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David W. Slayton,
Executive Officer/Clerk of Court,
By J. Covarrubias, Deputy Clerk

8 *Counsel for Plaintiff and the Putative Class*

9 [Additional Counsel on Signature Page]

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 BEN CLARDY, STEPHANIE
13 EMBERTON, MEREDITH RIDGE,
14 ELIZABETH BOWEN, AND
15 SHANITA TAYLOR,
16 INDIVIDUALLY AND ON BEHALF
17 OF ALL OTHERS SIMILARLY
18 SITUATED;

19 PLAINTIFFS,

20 V.

21 MIKU, INC.

22 DEFENDANT.

CASE NO.: 23STCV15456

**CLASS ACTION COMPLAINT
FOR VIOLATIONS OF:**

**BREACH OF IMPLIED
WARRANTY**

**MAGNUSSON-MOSS
WARRANTY ACT,
15 U.S.C. § 2301, et. seq**

BREACH OF CONTRACT

**UNFAIR COMPETITION LAW,
CAL. BUS. & PROF. CODE §§
17200, ET SEQ.**

DEMAND FOR JURY TRIAL

1 Ben Clardy, Stephanie Emberton, Meredith Ridge, Elizabeth Bowen, and
2 Shanita Taylor (collectively, “Plaintiffs”), on behalf of themselves and all others
3 similarly situated, by and through their attorneys, make the following allegations
4 against Defendant Miku, Inc. pursuant to the investigation of their counsel and
5 based upon information and belief, except as to allegations specifically pertaining
6 to Plaintiffs, which are based on their personal knowledge.
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9 **NATURE OF THE ACTION**

10
11 1. This is a consumer protection action brought on behalf of consumers
12 who purchased and used the Miku Pro.

13
14 2. The Miku Pro is a wall or stand mounted baby monitoring system with
15 an integrated high-definition camera, two-way audio, and breathing and
16 temperature monitor. Defendant retails the base camera system and wall mount for
17 \$399 and separately sells other accessories and services, including a subscription-
18 based analytics app called Care + for use with the Miku Pro.
19

20
21 3. In November 2022 a defective software update which was intended to
22 enhance the Miku Pro’s firmware rendered the system wholly inoperable for most,
23 if not all users whose system received the update. The defective software update
24 left the entire device incapable of being turned on, leaving parents without a means
25 to monitor babies in their cribs. These consumers lost their ability to use their Miku
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1 Pro devices when Defendant’s intentionally “bricked” or rendered consumers’
2 Miku Pro devices nonfunctional.¹

3
4 4. Because Defendant could not fix the Miku Pro with a software patch,
5 Defendant announced a no-cost return and replace program which required
6 customers to send in their inoperable Miku Pro for a “replacement”. However, this
7 replacement included refurbished and used parts, was of lower quality than the
8 product consumers had originally purchased, and in many instances did not work,
9 leaving parents and other caregivers, still, without a working monitor often weeks
10 after their Miku Pro became inoperable.
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14 5. Plaintiffs bring this action individually and on behalf of all purchasers
15 of the Miku Pro which was rendered inoperable because of Defendant’s faulty
16 software update. Based on Defendant’s unlawful conduct, Plaintiffs seek damages,
17 restitution, and reasonable attorneys’ fees and costs for: (i) breach of implied
18 warranty; (ii) violation of the Magnusson-Moss Warranty Act; (iii) breach of
19 contract; and (i) violation of California’s Unfair Competition Law.
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26 ¹ “Brick” means “to render (an electronic device, such as a smartphone) nonfunctional (as by
27 accidental damage, malicious hacking, or software changes).” BRICK, MERRIAM-
28 WEBSTER’S DICTIONARY, <https://www.merriam-webster.com/dictionary/brick> (last accessed
June 13, 2023).

JURISDICTION AND VENUE

1
2 6. Plaintiffs bring this class action pursuant to Cal. Civ. Proc. Code §
3
4 382.

