

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Jonas B. Jacobson (Cal. Bar No. 269912)
jonas@dovel.com
Simon Franzini (Cal. Bar No. 287631)
simon@dovel.com
DOVEL & LUNER, LLP
201 Santa Monica Blvd., Suite 600
Santa Monica, California 90401
Telephone: (310) 656-7066

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Shannon Mack, and Lindsey Farrow,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

Amazon.com, Inc.,

Defendant.

Case No. 2:22-cv-01310-JCC

**FIRST AMENDED
CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL**

Table of Contents

1

2 I. Introduction..... 1

3 II. Parties..... 2

4 III. Jurisdiction, venue, and divisional assignment..... 2

5 IV. Facts..... 2

6 A. It is important to consumers that over-the-counter melatonin is accurately
dosed and labelled..... 2

7 B. Scientific research reveals serious problems with the accuracy of melatonin
dosing and labelling in Canada. Scientists warn that the same is likely true of
8 some U.S. brands. 3

9 C. Amazon sells over-the-counter melatonin supplements to U.S. consumers..... 4

10 D. Scientific testing reveals that Solimo Melatonin has substantial overdoses of
melatonin..... 6

11 E. Solimo Melatonin overdoses are unreasonably excessive under FDA standards..... 7

12 F. Amazon’s labelling is false and misleading to reasonable consumers. 10

13 G. Amazon overcharges consumers..... 12

14 H. Plaintiffs were misled and harmed by Amazon’s misleading labelling..... 13

15 V. Class action allegations..... 14

16 VI. Claims..... 16

17 Count 1: Violation of the Washington Consumer Protection Act..... 16

18 Count 2: Breach of Contract 17

19 Count 3: Breach of Express Warranty 18

20 Count 4: Breach of Implied Warranty..... 19

21 VII. Jury Demand..... 20

22 VIII. Prayer for Relief..... 20

23

24

25

26

27

28

1 **I. Introduction.**

2 1. Melatonin is a neurohormone that regulates the brain’s sleep cycle. Millions of
3 consumers take over-the-counter melatonin supplements to help them sleep. Because melatonin
4 alters brain chemistry, it is important that these supplements are accurately dosed and labelled.

5 2. A few years ago, scientists tested Canadian melatonin supplements and found that, for
6 a number of brands, the true amount of melatonin varied wildly from the label. Scientists, the
7 National Institute of Health, and consumer advocates have warned that the same is true in the U.S.

8 3. Amazon’s Solimo Melatonin is a major U.S. brand of melatonin supplements, sold
9 nationwide on Amazon.com. Each bottle claims to have a specific dose of melatonin per serving.

10 For example:



20

Supplement Facts	
Serving Size: 2 Gummies Servings Per Container: 60	
Amount Per Serving	% Daily Value
Calories	15
Total Carbohydrate	4 g 1%*
Total Sugars	3 g **
Includes 3 g Added Sugars 6%*	
Sodium	5 mg <1%
Melatonin	5 mg **

21
22
23
24
25
26
27
28

* Percent Daily Values are based on a 2,000 calorie diet.
** Daily Value not established.

20 4. Like other consumers, Plaintiffs bought Solimo Melatonin and trusted the accuracy of
21 Amazon’s dosing and labelling. To determine how much melatonin is really in Solimo Melatonin, a
22 university mass-spectrometry laboratory tested multiple bottles. The results were alarming—the
23 bottles are unreasonably overdosed. The true amount of melatonin was 144% to 182% of the claimed
24 amount.

25 5. Amazon systematically misrepresents how much melatonin is in the supplements it
26 sells. Consumers are being misled and overcharged.

1 **II. Parties.**

2 6. Plaintiff Shannon Mack is domiciled in Rochester, New York.

3 7. Plaintiff Lindsey Farrow is domiciled in Mechanicsburg, Pennsylvania.

4 8. The proposed class includes citizens of every state.

5 9. Defendant Amazon.com, Inc. is a Delaware corporation with its principal place of
6 business at 410 Terry Avenue North, Seattle, Washington 98109-5210.

7 **III. Jurisdiction, venue, and divisional assignment.**

8 10. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2). The amount
9 in controversy exceeds \$5,000,000, exclusive of interest and costs, and the matter is a class action in
10 which one or more members of the proposed class are citizens of a state different from Defendant.

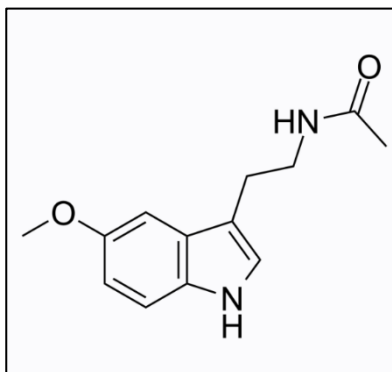
11 11. The Court has personal jurisdiction over Defendant because (among other reasons) its
12 principal place of business is in Washington.

13 12. Venue is proper under 28 U.S.C. § 1391(b)(1) because Amazon resides in this District,
14 at its Seattle headquarters.

