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Case Number CVRI2402042 0000089954262 - Jason B. Galkin, Executive Officer/Clerk of the Court By Janelle Blackwell, Clerk

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9 AND THE PROPOSED CLASS

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

DARREN KAWAI, on behalf of
himself and those similarly situated,

Plaintiff,

v.

The NOCO Company,

Defendant.

Case No.: **CVRI 2402042**

CLASS ACTION

COMPLAINT FOR VIOLATIONS

Amount Demanded Exceeds \$10,000

Jury Trial Demanded

Plaintiff Darren Kawai ("Plaintiff"), on behalf of himself and all others similarly situated, brings this action against Defendant the NOCO Company ("NOCO"). Plaintiff, on behalf of himself and similarly situated persons, demands a trial by jury on all counts for which a right to trial by jury is allowed and, in support of this Complaint, alleges as follows:

NATURE OF THE ACTION

1. This class action for damages and equitable relief arises from false claims made by NOCO about the efficacy of its product, the NOCO Boost ("the Product"). These false claims led Class Members to purchase defective products that did not perform as advertised and suffer injuries because of the defects.
2. NOCO's advertisement of the Product heavily featured claims of its reliability, longevity, and safety.

1 3. Many consumers of the Product specifically sought it out to use in emergencies,
2 especially due to its claims about its ability to safely jump start a dead battery multiple times on a
3 single charge.

4 4. Consumers who purchased the Product relying on the Product's claims of reliability
5 and safety found that it did not work as advertised. Specifically, the consumers experienced the
6 product not working at all despite fully charging it.

7 5. Because the Product did not perform as advertised, consumers who purchased it
8 were damaged by, at the very least, the loss of the purchase price.

9 **PARTIES, JURISDICTION, AND VENUE**

10 6. Plaintiff is an individual who is domiciled in and is a citizen of Riverside County,
11 California.

12 7. Defendant NOCO is a foreign corporation with its principal place of business in
13 Cleveland, Ohio.

14 8. This is an action arising under California law. Accordingly, jurisdiction for this
15 claim is conferred to this Court pursuant to, *inter alia*, Cal. Code Civ. Proc., § 410.10.

16 9. Venue is proper under California Code of Civil Procedure § 395(b) because this
17 action arises from the provision of goods intended primarily for personal use, and the buyer of these
18 services—Plaintiff—resides in Riverside County.

19 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

20 10. The NOCO Company is an American company that designs and creates consumer
21 battery chargers, jump starters, batteries, and a wide range of accessories.

22 11. NOCO offers a variety of portable vehicle battery jump start apparatuses.

23 12. Of its products, NOCO offers a portable lithium battery jump starter pack named
24 “NOCO Boost.” NOCO offers at least five different variations of the Product: the NOCO Boost
25 Sport (GB20), the NOCO Boost Plus (GB40), the NOCO Boost XL (GB50), the NOCO Boost HD
26 (GB70), and the NOCO Boost Pro (GB150).

27 13. NOCO describes the Product as follows: “Ultra-compact, yet powerful with the
28 power of lithium technology. Pound for pound, lithium provides extreme energy output at a fraction

1 of the size. And coupled with high-end electronics and design, it produces safe and efficient
2 performance.”¹

3 14. NOCO further repeats the claim of efficiency and safety throughout its various
4 versions of the NOCO Boost. NOCO describes its GB40 Boost Plus product as an “ultra-safe and
5 mistake-proof design with spark-proof technology and reverse polarity protection, which allow it
6 to safely connect to any battery.”²

7 15. NOCO further describes the Product as a “[c]ompact, yet powerful lithium jump
8 starter rated at 1,000 Amps – up to 20 jump starts on a single charge.”³

9 16. The product packaging prominently describes in capital letters that the Product is an
10 “ULTRASAFE JUMP STARTER.”



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27 ¹ NOCO Boost, NOCO, <https://no.co/products/power> (last visited April 10, 2024).

28 ² NOCO GB40 Boost Plus, <https://no.co/gb40> (last visited April 10, 2024).

³ *Id.*

1 17. The product packaging also represents that the Product will “start dead batteries.”
2 The packaging continues: “Safely jump start dead batteries on most gasoline vehicles up to 6.0
3 liters or 3.0 liter diesel.”



