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13  
14 **UNITED STATES DISTRICT COURT**  
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
16

17 DARREN MILLAM and DONALD  
18 SPRINKEL, individually and on behalf  
19 of all others situated;

20 Plaintiffs,

21 v.

22 ENERGIZER HOLDINGS, INC. and  
23 ENERGIZER BRANDS, LLC,

24 Defendants.  
25  
26  
27  
28

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**Class Action Complaint**

1 Upon personal knowledge as to their own acts, and based upon their  
2 investigation, the investigation of counsel, and information and belief as to all other  
3 matters, Plaintiffs Darren Millam and Donald Sprinkel, on behalf of themselves and  
4 all others similarly situated, allege as follows:

### 5 INTRODUCTION

6 1. This is a class action brought on behalf of persons who purchased  
7 Energizer's AA MAX batteries in the State of California.

8 2. Defendant Energizer Holdings, Inc. ("Energizer Holdings") is a global  
9 diversified household products leader in batteries and one of the world's largest  
10 manufacturers, marketers, and distributors of household and specialty batteries.  
11 Defendant Energizer Brands, LLC ("Energizer Brands") develops, manufacturers,  
12 markets, and sells batteries in the United States and worldwide. Energizer Holdings  
13 and Energizer Brands are collectively referred to herein as "Energizer."

14 3. As alleged herein, Energizer has made the false and misleading claim that  
15 its AA MAX batteries are "UP TO **50%** LONGER LASTING THAN BASIC  
16 AKALINE IN DEMANDING DEVICES" (the "50% Longer Lasting Claim").  
17 Energizer's advertisements, marketing representations, and labeling of the AA MAX  
18 batteries are misleading, untrue, and likely to deceive reasonable consumers.  
19 Energizer designs its packaging to mislead consumers into thinking that Energizer's  
20 AA MAX batteries have superior longevity (*i.e.*, battery life).

21 4. These claims are false and deceptive attempts by Energizer to confuse  
22 and mislead consumers about the comparative benefits of Energizer's AA MAX  
23 batteries relative to other alkaline batteries.

24 5. Plaintiffs herein seek relief under the laws of California.

### 25 PARTIES

26 6. At all relevant times, Plaintiff Millam has resided in Indio, California and  
27 purchased the Energizer AA MAX batteries from Walmart stores near his residence.  
28 Plaintiff Millam purchased at least five packages of the AA MAX batteries since

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1 approximately July 2020. In deciding to purchase the AA MAX batteries, Plaintiff  
2 Millam saw and relied upon the packaging of the AA MAX batteries. Specifically,  
3 Plaintiff Millam relied on the statement on the AA MAX's packaging: "UP TO 50%  
4 LONGER LASTING THAN BASIC AKALINE IN DEMANDING DEVICES."  
5 Energizer's packaging was material to Plaintiff Millam. Plaintiff Millam purchased  
6 the AA MAX batteries because he believed that the batteries had comparative benefits,  
7 including a longer battery life, relative to Energizer's competitors based on the  
8 packaging of the AA MAX batteries. Plaintiff Millam purchased and paid  
9 substantially more for the AA MAX batteries than he would have if he had known the  
10 truth about the AA MAX batteries. Plaintiff Milam has suffered actual damages in the  
11 form of his overpayment for the AA MAX batteries, which he purchased as a result  
12 of Energizer's misrepresentations. Energizer did not inform Plaintiff Millam of the  
13 true composition of the AA MAX batteries. Had Plaintiff Millam known that the AA  
14 MAX batteries were no different than other Energizer batteries or of Energizer's  
15 competitors, he would either not have purchased the AA MAX batteries or would have  
16 paid substantially less for it. At present, Plaintiff Millam has concerns about  
17 purchasing the AA MAX batteries for himself as he remains unsure as to whether the  
18 packaging of the AA MAX batteries is, and will continue to be, false and misleading.  
19 In the future, Plaintiff Millam would be willing to pay a premium for the Energizer  
20 AA MAX batteries if the AA MAX batteries were in fact longer lasting than  
21 competing batteries.

