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10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF NEVADA**

12 MICHELLE KARAJELIAN, TRACI  
13 ELLIS, MINDY CHARUSARN on behalf  
14 of themselves and all others similarly  
15 situated,

16 *Plaintiffs,*

17 v.

18 AFFINITY LIFESTYLES.COM, INC.,  
19 d/b/a REAL WATER  
20 3773 Howard Hughes Pkwy  
21 Suite 500S  
22 Las Vegas, Nevada, 89169

23 Serve Registered Agent:  
24 InCorp Service, Inc.  
25 3773 Howard Hughes Pkwy  
26 Suite 500S  
27 Las Vegas, Nevada, 89169

28 *Defendant.*

Case No.

**CLASS ACTION COMPLAINT**

**Demand for Jury Trial**

29 Plaintiffs Michelle Karajelian, Traci Ellis, Mindy Charusarn (“Plaintiffs”), acting on  
30 behalf of themselves and all others similarly situated (“Class Members” or the “Class”), bring  
31 this action for damages and/or equitable relief against Affinity Lifestyles.com, Inc., d/b/a Real  
32 Water (“Defendant”). Plaintiffs’ allegations are based upon personal knowledge as to  
33 themselves and their own actions, and upon information and belief as to all other matters.

**NATURE OF THE CASE**

1  
2 1. This is a civil class action brought by Plaintiffs on behalf of consumers who  
3 purchased Defendant’s “Real Water” brand alkaline water (the “Product”) for personal use.

4 2. Defendant formulates, manufactures, advertises, and sells the Product to consumers  
5 throughout the United States.

6 3. Unbeknown to Plaintiffs and members of the Classes (defined below) at the time  
7 of their purchase, and contrary to the express and implied representations made by Defendant in  
8 respect to the Product, the Product is defective, is deceptively advertised, and causes undesired  
9 side effects to consumers, including, but not limited to, liver failure, hospitalization, fever,  
10 vomiting, nausea, loss of appetite, and fatigue, which, if known to Plaintiffs and members of the  
11 Classes, would have caused Plaintiffs and members of the Classes not to purchase or use the  
12 Product.<sup>1</sup>

13  
14 4. As a result, Plaintiffs and Class Members have been, and continue to be harmed,  
15 by having purchased the Product under false pretenses, and paying for the Product while receiving  
16 something worthless in return.

17  
18 5. Plaintiffs and the Classes thus bring claims for negligence, violation of consumer  
19 protection statutes, and unjust enrichment seeking equitable relief and/or money damages, and  
20 reasonable attorneys’ fees.

21 **PARTIES**

22 6. Plaintiff Michelle Karajelian, is a citizen of California, residing in Fountain Valley,  
23 Orange County. Plaintiff Karajelian purchased and used the Product in California. As a result of  
24

25  
26 \_\_\_\_\_  
27 <sup>1</sup><https://www.fda.gov/food/outbreaks-foodborne-illness/investigation-acute-non-viral-hepatitis-illnesses-real-water-brand-alkaline-water-march-2021> (last visited March 19, 2021).  
28

1 using the Product Plaintiff Karajelian suffered nausea.

2 7. Plaintiff Traci Ellis is a citizen of California, residing in Fresno, Fresno County.  
3 Plaintiff Ellis purchased and used the Product in California. As a result of using the Product  
4 Plaintiff Ellis suffered nausea and blood in her urine.

5 8. Plaintiff Mindy Charusarn is a citizen of California, residing in Mission Hills, Santa  
6 Barbara County. Plaintiff Charusarn purchased and used the Product in California.

7 9. Defendant Affinitylifestyles.com, Inc. is incorporated in Nevada with its principal  
8 place of business at 3773 Howard Hughes Pkwy, STE 500S, Las Vegas, Nevada, 89169.  
9

10 **JURISDICTION AND VENUE**

11 10. This Court has jurisdiction over this action under the Class Action Fairness Act  
12 (“CAFA”), 28 U.S.C. § 1332(d). There are at least 100 members in the proposed class, the  
13 aggregated claims of the individual class members exceed the sum or value of \$5,000,000.00  
14 exclusive of interest and costs, and some of the members of the proposed class are citizens of states  
15 different from each of the Defendant.  
16

17 11. The Defendant has sufficient minimum contacts with Nevada to be subject to this  
18 Court’s personal jurisdiction. Defendant intentionally avails itself of the markets within Nevada  
19 through the promotion, sale, marketing, and distribution of the Products and numerous other  
20 products, which renders this Court’s exercise of jurisdiction necessary and proper.

21 12. In accordance with 28 U.S.C. § 1391, venue is proper in this District because a  
22 substantial part of the conduct giving rise to Plaintiffs’ claims occurred in this District, Defendant  
23 transacts business in this District, and Defendant is headquartered in this District.  
24

25 **FACTUAL ALLEGATIONS**

26 13. Defendant bottles water and sells it across the Southwest United States-including  
27  
28

1 Nevada, Utah, Arizona, New Mexico, and the Los Angeles area. Defendant sells the Product in  
2 major retail chains and many other stores, including at Sprouts, Whole Foods, and Costco.<sup>2</sup>

3 14. The Product comes in a variety of sizes and is available in ready to drink bottles.  
4 Customers can choose between 500mL, 750mL, 1 liter, and 1.5-liter bottles. A 1-gallon bottle  
5 option is in the works. Aside from the ready to drink option, Real Water also comes in a 5 gallon  
6 bottle for home deliveries.