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20 18. The Product is currently listed on NOCO’s website for \$99.95. On Amazon, the
21 Product is also listed for \$99.95.

19. On Amazon, NOCO again focuses on the Product’s longevity and safety.

Prime shipping.	
Brand	NOCO
Product Dimensions	4.61"D x 8.19"W x 4.21"H
Item Weight	7.94 Ounces
Amperage	1000 Amps
Peak Output Current	1000 Amps

Battery Cell Composition Lithium	Voltage 12 Volts
Vehicle Service Type Passenger Car, ATV, Van, Motorcycle, RV, UTV, Truck, Watercraft, Tractor	Battery Capacity 1000 Amp Hours

About this item

- **Start Dead Batteries** - Safely jump start a dead battery in seconds with this compact, yet powerful, 1000-amp lithium battery jump starter - up to 20 jump starts on a single charge - and rated for gasoline engines up to 6.0-liters and diesel engines up to 3.0-liters.
- **UltraSafe** - Safe and easy-to-use car jumper starter and jump pack without worrying about incorrect connections or sparks. Safely connect to any 12-volt vehicle with our mistake-proof design featuring spark-proof technology and reverse polarity protection.
- **Multi-Function** - It's a car jump starter, portable power bank, and LED flashlight. Recharge smartphones, tablets, and other USB devices. It's easily rechargeable from any powered USB port in 3-hours at 2.1-amps. Plus, an integrated 100-lumen LED flashlight with seven light modes, including emergency strobe and SOS.
- **Advanced Design** - Our most advanced car battery charger jump starter ever. Featuring high-discharge lithium technology for safe operation in any climate. A rugged and water-resistant enclosure rated at IP65. A rubberized over-molded casing to prevent scratching or marring of surfaces. And an ultra-compact and lightweight design weighing just 2.4 pounds.
- **In The Box** - GB40 UltraSafe Portable Car Jump Starter, Heavy Duty Booster Clamps, 12-Volt Car Charger, Micro USB Charging Cable, Microfiber Storage Bag, User Guide, 1-Year Warranty, and Designed in the USA.

> See more product details

20. The Product’s description on NOCO’s Amazon listing also boasts about its efficient ability to start dead batteries: **“Start Dead Batteries – Safely jump start a dead battery in seconds with this compact, yet powerful, 1000-amp lithium battery jump starter – up to 20 jump starts on a single charge – and rated for gasoline engines up to 6.0-liters and diesel engines up to 3.0-liters. UltraSafe – Safe and easy-to-use car jumper starter and jump pack without worrying about incorrect connections or sparks. Safely connect to any 12-volt vehicle with our mistake-proof design featuring spark-proof technology and reverse polarity protection.”**⁴

⁴ *NOCO Boost Plus GB40 1000A UltraSafe Car Battery Jump Starter, 12V Battery Pack, Battery Booster, Jump Box, Portable Charger and Jumper Cables for 6.0L Gasoline and 3.0L Diesel Engines, Gray*, AMAZON, https://www.amazon.com/NOCO-GB40-UltraSafe-Lithium-Starter/dp/B015TKUPIC/ref=cm_cr_arp_d_product_top?ie=UTF8 (last visited April 10, 2024) (emphasis added).

1 21. “Advanced Design – Our most advanced car battery charger jump starter ever.
2 Featuring high-discharge lithium technology for **safe operation in any climate.**”⁵

3 22. The Amazon listing repeats similar claims elsewhere on the page, noting that the
4 product’s main purpose is to “start dead batteries” and that it is “ultra-safe” with a “mistake-proof
5 design.” Furthermore, in its product description, the Product is said to “safely jump start a dead
6 battery in seconds – up to **20 times on a single charge.**”⁶

7 23. The Product is the “#1 Best Seller in Jump Starters” on Amazon with over 99,000
8 ratings. At the time of the filing of this Complaint, over 20,000 individuals bought the Product
9 within the last month. The Product has been sold on Amazon since at least 2010.

10 24. The Product is also sold through other retailers.

11 25. NOCO provides a 1-year express warranty with the Product.

