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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Priscilla Banh, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

Thermos LLC,

Defendant.

Case No.

CLASS ACTION COMPLAINT

- (1) UNFAIR COMPETITION
- (2) CONSUMER LEGAL REMEDIES ACT
- (3) FALSE ADVERTISING
- (4) BREACH OF EXPRESS WARRANTY
- (5) BREACH OF IMPLIED WARRANTY
- (6) NEGLIGENT MISREPRESENTATION
- (7) INTENTIONAL
MISREPRESENTATION/FRAUD
- (8) BREACH OF CONSUMER
PROTECTION STATUTES
- (9) UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

1 Plaintiff Priscilla Banh (“Plaintiff”) brings this action on behalf of herself and all others
2 similarly situated against Defendant Thermos LLC (“Thermos” or “Defendant”). Plaintiff makes
3 the following allegations pursuant to the investigation of her counsel and upon information and
4 belief, except as to allegations specifically pertaining to herself and her counsel, which are based
5 on personal knowledge.

6 **INTRODUCTION**

7 1. This class action aims to hold Defendant, Thermos LLC, responsible for failing to
8 truthfully and accurately label and market its thermos products.

9 2. Defendant manufactures, distributes, advertises and sells a line of thermos products
10 for containing liquids (the “Products¹”).

11 3. The Products’ front label prominently states the Products are “dishwasher safe.”

12 4. The Products’ online listings also state that the Products are “dishwasher safe.”

13 5. Defendant uniformly makes the misrepresentations about the Products being
14 dishwasher safe in all its online listings, marketing materials, and on the Products’ packaging.

15 6. These representations create the impression that the Products are safe for ordinary
16 and normal use in all areas of a standard residential dishwasher without being damaged.

17 7. But this statement is a false misrepresentation, as the Products cannot withstand
18 ordinary and normal use in all areas of the standard residential dishwasher without being damaged.

19 8. Reasonable consumers understand dishwasher safe to mean the Products are safe
20 for ordinary and normal use in all areas of a residential dishwasher without being damaged.

21 9. Like other reasonable consumers, Plaintiff was deceived by Defendant’s unlawful
22 conduct and brings this action individually and on behalf of all similarly situated consumers to
23 remedy Defendant’s unlawful acts.

24 **THE PARTIES**

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¹ The Products include the thermos products in Defendant’s funtainer collection, icon series
28 collection, and stainless king collection.

1 10. Defendant Thermos LLC is a company organized under the laws of Delaware with
2 its principal place of business located in Schaumburg, Illinois. At all times during the class period,
3 Defendant was the manufacturer, distributor, marketer, and seller of the Products.

4 11. Plaintiff Banh purchased three of Defendant's products from Defendant's Funtainer
5 collection from Target.com while residing in San Francisco, California, in or around November
6 2023. Prior to purchasing the products, Plaintiff saw and believed Defendant's representations on
7 the products' listing that the products were "dishwasher safe," which caused her to believe the
8 products were safe for ordinary and normal use in all areas of a residential dishwasher without
9 being damaged, i.e. without the Product material warping, peeling or deteriorating. She had also
10 seen the front label representations that the product was "dishwasher safe" on physical labels of the
11 Products in stores shortly before she made her purchases. When shopping for the products, she
12 specifically sought out products that were "dishwasher safe" as it is more convenient and usually
13 higher quality. When purchasing the products, Plaintiff did not expect that the products
14 "dishwasher safe" representations to be false. Plaintiff did not expect Defendant to publicly place
15 deceptive statements about the products on the front label of the products.

16 12. Plaintiff saw and relied on the "dishwasher safe" claim on the product listing and on
17 the front label of the products. Plaintiff would not have purchased the products, or would have paid
18 less for the products, had she known that the products were not "dishwasher safe" because the
19 products were not capable of withstanding normal and ordinary use in all areas of a standard
20 residential dishwasher without being damaged. As a result, Plaintiff suffered injury in fact when
21 she spent money purchasing products she would not have purchased, or would have paid less for,
22 absent Defendant's misconduct.

