Electronically FILED by Superior Court of California, County of Riverside on 05/28/2026 07:33 PM
Case Number CVRI2505343 0000169098777 - Jason B. Galkin, Executive Officer/Clerk of the Court By Joanne Bishop, Clerk

CLARKSON LAW FIRM, P.C.
Shireen M. Clarkson (SBN 237882)
sclarkson@clarksonlawfirm.com
Ryan J. Clarkson (SBN 257074)
rclarkson@clarksonlawfirm.com
Tiara Avaness (SBN 343928)
tavaness@clarksonlawfirm.com
22525 Pacific Coast Highway
Malibu, CA 90265
Tel: (213) 788-4050
Fax: (213 788-4070

Counsel for Plaintiffs and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

JEFFREY FOUSE and BRIANNA MILLER, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

E. MISHAN & SONS, INC., and DOES 1 through 10,

Defendant.

Case No. CVRI2505343

FIRST AMENDED CLASS ACTION COMPLAINT

1. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW BUSINESS & PROFESSIONS CODE § 17200, *et seq*.;
2. FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17500, *et seq*.
3. VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE § 1750, *et seq*.
4. VIOLATION OF COLORADO CONSUMER PROTECTION ACT, § 6-1-101 *et seq.*
5. BREACH OF WARRANTY
6. UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

Plaintiffs Jeffrey Fouse and Brianna Miller ("**Plaintiffs**"), individually and on behalf of all others similarly situated, bring this Action against E. Mishan & Sons, Inc. ("**Emson**" or "**Defendant**"). Plaintiffs' allegations are based upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters based on the investigation conducted by and through Plaintiffs' attorneys.

I. INTRODUCTION

1. In 2018, the common nonstick coating Teflon was revealed to contain cancer-causing "forever chemicals" called perfluoroalkyl substances ("**PFAs**"). In the wake of the widely publicized Teflon scandal, consumers increasingly seek safer, healthier cookware to avoid the PFAS, heavy metals, and other toxic substances that may be present in cookware.

2. Emson manufactures and sells cookware under the brand names Gotham Steel, Granitestone, and Bell & Howell. Gotham Steel cookware appeals to these health-conscious consumers with the following statements on its packaging and online advertising: "Healthy, Non-Toxic Ceramic Cookware & Bakeware," "Cookware for a Healthy Lifestyle," "Non-toxic," "Safe," "Free from PFOA, PFOS, PTFE, BPA, lead, and cadmium," "Cook healthy," "Made without PFOA PTFE PFOS," "Metal Utensil Safe," "Dishwasher Safe," "Oven safe up to 500° F." Granitestone cookware appeals to health-conscious consumers with the following statements on its packaging and/or online advertising: "Healthy," "Safe Use," "Toxin Free," "PFOA Free," "Healthy Cooking," "Made without PFOA," "Dishwasher Safe," "Oven safe up to 500° F." Upon information and belief, Bell & Howell cookware packaging and advertising included similar representations as to the safety of the brand's cookware Products. These statements are collectively referred to as the "**Challenged Representations**."

3. Reasonable consumers understand the Challenged Representations to mean that the cookware products are safe and non-toxic. Contrary to these promises, Gotham Steel, Granitestone, and Bell & Howell cookware is made with stainless steel components that contain toxic metals chromium, iron, nickel, lead, and cadmium, and include PFOA, PFAS, PTFE, or PFOS. Emson does not disclose the presence of these metals on its labels or in its online advertising, in violation of California's Safer Food Packaging and Cookware Act of 2021, Cal. Health & Safety Code § 109010

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

et seq. Emson's deceptive marketing practices also violate the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101 *et seq.*, and Colo. Rev. Stat. § 25-15-604.

4. At issue are all Gotham Steel, Granitestone, and Bell & Howell brand cookware products with stainless steel components, including, but not necessarily limited to, all variations and sizes of Gotham Steel skillets, frying pans, sauté pans, pasta pots, stock pots, saucepans, griddles, grill pans, and cookware sets (collectively, the "**Products**").

5. Plaintiffs Fouse and Miller bring this lawsuit on behalf of themselves and all those similarly situated to address Emson's false and misleading advertising. To remedy these violations of law, Plaintiffs and Class Members thus seek actual damages, statutory damages, restitution, and injunctive and declaratory relief, reasonable attorneys' fees, costs, and expenses incurred in bringing this action, and all other remedies this Court deems just and proper.

II. PARTIES

Plaintiffs

6. **Plaintiff Jeffrey Fouse.** Plaintiff Jeffrey Fouse is an individual residing in Riverside County, California. Plaintiff purchased a Gotham Steel brand frying pan within the relevant statutory class period from a Sam's Club store in Riverside County, California. In making his purchase decision, Plaintiff relied upon the labeling and advertising of the Product, which he reasonably believed to be healthy, non-toxic, and safe. Plaintiff only recently discovered the Product contained toxic metals, and had he known otherwise, he would not have purchased the Product or would have paid significantly less for it. Plaintiff spent money to purchase a product that was different than what he expected, and he did not receive the benefit of his bargain. Plaintiff would like to purchase the Product again in the future if he could be sure that the Product was compliant with California consumer protection laws.

7. **Plaintiff Brianna Miller.** Plaintiff Brianna Miller is an individual residing in Berthoud, Colorado. Plaintiff purchased a Gotham Steel brand frying pan within the relevant statutory class period from a television advertisement. In making her purchase decision, Plaintiff relied upon the labeling and advertising of the Product, which she reasonably believed to be healthy, non-toxic, and safe. Plaintiff only recently discovered the Product contained toxic metals, and had

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

she known otherwise, she would not have purchased the Product or would have paid significantly less for it. Plaintiff spent money to purchase a product that was different than what she expected, and she did not receive the benefit of her bargain. Plaintiff would like to purchase the Product again in the future if she could be sure that the Product was compliant with Colorado consumer protection laws.

Defendant

8. **E. Mishan & Sons, Inc.** Defendant E. Mishan & Sons, Inc. is a corporation headquartered in New York. Emson maintains its principal place of business at 230 5th Avenue Suite 800, RM 2305, New York, NY 10001. Emson offers the Products for sale on the internet and at numerous retail stores throughout California and the United States. Emson, directly and through its agents, has substantial contacts with and receives substantial benefits and income from and through the State of California. Emson does business in California and is the owner, manufacturer, and distributor of the Products, and is the company that created and/or authorized the false, misleading, and deceptive advertising of the Products.