12 26. NOCO’s claims of safety, reliability, and longevity led customers to pay a higher
13 price than they would have for other comparable products on the market.

14 27. Customers who purchased the Product found that it was not as reliable or long-
15 lasting as advertised by NOCO.

16 28. Customers noted that the Product would not jump start their car battery, despite fully
17 charging the Product.

18 29. For example, one Amazon customer wrote the following review on August 29, 2023:
19 “Bought the GB40 boost for emergency needs – like everyone else. A couple times a year, I’d take
20 it out of my vehicle trunk and recharge but it really held the charge so didn’t need much top-up
21 each time. The first time I needed it was about 4 years after purchase. The GB40 would not start
22 my Honda CR-v (2.4 L engine) even though it was rated for vehicles up to 6.0 L engine size. A call
23 to roadside assistance and got my jump start from the parking lot at the airport. About a week later,
24 I needed another jump, but likely this time the vehicle was in my garage. The GB40 again failed to
25 start my CR-V again...In the ensuing couple of weeks I needed to get more jump starts and each
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28 ⁵ *Id.*

⁶ *Id.*

1 time the GB40 failed... Bottom line, the GB40 didn't perform as expected on a vehicle within the
2 rated capacity of the GB40. Since the GB40 is out of warranty, I'm left holding the bag.”⁷

3 30. Another customer wrote on August 27, 2022: “After a frustrating experience trying
4 to get a jump for my car, I bought this so I'd never have to rely on anyone to get a jump start. So
5 far it has failed me nearly every time I needed it... The last time I tried to use it, it was fully charged
6 and it was summer, so no cold-battery excuse. I tried multiple times (and it was definitely hooked
7 up correctly). Thankfully I had jumper cables and I found a friend to help me jump start my
8 battery... I suppose I should just sign up for AAA. I am so not impressed with this product. I didn't
9 buy it to have a fancy phone charger, I bought it to help me when my battery is dead!”⁸

10 31. Based on these and other negative reviews on Amazon and through reviews on other
11 retail outlets, NOCO was aware of the flaws in the Product yet continued to advertise it as reliable
12 and “mistake-proof.” On information and belief, NOCO was aware of the flaws in the Product at
13 least as early as the first reviews of the product.

14 32. On information and belief, the frequency of returns for the Product and the reasons
15 customers gave for returning the Product also placed NOCO on notice of the flaws in the Product.
16 Yet, it continued to advertise the Product as reliable and long-lasting.

17 33. Because of how the Product is intended to be used for emergencies and
18 unpredictable situations, reliability and longevity is essential to customers of the Product.

19 34. Because the Product is not as reliable or long-lasting as advertised, it poses risks of
20 injury to users, most of whom are those needing to use the Product in emergencies.

21 35. Plaintiff first purchased the Product through Amazon on September 28, 2022.

22 36. Plaintiff purchased the Product new, not second-hand or used.

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25 ⁷ Customer Review, AMAZON (August 29, 2023) [HTTPS://WWW.AMAZON.COM/NOCO-GB40-ULTRASAFE-LITHIUM-STARTER/PRODUCT-REVIEWS/B015TKUPIC/REF=CM_CR_ARP_D_VIEWOPT_SR?IE=UTF8&REVIEWERTYPE=ALL_REVIEWS&FILTERBYSTAR=ONE_STAR&PAGENUMBER=1](https://www.amazon.com/NOCO-GB40-ULTRASAFE-LITHIUM-STARTER/PRODUCT-REVIEWS/B015TKUPIC/REF=CM_CR_ARP_D_VIEWOPT_SR?IE=UTF8&REVIEWERTYPE=ALL_REVIEWS&FILTERBYSTAR=ONE_STAR&PAGENUMBER=1) (last visited April 10, 2024).