23 13. Plaintiff desires to and would purchase Defendant's Products again if the Products'
24 labels were accurate and if the Products truthfully were dishwasher safe. However, because of
25 Defendant's ongoing misrepresentations, Plaintiff is unable to rely on the Products' labeling when
26 deciding in the future whether to purchase the Products. Considering that the Defendant continues
27 to sell the Products for sale, she is at an imminent risk of future injury.

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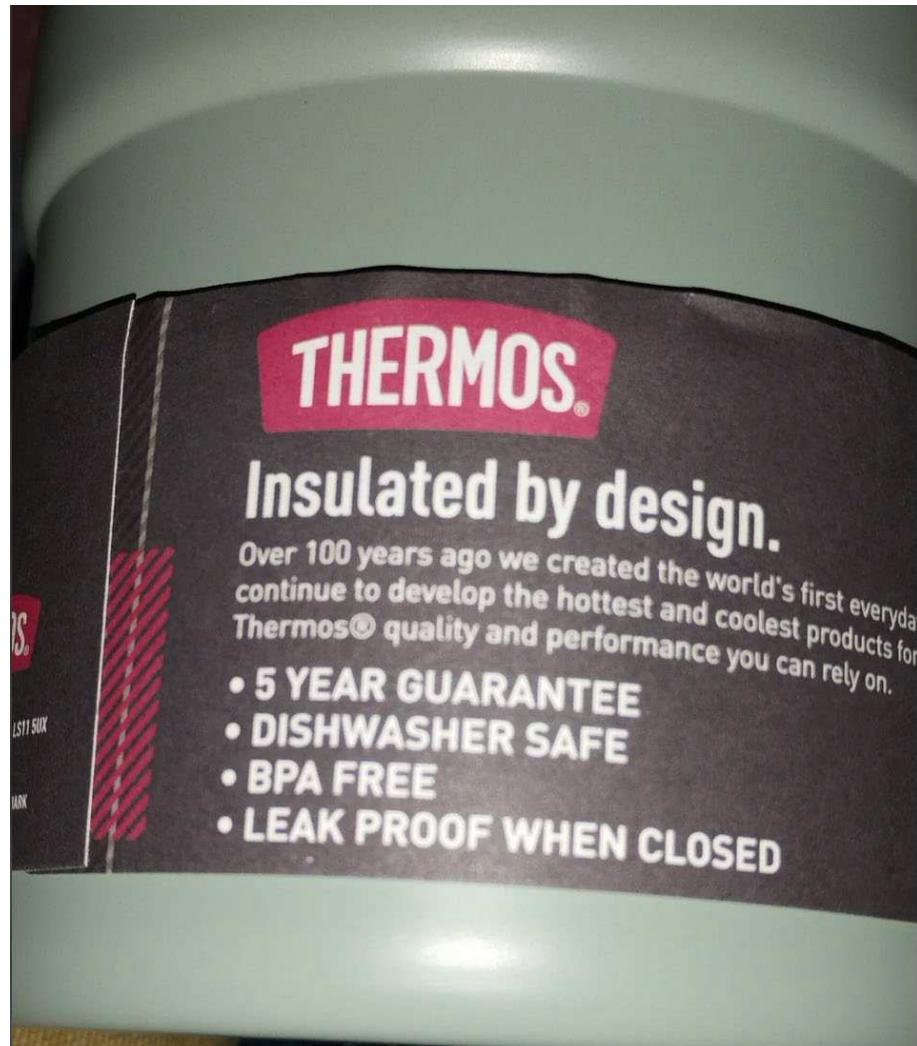
1 California, and it distributed, advertised, and sold the Products to Plaintiff and Class Members in
2 this State and District.

3 **FACTUAL BACKGROUND**

4 18. Defendant sells a variety of thermos products meant for maintaining liquids.

5 19. On the front of packaging of the Products, Defendant represents the Products are
6 “dishwasher safe.”

