IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LIABILITY LITIGATION This Document Relates to: Second Amended Master Long Form Complaint For Personal Injuries And Damages, And Demand For Jury Trial (ECF No. 2505)	Master Docket: No. 21-mc-1230-JFC MDL No. 3014 (Oral Argument Requested)

MEMORANDUM OF LAW IN SUPPORT OF PHILIPS RS NORTH AMERICA LLC'S MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) AND 12(b)(6)

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Defendant Philips RS North America LLC ("Respironics") respectfully moves to dismiss Plaintiffs' Second Amended Master Long Form Complaint for Personal Injuries and Damages (ECF No. 2505) (the "PISAC") pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6). Respironics previously moved to dismiss Plaintiffs' master personal injury complaint, in its entirety, on multiple grounds. *See* ECF Nos. 1345-46. The Special Master recommended dismissing certain, but not all, of Plaintiffs' claims. *See* ECF No. 2271 ("R&R"). The Court adopted the R&R in part and granted Plaintiffs leave to amend in order to plead (i) facts to attempt to support their omission claim, (ii) their negligent recall and negligent failure to recall claims as separate counts, (iii) product liability act ("PLA") claims in place of subsumed counts, and (iv) each of their state consumer protection claims as separate counts. *See* ECF Nos. 2471-72.

Despite having another opportunity to amend their complaint, guided by specific instructions from this Court, Plaintiffs' claims remain deficient in myriad ways. Among other defects, (i) their now separately stated negligent execution of the recall and negligent failure to recall claims remain preempted, (ii) their negligent execution of the recall claim remains subject to the primary jurisdiction doctrine, (iii) they still assert common law claims that are subsumed by PLAs, (iv) their amended fraud claim still fails to plead the special relationship required to allege fraud by omission in certain states (an issue identified but not ruled on in the earlier briefing round), and (v) their separately pled consumer protection claims are foreclosed on numerous statute-specific grounds. This Court should dismiss these claims with prejudice.

ARGUMENT

I. PLAINTIFFS' NEGLIGENT RECALL/FAILURE TO RECALL CLAIMS FAIL.

A. The Negligent Execution of/Failure to Recall Claims Are Preempted.

A manufacturer's recall and post-recall conduct is subject to FDA regulation and oversight. 21 U.S.C. § 360h(e) (granting the FDA "recall authority"); *see also Gates v. Medtronic, Inc.*, 192

F. Supp. 3d 704, 710-11 (W.D. Tex. 2016) ("The law is clear that the FDA regulates in this area"). The FDA may request that a firm initiate a recall, 21 C.F.R. § 7.45, and once a recall is initiated, the FDA regulates communications and actions regarding the recall. 21 U.S.C. §§ 360h(a)(2), (b).

Congress has impliedly preempted claims that seek to enforce the Federal Food, Drug, and Cosmetic Act ("FDCA") and FDA regulations or that seek recovery based upon alleged non-compliance with the FDCA and FDA regulations. *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 349 (2001) (noting FDA has "a variety of enforcement options."). Plaintiffs' negligent failure to recall and negligent execution of the recall claims (**Counts VI(1) *and* VI(2)**), challenging when and how Respironics should have performed the recall, improperly attempt to step into the FDA's shoes in regulating recalls and are subject to implied preemption.

First, "Congress intended the Secretary of FDA to have discretion as to when to seek recall." *Nat'l Women's Health Network, Inc. v. A. H. Robins Co.*, 545 F. Supp. 1177, 1181 (D. Mass. 1982); 21 U.S.C. § 360h(e). Plaintiffs fail to identify or articulate any state law duty requiring the initiation of a recall without FDA involvement despite having leave to attempt to do so. Instead, Plaintiffs rely on FDA inspection observations, grounded in FDA regulations (PISAC ¶¶ 8, 11, 168, 171), to allege that Respironics should have initiated a recall sooner. Thus, Plaintiffs' negligent failure to recall claim reflects a quintessential effort to privately enforce the FDCA that is "foreclosed" by preemption. *Nat'l Women's Health Network*, 545 F. Supp. at 1181.

Second, Plaintiffs' negligent execution of the recall claim encroaches upon the FDA's exclusive province to oversee and assess the adequacy of a medical device recall. The PISAC cites the FDA's notification order under section 518(a) of the FDCA, PISAC ¶¶ 286-290, 292, 433, acknowledges that Respironics needed "authorization from the FDA to begin a repair and/or replacement process," *id* ¶ 434, and notes that Respironics is working with the FDA to implement

the recall, *id.* ¶¶ 274-75, 282-83. Thus, Plaintiffs recognize that the FDA has authority to oversee the repair, replacement, and refund of the devices, and is exercising that authority. While the R&R pointed to Plaintiffs' allegation that Respironics "assumed duties to exercise reasonable care in issuing and implementing the recall" as an indication that their negligent recall claim did not rely on section 518(a), that generous reading is inconsistent with PISAC allegations because (i) the PISAC's repeated FDCA-based allegations contravene Plaintiffs' attempted reliance on conclusory statements of purported state law duties, (ii) any purported "state law duty to use reasonable care in undertaking a recall" remains preempted because assessing whether Respironics "could have or should have performed a better recall . . . require[s] the court to scrutinize . . . [r]ecall notices and remedies," *Cohen v. Subaru of Am., Inc.*, No. 120CV08442JHRAMD, 2022 WL 721307, at *38 (D.N.J. Mar. 10, 2022), which the FDCA regulates, and (iii) "applying negligence law of more than twenty states to . . . recall efforts would undermine the [federal regulation]'s comprehensive statutory scheme for commencing and carrying out recalls." *Id.* at *40; *see also Gates*, 192 F. Supp. 3d at 712 (negligent recall claim preempted where plaintiffs sought to use "common-law tort duties" to impose requirements for carrying out the recall that "add to or differ from those . . . imposed by the FDA"). Given the FDCA's detailed requirements governing a medical device recall, Plaintiffs' negligent execution of the recall claim is preempted.

B. The Negligent Execution of the Recall Claim Fails Under the Primary Jurisdiction Doctrine.

Primary jurisdiction "comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body[.]" *CSX Transp. Co. v. Novolog Bucks Cnty.*, 502 F.3d 247, 253 (3d Cir. 2007), *as amended* (Sept. 14, 2007) (quoting *United States v. W. Pac. R.R. Co.*, 352 U.S. 59, 63-64 (1956)). "[W]hen an activity is arguably subject to an administrative agency's

expertise, such as the FDA, federal courts must defer to the exclusive competence of that agency." *In re Human Tissue Prods. Liab. Litig.*, 488 F. Supp. 2d 430, 432 (D.N.J. 2007) (citation omitted). This Court has observed that "courts are not to get involved with what the FDA does in regulating the matters that are subject to . . . its jurisdiction."[1] Viewed through the Court's primary jurisdiction framework, execution of the recall is a matter over which the FDA has exclusive enforcement authority, barring Plaintiffs' negligent execution of the recall claim.[2]

To evaluate primary jurisdiction, courts in the Third Circuit weigh whether (i) "the question at issue is within the conventional experience of judges or whether it involves technical or policy considerations within the agency's particular field of expertise," (ii) "the question at issue is particularly within the agency's discretion," (iii) "there exists a substantial danger of inconsistent rulings," and (iv) "a prior application to the agency has been made." *Baykeeper v. NL Indus., Inc.*, 660 F.3d 686, 691 (3d Cir. 2011) (citation omitted) (Vanaskie, J.). Although the Special Master found that "abstention under the primary jurisdiction is not warranted," his analysis appears to have focused on a negligent ***failure*** to recall theory—particularly in his assessment of factors (i) and (ii). *See* R&R at 26-28. When focused on a negligent ***execution*** of the recall theory, each factor weighs in favor of deferral to the FDA's jurisdiction.

First, execution of Respironics' recall involves technical and policy considerations within the FDA's expertise. *See* 21 C.F.R. § 7.42(a) (outlining technical elements relevant to recall); PISAC Ex. 72 (Section 518(b) Notice) at 12 (acknowledging that remedial measures in this case "may present significant risks" and thus require the FDA's consideration); *see also Clark v. Actavis Grp. hf*, 567 F. Supp. 2d 711, 719 (D.N.J. 2008) ("[I]t is the FDA, not this Court who has the

[1] Tr. at 9, Mot. to Dismiss Hr'g, *SoClean* (Feb. 21, 2023) (ECF No. 104).
[2] The Court's position stands in contrast to the R&R's finding that determining the reasonableness of Respironics' recall "falls squarely with the conventional experience of judges." R&R at 26.

expertise in modifying the procedures associated with the recall.").

Second, oversight of the recall is particularly within the FDA's discretion. "[R]egulations implementing the [FDCA] vest the FDA with the authority to monitor and supervise product recall," and "set forth specific recall procedures whereby the FDA assumes control over monitoring recalls and assesses the adequacy of a firm's efforts in undertaking the recall." *Human Tissue*, 488 F. Supp. 2d at 432 (citing 21 C.F.R. §§ 7.40-7.59). The R&R relied on *In re Valsartan, Losartan, & Irbesartan Prods. Liab. Litig.*, 2020 WL 7418006, at *12 (D.N.J. Dec. 18, 2020), in analyzing this factor. However, no recall claims were at issue in *Valsartan*. Recall claims under FDA's active oversight present a different paradigm that directly implicates primary jurisdiction.

Third, judicial action poses a clear and substantial danger of inconsistent rulings given that the FDA's active oversight of the voluntary recall is both material and ongoing. *See* PISAC Ex. 72 (Section 518(b) Notice) at 2 (contemplating an order requiring Respironics "to submit a plan to repair, replace, and/or refund" the devices); *see also Harshbarger v. Pa. Mut. Life Ins. Co.*, No. 12-6172, 2014 WL 1409445, at *6 (E.D. Pa. Apr. 11, 2014) (finding courts should not intervene where, as here, "doing so would place [them] squarely in the realm reserved" for an agency).[3] Indeed, in contrast to the R&R's suggestion that the FDA has already made a determination on the reasonableness of the execution of the recall, the FDA itself states that its "evaluation of the information provided by Philips ***is ongoing***." PISAC ¶ 297 n.410 (emphasis added).

Finally, as the R&R noted and the PISAC confirms, the FDA continues to actively oversee and authorize elements of the recall and replacement program. R&R at 27; *see also* PISAC ¶¶ 191,

[3] The R&R distinguished *Harshbarger* on the ground that the Court here will not need to analyze FDA regulations, R&R at 27, but it is unclear how the Court would determine whether the recall was negligently executed without referring to the specific recall procedures outlined in the Federal Regulations that are cited in the PISAC as a basis for liability. *See, e.g.*, 21 C.F.R. §§ 7.40-7.59.

297 n.410. Even if Plaintiffs' negligent recall claim (**Count VI(2)**) were not preempted, dismissal under the primary jurisdiction doctrine is warranted. *Baykeeper*, 660 F.3d at 691.

C. Negligent Failure to Recall is Not a Cause of Action in Two States.

Plaintiffs' negligent failure to recall claim (**Count VI(1)**) should be dismissed insofar as it is alleged under Illinois and Oklahoma law because those states do not recognize it as an independent cause of action.[4] This Court's Opinion recognized that Respironics objected to the R&R on this basis, but did not rule on the objection. *See* ECF No. 2471 at 4, 6.

II. NEGLIGENCE *PER SE* IS NOT A CAUSE OF ACTION IN FOUR STATES.

The PISAC attempts to state a negligence *per se* claim (**Count XV**) under 23 states' laws. But in Delaware, Oregon, Rhode Island, and Wisconsin,[5] negligence *per se* is not an independent claim. Rather, it is a standard of care that a law imposes within a cause of action for negligence.[6]

III. STATE PRODUCT LIABILITY ACTS SUBSUME CERTAIN CLAIMS.

A. Plaintiffs' Indiana Breach of Warranty Claims Are Subsumed.

The Indiana Product Liability Act ("IPLA") governs all actions for "physical harm caused

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[4] *See Modelski v. Navistar Int'l Transp. Corp.*, 707 N.E.2d 239, 247 (Ill. App. Ct. 1999) (finding no extra-statutory duty to recall or retrofit products); *Wicker ex rel. Est. of Wicker v. Ford Motor Co.*, 393 F. Supp. 2d 1229, 1236 (W.D. Okla. 2005) ("Oklahoma does not recognize a post-sale duty to warn or retrofit a product.") (citations omitted).

[5] *See Gordon v. Nat'l R.R. Passenger Corp.*, No. CIV.A. 10753, 2002 WL 550472, at *7 (Del. Ch. Apr. 5, 2002) ("[N]egligence per se is not itself an independent claim."); *Hammick v. Jacobs*, No. 3:19-cv-00200-JR, 2020 WL 6135464, at *5 (D. Or. Oct. 19, 2020) ("[T]he doctrine of negligence per se does not create a cause of action . . . .") (citation omitted); *Kurczy v. St. Joseph Veterans Ass'n, Inc.*, 820 A.2d 929, 947 (R.I. 2003) ("[T]he violation of a statute or an ordinance is not negligence *per se* but is to be used by the trier of the facts merely as an aid in determining that issue on consideration of all the evidence.") (citation omitted); *D.L. by Friederichs v. Huebner*, 329 N.W.2d 890, 917 (Wis. 1983) ("Negligence *per se* ordinarily refers to a form of ordinary negligence that results from violation of a statute. The violation of the statute is the deviation from the standard of care and supplies one element of a negligence cause of action: breach of duty. Other issues such as causation and contributory negligence remain.") (citations omitted).

[6] The R&R recommended dismissal of Plaintiffs' negligence *per se* claim under the laws of 15 states on this basis, but did not consider Delaware, Oregon, Rhode Island, and Wisconsin law.

by a product; regardless of the substantive legal theory or theories upon which the action is brought." Ind. Code § 34-20-1-1. The IPLA subsumes all breach of warranty claims (**Counts X *through* XII**) where, as here, Plaintiffs allege only personal injury related to a defective product.[7]

B. Plaintiffs' Fraud Claim is Subsumed by Four States' Product Liability Acts.

Because Plaintiffs claim personal injury damages related to a product defect, their fraud claim (**Count XIII**) is subsumed by the Kansas, Mississippi, Ohio, and Tennessee PLAs. *See, e.g., In re Valsartan*, MDL No. 2875, 2021 WL 364663 at *14 (D.N.J. Feb. 3, 2021) (fraud claim in personal injury complaint was subsumed by Kansas and Tennessee PLAs).[8]

C. Certain Consumer Protection Claims Are Subsumed.

Plaintiffs' Indiana, Mississippi, and New Jersey consumer protection claims (**Counts XVI(14), (22), (27)**) are subsumed by those states' PLAs, which govern ***all*** actions for physical harm caused by an allegedly defective product. *See* Ind. Code § 34-20-1-1 (Indiana PLA governs "regardless of the substantive legal theory or theories upon which the action is brought"); Miss. Code Ann. § 11-1-63 (Mississippi PLA applies "in ***any*** action for damages caused by a product") (emphasis added); N.J.S.A. 2A:58C-1 (New Jersey PLA governs "any claim or action brought by a claimant for harm caused by a product, irrespective of the theory underlying the claim . . . .").[9]

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[7] *See, e.g., Palm v. Taurus Int'l Mfg., Inc.*, No. 22-CV-337, 2022 WL 17714600, at *4-5 (N.D. Ind. Dec. 15, 2022) (holding that, because "[e]ach warranty claim alleges only [plaintiff's] personal injury and injury originating from a product defect[,]" the express and implied warranty claims "are subsumed by the IPLA") (citation omitted).

[8] *See also Young v. Bristol-Myers Squibb Co.*, No. 416CV00108, 2017 WL 706320, at *4 (N.D. Miss. Feb. 22, 2017) ("fraud claims are subsumed by the [Mississippi PLA] unless the claims are 'unrelated to the alleged defects'") (citation omitted); *McFarland v. Ethicon, Inc.*, No. 20-cv-02188, 2020 WL 4464401, at *2 (S.D. Ohio, Aug. 4, 2020) (fraud claim in medical device case was subsumed by Ohio PLA).

[9] *See also In re Valsartan*, 2021 WL 364663, at *9 (New Jersey CPA claim in personal injury master complaint was subsumed by New Jersey PLA because the two claims were "nearly

IV. PLAINTIFFS IMPROPERLY ASSERT THEORIES OF LIABILITY UNAVAILABLE UNDER FOUR STATES' PRODUCT LIABILITY STATUTES.

Only limited theories of liability are available under the Kansas, Louisiana, New Jersey, and Ohio PLAs.[10] Plaintiffs plead common law causes of action under their PLA claims without regard for these limits.[11] These claims (**Counts XXV, XXVI, XXVIII, XXIX**) must be dismissed (or struck) to the extent they are based on theories of liability unavailable under each PLA.[12]

V. PLAINTIFFS' FRAUD CLAIM MUST BE DISMISSED UNDER THE LAWS OF THIRTEEN STATES FOR FAILURE TO PLEAD A SPECIAL RELATIONSHIP.

This Court previously dismissed Plaintiffs' common law fraud claim (**Count XIII**) under Rule 9(b) without addressing whether Plaintiffs pled the confidential or fiduciary relationship required to state a fraud-by-omission claim under 13 states' laws. Plaintiffs still fail to plead such a relationship, which is a predicate to pleading a duty to disclose in these states.[13] Thus, Plaintiffs'

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indistinguishable" and sought "virtually the same damages."); *Nelson v. C.R. Bard, Inc.*, 553 F. Supp. 3d 343, 349-50 (S.D. Miss. 2021) (Mississippi PLA subsumed CPA claim that "involve[d] the recovery of damages related to an allegedly defective product"); *Elward v. Electrolux Home Prods., Inc.*, 264 F. Supp. 3d 877, 892 (N.D. Ill. 2017) ("[C]laims based solely on physical harm caused by a product must be brought under the IPLA.") (citation omitted).

[10] *See Roeder v. Am. Med. Sys., Inc.*, No. 20-1051-JWB, 2021 WL 4819442, at *3 (D. Kan. Oct. 15, 2021) (Kansas PLA limited to negligence, breach of warranty, and strict liability); *Price v. Luster Prods. Inc.*, No. CV 21-1036, 2022 WL 1719274, at *7 (E.D. La. May 27, 2022) (Louisiana PLA limited to unreasonably dangerous construction, design, lack of adequate warning, and nonconformity with express warranty); *Gremo v. Bayer Corp.*, 469 F. Supp. 3d 240, 251 (D.N.J. 2020) (New Jersey PLA limited to design defect, manufacturing defect, or warnings defect); *Einbecker v. Gates Corp.*, No. 1-22-62, 2024 WL 416332, at *4 (Ct. App. Ohio Feb. 5, 2024) (Ohio PLA limited to defects in manufacture, construction, design, or formulation; defects due to inadequate warning; and nonconformance with a representation by the manufacturer).

[11] For example, under their New Jersey PLA claim, Plaintiffs assert theories of liability for, *inter alia*, strict liability design defect, negligent design, and medical monitoring. PISAC ¶¶ 1802-03.

[12] If this Court determines that any of Plaintiffs' common law claims must be dismissed, Plaintiffs' corresponding allegations of liability should be dismissed as to (or struck from) all PLA claims (**Counts XXIII *through* XXXI**).

[13] Certain states may also imply a duty to disclose if the defendant made an affirmative statement about a relevant safety feature of a product that was made misleading by the purported omission.

fraudulent omission claims under these states' laws fail to state a claim under Rule 12(b)(6).[14]

VI. PLAINTIFFS' CONSUMER PROTECTION CLAIMS FAIL ON MULTIPLE STATUTE-SPECIFIC GROUNDS.

A. North Dakota's Deceptive Trade Practices Act Has No Private Right of Action.

Plaintiffs' North Dakota Deceptive Trade Practices Act claim (**Count XVI(31)**) should be dismissed because there is no private right of action for damages under that statute. *See DJ Coleman, Inc. v. Nufarm Americas, Inc.*, 693 F. Supp. 2d 1055, 1075 (D.N.D. 2010) ("By creating a private right of action for injunctive relief, but not for damages, the North Dakota [legislature] . . . has clearly expressed its intent to not create a private remedy for damages.").

B. Utah's Consumer Sales Practices Act Excludes Personal Injury Claims.

Plaintiffs' Utah Consumer Sales Practices Act claim (**Count XVI(37)**) fails because that statute does not apply to "claim[s] for personal injury" like those Plaintiffs assert here. *See In re Testosterone Replacement Therapy Prods. Liab. Litig.*, No. 14 C 1748, 2017 WL 1836443, at *10 (N.D. Ill. May 8, 2017); *see also Jackson v. Philip Morris Inc.*, 46 F. Supp. 2d 1217, 1220-21 (D.

See, e.g., *Costa v. FCA US LLC*, 542 F. Supp. 3d 83, 100-01 (D. Mass. 2021). Plaintiffs cannot rely on this exception because they have disavowed any misrepresentation-based fraud theory. *See* January 24, 2024 Opinion (ECF No. 2471) at 3 (noting Plaintiffs sought leave to amend to "clarify that their common law fraud claim (count XIII) is based on the theory of fraudulent omission, not commission"). In any event, this exception does not apply because Plaintiffs have not pled any representation by Respironics regarding the safety of the foam, much less reliance.

