retaining the revenues
9 derived from Plaintiff's and Class members' purchases of the Inclined Sleepers.
10 Retention of those moneys under these circumstances is unjust and inequitable
11 because Defendants failed to disclose that the Inclined Sleepers were unfit for their
12 intended use, or that the risks were substantially likely to manifest through the
13 customary and intended use of the Inclined Sleepers. These omissions caused
14 injuries to Plaintiff and Class members because they would not have purchased the
15 Inclined Sleepers if the true facts were known.

16 72. Retention of those moneys also is unjust and inequitable because, as
17 alleged above, Defendants commenced an ineffective recall that was calculated to
18 result in few returns, and generally no refunds, thereby protecting profits Defendants
19 collected from selling the Inclined Sleepers.

20 73. Because Defendants' retention of the non-gratuitous benefits conferred
21 on them by Plaintiff and Class members is unjust and inequitable, Defendants must
22 pay restitution to Plaintiff and Class members for its unjust enrichment, as ordered
23 by the Court.

COUNT III
(Breach of Express Warranty)

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25
26 74. Plaintiff incorporates by reference and re-alleges herein all paragraphs
27 alleged above.

28 75. Plaintiff brings this claim individually and on behalf of the members of

1 the proposed Class and Subclass against Defendants.

2 76. Defendants are, and at all relevant times were, a merchant engaged in
3 the business of manufacturing and distributing, among other things, Inclined
4 Sleepers. Defendants sold the Inclined Sleepers in the regular course of business and
5 Plaintiff and Class members purchased the Inclined Sleepers.

6 77. Defendants expressly warranted to all consumers that the Inclined
7 Sleepers were appropriate and safe for infant use, which became the basis of the
8 bargain between Defendants and Plaintiff and Class members.

9 78. Defendants gave these express warranties to Plaintiff and Class
10 members in written form on the packaging of the Inclined Sleepers as well as
11 through the marketing and advertising described herein.

12 79. Defendants' written affirmations of fact, promises, and/or descriptions
13 as alleged are each a written warranty.

14 80. Defendants breached their express warranties because their
15 representations and statements alleged herein are false and the Inclined Sleepers did
16 not contain the properties Defendants represented. Despite warranting the Inclined
17 Sleepers as suitable for infant use, Defendants knew that there were risks associated
18 with the Inclined Sleepers and failed to inform Plaintiff and the Class members as
19 such.

20 81. By placing the Inclined Sleepers in the stream of commerce, Defendants
21 further warranted that the Inclined Sleepers were safe to use and complied with
22 applicable guidelines.

23 82. Defendants breached their warranties because, contrary to their
24 representations, the Inclined Sleepers are not suitable for infant use, and do not
25 comply with applicable guidelines and recommendations for safe infant use.

26 83. As a direct and proximate result of this breach of warranty by
27 Defendants, Plaintiff and other consumers have been damaged by paying monies for
28 products that are completely unusable. Plaintiff seeks damages in an amount to be

1 proven at trial for the injuries suffered from Defendants' breach of express
2 warranties. The damages suffered by Plaintiff and the Class Members include, but
3 are not limited to, the monies paid to Defendants for the Inclined Sleepers.

4 **COUNT IV**
5 **(Breach of Implied Warranty of Fitness and Merchantability)**

6 84. Plaintiff incorporates by reference and re-alleges herein all paragraphs
7 alleged above.

8 85. Plaintiff brings this claim individually and on behalf of the members of
9 the proposed Class and Subclass against Defendants.

10 86. Defendants are, and at all relevant times were, a merchant engaged in
11 the business of manufacturing and distributing, among other things, the Inclined
12 Sleepers

13 87. Plaintiff and the Class Members purchased the Inclined Sleepers.

14 88. Defendants are manufacturers and merchants with respect to goods of
15 this kind, which were sold to Plaintiff and other consumers, and there was in the sale
16 to Plaintiff and other consumers an implied warranty that those goods were
17 merchantable and that they were fit for their intended use as infant sleepers.

18 89. However, Defendants breached that warranty implied in the contract for
19 the sale of goods in that the Inclined Sleepers are completely unusable, lack even the
20 most basic degree of fitness for ordinary or intended use, and are not safe for human
21 use as set forth in detail herein above.

