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8 **IN THE UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA**
 10 **WESTERN DIVISION**

11 SCOTT BARNES, individually and on
 12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 GREATCALL, INC.; BEST BUY CO.,
 16 INC.; and DOES 1 to 10,

17 Defendants.
 18
 19

Case No.

CLASS ACTION

**CLASS ACTION COMPLAINT
 FOR DAMAGES AND EQUITABLE
 RELIEF**

JURY TRIAL DEMANDED

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1 Plaintiff Scott Barnes (“Plaintiff”), individually and on behalf of all others
2 similarly situated, bring this class action against Defendants GreatCall, Inc., Best
3 Buy, Co., Inc. and DOES 1 to 10 (collectively referred to herein as “Defendants”),
4 and in support thereof the following, based upon personal information, investigation
5 of his counsel, and upon information and belief as to all other allegations.

6 I. INTRODUCTION AND NATURE OF THE CASE

7 1. Defendants are the leading provider of connected health and personal
8 emergency response services to the aging population, with more than 900,000 paying
9 subscribers. Defendants introduced the new Lively Mobile Plus (the “Defective
10 Medical Alert Device”) and advertised it as “the highest standard in medical alerts.”
11 Defendants further represent on their website that the Defective Medical Alert
12 Device will provide “help anytime, anywhere, 24/7,” has the “[f]astest call response
13 time,” “[e]nhanced GPS” and “[f]all Detection.”¹ This is all well and good, but the
14 Defective Medical Alert Device fails to provide what was promised to consumers:
15 the Defective Medical Alert Device is defective in that the fall detection and GPS
16 does not function and fails to provide emergency services when activated (the
17 “Defect”); thus, placing consumers—predominantly elderly and disabled persons
18 who are relying on the Defective Medical Alert Device—at great risk of serious
19 injuries, including death if emergency services either arrive late or are never alerted.
20 As set forth below, the Defect is material information to consumers that would have
21 affected their decision to buy the Defective Medical Alert Device.

22 2. In a letter sent to Plaintiff, Defendants acknowledge that the Defective
23 Medical Alert Device has a “quality issue.” (See Exhibit 1.) Indeed, it states that
24 “Out of an abundance of caution—and because your safety is our top priority—we
25 need you to stop using the device immediately and return it to us.” (*Id.*)

26 3. Even though Defendants have been aware of the Defect, and that there
27 has been a drastic increase in failed emergency services calls, Defendants continued

28 ¹ <https://www.greatcall.com/devices/lively-mobile-medical-alert-system>

1 to sell the Defective Medical Alert Device and knowingly hid the Defect from
2 consumers. Defendants made a business decision that publicly notifying all potential
3 consumers about the Defect would negatively affect sales and profits and therefore
4 chose to conceal the serious consequences of the Defect. Faced with this no-win
5 situation, Defendants put profits over quality and safety.

6 **II. JURISDICTION AND VENUE**

7 4. This Court has subject matter jurisdiction over this action pursuant to
8 28 U.S.C. § 1331 because it arises under the laws of the United States and pursuant
9 to 28 U.S.C. § 1332(d) because: (i) there are 100 or more class members; (ii) there is
10 an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and
11 costs; and (iii) because at least one plaintiff and defendant are citizens of different
12 states. This Court has supplemental jurisdiction over the state law claims pursuant
13 to 28 U.S.C. § 1367.

14 5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391
15 because Defendants transact business in this district, is subject to personal
16 jurisdiction in this district, and is therefore deemed to be a citizen of this district.
17 Additionally, Defendants have advertised in this district and has received substantial
18 revenue and profits from its sales of the Defective Medical Alert Device in this
19 district; therefore, a substantial part of the events and/or omissions giving rise to the
20 claims occurred, in part, within this district.

21 6. This Court has personal jurisdiction over Defendants because it has
22 conducted substantial business in this judicial district and intentionally and
23 purposefully placed the Defective Medical Alert Device into the stream of
24 commerce within this district and throughout the United States.

25 **III. PARTIES**

26 **A. Plaintiff Scott Barnes**

27 7. Plaintiff Scott Barnes is a citizen of California and currently resides in
28 San Luis Obispo, California.

1 8. On April 21, 2019, Plaintiff purchased the Defective Medical Alert
2 Device from Defendants over the telephone. Plaintiff paid \$63.86 for the device and
3 \$24.00 a month thereafter for their services. Plaintiff being a senior, and a veteran,
4 used the device for personal use as he suffers from multiple health conditions.

5 9. In or about early May 2019, Plaintiff required emergency services on
6 two occasions, but the Defective Medical Alert Device failed. On both occasions
7 Plaintiff fell and upon activating the Defective Medical Alert Device, the fall
8 detection and GPS failed and did not alert emergency services. The failure of the
9 Defective Medical Alert Device to perform as represented caused Plaintiff additional
10 harm. Soon after Plaintiff made multiple complaints to Defendants about the
11 Defective Medical Alert Device, Defendants confirmed that their device contains the
12 Defect.

13 10. Prior to purchasing the Defective Medical Alert Device, Plaintiff was
14 kept in the dark about the Defect and was placed at serious risk.