15 **IV. Facts.**

16 **A. It is important to consumers that over-the-counter melatonin is accurately dosed**
17 **and labelled.**

18 13. Melatonin (N-acetyl-5-methoxytryptamine) is a neurohormone produced by the pineal
19 gland in the brain. It regulates the brain's circadian rhythm and sleep cycle.



26 *The chemical structure of melatonin*

1 14. Millions of U.S. consumers take melatonin supplements to treat sleep problems,
2 anxiety, and other issues. Melatonin is one of the most popular over-the-counter supplements in the
3 U.S.

4 15. As scientists explained in the *Journal of Clinical Sleep Medicine*, because melatonin is
5 “self-prescribed” (i.e., purchased directly by consumers who are not experts), it is particularly
6 “important that labels are informative and representative of the product,” i.e., that the “label claim
7 values for the active ingredient are accurate.”¹ When melatonin is falsely labelled, “higher doses
8 could lead to unpleasant/unexpected side effects.”² Side effects of melatonin include headaches,
9 dizziness, nausea, or excessive or unwanted sleepiness.³ “Many experts recommend starting with
10 the smallest available dosage — 0.5 milligrams to 1 milligram.” And regardless of side effects,
11 consumers don’t want to take excessive amounts of a neurohormone that alters brain chemistry.

12 **B. Scientific research reveals serious problems with the accuracy of melatonin**
13 **dosing and labelling in Canada. Scientists warn that the same is likely true of**
14 **some U.S. brands.**

15 16. In 2017, a study of Canadian melatonin brands found “high variability, ranging from
16 –83% to +478%, of the labelled concentration of melatonin content in melatonin supplements.”⁴ For
17 over 70% of the tested brands, the true amount of Melatonin varied more than 10% from the listed
18 amount. For some brands, the amount of melatonin varied highly between different lots
19 (manufacturing batches) of the same product. For other brands, the tested lots were consistently
20 dosed, but the dosing was systematically inaccurate compared to the labelling claim. The researchers
21

22 ¹ Erland, L. & Saxena, P., *Melatonin Natural Health Products and supplements: Presence of*
23 *serotonin and significant variability of melatonin content*, 13 *Journal of Clinical Sleep Medicine*
24 275–281 (2017).

25 ² Grigg-Damberger, M. & Ianakieva, D., *Poor quality control of over-the-counter melatonin:*
26 *What they say is often not what you get*, 13 *Journal of Clinical Sleep Medicine* 163–165 (2017).

27 ³ NIH National Library of Medicine Medline Plus, Melatonin,
28 <https://medlineplus.gov/druginfo/natural/940.html>

⁴ Lauren, *Melatonin Natural Health Products and supplements*, 13 *Journal of Clinical Sleep*
Medicine at 276.

1 concluded that “manufacturers require increased controls to ensure melatonin supplements” are
2 accurately labelled.

3 17. U.S. scientists warned that this Canadian study “herald[s] what may also be true in
4 OTC melatonin supplements marketed in the United States.”⁵ Likewise, the National Institute of
5 Health has warned that “some melatonin supplements may not contain what’s listed on the product
6 label.”⁶ And Consumer Reports warned: “The findings ... offer the latest proof of something
7 supplement industry critics have long warned about: When it comes to this poorly regulated corner of
8 modern medicine, consumers often don’t know what they’re buying.”⁷

9 **C. Amazon sells over-the-counter melatonin supplements to U.S. consumers.**

10 18. Amazon makes, markets, and sells Solimo Melatonin in the U.S. Amazon’s Solimo
11 melatonin products (“Solimo Melatonin”) are available nationwide at Amazon.com. Hundreds of
12 thousands (or even millions) of U.S. consumers buy Solimo Melatonin and rely on the accuracy of its
13 labelling.

14 19. Amazon makes and sells Solimo Melatonin. Solimo Melatonin comes in two types:
15 Tablets and Gummies. For each product, the label claims a specific amount of melatonin per serving,
16 e.g., 3 mg or 5 mg. Representative examples are pictured below:

23 ⁵ Grigg-Damberger, *Poor quality control of over-the-counter melatonin*, 13 *Journal of*
24 *Clinical Sleep Medicine* at 163.

25 ⁶ NIH National Center for Complementary and Integrative Health, *Melatonin: What You Need*
26 *To Know*, <https://www.nccih.nih.gov/health/melatonin-what-you-need-to-know>

27 ⁷ Consumer Reports, *New Study Questions Ingredient Levels in Some Melatonin Supplements*,
<https://www.consumerreports.org/melatonin/study-questions-ingredient-levels-some-melatonin-supplements/>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Supplement Facts	
Serving Size 1 Tablet	
Amount Per Serving	% Daily Value
Melatonin 3 mg	**
** Daily Value not established.	



Supplement Facts	
Serving Size: 2 Gummies	
Servings Per Container: 60	
Amount Per Serving	% Daily Value
Calories	15
Total Carbohydrate	4 g 1%*
Total Sugars	3 g **
Includes 3 g Added Sugars 6%*	
Sodium	5 mg <1%
Melatonin	5 mg **
* Percent Daily Values are based on a 2,000 calorie diet.	
** Daily Value not established.	