7  
8 15. Defendant touts itself as “a premium drinking water with 9.0 pH” that “can help  
9 your body to restore balance and reach your full potential.”<sup>3</sup>

10 16. Defendant touts that its water provides key benefits including that it supposedly  
11 deactivates pepsin, an enzyme that causes acid reflux, benefits people who have high blood  
12 pressure, diabetes, and high cholesterol, and enables blood to flow more efficiently and increasing  
13 oxygen delivery throughout the body.<sup>4</sup>

14 17. Defendant claims to add electrons to the water via a process known as “electrical  
15 restricting”.<sup>5</sup>

16  
17 18. Defendant represents that the Product technologically improves on, and is superior  
18 to, normal drinking water. In a YouTube video on Defendant’s website, it makes numerous claims  
19 about the innovative technology within the Product. It states that normal tap water creates “free  
20 radicals” that cause damage throughout the body and cause damage and serious health conditions:<sup>6</sup>  
21  
22

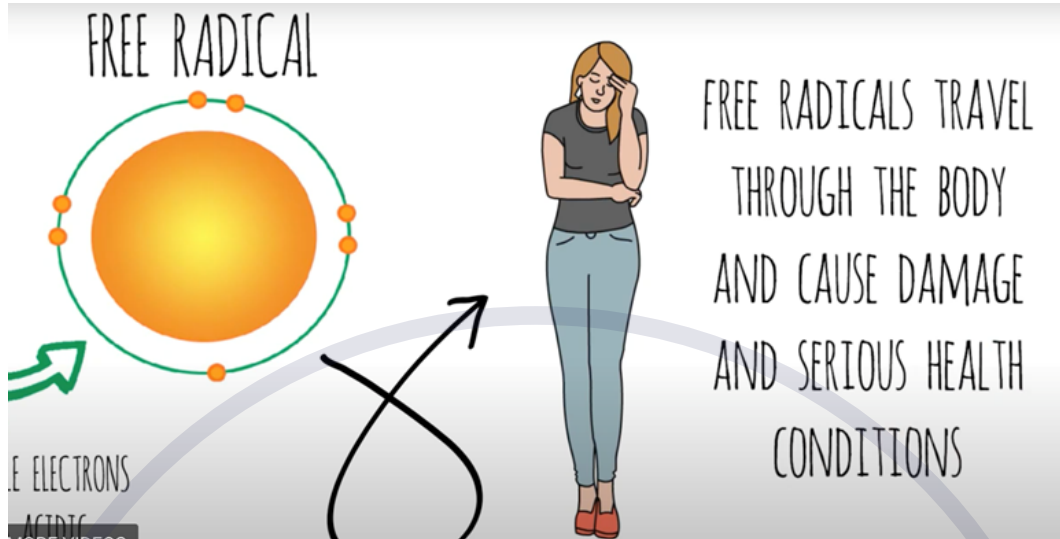
23  
24 <sup>2</sup> [https://www.washingtonpost.com/health/warning-issued-not-to-drink-vegas-based-real-water-product/2021/03/17/b7fbd294-876b-11eb-be4a-24b89f616f2c\\_story.html](https://www.washingtonpost.com/health/warning-issued-not-to-drink-vegas-based-real-water-product/2021/03/17/b7fbd294-876b-11eb-be4a-24b89f616f2c_story.html) (last visited March 18, 2021).

25 <sup>3</sup> <https://drinkrealwater.com/about-us/> (last visited March 18, 2021).

26 <sup>4</sup> <https://made.vegas/real-alkalized-water-las-vegas/> (last visited March 18, 2021).

27 <sup>5</sup> *Id.* (last visited March 18, 2021).

28 <sup>6</sup> <https://youtu.be/aVBN8v4e5cg> (last visited March 18, 2021).

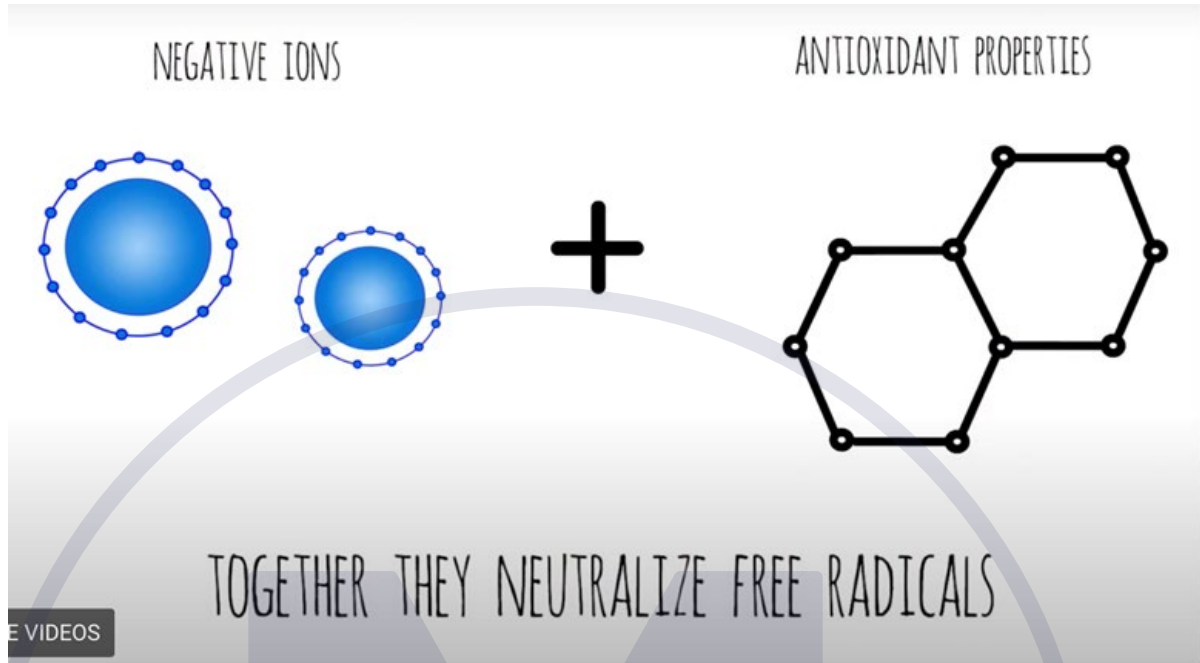


19. Defendant claims that the Product prevents these “free radicals” from building up in the body and using valuable electrolytes because of the electrons that are created within the body as a result of ingesting the Product.<sup>7</sup>

E2 ELECTRON ENERGIZED  
TECHNOLOGY ADDS  
TRILLIONS & TRILLIONS  
OF ELECTRONS



<sup>7</sup> *Id.*



20. Defendant directs the aforementioned representations and promises about the health benefits of the Product to consumers, like Plaintiffs and Class Members, and Defendant intended that Plaintiff and Class Members read and rely on these health representations in purchasing the Product.

21. In addition, each bottle of the Product represents that Real Water goes “beyond alkalinity” and contains water “infused with negative ions.” These representations conveyed to Plaintiffs and all other reasonable consumers the notion that the product is healthy or, at the least, that it is suitable for human consumption. Each of the Plaintiffs read and relied on such representations, which appear on all bottles of the Products.