22 7. At all relevant times, Plaintiff Sprinkel has resided in Hemet, California  
23 and purchased the Energizer AA MAX batteries from Walmart and CVS Pharmacy  
24 stores near his residence. Plaintiff Sprinkel has purchased at least five packages of the  
25 AA MAX batteries since approximately July 2020. In deciding to purchase the AA  
26 MAX batteries, Plaintiff Sprinkel saw and relied upon the packaging of the AA MAX  
27 batteries. Specifically, Plaintiff Sprinkel relied on the statement on the AA MAX's  
28 packaging: "UP TO 50% LONGER LASTING THAN BASIC AKALINE IN

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1 DEMANDING DEVICES.” Energizer’s packaging was material to Plaintiff Sprinkel.  
2 Plaintiff Sprinkel purchased the AA MAX batteries because he believed that the  
3 batteries had comparative benefits, including a longer battery life, relative to  
4 Energizer’s competitors based on the packaging of the AA MAX batteries. Plaintiff  
5 Sprinkel purchased and paid substantially more for the AA MAX batteries than he  
6 would have if he had known the truth about the AA MAX batteries. Plaintiff Sprinkel  
7 has suffered actual damages in the form of his overpayment for the AA MAX batteries,  
8 which he purchased as a result of Energizer’s misrepresentations. Energizer did not  
9 inform Plaintiff Sprinkel of the true composition of the AA MAX batteries. Had  
10 Plaintiff Sprinkel known that the AA MAX batteries were no different than other  
11 Energizer batteries or of Energizer’s competitors, he would either not have purchased  
12 the AA MAX batteries or would have paid substantially less for them. At present,  
13 Plaintiff Sprinkel has concerns about purchasing the AA MAX batteries for himself  
14 as he remains unsure as to whether the packaging of the AA MAX batteries is, and  
15 will continue to be, false and misleading. In the future, Plaintiff Sprinkel would be  
16 willing to pay a premium for the Energizer AA MAX batteries if the AA MAX  
17 batteries were in fact longer lasting than competing batteries.

18 8. Defendant Energizer Holdings is a Missouri corporation with its  
19 principal place of business at 533 Maryville University Drive, St. Louis, Missouri  
20 63141. Energizer Holdings is a global diversified household products leader in  
21 batteries and one of the world’s largest manufacturers, marketers and distributors of  
22 household and specialty batteries. Energizer Holdings is the parent company of  
23 Energizer Brands.

24 9. Defendant Energizer Brands is a Delaware corporation with its principal  
25 place of business at 533 Maryville University Drive, St. Louis, Missouri 63141.  
26 Energizer Brands develops, manufacturers, markets, and sells batteries in the United  
27 States and worldwide. Energizer Brands is a subsidiary of Energizer Holdings.  
28

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## JURISDICTION AND VENUE

10. This Court has original jurisdiction over this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because at least one class member is a citizen of a state other than that of Energizer, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interests and costs.

11. This Court has personal jurisdiction over Energizer pursuant to 18 U.S.C. § 1965(a) because Energizer was engaged in the manufacturing, labeling, packaging, marketing, and sale of the AA MAX batteries in the State of California.

12. This Court has personal jurisdiction over the Plaintiffs because Plaintiff submits to the Court's jurisdiction.

13. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the violations of law occurred in this District. This includes the transaction at issue—Plaintiffs' purchases of the AA MAX batteries.

## FACTUAL ALLEGATIONS

14. Energizer manufactures, distributes, and sells the AA MAX batteries at issue herein.

15. Around July and August of 2020, Energizer began a new advertising campaign in which it began marketing that its AA MAX batteries are "UP TO **50%** LONGER LASTING THAN BASIC AKALINE IN DEMANDING DEVICES." As shown below, Energizer's 50% Longer Lasting Claim is prominently displayed in font that is much larger than its surrounding disclaimers. For instance, the "50%" claim is bolded and nearly five times the size of the barely legible disclaimer comparing AA MAX batteries to "basic alkaline in demanding devices." It is over three times the size of the limiting phrase "up to" (which introduces the claim). It is wide enough that the

three characters comprising “50%” take up the same amount of space as the entire statements “THAN BASIC ALKALINE” and “IN DEMANDING DEVICES.”



