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Attorneys for Plaintiffs,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

**SUSAN PHILLIPS, EKATERINI
CAMPOS, ROBERT JELLINEK,
JANINE HARRISON,
Individually And On Behalf Of
Others Similarly Situated,**

Plaintiff,

v.

**ROYAL APPLIANCE MFG. CO.
d/b/a HOOVER,**

Defendants.

Case No.: 37-2021-00015486-CU-BT-NC

CLASS ACTION COMPLAINT

- I. VIOLATION OF THE SONG-
BEVERLY CONSUMER
WARRANTY ACT;**
- II. VIOLATION OF THE
CONSUMER LEGAL
REMEDIES ACT;**
- III. VIOLATION OF
CALIFORNIA'S UNFAIR
COMPETITION LAW**

JURY TRIAL DEMANDED

1. Plaintiffs Janine Harrison, Ekaterini Campos, Robert Jellinek, and Susan Phillips, (together the “Plaintiffs”), on behalf of themselves and others similarly situated, brings this class action suit against Royal Appliance Mfg. Co. d/b/a Hoover (“Defendant”) for violations of California’s Song Beverly Consumer Warranty Act (“SBA”), *California Civil Code* §§ 1790, *et seq.*; California’s Consumer Legal Remedies Act (“CLRA”), *California Civil Code* §§ 1750, *et seq.*; and California’s Unfair Competition Law (“UCL”), *California Business and Professions Code* §§ 17200, *et seq.*

SUMMARY

2. Defendant is a manufacturer of products and advertises that its products are sold with express warranties.
3. Defendant makes a warranty registration form available online and includes warranty registration cards with the packaging of its products.
4. The SBA explicitly requires a manufacturer who chooses to provide a warranty or product registration card or form, or an electronic online warranty or product registration form, to be completed and returned by the consumer, to have the card or form include statements that:
 - a. Inform the consumer that the card or form is for product registration; and,
 - b. Inform the consumer that failure to complete and return the card or form does not diminish the individual’s warranty rights.
5. Defendant intentionally omits any such statements that are expressly required by the SBA.
6. As a result of Defendant’s unlawful and deceitful business practices, Defendant is able to chill warranty claims and benefit economically by duping consumers into thinking they do not have warranty rights unless they fill out the form and provide their personal information to Defendant. Or even worse, consumers actually do not have the warranties that were promised to them when they

1 purchased their products as they must now register their warranties, a
 2 requirement that was not disclosed at the time of purchase. Consumers are thus
 3 additionally deceived into purchasing products they would not have, had they
 4 known they did not actually come with warranties.

5 7. Either scenario results in Defendant benefitting at the consumer's expense.

6 8. Defendant's unlawful and deceptive practices alleged herein violate the SBA, the
 7 CLRA, and the UCL.

8 **PARTIES**

9 9. Plaintiff Jellinek is, and at all times relevant herein was, an individual residing in
 10 the County of San Diego, State of California.

11 10. Plaintiff Jellinek is, and at all times relevant herein was, a purchaser of
 12 Defendant's Hoover Windtunnel 2 Whole House vacuum.

13 11. Plaintiff Phillips is, and at all times relevant herein was, an individual residing in
 14 County of Fresno, State of California.

15 12. Plaintiff Phillips is, and at all times relevant herein was, a purchaser of
 16 Defendant's Nano Heap Vacuum.

17 13. Plaintiff Harrison, and at all times relevant herein was, is an individual residing
 18 in the County of Riverside, State of California.

19 14. Plaintiff Harrison is a purchaser of Defendant's Hoover Smartwash Automatic
 20 Carpet Cleaner.

21 15. Plaintiff Campos is an individual residing in the County of Riverside, State of
 22 California

23 16. Plaintiff Campos is a purchaser of Defendant's Hoover Windtunnel Vacuum.

24 17. The above-mentioned products are referred to herein collectively as the
 25 "Products."

26
 27 18. Upon information and belief, Defendant is an Ohio Corporation that does
 28 continuous and substantial business throughout the state of California, including

1 the County of San Diego.

2 19. At all relevant times, Defendant was engaged in the business of marketing,
3 supplying, and selling its products, including the Product purchased by Plaintiff,
4 to the public through a system of marketers, retailers and distributors.