[14] *See White v. Volkswagen Grp. of Am., Inc.*, No. 2:11-CV-02243, 2013 WL 685298, at *9 (W.D. Ark. Feb. 25, 2013); *R.J. Reynolds Tobacco Co. v. Whitmire*, 260 So. 3d 536, 538-39 (Fla. Dist. Ct. App. 2018); *McCabe v. Daimler AG*, 160 F. Supp. 3d 1337, 1352 (N.D. Ga. 2015); *Flynn v. FCA US LLC*, 327 F.R.D. 206, 218 (S.D. Ill. 2018); *Estate of White ex rel. White v. R.J. Reynolds Tobacco Co.*, 109 F. Supp. 2d 424, 431 (D. Md. 2000); *Costa v. FCA US LLC*, 542 F. Supp. 3d 83, 100-01 (D. Mass. 2021); *Ruth v. A.O. Smith Corp.*, 4-CV-18912, 2005 WL 2978694, at *4 (N.D. Ohio Oct. 11, 2005) (applying Mississippi law); *Las Vegas Metro. Police Dep't v. Harris Corp., M/A Com, Inc.*, No. 13-cv-01780, 2015 WL 895054, at *7 (D. Nev. Mar. 3, 2015); *Matanky v. Gen. Motors LLC*, 370 F. Supp. 3d 772, 795 (E.D. Mich. 2019) (applying Ohio law); *Martell v. Gen. Motors LLC*, 492 F. Supp. 3d 1131, 1143 (D. Or. 2020); *Gaines v. Krawczyk*, 354 F. Supp. 2d 573, 586 (W.D. Pa. 2004) (Cercone, J.); *Taggart v. Ford Motor Credit Co.*, 462 N.W.2d 493, 499 (S.D. 1990); *McCabe*, 160 F. Supp. 3d at 1358 (applying Virginia law).

Utah 1998) (a personal injury claim is "excluded from available actions under the [UCSPA]").

C. Sixteen Consumer Protection Statutes Apply Only to "Consumer Goods," Not to Prescription Medical Devices.

Sixteen jurisdictions limit their consumer protection statutes to claims involving consumer goods, defined as goods that a consumer might purchase (or, in some jurisdictions, lease) for "personal, family, or household" use.[15] These statutes' plain language, informed by their purpose, historical context, as well as relevant caselaw, confirm that medical devices prescribed by a doctor are ***not*** consumer goods within the purview of these statutes. Given their restricted prescription-based distribution, FDA-regulation, and the absence of a direct seller-consumer relationship (it is the physician who decides what therapy is appropriate and what device to prescribe), a statutory consumer protection claim cannot be stated in any of these jurisdictions.[16]

Plaintiffs allege they "are consumers who purchased, leased, or used Recalled Devices ***for personal and/or household purposes***." *E.g.*, PISAC ¶¶ 883, 908 (emphasis added).[17] The R&R assumed the devices were "consumer goods" under the laws of any state that lacks caselaw expressly holding that prescription medical devices are not "personal, household, or family" goods. *See* R&R at 93-105. As this Court set out in its recent opinion on Respironics' motion to dismiss Plaintiffs' medical monitoring claims, that assumption is inconsistent with Third Circuit precedent

[15] *E.g.*, Ala. Code § 8-19-3(4) (applying only to "good or services for personal, family, or household use"); Cal. Civ. Code § 1761(a) (applying only to "chattels bought or leased for use primarily for personal, family, or household purposes"); D.C. Code § 28-3901(a)(2) (applying only to goods "normally use[d] for personal, household, or family purpose[s]"); *see also* 815 Ill. Comp. Stats. 505/1(e); Ind. Code § 24-5-0.5-2(a)(1)-(2); Ky. Rev. Stat. § 367.220(1), Md. Code Ann., Com. Law, § 13-101(c)(2)(iii); Mich. Comp. Laws § 445.902(g), Miss. Code § 75-24-15(1), Mo. Stat. § 407.025(1); Mont. Code § 30-14-102(1); R.I. Gen. Laws § 6-13.1-5.2(a), Vt. Stat. tit. 9, § 2451a(1), Va. Code § 59.1-198, W. Va. Code § 46A-6-102(2); Wyo. Stat. § 40-12-102(a)(ii).
[16] **Counts XVI(1), (4), (9), (13), (14), (16), (17), (19), (22)-(24), (34), (39), (40), (41), and (43)**.
[17] *See also* Section VI.H, *infra* (regarding lack of standing for users and lessees of devices).

clarifying federal courts' "[d]uty to interpret, not expand, state law."[18] Plaintiffs' claims would require this Court to impermissibly expand state law by permitting claims under statutes that do not expressly refer to prescription medical devices and have not been interpreted by state courts to permit claims concerning physician-prescribed medical devices.[19]

Caselaw from six of the 16 jurisdictions—all of which utilize a substantively similar statutory definition—makes plain that prescription medical devices are not consumer goods for personal or household use. For example, in *Otis-Wisher v. Medtronic, Inc*., the Second Circuit affirmed dismissal of a Vermont consumer protection claim based on a prescription device. 616 Fed. App'x 433, 435 (2d Cir. June 9, 2015). The act "defines a 'consumer' as a 'person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services . . . for his or her use or benefit or the use or benefit of a member of his or her household." *Id.* (quoting Vt. Stat. tit. 9, § 2451a(1)). Plaintiff was not a "consumer" because the device at issue was "not available for consumer purchase," but rather "was prescribed" by a doctor. *Id.*

Interpreting similar language in the consumer-focused Magnuson-Moss Warranty Act, *Kanter v. Warner-Lambert Co*. held that FDA-regulated products were not "consumer product[s]," which the statute defined as "any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes." 122 Cal. Rptr. 2d 72, 86 (Cal. App. 2002) (alternation in original). Neither prescription drugs nor medical devices were considered "consumer products" because "the FDCA and its implementing regulations govern the

[18] Memorandum Opinion [re: Respironics' motion to dismiss the second amended class action complaint for medical monitoring] (Feb. 14, 2024) (Conti, J.), ECF No. 2521, at *7-8 ("MM Op.").
[19] The 16 statutes at issue, adopted in the '60s and '70s, were not intended to regulate the marketing of prescription devices otherwise regulated under the FDCA. Rather, they were intended to regulate "relatively common cash and credit transactions in which [consumers] engage on a regular basis." *State ex rel. McGraw v. Bear, Stearns & Co.*, 618 S.E.2d 582, 587 (W. Va. 2005).

labeling at issue here." *Id.*; *cf. Forcellati v. Hyland's, Inc.*, 876 F. Supp. 2d 1155, 1165-66 (C.D. Cal. 2012) (holding homeopathic products, ***as opposed to prescription products***, are "consumer products"); *see also De Bouse v. Bayer*, 922 N.E.2d 309, 318 (Ill. 2009) (finding the "sale" of prescription medication beyond the scope of that state's consumer protection statute). Courts from the relevant jurisdictions construing statutes that have a similar purpose of protecting consumers in "consumer goods" transactions have similarly concluded that prescription medical products are not consumer goods for "personal, family, or household use."[20] Other courts interpreting identical statutory language have reached the same conclusion.[21]

Likewise, courts interpreting similar consumer protection language have concluded that medical devices prescribed for use at home (like those at issue here) are not "consumer goods." For example, courts have found that insulin pumps, prescription medical devices which patients take with them and use at home, ***do not*** fit within the definition of "personal, family, or household" goods. *See Lightner v. Medtronic Inc.*, No. CV2010942, 2021 WL 4731351, at *7 (C.D. Cal. May 10, 2021) (California consumer-warranty statute, which applies to "consumer goods . . . used,

[20] *See Kemp v. Pfizer, Inc.*, 835 F. Supp. 1015, 1024-25 (E.D. Mich. 1993) ("[M]edical 'devices' covered by the Federal Food, Drug, and Cosmetic Act are specifically not included in the CPSA's definition of consumer products."); *Collins v. Davol, Inc.*, 56 F. Supp. 3d 1222, 1232 n.9 (N.D. Ala. 2014) ("a [medical] device is clearly inconsistent with the Alabama Uniform Commercial Code's definition of 'consumer good,' i.e. 'goods that are used or bought for use primarily for personal, family, or household purposes'") (citation omitted); *McCurdy v. Wright Med. Tech., Inc.*, No. CV 19-1898-CFC, 2020 WL 906329, at *6-7 (D. Del. Feb. 25, 2020), *report and recommendation adopted in relevant part*, 2020 WL 3118647 (D. Del. June 12, 2020) (under Alabama UCC statute, "a medical device is a non-consumer good"); *Hogan v. Md. State Dental Ass'n*, 843 A.2d 902, 906 (Md. Spec. App. 2004) (dental fillings were not goods "primarily for personal, household, family, or agricultural purposes"); *Pease v. Abbott Labs., Inc.*, No. JKB-12-1844, 2013 WL 174478, at *2 (D. Md. 2013) ("prescription drugs are not 'consumer goods'"); *Kemp*, 835 F. Supp. at 1024-25 ("medical devices are not . . . consumer products").

[21] For example, courts interpreting the Ohio consumer protection statute with the same language exclude prescription medical devices. *See Reeves v. PharmaJet, Inc.*, 846 F. Supp. 2d 791, 799 n.2 (N.D. Ohio 2012) ("[A] prescription medical device is not a good for personal, family or household use and thus is not a consumer good as defined by the OCSPA.").

bought, or leased primarily for personal, family, or household purposes," found not to apply "because the insulin Pump is a prescription medical device not sold at retail").[22]

In short, precedent establishes that a prescription medical device is not a consumer good for personal or household use giving rise to a consumer protection claim. Any contrary interpretation would amount to an impermissible expansion of state law. MM Op. at 14-15. The statutory language does not permit extension to cover prescription medical devices.[23]

D. Omissions Cannot Support Wisconsin Deceptive Trade Practices Act Claims.

Plaintiffs' Wisconsin Deceptive Trade Practices Act claim (**Count XVI(42)**) fails because it is premised solely on omissions, but "only affirmative assertions, representations, or statements of fact that are false, deceptive, or misleading" are actionable under the statute.[24] *See Tietsworth v. Harley-Davidson, Inc.*, 677 N.W.2d 233, 245 (Wis. 2004).

E. Five Consumer Protection Claims Fail For Lack of Pre-Suit Notice.

Five of Plaintiffs' consumer protection claims[25] require timely and compliant ***pre-suit*** notice as a condition precedent to asserting a claim.[26] Plaintiffs muster only conclusory allegations

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[22] *See also In re Minnesota Breast Implant Litig.*, 36 F. Supp. 2d 863, 876 (D. Minn. 1998) ("Plaintiffs' [products] do not constitute 'consumer products' under the [Magnuson-Moss] Act because these implants are not readily accessible to all consumers"); *Goldsmith v. Mentor Corp.*, 913 F. Supp. 56, 63 (D.N.H. 1995) (under the Magnuson-Moss Act, "a medical device regulated under the MDA, is not a consumer product.").

[23] As Plaintiffs and the Special Master have recognized, some courts have reached a different conclusion in the context of prescription medication. Those decisions are at odds with the rationale articulated by the courts that have closely analyzed the definition and scope of "consumer goods" in the state statutes. *E.g.*, R&R at 95 (*In re Vioxx Class Cases*), 96 (*In re Actiq Sales & Mktg. Practices Litig.*), 97-98 (*Mayor & City Council of Baltimore v. GlaxoSmithKline, LLC*); *but see White v. Wyeth*, 705 S.E.2d 828, 838 (W. Va. 2010) ("Prescription drug cases are not the type of private causes of action contemplated under the terms and purposes of the [statute] because the consumer can not and does not decide what product to purchase.").

[24] *See* PISAC ¶¶ 1640-50. PISAC ¶¶ 1647-48 and 1654-56 refer to misstatements, but without any factual support, and the pleading of this claim makes clear that Plaintiffs allege only omissions.

[25] **Counts XVI (4), (14), (18), (41) and (43)**.

[26] Cal. Civ. Code § 1782(a); Ind. Code §§ 24-5-05.-5, 24-5-0.5-2(a)(5)-(8); Mass. Gen. L. Ch. 93A § 1-9; W. Va. Code Ann. § 46A-5-108(a); Wyo. Stat. Ann. § 40-12-109.

that they "have complied or substantially complied with all applicable notice requirements . . . ." *E.g.*, PISAC ¶¶ 701, 955. Plaintiffs refer only to letters dated September 8, 2021, and May 16, 2022,[27] which purported to provide ***post-suit*** notice of economic damage claims—***the letters do not assert personal injury claims of any sort, making them both untimely and facially deficient***. These five PISAC counts should be dismissed while preserving the ability of compliant individual plaintiffs who can satisfy the required pre-suit notice elements missing in the PISAC to proceed.[28]

F. Plaintiffs Failed to Comply with Prerequisites to Sue Under the Mississippi Consumer Protection Act.

As a condition precedent to filing a Mississippi Consumer Protection Act ("MCPA") claim (**Count XVI(22)**), plaintiffs must make "a reasonable attempt to resolve any claim through an informal dispute settlement program approved by the Attorney General." Miss. Code § 75-24-15(2). Plaintiffs allege having done so, pointing to their purported "notice letters" of September 2021 and May 2022. *See* PISAC ¶ 1155. But as noted above, those are both ***post-suit letters and concern economic loss, not personal injury claims***.[29]

G. Plaintiffs Waived Their Alabama Deceptive Trade Practices Act Claim.

Plaintiffs pursuing civil remedies under the Alabama Deceptive Trade Practices Act ("ADTPA") must "surrender" "all other rights and remedies available at common law, by statute

[27] Copies of the letters and responses are attached as Exhibits A-D to the Motion and may be considered by the Court to evaluate Plaintiffs' claims. *See Beto v. Barkley*, 706 F. App'x 761, 765 (3d Cir. 2017) (court may consider documents incorporated by reference in the complaint).

[28] This Court in its Opinion requested the parties address "what constitutes 'presuit notice' in the context of a master complaint in an MDL." *See* Opinion at 7 n.8. Dismissal of these counts in the PISAC is warranted on a "master" global basis. However, individuals could retain the ability to state a claim under these statutes if plaintiffs, in their respective individual Short Form Complaints, are able to factually attest to their compliance with the conditions precedent to the consumer protection statutes under which they bring a claim. Failure by individual plaintiffs to do so in the Short Form Complaints, too, would result in dismissal of any individual consumer protection claims they might individually seek to pursue.

[29] The same remedial approach proposed in n.28, *supra*, also applies to Plaintiffs bringing Mississippi Consumer Protection Act claims. Miss. Code § 75-24-15(2).

or otherwise, for fraud, misrepresentation, deceit, suppression of material facts or fraudulent concealment arising out of any act, occurrence or transaction actionable under [the ADTPA]." Ala. Code § 8-19-15. Because Plaintiffs assert fraud and other claims arising out of the same alleged conduct as their ADTPA claim, Plaintiffs pursuing an ADTPA claim (**Count XVI(1)**) should "be deemed to have procedurally waived [their] claim under the ADTPA." *See Holmes v. Behr Process Corp.*, No. 2:15-CV-0454, 2015 WL 7252662, at *3 (N.D. Ala. Nov. 17, 2015); *see also Carter v. L'Oreal USA, Inc.*, No. 2:16-CV-508, 2019 WL 4786949, at *9 (S.D. Ala. Sept. 30, 2019) (the ADTPA is "exclusive of other remedies available under Alabama law.").[30]

H. Certain Plaintiffs Lack Statutory Standing to Sue.

Ten consumer protection statutes afford a private right of action only to consumers who "rented or purchased" a product.[31] Two statutes afford a private right of action only to consumers who "purchased" a product.[32] The claims of Plaintiffs who allege only to have "used" a device must be dismissed with prejudice under all twelve statutes (**Counts XVI (1), (4), (11), (12), (16) (22), (23), (24), (34), and (41)**). Under two additional statutes, the claims of Plaintiffs who allege only to have "used" or "leased" a device must also be dismissed (**Counts XVI(7) and (13)**).

CONCLUSION

For all the foregoing reasons, the aforementioned claims in the PISAC should be dismissed in their entirety with prejudice.

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[30] *But see Boddison v. Gen. Motors LLC*, No. 8:20-CV-2139, 2021 WL 2685770, at *3 (M.D. Fla. June 30, 2021). Respironics submits that *Holmes* and *Carter*—***issued by federal courts in Alabama***—are correct in holding that § 8-19-15 is an exclusive remedy even at the pleading stage.
[31] *See* Ala. Code §§ 8-19-10, 8-19-3(4), 8-19-3(12); Cal. Civ. Code §§ 1780(a), (d); Ga. Code §§ 10-1-399(a), 10-1-392(a)(7), 10-1-392(a)(10), 10-1-392(a)(6); Idaho Code § 48-608; Ky. Rev. Stat. § 367.220(1); Miss. Code § 75-24-15(1); Mo. Rev. Stat. § 407.025(1); Mont. Code §§ 30-14-133(1)(a), 30-14-102(1); R.I. Gen. Laws 1956, § 6-13.1-5.2; W. Va. Code, § 46A-6-106(a).
[32] *See* Colo. C.R.S.A. § 6-1-113(1)(a),(b); 6-1-113(1)(b); *Amon on Behalf of Amon v. Harrison*, No. 91 C 980, 1994 WL 532025, at *3 (N.D. Ill. Sept. 29, 1994).

Dated: March 11, 2024

Respectfully Submitted,

/s/ John P. Lavelle, Jr.

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Counsel for Defendant Philips RS North America LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2024, the foregoing document was electronically filed with the Clerk of the Court and served upon counsel of record through the Court's ECF system.

/s/ John P. Lavelle, Jr.
John P. Lavelle, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LIABILITY LITIGATION This Document Relates to: Second Amended Master Long Form Complaint For Personal Injuries And Damages, And Demand For Jury Trial (ECF No. 2505)	Master Docket: No. 21-mc-1230-JFC MDL No. 3014 (Oral Argument Requested)

INDEX OF EXHIBITS TO PHILIPS RS NORTH AMERICA LLC'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) AND 12(b)(6)

A. September 8, 2021 Plaintiff Letter

B. October 8, 2021 Respironics' Response to Plaintiff Letter

C. May 16, 2022 Plaintiff Letter

D. June 15, 2022 Respironics' Response to Plaintiff Letter

EXHIBIT A

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SHANON J. CARSON / *MANAGING SHAREHOLDER*
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September 8, 2021

PRIVILEGED AND CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY
PURSUANT TO FED. R. EVID. 408

VIA EMAIL

Daniel S. Savrin
Morgan Lewis
One Federal Street
Boston, MA 02110-1726
Daniel.savrin@morganlewis.com

Re: Philips' Defective and Recalled CPAP, BiPAP, Ventilators, and Other Breathing Machines – NOTICE OF VIOLATIONS

Dear Daniel:

As you are aware, our law firms have filed the Class Action Complaint attached hereto as Exhibit A captioned *Conley v. Philips Koninklijke, N.V.*, No. 1:21-cv-11328 (D. Mass.) against Defendants Philips Koninklijke, N.V., Philips North America, and Philips RS North America (collectively "Philips"), seeking damages and other relief related to Philips' recall of certain CPAP machines, BiPAP machines, and ventilators ("Recalled Products" as defined in the Class Action Complaint), due to the presence of a toxic and carcinogenic PE-PUR foam within the Recalled Products that degrades and can enter the airways of the user. We are sending this demand letter to comply with certain requirements under state law for various consumer protection laws and warranty laws. By sending this letter, we are not conceding that any of these demand requirements apply in this matter, as Philips has been on notice of nationwide class action claims ***for over two months*** but has not taken actions to remedy the harms caused by the Recalled Products.

This notice of claims is brought on behalf of all the plaintiffs in the Class Action Complaint as well as the individuals listed on Exhibit B who are a subset of Berger Montague's clients. Throughout this letter, any reference to "Plaintiffs" refers to these individuals on the Class Action Complaint and listed on Exhibit B.

The basis for the claims is fully set forth in the Class Action Complaint, but to briefly summarize, Plaintiffs are consumers who used the Recalled Devices and have out-of-pocket costs and other injuries in connection with their use of the Recalled Products,

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including costs associated with the purchase or rental of the Recalled Product, costs of purchasing Accessories (as defined in the Class Action Complaint) such as replacement masks, hoses, and other accessories, and costs of obtaining a replacement device. Moreover, Plaintiffs have all been exposed to toxic carcinogens that require ongoing medical monitoring and further medical costs. Plaintiffs allege that Philips has long been aware of the problems with the Recalled Products (since at least 2018) but did nothing until the recall in June 2021. Since the recall, Philips has not repaired the devices or provided replacements to all its consumers. Plaintiffs who cannot afford a replacement device are thus left with a Hobson's choice: either continue use of the device and risk continued exposure to carcinogens or cease using the device and risk other serious health problems.

I. Notice of Claims

This letter provides written notice of Plaintiffs' claims for violation of the following consumer protection laws. All claims are brought on behalf of Plaintiffs and all those similarly situated including the Class members alleged in the Complaint.

- Alabama Deceptive Trade Practices Act, Ala. Code. §§ 8-19-1, *et seq.*,
- Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Stat. §§ 45.50.471, *et seq.*,
- California Consumer Legal Remedies Act, Cal. Civ. Code. §§ 1750, *et seq.*
- Massachusetts General Laws Chapter 93A;
- Georgia Fair Business Practices Act, Ga. Code Ann. §§ 10-1-390, *et. seq.*
- Indiana Deceptive Consumer Sales Act, Ind. Code. §§ 24-5-0.5-1, *et seq.*
- Maine Unfair Trade Practices Act, Me. Rev. Stat. Ann. Tit. 5, §§ 205A, *et seq.*
- Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq*.
- Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. Com. Code §§ 17.41, *et seq.*

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- West Virginia Code §§ 46A-6-101, *et seq.*

- Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101, *et seq*.

This letter also provides notice on behalf of Plaintiffs and those similarly situated of a breach of the applicable warranty laws where the Recalled Products have been sold or provided.

Plaintiffs, on behalf of themselves and those similarly situated, seek all available damages, including, without limitation, the return of the purchase price of their Recalled Products and all Accessories with interest from the time they were purchased; the reimbursement for any and all costs associated with obtaining a replacement device; costs associated with ongoing medical monitoring; all available damages and penalties (including treble damages and punitive damages); reasonable costs and attorneys' fees; and any other damages ordered by the courts. In addition, Plaintiff and the Class will seek appropriate injunctive and declaratory relief relating to the Recalled Products, including, without limitation, notice to the Class regarding the defect, and replacement or repair of the Recalled Products.