22. Nowhere in Defendant’s advertisements, marketing or labeling of the Products does it disclose that the Product causes liver failure, hospitalization, fever, vomiting, nausea, loss of appetite, and/or fatigue

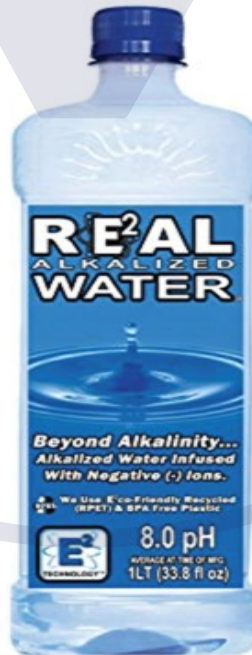


23. Plaintiffs would not have purchased the product, or would have paid much less for it, if they knew that they were undertaking a risk to their health by consuming it.

8



9



<sup>8</sup> <https://drinkrealwater.com/product/real-water-16-9oz-bottles-case-of-24/> (last visited March 21, 2021).

<sup>9</sup> <https://www.pinterest.com/pin/141511613265057702/> (last visited March 21, 2021).

1 24. As reported in the Washington Post, Defendant has touted the Product as the  
2 healthiest drinking water available, which provides specific advertised benefits, as alleged above.<sup>10</sup>

3 25. However, Defendant's Real Water is not the healthiest drinking water available. In  
4 fact, it is far from it.

5 26. Contrary to the aforementioned representations and promises made in respect to the  
6 Product by Defendant, the Product was defective and caused undesired side effects to consumers,  
7 including, but not limited to, fever, fatigue, loss of appetite, nausea, vomiting, abdominal pain,  
8 dark urine, clay or gray-colored bowel movements, joint pain, yellow eyes, jaundice, liver failure,  
9 hospitalization, and loss of appetite.

10 27. Defendant's Product does not help one reach their full potential. In fact,  
11 Defendant's product has caused liver damage to children due to non-viral hepatitis.<sup>11</sup>

12 28. In November 2020, a 2-year-old was transported to the hospital for liver  
13 malfunction. There, it became apparent at the hospital that multiple children have had similar  
14 ailments. The only common link between the group was drinking the Defendant's Product.<sup>12</sup>

15 29. ALT, which stands for alanine transaminase, is an enzyme found mostly in the liver.  
16 When liver cells are damaged, they release ALT into the bloodstream. An ALT test measures the  
17 amount of ALT in the blood. High levels of ALT in the blood can indicate a liver problem. The  
18 normal value for ALT in blood ranges from 29 to 33 units per liter (IU/L) for males and 19 to 25  
19  
20  
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22  
23 <sup>10</sup> [https://www.washingtonpost.com/health/warning-issued-not-to-drink-vegas-based-real-water-product/2021/03/17/b7fbd294-876b-11eb-be4a-24b89f616f2c\\_story.html](https://www.washingtonpost.com/health/warning-issued-not-to-drink-vegas-based-real-water-product/2021/03/17/b7fbd294-876b-11eb-be4a-24b89f616f2c_story.html) (last visited March 19, 2021).

24 <sup>11</sup> <https://www.8newsnow.com/news/local-news/fda-issues-warning-about-las-vegas-water-company-after-numerous-people-suffer-liver-damage-local-family-sues/> (last visited March 19, 2021).

25 <sup>12</sup> <https://www.8newsnow.com/news/local-news/fda-issues-warning-about-las-vegas-water-company-after-numerous-people-suffer-liver-damage-local-family-sues/> (last visited March 19, 2021).



1 IU/L for females. However, the 2-year-old’s ALT was measured at over 5,000, and, as a result  
2 thereof, he was informed that he was a candidate for an immediate liver transplant.<sup>13</sup>

3 30. Despite these episodes, Defendant continued selling the Product.

4 31. In March 2021, an FDA investigation started in connection with the Southern  
5 Nevada Health District that sought to determine the cause of the injuries suffered by the children  
6 as a result of drinking the Product.

7  
8 On March 13, the FDA was alerted to five cases of acute non-viral  
9 hepatitis (resulting in acute liver failure) in infants and children  
10 that occurred in November 2020 with an unknown cause reported  
11 to the Southern Nevada Health District. All five patients had been  
12 hospitalized but have since recovered. All patients were reported to  
13 have consumed “Real Water” brand alkaline water. These patients  
14 came from four different households. Five additional people, two  
15 adults and three children, from two of the four households were  
16 reported to have experienced other symptoms as well. Less severe  
17 symptoms included fever, vomiting, nausea, loss of appetite, and  
18 fatigue. **The consumption of “Real Water” brand alkaline  
19 water is the only common link identified among all of these  
20 cases to date.**<sup>14</sup>

21 (emphasis supplied).

22 32. The FDA investigation confirmed the children suffered from non-viral hepatitis that  
23 resulted in acute liver failure and the only common link among all the cases was the consumption  
24 of Defendant’s Product.

25 33. As a result of the FDA’s preliminary investigation, it recommended “[c]onsumers,  
26 restaurants, and retailers should not drink, cook with, sell, or serve “Real Water” alkaline water,  
27 until more information is known about the cause of the illnesses. Symptoms of all types of  
28 hepatitis, including non-viral hepatitis, are similar and can include fever, fatigue, loss of appetite,

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26 <sup>13</sup> *Id.*

27 <sup>14</sup> <https://www.fda.gov/food/outbreaks-foodborne-illness/investigation-acute-non-viral-hepatitis-illnesses-real-water-brand-alkaline-water-march-2021> (last visited March 19, 2021).

