

**BURSOR & FISHER, P.A.**

L. Timothy Fisher (State Bar No. 191626)

Blair E. Reed (State Bar No. 316791)

Brittany S. Scott (State Bar No. 327132)

1990 North California Blvd., Suite 940

Walnut Creek, CA 94596

Telephone: (925) 300-4455

Facsimile: (925) 407-2700

E-mail: ltfisher@bursor.com

breed@bursor.com

bscott@bursor.com

**BURSOR & FISHER, P.A.**

Scott A. Bursor (State Bar No. 276006)

701 Brickell Ave, Suite 1420

Miami, FL 33131

Telephone: (305) 330-5512

Facsimile: (305) 676-9006

E-Mail: scott@bursor.com

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

NICOLE MARROQUIN, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

L'OREAL USA, INC.,

Defendant.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Nicole Marroquin (“Plaintiff”) brings this action on behalf of herself and all others  
2 similarly situated against Defendant L’Oreal USA, Inc. (“L’Oreal”) for the manufacture,  
3 marketing, and sale of the Clarisonic face brush products identified below. Plaintiff makes the  
4 following allegations pursuant to the investigation of her counsel and based upon information and  
5 belief, except as to the allegations specifically pertaining to herself, which are based on personal  
6 knowledge.

7 **NATURE OF ACTION**

8 1. This is a class action against Defendant L’Oreal USA, Inc., for the manufacture and  
9 sale of its Clarisonic face brushes (collectively, the “Clarisonics”), all of which suffer from an  
10 identical defect in design. Specifically, the Clarisonics are not waterproof, which causes the  
11 Clarisonics to suffer from a battery defect. This defect renders the Clarisonics unusable because  
12 the defect renders them nonfunctional.

13 2. In widespread advertising and marketing, L’Oreal touts that its Clarisonic face  
14 brushes are waterproof. In numerous places, including the packaging of the Clarisonics, Defendant  
15 represents that the Clarisonics are waterproof and can be used in the “shower, bath, or sink.”

16 3. However, the Clarisonics are not waterproof. Instead, the Clarisonics have a  
17 waterproofing defect that leads to battery failure. Numerous consumers have reported that their  
18 Clarisonics would no longer charge, or turn on at all.

19 4. Plaintiff and consumers like her have all experienced the same defect – battery  
20 failure – after using the Clarisonics to wash their face according to the directions on the package.  
21 However, despite numerous complaints, L’Oreal has not publicly acknowledged the defect or  
22 attempted to fix it. Instead, when consumers take advantage of the Clarisonics’ warranty,  
23 Clarisonic sends replacement Clarisonics that suffer from the same defect.

24 5. Plaintiff brings claims against Defendant individually and on behalf of a class of all  
25 other similarly situated purchasers of the Clarisonics for (1) violation of California’s Consumers  
26 Legal Remedies Act (“CLRA”), Civil Code §§ 1750, *et. seq.*; (2) violation of California’s Unfair  
27 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-17210; (3) unjust enrichment, (4)  
28

breach of implied warranty under the Song-Beverly Act, (5) breach of implied warranty, (6) violation of the Magnuson-Moss Warranty Act (“MMWA”), and (7) breach of express warranty.

**PARTIES**

6. Plaintiff Nicole Marroquin is, and at all times relevant to this action has been, a resident of Clovis, California. In December 2018, Ms. Marroquin purchased a Clarisonic Mia 1 from an Ulta located in Clovis, California for approximately \$129.00. Before purchasing her Clarisonic Plaintiff Marroquin reviewed information about the Clarisonic, including the representation that the Clarisonic was waterproof. When purchasing her Clarisonic, Plaintiff Marroquin also reviewed the accompanying labels and marketing materials, and understood them as representations and warranties by Defendant that the Clarisonic was waterproof. Plaintiff Marroquin relied on these representations and warranties in deciding to purchase Defendant’s Clarisonic over comparable products. Accordingly, these representations and warranties were part of the basis of the bargain, in that she would not have purchased the Clarisonic on the same terms had she known these representations were not true. In making her purchase, Plaintiff Marroquin paid a substantial price premium due to the false and misleading waterproof claims. However, Plaintiff Marroquin did not receive the benefit of her bargain, because Defendant’s Clarisonics are not waterproof as advertised. Plaintiff Marroquin also understood that in making the sale, her retailer was acting with the knowledge and approval of Defendant and/or as the agent of Defendant. Plaintiff Marroquin further understood that each purchase involved a direct transaction between herself and Defendant, because her Clarisonic came with packaging and other materials prepared by Defendant, including representations and warranties regarding the waterproof claims. Plaintiff Marroquin may purchase a Clarisonic in the future if the defect is resolved, however, Plaintiff has no way to be certain that Defendant’s representations are true when she sees the products on the store shelves.