A. Alabama Deceptive Trade Practices Act Demand

Philips' actions described herein and in the attached Complaint constitute deceptive acts or practices that violate Alabama Code § 8-19-5. Philips' violations include, but are not limited to, the following provisions:

- Ala. Code § 8-19-5(5): Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have;

- Ala. Code § 8-19-5(7): Representing that goods are of a particular standard, quality, or grade, if they are of another;

- Ala Code § 8-19-5(9): Advertising goods with intent not to sell them as advertised; and

- Ala Code § 8-19-5(27): Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.

Philips has failed to abide by its consumer protection obligations to Plaintiff John Cook and others in Alabama, and has failed to adequately compensate Plaintiffs for the damage caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief for all members of the Alabama Subclass set forth in the Class Action Complaint within 15 days of your receipt of this letter, including, without limitation, the return of the purchase price of the Recalled Products and Accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties including statutory and treble damages; and reasonable costs and attorneys' fees.

We note that the pre-suit notice requirement of this statute does not apply if Philips does not "maintain a place of business or keep assets within" Alabama. Ala. Code. § 8-9-10(e). We are unaware of any place of business maintained by Philips or assets kept by Philips in Alabama.

B. <u>Alaska Unfair Trade Practices and Consumer Protection Act Demand</u>

Pursuant to Alaska Stat. § 45.50.535, Plaintiff Mark Welker and others from Alaska listed in Exhibit B intend to seek an injunction against Defendants for their failure to provide adequate notice of the recall, failure to timely provide replacement machines or reimburse others for the costs of replacement machines, failure to return the purchase price of the Recalled Products, and any other injunctive relief related to the recall as appropriate. Philips' actions described herein and in the attached Complaint constitute deceptive acts or practices that violate Alaska Stat. Ann. § 45.50.471. Philips' violations, include, but are not limited to, the following provisions:

- Alaska Stat. Ann. § 45.50.471(4): Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that the person does not have;

- Alaska Stat. Ann. § 45.50.417(6): Representing that goods are of a particular standard, quality, or grade, if they are of another;

- Alaska Stat. Ann. § 45.50.417(8): Advertising goods with intent not to sell them as advertised; and

- Alaska Stat. Ann. § 45.50.417(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing,

suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived, or damaged

In addition to an injunction, Plaintiff Welker and others from Alaska listed on Exhibit B, and the Alaska Subclass, will also be seeking the return of the purchase price of the Recalled Products and Accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties including statutory and treble damages; and reasonable costs and attorneys' fees.

C. California Consumer Legal Remedies Act Demand

Philips has violated and continues to violate numerous subsections of the Consumer Legal Remedies Act, including, but not limited to, the following:

- Cal. Civ. Code § 1770(a)(5): Representing that goods have characteristics, uses, and benefits which they do not have;

- Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular standard, quality, or grade, if they are of another;

- Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as advertised; and

Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in accordance with a previous representation when they have not.

Philips has failed to abide by its consumer protection obligations to Plaintiffs Bailey, DiJohn, others from California listed on Exhibit B, and the California Subclass, and has failed to provide adequate compensation for the damage caused to them by the Recalled Products. Plaintiffs demand full and appropriate relief for themselves and all members of the California Subclass within thirty (30) calendar days of your receipt of this letter, including, without limitation, the return of the purchase price of the Recalled Products and Accessories, the return of the purchase price of the Recalled Products and Accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties including statutory, treble damages, and punitive damages; and reasonable costs and attorneys' fees.

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D. Georgia Fair Business Practices Act Demand

Philips' actions described herein and in the attached Complaint constitute unfair or deceptive acts or practices that violate Ga. Code Ann. § 10-1-393(a). Additionally Philips' violations, include, but are not limited to, the following provisions which are intended to be illustrative of unfair or deceptive practices:

- Ga. Code Ann. § 10-1-393(b)(5): Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have;

- Ga. Code Ann. § 10-1-393(b)(7): Representing that goods are of a particular standard, quality, or grade, if they are of another; and

- Ga. Code Ann. § 10-1-393(b)(9): Advertising goods with intent not to sell them as advertised.

Philips has failed to abide by its consumer protection obligations to Plaintiffs Coggeshall, Stark, others from Georgia listed on Exhibit B, and the Georgia Subclass, and has failed to provide adequate compensation for the damages caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief for all members of the Georgia Subclass within 30 days of your receipt of this letter, including, without limitation, the return of the purchase price of the Recalled Products and Accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties including statutory and treble damages; and reasonable costs and attorneys' fees.

We note that the pre-suit notice requirement of this statute does not apply if Philips does not "maintain a place of business or keep assets within" Georgia. Ga. Code Ann. § 10-1-399(b). We are unaware of any place of business or assets kept by Philips in Georgia.

E. Indiana Deceptive Consumer Sales Act Demand

Philips' actions described herein and in the Class Action Complaint constitute unfair, abusive, or deceptive acts, omissions, or practices under Indiana Code § 24-5-0.5-3. Additionally, Philips' violations, include, but are not limited to, the following provisions which are intended to be illustrative of unfair or deceptive trade practices:

- Ind. Code. § 24-5-0.5-3(b)(1): That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have; and

- Ind. Code. § 24-5-0.5-3(b)(2): That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

Philips has failed to abide by its consumer protection obligations to Plaintiff Schuckit, others from Indiana listed on Exhibit B, and the Indiana Subclass, and has failed to provide adequate compensation to Plaintiffs and the Class for the damage caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief for all members of the Subclass including, without limitation, the return of the purchase price of the Recalled Products and Accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties, including statutory and treble damages, and reasonable costs and attorneys' fees.

We note that the sending of this notice is not required because Philips' deceptive acts are incurable and uncured, and this notice is being sent within six (6) months after the initial discovery of the deceptive act. Ind. Code. § 24-5-0.5-5.

F. <u>Maine Unfair Trade Practices Act Demand</u>

Philips' actions described herein and in the attached Complaint constitute unfair or deceptive acts or practices that violate Me. Rev. Stat. Ann., tit. 5, § 207. Philips has failed to abide by its consumer protection obligations to Plaintiff Bean, others from Maine listed on Exhibit B, and the Maine Subclass, and has failed to provide adequate compensation to Plaintiffs and the Maine Subclass for the damage caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief all members of the Maine Subclass within 30 days of your receipt of this letter, including, without limitation, the return of the purchase price of the Recalled Products and Accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties including statutory and treble damages; and reasonable costs and attorneys' fees.

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G. Massachusetts General Laws Chapter 93A Demand

In the Class Action Complaint, Plaintiff McClay has alleged that he sent a pre-suit letter on behalf of himself and a Class more than 30 days in advance of the filing the Class Action Complaint. Plaintiff McClay thus brings a class action claim under Mass. Gen. Laws 93A, § 9. This letter is thus being sent on behalf of Plaintiff Conley and other persons from Massachusetts listed on Exhibit B.

Philips' actions described herein and in the attached Complaint constitute unfair and deceptive business practices that violate Massachusetts General Laws Chapter 93A. Philips has violated c. 93A because, among other things, Philips knew or should have known that the defects were present in the Recalled Products, but knowingly and/or recklessly misrepresented to Plaintiff Conley and others that the Recalled Products were free from defects, were merchantable and fit for their ordinary purposes, and took no action to adequately warn Plaintiffs and the Massachusetts Subclass or appropriately remedy the defects. Instead, Philips concealed and failed to warn customers and potential customers that the carcinogenic PE-PUR foam in the in Recalled Products can degrade and enter the airways of the Recalled Machines resulting in users breathing in toxic particles. Accordingly, Plaintiff demands full and appropriate relief for himself and the members of the Massachusetts Subclass, including but not limited to actual and/or statutory damages per violation under c. 93A.

H. Mississippi Consumer Protection Act Demand

Philips' actions described herein and in the Class Action Complaint constitute unfair or deceptive trade practices that violate Miss. Code Ann. § 74-25-5(a). Additionally Philips' violations, include, but are not limited to, the following provisions which are intended to be illustrative of unfair or deceptive trade practices:

- Miss. Code Ann. § 74-25-5(2)(e): Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that h does not have;

- Miss. Code Ann. § 74-25-5(2)(f): Representing that goods are of a particular standard, quality, or grade, if they are of another; and

- Miss. Code Ann. § 74-25-5(2)(g): Advertising goods with intent not to sell them as advertised.

Philips has failed to abide by its consumer protection obligations to Plaintiff Stafford, others from Mississippi listed on Exhibit B, and the Mississippi Subclass, and has failed to provide adequate compensation to Plaintiffs and the Mississippi Subclass for the damage caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief for all members of the Mississippi Subclass including, without limitation, the return of the purchase price of the Recalled Products and Accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties, and reasonable costs and attorneys' fees.

Pursuant to Miss. Code Ann. § 74-24-15(2), Plaintiffs request that Philips engage an informal dispute settlement program approved by the Mississippi Attorney General. If Philips is interested in participating in such a program, please advise.

I. Texas Deceptive Trade Practices Act Demand

Philips' actions described herein and in the attached Complaint constitute false, misleading, or deceptive acts or practices that violate Tex. Bus. & Com. Code § 17.46(a). Additionally Philips' violations, include, but are not limited to, the following provisions which are intended to be illustrative of false, misleading, or deceptive practices:

- Tex. Bus. & Com. Code § 17.46(b)(5): Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have;

- Tex. Bus. & Com. Code § 17.46(b)(7): Representing that goods are of a particular standard, quality, or grade, if they are of another; and

- Tex. Bus. & Com. Code § 17.46(b)(7): Advertising goods with intent not to sell them as advertised.

These acts in violation of Section 17.46 are actionable pursuant to Tex. Bus. & Com. Code § 17.50 (a)(1) because they were relied upon by Plaintiffs to their detriment. Philips actions as described herein also constitute breaches of express and implied warranties and unconscionable actions or an unconscionable course of action that are actionable pursuant to Tex. Bus. & Com. Code § 17.50 (a)(2) & (3).

Philips has failed to abide by its consumer protection obligations to Plaintiff Wohlfarth, others from Texas listed on Exhibit B, and the Texas Subclass, and has failed to provide adequate compensation to Plaintiffs and the Texas Subclass for the damage caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief for all members of the Texas Subclass within 60 days of your receipt of this letter, including, without limitation, the return of the purchase price of the Recalled Products and Accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties including treble damages; and reasonable costs and attorneys' fees.

J. West Virginia Consumer Protection Act Demand

Philips' actions described herein and in the Class Action Complaint constitute unfair or deceptive trade practices that violate W. Va. Code, § 46A-6-10. Plaintiff Bays and others from West Virginia listed on Exhibit B demand full and appropriate relief for all members of the West Virginia Subclass to be provided within 45 days of the receipt of this letter including, without limitation, the return of the purchase price of the Recalled Products and Accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties, including statutory damages, and reasonable costs and attorneys' fees.

K. Wyoming Consumer Protection Act Demand.

Philips' actions described herein and in the attached Class Action Complaint are deceptive trade practices that violate Wyo. Code. Ann. § 40-12-105. Philips' violations, include, but are not limited to:

- Wyo. Code Ann. § 40-12-105(a)(i): Represents that merchandise is of a particular standard, grade, style or model, if it is not;

- Wyo. Code Ann. § 40-12-105(a)(x): Advertises merchandise with intent not to sell it as advertised; and

- Wyo. Code Ann. § 40-12-105(a)(xv): Engages in unfair or deceptive acts or practices.

Philips has failed to abide by its consumer protection obligations to Plaintiff DiMaio, others from Wyoming listed on Exhibit B, and the Wyoming Subclass, and has failed to provide adequate compensation to Plaintiffs and the Wyoming Subclass for the damage caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief for all members of the Wyoming Subclass within 60 days of your receipt of this letter, including, without limitation, the return of the purchase price of the Recalled Products and Accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device, all costs of ongoing medical monitoring, and all other available damages and penalties, and reasonable costs and attorneys' fees.

L. Breach of Warranties

This letter is also to provide you notice that Philips as breached its express or implied warranties as set forth herein and in the Class Action Complaint, in violation of the following laws:

Jurisdiction	Authority
Alabama	Ala. Code § 7-2-313, 7-2-314, *et seq*.
Alaska	Alaska. Stat. § 45.02.314, 45.02.725, *et seq*.
Arizona	Ariz. Rev. Stat. Ann. §§ 47-2313, § 47-2314, *et seq*.
Arkansas	Ark. Code Ann. §§ 4-2-314, *et seq*.; Ark. Code Ann. § 4-2-313(1), *et seq*.
California	Cal. Comm. Code §§ 2313, 2314, *et seq*.
Colorado	Colo. Rev. Stat. §§ 4-2-313, 4-2-314, *et seq*.
Connecticut	Conn. Gen. Stat. Ann. § 42a-2-313, 42a-2-314 *et seq*.
Delaware	Del. Code Ann. tit. 6, §§ 2-313, 2-314, *et seq*.;
District of Columbia	D.C. Code Ann. §§ 28:2-725, 28:2-314, *et seq*.
Florida	Fla. Stat. Ann. §§ 672.313, 672.314, *et seq*.
Georgia	Ga. Code Ann. §§ 11-2-313, 11-2-314, *et seq*.;
Hawaii	Haw. Rev. Stat. §§ 490:2-313; 490:2-314, *et seq*.

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Idaho	Id. Code §§ 28-2-313, 28-2-314, *et seq*.
Illinois	Ill. Comp. Stat. Ann. Ch. 810, 5/2-313, 5/2-314, *et seq*.
Indiana	Indiana Code Ann. §§ 26-1-2-3131, 26-1-2-314, et seq.
Iowa	Iowa Code Ann. §§ 554.2318, 554.2314, *et seq*.
Kansas	Kan. Stat. Ann. §§ 84-2-313, 84-2-314, *et seq*.
Kentucky	Ky. Rev. Stat. Ann. §§ 355.2-313, 355.2-314, *et seq*.
Louisiana	La. Civ. Code Ann. art. 2520, *et seq*. (and is liable for redhibitory defects); La. Rev. Stat. Ann. § 9:2800.58, *et seq.*
Maine	Me. Rev. Stat. Ann. tit. 11, §§ 2-313, 2-314, *et seq.*
Maryland	Md. Code Ann., Com. Law §§ 2-313, 2-314, *et seq.*
Massachusetts	Mass. Gen. Laws Ann. Ch. 106, §§ 2-313, 2-314, *et seq.*
Michigan	Mich. Comp. Laws Ann. §§ 4440.2313, 440.2314, *et seq*.
Minnesota	Minn. Stat. Ann. §§ 336.2-313, 336.2-314, *et seq.*
Mississippi	Miss. Code Ann. §§ 75-2-313, 75-2-314, *et seq.*
Missouri	Mo. Rev. Stat. Ann. §§ 400.2-313, 400.2-314, *et seq.*
Montana	Mont. Code Ann. §§ 30-2-313, 30-2-314, et seq.
Nebraska	Neb. Rev. Stat. §§ 2-313, 2-314, *et seq*.
Nevada	Nev. Rev. Stat. §§ 104.2313, 104.2314, *et seq.*;
New Hampshire	N.H. Rev. Stat. Ann. §§ 382-A:2-313, 382-A:2-314, *et seq.*
New Jersey	N.J. Stat. Ann. §§ 12A:2-313; 12A:2-314, *et seq.*
New Mexico	N.M. Stat. Ann. §§ 55-2-313(1); 55-2-314, *et seq.*
New York	N.Y. U.C.C. Law §§ 2-313, 2-314, *et seq.*

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North Carolina	N.C. Gen. Stat. Ann. §§ 25-2-313, 25-2-314, *et seq*.
North Dakota	N.D. Cent. Code §§ 41-02-30, 41-02-31, *et seq.*
Ohio	Ohio Rev. Code Ann. §§ 1302.26, 1302.27, *et seq.*
Oklahoma	Okla. Stat. Tit. 12A, §§ 2-313, 2-314 *et seq.*
Oregon	Or. Rev. Stat. §§ 72.3130, 72.3140, *et seq*.
Pennsylvania	13 Pa. Stat. Ann. §§ 2313, 2314 *et seq*.
Puerto Rico	P.R. Laws. Ann. Tit. 31, § 3841, *et seq*.
Rhode Island	R.I. Gen. Laws §§ 6A-2-313, 6A-2-314, *et seq.*
South Carolina	S.C. Code Ann. §§ 36-2-313, 36-2-314, *et seq*.
South Dakota	S.D. Codified Laws §§ 57-A-2-313;57A-2-314, *et seq.*
Tennessee	Tenn. Code Ann. §§ 47-2-313, 47-2-314, *et seq.*
Texas	Tex. Bus. & Com. Code Aim. §§ 2.313, 2.314, *et seq.*
Utah	Utah Code Ann. §§ 70A-2-313, 70A-2-314, *et seq.*
Vermont	Vt. Stat. Ann. tit. 9A, §§ 2-313, 2-314, *et seq.*
Virginia	Va. Code §§ 8.2-313, 8.2-314, *et seq.*;
Washington	RCW §§ 62A.2-313, 62A.2-314 et seq.;
West Virginia	W. Va. Code §§ 46-2-313, 46-2-314, *et seq.*
Wisconsin	Wis. Stat. Ann. §§ 402.313, 402.314, *et seq.*
Wyoming	Wyo. Stat. Ann. §§ 34.1-2-313, 34.1-2-314, *et seq.*

We look forward to your response.

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Sincerely,

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EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DANIEL F. CONLEY, ANGELA SCUNZIANO, PAUL ROHAN, IMAN JONES, BARTLEY WILSON, WALTER COGGESHALL,YOLANDA STARK, ALLEN SMOCK, ANDREW FISHER, MIA COLEMAN, PAUL MIYAHIRA, JULES LABONTE, CHRISTOPHER GLAUB, LAURELANN PORTER, DEANNA MELCHER, PAUL BAILEY, CHRISTINE DIJOHN, JOHN COOK, MATTHEW WARD, JOHN POLAND, JOSE LOPEZ, CHAD WELLS, WILLIAM VLAHOS, EUGENE WOHLFARTH, CAMERON ROSE, TAWNYA PORTER, LYNN ANN KOENCK, DELORES BROWN, FORREST STAFFORD, MURRAY CRAIG, TONY JONES, ELAINE LIZOTTE, ROBERT MCNULTY, DAVID JOSEPH MARTIN, WILLIAM WORMAN, ANTONIO PEREZ BONANO, RACHAEL DIMAIO, LISA BROWN, ROBERT MCCLAY, ROBERT SHUCKIT, DONALD BASEMORE, JOHN BURLISON, DAVID GORRIS, MARK WELKER, CHARLES PINCK, CHRIS BROWN, ADAM HALE, CARLOS OLDIGS, STEVE ABARR, PHILIP BEAN, JULIE LONGWAY, JOSEPH RYAN, HEATH BYERS, DIANE LAMONTAGNE, DAVID BAYS, BENEDICT NAGY, JR., DUANE ALT, CARL GOLD, MYRON FIELDS, JO DAWN WARD, GARY JACOBS, ADAM MCLEAN, VICKI CHAMBERS, JIMMY ARRIAGA, PAUL DUNN, AND HARRIS JENKINS, individually and on behalf of all others similarly situated, Plaintiffs,	Civil Action No. **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

v.	:
	:
KONINKLIJKE PHILIPS N.V., PHILIPS NORTH AMERICA LLC, and PHILIPS RS NORTH AMERICA LLC,	:
	:
Defendants.	:
	:
	:
	:

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CLASS ACTION COMPLAINT

Plaintiffs Daniel F. Conley, Angela Scunziano, Paul Rohan, Iman Jones, Bartley Wilson, Walter Coggeshall, Yolanda Stark, Allen Smock, Andrew Fisher, Mia Coleman, Paul Miyahira, Jules Labonte, Christopher Glaub, Laurelann Porter, Deanna Melcher, Paul Bailey, Christine DiJohn, John Cook, Matthew Ward, John Poland, Jose Lopez, Chad Wells, Williams Vlahos, Eugene Wohlfarth, Cameron Rose, Tawnya Porter, Lynn Ann Koenck, Delores Brown, Forrest Stafford, Murray Craig, Tony Jones, Elaine Lizotte, Robert McNulty, David Joseph Martin, William Worman, Antonio Perez Bonano, Rachael DiMaio, Lisa Brown, Robert McClay, Robert Shuckit, Donald Basemore, John Burlison, David Gorris, Mark Welker, Charles Pinck, Chris Brown, Adam Hale, Carlos Oldigs, Steve Abarr, Philip Bean, Julie Longway, Joseph Ryan, Heath Byers, Diane Lamontagne, David Bays, Benedict Nagy, Jr., Duane Alt, Carl Gold, Jo Dawn Ward, Myron Fields, Gary Jacobs, Adam Mclean, Vicki Chambers, Jimmy Arriaga, Paul Dunn, and Harris Jenkins, individually and on behalf of all others similarly situated, through their undersigned counsel, allege as follows.

I. NATURE OF THE ACTION

1. Plaintiffs collectively are residents of the following **51** United States jurisdictions: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Washington, D.C., West Virginia, Wisconsin, and Wyoming.

2. Defendants Koninklijke Philips N.V., Philips North America LLC, and Philips RS North America LLC (collectively, "Philips") manufacture and sell a variety of products that are intended to help people breathe. These include Continuous Positive Airway Pressure ("CPAP") and Bilevel Positive Airway Pressure ("BiPAP") machines, which are commonly used to treat sleep apnea, and ventilators, which treat respiratory failure. In general, all of these devices blow air into patients' airways. CPAP and BiPAP machines are intended for daily use while sleeping, and ventilators are used continuously while needed. Without these devices, patients may experience severe symptoms including heart attack, stroke, and death by asphyxiation.