5 20. Upon information and belief, all acts of employees of Defendant as alleged were
6 authorized or ratified by an officer, director, or managing agent of the employer.

7 **JURISDICTION AND VENUE**

8 21. Subject matter jurisdiction is proper in this Court for the California statutory
9 causes of action.

10 22. This Court has personal jurisdiction over Defendant because Defendant
11 conducts business in the County of San Diego, State of California, and Plaintiff
12 Jellinek was injured in the County of San Diego where Plaintiff Jellinek resides.

13 23. Venue is proper.

14 **FACTUAL ALLEGATIONS**

15 **PLAINTIFF PHILLIPS**

16 24. In or about December 2019, Plaintiff Phillips visited a Walmart retail store
17 location in Fresno, California looking for a new household vacuum.

18 25. While viewing the various options, Plaintiff Phillips saw Defendant's Hoover
19 Nano Heap Vacuum ("Product") advertised for sale.

20 26. It was advertised to Plaintiff Phillips that the Product was accompanied by
21 Defendant's express warranties.

22 27. The Product's advertisement did not contain any other terms, conditions,
23 exclusions or limitations with respect to the warranty availability.

24 28. Relying on, and valuing, the affirmative warranty promise made regarding the
25 Product, Plaintiff Phillips purchased the Product for approximately \$90.00 from
26 Walmart.

27 29. Upon opening the Product's packaging, Plaintiff Phillips discovered that the
28 Product did not come with a warranty as Plaintiff Phillips was led to believe.

30. Instead, Plaintiff Phillips recalls seeing a warranty registration form requiring Plaintiff to “register” the Product online in order to receive the complete benefits of the warranty.

31. Specifically, Plaintiff was instructed to register the Product at <https://www.hoover.com/product-registration/>.

32. The warranty online registration form failed to inform Plaintiff Phillips that it was for *product* registration only, and did not inform Plaintiff Phillips that failure to complete the online form did *not diminish Plaintiff’s warranty rights* as required by *California Civil Code* § 1793.1.

33. The warranty card registration also failed to inform Plaintiff Phillips that it was for *product* registration only, and did not inform Plaintiff Phillips that failure to complete the online form did *not diminish Plaintiff’s warranty rights* as required by *California Civil Code* § 1793.1.

PLAINTIFF JELLINEK

34. Sometime in 2019, Plaintiff Jellinek visited a Home Depot location in Oceanside, California looking for a new household vacuum.

35. While viewing the various options, Plaintiff Jellinek saw Defendant’s Hoover Wind Tunnel 2 Whole House Vacuum (“Product”) advertised for sale.

36. It was represented to Plaintiff Jellinek that the Product was accompanied by Defendant’s express warranties.

37. The Product’s advertisement did not contain any other terms, conditions, exclusions or limitations with respect to the warranty availability.

38. Relying on, and valuing, the affirmative warranty promise made regarding the Product, Plaintiff Jellinek purchased the Product for approximately \$120 from Home Depot.

39. Upon opening Product’s packaging, Plaintiff Jellinek discovered that the Product did not come with a warranty as Plaintiff Jellinek was led to believe.

40. In addition, Defendant’s online warranty registration form failed to inform

1 Plaintiff that it was for *product* registration only, and did not inform Plaintiff that
 2 failure to complete the online form did *not diminish Plaintiff's warranty rights*
 3 as required by *California Civil Code* § 1793.1.

4 **PLAINTIFF HARRISON**

5 41. On or about July 15, 2019, Plaintiff Harrison searched online looking for a new
 6 household vacuum.

7 42. While viewing the various options, Plaintiff Harrison saw Defendant's Hoover
 8 Smartwash Automatic Carpet Cleaner ("Product ") advertised for sale.

9 43. It was represented to Plaintiff Harrison that the Product was accompanied by
 10 Defendant's express warranties.

11 44. The Product's advertisement did not contain any other terms, conditions,
 12 exclusions or limitations with respect to the warranty availability.

13 45. Relying on, and valuing, the affirmative warranty promise made regarding the
 14 Product, Plaintiff Harrison purchased the Product for approximately \$198.00
 15 through Amazon.com.

16 46. Upon opening the Product's packaging, Plaintiff Harrison discovered that it did
 17 not come with a warranty as Plaintiff Harrison was led to believe.