7 20. Below is an illustration of what the representation looks like on the packaging of
8 the Products:



26 21. Defendant also makes unequivocal “dishwasher safe” representations about the
27 Products in its marketing materials and online listings for its Products. One such example taken
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1 from the Product listing for the products purchased by Plaintiff from Target.com can be seen
2 below:

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5 **Highlights**

- 6 • 12oz vacuum-insulated water bottle with straw
- 7 • Double-wall stainless steel construction
- 8 • Fun character prints
- 9 • Flip top lid
- 10 • BPA-free
- 11 • Integrated handle
- 12 • Suitable for cold beverages
- 13 • Dishwasher safe

14 22. Defendant's wrongful conduct in making these representations is still ongoing.

15 23. It is reasonable to infer from these representations, as Plaintiff did, that the Products
16 would not be damaged through ordinary and normal use in all areas of a standard residential
17 dishwasher without being damaged.

18 24. But contrary to Defendant's representations, the Products are not dishwasher safe as
19 they are not safe for ordinary and normal use in all areas of a standard residential dishwasher as
20 they will be materially damaged through normal and ordinary use, such as warping, peeling and
21 deteriorating – which is what Plaintiff experienced with the products she purchased from
22 Defendant.

23 25. It is common for companies selling the same type of products as Defendant's
24 Products, which can withstand ordinary and normal use in all areas of a residential dishwasher, to
25 label their product as dishwasher safe.
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1 its online listings, including its target.com listing where Plaintiff purchased Defendant’s product,
2 and through its marketing materials.

3 34. **HOW:** Defendant made material misrepresentations and/or failed to disclose
4 material facts regarding the Products, by making statements about the Product being dishwasher
5 safe, even though the Products cannot tolerate ordinary and normal use in all areas of a standard
6 residential dishwasher without being damaged, including warping, peeling and deteriorating. The
7 “dishwasher safe” representations were made on the front label of the Products, and also in the
8 online listings and marketing materials for the Products.

9 35. **WHY:** Defendant made the material misrepresentations and/or omissions detailed
10 herein for the express purpose of inducing Plaintiff, the proposed class members, and all
11 reasonable consumers to purchase and/or pay for the Products, the effect of which was that
12 Defendant profited by selling the Products to tens of thousands of consumers.

13 36. **INJURY:** Plaintiff and the proposed class members purchased, paid a premium, or
14 otherwise paid more for the Products when they otherwise would not have absent Defendant’s
15 misrepresentations and/or omissions.

16 **CLASS ACTION ALLEGATIONS**

17 37. Plaintiff brings this action on behalf of herself and all others similarly situated
18 pursuant to Federal Rules of Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3). The proposed classes
19 are defined below as (“collectively, the “Classes”):

20 **The Nationwide Class**

21 All persons in the United States who, within the applicable statute of
22 limitations period, up to and including the date of final judgment in
23 this action, who purchased any of Defendant’s Products

24 **Multi-State Consumer Protection Subclass:**

25 All persons who, during the maximum period of time permitted by law,
26 purchased Defendant’s Products in Alaska, Arizona, Arkansas, California,
27 Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia,
28 Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine,
Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska,
Nevada, New Hampshire, New Jersey, New Mexico, New York, North

1 Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode
2 Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont,
3 Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

4 **Multi-State Warranty Subclass:**

5 All persons who, during the maximum period of time permitted by law,
6 purchased Defendant's Products in Alaska, Arizona, Arkansas, California,
7 Colorado, Connecticut, Delaware, District of Columbia, Georgia, Hawaii,
8 Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts,
9 Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New
10 Hampshire, New Jersey, New Mexico, New York, North Carolina, North
11 Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South
12 Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia,
13 Washington, West Virginia, and Wyoming.

14 **California Subclass:**

15 All persons in California who, during the maximum period of time
16 permitted by the law, purchased Defendant's Products for their personal
17 use.

18 38. The Classes do not include (1) Defendant, its officers, and/or directors; (2) the
19 Judge and/or Magistrate to whom this cause is assigned; (3) the Judge or Magistrate's staff and
20 family; and (4) Plaintiff's counsel and Defendant's counsel.