1 nausea, vomiting, abdominal pain, dark urine, clay or gray-colored bowel movements, joint pain,  
2 yellow eyes, and jaundice. Those experiencing these symptoms should contact their doctor.”<sup>15</sup>

3 34. On March 17, 2021, nearly 5 months from the first episode suffered as a result of  
4 drinking the Product, the President of the company who manufactures the Product ordered for all  
5 retailers, restaurants, and any other business to stop selling the Product “throughout the United  
6 States until the issue is resolved.”<sup>16</sup>

7  
8 35. On its homepage, Defendant on March 16, 2021, told consumers to return their  
9 unused bottles to retailers, without offering a full (or any) refund of their purchase price, or  
10 otherwise hinting at a process by which consumers can receive compensation for purchasing a  
11 product deemed too dangerous to leave in the stream of commerce. The website stated the  
12 following:

- 13 • Real Water was notified on March 16, 2021, of a potential problem with our water  
14 dating back to November 2020. We are saddened to hear of the potential health  
15 issue of the product from our Real Water Las Vegas Home Delivery operation.
- 16 • We, at Real Water, take the safety of our products and concern for our customer’s  
17 health seriously. Real Water takes great strides in every way to make sure our  
18 product is safe for consumption. Our goal is to diligently work with the FDA to  
19 achieve a swift resolution.
- 20 • While the potential problem arose in Las Vegas, we are taking proactive steps to  
21 stop selling and distributing Real Water products throughout the United States until  
22  
23

24  
25 <sup>15</sup> *Id.*

26 <sup>16</sup> [https://www.washingtonpost.com/health/warning-issued-not-to-drink-vegas-based-real-water-product/2021/03/17/b7fbd294-876b-11eb-be4a-24b89f616f2c\\_story.html](https://www.washingtonpost.com/health/warning-issued-not-to-drink-vegas-based-real-water-product/2021/03/17/b7fbd294-876b-11eb-be4a-24b89f616f2c_story.html) (last visited March 19,  
27 2021).

1 the issue is resolved.

- 2
- 3 • Real Water is asking that all retailers pull the product from the shelf, effective
  - 4 immediately, and hold it in the back rooms or return it to the distributors.
  - 5 • Any customer who has purchased Real Water from a retailer is asked to return the
  - 6 product. For more information, we urge you to call 702-310-5437 or email us at
  - 7 customerservice@drinkrealwater.com

8 36. Defendant failed to disclose to consumers on the label and packaging of the Product  
9 and/or in the Product's marketing materials that health injuries could result from simply drinking  
10 the Product, despite having knowledge for months (since November 2020) of the harmful effects  
11 of the Product.

12 37. On information and belief, the Product's defective nature arose out of Defendant's  
13 failure to, among other things, perform sufficient product testing, and quality control to ensure the  
14 Product was safe for consumer use, as expressly and/or impliedly advertised by Defendant.

15 38. Because Defendant decided to cut corners in the formulating, manufacturing and/or  
16 testing of the Product, consumers, including Plaintiffs, have suffered injuries, and paid for a  
17 product they would not have bought, or would have paid materially less, if they knew the truth that  
18 was omitted by Defendant.

19 39. Although Defendant publicly acknowledged the Product was defective and  
20 dangerous, Plaintiffs and Class Members still remained uncompensated for purchasing a worthless  
21 product. Nor has Defendant addressed any personal injuries caused by the Product.

22 40. Because of Defendant's omissions, false promises and deceptive and misleading  
23 advertising practices, consumers were deceptively induced to purchase the Product. The only  
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1 conceivable purpose for falsely and deceptively making these claims about the Product, and failing  
2 to disclose the serious hazard it posed, is to stimulate sales and enhance Defendant's profits.

3 41. As a result, consumers, including Plaintiffs, purchased and paid valuable  
4 consideration for a Product that is worthless. Indeed, Defendant surely understands that no  
5 reasonable consumer would purchase the Product if it were accurately labeled and/or marketed as  
6 presenting health risks.

7  
8 42. Plaintiffs are in the same Class as all other consumers who purchased Defendant's  
9 Product during the relevant time period. Plaintiffs and the Class Members were in fact misled by  
10 Defendant's omissions and/or misrepresentations in respect to the Product. Plaintiffs and Class  
11 Members would have purchased other bottled water, if any at all, if they had not been deceived by  
12 the misleading and deceptive marketing and/or labeling of the Product by Defendant.

13 **CLASS ACTION ALLEGATIONS**

14 **Class Definitions**

15 43. Plaintiffs bring this action individually and as representatives of all those similarly  
16 situated, pursuant to Federal Rule of Civil Procedure 23, on behalf of the below-defined Class:

17  
18 **Nationwide Class: All persons in the United States who,  
19 during the maximum period permitted by the law, purchased  
20 the Product for personal, family, or household use.**

21 44. Plaintiffs Michelle Karajelian, Traci Ellis, Matthew Daniel, Mindy Charusarn bring  
22 this action on behalf of themselves and the members of the following Subclass:

23 **California Subclass: All persons in California who, during  
24 the maximum period permitted by the law, purchased the  
25 Product for personal, family, or household use.**

26 45. Specifically excluded from these definitions are (1) any and all persons who  
27 purchased the Products directly from Defendant; (2) Defendant, any entity in which Defendant has  
28 a controlling interest, and its legal representatives, officers, directors, employees, assigns and

1 successors; (3) the Judge to whom this case is assigned and any member of the Judge’s staff or  
2 immediate family; and (4) Class Counsel.

3 46. As used herein, “Class Members” shall mean and refer to the members of the  
4 Nationwide Class and all Subclasses, including Plaintiffs.

5 47. Plaintiffs seek only damages and/or equitable relief on behalf of themselves and the  
6 Class Members. Plaintiffs disclaim any intent or right to seek any recovery in this action for  
7 personal injuries, wrongful death, or emotional distress suffered by Plaintiffs and/or the Class  
8 Members.  
9

10 48. Numerosity: Although the exact number of Class Members is uncertain at this time  
11 and can only be ascertained through discovery, the number is great enough such that joinder is  
12 impracticable and likely in the thousands. The disposition of the claims of these Class Members  
13 in a single action will provide substantial benefits to all parties and to the Court.

14 49. Typicality: The claims of the representative Plaintiffs are typical in that Plaintiffs,  
15 like all Class Members, purchased the Products that were manufactured and distributed by  
16 Defendant. Plaintiffs, like all Class Members, have been damaged by Defendant’s misconduct in  
17 that, *inter alia*, they have incurred or will continue to incur damage as a result of overpaying for a  
18 product that contained a significantly lesser amount of hemp extract than advertised. Furthermore,  
19 the factual basis of Defendant’s misconduct is common to all Class Members because Defendant  
20 engaged in a uniform, systematic course of conduct, and/or a uniform failure to act and/or convey  
21 complete and truthful information , and defendants’ wrongdoing has injured all Class Members.  
22

23 50. Commonality: Plaintiffs have numerous questions of law and fact common to  
24 themselves and Class Members that predominate over any individualized questions. These  
25 common legal and factual issues include:  
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28