22 90. The Inclined Sleepers are defective and unusable because they were
23 distributed to the public with extreme safety risks, and because those risks were
24 substantially likely to manifest through the customary and intended use of the
25 Inclined Sleepers. As a result, the Inclined Sleepers were not usable and dangerous
26 to the health and well-being of its consumers.

27 91. Defendants admitted that the Little Loungers were completely unusable
28 and unfit for normal use when it initiated the Recall described in detail herein above.

1 92. As a direct and proximate result of this breach of warranty by
2 Defendants, Plaintiff and other consumers have been damaged by paying monies for
3 products that are completely unusable and unfit for their intended purpose.

4 93. Plaintiff seeks damages in an amount to be proven at trial for the
5 injuries suffered from Defendants’ breach of the implied warranties. The damages
6 suffered by Plaintiff and the Class Members include, but are not limited to, the
7 monies paid to Defendants for the Inclined Sleepers.

8 94. As a result of Defendants’ conduct, Plaintiff did not receive goods as
9 impliedly warranted by Defendants to be merchantable.

10 **COUNT V**

11 **(Violation Of California’s Consumers Legal Remedies Act (“CLRA”),
12 Cal. Civil Code §§ 1750, *et seq.*)**

13 95. Plaintiff hereby incorporates by reference the allegations contained in
14 all preceding paragraphs of this complaint.

15 96. Plaintiff Brezinski brings this claim individually and on behalf of the
16 California Subclass against Defendants.

17 97. California’s Consumers Legal Remedies Act, Cal. Civ. Code §
18 1770(a)(5), prohibits “[r]epresenting that goods or services have sponsorship,
19 approval, characteristics, ingredients, uses, benefits, or quantities which they do not
20 have or that a person has a sponsorship, approval, status affiliation, or connection
21 which he or she does not have.”

22 98. California’s Consumers Legal Remedies Act, Cal. Civ. Code §
23 1770(a)(7), prohibits “[r]epresenting that goods or services are of a particular
24 standard, quality, or grade, or that goods are of a particular style or model, if they are
25 of another.”

26 99. California’s Consumers Legal Remedies Act, Cal. Civ. Code §
27 1770(a)(9) disallows “[a]dvertising goods or services with intent not to sell them as
28 advertised.”

1 100. Defendants violated this provision by misrepresenting that the Inclined
2 Sleepers were safe for infants.

3 101. Plaintiff Brezinski and the California Subclass suffered injuries caused
4 by Defendants because: (a) they would not have purchased the Inclined Sleepers on
5 the same terms if the true facts were known about the product; (b) they paid a price
6 premium for the Inclined Sleepers due to Defendants' promises that they were
7 suitable for infants; and (c) the Inclined Sleepers do not have the characteristics as
8 promised by Defendants.

9 102. On February 19, 2020, prior to the filing of this Complaint, Plaintiff's
10 counsel sent Defendants a notice letter, which complies in all respects with
11 California Civil Code §1782(a). The letter was sent via certified mail, return receipt
12 requested, advising Defendants that it was in violation of the CLRA and demanding
13 that it cease and desist from such violations and make full restitution by refunding
14 the monies received therefrom. The letter stated that it was sent on behalf of
15 Plaintiff Brezinski, and all other similarly situated purchasers. Defendants did not
16 respond to the letter.

17 **COUNT VI**
18 **(Violation Of California's Unfair Competition Law ("UCL"),**
19 **Cal. Bus. & Prof. Code §§ 17200, et seq.)**

20 103. Plaintiff hereby incorporates by reference the allegations contained in
21 all preceding paragraphs of this complaint.

22 104. Plaintiff Brezinski brings this claim individually and on behalf of the
23 members of the California Subclass against Defendants.

24 105. Defendants are subject to California's Unfair Competition Law, Cal.
25 Bus & Prof. Code §§ 17200, et seq. The UCL provides, in pertinent part: "Unfair
26 Competition shall mean and include unlawful, unfair, or fraudulent business
27 practices and unfair, deceptive, untrue, or misleading advertising"

28 106. Defendants' misrepresentations and other conduct, described herein,

1 violated the “unlawful” prong of the UCL by violating the CLRA as described
2 herein; the FAL as described herein; and Cal. Com. Code § 2607.