21 39. Plaintiff reserves the right to amend the above class definitions and add additional
22 classes and subclasses as appropriate based on investigation, discovery, and the specific theories of
23 liability.

24 40. ***Numerosity.*** Members of the Class are so numerous that their individual joinder
25 herein is impracticable. On information and belief, the Class comprises at least millions of
26 consumers. The precise number of Class members and their identities are unknown to Plaintiff at
27 this time but may be determined through discovery. Class members may be notified of the
28 pendency of this action by mail and/or publication through the distribution records of Defendant.

41. ***Commonality and Predominance.*** Common questions of law and fact exist as to
all Class members and predominate over questions affecting only individual Class members.
Common legal and factual questions include, but are not limited to:

- 1 (a) Whether Defendant is responsible for the conduct alleged herein which was
2 uniformly directed to all consumers who purchased the Products;
- 3 (b) Whether Defendant’s misconduct set forth in this Complaint demonstrates that
4 Defendant engaged in unfair, fraudulent, or unlawful business practices with respect
5 to the advertising, marketing, and sale of the Products;
- 6 (c) Whether Defendant made misrepresentation concerning the Products that were
7 likely to deceive the public;
- 8 (d) Whether Plaintiff and the Class are entitled to injunctive relief;
- 9 (e) Whether Plaintiff and the Class are entitled to money damages and/or restitution
10 under the same causes of action as the other Class Members.

11 42. With respect to the California Subclass, additional questions of law and fact
12 common to the members include whether Defendant violated California’s Consumers Legal
13 Remedies Act, (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*, California’s False Advertising Law
14 (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq.*, and California’s Unfair Competition Law
15 (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*

16 43. **Typicality.** Plaintiff is a member of the Class that Plaintiff seeks to represent.
17 Plaintiff’s claims are typical of the claims of each Class Member in that every member of the Class
18 was susceptible to the same deceptive, misleading conduct and purchased the Products. Plaintiff is
19 entitled to relief under the same causes of action as the other Class Members.

20 44. **Adequacy.** Plaintiff will fairly and adequately protect Class members’ interests.
21 Plaintiff has no interests antagonistic to Class members’ interests, and Plaintiff has retained
22 counsel that have considerable experience and success in prosecuting complex class-actions and
23 consumer-protection cases.

24 45. **Superiority.** A class action is superior to all other available methods for the fair and
25 efficient adjudication of this controversy for, *inter alia*, the following reasons: prosecutions of
26 individual actions are economically impractical for members of the Class; the Class is readily
27 definable; prosecution as a class action avoids repetitious litigation and duplicative litigation costs,
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1 conserves judicial resources, and ensures uniformity of decisions; and prosecution as a class action
2 permits claims to be handled in an orderly and expeditious manner.

3 46. Defendant has acted or failed to act on grounds generally applicable to the Class,
4 thereby making appropriate final injunctive relief with respect to the Class as a whole.

5 47. Without a class action, Defendant will continue a course of action that will result in
6 further damages to Plaintiff and members of the Class and will likely retain the benefits of its
7 wrongdoing.

8 48. Based on the foregoing allegations, Plaintiff's claims for relief include those set
9 forth below.

10 **CAUSES OF ACTION**

11 **Count I:**

12 **Violations of California's Unfair Competition Law ("UCL"),**
13 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***
14 **(On behalf of Plaintiff and the California Subclass)**

15 49. Plaintiff re-alleges and incorporates by reference every allegation set forth in the
16 preceding paragraphs as though alleged in this Count.

17 50. Plaintiff brings this claim under the UCL individually and on behalf of the
18 California Class against Defendant.