20. All Solimo Melatonin products are substantially similar. They all advertise melatonin as the active ingredient and claim to have a specific amount of melatonin per serving. This claim appears in the same place (on the front and back of the label), in the same way. And as explained below, the labels are all false in the same way: they all substantially understate the true dosage of melatonin. As a result, consumers suffer the same deception: they believe that they are buying a bottle with the claimed dose, but in reality, are getting a bottle with a substantially higher dose that they did not want or intend to buy. To be sure, there are immaterial differences (like flavoring or inactive ingredients), but in the material respect (the claimed melatonin dosage) the labels are all false in the same way.

D. Scientific testing reveals that Solimo Melatonin has substantial overdoses of melatonin.

21. Liquid Chromatography-Mass Spectrometry analysis (LC-MS) can accurately measure the true amount of melatonin in an over-the-counter supplement. LC-MS is a reliable and appropriate analytical procedure for measuring melatonin content.

22. For Solimo Melatonin, a university mass-spectrometry laboratory used LC-MS to test Solimo Melatonin. The lab tested bottles from different manufacturing batches (lots). The lab tested each type of Solimo (Tablets and Gummies). The results are summarized below:

Amazon type	Claimed melatonin dose (mg / gummy or tablet)	True melatonin dose (mg / gummy or tablet) ⁸	True melatonin dose (%) ⁹
Amazon Solimo Melatonin Gummies (Lot# B51L01-1) Expiration date: 5/2023	2.5	4.56	+182%
Amazon Solimo Melatonin Tablets (Lot# 20JAF0049) Expiration date: 2/2022	3	4.33	+144%

23. As the results show, the melatonin content of Solimo Melatonin is consistently and substantially overdosed.

24. As detailed below, Ms. Mack purchased Solimo Melatonin Tablets and Ms. Farrow purchased Solimo Melatonin Gummies. Plaintiffs purchased and used up their Solimo melatonin before they became aware that Amazon's labels and dosing were misleading. Thus, through no fault of their own, it is not possible to test Plaintiffs' bottles. However, the test results above (of bottles

⁸ The lab tested three gummies per bottle and averaged the results. The tested gummies were all consistently overdosed (with about 4.2 – 5.3 mg of melatonin). The tested tablets were all consistently overdosed (with about 4.2 – 4.5 mg of melatonin). This confirms that the sample reasonably reflects the bottle. And this makes sense because Amazon's manufacturing practices (and overages) are systematic.

⁹ The percentage ratio of the true dose to the claimed dose.

1 from different lots and of different types), reflect the melatonin dosage in Plaintiffs' own bottles.
2 Amazon's manufacturing practices are systematic: Amazon targets a specific overage across bottles
3 and lots. This is to make manufacturing efficient. As a result, tests from one bottle will reflect the
4 melatonin content in that same type of melatonin, from a different bottle. This is consistent with the
5 study of Canadian brands, where some brands had consistent doses across lots, but the dosing was
6 systematically inaccurate. Here Plaintiffs tested both Tablets and Gummies (from different lots) and
7 the overages were unreasonably excessive across both products. Thus, it is more than reasonable to
8 infer that the identified overages reflect Plaintiffs' bottles as well.

9 25. Amazon itself has unique access to the data that will prove this. Supplement
10 manufacturers are required to test the dietary supplements they sell for compliance with FDA
11 regulations. That testing must be performed using a random 12-sample composite method. 21 C.F.R.
12 § 101.9(g)(2) (describing this method). Manufacturers like Amazon must retain the data from these
13 tests. As shown above, in Plaintiffs' testing, all of the bottles were substantially overdosed. This was
14 true across lots, product types, and expiration dates. Accordingly, it is reasonable to infer that
15 Amazon's own testing—available only through discovery—will confirm that the products are
16 substantially (and unreasonably) overdosed. This, in turn, will prove that Plaintiffs' bottles (like all
17 bottles) were unreasonably overdosed.

18 **E. Solimo Melatonin overdoses are unreasonably excessive under FDA standards.**

19 26. For dietary supplements, the FDA states that “reasonable excesses over labeled
20 amounts are acceptable within current good manufacturing practice.” 21 C.F.R §101.36(f)(1). This
21 means that a manufacturer can add enough melatonin such that the dosage “meets the amount
22 specified on the label throughout the product's shelf life.” Current Good Manufacturing Practice in
23 Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements, 72 Fed. Reg.
24 34752, 34884 (June 25, 2007). But the FDA prohibits a manufacturer from adding “unspecified
25 amounts [of an ingredient] that would be in excess of the amount actually needed to meet the label
26 declaration.” 68 Fed. Reg. 12158, 12158 (Mar. 13, 2003). Accordingly, an excess is not a “reasonable
27

1 excess” (and violates FDA regulations) if the excess is materially more than necessary to meet the
2 amount specified on the label throughout the product’s shelf life.

3 27. Notably, the FDA does not review and approve any particular overages for dietary
4 supplements—the duty falls on manufacturers to assure compliance with the “reasonable excess”
5 limit. Here, Amazon is violating that duty.