7. In early 2020, Plaintiff’s Clarisonic Mia 1 ceased working and would no longer charge.

8. Defendant L’Oreal USA, Inc. is a Delaware corporation with its principal place of business at 10 Hudson Yards 30<sup>th</sup> Floor, New York, New York, 10001. Defendant markets a wide

1 assortment of beauty products throughout North America. L’Oreal has annual sales of \$29.8  
2 billion globally. Defendant manufactures, distributes, and sells the Clarisonics throughout the  
3 United States, and is responsible for the advertising, marketing, and packaging of the Clarisonics.

4 **JURISDICTION AND VENUE**

5 9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
6 § 1332(d) because there are more than 100 class members and the aggregate amount in controversy  
7 exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least one Class member is a  
8 citizen of a state different from Defendant.

9 10. This Court has personal jurisdiction over Defendant because Defendant conduct  
10 substantial business within California such that Defendant has significant, continuous, and  
11 pervasive contacts with the State of California.

12 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant  
13 does substantial business in this District, a substantial part of the events giving rise to Plaintiff’s  
14 claims took place within this District because Plaintiff purchased her Clarisonic in this District and  
15 resides in this District.

16 **COMMON FACTUAL ALLEGATIONS**

17 12. Defendant L’Oreal is the world’s largest cosmetics company, manufacturing over  
18 30 makeup, hair, fragrance, and skincare brands. Among the various skincare products sold by  
19 L’Oreal are the Clarisonic Mia 1, Clarisonic Mia 2, Clarisonic Prima, Clarisonic Mia Smart, and  
20 Clarisonic Mia Men (collectively the “Clarisonics”). The Clarisonics are manufactured by  
21 L’Oreal and marketed, distributed, and sold under its “Clarisonic” brand. Every Clarisonic is  
22 marketed as being waterproof, and from a functional and manufacturing standpoint, the Clarisonics  
23 are nearly identical:



**Top Row: Mia 1, Mia 2, and Mia Prima Bottom Row: Mia Smart and Mia Men**

13. Every Clarisonic features the waterproof warranty:



**WATERPROOF**

Use it in the shower, bath or sink



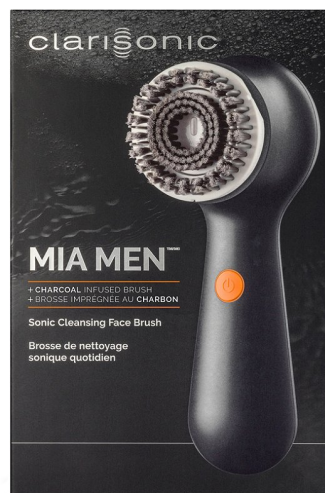
**WATERPROOF**

Use it in the shower, bath or sink

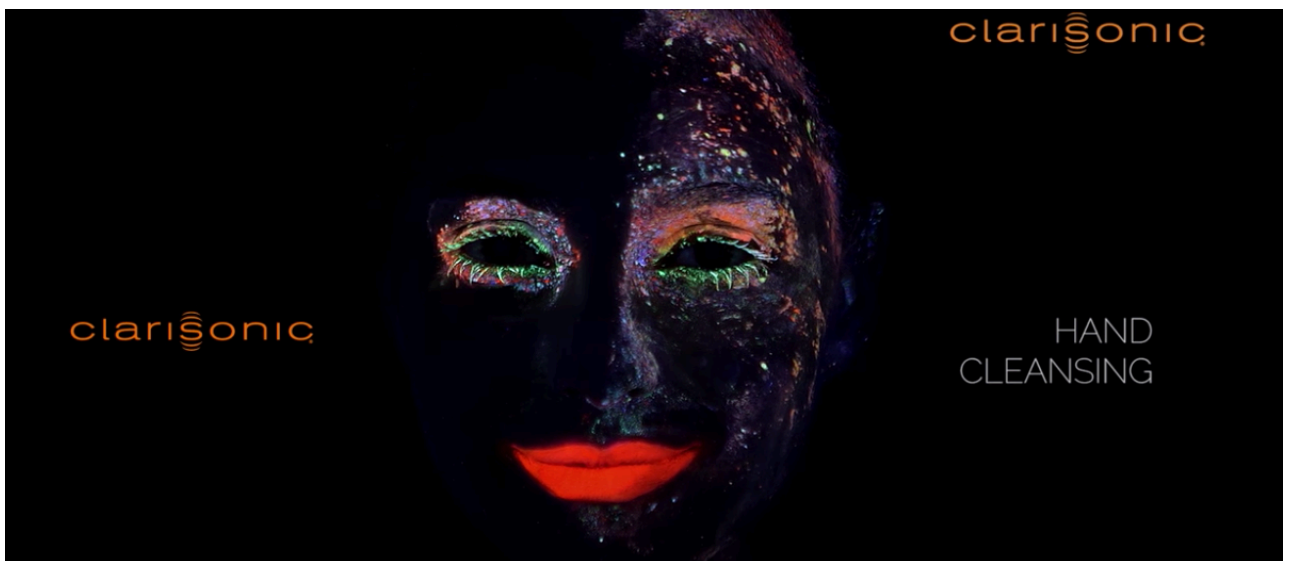
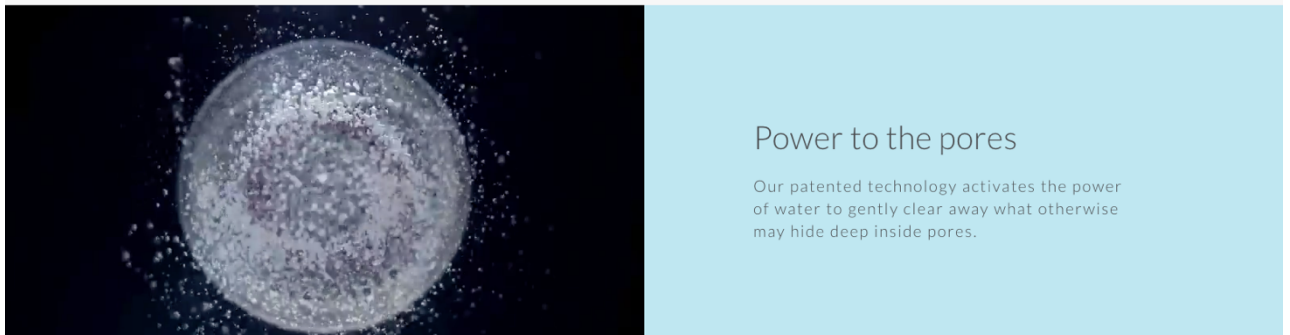
The waterproof warranty is material to consumers because if the Clarisonics are not waterproof, the electronic components will fail. Indeed, Defendant has admitted that failure of the waterproofing can cause the internal component to fail:

“Our devices are not repairable, nor are the batteries replaceable. Clarisonic devices are sealed to be waterproof so they can be used freely near water and in the shower. If the waterproof seal is broken the likelihood of water leaking into the device is high, further compromising the device’s internal components.”

14. The packaging for the Clarisonics reinforces that fact the Clarisonics are intend for use in water because they all picture water running on or behind the Clarisonic pictured on the package:



1           15. Similarly, the fact that the Clarisonics stop functioning and will not charge is  
2 material to consumers. Consumers purchase the Clarisonics because the powered face brushes are  
3 intended to be more effective than other methods of facial cleansing:  
4



1 As such, the defect renders the Clarisonics useless because they will not operate once the defect  
2 appears.

3 16. The defect presents itself when the Clarisonics stop turning on and fail to charge.  
4 Consumers have reported that their Clarisonics will abruptly stop functioning within the useful life  
5 of the Clarisonics, despite being used according to direction, and will no longer charge.

6 17. The Clarisonics were made defectively, rendering the Clarisonics unusable and  
7 causing them to stop functioning. Defendant was undoubtedly aware of the Clarisonics' defective  
8 nature because numerous consumers have made warranty claims under Clarisonics' one-year  
9 warranty. The defect is substantially likely to materialize during the useful life of the Clarisonics.

10 18. With thousands of units sold at approximately \$99 to \$169 each, Defendant has  
11 profited enormously from its failure to disclose the defect. Defendant's Clarisonic sales continue  
12 to this day.

13 19. The defect at issue here involves a critical function and component of the  
14 Clarisonics, and no reasonable consumer would spend hundreds of dollars on an electronic face  
15 brush had he or she known it was substantially likely to manifest a defect during the Clarisonics'  
16 useful lifespan, rendering it useless. Defendant had exclusive knowledge of the defect, which was  
17 not known to Plaintiff for class members.

18 20. Defendant made representations to Plaintiff and class members while suppressing  
19 the Clarisonics' defective nature. Specifically, by displaying the Clarisonics and describing their  
20 features, the product packaging implied that the Clarisonics were suitable for use as an electronic  
21 face brush that would be suitable for use "in the shower, bath, or sink," without disclosing that they  
22 had a critical defect that could result in the Clarisonics being rendered completely useless.