16. As depicted below, in addition to appearing on the product packaging, Energizer’s new 50% Longer Lasting claim appears on prominent in-store advertising and in other advertising materials.



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1 17. Energizer has been engaging in the unfair, unlawful, and deceptive  
2 practice of manufacturing, marketing, and selling its AA MAX batteries, such that  
3 consumers believe they are purchasing AA MAX batteries with a longer battery life.

4 18. Specifically, Energizer misleads consumers by prominently displaying  
5 “UP TO **50%** LONGER LASTING THAN BASIC AKALINE IN DEMANDING  
6 DEVICES” in distinctive capitalized and bold letting. Due to the inclusion of the 50%  
7 Longer Lasting Claim, reasonable consumers believe they are purchasing a superior  
8 product with a longer battery life.

9 19. Notably, the term “basic alkaline” is not defined anywhere on the  
10 Energizer AA MAX packaging. This term is so broad that it encompasses all non-  
11 specialized, all-purpose alkaline batteries in the marketplace.

12 20. Consumers understand “basic alkaline” to refer to most, if not all,  
13 alkaline batteries.

14 21. Energizer’s 50% Longer Lasting Claim misleads consumers, including  
15 Plaintiffs, to believe that Energizer AA MAX batteries last up to 50% longer than  
16 most, if not all alkaline batteries in most, if not all, devices. That is false, since  
17 Energizer AA MAX batteries are not “UP TO **50%** LONGER LASTING” than other  
18 competing batteries, including, for example, Duracell Coppertop batteries.

19 22. The term “demanding devices” is also not defined anywhere on the AA  
20 MAX packaging, and does not have a standard meaning, and so consumers will  
21 understand that term to include a broad range of devices.

22 23. However, Energizer AA MAX batteries are not even close to 50% longer  
23 lasting than other competing batteries, like Duracell Coppertop batteries. On  
24 information and belief, competing batteries like Duracell Coppertop batteries last  
25 longer than Energizer AA MAX batteries across several American National Standards  
26 Institute (“ANSI”) battery discharge testing standards.

27 24. By representing that Energizer AA MAX batteries last 50% longer,  
28 Energizer deceives consumers into believing they are purchasing a battery that is



1 longer lasting in “demanding devices” than other comparable batteries, like Duracell  
2 Coppertop batteries.

3 25. Additionally, several customers have complained about the battery life  
4 of the AA MAX batteries at issue herein. For instance, on February 24, 2021, a  
5 consumer stated:

6 These batteries don't last anywhere near as long as Duracell batteries do.  
7 I'm very disappointed in them.<sup>1</sup>

8 26. On February 8, 2021, another consumer commented:

9 I am not sure if I just got a bad pack, or if this product has poor quality  
10 life. Every time I put some of these in an item, it is dead way too soon!<sup>2</sup>

11 27. Then, on April 10, 2021, another purchaser noted that he was  
12 disappointed in his purchase of the AA MAX batteries and stated:

13 Do not last long. I will never buy this brand again<sup>3</sup>

14 28. Earlier, on December 20, 2020, a consumer also explained that these  
15 batteries do not have superior longevity:

16 Brand new batteries...tested just fine lasted three days in my fairy lights.  
17 Same strand lasted two months last year and year before. I will never  
18 again buy any more energizer. I have wasted so much money using  
19 energizer this year on my lights. Switching to duracell.<sup>4</sup>

20 29. Similarly, another consumer stated the following on December 1, 2020:

21 Have battery operated led light strings that are on for 6 hours and off for  
22 18 hours in Christmas wreaths. Duracell batteries lasted whole season  
23 last year, and I thought I would "upgrade" this year to these batteries,  
24 barely lasted 2 weeks.<sup>5</sup>

25  
26 <sup>1</sup><https://www.walmart.com/reviews/product/537457013?rating=1>.