5 7. This Court has subject matter jurisdiction under Cal Civ. Proc. Code §
6 410.10 and Section 10, Article VI of the California Constitution. The amount in
7
8 controversy exceeds any applicable jurisdictional minimum.

9 8. The Court has personal jurisdiction over Defendant because Defendant
10 is headquartered and maintains its principal place of business in California.
11 Further, Defendant intentionally markets, promotes, and sells its products and
12 services, including the Miku Pro and Care +, to consumers in California and
13
14 knowingly collects substantial revenue from such transactions in California, such
15 that Defendant conducts significant business in California and otherwise
16
17 intentionally and purposefully avails itself of the markets and the benefits of doing
18
19 business in California.

20 9. Under California Civil Code Section 1780(c) venue is proper in Los
21 Angeles County because Defendant is headquartered in and conducts significant
22
23 business in Los Angeles County, engages in substantial transactions in Los Angeles
24
25 County, and because a substantial amount of the transactions between Defendant
26
27 and the Class members described herein occurred in Los Angeles County.
28

THE PARTIES

1
2 10. Plaintiff Ben Clardy is a citizen of Texas. Mr. Clardy purchased his
3 Miku Pro in December 2022. Mr. Clardy noticed his Miku Pro entirely stopped
4 working in around late-April 2023. Mr. Clardy received from Defendant a Miku
5 Pro under the replacement program which is not performing as well as the unit he
6 purchased.
7

8
9 11. Plaintiff Stephanie Emberton is a citizen of Michigan. Ms. Emberton
10 purchased her Miku Pro in March 2022. Ms. Emberton noticed her Miku Pro
11 entirely stopped working in around late-April 2023.
12

13 12. Plaintiff Meredith Ridge is a citizen of Michigan. Ms. Ridge
14 purchased her Miku Pro in March 2022. Ms. Ridge noticed her Miku Pro entirely
15 stopped working in around late April 2023. Ms. Ridge received from Defendant a
16 Miku Pro under the replacement program which is also completely non-functional.
17

18 13. Plaintiff Elizabeth Bowen is a citizen of Ohio. Ms. Bowen purchased
19 her Miku Pro in February 2022. Contemporaneously with her purchase of the Miku
20 Pro, Ms. Bowen subscribed to the Care + app on an annual basis. Ms. Bowen noticed
21 her Miku Pro entirely stopped working in May 2022 and she lost the benefit of her
22 Care + app subscription. Ms. Bowen did not receive a replacement device or a
23 refund.
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1 14. Plaintiff Shanita Taylor is a citizen of Tennessee. Ms. Taylor obtained
2 her Miku Pro in December 2022. Contemporaneously with her purchase of the Miku
3 Pro, Ms. Taylor subscribed to the Care + app on an annual basis. Ms. Taylor noticed
4 her Miku Pro entirely stopped working in June 2023 and she lost the benefit of her
5 Care + app subscription. Ms. Taylor did not receive a replacement device or refund.
6

7
8 15. Defendant Miku, Inc. manufactures and sells at retail, direct to
9 consumers, baby monitoring systems, including the Miku Pro. Defendant is
10 organized and incorporated under the laws of Delaware and maintains its principal
11 place of business and headquarters in Los Angeles, California in Los Angeles
12 County.
13

14 **FACTUAL BACKGROUND**

15 **I. Defendant's Defective Software Update Renders the Miku Pro** 16 **Inoperable**

17
18 16. The Miku Pro is a stand or wall-mountable system, significantly more
19 advanced than the baby monitors of old, which were essentially two-way radios. The
20 Miku Pro bills itself as a "contact-free health monitor" which streams live,
21 "stunning" 1080p high-definition video feed of a baby in its crib, with "crystal clear
22 night vision", directly to a parent's smart device whether "down the hall or on the
23 other side of the world."² The Miku Pro is equipped with breathing and temperature
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28 ² "Meet the Miku Pro Smart Baby Monitor" available at
<https://www.youtube.com/watch?v=S6QsvozABTE> (last accessed May 31, 2023).