9. The true names and capacities, whether individual, corporate, associate, or otherwise of certain manufacturers, distributors, and/or their alter egos sued herein as DOES 1 through 10 inclusive are presently unknown to Plaintiffs who therefore sue this Defendant by fictitious names. Plaintiffs will seek leave of this Court to amend the Complaint to show their true names and capacities when the same have been ascertained. Plaintiffs are informed and believe and based thereon allege that DOES 1 through 10 were authorized to do and did business in the County of Riverside. Plaintiffs are further informed and believe and based thereon allege that DOES 1 through 10 were and/or are, in some manner or way, responsible for and liable to Plaintiffs for the unfair business practices set forth herein.

10. In committing the wrongful acts alleged herein, Emson planned and participated in and furthered a common scheme by means of false, misleading, deceptive, and fraudulent representations to induce members of the public to purchase the Products. Emson participated in the making of such representations in that each did disseminate or cause to be disseminated said misrepresentations.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

11. Emson, upon becoming involved with the manufacture, distribution, advertising, labeling, marketing, and sale of the Products, knew or should have known that the Challenged Representations were false and misleading. Emson affirmatively misrepresented the nature and characteristics of the Product to convince the public to purchase and consume the Product, resulting in significant profits to Emson, all to the detriment of the consuming public.

III. JURISDICTION AND VENUE

12. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, Section 10, because this case is a cause not given by statute to other trial courts. Plaintiffs have standing to bring this action pursuant to Business and Professions Code sections 17200, *et seq*.

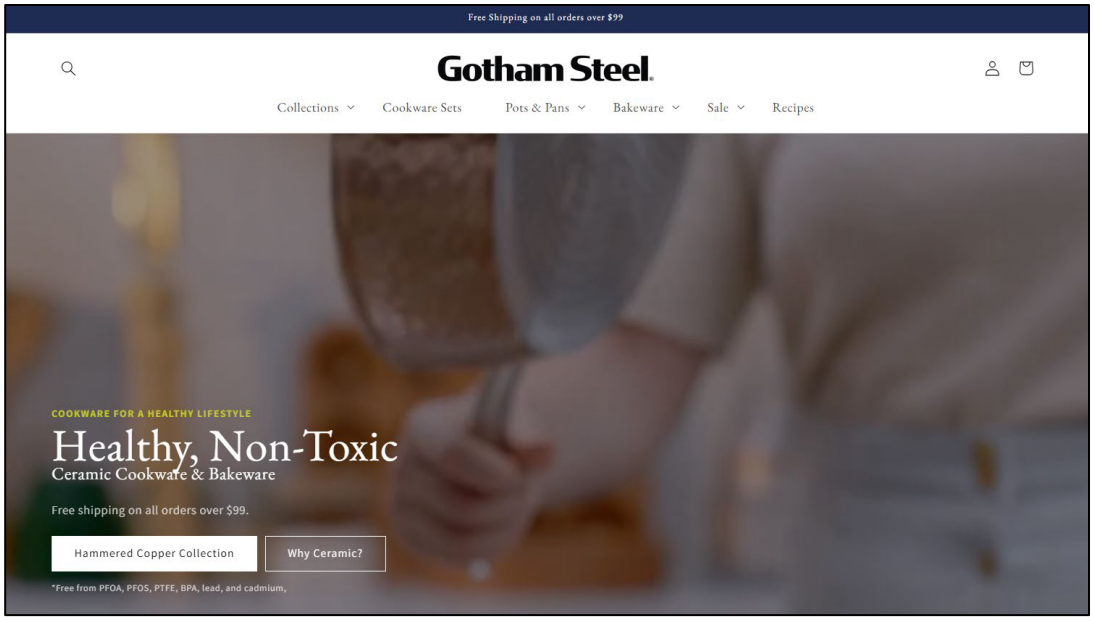
13. Venue is proper in this Court because Plaintiff Fouse purchased the Product in Riverside County; Emson receives substantial compensation from sales in Riverside County; and Emson made numerous misrepresentations which had a substantial effect in Riverside County, including, but not limited to, label, point of purchase displays, and internet advertisements.

14. Emson is subject to personal jurisdiction in California based upon sufficient minimum contacts which exist between it and California. Emson is authorized to do and is doing business in California.

IV. FACTUAL ALLEGATIONS

15. Emson sells Gotham Steel, Granitestone, and Bell & Howell brand cookware with one or more of the Challenged Representations on the Product labels, packaging, and online advertising. Examples of the Challenged Representations in Emson's packaging and advertising are shown below:

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265





///

///

///

///

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265





///

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

16. Contrary to Emson's representations that the Products are "Healthy," "Non-toxic," and "Safe," the stainless-steel components of the Products contain the toxic metals chromium, iron, and nickel. Chromium, iron, and nickel are carcinogenic and toxic to the environment. The state of California requires cookware manufacturers to disclose the presence of these metals on the product label and on the manufacturer's internet advertising. Cal. Health and Safety Code section 109011.

17. The Products also contain lead, cadmium, PFOA, PFAS, PTFE, or PFOS. Colorado prohibits the sale or distribution of consumer products, including cookware, that contain PFAS chemicals. Colo. Rev. Stat. § 25-15-604.

18. Despite these requirements, Emson does not disclose the presence of these toxic metals on its labels or in its online advertising. Emson promises that its Products are safe, healthy, and non-toxic in violation of California false advertising laws.

19. **Reasonable Consumer's Perception.** Emson's labeling, advertising, marketing, and packaging of the Products, identified above, falsely, misleadingly and deceptively led Plaintiffs and other reasonable consumers to believe that the Products are non-toxic. Plaintiffs and other reasonable consumers are consistently misled into buying the Product without knowing that it contains toxic metals.

20. **Reliance**. When purchasing the Product, Plaintiffs relied upon the labeling, advertising, and marketing of the Product as non-toxic. Had Plaintiffs known the Product contained toxic metals, they would not have purchased it. Plaintiffs and the Class have suffered injury in fact and have lost money as a result of Emson's false representations.