3. On June 14, 2021, Philips announced a recall of millions of its CPAP/BiPAP machines and ventilators. These products contain polyester-based polyurethane ("PE-PUR") foam for sound abatement. Philips announced that the foam may break down and be inhaled or ingested, or may emit volatile organic compounds ("VOCs") that may be inhaled, resulting in adverse effects to organs or cancer. Philips stated that the potential risks of exposure due to such chemical emissions include "headache/dizziness, irritation (eyes, nose respiratory tract, skin), hypersensitivity, nausea, vomiting, toxic and carcinogenic effects. Philips's announcement to doctors advised that these hazards could result in "serious injury which can be life-threatening or cause permanent impairment."

4. On July 22, 2021 the U.S. Food and Drug Administration ("FDA") confirmed the severity of the problem, and classified the recall of Philips' breathing devices at issue as a Class I recall, or "the most serious type of recall," meaning use of the devices "may cause serious injuries or death."[1]

[1] https://www.fda.gov/medical-devices/medical-device-recalls/philips-respironics-recalls-certain-continuous-and-non-continuous-ventilators-including-cpap-and.

5. In truth, Philips knew about these very serious risks long before the recall. Patients who use the affected devices have complained about black particles in their machines for many years. And while Philips notified its shareholders about the defect in late April 2021, it did not recall its machines until June 14, 2021.

6. Philips' recall is a "recall" in name only. Philips has failed its customers since providing its late notice of the problems. For example, Philips has not offered its customers a refund for their purchase of the recalled devices so that they can purchase an alternative breathing machine. Nor has Philips actually replaced or repaired any of the affected devices. Although patients need to use their devices every day, Philips has no concrete timeline for replacing any devices and may not provide replacements or repairs for a year or more.

7. In fact, it appears that Philips timed its recall to coincide with its launch of a next generation of the affected products, which Philips claims does not suffer from the same foam issues. Thus, the only safe option that Philips currently offers to its customers—many of whom need a BiPAP/CPAP machine to sleep—is to purchase, at full price, Philips's new, next-generation device, thus profiting Philips further.

8. Because of the increased demand and shortage of microchips, replacement machines are very difficult to find and only available at inflated prices. Many users have thus been forced by Philips into a Hobson's choice—continue using Philips' recalled machines exposing themselves to a risk of serious injury or death, or stop using Philips' recalled machines exposing themselves to a risk of serious injury or death.

9. Each of the Plaintiffs acquired a device that Philips has now recalled. They would not have obtained the device at the price that they paid, or at all, if they had known that the PE-PUR foam in the device could cause serious injury or death.

10. Plaintiffs, on behalf of themselves and other similarly situated individuals who also paid for the defective devices, seek to recover damages from Philips based on strict liability, negligence, breach of express warranty, breach of implied warranty, the Magnuson Moss Warranty Act, unjust enrichment, and applicable state consumer protection and deceptive trade practices statutes. Plaintiffs also seek medical monitoring damages for users of devices.

II. THE PARTIES

A. PLAINTIFFS[2]

11. Plaintiff Daniel F. Conley resides in West Roxbury, Massachusetts. From 1994 to 2002, Plaintiff Conley served on the Boston City Council. From 2002-2018, Plaintiff Conley served as the District Attorney for Suffolk County, Massachusetts, and was elected to four consecutive terms. In or around April 2020, Daniel Conley acquired a DreamStation CPAP to treat his sleep apnea. Plaintiff Conley would not have obtained the device if he had known it was defective. Plaintiff Conley wants a refund, replacement with a non-defective device,[3] costs for ongoing medical monitoring, and all other appropriate damages for all the injuries he suffered as a result of the defective device. In particular, as a four-term District Attorney of Suffolk County, Massachusetts, Plaintiff Conley's participation as a named Plaintiff and class representive in this litigation is meaningful and significant, as he has handled, overseen, and managed complex

[2] Each of the Named Plaintiffs is also a proposed Class Representative for the state law subclass in which they reside.

[3] Any time reference is made in this Class Action Complaint to a refund, it also refers to a refund of any related accessories purchased by the Plaintiff or Class member that can no longer be used, and any time reference is made in this Class Action Complaint to costs of replacement of a recalled breathing device, it also refers to the costs of any related accessories that need to be purchased by the Plaintiff or Class Member accompanying the replacement device. The term "accessories" as used in this Class Action Complaint includes, for example, masks, filters, cushions, tubes, hoses, power cords, converters, and humidifiers.

litigation for decades, and the Court can be assured that along with his co-Plaintiffs, he will well represent the proposed Class members in this litigation.

12. Plaintiff John Cook resides in Attala, Alabama. John Cook acquired a Philips DreamStation to treat sleep apnea. Plaintiff Cook is experiencing headaches, fatigue, coughing, trouble breathing, and sneezing. Plaintiff Cook would not have obtained the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

13. Plaintiff Mark Welker resides in Anchorage, Alaska. In 2021, Plaintiff Welker acquired two Philips DreamStation machines to treat sleep apnea. Plaintiff Welker would not have obtained the devices if he had known they were defective. Plaintiff Welker wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

14. Plaintiff Laurelann Porter resides in Mesa, Arizona. In or around 2019, Plaintiff Porter obtained a Philips DreamStation to treat sleep apnea. Laurelann Porter is experiencing chronic pain and chronic fatigue, trouble sleeping, shortness of breath, and a dry cough. Plaintiff Porter would not have acquired the device if she had known it was defective. Laurelann Porter wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device .

15. Plaintiff Deanna Melcher resides in Hazen, Arkansas. She obtained a DreamStation in March 2020 to treat moderate to severe sleep apnea. Since using her DreamStation, she has suffered hoarseness, frequent sore throat, bronchitis, and upper respiratory irritation. She would not have acquired the device if she had known it was defective. She wants a refund, replacement

with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

16. Plaintiff Paul Bailey resides in Aptos, California. Mr. Bailey acquired a DreamStation CPAP machine in 2018 to treat sleep apnea. Mr. Bailey, like all the Plaintiffs, is very worried about future health issues that may arise as a result of the use of his DreamStation. He would not have obtained the device if he had known it was defective. He wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

17. Plaintiff Christine DiJohn resides in Hemet, California. She obtained a DreamStation BiPAP machine in 2018 to treat sleep apnea. Since using her device, she has had numerous asthma attacks which have led to multiple Emergency Room and doctor visits. She has had to be admitted to the hospital several times since using her device, where she has been treated with multiple high-dose steroid injections, breathing treatments, and oxygen supplementation. Her hospital admissions have each lasted at least three days. She experiences daily acute, severe headaches, nasal irritation, shortness of breath, heart palpitations, higher blood pressure, swollen tonsils and throat, and severe coughing. She has been having difficulty sleeping and is experiencing fatigue and drowsiness. This is interfering with her daily activities. She would not have acquired the device if she had known it was defective. She wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

18. Plaintiff Bartley Wilson resides in Monument, Colorado. In 2019, Bartley Wilson obtained a Philips DreamStation to treat sleep apnea. As a result of the machine, Plaintiff Wilson is experiencing coughing. Bartley Wilson would not have acquired the device if he had known it

was defective. Bartley Wilson wants a refund, replacement with a non-defective device, and costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

19. Plaintiff Paul Rohan resides in Westport, Connecticut. In or around May 2019, Plaintiff Rohan obtained a Philips DreamStation to treat sleep apnea. Plaintiff Rohan would not have acquired the device if he had known it was defective. In response to the recall, Plaintiff Rohan purchased a replacement machine for approximately $883. Paul Rohan wants replacement with a non-defective device, as with all of the Plaintiffs the economic losses associated with any costs spent on a replacement device and accessories, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

20. Plaintiff Jimmy Arriaga is a resident of Wilmington, Delaware. In January 2021, he acquired a DreamStation CPAP machine to treat sleep apnea and has purchased a replacement mask. He would not have acquired the device had he known it was defective. He wants a refund, as with all of the Plaintiffs the economic losses associated with any costs spent on a replacement device and accessories, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

21. Plaintiff Charles Pinck resides in Washington, D.C. In or around June 2020, Plaintiff acquired a Philips DreamStation to treat sleep apnea. Plaintiff Pinck has experienced tinnitus, congestion, and sinus infections. Plaintiff Pinck would not have obtained the device if he had known it was defective. Plaintiff Pinck wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

22. Plaintiff Iman Jones resides in Jacksonville, Florida. She acquired a DreamStation CPAP to treat sleep apnea. She would not have obtained the device if she had known it was defective. She wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

23. Plaintiff Walter Coggeshall resides in McDonough, Georgia. He obtained a DreamStation AutoCPAP to treat sleep apnea. Since using his device, he has suffered severe nasal congestion, and in 2020, experienced that he could not breathe through his nose at all. In November 2020, Mr. Coggeshall had to have sinus surgery to be able to breathe through his nose again. He would not have acquired the device if he had known it was defective. He wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

24. Plaintiff Yolanda Stark resides in Atlanta, Georgia. She obtained a DreamStation to treat sleep apnea. Since using her device, she has been experiencing chest pains and has been admitted to the hospital on one occasion as a result. She would not have acquired the device if she had known it was defective. She wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

25. Plaintiff Chris Brown resides in Kapolei, Hawaii. Plaintiff Brown obtained a DreamStation CPAP to treat sleep apnea. Plaintiff Brown would not have acquired the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

26. Plaintiff Adam Hale resides in Pocatello, Idaho. He obtained a Dream Station ASV to treat apnea. He would not have acquired the device if he had known it was defective. He wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

27. Plaintiff Allen Smock resides in Palos Hills, Illinois. He obtained a DreamStation CPAP with humidifier to treat sleep apnea. Since using his device, Mr. Smock has been experiencing severe congestion. The device requires frequent refills of the reservoir and emits a burning smell. This is causing him to lose sleep. Like all of the Plaintiffs, he is concerned about the long term health effects that may arise as a result of his using the device. He would not have acquired the device if he had known it was defective. He wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

28. Plaintiff Carlos Oldigs resides in Winnebago County, Illinois. Plaintiff Oldigs acquired a DreamStation BiPAP ASV device for sleep apnea in 2018, and to date has paid $2,705.83 for his device. Plaintiff, like many of the Plaintiffs, has paid out of pocket for replacement filters, masks, and cushions related to his device. Plaintiff Oldigs would not have obtained the device if he had known it was defective. He wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

29. Plaintiff Robert Schuckit resides in Carmel, Indiana. Mr. Schuckit obtained a DreamStation Auto CPAP with humidifier, and a cellular modem, model no. DSX500H11C, serial no. J192858140274, to treat his sleep apnea. Mr. Schuckit would not have obtained the device if he had known it was defective. Mr. Schuckit wants a refund, replacement with a non-defective

device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

30. Plaintiff Steve Abarr resides in Johnston, Iowa. Plaintiff Abarr has obtained a SyatemOne and DreamStation BiPAP machines to treat sleep apnea. Plaintiff Abarr has been diagnosed with severe chronic asthma. Plaintiff would not have acquired the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

31. Plaintiff Andrew Fisher resides in Overland Park, Kansas. He obtained a Dream Station Auto CPAP, Model Number DNX500H11C, Serial Number J252878809174, to treat sleep apnea. He has been experiencing sinus issues since using his device. He would not have acquired the device if he had known it was defective. He wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

32. Plaintiff Mia Coleman resides in Louisville, Kentucky. She obtained a DreamStation CPAP with humidifier to treat sleep apnea. She would not have acquired the device if she had known it was defective. She wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

33. Plaintiff Paul Miyahira resides in West Monroe, Louisiana. He obtained a DreamStation to treat sleep apnea. He has been experiencing issues with his breathing since using the device. He would not have acquired the device if he had known it was defective. He wants a

refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

34. Plaintiff Philip Bean resides in Yarmouth, Maine. Plaintiff Bean acquired a DreamStation CPAP to treat sleep apnea. Plaintiff Bean has experienced a recurrent cough. Plaintiff Bean would not have obtained the device if he had known it was defective. Plaintiff Bean wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

35. Plaintiff Jules Labonte resides in Silver Spring, Maryland. Plaintiff acquired a DreamStation BiPAP, Serial Number J234305865BC7, in 2019 to treat severe sleep apnea. Since using his device, Mr. Labonte has suffered from respiratory irritations including consistent and chronic coughing and throat soreness. He would often notice a weird taste in his mouth while using his device. He would not have obtained the device if he had known it was defective. He wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

36. Plaintiff Robert McClay resides in Bridgewater, Massachusetts. Plaintiff McClay acquired a Philips DreamStation ASV BiPAP machine, Model No. DSX700S11, Serial No. J26177200E221, to treat his sleep apnea in September 2020. Previously, in 2014, Mr. McClay purchased a SystemOne - Model No. DS6TFLG, Serial No. P09266338 0C60. Plaintiff McClay would not have obtained the devices if he had known they were defective. Plaintiff McClay sent Defendants a demand letter seeking remedies under Mass. Gen. Laws Chapter 93A more than 30 days ago. He seeks a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

37. Plaintiff Lisa Brown resides in Jackson, Michigan. Plaintiff Brown obtained a DreamStation Auto CPAP to treat sleep apnea. Plaintiff Brown would not have acquired the device if she had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

38. Plaintiff Julie Longway resides in Lowell, Michigan. Plaintiff obtained a Philips Dream Station to treat severe sleep apnea. Plaintiff would not have acquired the device if she had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

39. Plaintiff Tawnya Porter resides in International Falls, Minnesota. Plaintiff Porter obtained a Philips SystemOne to treat sleep apnea. Plaintiff would not have acquired the device if she had known it was defective. Plaintiff Porter wants a refund, a replacement device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

40. Plaintiff Forrest Stafford resides in Coila, Mississippi. In 2018, Plaintiff Stafford obtained a DreamStation CPAP to treat sleep apnea. Plaintiff has since developed sinus issues, tinnitus, and headaches. Plaintiff Stafford would not have acquired the device if he had known it was defective. Plaintiff Stafford wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

41. Plaintiff Delores Brown resides in Kansas City, Missouri. In 2020, Plaintiff Brown obtained a DreamStation Auto CPAP to treat sleep apnea. Plaintiff Brown has since developed a

consistent cough. Plaintiff Brown would not have acquired the device if she had known it was defective. Plaintiff Brown wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

42. Plaintiff Donald Basemore is a retired veteran who resides in an assisted living facility in St Louis, Missouri. He was diagnosed with sleep apnea and obtained a DreamStation CPAP machine through the Veterans Administration. Like all the Plaintiffs, he would not have accepted this product if he had known it was defective, contained a carcinogenic byproduct, and would be subject to a recall for containing defective materials. Plaintiff Basemore wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

43. Plaintiff William Worman resides in Broadus, Montana. In or around October 2020, Plaintiff acquired a DreamStation Machine to treat sleep apnea. Plaintiff would not have obtained the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

44. Plaintiff Christopher Glaub resides in Lincoln, Nebraska. Christopher Glaub acquired a Philips REMStar Pro to treat sleep apnea and since has experienced shortness of breath. Plaintiff Glaub would not have obtained the device if he had known it was defective. Plaintiff Glaub wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

45. Plaintiff John Poland resides in Las Vegas, Nevada. In or around August 2018, Plaintiff acquired a DreamStation to treat sleep apnea, and since the has experienced headaches, scarring of the lungs, dizziness, fatigue, hypertension, coughing, loss of enjoyment of life, and trouble breathing. Plaintiff Poland would not have obtained the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

46. Plaintiff Robert McNulty resides in Reno, Nevada. In or around July 2020, Plaintiff McNulty acquired a DreamStation CPAP Machine to treat sleep apnea. Plaintiff Mcnulty would not have obtained the device if he had known it was defective. Plaintiff McNulty wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

47. Plaintiff John Burlison resides in Henderson, Nevada. He is a retired college dean now working as a real estate broker. He was diagnosed with obstructive sleep apnea in late 2019 and purchased a DreamStation in early 2020. Like all of the Plaintiffs, he would not have purchased this product if he had known it was defective, contained a carcinogenic byproduct, and would be subject to a recall for containing defective materials. Upon learning of the recall, and after consulting with his physician, Mr. Burlison stopped using the DreamStation and purchased a replacement CPAP machine for approximately $1,400.00. His health insurance company would not pay for any part of the replacement machine, Plaintiff Burlison wants a refund, economic losses associated with the replacement of his defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

48. Plaintiff William Vlahos resides in Salem, New Hampshire. In or around October 2018, Plaintiff Vlahos acquired a Philips DreamStation CPAP to treat sleep apnea. Plaintiff Vlahos would not have obtained the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

49. Plaintiff Elaine Lizotte resides in Hudson, New Hampshire. In or around June 2018 Elaine Lizotte acquired a DreamStation CPAP machine to treat sleep apnea. Plaintiff Lizotte would not have obtained the device if she had known it was defective. In July 2021, Plaintiff Lizotte purchased a machine from another manufacturer costing over $800. Plaintiff Lizotte wants a refund, economic losses associated with the replacement of the defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

50. Plaintiff Joseph Ryan resides in West Berlin, New Jersey. In or around July 2018, Plaintiff Ryan acquired a DreamStation CPAP to treat sleep apnea. Plaintiff Ryan would not have obtained the device if he had known it was defective. Plaintiff recently purchased a replacement machine. Plaintiff Ryan wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

51. Plaintiff Gary Jacobs resides in Marlton, New Jersey. In 2018, Plaintiff Jacobs acquired a DreamStation CPAP to treat sleep apnea, and like many of the Plaintiffs, purchased masks and filters while using the machine. Plaintiff Jacobs would not have obtained the device if he had known it was defective. Plaintiff Jacobs wants a refund, replacement with a non-defective

device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

52. Plaintiff Jo Dawn Ward resides in Edgeworth, New Mexico. Plaintiff Ward obtained a DreamStation ASV, and since then has experienced and suffered from headaches, nausea, vomiting, and a lump in her throat. Plaintiff would not have acquired the device if she had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

53. Plaintiff Myron Fields resides in Aztec, New Mexico. In or around April 2019, he acquired a DreamStation to treat apnea. He would not have obtained the device if he had known it was defective. Plaintiff Fields wants a refund, replacement with a non-defective device, and costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

54. Plaintiff Carl Gold resides in Highland Mills, New York. In or around August 2020, Plaintiff Gold acquired a Phillips DreamStation to treat sleep apnea, and since then has experienced headaches, coughing, and trouble sleeping. Plaintiff would not have acquired the device if he had known it was defective. Plaintiff Gold purchased a replacement device from a different manufacturer, paying approximately $912.00. Plaintiff's insurance refused to cover the cost of the replacement machine. Plaintiff Gold wants a refund, economic losses related to the replacement of his defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

55. Plaintiff Angela Scunziano resides in Smithtown, New York. In 2020, Angela Scunziano acquired a DreamStation to treat sleep apnea and since then has experienced dry mouth

and throat, coughing, dry and teary eyes, stomach aches, nausea, vomiting, frequent and recurring headaches, and irritation in her throat and sinuses. Plaintiff Scunziano would not have obtained the device if she had known it was defective. Plaintiff Scunziano wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

56. Plaintiff Tony Jones resides in Reidsville, North Carolina. In or around July 2014, Plaintiff Jones obtained a RemStar machine to treat sleep apnea. Plaintiff Jones would not have acquired the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

57. Plaintiff Heath Byers resides in Dickinson, North Dakota. Plaintiff Byers acquired a System One device to treat sleep apnea. Plaintiff Byers would not have obtained and used the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

58. Plaintiff Matthew Ward resides in Hilliard, Ohio. Plaintiff obtained a Philips DreamStation to treat sleep apnea and since then has experienced fatigue, headaches, congestion, trouble breathing, and inflamed sinuses. Plaintiff Ward would not have acquired the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

59. Plaintiff Chad Wells resides in Wanette, Oklahoma. Chad Wells acquired a Philips SystemOne BiPAP to treat sleep apnea and since then has experienced asthma and wheezing.