27 <sup>2</sup> *Id.*

28 <sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

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30. Energizer understands that these misrepresentations and omissions would be important to a reasonable consumer in deciding whether to purchase the AA MAX batteries rather than competing products.

31. In fact, Energizer brought claims against Duracell Coppertop batteries for similar claims. *See Energizer Brands, LLC v. Duracell U.S. Operations, Inc.*, Case No. 1:19-cv-09061 (S.D.N.Y., filed Sept. 30, 2020); *see also Duracell U.S. Operations, Inc. v. Energizer Brands, LLC*, Case No. 1:20-cv-07318 (S.D.N.Y., filed Sept. 8, 2020).

32. On information and belief, the National Advertising Division (“NAD”) of the Better Business Bureau (“BBB”) has also previously brought a case against Energizer Holdings relating to similar “performance” and “up to” claims in 2014.

33. Energizer’s deceptive and misleading marketing and packaging of the AA MAX batteries caused consumers, including Plaintiffs, to rely on Energizer’s representations that the AA MAX batteries have a longer battery life than competing products. Additionally, consumers, including Plaintiffs, purchased and overpaid for the Energizer AA MAX batteries even though they are not longer lasting.

### CLASS ACTION ALLEGATIONS

34. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23(a) on behalf of themselves and the proposed Class defined as follows:

All persons who purchased Energizer AA MAX batteries with the 50% Longer Lasting Claim in the State of California (the “California Class”).

35. Within the California Class, there is one subclass for purposes of Plaintiffs’ claims under the Consumer Legal Remedies Act (the “California Subclass”). The proposed California Subclass is defined as follows: all persons who purchased Energizer AA MAX batteries with the 50% Longer Lasting Claim on the packaging in the State of California for personal, family, or household purposes.

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36. Excluded from the Class and Subclass are governmental entities, Energizer, any entity in which Energizer has a controlling interest, and Energizer's officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class and Subclass are any judges, justices, or judicial officers presiding over this matter and the members of their immediate families and judicial staff. This action is brought and may be properly maintained as a class action pursuant to Federal Rule of Civil Procedures 23(b)(2) and 23(b)(3), and satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of these rules.

37. ***Numerosity Under Rule 23(a)(1).*** The Class is so numerous that the individual joinder of all members is impracticable, and the disposition of the claims of all Class members in a single action will provide substantial benefits to the parties and the Court. Although the precise number of members of the California Class and California Subclass are unknown to Plaintiffs at this time, on information and belief, the proposed Class and Subclass contains at least thousands of purchasers of the Energizer AA MAX batteries who have been damaged by Energizer's conduct as alleged herein. Discovery will reveal, through Energizer's records, the approximate number of the California Class and California Subclass members.

38. ***Commonality Under Rule 23(a)(2).*** Common legal and factual questions exist that predominate over any questions affecting only individual members. These common questions, which do not vary among Class or Subclass members and which may be determined without reference to any Class or Subclass member's individual circumstances, include, but are not limited to:

- a) Whether Energizer AA MAX batteries provide the benefits claimed by Energizer on the labeling, packaging, and/or in the course of marketing;
- b) Whether Energizer's conduct violated the applicable state consumer fraud claims alleged herein;

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c) Whether Energizer engaged in unfair or deceptive practices in trade or commerce by objectively misleading Plaintiffs and putative Class and Subclass members;

d) Whether Energizer's representations and omissions in AA MAX advertising are likely to deceive a reasonable consumer;

e) Whether Energizer's representations and omissions in advertising regarding the AA MAX batteries are material to a reasonable consumer;

f) Whether Energizer knew or should have known that Energizer AA MAX batteries do not last up to 50% longer;

g) Whether Energizer had knowledge that its representations and omissions in advertising were false, deceptive, and misleading;

h) Whether Energizer advertised, represented, or marketed, or continues to advertise, represent, or market, that the Energizer AA MAX batteries are up 50% longer lasting;

i) Whether, as a result of Energizer's omissions and/or misrepresentations of material facts, Plaintiffs and members of the Class and Subclass have suffered an ascertainable loss of monies and/or property and/or value;

j) Whether Plaintiffs and the Class or Subclass have been damaged by the wrongs alleged herein and are entitled to compensatory or punitive damages; and

k) Whether Plaintiffs and the Class or Subclass are entitled to injunctive or other equitable relief, including restitution.