21. **Emson's Knowledge.** Emson knew, or should have known, that the Challenged Representations were misleading, deceptive, and unlawful at the time that Emson manufactured, marketed, advertised, labeled, and sold the Products using the Challenged Representations to Plaintiffs and the Class.

22. **Knowledge of Reasonable Consumers' Perception.** Emson knew or should have known that the Challenged Representations would lead reasonable consumers to believe that the Products are safe and non-toxic. Not only has Emson utilized a long-standing brand strategy to identify the Products with that promise, but Emson also has an obligation under section 5 of the

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

Federal Trade Commission Act, codified at 15 U.S.C. § 45 *et seq*., to evaluate its marketing claims from the perspective of the reasonable consumer. That means Emson was statutorily obligated to consider whether the Challenged Representations, be they in isolation or in conjunction with its marketing strategy, would mislead reasonable consumers into believing that the Products are safe and non-toxic. Thus, Emson either knew that the Challenged Representations were misleading before it marketed the Products to the Class, including Plaintiffs, or Emson would have known that they were deceptive had it complied with its statutory obligations.

23. **Knowledge of Falsity**. Emson manufactured and marketed the Products with the Challenged Representations, but Emson opted to make Products that do not conform with the representations. Emson chose to advertise and label the Products with the Challenged Representations despite knowing that the Products contain toxic metals.

24. **Knowledge of Materiality.** Emson knew or should have known of the Challenged Representations' materiality to consumers. First, manufacturers and marketers, like Emson, generally reserve the front primary display panels of labels on consumer products for the most important and persuasive information, which they believe will motivate consumers to buy the products. Here, the conspicuousness of the Challenged Representations on the Products' labels demonstrates Emson's awareness of their importance to consumers and Emson's understanding that consumers prefer and are motivated to buy products that conform to the Challenged Representations. Second, manufacturers and marketers repeat marketing claims to emphasize and characterize a brand or product line, shaping the consumers' expectations, because they believe those repeated messages will drive consumers to buy the Products. Here, the constant, unwavering use of the Challenged Representations on countless Products, advertisements, and throughout Emson's marketing campaign evidence Emson's awareness that the advertised safety and non-toxicity is important to consumers. It also evidences Emson's intent to convince consumers that the Products conform to the Challenged Representations and, ultimately, drive sales. Third, the Products' primary, if not only, purpose was to provide safe, non-toxic cookware. Thus, Emson knew, in designing the Products, that the Challenged Representations were material to consumers.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

25. **Emson's Continued Deception, Despite Its Knowledge.** Emson, as the manufacturer and marketer of the Products, had exclusive control over the inclusion of the Challenged Representations on the Products' labels and advertisements—i.e., Emson readily and easily could have stopped using the Challenged Representations to sell the Products. However, despite Emson's knowledge that the Challenged Representations were false, misleading, and deceptive, and Emson's knowledge that consumers reasonably rely on the Challenged Representations in deciding to buy the Products, Emson deliberately chose to market the Products with the Challenged Representations, thereby misleading consumers into buying or overpaying for the Products. Thus, Emson knew, or should have known, at all relevant times, that the Challenged Representations mislead and deceive reasonable consumers, such as Plaintiffs, into buying the Products to attain the benefit that Emson falsely advertised and warranted.

26. **Detriment**. Plaintiffs and similarly situated consumers would not have purchased the Products or would not have overpaid a price premium for them if they had known that the Challenged Representations were false, misleading, and deceptive. Accordingly, based on Emson's Challenged Representations, reasonable consumers, including Plaintiffs, purchased the Products to their detriment.

27. **The Products at Issue are Substantially Similar.** Plaintiffs purchased a Gotham Steel brand frying pan with stainless steel components. The other Products at issue are substantially similar because they all have stainless steel components that have undisclosed iron, chromium, nickel, lead, and cadmium, as well as PFOA, PFAS, PTFE, or PFOS.

a. **Emson**. All Products are manufactured, sold, marketed, advertised, and labeled by Emson.

b. **Marketing Demographics.** All Products are marketed directly to consumers for personal consumption.

c. **Purpose**. All Products are cookware items that purport to be safe and non-toxic.

d. **Use**. All Products are used in the same manner—used as cookware.

e. **Challenged Representations.** All Products are advertised with one or more of the Challenged Representations.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

f. **Packaging.** The Products are similarly packaged.

g. **Key Attributes**. All Products have stainless steel components that have undisclosed iron, chromium, nickel, lead, and cadmium, as well as PFOA, PFAS, PTFE, or PFOS.

h. **Misleading Effect.** The misleading effect of the Challenged Representations on consumers is the same for both Products—consumers overpay for cookware products which they believe are safe and non-toxic, when in reality, the Products contain undisclosed toxic metals.

28. **No Legitimate Business Purpose.** There is no practical reason for Emson's use of the Challenged Representations, other than to mislead consumers. Through such false and misleading advertising, consumers purchase the Products incorrectly thinking they are safe and non-toxic, thus providing Emson with a financial windfall.

29. **No Adequate Remedy at Law.** Plaintiffs and members of the Class are entitled to equitable relief as no adequate remedy at law exists.

a. **Broader Statutes of Limitations.** The statutes of limitations for the causes of action pled herein vary. The limitations period is four years for claims brought under the UCL, which is one year longer than the statutes of limitations under the FAL and CLRA. Thus, class members who purchased the Product more than 3 years prior to the filing of the complaint will be barred from recovery if equitable relief were not permitted under the UCL.

b. **Broader Scope of Conduct.** In addition, the scope of actionable misconduct under the unfair prong of the UCL is broader than the other causes of action asserted herein. It includes, for example, Emson's overall unfair marketing scheme to promote the Product with the Challenged Representations, across a multitude of media platforms, including the Product's labels and packaging, over a long period of time, in order to gain an unfair advantage over competitor products and to take advantage of consumers' desire for products that comport with the labeling and advertising. The UCL also creates a cause of action for violations of law (such as statutory or regulatory requirements and court orders related to similar representations and omissions made

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

on the type of products at issue). Thus, Plaintiffs and Class members may be entitled to restitution under the UCL, while not entitled to damages under other causes of action asserted herein (e.g., the FAL requires actual or constructive knowledge of the falsity; the CLRA is limited to certain types of plaintiffs (an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes) and other statutorily enumerated conduct).