18 47. Instead, Plaintiff Harrison recalls seeing a warranty registration form requiring
 19 Plaintiff Harrison to "register" the Product online in order to receive the
 20 complete benefits of the warranty.

21 48. Specifically, Plaintiff Harrison was instructed to register the Product at
 22 <https://www.hoover.com/product-registration/>.

23 49. The warranty online registration form failed to inform Plaintiff that it was for
 24 *product* registration only, and did not inform Plaintiff that failure to complete the
 25 online form did *not diminish Plaintiff's warranty rights* as required by *California*
 26 *Civil Code* § 1793.1.

27 50. The warranty card registration also failed to inform Plaintiff Harrison that it was
 28 for *product* registration only, and did not inform Plaintiff that failure to complete

1 the online form did *not diminish Plaintiff's warranty rights* as required by
 2 *California Civil Code* § 1793.1.

3 **PLAINTIFF CAMPOS**

4 51. On or about June of 2019, Plaintiff Campos visited Costco retail store in Lake
 5 Elsinore looking for a new household vacuum.

6 52. While viewing the various options, Plaintiff Campos saw Defendant's Hoover
 7 Smartwash Automatic Carpet Cleaner ("Product") advertised for sale.

8 53. It was represented to Plaintiff Campos that the Product was accompanied by
 9 Defendant's express warranties.

10 54. The Product's advertisement did not contain any other terms, conditions,
 11 exclusions or limitations with respect to the warranty availability.

12 55. Relying on, and valuing, the affirmative warranty promise made regarding the
 13 Product, Plaintiff Phillips purchased the Product for approximately \$198.00 from
 14 Costco.

15 56. Upon opening Product's packaging, Plaintiff discovered that it did not come
 16 with a warranty as Plaintiff was led to believe.

17 57. The warranty online registration form failed to inform Plaintiff that it was for
 18 *product* registration only, and did not inform Plaintiff that failure to complete the
 19 online form did *not diminish Plaintiff's warranty rights* as required by *California*
 20 *Civil Code* § 1793.1.

21 **FACTUAL ALLEGATIONS APPLICABLE TO ALL PLAINTIFFS**

22 58. Upon information and belief, Defendant uses the personal information it collects
 23 from such form for its own business and marketing purposes and for its own
 24 economic benefit.

25 59. Upon information and belief, Defendant intends for the warranty registration
 26 online form to have a chilling effect on warranty claims, preventing customers
 27 who have not registered, or who choose not to register, their warranties from
 28 making warranty claims, thereby saving Defendant money in warranty repair and

administration costs.

60. Defendant has no right to access personal customer information through warranty registration for these purposes, by not making the legally mandated disclosures to customers.

61. Had the Product's exterior packing disclosed that the warranty was contingent on registration by Plaintiffs providing their personal information, Plaintiffs would not have purchased the Products, or alternatively would not have paid a premium for the Products.

62. Plaintiffs have not received the Products that Plaintiffs bargained for.

CLASS ALLEGATIONS

63. Plaintiffs bring this action on behalf of himself and on behalf of all others similarly situated (the "Class"), pursuant to California Code of Civil Procedure Section 382.

64. Plaintiffs represent and are a member of the Classes, consisting of:

a. All persons who purchased one or more of Defendant's products within California during the four (4) years immediately preceding the filing of the Complaint through the date of class certification, which were accompanied by a warranty or product registration card or form, or an electronic online warranty or product registration form, to be completed and returned by the consumer, which do not contain statements, each displayed in a clear and conspicuous manner, informing the consumer that: i) the card or form is for product registration, and ii) informing the consumer that failure to complete and return the card or form does not diminish his or her warranty rights.

b. All persons who purchased one or more of Defendant's products within California during the three (3) years immediately preceding the filing of the Complaint through the date of class certification, which were advertised as being accompanied with an express warranty but which do not contain a warranty, and/or contain warranty activation, confirmation or registration cards requiring persons to

1 provide their personal data or take additional steps in order
2 to receive a warranty.

3 65. Products that meet the above Class definition are referred to herein as “Class
4 products.”

5 66. Defendant and its employees or agents are excluded from the Classes.

6 67. Plaintiffs do not presently know the number of members in the Classes but
7 believes the Class members number in the several thousands, if not substantially
8 more. Thus, this matter should be certified as a class action to assist in the
9 expeditious litigation of this matter.