Plaintiff Wells would not have obtained the device if he had known it was defective. Plaintiff Wells wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

60. Plaintiff Adam Mclean resides in Seaside, Oregon. In or around June 2021, Adam Mclean purchased a DreamSation BiPAP to treat sleep apnea. Plaintiff Mclean would not have purchased the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, and costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

61. Plaintiff Lynn Ann Koenck resides in Pottstown, Pennsylvania. In or around October 2019, Plaintiff Koenck acquired a Philips DreamStation CPAP to treat sleep apnea. Plaintiff Koenck would not have obtained the device if she had known it was defective. Plaintiff Koenck wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

62. Plaintiff Antonio Perez Bonano resides in San Juan, Puerto Rico. In or around April 2019, Plaintiff Bonano acquired a DreamStation Auto CPAP to treat sleep apnea and since then has experienced headaches, dry mouth, cough, upper airway irritation, and eye irritation. Plaintiff Bonano would not have obtained the device if he had known it was defective. Plaintiff Bonano wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

63. Plaintiff Diane Lamontagne resides in Cumberland, Rhode Island. Plaintiff Lamontagne acquired a DreamStation CPAP to treat obstructive sleep apnea and since then has

suffered from several sinus infections. Plaintiff would not have acquired the device if she had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

64. Plaintiff Harris Jenkins resides in Moncks Corner, South Carolina. Plantiff obtained a RemStar Plus in 2018 and is currently suffering from headaches and a racing heartbeat. Plaintiff Jenkins would not have purchased the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

65. Plaintiff Vicki Chambers resides in Bluffton, South Carolina. Plaintiff Chambers acquired a DreamStation BiPAP machine to treat sleep apnea and since then has experienced bronco spasms and could not inhale or exhale with the machine. Plaintiff Chambers also noticed an odor that smelled like a burnt chemical in the machine. Plaintiff Chambers would not have obtained the device if she had known it was defective. Plaintiff Chambers wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

66. Plaintiff Murray Craig resides in Camden, Tennessee. In or around June 2018, Murray Craig acquired a DreamStation CPAP to treat sleep apnea and since then has suffered from headaches, dizziness, nausea, and coughing. Plaintiff Craig would not have obtained the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

67. Plaintiff Eugene Wohlfarth resides in Lockhart, Texas. Plaintiff Wohlfarth acquired a Philips DreamStation CPAP to treat obstructive sleep apnea. Plaintiff would not have obtained the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

68. Plaintiff Benedict Nagy, Jr. resides in Enterprise, Utah. Plaintiff Nagy acquired a Philips SystemOne to treat sleep apnea (along with various accessories like masks and hoses), and since then has suffered from sinus infections, nasal polyps, and difficulty breathing. Plaintiff would not have obtained the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

69. Plaintiff David Joseph Martin resides in Island Pond, Vermont. Plaintiff Martin acquired a DreamStation CPAP to treat sleep apnea and later developed headaches, nosebleeds, and congestion from using the CPAP. Plaintiff Martin would not have obtained the device if he had known it was defective. Plaintiff Martin wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

70. Plaintiff Cameron Rose resides in Richmond, Virginia. In 2018, Plaintiff Rose acquired a Philips DreamStation CPAP to treat sleep apnea. Plaintiff Rose would not have obtained the device if he had known it was defective. Plaintiff Rose wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

71. Plaintiff David Gorris is disabled and resides in Richmond, Virginia. In 2020, he was diagnosed with obstructive sleep apnea and acquired a DreamStation. Like all the Plaintiffs, he would not have obtained this product if he had known it was defective, contained a carcinogenic byproduct, and would be subject to a recall for containing defective materials. Plaintiff Gorris wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

72. Plaintiff Jose Lopez resides in Vancouver, Washington. In or around October 2019, Jose Lopez acquired a Philips DreamStation AutoCPAP to treat sleep apnea, and since then has suffered from a cough after using the recalled device. Plaintiff Lopez would not have obtained the device if Plaintiff Lopez had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

73. Plaintiff David Bays resides in Alum Creek, West Virginia. In 2020, Plaintiff Bays obtained a DreamStation CPAP to treat sleep apnea. Plaintiff would not have acquired the device if he had known it was defective. Plaintiff wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

74. Plaintiff Paul Dunn resides in Charleston, West Virginia. Plaintiff Dunn purchased a Philips Dreamstation CPAP machine to treat sleep apnea and other breathing difficulties. Plaintiff Dunn would not have purchased the device if he had known it was defective. Plaintiff Dunn sought a replacement machine from Philips and was told he would have to pay $300 for a loaned machine, and that he could no longer use his existing machine. Plaintiff Dunn paid Philips $300 for a replacement machine. Plaintiff Dunn wants a refund, all economic losses related to the

replacement of his defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

75. Plaintiff Duane Alt resides in Prairie Du Sac, Wisconsin. Plaintiff Alt obtained a SystemOne CPAP to treat sleep apnea and since then has experienced headaches. Plaintiff Alt would not have acquired the device if he had known it was defective. Plaintiff Alt wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

76. Plaintiff Rachael DiMaio resides in Cheyenne, Wyoming. She acquired a SystemOne CPAP machine and in 2020 obtained a DreamStation CPAP to treat sleep apnea. Plaintiff DiMaio would not have obtained the devices had she known they were defective. She wants a refund, replacement with a non-defective device, costs for ongoing medical monitoring, and all other appropriate damages for all the injuries suffered as a result of the defective device.

B. DEFENDANTS

77. Koninklijke Philips N.V. is a Dutch multinational company headquartered in Amsterdam, Netherlands, and is the parent company of Philips North America LLC and Philips RS North America LLC.

78. Defendant Philips North America LLC is a Delaware company with its principal place of business in Cambridge, Massachusetts.

79. Defendant Philips RS North America LLC (formerly Respironics, Inc.) is a Delaware company headquartered in Pittsburgh, Pennsylvania.

80. At all relevant times, each Defendant acted in all aspects as the agent and alter ego of each other, and all references to "Philips," "Defendant," or "Defendants" herein refers to each and every Defendant individually and collectively.

III. JURISDICTION AND VENUE

81. This Court has subject matter jurisdiction over this class action pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, because the matter in controversy exceeds $5 million, exclusive of interest and costs, and is a class action in which Plaintiff and some members of the Class are citizens of states different than Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).

82. Venue is proper in this District because Philips North America LLC is headquartered in this District and because a substantial part of the events or omissions giving rise to the claim occurred in this District.

IV. FACTUAL ALLEGATIONS

A. CPAP AND BIPAP MACHINES AND VENTILATORS TREAT SERIOUS CONDITIONS.

83. Sleep apnea is a sleeping disorder in which breathing is disturbed temporarily during sleep. Breathing may stop or become very shallow. These disturbances are called "apneas."

84. According to the Mayo Clinic, the main types of sleep apnea are obstructive sleep apnea, central sleep apnea, and complex sleep apnea syndrome (also known as treatment-emergent central sleep apnea).

85. Obstructive sleep apnea is the most common type. It occurs when the muscles in the back of the throat relax during inhalation, which causes the airway to narrow or close and prevent sufficient air from passing through. This in turn lowers the oxygen level in the blood, which causes the brain to briefly wake the body from sleep to reopen the airway. This reawakening may be so brief that the patient does not remember it, and it may be associated with snorting, choking, or gasping. It can happen anywhere from a few times per hour to once every few minutes, all night, and can prevent the patient from reaching the deep, restful phases of sleep.

86. Central sleep apnea occurs when the brain fails to transmit signals to the breathing muscles. As a result, the body stops breathing temporarily, which can cause waking with shortness of breath or difficulty getting to sleep or staying asleep.

87. Complex sleep apnea syndrome occurs when a patient has both obstructive sleep apnea and central sleep apnea.

88. Sleep apnea is a serious medical condition that can cause daytime fatigue, high blood pressure or heart problems, stroke, type 2 diabetes, metabolic syndrome, complications with medications and surgery, liver problems, snoring or other noises during sleep, and other medical ailments.

89. CPAP therapy is a common treatment for sleep apnea. In CPAP therapy, a machine delivers a flow of air through a mask over the nose or mouth, which increases air pressure in the throat so that the airway does not collapse during inhalation. CPAP therapy assists breathing during sleep and can successfully treat sleep apnea.

90. Other therapies to treat sleep apnea include BiPAP and Automatic Positive Airway Pressure (APAP). BiPAP machines use two different pressures, one for inhaling and one for exhaling. APAP machines adjust pressure automatically throughout the night to the patient's pressure needs, for example, in response to changed sleeping positions or different sleep stages. Not every therapy is appropriate for every patient. Many patients respond well to one treatment and not others.

91. Patients usually place the CPAP, BiPAP, or APAP machines on a nearby nightstand or shelf. A hose connects the unit to the mask, which is worn over the nose or mouth during sleep.

92. Patients who use CPAP or BiPAP machines typically must use them every day when they sleep. Symptoms may return quickly if therapy is discontinued.

93. Respiratory failure is a condition in which a patient has difficulty breathing or getting enough oxygen into the blood. Many underlying conditions can cause respiratory failure, including physical trauma, sepsis, pneumonia, COVID-19, and drug overdose. Respiratory failure can be fatal.

94. Mechanical ventilators, usually called "ventilators," are often used to treat respiratory failure. Ventilators push air into and out of the patient's lungs like a bellows, typically through a tube that is connected to the machine on one end and is inserted through the patient's nose or mouth into the trachea on the other end. Patients are usually sedated while on ventilation because it can otherwise cause intense pain.

95. Ventilators can also be used in other circumstances, such as during surgery when general anesthesia may interrupt normal breathing. Ventilators intended for home use also exist.

96. The COVID-19 crisis has led to a significant increase in the demand for ventilators because severe COVID-19 can cause sufficient damage to the lungs that patients have difficulty breathing on their own and thus require a ventilator.

B. PHILIPS SELLS CPAP AND BIPAP MACHINES AND VENTILATORS CONTAINING PE-PUR FOAM.

97. Philips manufactures and sells CPAP machines, BiPAP machines, and ventilators, among other products. According to Philips's 2020 Annual Report,[4] Sleep & Respiratory Care constituted 49% of Philips's total sales in its Connected Care line of business, which in turn accounted for 28% of Philips's overall sales of about €19.535 billion. Philips has sold millions of CPAP and BiPAP machines and ventilators in the United States.

[4] https://www.results.philips.com/publications/ar20/downloads/pdf/en/PhilipsFullAnnualReport20 20-English.pdf?v=20210531142942.

98. Philips's flagship CPAP/BiPAP machine product family is the DreamStation family, including the original DreamStation, launched in October 2015, and the DreamStation Go (a travel version). Philips sells DreamStation products through its subsidiary, Respironics, which Philips acquired in 2008 and is now known as Philips RS North America LLC. The user manual for the DreamStation products is marked with a copyright notice indicating that Koninklijke Philips, N.V. owns the copyright to the manual.

99. Philips markets the recalled DreamStation products under an approval from the FDA. Philips submitted premarket notification of intent to market medical devices under Section 510(k) of the Federal Food, Drug, and Cosmetic Act. Based on Philips's submission, the FDA "determined the device is substantially equivalent (for the indications for use stated in the enclosure) to legally marketed predicate devices marketed in interstate commerce prior to May 28, 1976, the enactment date of the Medical Device Amendments, or to devices that have been reclassified in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act (Act) that do not require approval of a premarket approval application (PMA)."

100. Under this regulatory framework, the devices did not have to undergo a detailed review for safety and efficacy.

101. The FDA classifies medical devices as Class I, II, or III, based on the risk to the patient, the intended use, and the indications for use. Class I devices are the lowest risk and Class III devices are the highest risk. The FDA classified the DreamStation products as Class II devices. Other recalled products (listed below) are Class II or Class III devices.

102. Many of Philips's CPAP and BiPAP machines and ventilators contain PE-PUR foam for sound abatement. Polyurethane is an organic polymer in which urethane groups connect the molecular units, and it is usually formed by reacting a diisocyanate or triisocyanate with a

polyol. Under certain circumstances, polyurethane may break down into a diisocyanate or triisocyanate as well.

103. The two main types of polyurethane are polyester and polyether. Polyester polyurethane has much better shock absorption and vibration dampening properties and is commonly used for soundproofing or sound dampening.

104. The recalled devices contain polyester polyurethane foam for sound dampening.

105. In the DreamStation, for example, there is a channel that surrounds the central fan in the device. This channel is stuffed with PE-PUR foam to absorb the noise from the device while the patient is sleeping. Air passes through this channel, and thus through the PE-PUR foam, before it enters the fan and is pumped into the patient's airway.

106. Philips advertises itself as a trusted brand and "global leader in the sleep and respiratory markets."[5] Its branding promises consumers that they will "[b]reath easier, sleep more naturally[.]"[6] Philips further assures consumers that its "sleep therapy systems are designed with the needs of care practitioners and patients in mind," and that its "quality systems reflect [Philips'] commitment to providing exceptional therapy," among other things. And it has long advertised its CPAP and BiPAP Machines as "clinically proven" treatment for sleep disorders.[7]

107. Philips boasts that it has the "most prescribed CPAP systems by U.S. sleep physicians."[8] The machines routinely cost from seven or eight hundred dollars to thousands of dollars per machine.

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[5] *See* http://www.respironics.com/us_en.
[6] http://www.respironics.com/product_library.
[7] https://www.usa.philips.com/healthcare/solutions/sleep.
[8] *See* https://www.usa.philips.com/healthcare/solutions/sleep/sleep-therapy (citing 2016 Philips survey).

C. PHILIPS RECALLED ITS PE-PUR FOAM-CONTAINING MACHINES DUE TO SERIOUS HEALTH HAZARDS THAT THEY CAUSE.

108. On April 13, 2021, Philips announced that it was launching the DreamStation 2, a next-generation machine in its DreamStation product family.

109. Less than two weeks later, on April 26, 2021, Philips announced that its previous generation products posed serious health risks to users and, in the same release, started trying to convince consumers to purchase its latest generation device:

> Philips has determined from user reports and testing that there are possible risks to users related to the sound abatement foam used in certain of Philips' sleep and respiratory care devices currently in use. The risks include that the foam may degrade under certain circumstances, influenced by factors including use of unapproved cleaning methods, such as ozone,* and certain environmental conditions involving high humidity and temperature. The majority of the affected devices are in the first-generation DreamStation product family. Philips' recently launched next-generation CPAP platform, DreamStation 2, is not affected. Philips is in the process of engaging with the relevant regulatory agencies regarding this matter and initiating appropriate actions to mitigate these possible risks. Given the estimated scope of the intended precautionary actions on the installed base, Philips has taken a provision of EUR 250 million.

110. On June 14, 2021, Philips issued a further announcement, stating:

> To date, Philips has produced millions of Bi-Level PAP, CPAP and mechanical ventilator devices using the PE-PUR sound abatement foam. Despite a low complaint rate (0.03% in 2020), Philips determined based on testing that there are possible risks to users related to this type of foam. The risks include that the PE-PUR foam may degrade into particles which may enter the device's air pathway and be ingested or inhaled by the user, and the foam may off-gas certain chemicals. The foam degradation may be exacerbated by use of unapproved cleaning methods, such as ozone,** and high heat and high humidity environments may also contribute to foam degradation.
>
> Therefore, Philips has decided to voluntarily issue a recall notification* to inform patients and customers of potential impacts on patient health and clinical use related to this issue, as well as instructions on actions to be taken.

111. Philips stated that "[t]he majority of the affected devices within the advised 5-year service life are in the first-generation DreamStation product family." Philips elaborated:

Based on the latest analysis of potential health risks and out of an abundance of caution, the recall notification advises patients and customers to take the following actions:

For patients using affected BiLevel PAP and CPAP devices: Discontinue use of your device and work with your physician or Durable Medical Equipment (DME) provider to determine the most appropriate options for continued treatment. To continue use of your device due to lack of alternatives, consult with your physician to determine if the benefit of continuing therapy with your device outweighs the risks identified in the recall notification.

For patients using affected life-sustaining mechanical ventilator devices: Do not stop or alter your prescribed therapy until you have talked to your physician. Philips recognizes that alternate ventilator options for therapy may not exist or may be severely limited for patients who require a ventilator for life-sustaining therapy, or in cases where therapy disruption is unacceptable. In these situations, and at the discretion of the treating clinical team, the benefit of continued usage of these ventilator devices may outweigh the risks identified in the recall notification.

Possible health risks

The company continues to monitor reports of potential safety issues as required by medical device regulations and laws in the markets in which it operates. To date, there have been no reports of death as a result of these issues. Philips has received reports of possible patient impact due to foam degradation. The potential risks of particulate exposure include headache, irritation, inflammation, respiratory issues, and possible toxic and carcinogenic effects. The potential risks of chemical exposure due to off-gassing include headache, irritation, hypersensitivity, nausea/vomiting, and possible toxic and carcinogenic effects. Philips has received no reports regarding patient impact related to chemical emissions.

112. The recalled products ("Recalled Products") are:

- E30
- DreamStation ASV
- DreamStation ST, AVAPS
- SystemOne ASV4
- C Series ASV, S/T, AVAPs
- OmniLab Advanced Plus
- SystemOne (Q Series)

- DreamStation CPAP, Auto CPAP, BiPAP
- DreamStation Go CPAP, APAP
- Dorma 400, 500 CPAP
- REMStar SE Auto CPAP
- Trilogy 100 and 200
- Garbin Plus, Aeris, LifeVent
- A-Series BiPAP Hybrid A30
- A-Series BiPAP V30 Auto
- A-Series BiPAP A40
- A-Series BiPAP A30

113. The recall notice stated that "Philips has produced millions of Bi-Level PAP, CPAP and mechanical ventilator devices using the PE-PUR sound abatement foam."

114. Philips explained: "Based on Philips [*sic*] analysis, the root cause of this issue is related to the sound abatement foam currently used in specific identified products of the Sleep & Respiratory Care portfolio."

115. On the same day, Philips provided additional information in an announcement entitled "Clinical information for physicians," that explained that the foam breakdown "may lead to patient harm and impact clinical care." It adds:

> While there have been limited reports of headache, upper airway irritation, cough, chest pressure and sinus infection that may have been associated with the foam, based on lab testing and evaluations, it may be possible that these potential health risks could result in a wide range of potential patient impact, from transient potential injuries, symptoms and complications, as well as possibly serious injury which can be life-threatening or cause permanent impairment, or require medical intervention to preclude permanent impairment.

116. The announcement detailed two types of hazards from the foam in the devices. First, the announcement described dangers due to foam degradation exposure:

> **Potential Hazard:** Philips has determined from user reports and lab testing that under certain circumstances the foam may degrade into particles which may enter the device's air pathway and be ingested or inhaled by the user of its Continuous Positive Airway Pressure (CPAP), BiLevel Positive Airway Pressure (BiLevel PAP) and Mechanical Ventilator devices. The foam degradation may be exacerbated by environmental conditions of higher temperatures and humidity in certain regions. Unauthorized cleaning methods such as ozone may accelerate potential degradation.
>
> The absence of visible particles does not mean that foam breakdown has not already begun. Lab analysis of the degraded foam reveals the presence of potentially harmful chemicals including:
>
> - Toluene Diamine
>
> - Toluene Diisocyanate
>
> - Diethylene glycol

117. Millions of patients across the United States, including all of the Named Plaintiffs, used and trusted the Recalled Products on a nightly basis while they slept. Philips has now revealed that the PE-PUR foam in their breathing machines degraded in Defendants' devices and the poisonous particles were aspirated by these patients.

118. The fact that the patients breathed in toxic and poisonous chemicals is not reasonably in dispute. According to the Report on Carcinogens, Fourteenth Edition, by the National Toxicology Program in the United State Department of Health and Human Services, toluene diisocyanates are reasonably anticipated to be human carcinogens based on sufficient evidence of carcinogenicity from studies in experimental animals. Administration of commercial-grade toluene diisocyanate (analyzed as 85% 2,4 isomer and 15% 2,6 isomer) by stomach tube caused liver tumors (hepatocellular adenoma) in female rats and mice, benign tumors of the mammary gland (fibroadenoma) and pancreas (islet-cell adenoma) in female rats, and benign

tumors of the pancreas (acinar-cell adenoma) in male rats. It also increased the combined incidences of benign and malignant tumors of subcutaneous tissue (fibroma and fibrosarcoma) in rats of both sexes and of the blood vessels (hemangioma and hemangiosarcoma) in female mice.

119. The Report also notes that toluene diisocyanates are used primarily to manufacture flexible polyurethane foams for use in furniture, bedding, and automotive and airline seats. The foam in Philips's recalled products is flexible polyurethane foam.

120. The European Union considers toluene diisocyanate "highly toxic" and has concluded that toluene diamine "cannot be considered safe for use" even as a hair dye, let alone breathed into the lungs on a nighly basis for many hours each night.

121. Philips disclosed that it "has received several complaints regarding the presence of black debris/particles within the airpath circuit (extending from the device outlet, humidifier, tubing, and mask)." The PE-PUR foam is black, and when it breaks down, it can release black particles.

122. The second hazard is the possibility of VOCs, that is, chemical emissions from the PE-PUR foam. Philips explained:

> **Potential Hazard:** Lab testing performed for and by Philips has also identified the presence of VOCs which may be emitted from the sound abatement foam component of affected device(s). VOCs are emitted as gases from the foam included in the CPAP, BiLevel PAP and MV devices and may have short- and long-term adverse health effects.
>
> Standard testing identified two compounds of concern (COC) may be emitted from the foam that are outside of safety thresholds. The compounds identified are the following:
>
> - Dimethyl Diazine
>
> - Phenol, 2,6-bis (1,1-dimethylethyl)-4-(1-methylpropyl)-

123. Philips admitted that the risks of these VOCs include: "irritation and airway inflammation, and this may be particularly important for patients with underlying lung diseases or

reduced cardiopulmonary reserve" and may lead to the following symptoms: "headache/dizziness, irritation (eyes, nose, respiratory tract, skin), hypersensitivity, nausea/vomiting, toxic and carcinogenic effects," as well as "adverse effects to other organs such as kidney and liver."

124. Corroborating the dangerous nature of the Recalled Products, on July 22, 2021, the FDA upgraded Philips's recall of the Recalled Devices to its most serious classification, Class I, which according to the FDA means: "A situation in which there is a reasonable probability that the use of or exposure to a violative product will cause serious adverse health consequences or death."

125. As noted herein, Philips has admitted that the Recalled Products are defective and unsafe. The Recalled Products are therefore worthless and certainly have a far lesser value (zero) than what customers paid and would not have been purchased by patients if they were informed of the defect at the time of sale.

126. The purity of the air coming from a breathing device to a patient is highly important and material to a typical patient. Philips advertises the filtration systems in its devices, for example, noting them on a diagram in its DreamStation Family Brochure.[9] Philips's filtration system, however, does not filter out the particles and VOCs described above.

127. Plaintiffs and the Class have suffered injuries as a result of their purchase of the Recalled Products, including substantial economic losses related to their purchase of the Recalled Products and accessories, and replacement machines and accessories, personal injuries, exposure

9 https://www.documents.philips.com/assets/20180205/15ef65ad106d4ddc88fca87e0134dc60.pdf?_gl=1*1l6jo9f*_ga*MTM1OTI5NDM5Ny4xNjIzODE3MzMz*_ga_2NMXNNS6LE*MTYyNjkxMDEyNC4yMi4xLjE2MjY5MTQyNTkuMjc.&_ga=2.220564312.1106063144.1626914226-1359294397.1623817333.

to the toxic foam, and the accompanying need for medical monitoring costs, and losses from not being able to use their machines, including wage loss and other consequential damages.