15 11. Plaintiff would not have purchased the Defective Medical Alert Device
16 and Defendants' services had Defendants told him about the Defect—a Defect
17 Defendants were well aware about prior to his purchase.

18 12. As a result of Defendants' failure to disclose the Defect in the
19 Defective Medical Alert Device, Plaintiff suffered an ascertainable loss including,
20 but not limited to, out-of-pocket expenses and other consequential damages.

21 **B. Defendants**

22 13. Defendant GreatCall, Inc. is a California corporation with its principal
23 place of business at 2200 Faraday Ave., Carlsbad, California 92008. Defendant is a
24 leading provider of connected health and personal emergency response services to
25 the aging population, with more than 900,000 paying subscribers. In addition,
26 Defendant GreatCall has a range of services, including a simple, one-touch
27 connection to trained, U.S.-based agents who can connect the user to family
28 caregivers, provide general concierge services, answer service-related questions and

1 dispatch emergency personnel. Furthermore, GreatCall, Inc. designs, develops,
2 manufactures, distributes, markets, and sells the Defective Medical Alert Device.

3 14. Defendant Best Buy Co., Inc. is a Minnesota corporation with its
4 principal place of business at 7601 Penn Ave. S., Richfield, MN 55423. Defendant
5 Best Buy is the parent corporation of GreatCall, Inc. In August 2018, Best Buy
6 acquired GreatCall, Inc.

7 15. Defendants engage in continuous and substantial business in
8 California.

9 **IV. FACTUAL ALLEGATIONS**

10 16. As alleged above, Defendants manufacture, market and sell the
11 Defective Medical Alert Device to citizens in California and throughout the United
12 States, and advertises the product as the “highest standard in medical alerts.” The
13 Defective Medical Alert Device is sold for approximately \$37.49. Consumers who
14 are seeking a low cost yet reliable medical alert device are attracted to the Defective
15 Medical Alert Device because of Defendants’ representations.

16 17. Defendants represent that they have the “nation’s largest and most
17 dependable wireless network,” and that the Defective Medical Alert Device has
18 “[e]nhance[d] GPS,” “[f]all [d]etection,” and provides “help anytime, anywhere,
19 24/7.”

20 18. Defendants’ website reiterates the representation made to Plaintiff that
21 the Defective Medical Alert Device is the “highest standard in medical alerts.”²

22 19. But Defendants’ marketing materials and advertising are false and
23 misleading. In reality, the Defective Medical Alert Device fails to provide help
24 when needed. When the device is activated to request emergency services, it fails to
25 operate according to what Defendants represented it would do.

26 20. Defendants’ own admission in a letter sent to consumers states the
27 Defective Medical Alert Device has a “quality issue.” It further states that “[o]ut of

28 ² <https://www.greatcall.com/devices/lively-mobile-medical-alert-system>

1 an abundance of caution—and because your safety is our top priority—we need you
2 to stop using the device immediately and return it to us.” But for Plaintiff and other
3 consumers, Defendants’ warning was too late.

4 21. There is no doubt that had consumers been told the whole truth about
5 the Defective Medical Alert Device, it would have affected their decision to
6 purchase the Defective Medical Alert Device or the amount they were willing to pay
7 for it.

8 **V. CLASS ACTION ALLEGATIONS**

9 22. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this
10 lawsuit on behalf of himself and all similarly situated individuals. Plaintiff seeks to
11 represent the following nationwide class: All persons in California and throughout
12 the United States who purchased one or more of the Defective Medical Alert Devices
13 (the “Class”).

14 23. The Class is defined in terms of objective characteristics and common
15 transactional facts; namely, the purchase of the Defective Medical Alert Device. As
16 set forth above, membership in the Class will be readily ascertainable from
17 Defendants and their third-party retailers’ records.

18 24. Excluded from the Class are Defendants, their affiliates, subsidiaries,
19 parents, successors, predecessors, any entity in which Defendants or their parents
20 have a controlling interest; Defendants’ current and former employees, officers and
21 directors; the Judge(s) and/or Magistrate(s) assigned to this case; any person who
22 properly obtains exclusion from the Class; any person whose claims have been
23 finally adjudicated on the merits or otherwise released; and the parties’ counsel in
24 this litigation. Plaintiff reserves the right to modify, change, or expand the definition
25 of the Class based upon discovery and further investigation.

26 25. **Numerosity**: Upon information and belief, the Class is so numerous
27 that joinder of all members is impracticable. While the exact number and identities
28 of individual members of the Class are unknown at this time, such information being

1 in the sole possession of Defendants and obtainable by Plaintiff only through the
2 discovery process, Plaintiff believes, and on that basis allege, that the members of
3 the Class number in the thousands and all have been subjected to the illegal and
4 unlawful conduct by Defendants as alleged herein. Furthermore, and as evidenced
5 above, members of the Class can be readily identified and notified based on the
6 records maintained by Defendants and their third-party retailers.

7 26. **Existence and Predominance of Common Questions of Fact and**

8 **Law**: Common questions of law and fact exist as to all members of the Class. These
9 questions predominate over the questions affecting individual members in the Class.