19 51. The UCL prohibits any "unlawful," "fraudulent," or "unfair" business act or
20 practice and any false or misleading advertising. Defendant committed unlawful business acts or
21 practices by making the representations and omitted material facts (which constitutes advertising
22 within the meaning of California Business & Professions Code section 17200), as set forth more
23 fully herein, and by violating California's Consumers Legal Remedies Act, Cal. Civ. Code
24 §1750, *et seq.*, California's False Advertising Law, Cal. Bus. & Prof. § 17500, *et seq.*, 15 U.S.C.
25 § 45, and by breaching express and implied warranties. Plaintiff, individually and on behalf of the
26 other Class members, reserves the right to allege other violations of law, which constitute other
27 unlawful business acts or practices. Such conduct is ongoing and continues to this date.
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1 52. Defendant committed “unfair” business acts or practices by: (a) engaging in
2 conduct where the utility of such conduct is outweighed by the harm to Plaintiff and the members
3 of the Class; (2) engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or
4 substantially injurious to Plaintiff and the members of the Class; and (3) engaging in conduct that
5 undermines or violates the intent of the consumer protection laws alleged herein. There is no
6 societal benefit from deceptive advertising. Plaintiff and the other Class members paid for
7 Products that are not as advertised by Defendant. Further, Defendant failed to disclose a material
8 fact (that the Products cannot withstand normal and ordinary use in all areas of a residential
9 dishwasher without being damaged) of which it had exclusive knowledge. While Plaintiff and the
10 other Class members were harmed, Defendant was unjustly enriched by its false
11 misrepresentations and material omissions. As a result, Defendant’s conduct is “unfair,” as it
12 offended an established public policy. There were reasonably available alternatives to further
13 Defendant’s legitimate business interests, other than the conduct described herein.
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15 53. Defendant committed “fraudulent” business acts or practices by making the
16 representations of material fact regarding the products set forth herein. Defendant’s business
17 practices as alleged are “fraudulent” under the UCL because they are likely to deceive customers
18 into believing the products are safe for use in all areas of the dishwasher.
19

20 54. Plaintiff and the other members of the Class have in fact deceived as a result of their
21 reliance on Defendant’s material representations and omissions. This reliance has caused harm to
22 Plaintiff and the other members of the Class, each of whom purchased Defendant’s Products. Plaintiff
23 and the other Class members have suffered injury in fact and lost money as a result purchasing the
24 Products and Defendant’s unlawful, unfair, and fraudulent practices.
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26 55. Defendant’s wrongful business practices and violations of the UCL are ongoing.
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1 68. Civil Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a
2 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of
3 another.”

4 69. Civil Code § 1770(a)(9) prohibits “advertising goods or services with intent not to
5 sell them as advertised.”

6 70. Defendant’s wrongful business practices constituted, and still constitute, a
7 continuing course of conduct in violation of the CLRA.

8 71. Plaintiff and the Class suffered economic injury as a direct result of Defendant’s
9 misrepresentations and/or omissions because they were induced to purchase the Products they
10 would not have otherwise purchased or would have paid less for had Defendant had not made its
11 misrepresentations about the Products being dishwasher safe.

12 72. On June 23, 2025, Plaintiff notified Defendant in writing, by certified mail, of the
13 violations alleged herein and demanded that Defendant remedy those violations pursuant to Cal.
14 Civ. Code 1782. Defendant failed to correct its business practices or provide the requested relief
15 within 30 days.

16 73. Pursuant to California Civil Code 17800(a)(1)-(5) and 17800(e), Plaintiff and the
17 California Subclass seek, in addition to injunctive relief, monetary damages from Defendant,
18 reasonable attorneys’ fees and litigation costs, and any other relief the Court deems proper under.
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Count IV
Breach of Express Warranty²
(On behalf of Plaintiff and the Multi-State Warranty Class)

74. Plaintiff realleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

75. Plaintiff brings this claim individually and on behalf of the Multi-State Warranty Class against Defendant.

76. Plaintiff and the Multi-State Warranty Class Members formed a contract with Defendant at the time Plaintiff and the Multi-State Warranty Class Members purchased the Products.

77. The terms of the contract include the promises and affirmations of fact made by Defendant on the Products’ packaging that they are “dishwasher safe.”

78. This labeling and advertising constitute express warranties and became part of the basis of the bargain and part of the standardized contract between Plaintiff and the Multi-State Warranty Class and Defendant.