1 sensors which deliver “customizable real time reports, with no latency, so [a parent]
2 can be sure [their] little one is getting a good night’s rest.”³ Parents are encouraged
3 to “think of [the Miku Pro’s] sensors as an extension of you, so it’s like you’re right
4 there” as the product is intended to “give parents a restful night too.”⁴ The Mike Pro
5 is advertised as “simple and seamless for a new family’s journey.”⁵
6

7
8 17. Defendant touts the Miku Pro’s ability to “always be ahead of the
9 curve” with its ability to receive “software versions that update automatically.”⁶
10

11 18. However, one such software update which Defendant issued on
12 November 15, 2022 rendered the system fully inoperable. Defendant continued to
13 issue the defective update until April 10, 2023.
14

15 19. On or about May 4, 2023 in response to customer complaints,
16 Defendant issued a notice which stated, in relevant part, as follows:
17

18 We recently became aware that some of our **Miku Pro**
19 monitors stopped working unexpectedly. We immediately
20 investigated and traced the cause to a November 15, 2022
21 firmware update that unintentionally began to consume the
22 monitor’s available on-board memory.

23 We program our monitors to not work if they do not have
24 sufficient on-board memory. This condition, if it occurs, will
25 be obvious. The monitor may not power on at all, or it may
26 power on but fail to boot up. (You will see flashing LEDs,
27 but otherwise the monitor will be unresponsive).

28 ³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ <https://mikucare.com/pages/technology>

1 The issue affects *only* those Miku Pro monitors that were in
2 operation and received the firmware update *between*
3 *November 15, 2022 and April 10, 2023*. You're receiving this
4 letter because our records show you used your Miku Pro
5 monitor during those five months when the firmware update
6 was available for download, and the issue may affect your
7 device in the future.

8 On April 11, 2023, we released a new firmware update that
9 remedies the root cause of the issue. Any **Miku Pro** monitors
10 that were *first* paired or activated on or since April 11, 2023,
11 are not impacted by this issue. This impacts only the **Miku**
12 **Pro**; Miku Original monitors are *not* affected.

13 We know how important it is for our customers to have the
14 peace of mind our monitors deliver. Miku is taking
15 immediate steps to minimize any inconvenience to you from
16 this issue.

17 20. The notice goes on to advise that customers with a non-working Miku
18 Pro should visit Defendant's website to request a no-cost return and replacement.
19 However, Defendant swapped its "bricked" Miku Pros, which customers purchased
20 new for the cost of \$399 or more, for a refurbished unit which Defendant stated
21 would be "a working replacement" refurbished to "original factory condition

22 **II. Defendant's Replacement Devices Were Inadequate and**
23 **Defendant Failed to Refund Customers' Money**

24 21. Defendant refused to refund customers' money for the sale of the
25 inoperable Miku Pro and instead offered only a replacement product. These
26 replacement units were not "working replacements" and were not refurbished to
27
28

1 “original factory condition.” The replacements suffered from a host of problems and
2 performed worse than the new product customers purchased originally before the
3 defective update rendered the units inoperable.
4

5 22. Defendant’s failure to provide a working replacement for parents who
6 urgently needed a baby monitor has been the source of myriad customer
7 complaints:⁷
8

- 9
- 10 • “Customers who have received their replacement Miku are
11 advising they are refurbished devices which are also not
12 operable with various glitches including not being able to
13 connect to WiFi networks etc. I have completely lost faith in
14 Miku and will no longer accept a (refurbished) device that
15 they are forcing out. I am seeking a full refund under the terms
16 of Miku's warranty and their negligent firmware update
17 leading to complete shutdown of my device. To this point
18 Miku has been largely unresponsive to any email, other than
19 saying I will get a "replacement device" which hasn't been
20 confirmed and nothing has been received. Miku has done
21 nothing but gaslight their customer base[.]”.