c. **Injunctive Relief to Cease Misconduct and Dispel Misperception**. Injunctive relief is appropriate on behalf of Plaintiffs and members of the Class because Emson continues to misrepresent the Product as alleged herein. Injunctive relief is necessary to prevent Emson from continuing to engage in the unfair, fraudulent, and/or unlawful conduct described herein and to prevent future harm—none of which can be achieved through available legal remedies (such as monetary damages to compensate past harm). Further, injunctive relief, in the form of affirmative disclosures is necessary to dispel the public misperception about the Product that has resulted from years of Emson's unfair, fraudulent, and unlawful marketing efforts. Such disclosures would include, but are not limited to, publicly disseminated statements that the Product labeling and advertising is not true and providing accurate information about the Product's true nature; and/or requiring prominent qualifications and/or disclaimers on the Product's front label concerning the Product's true nature. An injunction requiring affirmative disclosures to dispel the public's misperception, and prevent the ongoing deception and repeat purchases based thereon, is also not available through a legal remedy (such as monetary damages). In addition, Plaintiffs are currently unable to accurately quantify the damages caused by Emson's future harm, because discovery and Plaintiffs' investigation has not yet completed, rendering injunctive relief all the more necessary. For example, because the court has not yet certified any class, the following remains unknown: the scope of the class, the identities of its members, their respective purchasing practices, prices of past/future Product sales, and quantities of past/future Product sales.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

d. **Public Injunction.** Further, because a "public injunction" is available under the UCL, damages will not adequately "benefit the general public" in a manner equivalent to an injunction.

e. **Procedural Posture—Incomplete Discovery & Pre-Certification.** Lastly, this is an initial pleading in this action and discovery has not yet commenced and/or is at its initial stages. No class has been certified yet. No expert discovery has commenced and/or completed. The completion of fact/non-expert and expert discovery, as well as the certification of this case as a class action, are necessary to finalize and determine the adequacy and availability of all remedies, including legal and equitable, for Plaintiffs' individual claims and any certified class. Plaintiffs therefore reserve their right to amend this complaint and/or assert additional facts that demonstrate this Court's jurisdiction to order equitable remedies where no adequate legal remedies are available for either Plaintiffs and/or any certified class. Such proof, to the extent necessary, will be presented prior to trial of any equitable claims for relief and/or the entry of an order granting equitable relief.

V. CLASS ALLEGATIONS

30. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated as members of the Class defined as follows:

> All residents of California who, within the applicable statute of limitations periods, purchased the Products in California for purposes other than resale ("**California Class**");
>
> And
>
> All residents of Colorado who, within the applicable statute of limitations periods, purchased the Products in Colorado for purposes other than resale ("**Colorado Class**").

The California Class and Colorado Class are collectively referred to as the "**Class**." Plaintiff Fouse brings this action on his own behalf and on behalf of the California Class. Plaintiff Miller brings this action on her own behalf and on behalf of the Colorado Class.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

31. Excluded from the Class are: (i) Emson, its assigns, successors, and legal representatives; (ii) any entities in which Emson has controlling interests; (iii) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; and (iv) any judicial officer presiding over this matter.

32. Pursuant to California Civil Code section 382, Plaintiffs reserve the right to amend or otherwise alter the class definition presented to the Court at the appropriate time in response to facts learned through discovery, legal arguments advanced by Emson, or otherwise.

33. The Class is comprised of hundreds of thousands of consumers throughout California and Colorado. The Class is so numerous that joinder of all members is impracticable and the disposition of their claims in a class action will benefit the parties and the Court.

34. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented in that the Class was exposed to the same common and uniform false and misleading advertising. The questions of law and fact common to the Class predominate over questions which may affect individual Class members. Common questions of law and fact include, but are not limited to, the following:

a. Whether Emson's conduct is an unlawful business act or practice within the meaning of Business and Professions Code sections 17200, *et seq.*;

b. Whether Emson's conduct is a fraudulent business act or practice within the meaning of Business and Professions Code sections 17200, *et seq.*;

c. Whether Emson's conduct is an unfair business act or practice within the meaning of Business and Professions Code sections 17200, *et seq.*;

d. Whether Emson's advertising is untrue or misleading within the meaning of Business and Professions Code sections 17500, *et seq.*;

e. Whether Emson's advertising is deceptive within the meaning of the Colorado Consumer Protection Act section § 6-1-105, *et. seq*;

f. Whether Emson made false and misleading representations in its advertising and labeling of the Products;

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

g. Whether Emson knew or should have known that the Challenged Representations were false and misleading; and

h. Whether Emson represented that the Products have characteristics, benefits, uses, or quantities which they do not have.

35. Plaintiffs' claims are typical of the claims of the proposed Class, as the representations made by Emson are uniform and consistent and are contained in advertisements and on packaging that was seen and relied on by Plaintiffs and members of the Class.

36. Plaintiffs will fairly and adequately represent and protect the interests of the proposed Class. Plaintiffs have retained competent and experienced counsel in class action and other complex litigation.

37. Plaintiffs and the Class have suffered injury in fact and lost money as a result of Emson's false, deceptive, and misleading representations.

38. Plaintiffs would not have purchased the Product, or would not have paid as much money for the Product, but for the Challenged Representations.

39. The Class is identifiable and readily ascertainable. Notice can be provided to such purchasers using techniques and a form of notice similar to those customarily used in class actions, and by internet publication, radio, newspapers, and magazines.

40. A class action is superior to other available methods for fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed members of the Class to prosecute their claims individually.

41. The trial and the litigation of Plaintiffs' claims are manageable.

42. Emson has acted on grounds generally applicable to the entire Class, thereby making final injunctive relief and/or corresponding declaratory relief appropriate with respect to the Class as a whole. The prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to individual member of the Class that would establish incompatible standards of conduct for Emson.

43. Absent a class action, Emson will likely retain the benefits of its wrongdoing. Because of the small size of the individual Class members' claims, few, if any, Class members could

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

afford to seek legal redress for the wrongs complained of herein. Absent a representative action, the Class members will continue to suffer losses and Emson will be allowed to continue these violations of law and to retain the proceeds of its ill-gotten gains.

COUNT ONE

Violation of California Unfair Competition Law

(Cal. Bus. & Prof. Code, §§ 17200, *et seq*.)