79. As set forth above, Defendant purports through its labeling, marketing, and packaging to create an express warranty that the Products are “dishwasher safe.” However, Defendant breached its express warranties regarding the Products because the Products are not safe for ordinary and normal use in all areas of a residential dishwasher

² While discovery may alter the following, Plaintiff asserts that the states with similar express warranty laws under the facts of this case include, but are not limited to: Alaska Stat. § 45.02.313; A.R.S. § 47-2313; Ark. Code § 4-2-313; Cal. Com. Code § 2313; Colo. Rev. Stat. § 4-2-313; Conn. Gen. Stat. § 42a-2-313; 6 Del. C. § 2-313; D.C. Code § 28:2 313; Ga. Code § 11-2-313; HRS § 490:2- 313; Idaho Code § 28-2-313; 810 ILCS 5/2-313; Ind. Code § 26-1-2-313; K.S.A. § 84-2-313; KRS § 355.2-313; 11 M.R.S. § 2-313; Mass. Gen. Laws Ann. ch. 106 § 2-313; Minn. Stat. § 336.2-313; Miss. Code Ann. § 75-2-313; R.S. Mo. § 400.2-313; Mont. Code Anno. § 30-2 313; Neb. Rev. Stat. § 2- 313; Nev. Rev. Stat. Ann. § 104.2313; RSA 382-A:2 313; N.J. Stat. Ann. § 12A:2-313; N.M. Stat. Ann. § 55-2-313; N.Y. U.C.C. Law § 2-313; N.C. Gen. Stat. § 25-2-313; N.D. Cent. Code § 41-02-30; ORC Ann. § 1302.26; 12A Okl. St. § 2-313; Or. Rev. Stat. § 72-3130; 13 Pa. C.S. § 2313; R.I. Gen. Laws § 6A-2-313; S.C. Code Ann. § 36-2-313; S.D. Codified Laws, § 57A 2-313; Tenn. Code Ann. § 47-2-313; Tex. Bus. & Com. Code § 2.313; Utah Code Ann. § 70A-2-313; 9A V.S.A. § 2-313; Va. Code Ann. § 59.1-504.2; Wash. Rev. Code Ann. § 62A.2-313; W. Va. Code § 46- 2-313; and Wyo. Stat. § 34.1-2-31.

1 Plaintiff and Class Members of property or otherwise causing injury, and thus, Defendant has
2 committed fraud.

3 106. Defendant's deceptive or fraudulent intent is evidenced by motive and opportunity.
4 Defendant knew that consumers would pay more for products if they believed they were
5 dishwasher safe. For that reason, Defendant misrepresented the Products so that Defendant could
6 realize greater profits. Defendant knew that consumers would place trust and confidence in its
7 Products' claims and rely thereon in their purchases of the Products.

8 107. Plaintiff and the Class Members were unaware of the falsity in Defendant's
9 misrepresentations and omissions and, as a result, justifiably relied on them when making the
10 decision to purchase the Products.

11 108. As a proximate result of Defendant's intentional misrepresentations, Plaintiff and
12 the Class were induced to purchase the Products at a premium.

13 109. Plaintiff and the Class Members would not have purchased the Products or paid as
14 much for the Products if the true facts had been known.

15 110. As a result of their reliance, Plaintiff and the Class Members were injured in an
16 amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and
17 overpayment at the time of purchase.

18 111. Defendant's conduct was knowing, intentional, with malice, demonstrated a
19 complete lack of care, and was in reckless disregard for the rights of Plaintiff and Class Members
20 Plaintiff and Class Members are therefore entitled to an award of punitive damages.

COUNT VIII

**Breach of Consumer Protection Statutes³
(On Behalf of Plaintiff and the Multi-State Consumer Protection Subclass)**

112. Plaintiff hereby incorporates the foregoing paragraphs as if fully stated herein.

113. Plaintiff brings this claim individually and on behalf of the Multi-State Consumer Protection Subclass against Defendant.

114. Defendant’s acts and practices, as described herein, have deceived and/or are likely to continue to deceive members of the Multi-State Consumer Protection Subclass and the public. As described throughout this Complaint, Defendant misrepresents that the Products are “dishwasher safe” when Products are not safe for ordinary and normal use in all areas of a standard residential dishwasher.