6 28. For context, testing has shown that melatonin by other U.S. manufacturers who do not
7 unreasonably overdose their products has only around a 10-15% excess when the product is
8 purchased, such that by the time the shelf life ends, it has approximately the amount of melatonin that
9 is specified on the label. Solimo Melatonin, in contrast, has a much higher excess of melatonin,
10 compared to other U.S. manufacturers.

11 29. Testing an expired Solimo Melatonin bottle has confirmed that the dosing of Solimo
12 Melatonin is unreasonably excessive. If Solimo Melatonin were reasonably dosed, the amount of
13 melatonin at the end of the shelf life would be materially the same as the claim on the label, i.e., close
14 to 100% of the claimed amount. In contrast, if Solimo is unreasonably overdosed, even after a bottle
15 expires (i.e., its shelf life is over) there will be materially more melatonin than the amount specified
16 on the label. Here, testing confirms that Solimo Melatonin has substantially more melatonin than
17 needed to meet the labelling claim throughout the shelf life.

18 30. The laboratory tested an expired bottle of Solimo Melatonin (Lot# 20JAF0049). This
19 bottle expired in February 2022. Yet when it was recently tested, it still had 144% of the claimed
20 melatonin content. In other words, even six months after expiration, the bottle was still substantially
21 overdosed. On the date of expiration, the overdose would have been even higher. Because the excess
22 is materially more than reasonably necessary to ensure that the melatonin meets the amount specified
23 on the product label throughout the product’s shelf life, Solimo Melatonin is unreasonably overdosed.
24 And as explained in detail above, because Amazon’s manufacturing practices are systematic, it is
25 reasonable to infer that the same is true of Plaintiffs’ bottles (i.e., that Plaintiffs’ bottles were
26 unreasonably overdosed, under FDA standards).

1 31. Furthermore, an unnecessary excess is particularly unreasonable (and material to
2 consumers) if the excess is known to increase the risk of adverse side effects. The likelihood of side
3 effects from melatonin increases with the dosage. This is confirmed by peer-reviewed research:
4 when melatonin is falsely labeled, “higher doses could lead to unpleasant/unexpected side effects.”¹⁰
5 As the Texas Health hospital network explains, a “lower dose” will reduce the risk of “side effects”
6 and thus “using the lowest effective dose will give you the best outcomes while keeping any
7 undesirable side effects at bay.”¹¹ And as another major manufacturer of melatonin supplements
8 states: “The likelihood of these side effects [headaches, upset stomach, grogginess, sleeplessness,
9 irritability and dizziness] increases with the dosage.”¹² This is why, as explained above, experts
10 recommend starting with a lower dose and only escalating as necessary.

11 32. Amazon itself recognizes that consumers should not ingest more melatonin than the
12 recommended dosage on the bottles. On its Solimo bottles, Amazon states: “Do not exceed
13 recommended dosage.”¹³ But because Amazon is not exercising reasonable care to control its doses,
14 Amazon customers are unknowingly doing exactly what Amazon recommends against (substantially
15 and unreasonably exceeding the recommended dosages).¹⁴

16 33. In addition, an unnecessary excess of an ingredient is unreasonable (and material to
17 consumers) if the long-term safety is not established. This is especially true for a neurohormone like
18 melatonin, which can alter brain chemistry. As the National Institute of Health explains, the long-
19 term safety of melatonin remains unknown:
20

21 ¹⁰ Grigg-Damberger, M. & Ianakieva, D., Poor quality control of over-the-counter melatonin:
22 What they say is often not what you get, 13 Journal of Clinical Sleep Medicine 163–165 (2017).

23 ¹¹ <https://www.texashealth.org/areyouawellbeing/Health-and-Well-Being/Is-It-Safe-to-Take-Melatonin-Every-Night>

24 ¹² <https://www.zzzquil.com/en-us/faq/zzzquil-pure-zzqs-melatonin-faq> (made by Proctor & Gamble)

25 ¹³ https://www.amazon.com/Amazon-Brand-Melatonin-Gummies-Serving/dp/B07BBFFTKH/ref=sr_1_8?crd=1QEIWSRFTL7DA&keywords=solimo&qid=166189597&s=hpc&sprefix=solimo+%2Chpc%2C129&sr=1-8

26 ¹⁴ At this stage, Plaintiffs are not alleging fraud, but reserve the right to amend if discovery
27 reveals evidence of fraudulent intent.

1 For melatonin supplements, particularly at doses higher than what the body normally
2 produces, there's not enough information yet about possible side effects to have a clear
3 picture of overall safety. Short-term use of melatonin supplements appears to be safe for most
4 people, but information on the long-term safety of supplementing with melatonin is lacking.¹⁵

4 34. For this additional reason, Amazon's unnecessary excess dosing of melatonin is
5 unreasonable and material to consumers.

6 35. In sum, (a) Amazon's overdosing is far more than needed to meet the label declaration
7 throughout the shelf life; (b) the excessive dosing increases the risk of adverse side effects; and (c)
8 the long-term safety of melatonin is uncertain. For all of these reasons, Amazon's overdosing is an
9 unreasonable excess and this excess is material to consumers. This is prohibited (not permitted) by
10 FDA regulations. Plaintiffs' claims challenge this unreasonable excess and Amazon's false and
11 misleading labelling.