23 **A. Defendant's Pre-Sale Knowledge of the Defect**

24 21. Defendant has known about the defect for at least three years, as is evidenced by  
25 numerous complaints concerning the Clarisonics' defect on its own website. Defendant is clearly  
26 aware of all of the complaints posted to its own website because Defendant monitors its own  
27 website and also has an internal customer service team dedicated to consumer comments and  
28

1 complaints. Below is a small sample of the Clarisonics' reviews/complaints posted on Defendant's  
2 website clarisonic.com:

3 For example, two years ago, one Mia 1 purchaser reported:

4 "My old Clarisonic died after 5 years. Got a new Mia. First one wouldn't charge.  
5 Clarisonic sent a replacement. Second one doesn't work either. But since I've  
6 already had one replaced I can't have another replacement sent out. I have to wait  
7 for a refund. Then order a new one, and they are no longer on sale. Not too happy  
8 about the situation. Probably look for some thing else. Super disappointed in the  
9 product."

10 Three years ago, another Mia 1 owner commented:

11 "I purchased a Mia 12/2015. I loved it and used it daily. It stopped working by  
12 9/2016. I returned it under warranty. They sent me a new one (albeit with a pathetic  
13 usb charger). That one has lasted 11 months. While I like the product the quality is  
14 an insult for the price. The Mia was actually my second Clarisonic, I had the pro  
15 first, and my first lasted under 2 years. Great product, terrible durability."

16 Similarly, a third Mia 1 owner stated:

17 "I love my Mia, but warning if you buy one... I got mine as a gift for Christmas so  
18 about 7 months ago and a couple of weeks ago it stopped working.... I don't have  
19 the receipt (it was a gift) and customer service says that because it was made over  
20 a year ago and I don't have proof that I bought it less than a year ago I am out of  
21 luck. Seems that they should be able to do something about this. It's an expensive  
22 item and it's very unfortunate that it has died a 1/2 yr later."

23 In response to some of these reviews, Defendant's customer service team responded:

24 "Clarisonic devices cannot be overcharged; therefore, keeping it charged whenever  
25 it is not in use will not harm it or lessen the battery life! We hope these tips are  
26 helpful and we look forward to hearing back from you!"

27 Further, they stated:

28 "Our devices are not repairable, nor are the batteries replaceable. Clarisonic devices  
are sealed to be waterproof so they can be used freely near water and in the shower.  
If the waterproof seal is broken the likelihood of water leaking into the device is  
high, further compromising the device's internal components."

22. Similar reviews can be found for all of the Clarisonics:

For example, on Defendant's Mia Prima listing feature the following reviews:

"The product does not work after only a month of use"

"the device is not working - DOESN'T CHARGE AFTER ONE MONTH"

"I was loving this until it just gave out on me in a matter of a few weeks, just  
returned it, super disappointed."

1 “I got a clarisonic last year as a gift. I was very excited about this product and it  
2 quickly became a staple in my routine. Unfortunately, it died and when I tried to  
3 charge it, it didn’t work. It didn’t even register the charger. I reached out for  
4 customer support and was told that my warranty would have just expired a week  
ago. All they could offer me was \$10s off a new one. Great product but only lasts  
a year!”

5 The reviews on the Mia Smart share the same complaints:

6 “This product is really nice until it stops working. I had bought one and used it for  
7 no more than a month and it just stopped charging. I then exchanged it for a new  
8 one.. well this one lasted a good 6 months until it also stopped working. I read so  
9 many reviews about these devices breaking down, but wanted to see for myself.  
10 Unfortunately everyone was right. This device is too expensive to just break down  
the way they do. Now I just use the device without turning it on as the brush heads  
work very well. Still so disappointing... I recommend finding another brand of a  
cleansing brush. Don’t waste your money or time.”

11 “It's unbelievable that a product which costs so much money would be so poorly  
12 made and defective. At first, I had to replace the device after less than 6 months of  
13 light wear and proper usage. And, with the warranty, I was able to replace it. I had  
14 hoped that my first device was defective. Now, after another 6 months, I'm forced  
15 to replace it again! It's without question that I could cleanse my skin with another  
product in a similar manner, but for significantly less money- and you can bank  
on that I'm never buying from Clarisonic ever again.”

16 “The Mia Smart was sent to me for a warranty replacement of an Alpha Fit. The  
17 battery of the Alpha Fit would not hold a charge and the Mia was sent to me to  
18 replace it. After using the Mia Smart for one month, the battery stopped working.  
I called customer service and was advised that there is no new warranty on the  
new replacement device (mia smart) since it replaced the alpha.

19 “In all seriousness, I can't help but think the Mia Smart was knowingly sent to me  
20 with a defective battery. There are too many reviews indicating this and clarisonic  
21 most likely knows the units affected by the issue. I would have been fine with a  
22 simple Mia and wondered why the higher end model was provided. These products  
are not cheap it is unfortunate defective products are provided to replace defective  
products.”

