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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 GASTON PROCOPIO GIMENEZ, individually
and on behalf of all others similarly situated,

11 Plaintiffs,

12 v.

13 GUNNAR OPTIKS, LLC,

14 Defendant.
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Case No. 37-2023-00007453-CU-FR-CTL

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Gaston Procopio Gimenez (“Plaintiff”), by and through his attorneys, individually
2 and on behalf of himself and classes of those similarly situated, makes the following allegations
3 against defendant Gunnar Optiks, LLC (“GUNNAR” or “Defendant”):

4 **JURISDICTION AND VENUE**

5 1. Defendant is within the jurisdiction of this Court in that they are headquartered in
6 and transact millions of dollars of business in the State of California and in San Diego County.
7 As a result, Defendant has obtained the benefits of the laws of the State of California and its
8 construction building materials market.

9 2. Venue is proper in this County because Defendant has conducted substantial
10 business in this County, and the transactions in question occurred in this County. Further: (1)
11 they operate within this County; (2) they are qualified with the California Secretary of State to
12 do business and are doing business in California, and in this County; and (3) because many of
13 the acts complained of occurred and arose in California, and specifically, this county.
14 Additionally, Defendant CPC is either a citizen of California, has sufficient minimum contacts in
15 California, or otherwise intentionally avails itself of the California market so as to render the
16 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
17 play and substantial justice.

18 **NATURE OF THE ACTION**

19 3. This is a class action for damages relating to the Defendant’s formulation,
20 manufacture, testing, marketing, promotion, distribution, and sale of its defective blue light
21 blocking eyeglasses product including, but not limited to, the Gunnar Onyx Vinyl Crystalline
22 Glasses (the “Gunnar Glasses” or the “Product”).

23 4. Defendant advertises the Gunnar Glasses as doctor recommended to “block blue
24 light”, “reduce digital eyestrain”, “prevent dry eyes”, “minimize glare”, and sleep better.”¹

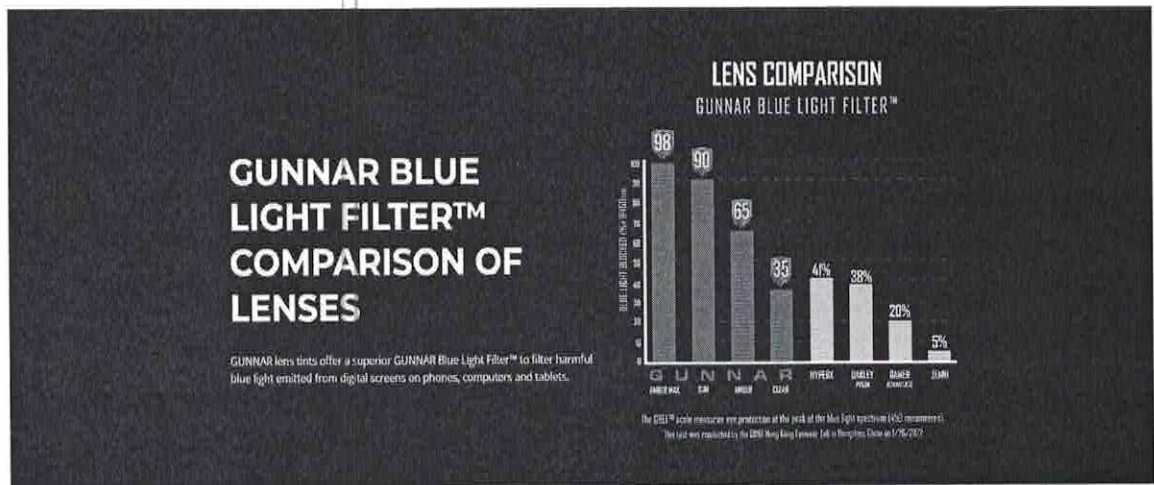
25 5. Gunnar Glasses have quickly grown to be one of the most widely sold blue light
26 blocking eyewear products in the country, primarily due to Defendant’s marketing. This
27 includes the notable packaging and influential ambassadors backing Gunnar Glasses’—

28 ¹ <https://gunnar.com/pages/technology> (Last visited on January 25, 2023)

1 advertising in various channels, including through social media and big names like “Call of
2 Duty” and “Marvel” endorsements, and that it was featured on “Shark Tank” and recommended
3 by “Rolling Stone” magazine.²

4 6. The Product is sold throughout the United States in hundreds of thousands of
5 retail locations, including by electronic stores and mass retailers, as well as through online
6 retailers and Defendant’s own website, www.gunnar.com.