- a. Whether the Product is defective such that they cause health problems including fever, fatigue, loss of appetite, nausea, vomiting, abdominal pain, dark urine, clay or gray-colored bowel movements, joint pain, yellow eyes, jaundice, liver failure, hospitalization, and/or loss of appetite after consumption;
- b. Whether and when Defendant had exclusive knowledge that the Product is defective but failed to disclose the defect to the public;
- c. Whether the Product disclosed the side effects of the Product as described herein;
- d. Whether Defendant's conduct violated the applicable state consumer claims alleged herein;
- e. Whether Defendant's acts and omissions make it liable to Plaintiff and Class Members for negligence and strict products liability;
- f. Whether Defendant engaged in unfair, deceptive, unlawful and/or wrongful acts or practices in trade or commerce by objectively misleading Plaintiffs and putative Class and Subclass members;
- g. Whether Defendant's conduct, as alleged herein, was likely to mislead a reasonable consumer;
- h. Whether Defendant's statements, concealments and omissions regarding the Products were material, in that a reasonable consumer could consider them important in purchasing the Products;
- i. Whether, as a result of Defendant's omissions and/or misrepresentations of material facts, Plaintiffs and members of the Class and Subclass have suffered an ascertainable loss of monies and/or property and/or value; and
- j. Whether Plaintiffs and Class members are entitled to monetary damages, injunctive relief, and/or other remedies and, if so, the nature of any such relief.

51. Adequate Representation: Plaintiffs will fairly and adequately protect the interests of Class Members. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including consumer and product defect class actions, and Plaintiffs intend to prosecute this action vigorously.

52. Predominance and Superiority: Plaintiffs and Class Members have all suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, Class Members would likely find the cost of litigating



1 their claims prohibitively high and would therefore have no effective remedy at law. Because of  
2 the relatively small size of Class Members' individual claims, it is likely that few Class Members  
3 could afford to seek legal redress for Defendant's misconduct. Absent a class action, Class  
4 Members will continue to incur damages, and Defendant's misconduct will continue without  
5 remedy. Class treatment of common questions of law and fact would also be a superior method to  
6 multiple individual actions or piecemeal litigation in that class treatment will conserve the  
7 resources of the courts and the litigants and will promote consistency and efficiency of  
8 adjudication.

9 53. Defendant has acted or refused to act on grounds generally applicable to the Class,  
10 thereby making appropriate final injunctive relief or corresponding declaratory relief with respect  
11 to the Class appropriate.

12 **COUNT 1**  
13 **UNJUST ENRICHMENT**

14 54. Plaintiffs bring this count on behalf of themselves and the Nationwide Class and  
15 repeat and re-allege all previous paragraphs as if fully included herein.

16 55. Plaintiffs conferred benefits on Defendant by purchasing the Products at a premium  
17 price.

18 56. Defendant has knowledge of such benefits.

19 57. Defendant has been unjustly enriched in retaining the revenues derived from  
20 Plaintiffs' and Class Members' purchases of the Products, because the Defendant will obtain the  
21 benefits conferred by Plaintiffs and the Class Members without adequately compensating Plaintiffs  
22 and the Class Members therefore. Defendant failed to adequately compensate the Plaintiffs for the  
23 benefits conferred by providing the Products without those products having the characteristics and  
24 benefits promised.  
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1 58. Retention of those moneys under these circumstances is unjust and inequitable  
2 because (a) Defendant falsely and misleadingly represented that the Products increased health  
3 benefits; (b) Plaintiffs paid a price premium for the Products based on Defendant's false and  
4 misleading statements; and (c) the Products did not have the characteristics and benefits promised  
5 because of the latent and/or inherent defect that causes fever, fatigue, loss of appetite, nausea,  
6 vomiting, abdominal pain, dark urine, clay or gray-colored bowel movements, joint pain, yellow  
7 eyes, jaundice, liver failure, hospitalization, and/or loss of appetite after consumption.  
8

9 59. This has resulted in injuries to Plaintiffs and members of the Class because they  
10 would not have purchased (or paid a price premium) for the Products had they known of the latent  
11 and/or inherent defect in Defendant's Products that causes fever, fatigue, loss of appetite, nausea,  
12 vomiting, abdominal pain, dark urine, clay or gray-colored bowel movements, joint pain, yellow  
13 eyes, jaundice, liver failure, hospitalization, and/or loss of appetite after consumption.  
14

15 60. Because Defendant's retention of the non-gratuitous benefits conferred on it by  
16 Plaintiffs and members of the Class is unjust and inequitable, and because equity and good  
17 conscience requires restitution, Defendant must pay restitution to Plaintiffs and members of the  
18 Class for its unjust enrichment, as ordered by the Court.

19 **COUNT 2**  
20 **NEGLIGENCE – FAILURE TO WARN**

21 61. Plaintiffs bring this count on behalf of themselves and the Nationwide Class and  
22 repeat and re-allege all previous paragraphs as if fully included herein.

23 62. At all times referenced herein, Defendant was responsible for designing,  
24 formulating, testing, manufacturing, inspecting, distributing, marketing, supplying and/or selling  
25 the Products to Plaintiffs and the Class.  
26  
27  
28

1 63. At all times material hereto, the use of the Products in a manner that was intended  
2 and/or reasonably foreseeable by Defendant involved substantial risk of fever, fatigue, loss of  
3 appetite, nausea, vomiting, abdominal pain, dark urine, clay or gray-colored bowel movements,  
4 joint pain, yellow eyes, jaundice, liver failure, hospitalization, and/or loss of appetite after  
5 consumption.

6 64. At all times the risk of substantial health risks were known or knowable by  
7 Defendant, in light of the generally recognized and prevailing knowledge available at the time of  
8 manufacture and formulation, as described herein.  
9

10 65. Defendant, as the developer, manufacturer, distributor and/or seller of the Products,  
11 had a duty to warn Plaintiffs and the Class of all dangers associated with the intended use.

12 66. After receiving multiple complaints of fever, fatigue, loss of appetite, nausea,  
13 vomiting, abdominal pain, dark urine, clay or gray-colored bowel movements, joint pain, yellow  
14 eyes, jaundice, liver failure, hospitalization, and/or loss of appetite after consumption after using  
15 the Products, a duty arose to provide a warning to consumers that use of the Products could result  
16 in these side effects as a result of using the Products.  
17

18 67. Defendant was negligent and breached its duty of care by negligently failing to  
19 give adequate warnings to purchasers and users of the Products, including Plaintiffs and the  
20 Class, about the risks, potential dangers and defective condition of the Products.  
21

22 68. Defendant knew, or by the exercise of reasonable care, should have known of  
23 the inherent design and/or manufacturing defects and resulting dangers associated with using the  
24 Products as described herein, and knew that Plaintiffs and Class members could not reasonably be  
25 aware of those risks. Defendant failed to exercise reasonable care in providing the Class with  
26 adequate warnings.  
27  
28

1 69. As a direct and proximate result of Defendant’s failure to adequately warn  
2 consumers that use of the Products could cause fever, fatigue, loss of appetite, nausea, vomiting,  
3 abdominal pain, dark urine, clay or gray-colored bowel movements, joint pain, yellow eyes,  
4 jaundice, liver failure, hospitalization, and/or loss of appetite after consumption, Plaintiffs and the  
5 Class have suffered damages as set forth herein.