12 36. To be clear, while Amazon's unreasonably excessive dosing violates the FDC Act,
13 Plaintiffs are not seeking to enforce the FDC Act itself. Amazon's false and misleading labelling (and
14 unreasonably excessive dosing) is independently illegal under state consumer protection and warranty
15 laws. It is these state laws that Plaintiffs seek to enforce.

16 37. Nor are Plaintiffs seeking to impose disclosure requirements not required by the FDA.
17 Plaintiffs want Amazon to fix its dosing so that it is reasonable (instead of unreasonably excessive)
18 and so that its labels are not misleading. This is identical to what the FDC Act and FDA require.

19 **F. Amazon's labelling is false and misleading to reasonable consumers.**

20 38. By selling a melatonin supplement for sleep (i.e., a supplement that alters brain
21 chemistry), Amazon is representing to consumers that its products are accurately dosed and labelled.
22 When a consumer picks up a bottle of Solimo Melatonin, they reasonably expect that it actually has
23 the dosage for which Amazon designed the recommended serving. No reasonable consumer expects
24 that a melatonin supplement has an unreasonable overdose of melatonin, compared to what it is
25 specified on the label. And specifically, when a bottle of Solimo Melatonin says it has a particular

26
27 ¹⁵ <https://www.nccih.nih.gov/health/melatonin-what-you-need-to-know>

1 amount of melatonin per serving (e.g., 3 mg or 5 mg), consumers expect this to be reasonably
2 accurate. But the truth is, the dosing is not reasonably accurate. In this way, Amazon’s affirmative
3 representations are misleading to reasonable consumers.

4 39. The inaccurate dosing and labelling of Solimo Melatonin are highly material to
5 reasonable consumers. As detailed above, consumers need melatonin supplements to be accurately
6 dosed and labelled, so that consumers aren’t unknowingly ingesting more neurohormone than they
7 intend to take. A higher dose comes with a higher risk of adverse side effects and more concern for
8 long-term safety. No reasonable consumer wants to buy and ingest a supplement containing an
9 unreasonably excessive amount of melatonin, compared to what they intend to take.

10 40. Melatonin is generally available on the market in a range of mg doses, between 1-10
11 mg (e.g., 1 mg, 3 mg, 5 mg, 10 mg). This is because consumers want to make their own, informed
12 decision about the dosage that is right for them. Amazon itself sells different types of Solimo
13 Melatonin, with different claimed strengths, so that consumers can choose what is right for them. No
14 consumer wants this choice to be robbed from them by inaccurate labelling and dosing. For example,
15 if a consumer purchases a 5 mg dose (and not a higher dose), this is because they want 5 mg and not
16 more. This choice is objectively reflected by their decision to purchase 5 mg, instead of a higher
17 dose. This consumer does not want to be tricked into taking a much higher dose, when they thought
18 they were purchasing and taking 5 mg. The same is true of a consumer who wanted to purchase a
19 lower, 3 mg dose—they chose to buy a 3 mg, and not a higher dose.

20 41. To be sure, a different consumer may choose and purchase a higher dose. But that is
21 the point: because melatonin is a neurohormone and higher doses come with higher risks and greater
22 safety concerns, each consumer pays for the right to make their own, informed choice about what
23 dosage to purchase. This is why the FDA itself requires that any excess be reasonable, and not
24 unreasonable. No reasonable consumer wants to be tricked into paying for and taking a higher dose
25 than they wanted.

1 **G. Amazon overcharges consumers.**

2 42. Amazon’s false and misleading labelling drives the demand for Amazon’s Melatonin.
3 As explained above, consumers demand melatonin that is accurately dosed and labelled. This is
4 recognized by scientists, Consumer Reports, and Amazon itself. If consumers knew the truth—that
5 its dosing and labelling was seriously inaccurate—the price of its products would crater. For
6 example, on the Amazon website, a bottle of Solimo Melatonin Gummies costs \$8.65. If consumers
7 knew the truth—that this bottle was inaccurately and unreasonably dosed and labelled—Amazon
8 could not sell it for anything close to \$8.65 (or sell it at all). For example, a reasonable consumer
9 who wanted to buy a product with 5 mg of melatonin would not buy an unreasonably dosed and
10 inaccurately labelled product, and would instead buy a reasonably dosed and accurately labelled
11 product. Plaintiffs and each class member paid a substantial price premium driven by Amazon’s
12 false and misleading labelling.

13 43. This price premium injury occurs independently of whether the products work to
14 induce sleep. If a melatonin bottle is inaccurately labelled and excessively dosed, it may still induce
15 sleep. But if consumers knew the truth, the market would not pay the same price for this bottle (and
16 consumers would instead spend their money on accurately labelled bottles). In the same vein, a
17 consumer is injured by this artificial price premium regardless of whether they experienced adverse
18 side effects. The injury occurs at the point of purchase—overpaying for a product that is overpriced
19 due to its misleading label.