10 68. Plaintiffs and members of the Classes were harmed by the acts of Defendant in
11 violating Plaintiffs’ and the putative Class members’ rights.

12 69. Plaintiffs reserve the right to expand the class definition to seek recovery on
13 behalf of additional persons as warranted, as facts are learned through further
14 investigation and discovery.

15 70. The joinder of the Class members is impractical and the disposition of their
16 claims in the class action will provide substantial benefits both to the parties and
17 to the court.

18 71. The Classes can be identified through Defendant’s records, Defendant’s agents’
19 records, and/or records of the retailer from which the products were purchased.

20 72. There is a well-defined community of interest in the questions of law and fact to
21 the Classes that predominate over questions which may affect individual Class
22 members, including the following:

- 23 a. Whether the Class products were sold with warranty or product
24 registration cards or forms, or electronic online warranty or product
25 registration forms, which did not contain statements, each displayed in a
26 clear and conspicuous manner, informing the consumer that the card or
27 form is for product registration, and informing the consumer that failure
28



to complete and return the card or form does not diminish his or her warranty rights.

- b. Whether the Class products were sold with express warranties;
- c. Whether the Class products make warranty rights contingent on registration;
- d. Whether Defendant intends warranty registration to act as a barrier to warranty claims;
- e. Whether Defendant intends to use warranty registration as a means for obtaining Class members' personal information;
- f. How Defendant uses Class members' personal information;
- g. Whether Defendant violated the SBA by making Class products' warranties contingent on registration;
- h. Whether Defendant violated the SBA by not disclosing to Class members that by not submitting warranty registration cards, or online forms, their warranty rights would not be diminished;
- i. Whether Defendant engaged in false or deceptive advertising practices in violation of the CLRA by not disclosing the warranty registration requirement of Class products to Class members prior to their purchases;
- j. Whether Defendant is liable for damages, and the amount of such damages; and
- k. Whether Class members are entitled to equitable relief including injunctive relief.

73. Plaintiffs' claims are typical of the claims of the Classes since Plaintiffs purchased Class products, as did each member of the Classes.

74. Plaintiffs and all Class members sustained injuries arising out of Defendant's wrongful conduct and deception.

75. Plaintiffs are advancing virtually the same claims and the same legal theories on



1 behalf of themselves and all absent Class members.

2 76. Plaintiffs will fairly and adequately represent and protect the interests of the
3 Classes in that Plaintiffs have no interests antagonistic to any member of the
4 Classes.

5 77. Absent a class action, the Classes will continue to face the potential for
6 irreparable harm. In addition, these violations of law will be allowed to proceed
7 without remedy and Defendant will likely continue such illegal conduct.

8 78. Plaintiffs have retained counsel experienced in handling class action claims and
9 individual claims involving breach of warranties and unlawful business
10 practices.

11 79. A class action is a superior method for the fair and efficient adjudication of this
12 controversy. The injury suffered by each individual Class member is relatively
13 small in comparison to the burden and expense of individual prosecution of the
14 complex and extensive litigation necessitated by Defendant's conduct. It would
15 be virtually impossible for members of the Classes individually to redress
16 effectively the wrongs done to them. Even if the members of the Classes could
17 afford such individual litigation, the court system could not. Individualized
18 litigation presents a potential for inconsistent or contradictory judgments.
19 Individualized litigation increases the delay and expense to all parties, and to
20 the court system, presented by the complex legal and factual issues of the case.

21 80. By contrast, the class action device presents far fewer management difficulties,
22 and provides the benefits of single adjudication, an economy of scale, and
23 comprehensive supervision by a single court. Upon information and belief,
24 members of the Classes can be readily identified and notified based on, inter
25 alia, Defendant's own records, product serial numbers, submitted warranty
26 activation cards, warranty claims, registration records, and database of
27 complaints.

28 81. Defendant has acted, and continues to act, on grounds generally applicable to

the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S SONG-BEVERLY CONSUMER WARRANTY ACT

82. Plaintiffs incorporate all of the above paragraphs of this Complaint as though fully stated in this cause of action.

83. The Product and Class products are "consumer goods" as defined by *California Civil Code* § 1791(a).

84. Plaintiffs and Class members are "buyers" as defined by *California Civil Code* § 1791(b).

85. "Every manufacturer, distributor, or retailer making express warranties with respect to consumer goods shall fully set forth those warranties in simple and readily understood language[.]" *California Civil Code* § 1793.1(a)(1).