22 ...

23 “I did receive a refurbished Miku following my BBB
24 complaint, however the "new" device is not operable as it has
25 audio and Wi-Fi connection issues. Miku is providing
26 inoperable devices and have lost complete faith in the
27 company.”

28 May 9, 2023; May 12, 2023

- “They finally decided to send me a replacement and I received
a refurbished product after nearly a week. And while the
product was connecting, the night vision wasnt working
which makes the product basically useless. The response I

⁷ <https://www.bbb.org/us/ca/los-angeles/profile/baby-accessories/miku-inc-1216-1266002/complaints?page=1> (last accessed June 13, 2023)

1 have been getting from them is that they are looking into it
2 but haven't heard anything back. Over the last 3 days I
3 haven't heard back from them until and unless I asked for an
4 update. Its sad to see the status of affairs with the company,
5 what seemed like a potentially great product and service go
6 down in all aspects so fast."

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12 May 8, 2023

- 13 • "They sent me a replacement and the new camera wouldn't
14 even connect kept flashing white, telling ** we have no Wi-
15 Fi which was a lie as everything was working, then a warning
16 authentication service unavailable. I want a full refund and
17 they can have both cameras and accessories back. Its unsafe
18 to not have a reliable camera. I'm losing sleep over this!"

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**III. Defendant Breached Its Warranty by Failing to Replace its
Inoperable Products and Failing to Refund Customers'
Purchase Price**

23. Defendant warranted its products (including the Miku Pro) for one year
from the date of purchase.

24. Under the warranty, when a Miku product is defective, customers are
entitled to receive either (a) a working replacement or (b) a full refund. The
warranty states in relevant part:

Miku warrants solely to the original purchaser ("Purchaser")
that each Miku Baby Monitor unit (the "Product") will be free
from defects in materials and workmanship for twelve (12)
months from the date of tender of such Product unit by Miku
(i.e., from the date of delivery) following the original retail
purchase (the "Warranty Period"). Miku's entire liability and
Purchaser's sole and exclusive remedy for any breach of this
limited warranty will be, at Miku's option: (A) to replace the
defective Product with a functionally equivalent product
(repair parts and products may be either reconditioned or new,

1 but, if reconditioned, shall be of the same quality as new parts
2 or products); or (B) if Miku determines that it is unable to
3 repair or replace such Product, Miku will refund to Purchaser
4 the amount actually paid by Purchaser to Miku for the
5 applicable Product. All replaced parts requiring return
6 become the property of Miku.

7 25. Defendant’s replacement units were not “functionally equivalent” as
8 the suffer from myriad performance defects and were of lesser quality than the new
9 units customers originally purchased.

10 26. Defendant also failed to issue refunds to customers despite customers
11 being entitled to such refunds under Defendant’s warranty.

12
13 **IV. Miku Upsells Customers The Care + App, but also Failed to Refund**
14 **Customers who were Unable to Use the App Because of the Defective**
15 **Software Update**

16 27. Defendant also offered purchasers of the Miku Pro a subscription to
17 enhanced, app-based analytics which uses data taken from the Miku Pro device to
18 help parents “stay aware of changes in [their] child’s unique sleep and breathing
19 patterns.”
20

21 28. The Care + app’s capabilities are enhanced over the free Miku app in
22 that the Care + app monitors a baby’s breathing and sleep trends, gives parents “trend
23 notifications”, and includes a daily tracker and 30-day or unlimited video storage as
24 opposed to 7-day video storage available with the free Miku app.
25

26
27 29. Defendant sells Care + on an automatically renewing, subscription
28 basis and offers two products depending on video storage. Care + with 30-day video

1 storage costs \$9.99 per month or \$99 a year. Care + with unlimited video storage
2 costs \$19.99 a month or \$199 a year. Customers' stored credit cards are
3 automatically charged on a monthly or yearly basis.
4