26 ⁸ Customer Review, AMAZON (August 27, 2022) [HTTPS://WWW.AMAZON.COM/NOCO-GB40-ULTRASAFE-LITHIUM-STARTER/PRODUCT-REVIEWS/B015TKUPIC/REF=CM_CR_ARP_D_VIEWOPT_SR?IE=UTF8&REVIEWERTYPE=ALL_REVIEWS&FILTERBYSTAR=ONE_STAR&PAGENUMBER=1](https://www.amazon.com/NOCO-GB40-ULTRASAFE-LITHIUM-STARTER/PRODUCT-REVIEWS/B015TKUPIC/REF=CM_CR_ARP_D_VIEWOPT_SR?IE=UTF8&REVIEWERTYPE=ALL_REVIEWS&FILTERBYSTAR=ONE_STAR&PAGENUMBER=1) (last visited April 10, 2024).

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1 37. Before purchasing the Product, he reviewed the Amazon description and product
2 details to ensure the Product was suited to his needs. He noticed the various descriptions of the
3 Product as “ultrasafe,” “mistake-proof,” and its ability to “start dead batteries.”

4 38. Plaintiff purchased the Product in California, and it was delivered to his California
5 home.

6 39. Shortly after receiving the Product, Plaintiff found himself in need of jump starting
7 his car battery. Plaintiff used the Product on his dead car battery and his car started again.

8 40. However, the next time Plaintiff needed to use the Product was during an
9 emergency, when he was on the road and his car battery died. Plaintiff used the Product, but the
10 Product would not work, and his car battery remained dead. Plaintiff was left stranded, even though
11 Plaintiff had followed the Product’s instructions, and the Product was fully charged.

12 41. Plaintiff used the Product only as directed and for its intended purpose.

13 **CLASS ACTION ALLEGATIONS**

14 42. Plaintiff brings this lawsuit as a class action pursuant to Cal. Code Civ. Proc. § 382.

15 43. **Class Definition.** The Class consists of and is defined as all California citizens,
16 including Plaintiff, who (a) on or after April 15, 2020, (b) purchased the Product, and (c) suffered
17 damages because of the Product not being fit for its intended purpose. All Class Members will have
18 encountered the claims that the Product is reliable and long-lasting because it is a key feature of
19 NOCO’s advertising of the Product.

20 44. Plaintiff reserves the right to amend this definition as discovery proceeds and to
21 conform to the evidence.

22 45. Excluded from the Class are NOCO, its agents, representatives, and employees; any
23 judge to whom this action is assigned; and any member of that judge’s staff and immediate family.

24 46. While the exact numbers of the Class are unknown at this time, Plaintiff submits
25 that, upon information and belief, thousands of individuals throughout California are potential
26 members of the Class. Because the Class Members are so numerous, individual joinder of these
27 members is impractical. Further, the disposition of the Class’s claims in a single action will provide
28 substantial benefits to all parties and the Court.

1 47. Plaintiff further alleges the Class Members will be ascertainable through NOCO's
2 electronic records, data, and databases.

3 48. Plaintiff shares common questions of law and/or fact with each Class Member. The
4 common questions of law and/or fact include, but are not limited to, the following:

- 5 a. whether NOCO's false statements induced consumers to purchase the Product;
6 b. whether NOCO's conduct injured consumers; and
7 c. the appropriate nature of class-wide injunctive or other equitable relief.

8 49. The common questions of law and/or fact predominate over questions that may
9 affect only individual members.

10 50. A class action will cause an orderly and expeditious administration of claims by the
11 Class Members. Economies of time, effort, and expenses will be fostered, and uniformity of
12 decisions will be ensured.

13 51. Plaintiff's claims are typical of the claims of the Class since they are based on and
14 arise out of identical facts constituting the wrongful conduct of NOCO.

15 52. Plaintiff is a Class Member. Plaintiff is an adequate representative of the Class
16 because his interests do not conflict with the interests of other Class Members, and he will fairly
17 and adequately protect their interests. Additionally, Plaintiff is aware of his responsibility as a class
18 representative and has retained experienced counsel fully capable of, and intent upon, vigorously
19 pursuing the action. Class counsel has extensive experience in class action litigation.

20 53. There is no plain, speedy, or adequate remedy other than by maintenance of this
21 class action since Plaintiff is informed and believes that the damage to each Plaintiff is relatively
22 small, making it economically unfeasible to pursue remedies via means other than a class action.
23 Consequently, there would be a failure of justice but for the maintenance of the present class action.