86. "If the manufacturer, distributor, or retailer provides a warranty or product registration card or form, or an electronic online warranty or product registration form, to be completed and returned by the consumer, the card or form **shall** contain statements, each displayed in a clear and conspicuous manner, that do all of the following:

a. Informs the consumer that the card or form is for product registration.

b. Informs the consumer that failure to complete and return the card or form does not diminish his or her warranty rights." *California Civil Code* § 1793.1(a)(1)(A)-(B).

87. "No warranty or product registration card or form, or an electronic online warranty or product registration form, may be labeled as a warranty registration or a warranty confirmation." *California Civil Code* § 1793.1(b).

88. By providing an online registration form with Plaintiffs' Product and Class members' products' labeled as "Product Registration," which do not inform



1 Plaintiffs and Class members that the form is for product registration and that
 2 warranty rights will not be diminished if the form is not completed, Defendant is
 3 in violation of its affirmative obligations under the SBA.

4 89. Defendant values its ability to include warranty registration forms with its, and
 5 as a result of being permitted to include the forms without the statutorily
 6 prescribed language, Defendant received, and continues to receive, a benefit
 7 which Plaintiffs and Class members did not realize they paid for.

8 90. Had Plaintiffs and Class members been aware of these terms, they would not
 9 have paid the price they did.

10 91. Plaintiffs and Class members would have paid less for their products had they
 11 been aware of these terms. The premium paid is a benefit received by Defendant
 12 and should be returned to Plaintiffs.

13 92. Plaintiffs and Class members have been damaged by not receiving the warranty
 14 they were promised, or alternatively, even if warranties do exist, by rightfully
 15 believing they do not have warranty rights.

16 93. Defendant benefits, at Plaintiffs' and Class members' expense, from this tactic as
 17 its costs for repairing products under warranty, as well as administering product
 18 warranties, are reduced.

19 94. Class members who did provide their personal information have been damaged
 20 by being forced to relinquish their personal information based on Defendant's
 21 statutorily mandated omissions.

22 95. Plaintiffs and Class members are entitled to damages, including reimbursement
 23 of the purchase price of the Class products, under *California Civil Code*
 24 §1794(a) and §1794(b).

25 96. In addition to the other amounts recovered, Plaintiffs and Class members are
 26 entitled to a civil penalty of two-times the amount of actual damages, pursuant to
 27 *California Civil Code* §1794(c).

28 97. Plaintiffs and class members are further entitled to recover as part of the

1 judgment a sum equal to the aggregate amount of costs and litigation related
 2 expenses, including but not limited to attorney's fees, reasonably incurred in
 3 connection with the commencement and prosecution of this action under
 4 *California Civil Code* §1794(d).

5 **SECOND CAUSE OF ACTION**

6 **VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT**

7 98. Plaintiffs incorporate all of the above paragraphs of this Complaint as though
 8 fully stated in this cause of action.

9 99. Plaintiffs and Class members are "consumers" within the meaning of *California*
 10 *Civil Code* §1761(d).

11 100. The sale of Plaintiffs' and Class members' Products are "transactions" within the
 12 meaning of *California Civil Code* §1761(e).

13 101. Plaintiffs' and Class members' Products are "goods" within the meaning of
 14 *California Civil Code* §1761(a).

15 102. The CLRA prohibits "representing that goods or services have sponsorship,
 16 approval, characteristics, ingredients, uses, benefits, or quantities that they do not
 17 have." *California Civil Code* §1770(a)(5).

18 103. The CLRA prohibits "representing that goods or services are of a particular
 19 standard, quality, or grade, or that goods are of a particular style or model, if
 20 they are of another." *California Civil Code* §1770(a)(7).

21 104. The CLRA prohibits "advertising goods or services with intent not to sell them
 22 as advertised." *California Civil Code* §1770(a)(9).

23 105. The CLRA prohibits "representing that a transaction confers or involves rights,
 24 remedies, or obligations that it does not have or involve, or that are prohibited by
 25 law." *California Civil Code* §1770(a)(14).