7 7. When used as intended, the Product does not protect the consumer as Defendant
8 claims with their “Gunnar Blue Light Filter (“GBLF”)” or protect it as represented in comparison
9 with other named brands, such as “Hyperx”, “Oakley”, “Gamer” and “Zenni”. Per Defendant’s
10 lens comparison, their GBLF consists of four levels of blue light protection, 98%, 90%, 65%,
11 and 35%, which Defendant’s website makes clear relates to the percentage of blue light it claims
12 is blocked by the Product. The “GBLF scale measures eye protection at the peak of the blue
13 light spectrum.”³



2 ² <https://gunnar.com/> (Last visited January 25, 2023)

3 ³ <https://gunnar.com/pages/technology> (Last visited January 25, 2023)

FACTUAL ALLEGATIONS

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2 12. Defendant manufactures, markets, and sells Gunnar Glasses. They are packaged in
3 widely recognized, bright colors, and with big name collaborations. Defendant’s Product is sold
4 for approximately from \$24.99 to almost \$100 per pair of glasses. It is sold in a variety of
5 designs, including, but not limited to, 6-Siege Ash Edition, 6-Siege Intercept, Apex, Atherton,
6 Attache, Attache Reading Glasses, Berkeley, Call of Duty Convert Edition, Call of Duty Tactical
7 Edition, Clip On, Cruz (children’s lineup), and a variety of Cruz designs for kids including a Cruz,
8 Black Panther Edition, Collection for St. Jude, Spider-Man Miles Morales Edition and many more
9 design but all with the same options of GBLF to choose from: 35%, 65%, 90% or 98%.⁴

10 13. While purchased by all manner of consumers, the eye-catching packaging, and fun
11 designs that Gunnar offers in its Product have had special appeal for younger adults and children.

12 14. Defendant’s own marketing touts itself as “the only patented gaming and computer
13 eyewear recommend by doctors to protect and enhance your vision.” In fact, it claims “GUNNAR
14 blue light glasses address all short and long-term side effects of digital eye strain, including
15 headaches, dry eyes, blurry vision, glare, negative effects of artificial blue light, eye strain and
16 fatigue. The result, “improved, focus and performance.”⁵

17 15. Additionally, “gamers and streamers” endorsements have boosted Gunnar’s robust
18 sales, with figures such as Parallaxstella, FOXA, Nate Hill, among many other promoting the
19 product.⁶

20 16. First introduced in 2008, the Product is sold today in 38 countries, in the U.S. by
21 major retailers throughout the nation, including chain electronic stores and mass merchandisers, as

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25 ⁴ <https://gunnar.com/collections/shop-all> (Last visited on January 25, 2023)

26 ⁵ <https://gunnar.com/pages/technology> (Last visited on January 25, 2023)

27 ⁶ <https://gunnar.com/pages/ambassadors> (Last Visited January 25, 2023)

1 well as by many online retailers. It has A listers as customers such as Facebook, Google,
2 Microsoft and Zappos.⁷

3 17. Defendant’s Product page at www.gunnar.com represents that “GUNNAR offers a
4 real-world solution to keep your eyes safe and actually improve your experience while using
5 phones, computers and tablets.” “With GUNNAR blue blocker glasses, you’ll enhance your vision
6 to reach peak performance.”

7 18. However, Defendant’s marketing claims are false and misleading and omit material
8 information. When used as intended, Gunnar Glasses caused adverse reactions to consumers.

9 19. Further, the Product does not block anywhere near the amount of blue light
10 represented in Defendant’s website and marketing materials. This has been true since at least
11 when Plaintiff bought his glasses (if not before) and continues to this day.