24 54. The Class Members have suffered actual damages, losses, and harms as those
25 sustained by Plaintiff, including statutory damages.

26 55. Plaintiff's causes of action against NOCO may be maintained as a class action
27 pursuant to Cal. Code Civ. Proc. § 382 because the questions here are of common interest, there
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1 are numerous parties, the Class Members are readily ascertainable, and it is impracticable to bring
2 them all before the Court.

3 **COUNT I**

4 **BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

5 **CAL. COM. CODE § 2315**

6 56. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
7 in the preceding paragraphs.

8 57. This claim is brought by Plaintiff individually and on behalf of the Class.

9 58. Class Members purchased the Product intending to use it for a particular purpose –
10 to jump start a dead car battery.

11 59. NOCO had reason to know that consumers of the Product needed a reliable and
12 long-lasting battery jump starter pack for dead car batteries. As discussed in more detail above,
13 NOCO specifically advertised the Product as a powerful device, capable of jump-starting multiple
14 times on a single charge, including a description of the Product's intended use for cars, boats, RVs,
15 trucks, and more. Representations about the Product's safety and ability to jump start batteries are
16 repeated on the Product's packaging.

17 60. Since NOCO is a widely known manufacturer of consumer electronics, and
18 specifically billed the Product as safe and long-lasting, the Class Members relied on NOCO's skill
19 and judgment to furnish an adequately reliable and safe product.

20 61. NOCO had reason to know that Class Members would rely on its skill and judgment
21 in furnishing an adequately reliable and long-lasting product for consumer use as a jump starter
22 because it advertised the Product as such.

23 62. The Product is, in fact, not adequately reliable, long-lasting, or fit for its intended
24 use.

25 63. Plaintiff and all Class Members have suffered damages because NOCO breached
26 the implied warranty, the nature and exact amount to be determined at trial.

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COUNT II

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

CAL. COM. CODE § 2314(2)

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4 64. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
5 in the preceding paragraphs.

6 65. This claim is brought by Plaintiff individually and on behalf of the Class.

7 66. Class Members purchased the Product from NOCO directly or through authorized
8 third-party retailers.

9 67. When Class Members purchased the Product, NOCO was in the business of
10 manufacturing and selling portable lithium battery jump starter packs.

11 68. The Product was not fit for the ordinary purpose for which portable lithium battery
12 jump starter packs are used, namely, to be used to jump start a dead car battery. As discussed in
13 more detail above, NOCO specifically advertised the Product as reliable and long-lasting, including
14 descriptions of the Product's use for various gas engine vehicles. Representations about the
15 Product's safety and ability to jump start batteries are repeated on the Product's packaging.
16 Individuals purchasing the Product for its reliability and safety features could not use it for that
17 purpose because it was not reliable or safe.

18 69. The Product did not conform to the promises or affirmations of fact made by NOCO.

19 70. The Product was delivered to Plaintiffs and other Class Members in a condition that
20 was defective, susceptible to defects, or unsafe.

21 71. The Plaintiff and Class Members took reasonable steps within a reasonable time to
22 notify NOCO that the Product did not have the expected quality.

23 72. The Plaintiff and Class Members were injured.

24 73. The failure of the Product to have the expected quality was the cause of the Plaintiff
25 and Class Members' injuries, the nature and exact amount to be determined at trial.

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COUNT III
BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE
SONG-BEVERLY CONSUMER WARRANTY ACT
CAL. CIV. CODE § 1790 ET SEQ.

74. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

75. This claim is brought by Plaintiff individually and on behalf of the Class.

76. Class Members are consumers who purchased the Product new, primarily for personal, family, or household purposes. Class Members did not use the Product for business purposes.

77. Class Members purchased the Product either directly from NOCO or from an authorized retailer. These transactions occurred in California.

78. Class Members purchased the Product to start dead batteries for their vehicle or other machinery equipped with gas engines. Most often, Class Members sought out the Product for its reliability, longevity, and safety qualities because they intended to use the Product in times of emergencies or unpredictable situations. As discussed in more detail above, NOCO specifically advertised the Product as “mistake-proof,” safe, and reliable. The claims of the Product’s safety are also repeated on the Product’s packaging.