26 106. The CLRA prohibits "representing that the consumer will receive a rebate,
 27 discount or other economic benefit, if earning the benefit is contingent on an
 28 event to occur after the transaction." *California Civil Code* §1770(a)(17).

1 107. Defendant promised, advertised and represented at time of sale that Plaintiffs
2 and Class members would receive a warranty with no strings attached.

3 108. However, Defendant failed to disclose on Plaintiffs' Product's and Class
4 members' products' advertisement and exterior packaging information which
5 was concealed inside packaging; namely that the warranty must be "registered",
6 in violation of SBA's requirements.

7 109. Defendant's concealment of material warranty terms was done deliberately and
8 intentionally with the purpose of deceiving Plaintiffs and Class members and
9 inducing them into purchasing the Class products, or alternately providing their
10 personal information.

11 110. Defendant knows, or should have known, that were it to display on the exterior
12 of product packaging the material warranty terms it hides inside the product
13 packing (even if such terms are not valid), Plaintiffs and Class members would
14 not purchase the Class products or would not pay a premium for them.

15 111. Thus, Defendant's conduct violates *California Civil Code* § 1770(a)(5),
16 1770(a)(7), 1770(a)(9), 1770(a)(14), and 1770(a)(17).

17 112. Plaintiffs and Class members relied on Defendant's representations.

18 113. As a result of Defendant's false representations and deceitful conduct regarding
19 its warranties, Plaintiffs and Class members were injured because they: (a)
20 would not have purchased the Class products if the true facts were known
21 concerning the Defendant's false and misleading warranty claims at time of
22 purchase, or Plaintiffs and Class members would have paid substantially less; (b)
23 paid a premium price for the Class Products as a result of Defendant's false
24 warranties and misrepresentations; (c) purchased products that did not have the
25 sponsorship, characteristics, and qualities promised by Defendant; and (d) had to
26 take additional steps and actions in order to receive the benefit they should have
27 already entitled to.

28 114. Under *California Civil Code* § 1780(a) and (b), Plaintiffs, individually and on

1 behalf of the Classes, seek an injunction requiring Defendant to cease and desist
 2 the illegal conduct alleged in this Complaint. Specifically, Plaintiffs and Class
 3 members are entitled to a permanent injunction that compels Defendant to
 4 immediately: (1) cease and desist from the continued sale of the products that
 5 contain the same or similar misrepresentations as the Class products; (2) initiate
 6 a corrective advertising campaign to notify Class members who are victims of
 7 the above-described illegal conduct about the true nature the Class products and
 8 associated warranty; and (3) initiate a full recall of the Class products with an
 9 offer to refund the purchase price, plus reimbursement of interest.

10 115. Pursuant to § 1782(a) of the CLRA, on or about April 1, 2021, Plaintiffs'
 11 counsel notified Defendant in writing via certified mail return receipt requested
 12 of the particular violations of § 1770 of the CLRA and demanded that it rectify
 13 the problems associated with the actions detailed above and give notice to all
 14 affected consumers of Defendant's intent to act.

15 116. If Defendant fails to respond to Plaintiffs' letter, fails to agree to rectify the
 16 problems associated with the actions detailed above, or fails to give notice to all
 17 affected consumers within 30 days of the date of written notice, Plaintiffs reserve
 18 the right to amend the Complaint to pursue claims for actual, punitive, and
 19 statutory damages, as appropriate against Defendant. As to this cause of action,
 20 at this time, Plaintiffs seek only injunctive relief.

21 117. Attached hereto as **Exhibit A** is a sworn declaration from Phillips pursuant to
 22 *California Civil Code* § 1780(d).

23 118. Attached hereto as **Exhibit B** is a sworn declaration from Harrison pursuant to
 24 *California Civil Code* § 1780(d).

25 119. Attached hereto as **Exhibit C** is a sworn declaration from Jellinek pursuant to
 26 *California Civil Code* § 1780(d).

27 120. Attached hereto as **Exhibit D** is a sworn declaration from Campos pursuant to
 28 *California Civil Code* § 1780(d).

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW

121. Plaintiffs incorporate all of the above paragraphs of this Complaint as though fully stated in this cause of action.

122. The UCL defines “unfair business competition” to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. *California Business and Professions Code* § 17200.

123. The UCL imposes strict liability. Plaintiffs need not prove that Defendant intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices – but only that such practices occurred.