3 107. Defendants’ misrepresentations and other conduct, described herein,
4 violated the “unfair” prong of the UCL in that their conduct is substantially injurious
5 to consumers, offends public policy, and is immoral, unethical, oppressive, and
6 unscrupulous, as the gravity of the conduct outweighs any alleged benefits.

7 108. Defendants violated the “fraudulent” prong of the UCL by making
8 misrepresentations about the Inclined Sleepers, as described herein.

9 109. Plaintiff Brezinksi and the California Subclass lost money or property as
10 a result of Defendants’ UCL violations because: (a) they would not have purchased
11 the Inclined Sleepers on the same terms if the true facts were known about the
12 product; (b) they paid a price premium for the Inclined Sleepers due to Defendants’
13 promises that they suitable for infants; and (c) the Inclined Sleepers do not have the
14 characteristics as promised by Defendants.

15 **COUNT VII**
16 **(Violation Of California’s False Advertising Law (“FAL”),**
17 **Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

18 110. Plaintiff hereby incorporates by reference the allegations contained in
19 all preceding paragraphs of this complaint.

20 111. Plaintiff Brezinski brings this claim individually and on behalf of the
21 members of the California Subclass against Defendants.

22 112. California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500,
23 *et seq.*, makes it “unlawful for any person to make or disseminate or cause to be
24 made or disseminated before the public in this state, ...in any advertising device ...
25 or in any other manner or means whatever, including over the Internet, any
26 statement, concerning ... personal property or services, professional or otherwise, or
27 performance or disposition thereof, which is untrue or misleading and which is
28

1 known, or which by the exercise of reasonable care should be known, to be untrue or
2 misleading.”

3 113. Defendants committed acts of false advertising, as defined by § 17500,
4 by misrepresenting that the Inclined Sleepers are safe for infants.

5 114. Defendants knew or should have known, through the exercise of
6 reasonable care that its representations about the Inclined Sleepers were untrue and
7 misleading.

8 115. Defendants’ actions in violation of § 17500, as described herein, were
9 false and misleading such that the general public is and was likely to be deceived.

10 116. Plaintiff Brezinski and the California Subclass lost money or property as
11 a result of Defendants’ FAL violations because: (a) they would not have purchased
12 the Inclined Sleepers on the same terms if the true facts were known about the
13 product; (b) they paid a price premium for the Inclined Sleepers due to Defendants’
14 promises that they were suitable for infants; and (c) the Inclined Sleepers do not have
15 the characteristics as promised by Defendants.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
18 situated, seeks judgment against Defendants, as follows:

- 19 a) For an order certifying the Class and the California Subclass under
20 Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff
21 Brezinski as a representative of the Class and the California Subclass,
22 and Plaintiff’s attorneys as Class Counsel to represent the Class and
23 California Subclass;
- 24 b) For an order finding in favor of Plaintiff, the Class, and the California
25 Subclass on all counts asserted herein;
- 26 c) For compensatory, statutory, and punitive damages in amounts to be
27 determined by the Court and/or jury;
- 28 d) For prejudgment interest on all amounts awarded;

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- e) For an order of restitution and all other forms of equitable monetary relief;
- f) For injunctive relief as pleaded or as the Court may deem proper; and
- g) For an order awarding the Plaintiff, the Class, and the California Subclass their reasonable attorneys’ fees, expenses, and costs of suit.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action and issues so triable.

Dated: February 20, 2020

BURSOR & FISHER, P.A.

By: /s/ Brittany S. Scott
Brittany S. Scott

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Attorneys for Plaintiff

CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, Brittany S. Scott, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and a member of the bar of this Court. I am an associate at Bursor & Fisher, P.A., counsel of record for Plaintiff in this action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would competently testify thereto under oath.

2. The Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that a substantial portion of the events alleged in the Complaint occurred in the Central District of California.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed at Walnut Creek, California this 20th day of February, 2020.

/s/ Brittany S. Scott
Brittany S. Scott