6 **COUNT 3**  
7 **NEGLIGENCE – FAILURE TO TEST**

8 70. Plaintiffs bring this count on behalf of themselves and the Nationwide Class and  
9 repeat and re-allege all previous paragraphs as if fully included herein.

10 71. Defendant did not perform adequate testing on the Products, which were defectively  
11 designed, formulated, tested, manufactured, inspected, distributed, marketed, supplied and/or sold  
12 to Plaintiffs and the Class.

13 72. Adequate testing would have revealed the serious deficiencies in the Products in  
14 that it would have revealed the fever, fatigue, loss of appetite, nausea, vomiting, abdominal pain,  
15 dark urine, clay or gray-colored bowel movements, joint pain, yellow eyes, jaundice, liver failure,  
16 hospitalization, and/or loss of appetite occasioned by use of the Products.

17 73. Defendant had, and continues to have, a duty to exercise reasonable care to  
18 properly design—including the duty to test—the Products before introducing them into the stream  
19 of commerce.

20 74. Defendant breached these duties by failing to exercise ordinary care in the design  
21 and testing of the Products, which it introduced into the stream of commerce, because Defendant  
22 knew or should have known the Products could cause fever, fatigue, loss of appetite, nausea,  
23 vomiting, abdominal pain, dark urine, clay or gray-colored bowel movements, joint pain, yellow  
24 eyes, jaundice, liver failure, hospitalization, and/or loss of appetite after consumption.  
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1 75. Defendant knew or reasonably should have known that Class members such as  
2 Plaintiffs would suffer economic damages or injury and/or be at an increased risk of suffering  
3 damage and injury, as a result of its failure to exercise ordinary care in the design of the  
4 Products by failing to conduct appropriate testing.

5 76. By reason of the foregoing, Plaintiffs and the Class experienced and/or are at risk  
6 of experiencing financial damage and injury.

7 77. As a direct and proximate result of Defendant's failure to test the Products  
8 designed, formulated, manufactured, inspected, distributed, marketed, warranted, advertised,  
9 supplied and/or sold by the Defendant, Plaintiffs and the Class have suffered damages as described  
10 above.  
11

12 **COUNT 4**  
13 **VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT**  
14 **Cal. Civ. Code §§ 1750 *et seq.***

15 78. The Plaintiffs, individually and on behalf of the California Subclass, incorporate by  
16 reference all previous paragraphs of this Complaint as if fully stated herein.

17 79. This claim is for equitable relief only and does not assert money damages. Plaintiffs  
18 reserve the right to amend the complaint in the future to plead money damages.

19 80. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* ("CLRA"), is  
20 a comprehensive statutory scheme that is to be liberally construed to protect consumers against  
21 unfair and deceptive business practices in connection with the conduct of businesses providing  
22 goods, property or services to consumers primarily for personal, family, or household use.  
23

24 81. Defendant is a "person" as defined by Cal. Civ. Code §§ 1761(c) & 1770 and has  
25 sold Products which are "goods" as defined by Cal. Civ. Code §§ 1761(a) & 1770.  
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1 82. Plaintiffs and California Subclass members are “consumers” as defined by Cal. Civ.  
2 Code §§ 1761(d) & 1770 and have engaged in a “transaction” as defined by Cal. Civ. Code §§  
3 1761(e) & 1770.

4 83. Defendant’s unlawful conduct resulted in the sales of products and services to  
5 Plaintiffs and the California Subclass Members in violation of Cal. Civ. Code § 1770, including:

- 6 a. Representing that goods or services have characteristics that they do not have;  
7  
8 b. Representing that goods or services are of a particular standard, quality, or  
9 grade when they were not;  
10  
11 c. Advertising goods or services with intent not to sell them as advertised; and  
12  
13 d. Representing that the subject of a transaction has been supplied in accordance  
14 with a previous representation when it has not.

15 84. Defendant’s representations and omissions were material because they were likely  
16 to deceive reasonable consumers.

17 85. Had Defendant disclosed to Plaintiffs and California Subclass Members that they  
18 misrepresented Defendant’s Products, omitted material information regarding the risk involved  
19 with use of the Products and true abilities of those Defendant’s Products, and were otherwise  
20 engaged in common business practices that ultimately hurt consumers, Defendant would have been  
21 unable to continue selling defective Products. Instead, Defendant represented that its Products  
22 were healthy and gave various health benefits, without disclosing their potential risks and dangers  
23 of consumption. Plaintiffs and the California Subclass Members acted reasonably in relying on  
24 Defendant’s misrepresentations and omissions, the truth of which they could not have discovered  
25 with reasonable diligence.  
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1 86. As a direct and proximate result of Defendant’s violations of Cal. Civ. Code § 1770,  
2 Plaintiffs and California Subclass Members have suffered and will continue to suffer injury,  
3 ascertainable losses of money or property, and monetary and non-monetary damages, including  
4 from not receiving the benefit of their bargain in purchasing the Defendant’s Products, and  
5 increased time and expense in treating the damage caused by the use of Defendant’s Products.

6 87. Plaintiffs sent notice of their intention to seek damages via a letter dated March 21,  
7 2021, in compliance with Cal. Civ. Code § 1782(a). Any further notice would be futile because  
8 Defendant has yet to offer relief to the California Subclass, despite being on notice of its unfair,  
9 and deceptive conduct.

10 88. Plaintiffs, individually and on behalf of the other California Subclass Members,  
11 seek all equitable relief, including a refund and restitution and an order enjoining the acts and  
12 practices described above, attorneys’ fees, and costs under the CLRA.  
13

14 **COUNT 5**  
15 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW**  
16 **Cal. Bus. & Prof. Code §§ 17200 *et seq.***

17 89. Plaintiffs, individually and on behalf of the California Subclass, incorporate by  
18 reference all previous paragraphs of this Complaint as if fully stated herein.