23 Reviews on Amazon.com for Defendant’s Mia Men feature the same complaints:  
24

25 “I like how it cleaned my face however after three months the unit failed to charge  
26 again i’m very disappointed in the quality of this unit and will not buy a second one  
if it’s only going to last three months.”

27 “I used it to wash my face. For one charge and it stopped working. Will not  
28 recharge. This is ridiculous.”

**B. The Similarity of Complaints Is Further Indicia Of Defendant's Pre-Sale Knowledge**

23. Defendant's management also knows (or should know) about the defect because of the similarity of complaints posted to clarisonic.com made through Defendant's warranty, which Defendant's employees monitor and respond to. The fact that so many customers made similar complaints about the Clarisonics indicates that the complaints were not the result of user error or an anomalous incident, but instead a systemic problem with the Clarisonics. Here, the reports and complaints from consumers – whether made directly to Defendant's employees or posted on retailers' websites – were similar enough to put Defendant's management on notice that the incidents described were the result of a design defect, and that the Clarisonics were experiencing unusually high levels of complaints about the defect.

24. Defendant also would have had notice of the defect as a result of warranty claims, product returns, replacements, or requests for refunds.

25. In short, by 2017 at the latest, information from customer complaints and returns directly to Defendant, negative reviews on Defendant's website, and negative reviews on the website of retailers, whether alone or in aggregate, would have put Defendant on notice of the defect.

26. As a result of Defendant's actions, Plaintiff and Class Members have suffered injury in fact, have been damaged, and have suffered a loss of money or property for having paid more money than they otherwise would have for a defectively designed product.

**CLASS REPRESENTATION ALLEGATIONS**

27. Plaintiff seeks to represent a class defined as all persons in the United States who purchased the Clarisonics (the "Class"). Excluded from the Class are persons who made such purchases for purpose of resale.

28. Plaintiff also seeks to represent a subclass of all Class Members who purchased the Clarisonics in the State of California (the "California Subclass"). Excluded from the Class are persons who made such purchases for purpose of resale.

1           29. Subject to additional information obtained through further investigation and  
2 discovery, the above-described Classes may be modified or narrowed as appropriate, including  
3 through the use of multi-state subclasses.

4           30. At this time, Plaintiff does not know the exact number of members of the  
5 aforementioned Class and Subclass (“Class Members” and “California Subclass Members,”  
6 respectively); however, given the nature of the claims and the number of retail stores in the United  
7 States selling Defendant’s Clarisonics, Plaintiff believes that Class and California Subclass  
8 Members are so numerous that joinder of all members is impracticable.

9           31. There is a well-defined community of interest in the questions of law and fact  
10 involved in this case. Questions of law and fact common to the Class Members that predominate  
11 over questions that may affect individual Class Members include:

12                   (a) Whether Defendant misrepresented and/or failed to disclose material facts  
13 concerning the Clarisonics;

14                   (b) Whether Defendant’s conduct was unfair and/or deceptive;

15                   (c) Whether Defendant has been unjustly enriched as a result of the unlawful  
16 conduct alleged in this Complaint such that it would be inequitable for Defendant to retain the  
17 benefits conferred upon Defendant by Plaintiff and the Class;

18                   (d) Whether Plaintiff and the Class sustained damages with respect to the  
19 common law claims asserted, and if so, the proper measure of their damages.

20           32. With respect to the California Subclass, additional questions of law and fact  
21 common to the members that predominate over questions that may affect individual members  
22 include whether Defendant violated California’s Consumer Legal Remedies Act, Unfair  
23 Competition Law and False Advertising Law.

24           33. Plaintiff’s claims are typical of those of the Class because Plaintiff, like all Class  
25 Members, purchased, in a typical consumer setting, Defendant’s Clarisonics, and Plaintiff  
26 sustained damages from Defendant’s wrongful conduct.

34. Plaintiff will fairly and adequately protect the interests of the Class and Subclasses and has retained counsel that is experienced in litigating complex class actions. Plaintiff has no interests that conflict with those of the Class or the California Subclass.

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

36. The prosecution of separate actions by members of the Class and the California Subclass would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another might not. Additionally, individual actions could be dispositive of the interests of the Class and the Subclasses even where certain Class or California Subclass Members are not parties to such actions.

**COUNT I**  
**Violation of California’s Consumers Legal Remedies Act (“CLRA”),**  
**California Civil Code § 1750, *et seq.***

37. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

38. Plaintiff brings this claim individually and on behalf of the members of the proposed California Subclass against Defendant.

39. Civil Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.” Civil Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.” Civil Code § 1770(a)(9) prohibits “advertising goods or services with intent not to sell them as advertised.”

40. Defendant violated Civil Code § 1770(a)(5), (a)(7) and (a)(9) by holding out Clarisonics as fit for use as electronic face brushes, when in fact the products were defective and rendered unusable.