115. The foregoing deceptive acts and practices were directed at consumers.

116. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the nature and value of the Products.

117. As a result of Defendant’s deceptive practices, Plaintiff and the Multi-State Consumer Protection Subclass suffered an economic injury because they would not have purchased

³ While discovery may alter the following, Plaintiff asserts that the states with similar consumer fraud laws under the facts of this case include but are not limited to: Alaska Stat. § 45.50.471, et seq.; Ariz. Rev. Stat. §§ 44-1521, et seq.; Ark. Code § 4-88-101, et seq.; Cal. Bus. & Prof. Code § 17200, et seq.; Cal. Civ. Code § 1750, et seq.; Colo. Rev. Stat. Ann. § 6-1-101, et seq.; Colo. Rev. Stat. Ann. § 6-1-101, et seq.; Conn. Gen Stat. Ann. § 42-110, et seq.; 6 Del. Code § 2513, et seq.; D.C. Code § 28-3901, et seq.; Fla. Stat. Ann. § 501.201, et seq.; Ga. Code Ann. § 10-1-390, et seq.; Haw. Rev. Stat. § 480-2, et seq.; Idaho Code. Ann. § 48-601, et seq.; 815 ILCS 501/1, et seq.; Ind. Code § 24-5-0.5-2, et seq.; Kan. Stat. Ann. § 50-623, et seq.; Ky. Rev. Stat. Ann. § 367.110, et seq.; LSA-R.S. 51:1401, et seq.; Me. Rev. Stat. Ann. Tit. 5, § 207, et seq.; Md. Code Ann. Com. Law, § 13-301, et seq.; Mass. Gen Laws Ann. Ch. 93A, et seq.; Mich. Comp. Laws Ann. § 445.901, et seq.; Minn. Stat. § 325F, et seq.; Mo. Rev. Stat. § 407, et seq.; Neb. Rev. St. §§ 59-1601, et seq.; Nev. Rev. Stat. § 41.600, et seq.; N.H. Rev. Stat. § 358-A:1, et seq.; N.J. Stat. Ann. § 56:8, et seq.; N.M. Stat. Ann. § 57-12-1, et seq.; N.Y. Gen. Bus. Law § 349, et seq.; N.C. Gen Stat. § 75-1.1, et seq.; N.D. Cent. Code § 51-15, et seq.; Ohio Rev. Code Ann. § 1345.01, et seq.; Okla. Stat. tit. 15 § 751, et seq.; Or. Rev. Stat. § 646.605, et seq.; 73 P.S. § 201-1, et seq.; R.I. Gen. Laws § 6-13.1- 5.2(B), et seq.; S.C. Code Ann. §§ 39-5- 10, et seq.; S.D. Codified Laws § 37-24-1, et seq.; Tenn. Code Ann. § 47-18-101, et seq.; Tex. Code Ann., Bus. & Con. § 17.41, et seq.; Utah Code. Ann. § 13-11-175, et seq.; 9 V.S.A. § 2451, et seq.; Va. Code Ann. § 59.1-199, et seq.; Wash. Rev. Code § 19.86.010, et seq.; W. Va. Code § 46A, et seq.; Wis. Stat. § 100.18, et seq.; and Wyo. Stat. Ann. § 40-12-101, et seq.

1 (or paid a premium for) the Products had they known that the Products were not, in fact,
2 dishwasher safe.

3 118. Plaintiff and the Multi-State Consumer Protection Subclass seek to recover their
4 actual damages, statutory damages, punitive damages, and reasonable attorneys' fees and costs.

5 **COUNT IX**
6 **Unjust Enrichment**
7 **(On Behalf of Plaintiff and the Nationwide Class)**

8 119. Plaintiff hereby incorporates the foregoing paragraphs as if fully stated herein.