10 These common legal and factual questions include, but are not limited to:

- 11 a) Whether the Defective Medical Alert Device is defective;
- 12 b) Whether the Defect is due to design and/or manufacturing
- 13 c) When Defendants had actual or constructive notice of the Defect;
- 14 d) When Defendants began to realize the negative consequences of
- 15 the Defective Medical Alert Device;
- 16 e) Whether Defendants had a duty to disclose to Class members the
- 17 Defect and the negative consequences of the Defect;
- 18 f) Whether a reasonable consumer would have attached importance
- 19 to the Defective Medical Alert Devices and its negative
- 20 consequences in determining whether to purchase a Defective
- 21 Medical Alert Device or the amount he/she is willing to pay;
- 22 g) Whether Defendant created an express warranty and whether it
- 23 breached its express warranty;
- 24 h) Whether the Defective Medical Alert Device and its negative
- 25 consequences make it unmerchantable;
- 26 i) Whether the Defect poses a safety hazard;
- 27 j) Whether Defendants breached its implied warranty by designing,
- 28 manufacturing and distributing the Defective Medical Alert

1 Device that is unmerchantable as a result of the Defect;

2 k) Whether Defendants' conduct as alleged herein violates
3 California's consumer protection statutes;

4 l) Whether Plaintiff and the other members of the Class are entitled
5 to damages and other monetary relief and, if so, in what amount;
6 and

7 m) Whether Plaintiff and the other members of the Class are entitled
8 to equitable relief including, but not limited to, restitution or
9 injunctive relief.

10 27. As set forth above, Defendants have also acted or refused to act on
11 grounds generally applicable to Plaintiff and the other members of the Class in that it
12 has refused to engage in a public campaign to apprise Class members of the
13 potential hazards of the Defective Medical Alert Device and cover all damages
14 caused by the Defect; thereby making injunctive relief appropriate to the Class as a
15 whole.

16 28. **Typicality:** All of Plaintiff's claims are typical of the claims of the
17 members of the Class since they were all injured in the same manner by Defendants
18 uniform course of conduct described herein. Plaintiff and all members of the Class
19 have the same claims against Defendants relating to the conduct alleged herein, and
20 the same events giving rise to Plaintiff's claims for relief are identical to those
21 giving rise to the claims of all members of the Class. Plaintiff and all members of
22 the Class sustained monetary and economic injuries including, but not limited to,
23 ascertainable losses arising out of Defendants' wrongful conduct as described
24 herein. Plaintiff is advancing the same claims and legal theories on behalf of
25 himself and all absent members of the Class.

26 29. **Adequacy:** Plaintiff is adequate representative for the Class he seeks
27 to represent because his interests do not conflict with the interests of the members of
28 the Class. Plaintiff have also retained counsel competent and highly experienced in

1 33. This claim is brought by Plaintiff on behalf of himself and the Class.

2 34. Defendants are and were at all relevant times a merchant with respect
3 to medical devices. *See* Cal. Com. Code § 2104.

4 35. Pursuant to Cal. Com. Code § 2313:

5 (1) Express warranties by the seller are created as follows:

6 (a) Any affirmation of fact or promise made by the seller to the buyer
7 which relates to the goods and becomes part of the basis of the bargain
8 creates an express warranty that the goods shall conform to the
9 affirmation or promise.

10 36. Defendants expressly promised that the Defective Medical Alert
11 Device has “[e]nhance[d] GPS,” “[f]all [d]etection,” and will provide “*help*
12 *anytime, anywhere, 24/7.*”

13 37. These promises became part of the basis of the bargain when the
14 Plaintiff and members of the Class purchased the Defective Medical Alert Device.

15 38. As alleged herein, Defendants breached their express warranty because
16 the Defective Medical Alert Device, in fact, does not perform as represented by
17 Defendants.

18 39. By not fulfilling their express promises, Defendants breached their
19 express warranty, which became part of the bargain when the Plaintiff and members
20 of the Class purchased their Defective Medical Alert Device.

21 40. As a direct and proximate result of Defendants’ breach of the express
22 warranty, Plaintiff and members of the Class have been damaged in an amount to be
23 determined at trial.

24 **COUNT II**
25 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
26 **Cal. Com. Code § 2314**
27 **(On Behalf of Plaintiff and the Class Against all Defendants)**

28 41. Plaintiff repeats and realleges the allegations above as if fully set forth
herein.

1 42. This claim is brought by the Plaintiff on behalf of himself and the
2 Class.

3 43. Defendants are and were at all relevant times a merchant with respect
4 to medical devices. *See* Cal. Com. Code § 2104.

5 44. Pursuant to Cal. Com. Code § 2314, a warranty that the Defective
6 Medical Alert Device is in merchantable condition is implied by operation of law.

7 45. The Defective Medical Alert Device, when sold and at all times
8 thereafter, were not merchantable and not fit for the ordinary purpose for which
9 medical devices are used because of the Defect which, as set forth in detail above,
10 has rendered the Defective Medical Alert Device unusable, unreliable and unsafe to
11 use.