19 90. Defendant is a “person” as defined by Cal. Bus. & Prof. Code § 17201.

20 91. Defendant violated Cal. Bus. & Prof. Code §§ 17200 *et seq.* (“UCL”) by engaging  
21 in unlawful, unfair, and deceptive business acts and practices.

22 92. Defendant’s “unfair” acts and practices include:

- 23 a. Knowingly designing, developing, manufacturing, advertising, and selling  
24 Defendant’s Products with false health claims and significant defects that  
25 result in health and safety risks when used so that consumers did not  
26

1 receive the benefit of their bargain;

- 2 b. Marketing and selling Defendant's Products that relied upon false health  
3 claims, while at the same time exposing consumers to health and safety  
4 risks solely to increase profits;
- 5 c. Making affirmative public representations about alleged benefits of  
6 Defendant's Products while, at the same time, not ensuring consumer health  
7 and safety with respect to use of the Products; and
- 8 d. Concealing material information from consumers regarding the true nature  
9 of the defects in Defendant's Products in order to impact consumer  
10 purchasing behavior.

11  
12 93. Defendant engaged in "unlawful" business practices by violating multiple laws,  
13 including the CLRA, Cal. Civ. Code §§ 1780 *et seq.*, and California common law.

14 94. Defendant's deceptive acts and practices include:

- 15 a. Knowingly designing, developing, manufacturing, advertising, and selling  
16 Defendant's Products with false health claims and significant defects that  
17 result in health and safety risks when used so that consumers did not  
18 receive the benefit of their bargain;
- 19 b. Marketing and selling Defendant's Products that relied upon false health  
20 claims, while at the same time exposing consumers to health and safety  
21 risks solely to increase profits;
- 22 c. Making affirmative public representations about the alleged benefits of  
23 Defendant's Products while, at the same time, not ensuring consumer health  
24 and safety with respect to use of the Products; and  
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1 d. Concealing material information from consumers regarding the true nature  
2 of the defects in Defendant's Products in order to impact consumer  
3 purchasing behavior.

4 95. Defendant violated UCL § 17200's prohibition against engaging in unlawful acts  
5 and practices by engaging in false and misleading advertising and by omitting material facts from  
6 purchasers of Defendant's Products. As alleged more fully herein, Defendant's marketing and sale  
7 of Defendant's Products, and more specifically their failure to inform customers of the health and  
8 safety risks inherent in Defendant's Products, violated Cal. Civ. Code §§ 1750 *et seq.*, common  
9 law, and other statutory violations as alleged herein. Plaintiffs reserve the right to allege other  
10 violations of the law, which constitute other unlawful business acts and practices. As alleged  
11 herein, Defendant continues to misrepresent the Products' abilities and continues to deny that the  
12 Products pose health and safety risks, Defendant has not provided any remedial efforts including  
13 changing the label of the Products that discloses their possible risks, and Defendant's conduct is  
14 ongoing and continues to this date.  
15

16  
17 96. Defendant violated UCL § 17200's prohibition against unfair conduct by failing to  
18 inform its customers about Defendant's Products' abilities and their potential health and safety  
19 risks; engaging in a pattern or practice of concealing those facts and continuing to sell those  
20 Defendant's Products despite its knowledge that they are misrepresented and carry health and  
21 safety risks (including the risk of fever, fatigue, loss of appetite, nausea, vomiting, abdominal pain,  
22 dark urine, clay or gray-colored bowel movements, joint pain, yellow eyes, jaundice, liver failure,  
23 hospitalization, and/or loss of appetite after consumption) - thereby depriving customers of the  
24 value of Defendant's Products as represented. This conduct is substantially injurious to consumers,  
25 offends public policy, is immoral, unethical, oppressive, and unscrupulous as the gravity of the  
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1 conduct outweighs any alleged benefit. Specifically, the health and safety risks were outweighed  
2 by Defendant's profit motive. Defendant engaged in this conduct at the expense of its customers'  
3 rights when other, lawful alternatives were available (such as providing customers with full  
4 information about Defendant's Products, including the known risks and potential side effects of  
5 use, prior to purchase).

6 97. Defendant engaged in this conduct to gain an unfair commercial advantage over its  
7 competitors, seeking to avoid public knowledge of the abilities of Defendant's Products and their  
8 defects to avoid damage to their sales or reputation. Defendant withheld critical and material  
9 information from Plaintiffs and California Subclass Members, competitors, and the marketplace,  
10 all to Defendant's unfair competitive advantage.

11 98. Defendant's business practices, as alleged herein, constitute fraudulent conduct  
12 because they were likely to deceive, and did deceive, California Subclass Members into purchasing  
13 Defendant's Products when those Products were misrepresented and defective with health and  
14 safety risks and otherwise did not perform as advertised.

15 99. Defendant's representations and omissions were material because they were likely  
16 to deceive reasonable consumers.

17 100. As a direct and proximate result of Defendant's unfair, unlawful, and fraudulent  
18 acts and practices, Plaintiffs and California Subclass Members were injured and lost money or  
19 property, including from not receiving the benefit of their bargain in purchasing Defendant's  
20 Products, and increased time and expense in dealing with treating damages from the use of  
21 Defendant's Products.  
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1 101. Defendant recklessly disregarded Plaintiffs and California Subclass members'  
2 rights. Defendant's knowledge of the Defendant's Products' false claims and health and safety  
3 risks put it on notice that the Defendant's Products were not as it advertised.

4 102. Plaintiffs and California Subclass Members seek injunctive and declaratory relief,  
5 any other appropriate equitable relief, and an award of reasonable attorneys' fees and costs under  
6 California Code of Civil Procedure § 1021.5.

7  
8 **COUNT 6**  
9 **VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW**  
10 **Cal. Bus. & Prof. Code §§ 17500 *et seq.***

11 103. Plaintiffs, individually and on behalf of the California Subclass, incorporate by  
12 reference all previous paragraphs of this Complaint as if fully stated herein.

13 104. Defendant's acts and practices, as described herein, have deceived and/or are likely  
14 to continue to deceive Subclass Members and the public. As described, Defendant misrepresented  
15 Defendant's Products, concealed Defendant's Products' defects, concealed the health and safety  
16 risk with use of Defendant's Products, and also concealed and misrepresented the true nature of  
17 Defendant's Products.