(*On Behalf of the California Class*)

44. **Incorporation by Reference.** Plaintiff Fouse re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

45. **California Class.** This cause of action is brought pursuant to Business and Professions Code sections 17200, *et seq*., on behalf of Plaintiff Fouse and a California Class who purchased the Products within the applicable statute of limitations.

46. **The UCL.** California Business and Professions Code sections 17200, *et seq.* (the **"UCL"**) prohibits unfair competition and provides, in pertinent part, that "unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising."

47. **False Advertising Claims.** Emson, in its advertising of the Products, made false, misleading, and deceptive statements regarding the quality and characteristics of the Products.

48. **Emson's Deliberately Fraudulent Marketing Scheme.** Emson does not have any reasonable basis for the claims about the Products made in Emson's advertising and on Emson's labeling because the Products contain toxic metals. Emson knew and knows that the Products contain toxic metals, though Emson intentionally advertised and marketed the Products to deceive reasonable consumers into thinking that the Products are non-toxic.

49. **Misleading Advertising Claims Cause Purchase of Products.** Emson's labeling and advertising of the Products led to, and continues to lead to, reasonable consumers, including Plaintiffs, believing that the Products are non-toxic.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

50. **Injury in Fact.** Plaintiff and the California Class have suffered injury in fact and have lost money or property as a result of and in reliance upon the Challenged Representations—namely, Plaintiff and the California Class lost the purchase price for the Products they bought from Emson.

51. **Conduct Violates the UCL.** Emson's conduct, as alleged herein, constitutes unfair, unlawful, and fraudulent business practices pursuant to the UCL. The UCL prohibits unfair competition and provides, in pertinent part, that "unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising." Cal. Bus & Prof. Code, § 17200. In addition, Emson's use of various forms of advertising media to advertise, call attention to, or give publicity to the sale of goods or merchandise that are not as represented in any manner constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, and an unlawful business practice within the meaning of Business and Professions Code sections 17200 and 17531, and its advertisements have deceived and are likely to deceive the consuming public, in violation of Business and Professions Code section 17200.

52. **No Reasonably Available Alternatives/Legitimate Business Interests.** Emson failed to avail itself of reasonably available, lawful alternatives to further its legitimate business interests.

53. **Business Practice.** All of the conduct alleged herein occurred and continues to occur in Emson's business. Emson's wrongful conduct is part of a pattern, practice and/or generalized course of conduct, which will continue on a daily basis until Emson voluntarily alters its conduct or Emson is otherwise ordered to do so.

54. **Injunction.** Pursuant to Business and Professions Code sections 17203 and 17535, Plaintiffs and the members of the California Class seek an order of this Court enjoining Emson from continuing to engage, use, or employ its practice of labeling and advertising the sale and use of the Products with the Challenged Representations.

55. **Causation/Damages.** As a direct and proximate result of Emson's misconduct in violation of the UCL, Plaintiff and members of the California Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the California Class have suffered and continue to suffer economic losses and other damages including, but not limited

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the UCL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the California Class for said monies, as well as injunctive relief to enjoin Emson's misconduct to prevent ongoing and future harm that will result.

56. **Punitive Damages.** Plaintiff seeks punitive damages pursuant to this cause of action for violation of the UCL on behalf of Plaintiff and the California Class. Emson's unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Emson's misconduct is malicious as Emson acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Emson willfully and knowingly disregarded the rights of Plaintiff and consumers as Emson was, at all times, aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Emson's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Emson's misconduct is fraudulent as Emson intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Emson.

"Unfair" Prong

57. **Unfair Standard.** Under the UCL, a challenged activity is "unfair" when "any injury it causes outweighs any benefits provided to consumers and the injury is one that the consumers themselves could not reasonably avoid." *Camacho v. Auto Club of Southern California,* 142 Cal.App.4th 1394, 1403 (2006).

58. **Injury.** Emson's action of advertising the Products with the Challenged Representations does not confer any benefit to consumers; rather, doing so causes injuries to

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

consumers, who do not receive products commensurate with their reasonable expectations, overpay for the Products, and receive Products of lesser standards than what they reasonably expected to receive. Consumers cannot avoid any of the injuries caused by Emson's deceptive labeling and advertising of the Products. Accordingly, the injuries caused by Emson's deceptive labeling and advertising outweigh any benefits.

59. **Balancing Test.** Some courts conduct a balancing test to decide if a challenged activity amounts to unfair conduct under California Business and Professions Code section 17200. They "weigh the utility of the defendant's conduct against the gravity of the harm to the alleged victim." *Davis v. HSBC Bank Nevada, N.A.,* 691 F.3d 1152, 1169 (9th Cir. 2012).

60. **No Utility.** Here, Emson's conduct of advertising the Products with the Challenged Representations when the Products contain toxic metals has no utility and financially harms purchasers. Thus, the utility of Emson's conduct is vastly outweighed by the gravity of harm.

61. **Unfair Conduct.** Emson's labeling and advertising of the Products, as alleged herein, is deceptive, misleading, and unreasonable, and constitutes unfair conduct. Emson knew or should have known of its unfair conduct. Emson's Challenged Representations constitute an unfair business practice within the meaning of California Business and Professions Code section 17200.

62. **Reasonably Available Alternatives.** There existed reasonably available alternatives to further Emson's legitimate business interests, other than the conduct described herein. Emson could have refrained from advertising the Products with the Challenged Representations.

63. **Emson's Wrongful Conduct.** All of the conduct alleged herein occurs and continues to occur in Emson's business. Emson's wrongful conduct is part of a pattern or generalized course of conduct repeated on thousands of occasions daily.

64. **Injunction.** Pursuant to Business and Professions Code section 17203, Plaintiff and the California Class seek an order of this Court enjoining Emson from continuing to engage, use, or employ its practices of labeling the Products with the Challenged Representations.

65. **Causation/Damages.** Plaintiff and the California Class have suffered injury in fact and have lost money as a result of Emson's unfair conduct. Plaintiff and the California Class paid an unwarranted premium for these Products. Specifically, Plaintiff and the California Class paid for

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

Products that are non-toxic. Plaintiff and the California Class would not have purchased the Products, or would have paid substantially less for the Products, if they had known that the Products contain toxic metals. Accordingly, Plaintiff seeks damages, restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

"Fraudulent" Prong

66. **Fraud Standard.** The UCL considers conduct fraudulent (and prohibits said conduct) if it is likely to deceive members of the public. *Bank of the West v. Superior Court*, 2 Cal.4th 1254, 1267 (1992).