79. Class Members discovered that the Product was neither as reliable nor long-lasting as claimed immediately after use began or at least shortly after use began.

80. NOCO had reason to know that consumers of the Product would use it for a particular purpose: as a jump starter, most commonly for dead car batteries.

81. Since NOCO is a self-proclaimed manufacturer or premium consumer battery chargers, jump starters, and lithium batteries, and specifically sold the Product as reliable and long-lasting, the Class Members relied on NOCO’s skill and judgment in furnishing a robust, ultra-safe, easy to use, and reliable jump starter for use by individuals needing to jump start their dead battery.

1 82. NOCO had reason to know that Class Members would rely on their skill and
2 judgment in furnishing a reliable and long-lasting jump starter for use in emergencies or
3 unpredictable situations because it was advertised as such.

4 83. Plaintiff and Class Members were harmed.

5 84. The failure of the Product to be suitable was the cause of the harm to Plaintiff and
6 Class Members.

7 85. The Product is, in fact, not fit for its intended use, and Plaintiff and all Class
8 Members have suffered damages as a result of NOCO's breach of implied warranty.

9 86. As a result of NOCO's acts or omissions, Plaintiff and Class Members have
10 sustained damage in the amount actually paid, plus prejudgment interest thereon at the legal rate.

11 87. As a further result of NOCO's actions, Plaintiff and Class Members have sustained
12 incidental and consequential damages in an amount yet to be determined, plus interest at the legal
13 rate.

14 88. As a further result of NOCO's actions, Plaintiff and Class Members have sustained
15 damages equal to the difference between the value of the Product as accepted and the value the
16 Product would have had if it had been as warranted.

17 89. As a direct result of NOCO's acts or omissions and in pursuing Plaintiff's claim, it
18 was necessary for Plaintiff to retain legal counsel. Pursuant to the Song-Beverly Consumer
19 Warranty Act, Plaintiff is entitled to recover his attorneys' fees based upon actual time expended
20 and reasonably incurred in connection with the commencement and prosecution of this action.

21 **COUNT IV**

22 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

23 **SONG-BEVERLY CONSUMER WARRANTY ACT**

24 **CAL. CIV. CODE § 1790 ET SEQ.**

25 90. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
26 in the preceding paragraphs.

27 91. This claim is brought by Plaintiff individually and on behalf of the Class.

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1 92. Class Members are consumers who purchased the Product new, primarily for
2 personal, family, or household purposes. Class Members did not use the Product for business
3 purposes.

4 93. Class Members purchased the Product either directly from NOCO or from an
5 authorized retailer. These transactions occurred in California.

6 94. Pursuant to Cal. Civ. Cod. § 1792, the Product was accompanied by an implied
7 warranty of merchantability.

8 95. NOCO impliedly warranted that the Product would pass without objection in the
9 trade for the ordinary purpose for which it was intended. This includes that the Product was
10 adequately constructed or assembled and conformed to the promises or affirmation of fact made
11 to Plaintiff and Class Members.

12 96. As evidenced by the defects and malfunctions alleged herein, the Product was non-
13 merchantable because it did not have the quality the buyer would reasonably expect. It would not
14 pass without objection in the trade; namely, it was not adequately constructed or assembled and
15 because it did not or could not conform to the promises or affirmations of fact made to Plaintiff
16 and Class Members.

17 97. As a result of NOCO's acts or omissions, Plaintiff and Class Members have
18 sustained damage in the amount actually paid, plus prejudgment interest thereon at the legal rate.

19 98. As a further result of NOCO's actions, Plaintiff and Class Members have sustained
20 incidental and consequential damages in an amount yet to be determined, plus interest at the legal
21 rate.

22 99. As a further result of NOCO's actions, Plaintiff and Class Members have sustained
23 damages equal to the difference between the value of the Product as accepted and the value the
24 Product would have had if it had been as warranted.

25 100. As a direct result of NOCO's acts or omissions and in pursuing Plaintiff's claim, it
26 was necessary for Plaintiff to retain legal counsel. Pursuant to the Song-Beverly Consumer
27 Warranty Act, Plaintiff is entitled to recover his attorneys' fees based upon actual time expended
28 and reasonably incurred in connection with the commencement and prosecution of this action.