“Unfair” Prong

124. A business act or practice is “unfair” under the UCL if it offends an established public policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, and that unfairness is determined by weighing the reasons, justifications and motives of the practice against the gravity of the harm to the alleged victims.

125. Defendant’s actions constitute “unfair” business practices because, as alleged above, Defendant engaged in a misleading and deceptive practice of intentionally omitting statutorily mandated warranty disclosures to consumers.

126. This is done to trick consumers into believing they don’t have warranty rights in an effort to discourage warranty claim submissions, thus saving Defendant money and increasing its profit margin. Or worse, to actually eliminate the warranty promised at time of purchase.

127. Defendant tricks consumers into providing their personal information in order to obtain a warranty when the consumers are not required to share their personal information to obtain the benefit of an express warranty.

128. Defendant’s acts and practices offend an established public policy of transparency in warranty rights, and engage in immoral, unethical, oppressive,

and unscrupulous activities that are substantially injurious to consumers.

129. The harm to Plaintiffs and Class members grossly outweighs the utility of Defendant's practices as there is no utility to Defendant's practices.

"Fraudulent" Prong

130. A business act or practice is "fraudulent" under the UCL if it is likely to deceive members of the consuming public.

131. Defendant's acts and practices alleged above constitute fraudulent business acts or practices as they deceived Plaintiffs and are highly likely to deceive members of the consuming public.

132. By not providing the required statutory language, Plaintiffs and Class members can only draw one conclusion: registration is required in order to receive and access their warranty, contrary to the representations made at time of sale that the Product was accompanied with an express warranty.

"Unlawful" Prong

133. A business act or practice is "unlawful" under the UCL if it violates any other law or regulation.

134. Defendant's acts and practices alleged above constitute unlawful business acts or practices as they have violated the plain language of the SBA as described in Plaintiffs' First Cause of Action above.

135. As detailed in Plaintiffs' Second Cause of Action above, Defendant's acts and practices surrounding the sale also violate several provisions of the CLRA.

136. The violation of any law constitutes an "unlawful" business practice under the UCL.

137. These acts and practices alleged were intended to or did result in violations of the SBA and the CLRA.

138. Defendant's practices, as set forth above, have misled Plaintiffs, the Class members, and the public in the past and will continue to mislead in the future. Consequently, Defendant's practices constitute an unlawful, fraudulent, and

1 unfair business practice within the meaning of the UCL.

2 139. Pursuant to the UCL, Plaintiffs are entitled to preliminary and permanent
3 injunctive relief and order Defendant to cease this unfair competition, as well as
4 disgorgement and restitution to Plaintiffs and the Class of all Defendant's
5 revenues associated with its unfair competition, or such portion of those
6 revenues as the Court may find equitable.

7 **PRAYER FOR RELIEF**

8 Plaintiffs pray that judgment be entered against Defendant as follows:

- 9 1. That this action be certified as a class action;
- 10 2. That Plaintiffs be appointed as the representative of the Classes;
- 11 3. That Plaintiffs' attorneys be appointed Class Counsel;
- 12 4. For an order declaring Defendant's conduct to be unlawful;
- 13 5. For an order compelling Defendant to make restitution to Plaintiffs and
14 Class members under the SBA in an amount equal to the total amounts
15 paid and payable for the Class products;
- 16 6. For actual damages;
- 17 7. For a civil penalty of two-times actual damages;
- 18 8. For punitive damages;
- 19 9. For pre and post -judgment interest at the legal rate;
- 20 10. For injunctive and other equitable relief as necessary to protect the interests
21 of Plaintiffs and other Class members, and an order prohibiting Defendant
22 from engaging in the unlawful, unfair, deceptive and fraudulent acts
23 described above;
- 24 11. For an order that Defendant engage in a corrective advertising campaign;
- 25 12. For an order of restitution and disgorgement of all profits and unjust
26 enrichment that Defendant obtained from Plaintiffs and the Class members
27 as a result of its unlawful, unfair, and fraudulent business practices;
- 28 13. For attorney's fees, costs of suit, and out of pocket expenses; and

1 14. For such other and further relief that the Court deems proper.

2
3
4 Dated: April 1, 2021

Respectfully submitted,

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6 **KAZEROUNI LAW GROUP, APC**

7 
8 _____
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