41. Defendant had exclusive knowledge of the defect, which was not known to Plaintiff or California Subclass Members.

42. Defendant made representations to Plaintiff and the California Subclass Members, while suppressing the defect. Specifically, by displaying the Clarisonics and describing their features, the Clarisonics' packaging implied that the Clarisonics were suitable for use as an electronic face brushes because they were waterproof and could be used in the "shower, bath, or sink," without disclosing that the Clarisonics had a critical defect that would render the Clarisonics useless.

43. Plaintiff and the California Subclass Members have suffered harm as a result of these violations of the CLRA because they have incurred charges and/or paid monies for the Clarisonics that they otherwise would not have incurred or paid.

44. On April 14, 2020, prior to the filing of this Complaint, Plaintiff's counsel sent Defendant a CLRA notice letter, which complies in all respects with California Civil Code §1782(a). The letter also provided notice of breach of express and implied warranties. The letter was sent via certified mail, return receipt requested, advising Defendant that it was in violation of the CLRA and demanding that it cease and desist from such violations and make full restitution by refunding the monies received therefrom. The letter stated that it was sent on behalf of Plaintiff and all other similarly situated purchasers.

45. Plaintiff and the California Subclass Members seek all relief available under the CLRA, including actual and punitive damages, injunctive relief, restitution, the payment of costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court.

**COUNT II**  
**Violation California's Unfair Competition Law ("UCL"),**  
**California Bus. & Prof. Code §§ 17200**

46. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

47. Plaintiff brings this claim individually and on behalf of the members of the proposed California Subclass against Defendant.

1           48. By committing the acts and practices alleged herein, Defendant has violated  
2 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17210, as to the  
3 California Subclass, by engaging in unlawful, fraudulent, and unfair conduct.

4           49. Defendant has violated the UCL's proscription against engaging in unlawful  
5 conduct as a result of its violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7) and (a)(9) as  
6 alleged above.

7           50. Defendant's acts and practices described above also violate the UCL's proscription  
8 against engaging in fraudulent conduct.

9           51. As more fully described above, Defendant's misleading marketing, advertising,  
10 packaging, and labeling of the Clarisonics are likely to deceive reasonable consumers.

11           52. Defendant's acts and practices described above also violate the UCL's proscription  
12 against engaging in unfair conduct.

13           53. Plaintiff and the other California Subclass Members suffered a substantial injury by  
14 virtue of buying the Clarisonics that they would not have purchased absent Defendant's unlawful,  
15 fraudulent, and unfair marketing, advertising, packaging, and omission about the defective nature  
16 of the Clarisonics, or by virtue of paying an excessive premium price for the unlawfully,  
17 fraudulently, and unfairly marketed, advertised, packaged, and labeled product.

18           54. There is no benefit to consumers or competition from deceptively marketing and  
19 omitting material facts about the defective nature of the Clarisonics.

20           55. Plaintiff and the other California Subclass Members had no way of reasonably  
21 knowing that the Clarisonics they purchased were not as marketed, advertised, packaged, or  
22 labeled. Thus, they could not have reasonably avoided the injury each of them suffered.

23           56. The gravity of the consequences of Defendant's conduct as described above  
24 outweighs any justification, motive, or reason therefore, particularly considering the available legal  
25 alternatives which exist in the marketplace, and such conduct is immoral, unethical, unscrupulous,  
26 offends established public policy, or is substantially injurious to Plaintiff and the California  
27 Subclass Members.

1           57. Pursuant to California Business and Professional Code § 17203, Plaintiff and the  
2 California Subclass seek an order of this Court that includes, but is not limited to, an order  
3 requiring Defendant to: (a) provide restitution to Plaintiff and the other California Subclass  
4 members; (b) disgorge all revenues obtained as a result of violations of the UCL; (c) pay Plaintiff's  
5 and the California Subclass' attorney's fees and costs.

6                                   **COUNT III**  
7                                   **Unjust Enrichment**

8           58. Plaintiff incorporates by reference and re-allege herein all paragraphs alleged above.

9           59. Plaintiff brings this claim individually and on behalf of the members of the  
10 proposed Class and Subclasses against Defendant.

11           60. Plaintiff and Class Members conferred benefits on Defendant by purchasing the  
12 Clarisonics.

13           61. Defendant has been unjustly enriched in retaining the revenues derived from  
14 Plaintiff and Class Members' purchases of the Clarisonics. Retention of those moneys under these  
15 circumstances is unjust and inequitable because Defendant failed to disclose that the Clarisonics  
16 were unfit for use as electronic face brushes. These omissions caused injuries to Plaintiff and Class  
17 Members because they would not have purchased the Clarisonics if the true facts were known.