20 44. In fact, without accurate dosing and labelling, Solimo Melatonin is worthless. What
21 reasonable consumer wants to buy a supplement that alters brain chemistry, if the product is
22 inaccurately labelled and unreasonably dosed? Plaintiffs and each class member paid for Solimo
23 Melatonin products that are, in truth, worthless. Thus, the full economic injury here is the entire price
24 of the Solimo Melatonin that Plaintiffs and class members purchased.
25
26
27

H. Plaintiffs were misled and harmed by Amazon’s misleading labelling.

45. Like other consumers, Plaintiffs bought Solimo Melatonin and relied on the accuracy of Amazon’s dosing and labelling.

46. Ms. Mack bought multiple bottles of Solimo Melatonin Tablets (5 mg) from Amazon.com while residing in Rochester, New York. She purchased a bottle on October 30, 2020 and another bottle on March 16, 2021. Her doctor had recommended she take only 5 mg of melatonin, so she wanted a supplement with a claimed 5 mg dose. Because she was buying a melatonin supplement that could alter brain chemistry, she relied on the fact that Amazon’s dosages were well-controlled (i.e., that the actual dosage would match the recommended dosages). She read and relied on the accuracy of the melatonin content on the label, when buying the product and deciding to take it. She selected and purchased a 5 mg dose (and not a higher claimed dose) because she did not want to take more than 5 mg of melatonin from the product, due to increased concerns about side effects and safety. In other words, she chose not to purchase a higher dose because she did not want a higher dose. She would not have purchased the product at the price she paid, if she knew that it was inaccurately labelled and unreasonably overdosed. In fact, knowing the truth, the product is worthless to her. The economic injury she suffered is the price premium she paid for the product that, due to its inaccurate dosing and labelling, is substantially less valuable (in fact it is worthless).

47. Ms. Farrow bought multiple bottles of Solimo Melatonin Gummies (5 mg) (from Amazon.com) while living in Mechanicsburg, Pennsylvania. Her first purchase was on February 26, 2020. Her last purchase was on September 18, 2021. And she bought a bottle approximately every few weeks, in the period between 2020 and 2021. Because she was buying a melatonin supplement that could alter brain chemistry, she relied on the fact that Solimo Melatonin’s dosages were well-controlled (i.e., that the actual dosage would match the recommended dosage of 5 mg). She read and relied on the accuracy of the melatonin content on the label (including the claimed dosage per serving on the front and back label), when buying the product and deciding to take it. She wanted a 5 mg dose (and no more) because she recognized that the risks of side effects, and long-term safety

1 concerns, increased with the dose. Also, she had never taken melatonin before, so she wanted to be
2 cautious and controlled about her dose. Over time, as she took the Solimo Melatonin, she
3 experienced grogginess and frequent headaches. Because she trusted Amazon, she kept concluding
4 that the cause was something else, and not her melatonin. So, she kept taking it. But when she finally
5 stopped taking the Solimo Melatonin, in 2021, her symptoms went away. Knowing what she knows
6 now—that Amazon’s dosages are unreasonably excessive—she realized that the Solimo caused these
7 side effects. She would not have purchased the product at the price she paid, if she knew that it was
8 inaccurately labelled and unreasonably overdosed. In fact, knowing the truth, the product is worthless
9 to her. The economic injury she suffered is the price premium she paid for the product that, due to its
10 inaccurate dosing and labelling, is substantially less valuable (in fact it is worthless).

11 48. Plaintiffs want Amazon to fix its manufacturing practices and sell its melatonin
12 products with accurate dosing and labelling. If Amazon fixes its Solimo melatonin products, so that
13 they are accurately dosed and labelled, they intend to buy them again and would buy them again. But
14 given Amazon’s past deception, Plaintiffs cannot rely on Amazon’s word alone that it has fixed the
15 problem. Plaintiffs face an imminent threat of harm because they will not be able to rely on
16 Amazon’s labels in the future, and will not be able to buy Solimo Melatonin, even if Amazon claims
17 to have fixed the issue. When shopping in the store, Plaintiffs have no way to easily check whether
18 the label and claimed dosing is accurate (that requires sophisticated lab testing). To buy Amazon’s
19 products again, Plaintiffs need the Court to enter an order forbidding Amazon from selling its
20 melatonin unless it has fixed the dosing and labelling problem. With that Court order in hand,
21 Plaintiffs could and would buy Solimo Melatonin again. And with that order in hand, millions of
22 other consumers will be protected from being deceived like Plaintiffs were deceived.

23 **V. Class action allegations.**

24 49. Plaintiffs bring claims individually and on behalf of the following class:
25
26
27

Class	Definition
Nationwide Class	All persons who purchased Solimo Melatonin in the United States during the applicable statute of limitations.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

50. The following people are excluded from the class and the subclasses: (1) any Judge or Magistrate Judge presiding over this action and the members of their family; (2) Defendant, Defendant’s subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs’ counsel and Defendant’s counsel, and their experts and consultants; and (6) the legal representatives, successors, and assignees of any excluded persons.

Numerosity

51. The proposed class contains members so numerous that separate joinder of each member of the class is impractical. There are millions of proposed class members.

Commonality

52. There are questions of law and fact common to the proposed class. Common questions of law and fact include, without limitation:

- Whether Solimo Melatonin products are accurately dosed and labelled;
- Whether Amazon’s labelling is misleading to reasonable consumers;
- The monetary relief needed to reasonably compensate Plaintiffs and the proposed class.