5 30. Care + requires a functioning Miku Pro monitor to work. When
6 Defendant's system update rendered all Miku Pro's inoperable, Care + purchasers
7 immediately lost the benefits of the app which they had paid for including trend
8 monitoring, trend notification, and enhanced video storage.
9

10 31. Defendant's replacement program did not cover disruptions in the Care
11 + subscription and Defendant did not refund Care + subscribers a refund of their
12 subscription fees for the time period in which they were not receiving the Care +
13 services for which they had paid on either a monthly or annual basis.
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15

16 CLASS ACTION ALLEGATIONS

17 32. Plaintiffs bring this action on Plaintiffs' own behalf and on behalf of
18 all persons similarly situated as a class action pursuant to Cal Civ. Proc. Code §382.
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21 The Class which Plaintiff seeks to represent is comprised of and defined as:

22 All persons in United States who, within the applicable statutory period, up
23 to and including the date of final judgment in this action,
24 purchased or received a Miku Pro which was rendered inoperable because of
25 Defendant's software update.

26 Plaintiffs Bowen and Taylor also seek to represent a subclass ("The Care +
27 Subclass") comprised of and defined as:
28

1 All persons in the United States who, within the applicable statutory period,
2 up to and including the date of final judgment in this action, subscribed to
3 Care + and who were unable to use Care + functions because the subscriber's
Miku Pro was rendered inoperable because of Defendant's software update.

4 The Class and Care + Subclass are collectively identified herein as "the Classes"

5
6 33. Excluded from the Class are Defendant, its corporate parents,
7 subsidiaries, franchisees and affiliates, officers and directors, any entity in which
8 Defendant has a controlling interest, and the legal representatives, successors or
9 assigns of any such excluded person or entities, and the Court to which this action
10 is assigned.
11

12
13 34. Plaintiffs reserve the right under Rule 3.765 of the California Rules of
14 Court to amend or modify the class description with greater specificity or further
15 division into subclasses or limitation to particular issues based upon discovery or
16 further investigation.
17

18 35. *Numerosity.* The members of the class are so numerous that joinder
19 of all members is impracticable. While the exact number of class members is
20 unknown to Plaintiffs at this time, on information and belief the Class comprises at
21 least thousands of consumers throughout the United States. The precise number of
22 Class members and their identities are unknown to Plaintiffs at this time but may
23 be determined through discovery. Class members may be notified of the pendency
24 of this action by postal or electronic mail and/or publication through the
25 Defendant's sales records.
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1 36. ***Well-Defined Community of Interest.*** There is a well-defined
2 community of interest among the members of the class because common questions
3 of law and fact exist as to all members of the class and predominate over any
4 questions affecting solely individual members of the class. Common question of
5 law and fact include, but are not limited to:
6

- 7
- 8 (a) Whether Defendant's November 2022 software update caused Miku Pro
9 units to become inoperable;
 - 10 (b) Whether Defendant breached implied warranties applicable to the Miku
11 Pro and Care + app;
 - 12 (c) Whether Defendant breached express warranties applicable to the Miku
13 Pro;
 - 14 (d) Whether Defendant breached its contract with Care + subscribers;
 - 15 (e) Whether Plaintiff and the Class are entitled to, and the amount of any,
16 damages and/or restitution;
 - 17 (f) Whether Plaintiff and the Class are entitled to, and the amount of any,
18 damages and/or restitution;
 - 19 (g) Whether Plaintiffs and the Class are entitled to attorneys' fees and costs
20 under Cal. Civ. Proc. Code § 1021.5.