18           62. Because Defendant's retention of the non-gratuitous benefits conferred on them by  
19 Plaintiff and Class Members is unjust and inequitable, Defendant must pay restitution to Plaintiff  
20 and Class Members for its unjust enrichment, as ordered by the Court.

21                                   **COUNT IV**  
22                                   **Breach of Implied Warranty Under the Song-Beverly Act,**  
23                                   **California Civil Code § 1790 *et seq.***

24           63. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged  
25 above.

26           64. Plaintiff brings this claim individually and on behalf of the members of the  
27 proposed California Subclass against Defendant.

28           65. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790, *et seq.*,  
every sale of consumer goods in this State is accompanied by both a manufacturer's and retail

1 seller's implied warranty that the goods are merchantable, as defined in that Act. In addition, every  
2 sale of consumer goods in this State is accompanied by both a manufacturer's and retail seller's  
3 implied warranty of fitness when the manufacturer or retailer has reason to know that the goods as  
4 represented have a particular purpose (here, to be used as electronic face brushes) and that the  
5 buyer is relying on the manufacturer's or retailer's skill or judgment to furnish suitable goods  
6 consistent with that represented purpose.

7 66. The Clarisonics are "consumer goods" within the meaning of Cal. Civ. Code §  
8 1791(a).

9 67. Plaintiff and the Class Members who purchased one or more of the Clarisonics are  
10 "retail buyers" within the meaning of Cal. Civ. Code § 1791.

11 68. Defendant is in the business of manufacturing, assembling, producing and/or selling  
12 the Clarisonics to retail buyers, and therefore are a "manufacturer" and "seller" within the meaning  
13 of Cal. Civ. Code § 1791.

14 69. Defendant impliedly warranted to retail buyers that the Clarisonics were  
15 merchantable in that they would: (a) pass without objection in the trade or industry under the  
16 contract description, and (b) were fit for the ordinary purposes for which the Clarisonics are used.  
17 For a consumer good to be "merchantable" under the Act, it must satisfy both of these elements.  
18 Defendant breached these implied warranties because the Clarisonics were defective. Therefore,  
19 the Clarisonics would not pass without objection in the trade or industry and were not fit for the  
20 ordinary purpose for which they are used.

21 70. Plaintiff and Class Members purchased the Clarisonics in reliance upon Defendant's  
22 skill and judgment in properly packaging and labeling the Clarisonics.

23 71. The Clarisonics were not altered by Plaintiff or Class Members.

24 72. The Clarisonics were defective at the time of sale when they left the exclusive  
25 control of Defendant. The defect described in this complaint was latent in the Clarisonics and not  
26 discoverable at the time of sale.

27 73. Defendant knew that the Clarisonics would be purchased and used without  
28 additional testing by Plaintiff and Class Members.

74. As a direct and proximate cause of Defendant's breach of the implied warranty, Plaintiff and Class Members have been injured and harmed because they would not have purchased the Clarisonics if they knew the truth about the products, namely, that they were unfit for use as electronic face brushes.

**COUNT V**  
**Breach of Implied Warranty of Merchantability**

75. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

76. Plaintiff brings this claim individually and on behalf of the members of the proposed Class and California Subclass against Defendant.

77. Defendant, as the designers, manufacturers, marketers, distributors, and/or sellers, impliedly warranted that the Clarisonics were, in fact, fit their intended purpose.

78. Defendant breached the warranty implied in the contract for the sale of the Clarisonics because they could not pass without objection in the trade under the contract description, the goods were not of fair average quality within the description, and the goods were unfit for their intended and ordinary purpose because the Clarisonics were defectively designed, rendering them unusable. As a result, Plaintiff and the Class Members did not receive the goods as impliedly warranted by Defendant to be merchantable.

79. Plaintiff and Class Members purchased the Clarisonics in reliance upon Defendant's skill and judgment and the implied warranties of fitness for the purpose.

80. The Clarisonics were not altered by Plaintiff or the Class Members.

81. The Clarisonics were defective when they left the exclusive control of Defendant.

82. Defendant knew that the Clarisonics would be purchased and used without additional testing by Plaintiff and the Class Members.

83. The Clarisonics were defectively designed and unfit for their intended purpose, and Plaintiff and the Class Members did not receive the goods as warranted.

84. Defendant sells the Clarisonics through a network of authorized retailers, including Ulta, Sephora, QVC, and Amazon.com. Defendant has entered into various contractual agreements

1 with its dealers. The dealers were not the intended beneficiaries of the warranties associated with  
2 the Clarisonics. Plaintiff and Class members were the intended beneficiaries of the warranties  
3 associated with the Clarisonics.

4 85. As a direct and proximate case of Defendant's breach of the implied warranty,  
5 Plaintiff and the Class Members have been injured and harmed because they would not have  
6 purchased the Clarisonics if they knew the truth about the Clarisonics and the Clarisonics they  
7 received were worth substantially less than the Clarisonics they were promised and expected.