12 46. Even though Plaintiff purchased the Defective Medical Alert Device
13 directly from Defendants, some Class members may have purchased the Defective
14 Medical Alert Device from third-party retailers. Those Class members who
15 purchased the Defective Medical Alert Device from third-party retailers are
16 nevertheless entitled to assert this breach of implied warranty claim under Cal.
17 Comm. Code § 2314 because they are third-party beneficiaries to the contract
18 between Defendants and the authorized retailers from which they purchased the
19 Defective Medical Alert Device. There is no doubt that members of the Class have
20 more than incidentally benefitted from the contract between Defendants and their
21 authorized retailers. First, the authorized retailers are themselves agents of
22 Defendants. Second, the retailers, who purchased or acquired the Defective Medical
23 Alert Device from Defendants, were never intended to be the ultimate purchasers of
24 the Defective Medical Alert Device. Indeed, the intended ultimate purchasers of the
25 Defective Medical Alert Device were members of the Class. Obviously, the retailers
26 would lose money if they held onto the Defective Medical Alert Device. Third, the
27 retailers had no rights under the express warranty provided with the Defective
28 Medical Alert Device. The express warranty was designed for and intended to

1 benefit the ultimate purchasers; that is, members of the Class. Accordingly, as third-
2 party beneficiaries, members of the Class are entitled to maintain this implied
3 warranty claim against Defendants.

4 47. Furthermore, and for the same reasons set forth above, any limitations
5 in duration and/or remedies related to the implied warranty claim are
6 unconscionable, unenforceable, and/or should be tolled.

7 48. As a direct and proximate result of Defendants’ breach of the implied
8 warranty of merchantability, Plaintiff and members of the Class have been damaged
9 in an amount to be proven at trial.

10 **COUNT III**
11 **VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT**
12 **FOR BREACH OF EXPRESS WARRANTY**
13 **Cal. Civ. Code §§ 1791.2 & 1793.2**
14 **(On Behalf of Plaintiff and the Class Against all Defendants)**

15 49. Plaintiff repeats and realleges the allegations above as if fully set forth
16 herein.

17 50. This claim is brought by the Plaintiff on behalf of himself and the
18 Class under the Song-Beverly Consumer Warranty Act (“SBCWA”) for breach of
19 express warranty.

20 51. Plaintiff and members of the Class are “buyers” within the meaning of
21 the SBCWA. *See* Cal. Civ. Code § 1791(b).

22 52. The Defective Medical Alert Device is “consumer goods” within the
23 meaning of Cal. Civ. Code § 1791(a).

24 53. Defendants are a “manufacturer” within the meaning of Cal. Civ. Code
25 § 1791(j).

26 54. Plaintiff and members of the Class bought the Defective Medical Alert
27 Devices manufactured and distributed by Defendants.

28 55. As set forth in detail above, Defendants made express promises to
Plaintiff and members of the Class members within the meaning of Cal. Civ. Code

1 §§ 1791.2 and 1793.2 as set forth herein.

2 56. As set forth above in detail, the Defective Medical Alert Device is
3 defective because it fails to provide emergency services when activated. In addition,
4 and as set forth above, the Defective Medical Alert Device jeopardizes the health
5 and safety of Plaintiff and members of Class, substantially impairs the use, and value
6 of the Defective Medical Alert Device.

7 57. As alleged herein, the Defective Medical Alert Device contains the
8 Defect. Defendants uniformly manufactured and sold the Defective Medical Alert
9 Device with the Defect. Defendants, however, in breach of its own express warranty
10 have manufactured and sold Defective Medical Alert Devices that do not perform as
11 expressly warranted.

12 58. As a result of Defendants manufacturing the Defective Medical Alert
13 Device, Plaintiff and members of the Class have received goods containing the
14 Defect that substantially impairs the use, value, health and safety of the Defective
15 Medical Alert Devices. By failing to provide Plaintiff and Class members with a
16 product that performs as warranted, Plaintiff and members of the Class have been
17 damaged by incurring out-of-pocket expenses and other damages.

18 59. Pursuant to Cal. Civ. Code §§ 1793.2 and 1794, Plaintiff and other
19 members of the Class are entitled to damages and other legal and equitable relief
20 including, at their election, the purchase price of the Defective Medical Alert
21 Device, or the overpayment or diminution in value of the Defective Medical Alert
22 Device.

23 60. Pursuant to Cal. Civ. Code § 1794, Plaintiff and members of the Class
24 are also entitled to costs and reasonable attorneys' fees.

25
26 **COUNT IV**
27 **VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT**
28 **FOR BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
Cal. Civ. Code §§ 1791.1 & 1792
(On Behalf of Plaintiff and the Class Against all Defendants)

1 61. Plaintiff repeats and realleges the allegations above as if fully set forth
2 herein.

3 62. This claim is brought by the Plaintiff on behalf of himself and the
4 Class under the SBCWA for breach of the implied warranty of merchantability.

5 63. Plaintiff and members of the Class are “buyers” within the meaning of
6 the SBCWA. *See* Cal. Civ. Code § 1791(b).

7 64. The Defective Medical Alert Devices are “consumer goods” within the
8 meaning of Cal. Civ. Code § 1791(a).

9 65. Defendants are “manufacturers” within the meaning of Cal. Civ. Code
10 § 1791(j).