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26 37. ***Typicality.*** Plaintiffs' claims are typical of the claims of the Class in
27 that Plaintiffs and the Class sustained damages as a result of Defendant's uniform
28

1 wrongful conduct, based upon Defendant's defective software update rendering
2 their Miku Pro unit inoperable, Defendant's breaching applicable warranties, and
3 defendant failing to refund Plaintiffs' purchase and subscription price.
4

5 38. *Adequacy.* Plaintiffs will fairly and adequately protect Class members'
6 interests. Plaintiffs have no interest antagonistic to Class members' interests, and
7 Plaintiffs have retained counsel that have considerable experience and success in
8 prosecuting complex class-actions and consumer-protection cases.
9

10 39. *Superiority.* A class action is superior to all other available methods
11 for the fair and efficient adjudication of this controversy because joinder of all
12 members is impracticable, the likelihood of individual class members prosecuting
13 separate claims is remote, and individual class members do not have a significant
14 interest in individually controlling the prosecution of separate actions. Relief
15 concerning Plaintiffs' rights under the laws alleged herein and with respect to the
16 class as a whole would be appropriate. Plaintiffs know of no difficulty to be
17 encountered in the management of this action that would preclude its maintenance
18 as a class action.
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23 40. Defendant has acted or failed to act on grounds generally applicable to
24 the Class, thereby making appropriate final injunctive relief with respect to the
25 Class as a whole.
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1 41. Without a class action, Defendant will continue a course of action that
2 will result in further damages to Plaintiffs and members of the Class and will likely
3 retain the benefits of its wrongdoing.
4

5 42. Based on the foregoing allegations, Plaintiffs' claims for relief include
6 those set forth below.
7

8 **FIRST CLAIM FOR RELIEF**
9 **Breach of Implied Warranty**

10 43. Defendant provided Plaintiffs and the Class Members with an implied
11 warranty that the Miku Pro and Care + app were merchantable and fit for the ordinary
12 purposes for which they were sold. However, the Miku Pro, and consequently, the
13 Care + app, were not fit for their ordinary purpose because they were rendered
14 useless after the November 2022 defective firmware upgrade. Miku Pro owners
15 were no longer to use their monitors. As such, Care + subscribers could not use
16 function of the Care + app which relied on a working monitor.
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19
20 44. Defendant impliedly warranted that the Miku Pro and Care + app were
21 of merchantable quality and fit for such use. This implied warranty included, among
22 other things, a warranty that the Miku Pro and Care + app were reliable and would
23 not be rendered useless or that consumers would be left without a baby monitor and
24 the functionality of the Care + app reliant on a working Miku Pro which they had
25 paid for.
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1 45. Contrary to the applicable implied warranties, the Miku Pro and Care +
2 app were not fit for their ordinary and intended purpose of providing Plaintiffs and
3 the Class Members with reliable baby monitoring.
4

5 46. Defendant's actions, as complained of herein, breached the implied
6 warranty that the Miku Pro and Care + app were of merchantable quality and fit for
7 such use.
8

9 47. Plaintiffs and the Members of the Classes were harmed as a result of
10 Defendant's breach.
11

12 **SECOND CLAIM FOR RELIEF**
13 **Breach of Express Warranty—Magnusson-Moss Warranty Act**
14 **(15 U.S.C. § 2301, *et. seq*)**
15 **(On Behalf of the Class)**

16 48. Plaintiffs re-allege and incorporate each and every allegation set forth
17 above as if fully set forth herein.

18 49. The Miku Pro is a consumer product as defined in 15 U.S.C. §2301(1).

19 50. Plaintiffs and Class Members are consumers as defined in 15 U.S.C.
20 §2301(3).
21

22 51. Defendant is a supplier and warrantor as defined in 15 U.S.C. §§
23 2301(4) and (5).
24

25 52. Defendant provided Plaintiffs and Class Members with “written
26 warranties” within the meaning of 15 U.S.C. § 2301(6).
27
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1 53. 15 U.S.C. § 2310(d)(3)(C) is satisfied because Plaintiffs properly
2 invoke jurisdiction under Cal. Civ. Proc. Code § 382 and because the number of
3 class members exceeds 100 persons.
4