Typicality

53. Plaintiffs’ claims are typical of the proposed class. Like the proposed class, Plaintiffs purchased Solimo Melatonin.

1 ***Predominance and Superiority***

2 54. The prosecution of separate actions by individual members of the proposed class
3 would create a risk of inconsistent or varying adjudication with respect to individual members, which
4 would establish incompatible standards for the parties opposing the class. For example, individual
5 adjudication would create a risk that Solimo Melatonin labelling is found to be misleading for some
6 consumers, but not other similarly-situated consumers.

7 55. Common questions of law and fact predominate over any questions affecting only
8 individual members of the proposed class. These common legal and factual questions arise from
9 central issues which do not vary from class member to class member, and which may be determined
10 without reference to the individual circumstances of any particular class member. For example, a core
11 liability question is common: whether Amazon’s labelling is misleading to reasonable consumers.

12 56. A class action is superior to all other available methods for the fair and efficient
13 adjudication of this litigation because individual litigation of each claim is impractical. It would be
14 unduly burdensome to separately litigate millions of individual claims.

15 ***Classwide injunctive relief***

16 57. Amazon has acted or refused to act on grounds that apply generally to the class, so
17 that final injunctive relief is appropriate respecting the class as a whole.

18 **VI. Claims.**

19 **Count 1: Violation of the Washington Consumer Protection Act**

20 **(on behalf of Plaintiffs and the Nationwide Class)**

21 58. Plaintiffs incorporate each and every factual allegation set forth above.

22 59. Amazon’s terms of use purport to select Washington law for purchases made from
23 Amazon.com.

24 60. Plaintiffs bring this cause of action individually and for the Nationwide class.

25 61. As alleged in detail above, by selling inaccurately labeled and unreasonably overdosed
26 Solimo Melatonin, Amazon engaged in an unfair and deceptive practice. Defendant’s false and
27

1 misleading labelling had the capacity to deceive a substantial portion of the public. This practice also
2 causes substantial injury to consumers, which is not reasonably avoidable by consumers themselves
3 and is not outweighed by countervailing benefits. Consumers cannot reasonably avoid the injury
4 because consumers cannot tell how much melatonin is really in Solimo. And there are no benefits to
5 inaccurately labelled and unreasonably overdosed melatonin supplements.

6 62. Defendant's unfair and deceptive practices occurred in the conduct of trade or
7 commerce, including commerce directly and indirectly affecting the people of the state of
8 Washington. For out-of-state consumers, violating Washington consumer protection law gives
9 Amazon an improper advantage over other Washington companies that comply with this law.

10 63. Amazon's unfair and deceptive practices impact the public interest. These practices
11 were committed in the course of the Defendant's business, were committed repeatedly before the
12 Plaintiffs ever purchased a Solimo Melatonin product, and are part of a pattern of misrepresenting
13 whether Solimo Melatonin products were accurately dosed and labeled. There is a substantial
14 potential that Defendant's wrongful conduct will continue into the future.

15 64. Amazon's unfair and deceptive practices caused injury to Plaintiffs and class
16 members. Plaintiffs and class members were injured as a direct and proximate result of Amazon's
17 conduct because: (a) they would not have purchased Solimo Melatonin if they had known that Solimo
18 Melatonin was inaccurately labelled and unreasonably dosed; (b) they overpaid for the products
19 because the products are sold at a price premium due to Amazon's misleading labelling; or (c) they
20 received products that were, in truth, worthless.

21 65. Plaintiffs and class members are entitled to recover actual damages, treble damages,
22 costs and attorney fees, and other relief available under the Washington Consumer Protection Act.

23 **Count 2: Breach of Contract**

24 **(on behalf of Plaintiffs and the Nationwide Class)**

25 66. Plaintiffs incorporate by reference each and every factual allegation set forth above.

26 67. Plaintiffs allege this claim individually and on behalf of the Nationwide Class.

1 68. Plaintiffs and the class purchased Solimo Melatonin products directly from Amazon.

2 69. A valid contract existed between Plaintiffs (and the class) and Defendant. As part of
3 that contract, Defendant promised Plaintiffs that it would provide the dose claimed on the label. This
4 promise was displayed both on the front and back of the labels.

5 70. Plaintiffs and the class paid for the Solimo Melatonin products and performed all their
6 contractual obligations.

7 71. As alleged in detail above, Defendant materially breached the contract because the
8 Solimo Melatonin products in fact contain an unreasonable excess of melatonin, compared to the
9 label.

10 72. Defendant's breach was the proximate cause, and a substantial factor, in causing
11 losses and damage to Plaintiffs and the class.

12 73. As alleged in detail above, the market value of what Plaintiffs and class members
13 received was less than what Plaintiffs and Class members paid for.

14 74. Plaintiff Mack provided Defendant with notice of this breach (on behalf of herself and
15 the class), by mailing a notice letter to Defendant's headquarters on September 6, 2022. Plaintiff
16 Farrow provided Defendant with notice of this breach (on behalf of herself and the class), by mailing
17 a notice letter to Defendant's headquarters on November 21, 2022. Plaintiffs sent this notice shortly
18 after they discovered, via laboratory testing, that Amazon's dosing was inaccurate.