11 66. Defendants impliedly warranted to Plaintiff and the members of the
12 Class that their Defective Medical Alert Devices are “merchantable” within the
13 meaning of Cal. Civ. Code §§ 1791.1(a) and 1792.

14 67. In reality, the Defective Medical Alert Device does not possess those
15 qualities that a buyer would reasonably expect.

16 68. Section 1791.1(a) states: “Implied warranty of merchantability” or
17 “implied warranty that goods are merchantable” means that the consumer goods
18 meet each of the following: (1) Pass without objection in the trade under the contract
19 description. (2) Are fit for the ordinary purposes for which such goods are used. (3)
20 Are adequately contained, packaged, and labeled. (4) Conform to the promises or
21 affirmations of fact made on the container or label.

22 69. The Defective Medical Alert Device is not suitable for the market and
23 would not pass without objection in the medical alert device industry and market
24 because of the Defect. Specifically, Defendants designed and manufactured the
25 Defective Medical Alert Device with the Defect, which fails to provide emergency
26 services when activated.

27
28

1 77. This claim is brought by the Plaintiff on behalf of himself and the
2 Class under the Consumers Legal Remedies Act (the “CLRA”).

3 78. The CLRA prohibits “unfair methods of competition and unfair or
4 deceptive acts or practices undertaken by any person in a transaction intended to
5 result or which results in the sale or lease of goods or services to any consumer ...”
6 Cal. Civ. Code § 1770.

7 79. Defendants are “persons” as defined by Cal. Civ. Code § 1761(c).

8 80. The Defective Medical Alert Devices are “goods” as defined by Cal.
9 Civ. Code § 1761(a).

10 81. Plaintiff and the members of the Class are “consumers” as defined by
11 Cal. Civ. Code § 1761(d).

12 82. As set forth in detail above, Defendants omitted and concealed the
13 Defect and its consequences from Plaintiff and members of the Class.

14 83. In purchasing the Defective Medical Alert Device, Plaintiff and
15 members of the Class were deceived by Defendants’ failure to disclose the Defect,
16 which as detailed above, has resulted and is continuing to cause damage and expose
17 consumers to serious injuries, including death. Had consumers known about the
18 Defect and the damages caused by it, that knowledge would have affected their
19 decision to buy the Defective Medical Alert Device.

20 84. Defendants’ conduct, as hereinabove described, is in violation of Cal.
21 Civ. Code §1770 on the following grounds:

- 22 a. (a)(2): misrepresenting the source, sponsorship, approval or
23 certification of goods or services;
- 24 b. (a)(5): representing that goods or services have sponsorship,
25 approval, characteristics, ingredients, uses, benefits, or quantities
26 which they do not have;
- 27 c. (a)(7): representing that goods are of a particular standard,
28 quality, or grade, if they are another;

1 d. (a)(9): advertising goods with the intent not to sell them as
2 advertised; and

3 e. (a)(16): representing that goods have been supplied in
4 accordance with a previous representation when they have not.

5 85. As set forth in detail above, Defendants knew that the Defective
6 Medical Alert Devices were not suitable for their intended use.

7 86. Defendants had a duty to disclose the Defect because Defendants had
8 exclusive knowledge of the Defect prior to making sales of the Defective Medical
9 Alert Device.

10 87. Specifically, and as set forth above, Defendants were under a duty to
11 Plaintiff and members of the Class to disclose the Defect in the Defective Medical
12 Alert Device because:

13 a. Defendants were in a superior position to know the true state of
14 facts about the Defect—a defect that can pose a health and
15 safety risk and high out-of-pocket expenses;

16 b. Plaintiff and members of the Class did not know nor could they
17 reasonably have been expected to learn or discover that the
18 Defective Medical Alert Device had a defect that affects
19 operability of the Defective Medical Alert Device and creates
20 safety concerns until manifestation of a health emergency; and

21 c. Defendants knew that Plaintiff and members of the Class could
22 not reasonably have been expected to learn or discover the
23 Defect until manifestation of the Defect.

24 88. In failing to disclose the Defect in the Defective Medical Alert Device,
25 Defendants have knowingly and intentionally concealed material facts and breached
26 their duty to disclose.

27 89. The facts concealed or not disclosed by Defendants to Plaintiff and
28 members of the Class are material in that a reasonable consumer would have

1 considered them to be important in deciding whether to purchase the Defective
2 Medical Alert Device or pay a lesser price. Had the Plaintiff and members of the
3 Class known about the Defect, they would not have purchased the Defective
4 Medical Alert Device, or they would have paid less.

5 90. As a direct and proximate result of Defendants’ unfair and deceptive
6 acts or practices, the Plaintiff and members of the Class have been harmed.

7 91. Under Cal. Civ. Code § 1780(a), the Plaintiff and members of the
8 Class seek actual damages, an order enjoining Defendants from further engaging in
9 the unfair and deceptive acts and practices alleged herein, and restitutionary relief to
10 remedy Defendants’ violations of the CLRA as alleged herein.