5 54. Defendant breached its express warranty made to Plaintiffs, as follows:
6 Defendant promised, affirmed, and expressly warranted that its products “shall be
7 free from defects in material and workmanship”. In other words, Defendant
8 expressly warranted that the Miku Pro would continue to work as intended and
9 breached its warranty when the device stopped working after Defendant issued its
10 defective software update in November 2022. Defendant further breached its
11 warranty by failing to replace the inoperable units with “functionally equivalent
12 products” or providing refunds.
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16 55. Defendant’s warranty became part of the basis of the bargain for
17 Plaintiffs and other Class members because such statements are among the facts a
18 reasonable consumer would consider material in the purchase of a baby monitor with
19 advanced capabilities.
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22 56. Despite repeated demands by Plaintiffs and Class Members that
23 Defendant repair or replace the Miku Pro units rendered inoperable by Defendant’s
24 defective software update in violation of 15 U.S.C. § 2304.
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1 57. As a direct and proximate result of Defendant's breach of its express
2 written warranty, Plaintiffs and Class Members have been damaged in an amount
3 to be proven at trial.
4

5 **THIRD CLAIM FOR RELIEF**
6 **Breach of Contract**
7 **(On behalf of the Care + Subclass)**

8 58. Plaintiffs Bowen and Taylor repeat and re-allege the above allegations
9 as if fully set forth herein.

10 59. Plaintiffs Bowen and Taylor and members of the Care + Subclass
11 contracted with Defendant for provision of enhanced analytics and other features of
12 the Care + app.
13

14 60. Plaintiffs and the Care + Subclass members paid a monthly or annual
15 fee in exchange for the enhanced analytics of other features of the Care + app.
16

17 61. Defendant failed to provide said the features which Plaintiffs Bowen
18 and Taylor and the Care + subclass paid for due to the Miku Pro device being
19 inoperable because of Defendant's defective software update.
20

21 62. No contract provision allowed Defendant to cease providing the Care
22 + app features which Plaintiff and members of the Care + Subclass paid for.
23

24 63. Defendant breached the terms of its contract with Plaintiffs Bowen and
25 Taylor and members of the Care + Subclass by failing to provide Care + analytics
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1 and features which subscribers had paid for due to the Miku Pro device being
2 inoperable because of Defendant’s defective software update.

3
4 64. Plaintiffs Bowen and Taylor and members of the Care + Subclass have
5 performed all, or substantially all, of the obligations imposed on them under the
6 contract.

7
8 65. Plaintiffs and members of the Care + Subclass have sustained damages
9 as a result of Defendant’s breach of the contract and breach of the implied covenant
10 of good faith and fair dealing.
11

12 **FOURTH CLAIM FOR RELIEF**
13 **Violation of California’s Unfair Competition Law (“UCL”),**
14 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**
15 **(On behalf of the Classes)**

16 66. Plaintiffs re-allege and incorporate by reference every allegation set
17 forth in the preceding paragraphs as though alleged in this claim.

18 67. Plaintiffs brings this claim individually and on behalf of the members
19 of the proposed Classes against Defendant.
20

21 68. Cal. Bus. & Prof. Code § 17200, *et seq.* (the “UCL”) prohibits acts of
22 “unfair competition,” including any unlawful and unfair business acts or practices.
23

24 69. Under the “unlawful” prong of the UCL, a violation of another law is
25 treated as unfair competition and is independently actionable.
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1 70. Defendant committed unlawful practices in violation of the UCL by
2 violating the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301, *et. seq.*, and
3 committing a common law beach of implied warranty and breach of contract:
4

5 A. Defendant failed to abide by its express warranty the Miku Pro “shall
6 be free from defects in material and workmanship” when Miku Pro
7 units ceased working altogether after Defendant issued its defective
8 software update in November 2022. Defendant further failed to uphold
9 its express warranty by failing to replace the inoperable units with
10 “functionally equivalent products” or providing refunds.
11