D. PHILIPS HAS KNOWN ABOUT THE PE-PUR FOAM PROBLEMS FOR YEARS.

128. Although Philips did not disclose these health risks until June 2021, Philips knew about these health risks well beforehand. As discussed above, when Philips announced the recall, Philips also announced that it had received "several complaints" regarding black particles or debris in the airpath circuit. The DreamStation has been on the market since 2015, and several of the affected models have been on the market even longer.

129. Nick Dunn, who runs the YouTube channel "CPAP Reviews," reported as soon as the recall was announced that he had known about the foam issues for several years because he monitors message boards and social media about CPAP machines. It can be reasonably assumed that Philips, like most companies, closely monitored the Internet concerning its products, and heard about foam breakdown and black particles in the machines soon after launch, if not earlier. It can also be reasonably assumed that Philips conducted its own internal studies of its breathing machines and conducted tests and analysis of them that revealed the problems.

130. Message boards still contain many posts about black particles inside or on the filters of the DreamStation and other recalled devices. The following list is provided for illustration.

131. In 2018, the user "trickyneedsleep" reported on apneaboard.com that, using the DreamStation Auto, the filters turned black within three days of use.

132. In 2019, the user "WSHenry" reported on apneaboard.com in a thread entitled "DreamStation Filter Contamination" that "both the pollen and ultra-fine filters in my machine were clogged with black (Carbon?) particles. I also noted that water chamber was completely dry. There were odd odors noted, and the water chamber was undamaged." He explained that he had

recently cleaned the filters and that "[t]here was only a small amount of dust on the furniture, and the machine and tubing is clean. I do not burn candles nearby, and the furnace is off. I do have the window slightly opened, as is the case nearly year-round." He asked: "Is it possible the contamination is from the blower?"

133. In 2019, the user "Skogcat1" reported on apneaboard.com in a thread entitled "Black sticky dust in CPAP machine" that, when using the REMStar Auto, there were "sticky black dust particles" in the humidifier chamber.

134. In September 2020, Carol Nickerson posted on Facebook that she found a black mold-like substance in the water reservoir of her Philips DreamStation. She reported that she cleaned the tubing, mask, and reservoir every week and emptied the reservoir daily, and that she lived in a low-humidity environment in Arizona.

135. In June 2021, shortly after the recall was announced, on a Reddit thread entitled "Dreamstation Foam," user "BOSSHOG999" posted: "I was wondering what the hell those black particles were in my tube."

136. Many of the reports of black particles, dust, or mold in the machines are likely due to the breakdown and disintegration of the defective and poisonous PE-PUR foam in the machines, and it is implausible that Philips, the manufacturer and seller of the machines, was not aware of the complaints and reports.

137. Also, every Philips breathing assistance device since 2009 uses PE-PUR foam, but the DreamStation 2 does not. The implication is clear, and strongly demonstrates that Philips knew that PE-PUR foam was dangerous when it was designing the DreamStation 2, and designed a new product that did not use it.

138. Discovery in this case will pinpoint the exact time when Philips first learned of the potential problems with the poisonous PE-PUR foam that it used in its breathing machines. For example, Philips knew about the foam problems from its own testing of its own products. Companies that manufacturer medical devices certainly perform some testing on the devices before they market them to the public, even if the device is not of the type for which the FDA requires a full demonstration of safety and efficacy.

139. Philips advertises the results of various tests of its products, demonstrating that it tested them in some ways before marketing. For example, Philips advertises that the DreamStation is 63% quieter than a competing product, the ResMed AirSense 10, and is barely louder than a whisper.[10] This relative quietness is in part due to the noise-reducing PE-PUR foam. It is likely that Philips performed many other tests on the PE-PUR foam and uncovered the problems that led to the recall long before the recall.

E. PHILIPS HAS NOT REPLACED THE RECALLED DEVICES AND DOES NOT PLAN TO DO SO IN THE NEAR FUTURE.

140. Philips's CEO, Frans van Houten, stated in the recall announcement: "We deeply regret any concern and inconvenience that patients using the affected devices will experience because of the proactive measures we are announcing today to ensure patient safety."

141. But Philips's "recall" is a "recall" in name only, and does not actually provide patients with new CPAP, BiPAP, or ventilator devices. As Philips's June 14, 2021 announcement explains:

> **Repair and replacement program**
>
> Philips is providing the relevant regulatory agencies with required information related to the launch and implementation of the projected correction. The company will replace the current sound abatement foam with a new material and has already

[10] https://www.documents.philips.com/assets/20170523/62e4f43a1349489ba3cca77c0169c6ef.pdf.

> begun the preparations, which include obtaining the relevant regulatory clearances. Philips aims to address all affected devices in scope of this correction as expeditiously as possible.
>
> As part of the program, the first-generation DreamStation product families will be modified with a different sound abatement foam and shipped upon receipt of the required regulatory clearances. Philips' recently launched next-generation CPAP platform, DreamStation 2, is not affected by the issue. To support the program, Philips is increasing the production of its DreamStation 2 CPAP devices, that are available in the US and selected countries in Europe.

142. In reality, patients may register their device with Philips for the recall, but Philips is not currently replacing the defective PE-PUR foam. Nor has Philips provided a timeframe during which it anticipates replacing the defective PE-PUR foam, and it may take a year or more to provide replacements or repairs.

143. Additionally, due to the design of the devices, it is prohibitively difficult for patients to remove or replace the PE-PUR foam themselves. Nor is replacement foam readily available for self-service repairs.

144. But patients need to use their breathing machines every day or else their symptoms—which can be severe and life-altering—may return.

145. As a result, the recall leaves patients without safe, free options. Instead, patients may simply be forced to buy Philips's next-generation product or a competitor's product—at full price, and indeed, thousands of patients, including some of the Named Plaintiffs, have already done so.

146. Thus, Philips intends to, and is, simply profiting from its so-called "recall" by selling more of its next generation product, the DreamStation 2, to affected patients. It appears that Philips intentionally timed the "recall" to coincide with the launch of the DreamStation 2.

147. In its recall announcement, Philips estimated that "the full year comparable sales growth and Adjusted EBITA margin guidance provided on April 26, 2021 remains unchanged." In other words, Philips was stating that it did not expect the recall to impact its bottom line at all.

148. Philips has advised that users should use in-hose filters as a stopgap measure and many users have purchased such filters. There is no proof that the filters are effective, and, according to the FDA, the filters "will not help to reduce exposure to certain chemicals that may be released from the PE-PUR foam." The filters have to be replaced every couple weeks.

V. CLASS ALLEGATIONS

149. Plaintiffs bring this action individually and as a class action pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and/or 23(b)(3). Specifically, the Class and Subclasses consists of the following:

1. **Nationwide Class:** All persons or entities that purchased a Recalled Product not for resale in the United States.

2. **Alabama Subclass:** All persons or entities that purchased a Recalled Product not for resale in Alabama.

3. **Alaska Subclass:** All persons or entities that purchased a Recalled Product not for resale in Alaska.

4. **Arizona Subclass:** All persons or entities that purchased a Recalled Product not for resale in Arizona.

5. **Arkansas Subclass:** All persons or entities that purchased a Recalled Product not for resale in Arkansas.

6. **California Subclass:** All persons or entities that purchased a Recalled Product not for resale in California.

7. **Colorado Subclass:** All persons or entities that purchased a Recalled Product not for resale in Colorado.

8. **Connecticut Subclass:** All persons or entities that purchased a Recalled Product not for resale in Connecticut.

9. **Delaware Subclass:** All persons or entities that purchased a Recalled Product not for resale in Delaware.

10. **District of Columbia Subclass:** All persons or entities that purchased a Recalled Product not for resale in the District of Columbia.

11. **Florida Subclass:** All persons or entities that purchased a Recalled Product not for resale in Florida.

12. **Georgia Subclass:** All persons or entities that purchased a Recalled Product not for resale in Georgia.

13. **Hawaii Subclass:** All persons or entities that purchased a Recalled Product not for resale in Hawaii.

14. **Idaho Subclass:** All persons or entities that purchased a Recalled Product not for resale in Idaho.

15. **Illinois Subclass:** All persons or entities that purchased a Recalled Product not for resale in Illinois.

16. **Indiana Subclass:** All persons or entities that purchased a Recalled Product not for resale in Indiana.

17. **Iowa Subclass:** All persons or entities that purchased a Recalled Product not for resale in Iowa.

18. **Kansas Subclass:** All persons or entities that purchased a Recalled Product not for resale in Kansas.

19. **Kentucky Subclass:** All persons or entities that purchased a Recalled Product not for resale in Kentucky.

20. **Louisiana Subclass:** All persons or entities that purchased a Recalled Product not for resale in Louisiana.

21. **Maine Subclass:** All persons or entities that purchased a Recalled Product not for resale in Maine.

22. **Maryland Subclass:** All persons or entities that purchased a Recalled Product not for resale in Maryland.

23. **Massachusetts Subclass:** All persons or entities that purchased a Recalled Product not for resale in Massachusetts.

24. **Michigan Subclass:** All persons or entities that purchased a Recalled Product not for resale in Michigan.

25. **Minnesota Subclass:** All persons or entities that purchased a Recalled Product not for resale in Minnesota.

26. **Mississippi Subclass:** All persons or entities that purchased a Recalled Product not for resale in Mississippi.

27. **Missouri Subclass:** All persons or entities that purchased a Recalled Product not for resale in Missouri.

28. **Montana Subclass:** All persons or entities that purchased a Recalled Product not for resale in Montana.

29. **Nebraska Subclass:** All persons or entities that purchased a Recalled Product not for resale in Nebraska.

30. **Nevada Subclass:** All persons or entities that purchased a Recalled Product not for resale in Nevada.

31. **New Hampshire Subclass:** All persons or entities that purchased a Recalled Product not for resale in New Hampshire.

32. **New Jersey:** All persons or entities that purchased a Recalled Product not for resale in New Jersey.

33. **New Mexico Subclass:** All persons or entities that purchased a Recalled Product not for resale in New Mexico.

34. **New York Subclass:** All persons or entities that purchased a Recalled Product not for resale in New York.

35. **North Carolina Subclass:** All persons or entities that purchased a Recalled Product not for resale in North Carolina.

36. **North Dakota Subclass:** All persons or entities that purchased a Recalled Product not for resale in North Dakota.

37. **Ohio Subclass:** All persons or entities that purchased a Recalled Product not for resale in Ohio.

38. **Oklahoma Subclass:** All persons or entities that purchased a Recalled Product not for resale in Oklahoma.

39. **Oregon Subclass:** All persons or entities that purchased a Recalled Product not for resale in Oregon.

40. **Pennsylvania Subclass:** All persons or entities that purchased a Recalled Product not for resale in Pennsylvania.

41. **Puerto Rico Subclass:** All persons or entities that purchased a Recalled Product not for resale in Puerto Rico.

42. **Rhode Island Subclass:** All persons or entities that purchased a Recalled Product not for resale in Rhode Island.

43. **South Carolina Subclass:** All persons or entities that purchased a Recalled Product not for resale in South Carolina.

44. **Tennessee Subclass:** All persons or entities that purchased a Recalled Product not for resale in Tennessee.

45. **Texas Subclass:** All persons or entities that purchased a Recalled Product not for resale in Texas.

46. **Utah Subclass:** All persons or entities that purchased a Recalled Product not for resale in Utah.

47. **Vermont Subclass:** All persons or entities that purchased a Recalled Product not for resale in Vermont.

48. **Virginia Subclass:** All persons or entities that purchased a Recalled Product not for resale in Virginia.

49. **Washington Subclass:** All persons or entities that purchased a Recalled Product not for resale in Washington.

50. **West Virginia Subclass:** All persons or entities that purchased a Recalled Product not for resale in West Virginia.

51. **Wisconsin Subclass:** All persons or entities that purchased a Recalled Product not for resale in Wisconsin.

52. **Wyoming Subclass:** All persons or entities that purchased a Recalled Product not for resale in Wyoming.

150. The Nationwide Class and Subclasses are collectively referred to herein as the "Class." Excluded from the Class are Defendants and their employees, officers, and directors; and the Judge(s) assigned to this case.

151. Plaintiffs reserve the right to redefine, modify, or narrow the Class definitions prior to class certification based upon discovery or otherwise.

152. The rights of each member of the Class were violated in a similar fashion based upon Defendants' uniform actions.

153. This action has been brought and may be properly maintained as a class action for the following reasons:

a. Numerosity: Members of the Class are so numerous that their individual joinder is impracticable. The Nationwide Class contains millions of individuals and each Subclass contains thousands of individuals who purchased a Recalled Product not for resale. The Class is therefore sufficiently numerous to make joinder impracticable, if not impossible. The precise number of Class members is unknown to Plaintiffs at this time but the Class members are readily ascertainable and can be identified by Defendants' records or records of third parties such as durable medical equipment ("DME") providers.

b. Existence and Predominance of Common Questions of Fact and Law: Common questions of law and fact exist as to all members of the Class. These questions predominate over any questions affecting only individual Class members. These common legal and factual questions include, without limitation:

i. Whether Defendants manufactured and sold a defective product;

ii. Whether Defendants were negligent in selling the Recalled Products;

iii. Whether Defendants failed to warn consumers regarding the risks of the Recalled Products;

iv. Whether Defendants violated express or implied warranties in selling the Recalled Products;

v. Whether Defendants' practices constitute unfair or deceptive acts or practices under state consumer protection statutes;

vi. Whether Defendants were unjustly enriched by the sale of Recalled Products;

vii. The appropriate nature of class-wide equitable relief; and

viii. The appropriate measurement of restitution and/or measure of damages to Plaintiffs and members of the Class.

These and other questions of law or fact which are common to the members of the Class predominate over any questions affecting only individual members of the Class.

c. Typicality: Plaintiffs' claims are typical of the claims of all members of the Class who purchased the Recalled Products for personal use.

d. Adequacy: Plaintiffs are adequate representatives of the Class because their interests do not conflict with the interests of the Class that they seek to represent; they have retained counsel competent and highly experienced in complex class action litigation, and they intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

e. Superiority: A class action is superior to other available means of fair and efficient adjudication of the claims of Plaintiffs and the Class. The injury suffered by each Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. It would be virtually impossible for members of the Class to individually and effectively redress the wrongs done to them in particular with respect to their economic losses and medical monitoring. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments.

Individualized litigation also increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, an economy of scale, and comprehensive supervision by a single court.

VI. EQUITABLE TOLLING OF STATUTES OF LIMITATIONS

154. The running of any statute of limitations has been equitably tolled by reason of Defendants' fraudulent concealment and/or omissions of critical safety information. Through its affirmative misrepresentations and omissions, Philips actively concealed from Plaintiffs and their physicians the true risks associated with the Recalled Products.

155. As a result of Defendants' actions, Plaintiffs were unaware, and could not have reasonably known or learned through reasonable diligence, that they had been exposed to the risks and harms set forth herein and that those risks and harms were the direct and proximate result of Defendants' acts and omissions.

VII. CAUSES OF ACTION

COUNT 1
STRICT LIABILITY-FAILURE TO WARN
On behalf of the Nationwide Class and all Subclasses

156. Plaintiffs and the Class incorporate by reference all preceding paragraphs.

157. Under applicable state law, Defendants had a duty to warn Plaintiff and the Class members regarding the defect and true risks associated with the Recalled Products.

158. Defendants failed to provide adequate warnings regarding the risks of the PE-PUR foam.

159. Defendants had information regarding the true risks but failed to warn Plaintiffs, Class members, and their physicians of the serious health risks caused by use of the Recalled Products.

160. Despite Defendants' obligation to warn of the serious health risks caused by use of the Recalled Products, Philips instead chose to actively conceal this knowledge.

161. Plaintiffs and Class members would not have purchased the Recalled Products had they known of the defect and risks of purchasing the Recalled Products.

162. The defects described in this Class Action Complaint proximately caused Plaintiffs' and Class members' injuries as alleged herein, including, without limitation, economic losses and exposure to materials with toxic and carcinogenic effects resulting in the need for long-term medical monitoring.

163. Plaintiffs and the Class suffered damages in an amount to be determined at trial.

COUNT 2
DESIGN DEFECT STRICT LIABILITY
On behalf of the Nationwide Class and all Subclasses

164. Plaintiffs and the Class incorporate by reference all preceding paragraphs.

165. The design of the Recalled Products by Philips, including but not limited to the design and use of the PE-PUR foam and the placement of the PE-PUR foam within the Recalled Products, was defective and unreasonably dangerous, causing degradation and inhalation of the PE-PUR foam, and resulting in exposure to materials with toxic and carcinogenic effects.

166. Under applicable state law, Defendants had a duty to design the Recalled Products in a manner reasonably fit, suitable, and safe for their intended purposes. The design of the Recalled Products and the use of the PE-PUR foam rendered the Recalled Products not reasonably fit, suitable, or safe for their intended purpose.

167. The dangers of the Recalled Products outweighed the benefits and rendered the products unreasonably dangerous. Indeed, there are alternative breathing machines that do not use a similarly toxic foam that is subject to degradation, inhalation, and ingestion, such as competitors' machines and Defendants' next-generation Dreamstation machines.

168. Safer, alternative machines from other manufactures were available that did not suffer from the defects as set forth herein and did not have an unreasonable risk of harm as with the Recalled Products and their unsafe and defective PE-PUR foam.

169. The risk benefit profile of the Recalled Products was unreasonable, and the products should have had stronger and clearer warnings or should not have been sold in the market.

170. The Recalled Products did not perform as an ordinary consumer would expect.

171. Plaintiffs and the Class suffered damages in an amount to be determined at trial.

COUNT 3
NEGLIGENT FAILURE TO WARN
On behalf of the Nationwide Class and all Subclasses

172. Plaintiffs and the Class incorporate by reference all preceding paragraphs.

173. Under applicable state law, Defendants owed Plaintiffs and Class Members a duty of care and to warn of any risks associated with the Recalled Products. Defendants knew or should have known of the true risks but failed to warn Plaintiffs, Class members, and their doctors.

174. Defendants' negligent breach of duty caused Plaintiffs and Class members economic damages and exposure to materials with toxic and carcinogenic effects, resulting in the need for long-term medical monitoring, and other injuries in the form of headaches, irritation, inflammation, respiratory issues, and other ailments.

175. Plaintiffs and Class members would not have purchased the Recalled Products had they known of the serious risks associated with purchasing the Recalled Products.

176. Plaintiffs and the Class suffered damages in an amount to be determined at trial.

COUNT 4
NEGLIGENT DESIGN DEFECT
On behalf of the Nationwide Class and all Subclasses

177. Plaintiffs and the Class incorporate by reference all preceding paragraphs.

178. Defendants negligently designed the Recalled Products. Under applicable state law, Philips owed Plaintiffs and the Class a duty to design the Recalled Products in a reasonable manner. The design of the Recalled Products, including but not limited to design and use of the PE-PUR foam and the placement of the PE-PUR foam within the Recalled Products, was defective and unreasonably dangerous, causing degradation and inhalation of the foam, and exposure to materials with toxic and carcinogenic effects.

179. The design of the Recalled Products and the use of the PE-PUR foam rendered the Recalled Products not reasonably fit, suitable, or safe for their intended purpose.

180. The dangers of the Recalled Products outweighed the benefits and rendered the products unreasonably dangerous. Indeed, there are other breaching machines available in the market that do not use a similarly toxic foam that is subject to degradation, inhalation, and ingestion of toxic substances, such as competitors' breathing machines and Defendants' next-generation Dreamstation machines.

181. Safer, alternative machines from other manufactures were available that did not have an unreasonable risk of harm as with the Recalled Products and their unsafe PE-PUR foam.

182. The risk benefit profile of the Recalled Products was unreasonable, and the products should have had stronger and clearer warnings or should not have been sold in the market.

183. The Recalled Products did not perform as an ordinary consumer would expect.

184. Plaintiffs and the Class suffered damages in an amount to be determined at trial.

COUNT 5
NEGLIGENT RECALL
On behalf of the Nationwide Class and all Subclasses

185. Plaintiffs and the Class incorporate by reference all preceding paragraphs.

186. In issuing a voluntary recall, Philips assumed duties to Plaintiff and the Class to exercise reasonable care in issuing and implementing the recall.

187. Philips breached its duties by failing to adequately warn Plaintiffs and the Class of the dangers associated with the use of the Recalled Products by refusing to promptly refund, repair, or replace the Recalled Products.

188. As a direct result of Defendants' breach of duty, Plaintiffs and the Class have suffered harm in an amount to be determined at trial.

COUNT 6
BREACH OF EXPRESS WARRANTY
On behalf of the Nationwide Class and all Subclasses

189. Plaintiffs and the Class incorporate by reference all preceding paragraphs.

190. Defendants warranted the Recalled Products "shall be free from defects of workmanship and materials and will perform in accordance with the product specifications for a period of two (2) years from the date of sale."

191. Defendants breached this express warranty in connection with the sale and distribution of Recalled Products. At the point of sale, the Recalled Products, while appearing normal, contained defects as set forth herein, rendering them unsuitable and unsafe for personal use.

192. Had Plaintiffs and the Class known the Recalled Products were unsafe for use, they would not have purchased them.

193. Defendants have breached their warranty and refused to provide appropriate warranty relief notwithstanding the risks of using the Recalled Products. Plaintiff and the Class reasonably expected, at the time of purchase, that the Recalled Products were safe for their ordinary and intended use.

194. As a direct and proximate result of Defendants' breach of their express warranty, Plaintiffs and the Class have sustained damages in an amount to be determined at trial.