11 92. Under Cal. Civ. Code § 1780(b), Plaintiff seeks an additional award
12 against Defendants of up to \$5,000 for each member of the Class who qualifies as a
13 “senior citizen” or “disabled person” under the CLRA. Defendants knew or should
14 have known that their conduct was directed to one or more members of the Class
15 who are senior citizens or disabled persons. Defendants’ conduct caused one or
16 more of these senior citizens or disabled persons to suffer a substantial loss of
17 property set aside for retirement or for personal or family care and maintenance, or
18 assets essential to the health or welfare of the senior citizen or disabled person. One
19 or more members of the Class, who are senior citizens or disabled persons, are
20 substantially more vulnerable to Defendants’ conduct because of age, poor health or
21 infirmity, impaired understanding, restricted mobility, or disability, and each of
22 them suffered substantial physical, emotional, or economic damage resulting from
23 Defendants’ conduct.

24 93. Pursuant to Cal. Civ. Code § 3345, Plaintiff seeks an award of trebled
25 damages on behalf of all senior citizens and disabled persons comprising the Class
26 as a result of Defendants’ conduct alleged herein.

27 94. Pursuant to Section 1780(a)(4), Plaintiff also seeks punitive damages
28 against Defendants because it carried out reprehensible conduct with willful and

1 conscious disregard of the rights and safety of others, subjecting Plaintiff and
2 members of the Class to potential cruel and unjust hardship as a result. *See* Cal. Civ.
3 Code § 1780(a)(4). Defendants intentionally and willfully deceived Plaintiff, and
4 concealed material facts that only Defendants knew. Defendants’ unlawful conduct
5 likewise constitutes malice, oppression, and fraud warranting exemplary damages
6 under Cal. Civ. Code § 3294.

7 95. The Plaintiff further seeks an order awarding costs of court and
8 attorneys’ fees under Cal. Civ. Code § 1780(e), and any other just and proper relief
9 available under the CLRA.

10 96. Plaintiff will notify Defendants of the damages resulting from the
11 Defective Medical Alert Device in satisfaction of Cal. Bus. & Prof. Code § 1782.
12 Should Defendant refuse to properly and sufficiently remedy all damages caused by
13 the Defect to all members of the Class, Plaintiff will amend this complaint to include
14 a claim for damages.

15 **COUNT VI**
16 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**
17 **15 U.S.C. §§ 2301 *et seq.***
18 **(On Behalf of Plaintiff and the Class Against all Defendants)**

19 97. Plaintiff repeats and realleges the allegations above as if fully set forth
20 herein.

21 98. This claim is brought by the Plaintiff on behalf of himself and the
22 Class under the federal Magnuson-Moss Warranty Act (the “MMWA”).

23 99. The Plaintiff and members of the Class are “consumers” within the
24 meaning of the MMWA. *See* 15 U.S.C. § 2301(3).

25 100. The Defective Medical Alert Devices are “consumer products” within
26 the meaning of the MMWA. *See* 15 U.S.C. § 2301(1).

27 101. Defendants are a “supplier” and “warrantor” within the meaning of the
28 MMWA. *See* 15 U.S.C. § 2301(4)-(5).

102. Section 2310(d) of the MMWA provides a cause of action for

1 consumers who are harmed by the failure of a warrantor to comply with a written or
2 implied warranty.

3 103. Defendants' expressly warranted that the Defective Medical Alert
4 Device had certain characteristics and functions that could save a person's life
5 during an emergency—it did not perform as expressly warranted under Section
6 2301(6) of the MMWA. The Defective Medical Alert Device's implied warranty is
7 accounted for under Section 2301(7) of the MMWA, which warranty Defendants
8 cannot disclaim under the MMWA, when it fails to provide merchantable goods.

9 104. As set forth above, Defendants breached their warranties with the
10 Plaintiff and members of the Class.

11 105. Additionally, 15 U.S.C. § 2304(d) provides in pertinent part:

12 [T]he warrantor may not assess the consumer for any costs the
13 warrantor or his representatives incur in connection with the
14 required remedy of a warranted consumer product ... [I]f any
15 incidental expenses are incurred because the remedy is not
16 made within a reasonable time or because the warrantor
17 imposed an unreasonable duty upon the consumer as a
18 condition of securing remedy, then the consumer shall be
entitled to recover reasonable incidental expenses which are so
incurred in any action against the warrantor.

19 106. As set forth above, the Defective Medical Alert Device were
20 manufactured by Defendants with the Defect.

21 107. Defendants breached their express warranty and the implied warranty
22 of merchantability as described above by, among other things: (1) manufacturing the
23 Defective Medical Alert Device; and (2) selling or distributing the Defective
24 Medical Alert Device which is not in a merchantable condition due to the damages
and negative consequences caused by the Defect.

25 108. As set forth above, and with respect to the common law breach of
26 implied warranty claims, Plaintiff and members of the Class are third-party
27 beneficiaries to the contracts between Defendants and their authorized retailers.
28

1 109. As a direct and proximate result of Defendants' breach of their express
2 warranty and implied warranty pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff and
3 members of the Class have suffered damages in an amount to be proven at trial.

4 110. The amount in controversy of the Plaintiff's individual claims meets or
5 exceeds the sum of \$25. The amount in controversy of this claim exceeds the sum
6 of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be
7 determined in this lawsuit.