39. ***Typicality Under Rule 23(a)(3).*** Plaintiffs' claims are typical of the Class members' and Subclass members' claims. Energizer's course of conduct caused Plaintiffs and the Class members and Subclass members the same harm, damages, and losses as a result of Energizer's uniformly unlawful conduct. Likewise, Plaintiffs and other Class members and Subclass members must prove the same facts in order to establish the same claims.

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1           40.    ***Adequacy of Representation Under Rule 23(a)(4).*** Plaintiffs are  
2 adequate representative of the Class and Subclass because they are members of the  
3 Class and Subclass, and their interests do not conflict with the interests of the Class  
4 or Subclass. Plaintiffs have retained counsel competent and experienced in complex  
5 litigation and consumer protection class action matters such as this action, and  
6 Plaintiffs and their counsel intend to vigorously prosecute this action for the Class's  
7 and Subclass's benefit and have the resources to do so. Plaintiffs and their counsel  
8 have no interests adverse to those of the other members of the Class or Subclass.

9           41.    ***Superiority.*** A class action is superior to all other available methods for  
10 the fair and efficient adjudication of this controversy because individual litigation of  
11 each Class member's and Subclass member's claim is impracticable. The damages,  
12 harm, and losses suffered by the individual members of the Class and Subclass will  
13 likely be small relative to the burden and expense of individual prosecution of the  
14 complex litigation necessitated by Energizer's wrongful conduct. Even if each Class  
15 member and Subclass member could afford individual litigation, the Court system  
16 could not. It would be unduly burdensome if thousands of individual cases  
17 proceeded. Individual litigation also presents the potential for inconsistent or  
18 contradictory judgments, the prospect of a race to the courthouse, and the risk of an  
19 inequitable allocation of recovery among those individuals with equally meritorious  
20 claims. Individual litigation would increase the expense and delay to all parties and  
21 the Courts because it requires individual resolution of common legal and factual  
22 questions. By contrast, the class action device presents far fewer management  
23 difficulties and provides the benefit of a single adjudication, economies of scale, and  
24 comprehensive supervision by a single court.

25           42.    As a result of the foregoing, class treatment is appropriate.  
26  
27  
28



**FIRST CLAIM FOR RELIEF**  
**Violations of the California False Advertising Law**  
**CAL. BUS. & PROF. CODE § 17500 *et seq.***  
***On Behalf of Plaintiffs Millam, Sprinkel, and the California Class***

43. Plaintiffs Millam and Sprinkel, individually and on behalf of the California Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

44. Plaintiffs Millam and Sprinkel bring this claim individually and on behalf of the California Class against Energizer.

45. California's False Advertising Law prohibits any statement in connection with the sale of goods "which is untrue or misleading." CAL. BUS. & PROF. CODE § 17500.

46. Plaintiffs Millam and Sprinkel, individually and on behalf of the California Class, have standing to pursue this claim because they suffered injury in fact and have lost money or property as a result of Energizer's actions, as described above.

47. Energizer engaged in advertising and marketing to the public and offered for sale the Energizer AA MAX batteries in California.

48. Energizer engaged in the advertising and marketing alleged herein with the intent to directly or indirectly induce the sale of Energizer AA MAX batteries to consumers like Plaintiffs Millam, Sprinkel, and members of the California Class.

49. Energizer's advertising and marketing representations regarding the AA MAX batteries were false, misleading, and deceptive within the definition, meaning, and construction of California Business & Professions Code §§ 17500, *et seq.* (False Advertising Law).

50. Energizer's misrepresentations and omissions alleged herein were the type of misrepresentations that are material, *i.e.*, a reasonable person would attach

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1 importance to them and would be induced to act on the information in making  
 2 purchase decisions.