19 **Count 3: Breach of Express Warranty**

20 **(on behalf of Plaintiffs and Nationwide Class)**

21 75. Plaintiffs incorporate by reference each and every factual allegation set forth above.

22 76. Plaintiffs bring this cause of action individually and on behalf of the Nationwide
23 Class.

24 77. Defendant, as the designer, manufacturer, marketer, distributor, supplier, and/or seller
25 of the Solimo Melatonin products, issued a material, written warranty by representing that Solimo
26
27

1 Melatonin products contained the specific amount of melatonin identified on the label. This was an
2 affirmation of fact about the products and a promise relating to the goods.

3 78. This warranty was part of the basis of the bargain for Plaintiffs and class members.
4 Plaintiffs read and relied on this warranty.

5 79. The Solimo Melatonin products do not conform to this warranty because, as alleged in
6 detail above, they are not accurately (or reasonably) dosed and labelled.

7 80. Plaintiff Mack provided Defendant with notice of this breach of warranty (on behalf of
8 herself and the class), by mailing a notice letter to Defendant's headquarters on September 6, 2022.
9 Plaintiff Farrow provided Defendant with notice of this breach of warranty (on behalf of herself and
10 the class), by mailing a notice letter to Defendant's headquarters on November 21, 2022. Plaintiffs
11 sent this notice shortly after they discovered, via laboratory testing, that Amazon's dosing was
12 inaccurate.

13 81. Plaintiffs and class members were injured as a direct and proximate result of
14 Amazon's conduct because: (a) they would not have purchased Solimo Melatonin if they had known
15 that Solimo Melatonin was inaccurately labelled and unreasonably dosed; (b) they overpaid for the
16 products because the products are sold at a price premium due to Amazon's false express warranty;
17 or (c) they received products that were, in truth, worthless.

18 **Count 4: Breach of Implied Warranty**

19 **(on behalf of Plaintiffs and Nationwide Class)**

20 82. Plaintiffs incorporate by reference each and every factual allegation set forth above.

21 83. Plaintiffs bring this cause of action individually and on behalf of the Nationwide
22 Class.

23 84. Plaintiffs and the class purchased Solimo Melatonin products directly from Amazon.

24 85. Solimo Melatonin is subject to the implied warranty of merchantability.

25 86. Amazon breached this warranty because, as alleged in detail above, Solimo Melatonin
26 is inaccurately labelled and unreasonably dosed. In truth, Solimo Melatonin would not pass without
27

1 objection in the trade under the contract description; is not of fair average quality within the
2 description; is not fit for the ordinary purposes for which such goods are used; does not run, within
3 the variations permitted by the agreement, of even kind, quality and quantity within each unit and
4 among all units involved; is not adequately labeled; and does not conform to the promises or
5 affirmations of fact made on the label.

6 87. Plaintiff Mack provided Defendant with notice of this breach of implied warranty (on
7 behalf of herself and the class), by mailing a notice letter to Defendant's headquarters on September
8 6, 2022. Plaintiff Farrow provided Defendant with notice of this breach of implied warranty (on
9 behalf of herself and the class), by mailing a notice letter to Defendant's headquarters on November
10 21, 2022. Plaintiffs sent this notice shortly after they discovered, via laboratory testing, that
11 Amazon's dosing was inaccurate.

12 88. Plaintiffs and class members were injured as a direct and proximate result of
13 Amazon's conduct because: (a) they would not have purchased Solimo Melatonin if they had known
14 that Solimo Melatonin was inaccurately labelled and unreasonably dosed; (b) they overpaid for the
15 products because the products are sold at a price premium due to Amazon's false implied warranty;
16 or (c) they received products that were, in truth, worthless.

17 **VII. Jury Demand.**

18 89. Plaintiffs demand a jury trial on all issues so triable.

19 **VIII. Prayer for Relief.**

20 90. Plaintiffs seek the following relief individually and for the proposed class and
21 subclasses:

- 22 • An order certifying the asserted claims, or issues raised, as a class action;
- 23 • A judgment in favor of Plaintiffs and the proposed class;
- 24 • Damages, including statutory and treble damages, as allowed by law;
- 25 • Restitution, disgorgement, and other just equitable relief, as allowed by law;
- 26 • Attorney's fees, as available by law;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- An injunction;
- Pre- and post-judgment interest;
- Any additional relief that the Court deems reasonable and just.

Dated: December 5, 2022

Respectfully submitted,

By: /s/Jonas Jacobson

Jonas B. Jacobson (Cal. Bar No. 269912)*
jonas@dovel.com
Simon Franzini (Cal. Bar No. 287631)*
simon@dovel.com
DOVEL & LUNER, LLP
201 Santa Monica Blvd., Suite 600
Santa Monica, California 90401
Telephone: (310) 656-7066
Facsimile: (310) 656-7069

Wright A. Noel, WSBA No. 25264
20 Sixth Ave. NE
Issaquah WA 98027 Tel: 425-395-7786
Fax: 425-837-5396
Email: wright@carsonnoel.com

Counsel for Plaintiffs

**Admitted Pro Hac Vice*