8 111. Plaintiff and members of the Class are entitled to recover damages as a
9 result of Defendants' breach of these warranties.

10 112. Plaintiff and members of the Class are also entitled to seek costs and
11 expenses, including attorneys' fees, under the MMWA. *See* 15 U.S.C. § 2310(d)(2).

12 **COUNT VII**
13 **FRAUD/FRAUDULENT CONCEALMENT**
14 **(On Behalf of Plaintiff and the Class Against all Defendants)**

15 113. Plaintiff repeats and realleges the allegations above as if fully set forth
16 herein.

17 114. This claim is brought by Plaintiff on behalf of himself and the Class
18 for fraud and/or fraudulent concealment.

19 115. As set forth above, Defendants concealed and suppressed material
20 facts concerning the Defective Medical Alert Device and the serious consequences
21 of the Defect. Specifically, Defendants omitted these material facts from consumers
22 in order to avoid the loss of sales of the Defective Medical Alert Device.

23 116. As set forth above, Plaintiff and members of the Class had no way of
24 knowing that Defendants were omitting material facts. As set forth above, Plaintiff
25 and members of the Class did not, and could not, unravel Defendants' deception on
26 their own.

27 117. As set forth above, Defendants had a duty to disclose the Defect and its
28 consequences because: (1) Defendants had exclusive knowledge and access to the
29 details relating to the Defective Medical Alert Device; (2) Defendants had superior

1 knowledge and access to the facts; and (3) Defendants knew these material facts
2 were not known to, or reasonably discoverable, by the Plaintiff and members of
3 the Class. Defendants also had a duty to disclose because it made misleading partial
4 representations about the Defective Medical Alert Device.

5 118. As set forth above, Defendants still have not made full and adequate
6 disclosures, and continues to defraud consumers by concealing material information
7 relating to the Defective Medical Alert Device and its consequences.

8 119. Plaintiff and members of the Class were unaware of these omitted
9 material facts and would not have acted as they did if they had known of the
10 concealed and/or suppressed facts, in that they would not have purchased the
11 Defective Medical Alert Device. Defendants were in exclusive control of the
12 material facts and such facts were not known to the public as set forth above.

13 120. Plaintiff and members of the Class reasonably relied upon Defendants'
14 omissions and misleading representations in deciding to purchase the Defective
15 Medical Alert Device. The actions of Plaintiff and members of the Class were
16 justified.

17 121. Because of the concealment and/or suppression of the material facts,
18 Plaintiff and members of the Class sustained damage because they either would not
19 have purchased or would have paid less for the Defective Medical Alert Device had
20 they known the entire truth about them.

21 122. Accordingly, Defendants are liable to Plaintiff and the members of the
22 Class for damages in an amount to be proven at trial.

23 123. As set forth in detail above, Defendants' acts were done maliciously,
24 oppressively, deliberately, with intent to defraud, and in reckless disregard of the
25 rights of Plaintiff and members of the Class to enrich themselves. Defendants
26 conduct warrants an assessment of punitive damages in an amount sufficient to deter
27 such conduct in the future, which amount is to be determined according to proof.

28 124. Furthermore, as the intended and expected result of their fraud and

1 conscious wrongdoing, Defendants have profited and benefited from the purchase of
2 the Defective Medical Alert Device. Defendants have voluntarily accepted and
3 retained these profits and benefits with full knowledge and awareness that, as a
4 result of Defendants' misconduct alleged herein, Plaintiff and members of the Class
5 were receiving Defective Medical Alert Device.

6 125. Defendants have been unjustly enriched by its fraudulent, deceptive,
7 and otherwise unlawful conduct in connection with the sale the Defective Medical
8 Alert Device. Equity and good conscience militate against permitting Defendants to
9 retain these profits and benefits, and Defendants should be required to make
10 restitution of its ill-gotten gains resulting from the conduct alleged herein.

11 **COUNT VIII**

12 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

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

14 **(On Behalf of Plaintiff and the Class Against all Defendants)**

15 126. Plaintiff repeats and realleges the allegations above as if fully set forth
16 herein.

17 127. This claim is brought by Plaintiff and on behalf of the Class for
18 violations of the Unfair Competition Law (the "UCL").

19 128. The UCL broadly prohibits acts of "unfair competition," including any
20 "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive,
21 untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.

22 129. A business act or practice is "unfair" under the UCL if the reasons,
23 justifications and motives of the alleged wrongdoer are outweighed by the gravity of
24 the harm to the alleged victims.

25 130. Defendants have engaged in "unfair" business practices and/or acts by
26 failing to disclose the Defect in the Defective Medical Alert Device to Plaintiff and
27 members of the Class.

28 131. The acts and practices alleged herein are unfair because they caused
Plaintiff and members of the Class, and reasonable consumers like them, to believe

1 that Defendants were offering something of value that did not, in fact, exist.
2 Defendants intended for Plaintiff and members of the Class to rely on its omissions
3 and misleading half-truths. As a result, purchasers, including Plaintiff, reasonably
4 perceived they were receiving the Defective Medical Alert Device with certain
5 benefits. This perception induced reasonable purchasers to purchase the Defective
6 Medical Alert Device which they would not otherwise have done had they known
7 the truth.