COUNT V

VIOLATION OF THE CALIFORNIA BUSINESS & PROFESSIONS CODE

§ 17500 ET SEQ. FOR FALSE AND MISLEADING ADVERTISING

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4 101. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
5 in the preceding paragraphs.

6 102. This claim is brought by Plaintiff individually and on behalf of the Class.

7 103. Plaintiff and Class Members relied on NOCO's advertising claims that the Product
8 is reliable and intended to jump start a vehicle "up to 20 times on a single charge." These claims
9 appeared in multiple places on NOCO's website listing, on NOCO's Amazon listing, and pages
10 for the Product on other retailers' websites. As discussed in more detail above, NOCO specifically
11 advertised the Product as able to "start dead batteries." This claim is repeated on the Product's
12 packaging.

13 104. NOCO's advertisements were likely to deceive or mislead consumers because the
14 Product does not, in fact, jump start a vehicle up to 20 times on a single charge.

15 105. NOCO knew or should have known that the Product does not jump start a vehicle
16 up to 20 times on a single charge.

17 106. NOCO's advertisements did, in fact, mislead Plaintiff and Class Members, causing
18 them to purchase the Product even though the Product was not adequate for the advertised purpose.

19 107. NOCO's advertisements caused Plaintiff and Class Members to purchase the
20 Product at a higher price than they would have paid for comparable products.

21 108. Plaintiff and Class Members suffered damages due to NOCO's false and misleading
22 conduct, the nature and exact amount to be determined at trial. This damage includes monetary
23 damages based on purchasing an unusable Product and damages through injuries caused by the
24 Product.

25 109. At a minimum, to the extent the Court ultimately deems the remedies at law that
26 Plaintiff requests inadequate, Plaintiff and Class Members are entitled to equitable relief such as
27 restitution and injunctive relief enjoining NOCO from continuing to engage in this false and
28 misleading conduct.

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COUNT VI

COMMON LAW FRAUDULENT MISREPRESENTATION

110. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

111. This claim is brought by Plaintiff individually and on behalf of the Class.

112. NOCO made misrepresentations of a material fact about the Product. As discussed in more detail above, NOCO falsely claimed that the Product could “jump start a vehicle up to 20 times on a single charge,” even though the Product was not suited for such purposes.

113. As discussed in more detail above, NOCO knew that the Product was not, in fact, as reliable and long-lasting as represented.

114. NOCO intended to deceive consumers into believing that the Product was suitable as a reliable and long-lasting portable jump starter to induce reliance and make sales to their target market, namely individuals who would need to restart their car batteries during emergencies or unpredictable situations.

115. Plaintiff and Class Members justifiably relied on the misrepresentations repeatedly made by NOCO about the reliability and longevity qualities of the Product.

116. Plaintiff and Class Members suffered damages due to NOCO’s false and misleading conduct, the nature and exact amount to be determined at trial.

COUNT VII

NEGLIGENT MISREPRESENTATION

117. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in preceding paragraphs.

118. This claim is brought by Plaintiff individually and on behalf of the Class.

119. NOCO made misrepresentations of material facts about the Product. As discussed in more detail above, NOCO falsely claimed that the Product was reliable and long-lasting, to the point of being able to jump start a vehicle 20 times on a single charge, even though the Product was not suited for such purposes.

1 120. As pleaded herein, NOCO did not have reasonable grounds for believing the Product
2 was adequately reliable or long-lasting for ordinary use yet made claims of its reliability and
3 longevity.

4 121. NOCO made these representations with the intent that Plaintiff and Class Members
5 would rely on these claims, or else they would not have featured the claims so prominently in their
6 advertisements of the Product.

7 122. Plaintiff and Class Members justifiably relied on the misrepresentations made by
8 NOCO.

9 123. Plaintiff and Class Members were damaged due to their reliance on NOCO’s
10 misrepresentations.

11 **COUNT VIII**

12 **VIOLATION OF THE UNFAIR COMPETITION LAW**

13 **CAL. BUS. & PROF. CODE § 17200, ET SEQ.**

14 124. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
15 in the preceding paragraphs.

16 125. This claim is brought by Plaintiff individually and on behalf of the Class.