3 51. Energizer's misrepresentations and omissions alleged herein are  
 4 objectively material to a reasonable consumer, and therefore reliance upon such  
 5 misrepresentations may be presumed as a matter of law.

6 52. At the time it made the misrepresentations and omissions alleged herein,  
 7 Energizer knew or should have known that they were untrue or misleading and acted  
 8 in violation of California Business and Professions Code §§ 17500, *et seq.*

9 53. Unless restrained by this Court, Energizer will continue to engage in  
 10 untrue and misleading advertising, as alleged above, in violation of California  
 11 Business & Professions Code §§ 17500, *et seq.*

12 54. As a result of Energizer's conduct and actions, Plaintiffs Millam and  
 13 Sprinkel and each member of the California Class has been injured, has lost money or  
 14 property, and is entitled to relief. Plaintiffs Millam and Sprinkel seek disgorgement,  
 15 restitution, injunctive relief, and all other relief permitted under California Business  
 16 & Professions Code §§ 17500, *et seq.*

17 **SECOND CLAIM FOR RELIEF**  
 18 **Violations of Consumer Legal Remedies Act**  
 19 **CAL. CIV. CODE § 1750 *et seq.***  
***On Behalf of Plaintiffs Millam, Sprinkel, and the California Subclass***

20 55. Plaintiffs Millam and Sprinkel, individually and on behalf of the  
 21 California Subclass, incorporate by reference all of the allegations contained in the  
 22 preceding paragraphs of this Class Action Complaint as if fully set forth herein.

23 56. Plaintiffs Millam and Sprinkel bring this claim individually and on behalf  
 24 of the California Subclass against Energizer.

25 57. Energizer is a "person" under Cal. Civ. Code § 1761(c).

26 58. Plaintiffs Millam, Sprinkel, and the California Subclass members are  
 27 "consumers" as defined by Cal. Civ. Code § 1761(d), who purchased one or more  
 28 packages of the Energizer AA MAX batteries. The Consumer Legal Remedies Act

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(“CLRA”) prohibits “unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer[.]” Cal. Civ. Code § 1770(a). Energizer has engaged in unfair or deceptive acts that violated Cal. Civ. Code § 1750, *et seq.*, as described above and below, by representing that the AA MAX batteries had characteristics, uses, benefits, and qualities which they do not have; representing that the AA MAX batteries are of a particular standard, quality, and grade when they are not; advertising the AA MAX batteries with the intent not to sell or lease them as advertised; and representing that the subject of a transaction involving AA MAX batteries has been supplied in accordance with a previous representation when it has not.

59. In connection with its sale of the Energizer AA MAX batteries to Plaintiffs Millam, Sprinkel, and the California Subclass, Energizer violated the CLRA by:

- a) Misrepresenting to Plaintiffs Millam, Sprinkel, and the California Subclass that the Energizer AA MAX batteries are up to 50% longer lasting than other competing batteries, when in fact, the AA MAX batteries are not up to 50% longer lasting, in violation of CAL. CIV. CODE §§ 1770(a)(5), (7), (9), and (16);
- b) Misrepresenting to Plaintiffs Millam, Sprinkel, and the California Subclass that the Energizer AA MAX batteries had sponsorship, approval, characteristics, uses, benefits, or quantities that they did not have, in violation of CAL. CIV. CODE § 1770(a)(5);
- c) Representing to Plaintiffs Millam, Sprinkel, and the California Subclass that the Energizer AA MAX batteries were of a particular standard, quality, or grade, when they were of another in violation of CAL. CIV. CODE § 1770(a)(7);

- 1           d) Advertising goods to Plaintiffs Millam, Sprinkel, and the  
 2           California Subclass with the intent not to sell them as advertised,  
 3           in violation of CAL. CIV. CODE § 1770(a)(9); and  
 4           e) Misrepresenting to Plaintiffs Millam, Sprinkel, and the  
 5           California Subclass that the subject of a transaction had been  
 6           supplied in accordance with a previous representation when it  
 7           had not, in violation of CAL. CIV. CODE § 1770(a)(16).