8 132. As set forth in detail above, the gravity of the harm to members of the
9 Class resulting from these unfair acts and practices outweighs any conceivable
10 reasons, justifications and/or motives of Defendants for engaging in such deceptive
11 acts and practices. By committing the acts and practices alleged above, Defendants
12 engaged in unfair business practices within the meaning of the UCL.

13 133. A business act or practice is also “fraudulent” under the UCL if it is
14 likely to deceive members of the consuming public.

15 134. Defendants engaged in a uniform course of conduct which was
16 intended to, and did in fact, deceive Plaintiff and members of the Class into buying
17 the Defective Medical Alert Device. Defendants course of conduct and misleading
18 partial representations were fraudulent within the meaning of the UCL because they
19 deceived Plaintiff, and were likely to deceive members of the Class, into believing
20 that they were entitled to a benefit that did not, in fact, exist.

21 135. A business act or practice is also “unlawful” under the UCL if it
22 violates any other law or regulation. As set forth above, Defendants have violated
23 the SBWCA, the CLRA and the MMWA, and other laws as set forth herein.

24 136. Defendants have engaged in unfair competition and unfair, unlawful
25 and fraudulent business practices by the conduct, statements, and omissions
26 described above, and by knowingly and intentionally concealing from Plaintiff and
27 members of the Class the Defect in the Defective Medical Alert Device (and the
28 costs, and health and safety risks as a result of this defect). Defendants should have

1 disclosed the Defect and its consequences because Defendants were in a superior
2 position to know the true facts related to the Defect, and the Plaintiff and members
3 of the Class could not reasonably be expected to learn or discover the true facts
4 related to the Defective Medical Alert Device. Plaintiff and members of the Class
5 relied upon Defendants' omissions and partial misleading representations, believed
6 them to be true, and would not have agreed to purchase the Defective Medical Alert
7 Device had they known the truth about the Defect.

8 137. Therefore, the omissions and acts of concealment, fraud, and deceit by
9 Defendants pertained to information that was material to Plaintiff and members of
10 the Class, as it would have been to all reasonable consumers.

11 138. Defendants had a duty to disclose the Defect in the Defective Medical
12 Alert Device because Defendants had exclusive knowledge of the Defect prior to
13 making sales of the Defective Medical Alert Device and because Defendants made
14 partial representations about the reliability and positive benefits of the Defective
15 Medical Alert Device.

16 139. In failing to disclose that the Defective Medical Alert Device
17 contained the Defect, and by suppressing other material facts from Plaintiff and
18 members of the Class, Defendants breached their duties to disclose these facts,
19 violated the UCL, and caused injuries to Plaintiff and members of the Class.

20 140. The injuries suffered by Plaintiff and members of the Class are greatly
21 outweighed by any potential countervailing benefit to consumers or to competition,
22 nor are they injuries that Plaintiff and members of the Class could have reasonably
23 avoided.

24 141. Through its fraudulent, unfair, and unlawful acts and practices,
25 Defendants have improperly obtained money from Plaintiff and the members of the
26 Class.

27 142. Plaintiff seeks to enjoin further unlawful, unfair and/or fraudulent acts
28 or practices by Defendants relating to the Defective Medical Alert Device and from

1 violating the UCL in the future by selling the Defective Medical Alert Device.

2 143. Plaintiff also seeks to obtain restitutionary disgorgement of all monies
3 and revenues generated as a result of such practices, require notice of the Defect be
4 provided to members of the Class, and all other relief allowed under Cal. Bus. &
5 Prof. Code § 17200.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, on behalf of himself and similarly situated
8 members of the Class, respectfully request that this Court:

- 9 (a) Certify the Class as defined herein under Federal Rule of Civil
10 Procedure 23, appoint Plaintiff as the class representative, and appoint
11 his counsel as Class Counsel;
- 12 (b) Award all actual, general, special, incidental, statutory, punitive and
13 consequential damages to which Plaintiff and the members of the Class
14 are entitled;
- 15 (c) Award pre-judgment and post-judgment interest on such monetary
16 relief;
- 17 (d) Grant appropriate injunctive and/or declaratory relief including,
18 without limitation, an order that requires Defendants to repair, recall,
19 and/or replace the Defective Medical Alert Device and to extend the
20 applicable warranties to a reasonable period of time, or, at a minimum,
21 to provide Plaintiff and members of the Class with appropriate curative
22 notice regarding the existence and cause of the Defect;
- 23 (e) Award Plaintiff and members of the Class their reasonable costs and
24 expenses incurred in this action, including attorneys' fees and expert
25 fees; and
- 26 (f) Award such other and further relief as the Court may deem just and
27 proper.
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DEMAND FOR JURY TRIAL

Plaintiff respectfully demand a jury trial for all claims so triable.

Dated: May 22, 2019

Respectfully submitted,

BISNAR | CHASE LLP

/s/ Jerusalem F. Beligan

BRIAN D. CHASE

JERUSALEM F. BELIGAN

IAN M. SILVERS