12 B. Defendant breached its duties under common law by selling non-
13 merchantable goods insofar as the Miku Pro was unsuitable for its
14 ordinary purpose as a baby monitor with advanced features once
15 rendered totally inoperable after Defendant’s defective software
16 update in November 2022.
17

18 C. Defendant breached its duty under common law by failing to abide by
19 its contract with Care + subscribers who were unable to use enhanced
20 analytics and other features of care plus because their Miku Pro units
21 were rendered inoperable after Defendant’s defective software update
22 in November 2022.
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1 71. Under the “unfair” prong of the UCL, a business practice is unfair if
2 that practice offends an established public policy or when the practice is immoral,
3 unethical, oppressive, unscrupulous or substantially injurious to consumers.
4

5 72. Defendant committed unfair acts and practices in violation of the UCL
6 by, *inter alia*, negligently issuing a defective software update which rendered the
7 Miku Pro inoperable, and by continuing to issue a defective software update even
8 after having received consumer complaints that consumers’ Miku Pro units were
9 being rendered inoperable.
10

11 73. Plaintiffs and the Class reserve the right to allege other violations of
12 law which constitute unlawful, unfair, or fraudulent business acts or practices as
13 Defendant’s conduct is ongoing and continues to this date.
14

15 74. As a direct and proximate result of Defendant’s unlawful and/or unfair
16 practices described herein, Defendant has received, and continues to hold,
17 unlawfully retained money and accrued interest belonging to Plaintiffs and the Class
18 in the form of proceeds for the sale of Miku Pro units and Care + app subscriptions
19 which should be disgorged and returned to customers.
20

21 75. Defendant’s acts and omissions as alleged herein violate obligations
22 imposed by statute, are substantially injurious to consumers, offend public policy,
23 and are immoral, unethical, oppressive and unscrupulous as the gravity of the
24 conduct outweighs any alleged benefits attributable to such conduct.
25
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27
28

1 76. There were reasonably available alternatives to further Defendant's
2 legitimate business interests, other than the conduct described herein.

3
4 77. Defendant's acts, omissions, nondisclosures, and misleading
5 statements as alleged herein were and are false, misleading, and/or likely to deceive
6 the consuming public.

7
8 78. As a result of Defendant's unlawful and unfair business practices,
9 Plaintiffs and the Class have suffered an injury in fact and have lost money in an
10 amount to be determined at the trial of this action.

11
12 79. Pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17204, Plaintiffs and
13 the other members of the Class are entitled to an order requiring Defendant to
14 disgorge its unjust profits and make restitution to
15 Plaintiffs and the Class members.

16
17 **PRAYER FOR RELIEF**

18
19 WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class,
20 respectfully requests that this Court enter an Order:

- 21
22 A. Certifying the Class as defined above;
23
24 B. Appointing Plaintiffs as Class representatives under Cal. Civ. Proc.
25 Code § 382 and appointing Plaintiffs' counsel as Class counsel;
26
27 C. Finding in favor of Plaintiffs and the Class on all claims alleged herein;
28

1 D. Awarding actual, compensatory, statutory, and/or punitive damages in
2 amounts to be determined by the Court and/or jury;

3 E. Awarding prejudgment interest on all amounts awarded;

4 F. Awarding equitable relief in the form of restitution and all other forms
5 of equitable monetary relief;
6

7 G. Awarding injunctive relief as pleaded or as the Court may deem
8 proper; and
9

10 H. Awarding Plaintiffs and the Class reasonable attorneys' fees expenses,
11 and costs of suit; and
12

13 I. Awarding such other equitable or other relief as the Court may deem
14 just and proper.
15

16
17 **JURY TRIAL**

18 Plaintiffs hereby demand a trial by jury on all claims and issues so triable.
19

20
21 Dated: June 30, 2023

Respectfully Submitted,

22 **HEDIN HALL LLP**

23
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