12 20. Plaintiff and Class members sustained damages as a direct and proximate result of
13 Defendant’s negligence and wrongful conduct and omissions in connection with the research,
14 formulation, manufacture, testing, marketing, and sale of the Product. Defendant has failed to
15 provide adequate and accurate information on the Product packaging or in other marketing
16 materials. Moreover, Defendant has failed to take proper action to mitigate the adverse effects
17 caused by its Product.

18 21. Plaintiff and other Class members relied on Defendant’s misrepresentations and
19 omissions regarding the benefits of the Product. Plaintiff and the Class have been damaged by
20 Defendant’s deceptive and unfair conduct and wrongful inaction in that they purchased the
21 Product which they would not have otherwise purchased or would not have paid as much for had
22 Defendant not misrepresented the benefits of the Product or warned them of the potential harms
23 caused by the Product.

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25 ⁷ [https://gunnars.com.ph/about-](https://gunnars.com.ph/about-gunnar/#:~:text=The%20idea,who%20was%20fascinated%20by%20technology)
26 [gunnar/#:~:text=The%20idea,who%20was%20fascinated%20by%20technology](https://gunnars.com.ph/about-gunnar/#:~:text=The%20idea,who%20was%20fascinated%20by%20technology). (Last visited January 25,
27 2023)

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CLASS DEFINITION AND ALLEGATIONS

22. Plaintiff seeks to represent as class defined as all consumers who purchased the Product from Defendant (the “Class”).

23. Members of the Class are so numerous that their individual joinder herein is impracticable. According to information and belief, members of the Class number in the thousands if not tens of thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant and third-party retailers and vendors.

24. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to, whether Defendant’s marketing of the Product was misleading and omitted material information.

25. The claims of the named Plaintiff are typical of the claims of the Class and any subclasses he seeks to represent in that the named Plaintiff was exposed to Defendant’s misleading advertising, purchased the Product, and was damaged as a result of that purchase.

26. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class members he seeks to represent, he has retained competent counsel experienced in prosecuting class actions, and they intend to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and his counsel.

27. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members. Each individual member of the Class may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant’s liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential

1 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
2 management difficulties and provides the benefits of single adjudication, economy of scale, and
3 comprehensive supervision by a single court on the issue of Defendant’s liability. Class treatment
4 of the liability issues will ensure that all claims and claimants are before this Court for consistent
5 adjudication of the liability issues.

6 **FIRST CAUSE OF ACTION**
7 **(California’s Consumer Legal Remedies Act, Cal. Civil Code §§ 1750, et seq.)**

8 28. Plaintiff repeats the allegations contained in the paragraphs above as if fully set
9 forth herein.

10 29. Plaintiff brings this individually and on behalf of the Class.

11 30. Plaintiff and class members are consumers who purchased Gunnar Glasses for
12 eyecare purposes. Accordingly, Plaintiff and Class members are “consumers” as that term is
13 defined by the CLRA in *Cal. Civ. Code § 1761(d)*. Plaintiff and Class members are not
14 sophisticated experts with independent knowledge of the formulation, design and effects of the
15 Product.

16 31. At all relevant times, the Product constituted a “good” as that term is defined in
17 *Cal. Civ. Code § 1761(a)*.

18 32. At all relevant times, Defendant was a “person” as that term is defined in *Civ. Code*
19 *§ 1761(c)*.

20 33. At all relevant times, Plaintiff’s purchase of the Product, and the purchases of the
21 Product by other Class members, constituted “transactions” as that term is defined in *Cal. Civ.*
22 *Code § 1761(e)*. Defendant’s actions, inactions, representations, omissions, and conduct has
23 violated, and continues to violate the CLRA, because they extend to transactions that intended to
24 result, or which have resulted in, the sale of the Product to consumers.

25 34. The policies, acts, omissions, and practices described in this Complaint were
26 intended to and did result in the sale of the Product to Plaintiff and the Class. Defendant’s
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1 practices, acts, omissions, policies, and course of conduct violated the CLRA §1750 *et seq.* as
2 described above.

3 35. Defendant represented that the Product had approval, characteristics, uses, and
4 benefits which it did not have in violation of *Cal. Civ. Code § 1770(a)(5)*.

5 36. Defendant represented that the Product was of a particular standard or quality when
6 Defendant was aware it was of another, in violation of *Cal. Civ. Code § 1770(a)(7)*.