67. **Fraudulent & Material Challenged Representations.** Emson used the Challenged Representations with the intent to sell the Products to consumers, including Plaintiff and the California Class. The Challenged Representations are deceptive, and Emson knew, or should have known, of their deception. The Challenged Representations are likely to mislead consumers into purchasing the Products because they are material to the average, ordinary, and reasonable consumer.

68. **Fraudulent Business Practice.** As alleged herein, the labeling and advertising by Emson constitutes a fraudulent business practice in violation of California Business and Professions Code section 17200.

69. **Reasonable and Detrimental Reliance.** Plaintiff and the California Class reasonably and detrimentally relied on the Challenged Representations to their detriment in that they purchased the Products.

70. **Reasonably Available Alternatives.** Emson had reasonably available alternatives to further its legitimate business interests, other than the conduct described herein. Emson could have refrained from labeling the Products with the Challenged Representations.

71. **Business Practice.** All of the conduct alleged herein occurs and continues to occur in Emson's business. Emson's wrongful conduct is part of a pattern or generalized course of conduct.

72. **Injunction.** Pursuant to Business and Professions Code section 17203, Plaintiff and the California Class seeks an order of this Court enjoining Emson from continuing to engage, use, or employ its practice of labeling the Products with the Challenged Representations.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

73. Causation/Damages. Plaintiff and the California Class have suffered injury in fact and have lost money as a result of Emson's fraudulent conduct. Plaintiff paid an unwarranted premium for the Products. Specifically, Plaintiff and the California Class paid for non-toxic Products, when, in fact, the Products contain toxic metals. Plaintiff and the California Class would not have purchased the Products if they had known the truth. Accordingly, Plaintiff seeks damages, restitution, and/or disgorgement of ill-gotten gains pursuant to the UCL.

"Unlawful" Prong

74. **Unlawful Standard.** The UCL identifies violations of other laws as unlawful practices that the unfair competition law makes independently actionable.

75. **Violations of CLRA and FAL.** Emson's labeling of the Products, as alleged herein, violates California Civil Code sections 1750, *et seq.* (the "**CLRA**") and California Business and Professions Code sections 17500, *et seq.* (the "**FAL**") as set forth below in the sections regarding those causes of action.

76. **Violation of California Health and Safety Code.** Emson's failure to include a statement identifying the presence of iron, chromium, and nickel in its Products violates California Health and Safety Code sections 109011, *et seq*.

77. **Fraud.** Additionally, Emson's use of the Challenged Representations to sell the Products violates California Civil Code sections 1572 (actual fraud), 1573 (constructive fraud), 1709-1710 (fraudulent deceit), and 1711 (deceit upon the public), as set forth above.

78. **Additional Violations.** Emson's conduct in making the false, misleading, and deceptive representations described herein constitutes a knowing failure to adopt policies in accordance with and/or adherence to applicable laws, as set forth herein, all of which are binding upon and burdensome to its competitors. This conduct engenders an unfair competitive advantage for Emson, thereby constituting an unfair, fraudulent and/or unlawful business practice under California Business and Professions Code sections 17200-17208.

79. **Unlawful Conduct.** Emson's labeling and advertising of the Products, as alleged herein, is deceptive, misleading, and unreasonable, and constitutes unlawful conduct. Emson knew or should have known of its unlawful conduct.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

80. **Reasonably Available Alternatives.** Emson had reasonably available alternatives to further its legitimate business interests, other than the conduct described herein. Emson could have refrained from labeling the Products with the Challenged Representations.

81. **Business Practice.** All of the conduct alleged herein occurs and continues to occur in Emson's business. Emson's wrongful conduct is part of a pattern or generalized course of conduct.

82. **Injunction.** Pursuant to Business and Professions Code section 17203, Plaintiff and the California Class seeks an order of this Court enjoining Emson from continuing to engage, use, or employ its practice of deceptive advertising of the Products.

83. **Causation/Damages.** Plaintiff and the California Class have suffered injury in fact and have lost money as a result of Emson's unlawful conduct. Plaintiff and the California Class paid an unwarranted premium for the Products. Plaintiff and the California Class would not have purchased the Products if they had known that Emson purposely deceived consumers into believing that the Products are non-toxic. Accordingly, Plaintiff seeks damages, restitution and/or disgorgement of ill-gotten gains pursuant to the UCL.

COUNT TWO

Violation of California False Advertising Law

(Cal. Bus. & Prof. Code, §§ 17500, *et seq*.)

(*On Behalf of the California Class*)

84. **Incorporation by Reference.** Plaintiff Fouse re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

85. **California Class.** Plaintiff Fouse brings this claim individually and on behalf of the California Class who purchased the Products within the applicable statute of limitations.

86. **FAL Standard.** The False Advertising Law, codified at Cal. Bus. & Prof. Code, §§ 17500, *et seq.*, prohibits "unfair, deceptive, untrue or misleading advertising."

87. **Challenged Representations Disseminated to Public.** Emson violated section 17500 when it advertised and marketed the Products through the unfair, deceptive, and misleading representations disseminated to the public through the Products' labeling and advertising. The Challenged Representations were deceptive because the Products do not conform to them. The

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

Challenged Representations were material because they are likely to and did mislead reasonable consumers into purchasing the Products.

88. **Knowledge.** In making and disseminating the Challenged Representations alleged herein, Emson knew or should have known that the Challenged Representations were untrue or misleading, and acted in violation of section 17500.

89. **Intent to sell.** Emson's Challenged Representations were specifically designed to induce reasonable consumers, like Plaintiff and the California Class, to purchase the Products.

90. **Causation/Damages.** As a direct and proximate result of Emson's misconduct in violation of the FAL, Plaintiff and members of the California Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of the FAL in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the California Class for said monies, as well as injunctive relief to enjoin Emson's misconduct to prevent ongoing and future harm that will result.

91. **Punitive Damages.** Emson's unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Emson's misconduct is malicious as Emson acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Emson willfully and knowingly disregarded the rights of Plaintiff and consumers as Emson was aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Emson's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Emson's misconduct is fraudulent as Emson, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice,

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Emson.