8           60. In addition, under California law, a duty to disclose arises in four  
 9           circumstances: (1) when the defendant is in a fiduciary relationship with the plaintiff;  
 10          (2) when the defendant has exclusive knowledge of material facts not known to the  
 11          plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff;  
 12          and (4) when the defendant makes partial representations but also suppresses some  
 13          material facts.

14          61. Energizer had a duty to disclose to Plaintiffs Millam, Sprinkel, and the  
 15          California Subclass that the Energizer AA MAX batteries are not up to 50% longer  
 16          lasting for the following three independent reasons: (a) Energizer had exclusive  
 17          knowledge of the information at the time of sale; (b) Energizer actively concealed  
 18          from Plaintiffs Millam, Sprinkel, and the California Subclass that the Energizer AA  
 19          MAX batteries are not up to 50% longer lasting; and (c) Energizer made partial  
 20          representations to Plaintiffs Millam, Sprinkel, and the California subclass regarding  
 21          the battery life of the Energizer AA MAX batteries.

22          62. Energizer violated the CLRA by selling Energizer AA MAX batteries,  
 23          while concealing that the battery life of the AA MAX batteries is not superior to  
 24          competing batteries from Plaintiffs Millam, Sprinkel, and the California Subclass.

25          63. Energizer's misrepresentations and omissions in violation of the CLRA  
 26          were likely to mislead an ordinary consumer. Plaintiffs Millam, Sprinkel, and the  
 27          California Subclass reasonably understood Energizer's representations and omissions  
 28

1 to mean that the AA MAX batteries would last up to 50% longer than competing  
2 batteries.

3 64. Energizer's misrepresentations and omissions alleged herein were  
4 material in that a reasonable person would attach importance to the information and  
5 would be induced to act upon the information in making purchase decisions.

6 65. Plaintiffs Millam, Sprinkel, and the California Subclass relied to their  
7 detriment on Energizer's misrepresentations and omissions in purchasing Energizer  
8 AA MAX batteries.

9 66. Plaintiffs Millam and Sprinkel, on behalf of themselves and the  
10 California Subclass, demand judgment against Energizer under the CLRA for  
11 declaratory and injunctive relief.

12 67. Pursuant to Cal. Civ. Code § 1782(a), Plaintiffs Millam and Sprinkel will  
13 serve Energizer with notice of its alleged violations of the CLRA by certified mail  
14 return receipt requested. If within thirty days after the date of such notification,  
15 Energizer fails to provide appropriate relief for its violations of the CLRA, Plaintiffs  
16 Millam and Sprinkel reserve the right to amend this Class Action Complaint to seek  
17 compensatory and punitive damages under the CLRA.

18 68. Notwithstanding any other statements in this Complaint, Plaintiffs  
19 Millam and Sprinkel do not seek monetary damages in conjunction with their CLRA  
20 claim—and will not do so—until this thirty- day period has passed.

21 69. Plaintiffs Millam and Sprinkel, on behalf of themselves and the  
22 California Subclass, further seek an order enjoining Energizer's unfair or deceptive  
23 acts or practices, restitution, costs of court, attorneys' fees under Cal. Civ. Code  
24 § 1780(e), and any other just and proper relief available under the CLRA.



**THIRD CLAIM FOR RELIEF**  
**Violations of the California Unfair Competition Law**  
**CAL. BUS. & PROF. CODE § 17200 *et seq.***  
***On Behalf of Plaintiffs Millam, Sprinkel, and the California Class***

70. Plaintiffs Millam and Sprinkel, individually and on behalf of the California Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

71. Plaintiffs Millam and Sprinkel bring this claim individually and on behalf of the California Class against Energizer.

72. Plaintiffs Millam and Sprinkel have standing to pursue this claim because they have suffered injury in fact and has lost money or property as a result of Energizer's actions as described above. All California Class Members overpaid for the AA MAX batteries due to Energizer's misrepresentations or concealment about the AA MAX's battery life.