7 37. Defendant violated *Cal. Civ. Code §§ 1770(a)(5) and (a)(7)* by representing that
8 the Product were glasses that would block a certain amount of blue light when, in fact, the Product
9 does not have these effects and did not block anywhere near the claimed amount of blue light.

10 38. Defendant advertised the Product with the intent not to sell it as advertised in
11 violation of § 1770(a)(9) of the CLRA. Defendant did not intend to sell the Product as advertised
12 because Defendant knew that the Product would not block the blue light as advertised. As such,
13 Defendant knew use of the Product would not prevent eye strain, dry eyes, irritation and other
14 damages to consumers as claimed.

15 39. Plaintiff and Class members suffered injuries caused by Defendant's
16 misrepresentations and omissions because: (a) Plaintiff and Class members would not have
17 purchased the Product or would not have paid as much for the Product if they had known the true
18 facts; (b) Plaintiff and Class members purchased the Product due to Defendant's
19 misrepresentations and omissions; and (c) the Product did not have the level of quality,
20 effectiveness, or value as promised.

21 40. Plaintiff and the Class seek an order enjoining Defendant's unfair or deceptive acts
22 or practices, equitable relief, an award of attorneys' fees and costs under *Cal. Civ. Code § 1780(e)*,
23 and any other just and proper relief available under the CLRA.

24 41. Prior to the filing of this Complaint, a CLRA notice letter was served on Defendant
25 which complies in all respects with *Cal. Civ Code § 1782(a)*. A true and correct copy of
26 Plaintiff's letter is attached as Exhibit A. The letter was sent to Defendant via certified mail,
27 return receipt requested, advising Defendant that it is in violation of the CLRA and must correct,
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1 repair, replace, or otherwise rectify the goods alleged to be in violation of § 1770. In the event
2 that the relief requested has not been provided within thirty (30) days, Plaintiff will amend this
3 Complaint to include a request for damages pursuant to the CLRA.

4 **SECOND CAUSE OF ACTION**
5 **(California’s False Advertising Law, Cal. Bus. & Prof. Code §§17500, *et seq.*)**

6 42. Plaintiff repeats the allegations contained in the paragraphs above as if fully set
7 forth herein.

8 43. Plaintiff brings this cause of action individually and on behalf of the Class.

9 44. California’s FAL (Bus. & Prof. Code §§17500, *et seq.*) makes it “unlawful for any
10 person to make or disseminate or cause to be made or disseminated before the public in this state, .
11 . . in any advertising device . . . or in any other manner or means whatever, including over the
12 Internet, any statement, concerning . . . personal property or services, professional or otherwise, or
13 performance or disposition thereof, which is untrue or misleading and which is known, or which
14 by the exercise of reasonable care should be known, to be untrue or misleading.”

15 45. Defendant committed acts of false advertising, as defined by the FAL, by using
16 false and misleading statements, and material omissions, to promote the sale of the Product, as
17 described above, and including, but not limited to, representing that the Product blocked a certain
18 percentage of blue light, when Defendant knew or should have known that use of the Product did
19 not block the claimed amount of blue light and thus did not prevent eye strain, dry eyes, irritation
20 and other damages to consumers as claimed..

21 46. Defendant knew or should have known, through the exercise of reasonable care,
22 that its statements were untrue and misleading.

23 47. Defendant’s actions and omissions in violation of the FAL were false and
24 misleading such that the general public is and was likely to be deceived.

25 48. As a direct and proximate result of these acts and omissions, consumers have been
26 and are being harmed. Plaintiff and members of the Class have suffered injury and actual out-of-
27 pocket losses as a result of Defendant’s FAL violation because: (a) Plaintiff and Class members

1 would not have purchased the Product or would not have paid as much for it if they had known the
2 true facts; (b) Plaintiff and Class members purchased the Product due to Defendant's
3 misrepresentations and omissions; and (c) the Product did not have the level of quality,
4 effectiveness, or value as promised.