COUNT THREE

Violation of California Consumers Legal Remedies Act

(Cal. Civ. Code, §§ 1750, *et seq*.)

(*On Behalf of the California Class*)

92. **Incorporation by Reference.** Plaintiff Fouse re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

93. **California Class.** Plaintiff Fouse bring this claim individually and on behalf of the California Class who purchased the Products within the applicable statute of limitations.

94. **CLRA Standard.** The CLRA provides that unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful.

95. **Goods/Services.** The Products are "goods," as defined by the CLRA in California Civil Code section 1761, subdivision (a).

96. **Emson.** Emson is a "person," as defined by the CLRA in California Civil Code section 1761, subdivision (c).

97. **Consumers.** Plaintiff and members of the California Class are "consumers," as defined by the CLRA in California Civil Code section 1761, subdivision (d).

98. **Transactions.** The purchase of the Products by Plaintiffs and members of the California Class are "transactions" as defined by the CLRA under California Civil Code section 1761, subdivision (e).

99. **Violations of the CLRA.** Emson violated the following sections of the CLRA by selling the Products to Plaintiffs and the California Class through the misleading, deceptive, and fraudulent Challenged Representations:

a. Section 1770, subdivision (a)(5) by representing that the Products have "characteristics, . . . uses [or] benefits . . . which [they] do not have."

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

b. Section 1770, subdivision (a)(7) by representing that the Products "are of a particular standard, quality, or grade . . . [when] they are of another."

c. Section 1770, subdivision (a)(9) by advertising the Products "with [the] intent not to sell them as advertised."

d. Section 1770, subdivision (a)(16) by representing that the Products have "been supplied in accordance with a previous representation" when they have not.

100. **Knowledge.** Emson's use of the Challenged Representations on the Products was likely to deceive, and Emson knew or should have known that these representations were misleading.

101. **Malicious.** Emson's conduct is malicious, fraudulent, and wanton in that Emson intentionally misled consumers, including Plaintiffs, to increase the sales of the Products.

102. **Plaintiffs Could Not Have Avoided Injury.** Plaintiff and members of the California Class could not have reasonably avoided such injury. Plaintiff and members of the California Class were misled and unaware of the existence of facts that Emson suppressed and failed to disclose, and Plaintiff and members of the California Class would not have purchased the Products and/or would have purchased them on different terms had they known the truth.

103. **Causation/Reliance/Materiality.** Plaintiff and the California Class suffered harm as a result of Emson's violations of the CLRA because they relied on the Challenged Representations in deciding to purchase the Products. The Challenged Representations were a substantial factor in their purchasing decisions.

104. **Causation/Damages.** As a direct and proximate result of Emson's misconduct in violation of the CLRA, Plaintiff and members of the California Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for violation of this Act in the form of damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the California Class for said monies.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

105. **Injunction.** Given that Emson's conduct violated California Civil Code section 1780, Plaintiff and members of the California Class are entitled to seek, and do hereby seek, injunctive relief to put an end to Emson's violations of the CLRA and to dispel the public misperception generated, facilitated, and fostered by Emson's false, misleading, and deceptive advertising campaign. Plaintiff has no adequate remedy at law. Without equitable relief, Emson's unfair and deceptive practices will continue to harm Plaintiffs and the California Class. Accordingly, Plaintiff seeks an injunction to enjoin Emson from continuing to employ the unlawful methods, acts, and practices alleged herein pursuant to section 1780, subdivision (a)(2), and otherwise require Emson to take corrective action necessary to dispel the public misperception engendered, fostered, and facilitated through Emson's deceptive labeling of the Products with the Challenged Representations.

106. **Punitive Damages.** Emson's unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Emson's misconduct is malicious as Emson acted with the intent to cause Plaintiff and consumers to pay for Products that they were not, in fact, receiving. Emson willfully and knowingly disregarded the rights of Plaintiff and consumers as Emson was, at all times, aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiff. Emson's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their rights. Emson's misconduct is fraudulent as Emson, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiff and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Emson. Accordingly, Plaintiff seek an award of punitive damages against Emson.

///

///

///

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

COUNT FOUR

Violation of Colorado Consumer Protection Act

(Colo. Rev. Stat. §§ 6-1-101 *et seq.*)

(*On Behalf of the Colorado Class*)

107. **Incorporation by Reference.** Plaintiff Miller re-alleges and incorporates by reference all allegations contained in this complaint, as though fully set forth herein.

108. **Colorado Class.** Plaintiff Miller brings this claim individually and on behalf of the Colorado Class who purchased the Products within the applicable statute of limitations.

109. **Deceptive Trade Practices.** Defendant has engaged in deceptive trade practices under C.R.S. § 6-1-105(1)(e) because, in the course of their businesses, Defendant knowingly or recklessly made false representations as to the characteristics, ingredients, uses, and benefits of the Products as healthy, safe, and non-toxic.

110. Defendant has engaged in deceptive trade practices under C.R.S. § 6-1-105(1)(g) by, in the course of their businesses, representing that the Products were of a particular standard, quality or grade appropriate for cooking use and food contact when they knew, or should have known, that such representations were untrue.

111. **Significant Public Impact**. These actions relate to the marketing, advertising, and sale of cookware to consumers throughout Colorado, and significantly impacts the public as actual or potential consumers of Defendant's goods. The continued deceptive sale of the Products places the public at risk of exposure to toxic metals.

112. **Damages**. As a result of Defendant's deceptive trade practices under Colo. Rev. Stat. § 6-1-105, Plaintiff and the Colorado Class have suffered actual damages in an amount to be proven at trial and reasonably attorneys' fees and costs against Defendant for their deceptive trade practices.

///

///

///

///

///

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

COUNT FIVE

Breach of Warranty

(*On Behalf of the California Class and Colorado Class*)

113. **Incorporation by Reference.** Plaintiffs re-allege and incorporate by reference all allegations contained in this complaint, as though fully set forth herein.

114. **California Class & Colorado Class.** Plaintiffs bring this claim individually and on behalf of the California Class and Colorado Class (the "**Class**") who purchased the Products within the applicable statute of limitations.

115. **Express Warranty.** By advertising and selling the Products at issue, Emson made promises and affirmations of fact on the Products' labeling, and through its marketing and advertising, as described herein. This labeling and advertising constitute express warranties and became part of the basis of the bargain between Plaintiffs and members of the Class and Emson. Emson purports, through the Products' labeling and advertising, to create express warranties that the Products, among other things, conform to the Challenged Representations.