COUNT 7
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
On behalf of the Nationwide Class and all Subclasses

195. Plaintiffs and the Class incorporate by reference all preceding paragraphs.

196. By operation of law, Defendants, as manufacturers of the Recalled Products and as the providers of a limited warranty for the Recalled Products, impliedly warranted to Plaintiff and the Class that the Recalled Products were of merchantable quality and safe for their ordinary and intended use.

197. Defendants breached the implied warranty of merchantability in connection with the sale and distribution of the Recalled Products. At the point of sale, the Recalled Products while appearing normal—contained defects as set forth herein rendering them unsuitable and unsafe for personal use.

198. Had Plaintiffs and the Class known the Recalled Products were unsafe for use, they would not have purchased them.

199. Defendants have refused to provide appropriate warranty relief notwithstanding the risks of using the Recalled Products. Plaintiffs and the Class reasonably expected, at the time of purchase, that the Recalled Products were safe for their ordinary and intended use.

200. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and the Class have sustained damages in an amount to be determined at trial.

COUNT 8
VIOLATIONS OF MAGNUSON-MOSS FEDERAL WARRANTY ACT
15 U.S.C. 2301, *et seq*.
On behalf of the Nationwide Class and all Subclasses

201. Plaintiffs and the Class incorporate by reference all preceding paragraphs.

202. The Recalled Products constitute "consumer products" as defined in 15 U.S.C. § 2301.

203. Plaintiffs and the members of the Class are "consumers" as defined in 15 U.S.C. § 2301.

204. Philips is a "supplier" of the Recalled Products as defined in 15 U.S.C. § 2301.

205. Philips is a "warrantor[s]" as defined in 15 U.S.C. § 2301.

206. The warranties made by Philips pertained to consumer products costing the consumer more than five dollars, *see* 15 U.S.C. § 2302(e).

207. Plaintiffs and the members of the Class invoke federal jurisdiction for the claims stated under this Count pursuant to the Class Action Fairness Act.

208. The Recalled Products were defective at the time they came off Philips' assembly lines and at all subsequent times (including at the times of sale and/or delivery to Plaintiffs and the members of the Class) because the defective PE-PUR foam and design makes them dangerously unsafe.

209. As a result, the Recalled Products were worth less (nothing) at the time of their sales than the prices paid for them.

210. Plaintiffs and the members of the Class would not have purchased or accepted the Recalled Products had they known the machines were defective.

211. Philips violated the Magnuson-Moss Federal Warranty Act by failing to comply with the express warranties they made to Plaintiffs and the members of the Class. Philips violated the Magnuson-Moss Federal Warranty Act by failing to comply with the implied warranties they made to Plaintiffs and the members of the Class.

212. Plaintiffs and the Class need not have given notice of the defects to Philips and an opportunity for Philips to comply with their warranty obligations prior to the filing of this suit, because Plaintiffs may give such notice to Philips on their own behalf and on behalf of the Class after class certification pursuant to 15 U.S.C. § 2310(e).

213. Based on the facts alleged herein, any durational limitations to the warranties that would otherwise bar the Magnuson-Moss Federal Warranty Act claims in this Count are procedurally and substantively unconscionable and otherwise unenforceable under federal law and the applicable state common law.

214. Based on the facts alleged herein, any durational limitation to the warranties that would otherwise bar the claims in this Count are tolled under equitable doctrines.

215. Plaintiffs and the members of the Class sustained injuries and damages as a proximate result of Philips' violation of its express and implied warranties, and are entitled to legal and equitable relief against Defendants, including economic damages, rescission or other relief as appropriate, including compensatory damages consisting of: (a) the difference between the values of the Recalled Products as warranted (their prices) and their actual values at the time of purchase ($0.00), or (b) the cost to replace the Recalled Products, and (c) other miscellaneous incidental and consequential damages.

216. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and the other members of the Class are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have been reasonably incurred by them in connection with the commencement and prosecution of this action

COUNT 9
UNJUST ENRICHMENT
(In the Alternative)
On behalf of the Nationwide Class and all Subclasses

217. Plaintiffs and the Class incorporate by reference all preceding paragraphs.

218. Plaintiffs and the Class members conferred a tangible and material economic benefit upon Defendants by purchasing the Recalled Products. Plaintiffs and Class members would not have purchased the Recalled Products had they known of the defect and true risks of using the Recalled Products, while Defendants cannot and have not provided a timely repair or replacement for the Recalled Products. Under these circumstances, it would be unjust and inequitable for Defendants to retain the economic benefits they received at the expense of Plaintiff and the Class.

219. Failing to require Defendants to provide remuneration under these circumstances would result in Defendants being unjustly enriched at the expense of Plaintiffs and the Class members who endure being exposed to the risk of developing serious medical conditions and can no longer use their machines safely.

220. Defendants' retention of the benefit conferred upon them by Plaintiff and the Class would be unjust and inequitable.

221. Plaintiffs and the Class suffered damages in an amount to be determined at trial.

COUNT 10
Arizona Consumer Fraud Act
A.R.S. §§ 44-1521, *et seq.*
On Behalf of the Arizona Subclass

222. Plaintiffs incorporate by reference all preceding paragraphs.

223. Plaintiff Laurelann Porter brings this cause of action individually and on behalf of the members of the Arizona Subclass.

224. The Arizona Consumer Fraud Act prohibits "[t]he act, use or employment by any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged." A.R.S. § 44-1522.

225. Defendants engaged in unlawful trade practices, and unfair or deceptive acts or practices that violated the Arizona Consumer Fraud Act.

226. Defendants participated in unfair or deceptive trade practices that violated the Arizona Consumer Fraud Act as described herein. By concealing the true risks of the Recalled Products, Defendants knowingly and intentionally misrepresented and omitted material facts in connection with the sale the Recalled Products. Defendants systematically misrepresented, concealed, suppressed, or omitted material facts relating to the Recalled Products in the course of their business.

227. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Recalled Products.

228. Defendants' unfair and deceptive acts or practices occurred repeatedly in Defendants' trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

229. Defendants knew that the risks inherent in the Recalled Products made them not suitable for their intended use.

230. Defendants knew or should have known that their conduct violated the Arizona Consumer Fraud Act.

231. Had Plaintiff Porter and the Arizona Subclass Members known the truth about the Recalled Products, they would not have purchased the Recalled Products. Plaintiffs did not receive the benefit of their bargain as a result of Defendants' misconduct.

232. Defendants owed Plaintiff and the Arizona Subclass Members a duty to disclose the truth about the Recalled Products because Defendants: (a) possessed exclusive, specific and superior knowledge of the true risks of the Recalled Products; (b) intentionally concealed the foregoing from Plaintiff and the Arizona Subclass Members; and/or (c) made incomplete representations regarding the Recalled Products, while purposefully withholding material facts from Plaintiff Porter and the Arizona Subclass Members that contradicted these representations.

233. Plaintiff Porter and the Arizona Subclass Members suffered monetary damages as a result of Defendants' conduct.

234. Defendants' violations present a continuing risk to Plaintiff Porter and the Arizona Subclass Members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

235. Defendants are liable to Plaintiff and the Arizona Subclass Members for their damages, punitive damages, attorneys' fees costs.

COUNT 11
Arkansas Deceptive Trade Practices Act
Ark. Code Ann. §§ 4-88-101, *et seq.*
On Behalf of the Arkansas Subclass

236. Plaintiffs incorporate by reference all preceding paragraphs.

237. Plaintiff Melcher brings this cause of action individually and on behalf of the members of the Arkansas Subclass.

238. The Arkansas Deceptive Trade Practices Act prohibits deceptive and unconscionable trade practices, including, among other things, "[k]nowingly making a false representation as to the characteristics, ingredients, uses, benefits, alterations, source, sponsorship, approval, or certification of goods or services or as to whether goods are original or new or of a particular standard, quality, grade, style, or model" or "[e]ngaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade." Ark. Code Ann. § 4-88-107.

239. The Arkansas Deceptive Trade Practices Act makes it unlawful to engage in "any deception, fraud, or false pretense" or "[t]he concealment, suppression, or omission of any material fact with intent that others rely upon the concealment, suppression, or omission" "[w]hen utilized in connection with the sale or advertisement of any goods." Ark. Code Ann. § 4-88-108.

240. Defendants engaged in unlawful deceptive and unconscionable trade practices, deception, fraud, or false pretense, and the concealment, suppression, or omission of any material fact with intent that others rely upon that concealment, suppression, or omission, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff Melcher and Arkansas Subclass Members, in violation of Ark. Code Ann. §§ 4-88-101, *et seq.*, including by misrepresenting the true quality of the Recalled Products, and concealing the true risks of the Recalled Products.

241. The above deceptive and unconscionable trade practices or acts by Defendants were conducted in connection with the sale or advertisement of "goods," as defined Ark. Code Ann. § 4-88-102(4).

242. The above unlawful acts or practices by Defendants were immoral, unethical, oppressive, and unscrupulous.

243. Defendants' actions were negligent, knowing, and willful, and/or wanton and reckless with respect to the rights of Plaintiff Melcher and the Arkansas Subclass members.

244. Defendants' actions were material to Plaintiff Melcher and Arkansas Subclass members, who relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

245. As a direct and proximate result of Defendants' unlawful deceptive and unconscionable acts or practices, Plaintiff and Arkansas Class Members suffered an ascertainable loss of money or property, real or personal, as described above, including the past, present, and future costs associated with replacement of the Recalled Products and ongoing medical costs and testing.

246. Plaintiff Melcher and the Arkansas Subclass members seek relief under Ark. Code Ann. § 4-88-113(f)(1)(A), including, but not limited to injunctive relief, restitution, statutory damages, compensatory damages, punitive damages, and attorneys' fees and costs.

COUNT 12
California Unfair Competition Law
Cal. Civil Code §§ 17200, *et seq*.
On Behalf of the California Subclass

247. Plaintiffs incorporate by reference all preceding paragraphs.

248. Plaintiffs Bailey and DiJohn bring this cause of action individually and on behalf of the members of the California Subclass.

249. California Business & Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising."

250. The acts and practices of Defendants as alleged herein constitute "unfair" business acts and practices under the UCL in that Defendants conduct is unconscionable, immoral, deceptive, unfair, illegal, unethical, oppressive, and/or unscrupulous. Further, the gravity of Defendants' conduct outweighs any conceivable benefit of such conduct.

251. Defendants have, in the course of their business and in the course of trade or commerce, undertaken and engaged in unfair business acts and practices under the UCL by concealing the true risks of the Recalled Products.

252. These acts also constitute "fraudulent" business acts and practices under the UCL in that Defendants' conduct is false, misleading, and has a tendency to deceive the Class and the general public.

253. Plaintiffs Bailey and DiJohn and California Subclass Members have suffered injury in fact and have lost money as a result of Defendants' fraudulent business acts or practices.

254. The unlawful, fraudulent, and unfair business acts or practices described herein present a threat and likelihood of harm and deception to Plaintiffs Bailey and DiJohn and California Subclass Members in that Defendants have systematically perpetrated the unfair conduct upon members of the public by engaging in the conduct described herein.

255. Pursuant to Business and Professions Code §§ 17200 and 17203, Plaintiffs Bailey and DiJohn and California Subclass Members seek an order providing restitution and

disgorgement of all profits relating to the above-described unfair business acts or practices, and injunctive and declaratory relief as may be appropriate.

256. Because of their reliance on Defendants' omissions concerning the Recalled Products, Plaintiffs Bailey and DiJohn and California Subclass Members suffered an ascertainable loss of money, property, and/or value and were harmed and suffered actual damages.

257. Plaintiffs Bailey and DiJohn and California Subclass Members are reasonable consumers who did not expect the risks inherent with the Recalled Products.

258. Defendants' conduct in concealing and failing to disclose the true risks of the Recalled Products is unfair in violation of the UCL, because it is immoral, unethical, unscrupulous, oppressive, and substantially injurious.

259. Defendants acted in an immoral, unethical, unscrupulous, outrageous, oppressive, and substantially injurious manner.

260. The gravity of harm resulting from Defendants' unlawful, fraudulent, and unfair conduct outweighs any potential utility. The Recalled Machines present a substantial health risk to consumers and harmed the public at large and is part of a common and uniform course of wrongful conduct.

261. The harm from Defendants' conduct was not reasonably avoidable by consumers because only Defendants were aware of the true facts concerning the risks of its Recalled Products, and Defendants did not disclose them, despite knowing of such defects. Plaintiffs Bailey and DiJohn and California Subclass Members did not know of and had no reasonable means of discovering the true risk of using the Recalled Products.

262. Plaintiffs Bailey and DiJohn suffered injury in fact, including lost money or property, as a result of Defendants' unlawful, fraudulent, and unfair acts. Absent Defendants' conduct, Plaintiffs would not have bought the Recalled Products.

263. Through its unlawful, fraudulent, and unfair conduct, Defendants acquired money that Plaintiffs once owned.

264. Plaintiffs Bailey and DiJohn and California Subclass Members accordingly seek appropriate relief under the UCL, including (a) restitution in full and (b) such orders or judgments as may be necessary to enjoin Defendants from continuing their unlawful, fraudulent, and unfair practices. Plaintiffs also seek reasonable attorneys' fees and costs under applicable law, including California Code of Civil Procedure section 1021.5.

COUNT 13
Colorado Consumer Protection Act
Colo. Rev. Stat. §§ 6-1-101, *et seq.*
On Behalf of the Colorado Subclass

265. Plaintiffs incorporate by reference all preceding paragraphs.

266. Plaintiff Wilson brings this cause of action individually and on behalf of the members of the Colorado Subclass.

267. The Colorado Consumer Protection Act prohibits unfair or deceptive acts or practices, including, "fail[ing] to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction." Colo. Rev. Stat. § 6-1-105(u). Defendants engaged in deceptive acts or practices that violated the Colorado Consumer Protection Act.

268. Defendants participated in unfair or deceptive trade practices that violated the Colorado Consumer Protection Act as described below and throughout this Class Action

Complaint. By concealing the true risks of the Recalled Products, Defendants knowingly and intentionally misrepresented and omitted material facts in connection with the sale of the Recalled Products. Defendants systematically misrepresented, concealed, suppressed, or omitted material facts relating to the Recalled Products in the course of their business.

269. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Recalled Products.

270. Defendants' unfair and deceptive acts or practices occurred repeatedly in Defendants' trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

271. Defendants knew that the risks inherent in the Recalled Products made them not suitable for their intended use.

272. Defendants knew or should have known that their conduct violated the Colorado Consumer Protection Act.

273. Had Plaintiff Wilson and the Colorado Subclass Members known the truth about the Recalled Products, they would not have purchased the Recalled Products. Plaintiffs did not receive the benefit of their bargain as a result of Defendants' misconduct.

274. Defendants owed Plaintiff and the Colorado Subclass Members a duty to disclose the truth about the Recalled Products because Defendants: (a) possessed exclusive, specific and superior knowledge of the true risks of the Recalled Products; (b) intentionally concealed the foregoing from Plaintiff and the Colorado Subclass Members; and/or (c) made incomplete

representations regarding the Recalled Products, while purposefully withholding material facts from Plaintiff and the Colorado Subclass Members that contradicted these representations.

275. Plaintiff Wilson and the Colorado Subclass Members suffered monetary damages as a result of Defendants' conduct.

276. Defendants' violations present a continuing risk to Plaintiff Wilson and the Colorado Subclass Members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

277. Defendants are liable to Plaintiff and the Colorado Subclass Members for actual damages sustained.

COUNT 14
Connecticut Unfair Trade Practices Act
Conn. Gen. Stat. §§ 42-110a, *et seq.*
On Behalf of the Connecticut Subclass

278. Plaintiffs incorporate by reference all preceding paragraphs.

279. Plaintiff Rohan brings this cause of action individually and on behalf of the members of the Connecticut Subclass.

280. The Connecticut Unfair Trade Practices Act prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. § 42-110(b)(a).

281. Defendants participated in unfair or deceptive trade practices that violated the Connecticut Unfair Trade Practices Act as described below and alleged throughout the Complaint. By concealing the true risks of the Recalled Products, Defendants knowingly and intentionally misrepresented and omitted material facts in connection with the sale of the Recalled Products. Defendants systematically misrepresented, concealed, suppressed, or omitted material facts relating to the Recalled Products in the course of their business.

282. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Recalled Products.

283. Defendants' unfair and deceptive acts or practices occurred repeatedly in Defendants' trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

284. Defendants knew that the risks inherent in the Recalled Products made them not suitable for their intended use.

285. Defendants knew or should have known that their conduct violated the Connecticut Unfair Trade Practices Act.

286. Had Plaintiff Rohan and the Connecticut Subclass Members known the truth about the Recalled Products, they would not have purchased the Recalled Products. Plaintiffs did not receive the benefit of their bargain as a result of Defendants' misconduct.

287. Defendants owed Plaintiff and the Connecticut Subclass Members a duty to disclose the truth about the Recalled Products because Defendants: (a) possessed exclusive, specific and superior knowledge of the true risks of the Recalled Products; (b) intentionally concealed the foregoing from Plaintiff and the Connecticut Subclass Members; and/or (c) made incomplete representations regarding the Recalled Products, while purposefully withholding material facts from Plaintiff and the Connecticut Subclass Members that contradicted these representations.

288. Plaintiff and the Connecticut Subclass Members suffered monetary damages as a result of Defendants' conduct.

289. Defendants' violations present a continuing risk to Plaintiff and the Connecticut Subclass Members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

290. Defendants are liable to Plaintiff and the Connecticut Subclass Members for actual damages, punitive damages, equitable relief, attorneys' fees and costs. Conn. Gen. Stat. § 42-110g(a), (d).

291. A copy of this complaint is being mailed to the Connecticut Attorney General and the Connecticut Commissioner of Consumer Protection. Conn. Gen. Stat. § 42-110g(d).

COUNT 15
Delaware Consumer Fraud Act
Del. Code Ann. § 2511, *et seq.*
On Behalf of the Delaware Subclass

292. Plaintiffs incorporate by reference all preceding paragraphs.

293. Plaintiff Jimmy Arriaga brings this cause of action individually and on behalf of the members of the Delaware Subclass.

294. The Delaware Consumer Fraud Act prohibits "the act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale . . . of any merchandise." Del. Code Ann. § 2513.

295. Defendants participated in unfair or deceptive trade practices that violated the Delaware Consumer Fraud Act as described below and alleged throughout the Complaint. By concealing the true risks of the Recalled Products, Defendants knowingly and intentionally misrepresented and omitted material facts in connection with the sale the Recalled Products.

Defendants systematically misrepresented, concealed, suppressed, or omitted material facts relating to the Recalled Products in the course of their business.

296. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Recalled Products.

297. Defendants' unfair and deceptive acts or practices occurred repeatedly in Defendants' trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

298. Defendants knew that the risks inherent in the Recalled Products made them not suitable for their intended use.

299. Defendants knew or should have known that their conduct violated the Delaware Consumer Fraud Act.

300. Had Plaintiff Arriaga and the Delaware Subclass Members known the truth about the Recalled Products, they would not have obtained the Recalled Products. Plaintiff and the Delaware Subclass did not receive the benefit of their bargain as a result of Defendants' misconduct.

301. Defendants owed Plaintiff and the Delaware Subclass Members a duty to disclose the truth about the Recalled Products because Defendants: (a) possessed exclusive, specific and superior knowledge of the true risks of the Recalled Products; (b) intentionally concealed the foregoing from Plaintiff and the Delaware Subclass Members; and/or (c) made incomplete representations regarding the Recalled Products, while purposefully withholding material facts from Plaintiff and the Delaware Subclass Members that contradicted these representations.

302. Plaintiff and the Delaware Subclass Members suffered monetary damages as a result of Defendants' conduct.

303. Defendants' violations present a continuing risk to Plaintiff and the Delaware Subclass Members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

304. Defendants are liable to Plaintiff and the Delaware Subclass Members for all damages sustained. Del. Code Ann. § 2525.

COUNT 16
District of Columbia Consumer Protection Act,
D.C. Code § 28-3901, *et seq*.
On Behalf of the District of Columbia Subclass

305. Plaintiffs incorporate by reference all preceding paragraphs.

306. Plaintiff Pinck brings this cause of action individually and on behalf of the members of the District of Columbia Subclass.

307. The D.C. Consumer Protection Act prohibits "unfair or deceptive trade practice[s]." D.C. Code § 28-3904.

308. Defendants participated in unfair or deceptive trade practices that violated the D.C. Consumer Protection Act as described below and alleged throughout the Complaint. By concealing the true risks of the Recalled Products, Defendants knowingly and intentionally misrepresented and omitted material facts in connection with the sale the Recalled Products. Defendants systematically misrepresented, concealed, suppressed, or omitted material facts relating to the Recalled Products in the course of their business.

309. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of

any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Recalled Products.

310. Defendants' unfair and deceptive acts or practices occurred repeatedly in Defendants' trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

311. Defendants knew that the risks inherent in the Recalled Products made them not suitable for their intended use.

312. Defendants knew or should have known that their conduct violated the D.C. Consumer Protection Act.

313. Had Plaintiff Pinck and the District of Columbia Subclass Members known the truth about the Recalled Products, they would not have purchased the Recalled Products. Plaintiff and District of Columbia Subclass Members did not receive the benefit of their bargain as a result of Defendants' misconduct.

314. Defendants owed Plaintiff Pinck and the District of Columbia Subclass Members a duty to disclose the truth about the Recalled Products because Defendants: (a) possessed exclusive, specific and superior knowledge of the true risks of the Recalled Products; (b) intentionally concealed the foregoing from Plaintiff and the District of Columbia Subclass Members; and/or (c) made incomplete representations regarding the Recalled Products, while purposefully withholding material facts from Plaintiff and the District of Columbia Subclass Members that contradicted these representations.

315. Plaintiff and the District of Columbia Subclass Members suffered monetary damages as a result of Defendants' conduct.