5 49. Plaintiff brings this action pursuant to Bus. & Prof. Code § 17535 for injunctive
6 relief to enjoin the practices described herein and to require Defendant to issue corrective
7 disclosures to consumers. Plaintiff and the Class are therefore entitled to: (a) an order requiring
8 Defendant to cease the acts of unfair competition alleged herein; (b) full restitution of all monies
9 paid to Defendant as a result of its deceptive practices; (c) interest at the highest rate allowable by
10 law; and (d) the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California
11 Code of Civil Procedure §1021.5.

12 **THIRD CAUSE OF ACTION**

13 **Breach of Song-Beverly Consumer Warranty Act For Breach Of Express Warranty**
14 **(Cal. Civ. Code §§ 1791.2 & 1793.2)**

15 50. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

16 60. This claim is brought by the Plaintiff on behalf of himself and the Class under
17 the Song-Beverly Consumer Warranty Act ("SBCWA") for breach of express
18 warranty.

19 61. The Plaintiff and members of the Class are "buyers" within the meaning of
20 the SBCWA. *See Cal. Civ. Code § 1791(b)*.

21 62. The Gunnar Glasses are "consumer goods" within the meaning of *Cal. Civ.*
22 *Code § 1791(a)*.

23 63. Defendant is a "manufacturer" within the meaning of *Cal. Civ. Code §1791(j)*.
24 Plaintiff and members of the Class bought Gunnar Glasses manufactured and distributed by
25 Defendant.

26 73. As set forth in detail above, Defendants provided the Express Warranty to the
27 Plaintiff and members of the Class members within the meaning of Cal. Civ. Code §§ 1791.2
28 and 1793.2 as set forth herein.

1 Defendant and Plaintiffs and the Class, thereby creating an express warranty that Defendant would
2 conform to those affirmations of fact, representations, promises and descriptions.

3 106. However, the Product does not do these things as addressed above, including that
4 the it does not lock the amount of blue light as represented by Defendant.

5 107. Plaintiff and proposed Class members were injured as a direct and proximate result
6 of Defendant's breach because (a) they would not have purchased the Product or would not have
7 paid as much for it had they known the true facts and (b) the Product did not have the
8 characteristics, uses, or benefits as promised.

9 **SEVENTH CAUSE OF ACTION**
10 **(Breach of Implied Warranty of Merchantability)**

11 108. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth
12 herein.

13 109. Plaintiff brings this claim individually and on behalf of the members of the Class
14 against Defendant.

15 110. Defendant, as the designer, manufacturer, distributor, and seller, impliedly
16 warranted that the Product was fit for its intended purpose in that the Product would act as a blue
17 light blocker. Defendant did so with the intent to induce Plaintiffs and Class members to purchase
18 the Product.

19 111. Defendant breached its implied warranties because the Product does not have the
20 characteristics, uses, or benefits as promised.

21 112. Plaintiffs and proposed Class members were injured as a direct and proximate
22 result of Defendant's breach because they would not have purchased the Product or would not
23 have paid as much for it had they known that it does not have the characteristics, uses, or benefits
24 as promised.

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EIGHTH CAUSE OF ACTION

(Unjust Enrichment)

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2 113. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth
3 herein.

4 114. Plaintiff brings this claim individually and on behalf of the members of the Class
5 against Defendant.

6 115. Plaintiff and members of the Class conferred benefits on Defendant by purchasing
7 the Product.

8 116. Defendant has been unjustly enriched in retaining revenues derived from Plaintiffs'
9 and Class members' purchases of the Product. Retention of that revenue under these
10 circumstances is unjust and inequitable because Defendant misrepresented and omitted facts
11 concerning the characteristics, uses, and benefits of the Product and caused Plaintiffs and Class
12 members to purchase the Product and to pay more for the Product, which they would not have
13 done had the true facts been known.

14 117. Because Defendant's retention of the non-gratuitous benefits conferred on it by
15 Plaintiffs and members of the Class is unjust and inequitable, Defendant must pay restitution to
16 Plaintiff and members of the Class for its unjust enrichment, as ordered by the Court.

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18 **NINETH CAUSE OF ACTION**

19 **(Negligence)**

20 118. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth
21 herein.

22 119. Plaintiff brings this claim individually and on behalf of the members of the Class
23 against Defendant.