116. **Implied Warranty of Merchantability.** By advertising and selling the Products at issue, Emson, a merchant of goods, made promises and affirmations of fact that the Products are merchantable and conform to the promises or affirmations of fact made on the Products' labeling, and through its marketing and advertising, as described herein. This labeling and advertising, combined with the implied warranty of merchantability, constitute warranties that became part of the basis of the bargain between Plaintiffs and members of the Class and Emson—to wit, that the Products, among other things, conform to the Challenged Representations.

117. **Breach of Warranty.** Contrary to Emson's warranties, the Products do not conform to the Challenged Representations and, therefore, Emson breached its warranties about the Products and their qualities.

118. **Causation/Remedies.** As a direct and proximate result of Emson's breach of warranty, Plaintiffs and members of the Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiffs seek a monetary award for breach of warranty in the form of damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiffs and the Class for said monies, as well as injunctive relief to enjoin Emson's misconduct to prevent ongoing and future harm that will result.

119. **Punitive Damages.** Plaintiffs seek punitive damages pursuant to this cause of action for breach of warranty on behalf of Plaintiffs and the Class. Emson's unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Emson's misconduct is malicious as Emson acted with the intent to cause Plaintiffs and consumers to pay for Products that they were not, in fact, receiving. Emson willfully and knowingly disregarded the rights of Plaintiffs and consumers as Emson was aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiffs. Emson's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such misconduct. Said misconduct subjected Plaintiffs and consumers to cruel and unjust hardship in knowing disregard of their rights. Emson's misconduct is fraudulent as Emson, at all relevant times, intentionally misrepresented and/or concealed material facts with the intent to deceive Plaintiffs and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Emson.

COUNT SIX

UNJUST ENRICHMENT

(*On Behalf of the California Class and Colorado Class*)

120. **Incorporation by Reference.** Plaintiffs re-allege and incorporate by reference all allegations contained in this complaint, as though fully set forth herein.

121. **California Class & Colorado Class.** Plaintiffs bring this claim individually and on behalf of the California Class and Colorado Class (the "**Class**") who purchased the Products within the applicable statute of limitations.

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

122. **Plaintiffs/Class Conferred a Benefit.** By purchasing the Products, Plaintiffs and members of the Class conferred a benefit on Emson in the form of the purchase price of the Products.

123. **Emson's Knowledge of Conferred Benefit.** Emson had knowledge of such benefit and Emson appreciated the benefit because, were consumers not to purchase the Products, Emson would not generate revenue from the sales of the Products.

124. **Emson's Unjust Receipt Through Deception.** Emson's knowing acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Emson's fraudulent, misleading, and deceptive labeling and advertising.

125. **Causation/Damages.** As a direct and proximate result of Emson's unjust enrichment, Plaintiffs and members of the Class were harmed in the amount of the purchase price they paid for the Products. Further, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiffs seek a monetary award for unjust enrichment in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiffs and the Class for said monies, as well as injunctive relief to enjoin Emson's misconduct to prevent ongoing and future harm that will result.

126. **Punitive Damages**. Plaintiffs seek punitive damages pursuant to this cause of action for unjust enrichment on behalf of Plaintiffs and the Class. Emson's unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of punitive damages as permitted by law. Emson's misconduct is malicious as Emson acted with the intent to cause Plaintiffs and consumers to pay for Products that they were not, in fact, receiving. Emson willfully and knowingly disregarded the rights of Plaintiffs and consumers as Emson was aware of the probable dangerous consequences of its conduct and deliberately failed to avoid misleading consumers, including Plaintiffs. Emson's misconduct is oppressive as, at all relevant times, said conduct was so vile, base, and/or contemptible that reasonable people would look down upon it and/or otherwise would despise such corporate misconduct. Said misconduct subjected Plaintiffs and consumers to cruel and unjust hardship in knowing disregard of their rights. Emson's misconduct is fraudulent as Emson, at all relevant times, intentionally misrepresented

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

and/or concealed material facts with the intent to deceive Plaintiffs and consumers. The wrongful conduct constituting malice, oppression, and/or fraud was committed, authorized, adopted, approved, and/or ratified by officers, directors, and/or managing agents of Emson.

PRAYER FOR RELIEF

127. WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, prays for judgment against Emson as follows:

a. **Certification:** For an order certifying this action as a class action, appointing Plaintiffs as the Class Representatives, and appointing Plaintiffs' Counsel as Class Counsel;

b. **Declaratory Relief:** For an order declaring that Emson's conduct violates the statutes and laws referenced herein consistent with applicable law and pursuant to only those causes of action so permitted;

c. **Injunction:** For an order requiring Emson to change its business practices to prevent or mitigate the risk of the consumer deception and violations of law outlined herein. This includes, for example, orders that enjoin Emson from continuing to market, advertise, distribute, and sell the Products in the unlawful manner described herein; and/or that require Emson to take all further and just corrective action, consistent with applicable law and pursuant to only those causes of action so permitted;

d. **Damages/Restitution/Disgorgement:** For an order awarding monetary compensation in the form of damages, restitution, and/or disgorgement to Plaintiffs and the Class, consistent with applicable law and pursuant to only those causes of action so permitted;

e. **Punitive Damages/Penalties:** For an order awarding punitive damages, statutory penalties, and/or monetary fines, consistent with applicable law and pursuant to only those causes of action so permitted;

f. **Attorneys' Fees & Costs:** For an order awarding attorneys' fees and costs, consistent with applicable law and pursuant to only those causes of action so permitted;

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265

g. **Pre/Post-Judgment Interest:** For an order awarding pre-judgment and post-judgment interest, consistent with applicable law and pursuant to only those causes of action so permitted; and

h. **All Just & Proper Relief:** For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiffs respectfully demand a trial by jury for all claims.

DATED: May 28, 2026

CLARKSON LAW FIRM, P.C.



Shireen M. Clarkson, Esq.
Ryan J. Clarkson, Esq.
Tiara Avaness, Esq.

Attorneys for Plaintiffs and the Proposed Class

Clarkson Law Firm, P.C. | 22525 Pacific Coast Highway | Malibu, CA 90265