17 126. NOCO committed acts of unfair competition, as described above, in violation of the
18 Unfair Competition Law (“UCL”).

19 127. NOCO’s conduct constitutes “unlawful” business practice within the meaning of the
20 UCL. It includes, without limitation, False and Misleading Advertising in Violation of § 17500 et
21 seq. of the California Business & Professions Code, violations of the Song-Beverly Consumer
22 Warranty Act, Cal. Civ. Code §1790 et seq., and negligent or fraudulent misrepresentation.

23 128. NOCO’s conduct constitutes “unfair” business practices within the meaning of the
24 UCL because, as described in the preceding paragraphs, NOCO’s practices of making false
25 representations about the durability and safety of the Product are unscrupulous, unethical, and
26 substantially injurious to Plaintiff and Class Members, are not outweighed by any utility from the
27 practices, and were not reasonably avoidable by Plaintiff and Class Members. Any purported
28

1 benefit arising out of NOCO's conduct does not outweigh the harms caused to the victims of
2 NOCO's conduct.

3 129. NOCO's conduct also constitutes an "unfair" business practice within the meaning
4 of the UCL because it is and was contrary to California public policy and numerous legislatively
5 declared policies, including the False and Misleading Advertising provisions in the California
6 Business & Professions Codes and the Song-Beverly Consumer Warranty Act. NOCO's conduct
7 contravenes the spirit and purpose of these statutes and further violates these laws, with an actual
8 adverse impact on consumers.

9 130. NOCO's conduct further constitutes an "unfair" business practice within the
10 meaning of the UCL because the gravity of the harm to Plaintiffs and Class Members far outweighs
11 any purported utility of NOCO's conduct. The impact of NOCO's conduct on Plaintiffs and Class
12 Members far outweighs any purported reasons, justifications, and motives that NOCO had for
13 making false advertisements and representations about the reliability and longevity of the Product.
14 On information and belief, NOCO's only reason, justification, or motive for falsely representing
15 the reliability or longevity of the Product is to increase profits through additional sales and higher
16 margins on sales. NOCO's desire for pecuniary gain from additional sales of the Product is far
17 outweighed by the impact of NOCO's conduct on Plaintiff and Class Members. NOCO's desire
18 for additional profits does not justify making false or misleading representations about the Product,
19 especially those reflecting its actual reliability or longevity.

20 131. NOCO's conduct, as described above, also constitutes a "fraudulent" business
21 practice violative of the UCL. As explained in the preceding paragraphs, NOCO's false statements
22 about the Product fraudulently present the impression that the Product was adequately reliable and
23 long-lasting to be used during emergencies or unpredictable situations. This conduct was designed
24 to – and did – deceive consumers as to the true quality and value of the product they purchased.

25 132. NOCO knew or should have known that their false representations and conduct
26 constituted unlawful, unfair, and fraudulent business practices that were likely to deceive a
27 reasonable consumer.
28

1 133. Plaintiff and Class Members have suffered injuries, in fact, and have lost money as
2 a result of each of NOCO's UCL violations in that they were deceived into purchasing the Product,
3 which was not adequately reliable or long-lasting for the purposes of Plaintiff and Class Members.

4 134. At a minimum, to the extent the Court ultimately deems the remedies at law that
5 Plaintiff requests inadequate, Plaintiff and Class Members are entitled to equitable relief such as
6 restitution and injunctive relief under Cal. Bus. And Pro. Code § 17203 enjoining NOCO from
7 continuing to conduct business through unlawful, unfair, and fraudulent acts and practices.

8 **PRAYER FOR RELIEF**

9 Named Plaintiff and the class requests the following relief:

- 10 a. Certification of the Class;
- 11 b. A judgment against NOCO;
- 12 c. Actual damages suffered by Plaintiff and the Class;
- 13 d. The costs of suit, including reasonable attorney's fees and pre-judgment and post-
14 judgment interest as provided by law;
- 15 e. Such other relief as the Court deems just and proper.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff respectfully demands a trial by jury on all issues that can be tried to a jury.

18
19 Date: April 15, 2024

Respectfully submitted,

21 /s/ Michael Merriman

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