24 120. Defendant negligently manufactured, designed, tested, researched, developed,
25 labeled, packaged, distributed, promoted, marketed, advertised, and sold the Product.

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1 124. Defendant had a duty to warn their customers and the public about the risks of
2 injury and adverse effects and refused to do so placing profit ahead of consumer safety.

3 125. Defendant knew or should have known that the Product had unreasonably
4 dangerous risks of which consumers would not be aware and did not block blue light as
5 represented. Defendant nevertheless advertised, marketed, sold and distributed the Product.

6 126. Despite the fact that Defendant knew or should have known that the Product did
7 not block blue light as represented and did not prevent the risk of injury as claimed, Defendant
8 continued to manufacture, market, advertise, promote, sell and distribute the Product to
9 consumers, including Plaintiff and Class members.

10 127. Defendant recklessly and/or negligently failed to disclose to Plaintiff and Class
11 members the true amount of blue light blocked and adverse effects associated with the Product,
12 thereby suppressing material facts about the Product, while having a duty to disclose such
13 information, which duty arose from its actions of making, marketing, promoting, distributing and
14 selling the Product as alleged.

15 128. Defendant led Plaintiffs and Class members to rely upon the safety of the Product
16 in their use of the Product.

17 129. Defendant's false representations were recklessly and/or negligently made in that
18 the Product did not block blue light as represented and did not prevent the risk of injury as claimed
19 and in fact caused injury, was unsafe, and the benefits of its use were far outweighed by the risk
20 associated with use thereof.

21 130. Defendant knew or should have known that its representations and/or omissions
22 were false. Defendant made such false, negligent and/or reckless representations with the intent or
23 purpose that Plaintiff and Class members would rely upon such representations, leading to the use
24 of the Product as described.

25 131. Defendant recklessly and/or negligently misrepresented and/or omitted information
26 with respect to the Product as set forth above.

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1 132. Defendant omitted, suppressed, and/or concealed material facts concerning the
2 amount of blue light blocked, dangers and risk of injuries associated with the use of the Product.
3 Furthermore, Defendant was willfully blind to, ignored, downplayed, avoided, and/or otherwise
4 understated the nature of the risks associated with the Product in order to continue to sell the
5 Product.

6 133. At the time Defendant made these misrepresentations and/or omissions, they knew
7 or should have known that the Product was unreasonably dangerous and not what Defendant had
8 represented to Plaintiff and Class members.

9 134. Defendant's misrepresentations and/or omissions were undertaken with an intent
10 that Plaintiff and Class members rely upon them.

11 135. Plaintiff relied on and were induced by Defendant's misrepresentations, omissions,
12 and/or active concealment of the dangers of the Product to Purchase and use the Product.

13 136. Plaintiff did not know that these representations were false and therefore were
14 justified in their reliance.

15 137. As a direct and proximate consequence of Defendant's negligent, willful, wanton,
16 and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts described
17 herein, Plaintiff and Class members sustained injuries and damages as alleged herein.

18 138. Had Plaintiff and Class members been aware of the increased risk of injury
19 associated with the Product and the relative efficacy of the Product compared with other readily
20 available products, they would not have purchased the Product or would not have paid as much for
21 it.

22 139. Defendant's negligence was a substantial factor in causing Plaintiff's harm and that
23 of Class members.

24 140. Plaintiff and Class members are entitled to compensatory damages, and exemplary
25 and punitive damages together with interest, and such other and further relief as this Court deems
26 just and proper.

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PRAYER FOR RELIEF

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

- a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representative of the Class and Plaintiff’s attorneys as Class Counsel to represent the Class;
- b. For an order declaring that Defendant’s conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiff and the Class on all causes of action asserted herein;
- d. For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For an order enjoining Defendant from continuing the unlawful practices detailed herein; and
- h. For an order awarding Plaintiff and the Class their reasonable attorneys’ fees and expenses and costs of suit.

DEMAND FOR JURY TRIAL

Plaintiff hereby demand a trial by jury on all issues so triable.

DATED: February 21, 2023

BISNAR|CHASE LLP

By: *Ian M. Silvers*
 BRIAN D. CHASE
 IAN M. SILVERS
Counsel for Plaintiffs