8 **COUNT VI**

9 **Violation Of The Magnuson-Moss Warranty Act,  
10 15 U.S.C. §§ 2301, *et seq.***

11 86. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged  
12 above.

13 87. Plaintiff brings this claim individually and on behalf of the members of the  
14 proposed Class and California Subclass against Defendant.

15 88. The Clarisonics are consumer products as defined in 15 U.S.C. § 2301(1).

16 89. Plaintiff and the Class and California Subclass Members are consumers as defined  
17 in 15 U.S.C. § 2301(3).

18 90. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

19 91. In connection with the marketing and sale of the Clarisonics, Defendant impliedly  
20 warranted that the Clarisonics were fit for use as electronic face brushes. The Clarisonics were not  
21 fit for use as electronic face brushes due to the defect described in the allegations above.

22 92. By reason of Defendant's breach of warranties, Defendant violated the statutory  
23 rights due Plaintiff and the Class and California Subclass Members pursuant to the Magnuson-  
24 Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, thereby damaging Plaintiff and the Class and  
25 California Subclass Members.

26 93. Plaintiff and the Class and California Subclass Members were injured as a direct  
27 and proximate result of Defendant's breach because they would not have purchased the Clarisonics  
28 if they knew the truth about the defective nature of the Clarisonics.

**COUNT VII**  
**Breach Of Express Warranty**

94. Plaintiff hereby incorporates by reference and re-alleges herein all paragraphs alleged above.

95. Plaintiff brings this claim individually and on behalf of the members of the proposed Class and the Subclass against Defendant.

96. In connection with the sale of the Clarisonics, Defendant issued written warranties. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller of the Clarisonics, expressly warranted that the Clarisonics were fit for their intended purpose by making promises and affirmations of fact on their Clarisonics' labeling and packaging, including the waterproof claims.

97. The affirmations of fact and promises made by Defendant to Plaintiff and the Class regarding the Clarisonics became part of the basis of the bargain between Defendant and Plaintiff and the Class and Subclass, thereby creating an express warranty that the Clarisonics would conform to those affirmations of fact, representations, promises, and descriptions in that each Clarisonics would be waterproof as specified by the waterproof claims.

98. The Clarisonics are not, in fact, waterproof. Instead, the Clarisonics' waterproofing is defect, leading to battery failure that renders the Clarisonics useless.

99. Plaintiff and members of the Class suffered economic injury as a direct and proximate result Defendant's breach because: (a) they would not have purchased the Clarisonics on the same terms if they knew that the Clarisonics had been falsely labeled as alleged herein; (b) they paid a price premium for the Clarisonics based on Defendant's express warranties; and (c) the Clarisonics did not have the characteristics, uses, or benefits as promised by Defendant in the waterproof claims. As a result, Plaintiff and members of the Class and the Subclass have been damaged either in the full amount of the purchase price of the Clarisonics or in the difference in value between the Clarisonics as warranted and the Clarisonics as sold.

100. On April 14, 2020, prior to filing this action, Defendant was served with a pre-suit notice letter that complied in all respects with U.C.C. §§ 2-313, 2-607. Plaintiff's counsel sent

Defendant a letter advising them that they breached an express warranty and demanded that they cease and desist from such breaches and make full restitution by refunding the monies received therefrom. A true and correct copy of Plaintiff's counsel's letter is attached hereto as **Exhibit A**.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

- a. For an order certifying the Class and California Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and California Subclass and Plaintiff's attorneys as Class Counsel to represent the Class and California Subclass members;
- b. For an order declaring the Defendant's conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiff, the Class, and the California Subclass on all counts asserted herein;
- d. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- e. For pre-judgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of monetary relief;
- g. For an order awarding Plaintiff and the Class and California Subclass their reasonable attorneys' fees and expenses and costs of suit.

**DEMAND FOR TRIAL BY JURY**

Plaintiff demands a trial by jury of all issues so triable.

Dated: June 5, 2020

**BURSOR & FISHER, P.A.**

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

L. Timothy Fisher (State Bar No. 191626)  
Blair E. Reed (State Bar No. 316791)  
Brittany S. Scott (State Bar No. 327132)

1990 North California Blvd., Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
E-mail: ltfisher@bursor.com  
breed@bursor.com  
bscott@bursor.com

**BURSOR & FISHER, P.A.**  
Scott A. Bursor (State Bar No. 276006)  
701 Brickell Ave, Suite 1420  
Miami, FL 33131  
Telephone: (305) 330-5512  
Facsimile: (305) 676-9006  
E-Mail: scott@bursor.com

*Attorneys for Plaintiff*