73. Energizer's actions as alleged herein constitute an "unlawful" practice within the definition, meaning, and construction of California's UCL because Energizer violated California's False Advertising Law (Bus. & Prof. Code §§ 17500, *et seq.*) and the CLRA (Civ. Code §§ 1750, *et seq.*).

74. Energizer's actions as alleged herein constitute a "fraudulent" practice because, by representing that the AA MAX batteries last 50% longer than other competing batteries, Energizer's conduct was likely to deceive consumers. Energizer's failure to disclose these facts constitutes a material omission in violation of the UCL.

75. Energizer's actions as alleged herein constitute an "unfair" practice because they offend established public policy and are immoral, unethical, oppressive, unscrupulous, and substantially injurious to Energizer's customers. The harm caused by Energizer's wrongful conduct outweighs any utility of such conduct and has caused—and will continue to cause—substantial injury to Plaintiffs Millam and

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1 Sprinkel and the California Class. Energizer could and should have chosen one of  
 2 many reasonably available alternatives, including disclosing the actual battery life of  
 3 the AA MAX batteries as compared to other competing batteries to prospective  
 4 purchasers. Additionally, Energizer's conduct was "unfair" because it violated the  
 5 legislatively declared policies reflected by California's strong consumer protection  
 6 and false advertising laws, including the CLRA, CAL. CIV. CODE §§ 1750 *et seq.*,  
 7 and the FAL, CAL. BUS. & PROF. CODE §§ 17500 *et seq.*

8 76. As a result of Energizer's unlawful, fraudulent, and unfair conduct,  
 9 Plaintiffs Millam, Sprinkel, and the California Class received an inferior product to  
 10 that which they were promised. Had Energizer disclosed the actual battery life of the  
 11 AA MAX batteries, Plaintiffs Millam and Sprinkel and the California Class would not  
 12 have purchased the AA MAX batteries or would have paid substantially less.

13 77. Energizer's wrongful business practices constitute a continuing course of  
 14 unfair competition because Energizer continues to represent that the AA MAX  
 15 batteries are "UP TO **50%** LONGER LASTING THAN BASIC AKALINE IN  
 16 DEMANDING DEVICES," Plaintiffs Millam, Sprinkel, and the California Class  
 17 therefore seek equitable relief to remedy Energizer's deceptive marketing, advertising,  
 18 and packaging.

19 78. Plaintiffs Millam, Sprinkel, and the California Class also seek an order  
 20 requiring Energizer to make full restitution of all monies that it has wrongfully  
 21 obtained from California Class members, as well as all other relief permitted under  
 22 the UCL.

### 23 PRAYER FOR RELIEF

24 **WHEREFORE**, Plaintiffs, on behalf of themselves and the Class and  
 25 Subclass, request that the Court order the following relief and enter judgment against  
 26 Energizer as follows:

- 27 A. an Order certifying the proposed Class and Subclass under Fed. R. Civ.  
 28 Proc. 23;

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- B. an Order appointing Plaintiffs to represent the Class and Subclass;
- C. a declaration that Energizer engaged in the illegal conduct alleged herein;
- D. an Order that Energizer be permanently enjoined from its improper activities and conduct described herein;
- E. a Judgment awarding Plaintiffs and the Class and Subclass restitution and disgorgement of all compensation obtained by Energizer from its wrongful conduct;
- F. a Judgment awarding Plaintiffs and the Class and Subclass compensatory damages and punitive damages, where available, in an amount to be proven at trial;
- G. Prejudgment and post-judgment interest at the maximum allowable rate;
- H. an Order awarding Plaintiffs and the Class and Subclass reasonable litigation expenses, costs, and attorneys' fees;
- I. an Order awarding such other injunctive and declaratory relief as is necessary to protect the interests of Plaintiffs and the Class and Subclass; and
- J. an Order awarding such other and further relief as the Court deems necessary, just, and proper.

### JURY DEMAND

Plaintiffs hereby demand a trial by jury for all claims and issues so triable.

Dated: September 2, 2021

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/s/ Alexandra K. Green

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