18 105. By their actions, Defendant disseminated uniform advertising regarding the  
19 Defendant's Products throughout the country, including in California. The advertising was, by its  
20 very nature, unfair, deceptive, untrue, and misleading within the meaning of Cal. Bus. & Prof.  
21 Code §§ 17500 *et seq.* Such advertisements were intended to and likely did deceive the consuming  
22 public for the reasons detailed herein.

23  
24 106. The above-described false, misleading, and deceptive advertising Defendant  
25 disseminated continues to have a likelihood to deceive in that Defendant failed to disclose the true  
26 nature of Defendant's Products. Defendant failed to instigate a public information campaign to  
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1 alert consumers of the defects and, instead, continued to misrepresent the true nature of  
2 Defendant's Products, continuing to deceive consumers.

3 107. Defendant continued to misrepresent to consumers that Defendant's Products were  
4 capable of certain benefits without disclosing health and safety risks. Had Defendant disclosed  
5 those issues, rather than falsely advertising Defendant's Products' abilities, consumers would have  
6 not purchased Defendant's Products, and would not pay an inflated price for Defendant's Products.

7  
8 108. In making and disseminating the statements alleged herein, Defendant knew, or  
9 should have known, its representations, advertisements, and statements were untrue and  
10 misleading in violation of California law. Plaintiffs and other California Subclass Members based  
11 their purchasing decisions on Defendant's omitted material facts. The revenues to Defendant,  
12 attributable to Products sold in those false and misleading advertisements, amount to hundreds of  
13 millions of dollars. Plaintiffs and California Subclass Members were injured in fact and lost money  
14 and property as a result.

15  
16 109. The misrepresentations and non-disclosures by Defendant of the material facts  
17 described and detailed herein constitute false and misleading advertising and, therefore, constitute  
18 violations of Cal. Bus. & Prof Code §§ 17500 *et seq.*

19 110. As a result of Defendant's wrongful conduct, Plaintiffs and the California Subclass  
20 Members lost money. Plaintiffs and the California Subclass Members are therefore entitled to  
21 restitution as appropriate for this cause of action.

22  
23 111. Plaintiffs and California Subclass Members seek all monetary and non-monetary  
24 relief allowed by law, including restitution of all profits stemming from Defendant's unfair,  
25 unlawful, and fraudulent business practices; injunctive and declaratory relief; reasonable  
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1 attorneys' fees and costs under California Code of Civil Procedure § 1021.5; and other appropriate  
2 equitable relief.

3 **COUNT 7**  
4 **VIOLATION OF NEVADA DECEPTIVE TRADE PRACTICES ACT**  
5 **(Nev. Rev. Stat. §41.600, §598.0915 and §598.0923, *et seq.*)**

6 112. Plaintiffs, individually and on behalf of the Nationwide class, incorporate by  
7 reference all previous paragraphs of this Complaint as if fully stated herein.

8 113. The Defendant's actions and/or inactions with respect to the sale, promotion, and  
9 management of the Product represent a violation of Nevada's Deceptive Trade Practices Act  
10 ("DTPA").

11 114. Defendant knowingly made false representations and/or material omissions  
12 regarding the characteristics, quality, and benefits of the Product while actively promoting and  
13 selling Product to Plaintiffs and Nationwide Class Members throughout Nevada and the United  
14 States.

15 115. Defendant perpetuated violations of Nevada's DTPA by knowingly and purposely  
16 concealing information about the Product making false health claims and significant defects that  
17 result in health and safety risks.

18 116. Defendant's deceptive acts and practices included the dissemination of material  
19 information through television, print, and internet that failed to disclose known health risks and  
20 significant defects with the Product.

21 117. Defendant engaged in deceptive trade practices in the course of its business as  
22 defined in Nev. Rev. Stat. §598.0915, including but not limited to subsections (2), (5), (7), and  
23 (15), in that Defendant:  
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- 1 a. Knowingly made a false representation as to the source, sponsorship,  
2 approval or certification of the Product;
- 3 b. Knowingly made a false representation as to the characteristics, uses, and  
4 benefits of the Product;
- 5 c. Represented that the Product was of a particular standard, quality or grade;  
6 and  
7
- 8 d. Knowingly made other false representation in its transactions involving the  
9 Product with the Plaintiffs and the Nationwide Class.

10 118. Defendant further engaged in deceptive trade practices in the course of its business  
11 as defined in Nev. Rev. Stat. §598.0923, including but not limited to subsection (2) in that  
12 Defendant knowingly failed to disclose a material fact in connection with the sale of the Product.

13 119. The totality of Defendant's deceptive practices and acts are a direct and proximate  
14 cause of economic harm against the Plaintiffs and similarly situated Nationwide Class Members.

15 120. Pursuant to Nev. Rev. Stat. §41.600(3), Plaintiffs and other similarly situated  
16 Nationwide Class Members are entitled all damages sustained, any equitable relief that the Court  
17 deems appropriate, and all costs and reasonable attorney's fees as a result of Defendant's violations  
18 of Nevada's DTPA.  
19

20  
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22 **RELIEF DEMANDED**

23  
24 WHEREFORE, Plaintiffs, individually and on behalf of a class of all others similarly  
25 situated, seeks a judgment against Defendant, as follows:

- 26 a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil  
27  
28

1 Procedure and naming Plaintiffs as Class representatives and Plaintiffs' attorneys as  
2 Class Counsel;

- 3 b. For an order declaring that Defendant's conduct violates the statutes and common  
4 law referenced herein;
- 5 c. For an order finding in favor of Plaintiffs and the Class on all counts asserted herein;
- 6 d. For compensatory, statutory, and punitive damages, as applicable, in amounts to be  
7 determined by the Court and/or jury;
- 8 e. For prejudgment interest on all amounts awarded;
- 9 f. For an order of restitution and all other forms of equitable monetary relief;
- 10 g. For injunctive relief as pleaded or as the Court may deem proper; and
- 11 h. For an order awarding Plaintiffs and the Class their reasonable attorneys' fees,  
12 expenses and costs incurred in bringing this lawsuit.

13  
14 **JURY TRIAL DEMANDED**

15 Plaintiffs demand a trial by jury on all claims so triable.

16  
17 DATED: March 22, 2021

Respectfully Submitted,

18 /s/ David Hilton Wise

19 David Hilton Wise, Esq.

20 Nevada Bar No. 11014

21 John J. Drudi, Esq.\*

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