9 120. Plaintiff brings this claim individually and on behalf of the Nationwide Class
10 against Defendant under California law, or, in the alternative, on behalf of the respective state laws
11 of the Nationwide Class, which are substantially similar to the law of unjust enrichment. California
12 law requires: (1) receipt of a benefit; (2) unjust or wrongful retention of the benefit; and (3) at the
13 expense of another.

14 121. To the extent required, Plaintiff asserts this cause of action in the alternative to legal
15 claims, as permitted by Rule 8.

16 122. Plaintiff and the Class Members conferred a benefit on Defendant in the form of the
17 gross revenues Defendant derived from the money they paid to Defendant.

18 123. Defendant knew of the benefit conferred on it by Plaintiff and the Class Members.

19 124. Defendant has been unjustly enriched in retaining the revenues derived from
20 Plaintiff's and the Class Members' purchases of the Products, which retention of such revenues
21 under these circumstances is unjust and inequitable because Defendant omitted that the Products
22 were not dishwasher safe. This caused injuries to Plaintiff and Class Members because they would
23 not have purchased the Products or would have paid less for them if the true facts concerning the
24 Products had been known.

25 125. Defendant accepted and retained the benefit in the amount of the gross revenues
26 derived from sales of the Products to Plaintiff and Class Members.

27 126. Defendant has thereby profited by retaining the benefit under circumstances which
28 would make it unjust for Defendant to retain the benefit.

1 127. Plaintiff and Class Members are, therefore, entitled to restitution in the form of the
2 revenues derived from Defendant’s sale of the Products.

3 128. As a direct and proximate result of Defendant’s actions, Plaintiff and the Class
4 Members have suffered in an amount to be proven at trial.

5 129. Plaintiff and the Class Members have suffered an injury in fact and have lost money
6 as a result of Defendant’s unjust conduct.

7 130. Plaintiff and the Class Members lack an adequate remedy at law with respect to this
8 claim and are entitled to non-restitutionary disgorgement of the financial profits that Defendant
9 obtained as a result of its unjust conduct.

10 131. Legal remedies available to Plaintiff and the Class Members are inadequate because
11 they are not equally prompt, certain, or efficient as equitable relief. Damages are not equally
12 certain as restitution because the standard that governs restitution is different than the standard that
13 governs damages. Hence, the Court may award restitution even if it determines Plaintiff fails to
14 sufficiently adduce evidence to support an award of damages. Damages and restitution are not the
15 same amount. Unlike damages, restitution is not limited to the amount of money a defendant
16 wrongfully acquired plus the legal rate of interest. Equitable relief, including restitution, entitles a
17 plaintiff to recover all profits from the wrongdoing, even where the original funds taken have
18 grown far greater than the legal rate of interest would recognize. Legal claims for damages are not
19 equally certain as restitution because such claims require different elements. In short, significant
20 differences in proof and certainty establish that any potential legal claim cannot serve as an
21 adequate remedy at law.

22 132. Equitable relief is appropriate because Plaintiff may lack an adequate remedy at law
23 if, for instance, damages resulting from their purchase of the Products are determined to be an
24 amount less than the premium price of the Products. Without compensation for the full premium
25 price of the Products, Plaintiff and the Class Members would be left without the parity in
26 purchasing power to which they are entitled.

Request for Relief

133. Plaintiff, individually, and on behalf of all others similarly situated, requests for relief pursuant to each claim as follows:

- a. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiff as the Class Representative and appointing the undersigned counsel as Class Counsel;
- b. Ordering restitution and disgorgement of all profits and unjust enrichment that Defendant obtained from Plaintiff and the Class members as a result of Defendant’s unlawful, unfair, and fraudulent business practices;
- c. Ordering injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices as set forth herein, and ordering Defendant to engage in a corrective advertising campaign;
- d. Ordering damages in amount which is different than that calculated for restitution for Plaintiff and the Class;
- e. Ordering Defendant to pay attorneys’ fees and litigation costs to Plaintiff and the other members of the Class;
- f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and
- g. Ordering other relief as may be just and proper.

Jury Demand

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

Dated: February 10, 2026

Respectfully submitted,

GUCOVSKI LAW FIRM, PLLC

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