316. Defendants' violations present a continuing risk to Plaintiff and the District of Columbia Subclass Members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

317. Defendants are liable to Plaintiff and the District of Columbia Subclass Members for all damages sustained, treble damages of $1,500, punitive damages, attorneys' fees and costs, and injunctive relief. D.C. Code § 28-3905(k)(1).

COUNT 17
Florida Deceptive Trade Practices Act,
Fla. Stat. Ann. § 501.201, *et seq*.
On Behalf of the Florida Subclass

318. Plaintiffs incorporate by reference all preceding paragraphs.

319. Plaintiff Jones brings this cause of action individually and on behalf of the members of the Florida Subclass.

320. Defendants' business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts or practices under the Florida Deceptive and Unfair Trade Practices Act, § 501.201, *et seq*., Florida Statutes ("FDUTPA").

321. At all relevant times, Plaintiff Jones and the Florida Subclass Members were "consumers" within the meaning of the FDUTPA. F.S.A. § 501.203(7).

322. Defendants' conduct, as set forth herein, occurred in the conduct of "trade or commerce" within the meaning of the FDUTPA. F.S.A. § 501.203(8).

323. Defendants' omissions and practices described herein were likely to, and did in fact, deceive and mislead members of the public, including Plaintiff and the Florida Subclass Members, acting reasonably under the circumstances, to their detriment. By failing to the true risks of the Recalled Products, Defendant violated FDUTPA.

324. Defendants failed to reveal facts that were material to Plaintiff Jones and the Florida Subclass Members' decisions to purchase the Recalled Products, and Defendants intended that Plaintiff and the Florida Subclass Members would rely upon the omissions.

325. Defendants' actions impact the public interest because Plaintiff Jones and the Florida Subclass Members were injured in exactly the same way as thousands of others purchasing Recalled Products as a result of and pursuant to Defendants' generalized course of deception.

326. Had Plaintiff Jones and the Florida Subclass Members known the truth about the Recalled Products, they would not have purchased and the Recalled Products.

327. The foregoing acts, omissions and practices proximately caused Plaintiff and the Florida Subclass Members to suffer actual damages with they are entitled to recover such damages, together with attorneys' fees and costs of suit.

COUNT 18
Hawaii Unfair and Deceptive Trade Practices Act,
Haw. Rev. Stat. § 480-2, *et seq*.
On Behalf of the Hawaii Subclass

328. Plaintiffs incorporate by reference all preceding paragraphs.

329. Plaintiff Chris Brown brings this cause of action individually and on behalf of the members of the Hawaii Subclass.

330. The Hawaii Unfair and Deceptive Trade Practices Act prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." Haw. Rev. Stat. § 480-2(a).

331. Defendants participated in unfair or deceptive trade practices that violated the Hawaii Unfair and Deceptive Trade Practices Act as described below and alleged throughout the Complaint. By concealing the true risks of the Recalled Products, Defendants knowingly and intentionally misrepresented and omitted material facts in connection with the sale the Recalled

Products. Defendants systematically misrepresented, concealed, suppressed, or omitted material facts relating to the Recalled Products in the course of their business.

332. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Recalled Products.

333. Defendants' unfair and deceptive acts or practices occurred repeatedly in Defendants' trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

334. Defendants knew that the risks inherent in the Recalled Products made them not suitable for their intended use.

335. Defendants knew or should have known that their conduct violated the Hawaii Unfair and Deceptive Trade Practices Act.

336. Had Plaintiff Brown and the Hawaii Subclass Members known the truth about the Recalled Products, they would not have purchased the Recalled Products. Plaintiffs did not receive the benefit of their bargain as a result of Defendants' misconduct.

337. Defendants owed Plaintiff Brown and the Hawaii Subclass Members a duty to disclose the truth about the Recalled Products because Defendants: (a) possessed exclusive, specific and superior knowledge of the true risks of the Recalled Products; (b) intentionally concealed the foregoing from Plaintiff Brown and the Hawaii Subclass Members; and/or (c) made incomplete representations regarding the Recalled Products, while purposefully withholding material facts from Plaintiff Brown and the Hawaii Subclass Members that contradicted these representations.

338. Plaintiff and the Hawaii Subclass Members suffered monetary damages as a result of Defendants' conduct.

339. Defendants' violations present a continuing risk to Plaintiff and the Hawaii Subclass Members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

340. Defendants are liable to Plaintiff and the Hawaii Subclass Members for actual damages, treble damages, equitable relief, attorneys' fees and costs. Haw. Rev. Stat. § 480-13.

COUNT 19
Idaho Consumer Protection Act
Idaho Code Ann. §§ 48-601, *et seq.*
On Behalf of the Idaho Subclass

341. Plaintiffs incorporate by reference all preceding paragraphs.

342. Plaintiff Adam Hale brings this cause of action individually and on behalf of the members of the Idaho Subclass.

343. The purpose of the Idaho Consumer Protection Act is to "protect both consumers and businesses against unfair methods of competition and unfair or deceptive acts and practices in the conduct of trade or commerce." Idaho Code Ann. § 48-601.

344. The Idaho Consumer Protection Act prohibits methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, including, among other things, "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have" or "[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another." Idaho Code Ann. § 48-603.

345. Defendants engaged in unfair methods of competition and unfair or deceptive acts or practices, with respect to the sale and advertisement of the Recalled Products purchased by

Plaintiff Hale and Idaho Subclass Members, in violation of Idaho Code Ann. §§ 48-601, *et seq.*, including by misrepresenting the true quality of the Recalled Products, and concealing the true risks of the Recalled Products.

346. The above unfair methods of competition and unfair or deceptive acts or practices by Defendants were conducted as part of "trade" or "commerce" as defined by Idaho Code Ann. § 48-602(2).

347. The above unfair methods of competition and unfair or deceptive acts or practices by Defendants were immoral, unethical, oppressive, and unscrupulous.

348. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff Hale and the Idaho Subclass members.

349. Plaintiff Hale and Idaho Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

350. As a direct and proximate result of Defendants' unfair methods of competition and unfair or deceptive acts or practices, Plaintiff Hale and Idaho Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

351. Plaintiff Hale and Idaho Subclass members seek relief under Idaho Code Ann. § 48-608, including, but not limited to injunctive relief, restitution, statutory damages, compensatory damages, treble damages, civil penalties, and attorneys' fees and costs.

COUNT 20
Illinois Consumer Fraud Act
815 ILCS § 505/1, *et seq.*
On Behalf of the Illinois Subclass

352. Plaintiffs incorporate by reference all preceding paragraphs.

353. Plaintiffs Smock and Oldigs bring this cause of action on their behalf and on behalf of the members of the Illinois Subclass.

354. Defendants engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the products purchased by Plaintiffs Smock and Oldigs and Illinois Subclass Members, in violation of 815 ILCS § 505/2, including by concealing the true risks of the Recalled Products. These injuries outweigh any benefits to consumers or to competition.

355. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous.

356. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiffs Smock and Oldigs and the Illinois Subclass members.

357. Plaintiffs Smock and Oldigs and Illinois Subclass members would not have purchased, chosen, and/or paid for all or part of the Recalled Products had they known that the Recalled Products were defective

358. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiffs Smock and Oldigs and Illinois Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

359. Plaintiffs Smock and Oldigs and Illinois Subclass members seek relief under 815 ILCS § 505/10a, including, but not limited to injunctive relief, damages, restitution, punitive damages and attorneys' fees and costs.

360. A copy of this complaint is being sent to the Illinois Attorney General. 815 ILCS § 505/10d.

COUNT 21
Iowa Consumer Frauds Act
Iowa Code §§ 714H, 714.16/
On Behalf of the Iowa Subclass

361. Plaintiffs incorporate by reference all preceding paragraphs.

362. Plaintiff Abarr brings this cause of action individually and on behalf of the members of the Iowa Subclass.

363. The Iowa Consumer Frauds Act prohibits the "practice or act the person knows or reasonably should know is an unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact, with the intent that others rely upon the unfair practice, deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission in connection with the advertisement, sale, or lease of consumer merchandise, or the solicitation of contributions for charitable purposes." Iowa Code § 714H.3.

364. Defendants participated in unfair or deceptive trade practices that violated the Iowa Consumer Frauds Act as described below and alleged throughout the Complaint. By concealing the true risks of the Recalled Products, Defendants knowingly and intentionally misrepresented and omitted material facts in connection with the sale the Recalled Products. Defendants systematically misrepresented, concealed, suppressed, or omitted material facts relating to the Recalled Products in the course of their business.

365. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Recalled Products.

366. Defendants' unfair and deceptive acts or practices occurred repeatedly in Defendants' trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

367. Defendants knew that the risks inherent in the Recalled Products made them not suitable for their intended use.

368. Defendants knew or should have known that their conduct violated the Iowa Consumer Frauds Act.

369. Had Plaintiff Abarr and the Iowa Subclass Members known the truth about the Recalled Products, they would not have purchased the Recalled Products. Plaintiffs did not receive the benefit of their bargain as a result of Defendants' misconduct.

370. Defendants owed Plaintiff Abarr and the Iowa Subclass Members a duty to disclose the truth about the Recalled Products because Defendants: (a) possessed exclusive, specific and superior knowledge of the true risks of the Recalled Products; (b) intentionally concealed the foregoing from Plaintiff Abarr and the Iowa Subclass Members; and/or (c) made incomplete representations regarding the Recalled Products, while purposefully withholding material facts from Plaintiff and the Iowa Subclass Members that contradicted these representations.

371. Plaintiff Abarr and the Iowa Subclass Members suffered monetary damages and ascertainable losses as a result of Defendants' conduct.

372. Defendants' violations present a continuing risk to Plaintiff Abarr and the Iowa Subclass Members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

373. Defendants are liable to Plaintiff and the Iowa Subclass Members for actual damages, treble damages, equitable relief, attorneys' fees and costs. Iowa Code § 714H.5.

374. A copy of this complaint is being sent to the Iowa Attorney General. Iowa Code § 714H.6.

COUNT 22
Kansas Consumer Protection Act
Kan. Stat. Ann. §§ 50-623, *et seq.*
On Behalf of the Kansas Subclass

375. Plaintiffs incorporate by reference all preceding paragraphs.

376. Plaintiff Fisher brings this cause of action individually and on behalf of the members of the Kansas Subclass.

377. A key policy purpose of the Kansas Consumer Protection Act, which is to be "construed liberally," is "to protect consumers from suppliers who commit deceptive and unconscionable practices." Kan. Stat. Ann. § 50-623.

378. The Kansas Consumer Protection Act prohibits suppliers from engaging in deceptive acts and practices "in connection with a consumer transaction," which include, among other things, (1) representations made knowingly or with reason to know that "[p]roperty or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have," (2) representations made knowingly or with reason to know that "property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation," (3) "the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact," and (4) "the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact." Kan. Stat. Ann. § 50-626(b)(1-3).

379. The Recalled Products purchased by Plaintiff and Kansas Subclass Members are "property" as defined by Kan. Stat. Ann. § 50-624(j).

380. Defendants are "suppliers" as defined by Kan. Stat. Ann. § 50-624(l).

381. Defendants engaged in deceptive acts or practices, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and Kansas Subclass Members, in violation of Kan. Stat. Ann. §§ 50-623, *et seq.*, including by misrepresenting the true quality of the Recalled Products, and concealing the true risks of the Recalled Products.

382. The above deceptive acts or practices by Defendants were conducted in connection with "consumer transactions" as defined by Kan. Stat. Ann. § 50-624(c).

383. The above unlawful deceptive acts or practices by Defendants were immoral, unethical, oppressive, and unscrupulous.

384. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff Fisher and the Kansas Subclass members.

385. Plaintiff Fisher and Kansas Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products would be defective.

386. As a direct and proximate result of Defendants' deceptive acts or practices, Plaintiff Fisher and Kansas Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

387. Plaintiff and Kansas Subclass members seek relief under by Kan. Stat. Ann. § 50-634, including, but not limited to injunctive relief, restitution, statutory damages, compensatory damages, civil penalties and attorneys' fees and costs.

COUNT 23
Kentucky Consumer Protection Act
Kentucky Revised Statutes Annotated §§ 367.110, *et seq.*
On Behalf of the Kentucky Subclass

388. Plaintiffs incorporate by reference all preceding paragraphs.

389. Plaintiff Coleman brings this cause of action individually and on behalf of the members of the Kentucky Subclass.

390. The Kentucky Consumer Protection Act was passed after its legislature found that "the public health, welfare and interest require a strong and effective consumer protection program to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services" and declared unlawful "[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce."

391. Defendants engaged in unfair, false, misleading, or deceptive acts or practices, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and Kentucky Subclass Members, in violation of Ky. Rev. Stat. Ann. § 367.170, including by concealing the true risks of the Recalled Products.

392. The above unfair, false, misleading, or deceptive acts or practices by Defendants were conducted in "trade" or "commerce," as defined by Ky. Rev. Stat. Ann. § 367.110(2).

393. The above unfair, false, misleading, or deceptive acts or practices by Defendants were immoral, unethical, oppressive, and unscrupulous.

394. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Kentucky Subclass members.

395. Plaintiff Coleman and Kentucky Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

396. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff Coleman and Kentucky Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

397. Plaintiffs and Kentucky Subclass members seek relief under Kentucky Ky. Rev. Stat. Ann. § 367.220, including, but not limited to injunctive relief, damages, and attorneys' fees and costs.

COUNT 24
Louisiana Unfair Trade Practices and Consumer Protection Law
La. Rev. Stat. Ann. §§ 51:1401, *et seq.*
On Behalf of the Louisiana Subclass

398. Plaintiffs incorporate by reference all preceding paragraphs.

399. Plaintiff Miyahira brings this cause of action individually and on behalf of the members of the Louisiana Subclass.

400. The Louisiana Unfair Trade Practices and Consumer Protection Law makes it unlawful to engage in "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." La. Rev. Stat. Ann. §§ 51:1405(A).

401. Defendants engaged in unfair methods of competition and unfair or deceptive acts or practices, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff Miyahira and Louisiana Subclass Members, in violation of La. Rev. Stat. Ann. § 51:1405A, including by concealing the true risks of the Recalled Products.

402. The above unfair methods of competition and unfair or deceptive acts or practices by Defendants were conducted in "trade" or "commerce," as defined by La. Rev. Stat. Ann. §§ 51:1402(10).

403. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous.

404. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff Miyahira and the Louisiana Subclass members.

405. Plaintiff Miyahira and Louisiana Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

406. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff Miyahira and Louisiana Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

407. Plaintiff Miyahira and Louisiana Subclass members seek relief under La. Rev. Stat. Ann. § 51:1409, including, but not limited to damages, treble damages and attorneys' fees and costs.

COUNT 25
Maryland Consumer Protection Act
Md. Code Ann., Com. Law §§ 13-101, *et seq*.
On Behalf of the Maryland Subclass

408. Plaintiffs incorporate by reference all preceding paragraphs.

409. Plaintiff Labonte brings this cause of action individually and on behalf of the members of the Maryland Subclass.

410. Under the Maryland Consumer Protection Act, "[a] person may not engage in any unfair, abusive, or deceptive trade practice" in the sale of any consumer goods. Md. Code Ann., Com. Law § 13-303(1).

411. Under the Maryland Consumer Protection Act, unfair, abusive, or deceptive trade practices include, among other things, representations that consumer goods "have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have" or "are of a particular standard, quality, grade, style, or model which they are not"; "[f]ailure to state a material fact if the failure deceives or tends to deceive; or "[d]eception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any

material fact with the intent that a consumer rely on the same in connection with…[t]he promotion or sale of any consumer goods." Md. Code Ann., Com. Law § 13-301.

412. Defendants engaged in unfair, abusive, or deceptive trade practices with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and Maryland Subclass Members, in violation of Md. Code Ann., Com. Law §§ 13-101, *et seq*., including by knowingly making statements or representations that were false or misleading regarding the quality of the Recalled Products and concealing the true risks of the Recalled Products.

413. The above unfair, abusive, or deceptive trade practices by Defendants were conducted in connection with the sale of "consumer goods," as defined by Md. Code Ann., Com. Law § 13-101(d)(1).

414. The above unfair, abusive, or deceptive trade practices by Defendants were immoral, unethical, oppressive, and unscrupulous.

415. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff Labonte and the Maryland Subclass members.

416. Plaintiff Labonte and Maryland Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

417. As a direct and proximate result of Defendants' unfair, abusive, or deceptive trade practices, Plaintiff Labonte and Maryland Subclass members suffered an ascertainable loss of money or property, real or personal, as described above.

418. Plaintiff Labonte and Maryland Subclass members seek relief under Md. Code Ann., Com. Law § 13-408, including, but not limited to compensatory damages, and attorneys' fees and costs.

COUNT 26
Massachusetts Consumer Protection Act
Mass. Gen. Laws Ann. ch. 93A, §§ 1-11, *et seq*.
On Behalf of the Massachusetts Subclass

419. Plaintiffs incorporate by reference all preceding paragraphs.

420. Plaintiff Robert McClay bring this cause of action individually and on behalf of the members of the Massachusetts Subclass.

421. Under the Massachusetts Consumer Protection Act, "unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." Mass. Gen. Laws Ann. ch. 93A, § 2.

422. Defendants engaged in unfair, abusive, or deceptive trade practices with respect to the sale and advertisement of the Recalled Products purchased by Plaintiffs McClay and Massachusetts Subclass Members, including by knowingly making statements or representations that were false or misleading regarding the quality of the Recalled Products, and concealing the true risks of the Recalled Products.

423. The above unfair, abusive, or deceptive trade practices by Defendants were immoral, unethical, oppressive, and unscrupulous.

424. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiffs and the Massachusetts Subclass members.

425. Plaintiff McClay and Massachusetts Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

426. As a direct and proximate result of Defendants' unfair, abusive, or deceptive trade practices, Plaintiff McClay and Massachusetts Subclass members suffered an ascertainable loss of money or property, real or personal, as described above.

427. Plaintiff McClay and Massachusetts Subclass members seek relief under Mass. Gen. Laws Ann. ch. 93A, § 2, including, but not limited to injunctive relief, compensatory damages, statutory damages, and attorneys' fees and costs.

COUNT 27
Michigan Consumer Protection Act
Mich. Comp. Laws §§ 445.901, *et seq.*
On Behalf of the Michigan Subclass

428. Plaintiffs incorporate by reference all preceding paragraphs.

429. Plaintiffs Lisa Brown and Julie Longway bring this cause of action individually and on behalf of the members of the Michigan Subclass.

430. The Michigan Consumer Protection Act ("Michigan CPA") prohibits "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce.…" Mich. Comp. Laws § 445.903(1). GM engaged in unfair, unconscionable, or deceptive methods, acts or practices prohibited by the Michigan CPA, including: "(c) Representing that goods or services have… characteristics… that they do not have.…;" "(e) Representing that goods or services are of a particular standard… if they are of another;" "(i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;" "(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;" "(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is;" and "(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner." Mich. Comp. Laws § 445.903(1).

431. Defendants engaged in unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce, with respect to the sale and advertisement of the

Recalled Products purchased by Plaintiffs and Michigan Subclass Members, in violation of Mich. Comp. Laws § 445.903, including by misrepresenting the true quality of the Recalled Products, and concealing the true risks of the Recalled Products.

432. The above unfair methods of competition and unfair or deceptive acts or practices by Defendants were conducted in "[t]rade or commerce," as defined by Mich. Comp. Laws § 445.902(1)(g).

433. The above unfair and deceptive practices and acts by Defendants were material misrepresentations of a presently existing or past fact.

434. The representations by Defendants regarding the quality of the Recalled Products was false.

435. Defendants knew the representations were false or made it recklessly as a positive assertion without knowledge of its truth.

436. Defendants intended that persons rely on the above misrepresentation regarding the quality of the Recalled Products.

437. Plaintiffs Brown and Longway and Michigan Subclass members acted in reliance on Defendants' representations.

438. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous.

439. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiffs Brown and Longway and the Michigan Subclass members.

440. Plaintiffs and Michigan Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had

they known that the Recalled Products were defective.

441. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiffs and Michigan Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

442. Plaintiffs Brown and Longway and Michigan Subclass members seek relief under Mich. Comp. Laws § 445.911, including, but not limited to injunctive relief, damages, attorneys' fees and costs.

COUNT 28
Minnesota Consumer Fraud Act, Minnesota Unlawful Trade Practices Act, and Minnesota Uniform Deceptive Trade Practices Act
Minn. Stat. §§ 325F.69; 325D.13; and 325D.44, respectively
On Behalf of the Minnesota Subclass

443. Plaintiffs incorporate by reference all preceding paragraphs.

444. Plaintiff Tawnya Porter brings this cause of action individually and on behalf of the members of the Minnesota Subclass.

445. The MPCFA makes unlawful "[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby." Minn. Stat. § 325F.69(1). The MPCFA further provides that "any person injured by a violation of [the MPCFA] may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court." Minn. Stat. § 8.31(3a).

446. Defendants engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and

Minnesota Subclass Members, in violation of Minn. Stat. §§ 325F.69; 325D.13; and 325D.44, including by misrepresenting the true quality of the Recalled Products and concealing the true risks of the Recalled Products.

447. The above unfair and deceptive practices and acts by Defendants involved the "sale" of "merchandise," as defined by Minn. Stat. § 325F.68.

448. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous.

449. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff Porter and the Minnesota Subclass members.

450. Plaintiff Porter and Minnesota Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

451. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff and Minnesota Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

452. Plaintiff Porter and Minnesota Subclass members seek relief under Minn. Stat. § 8.31, subd. 3a; and § 325D.45, including, but not limited to injunctive relief, damages, and attorneys' fees and costs.

COUNT 29
Missouri Merchandising Practices Act
Mo. Rev. Stat. § 407.010, *et seq.*
On Behalf of the Missouri Subclass

453. Plaintiffs incorporate by reference all preceding paragraphs.

454. Plaintiffs Delores Brown and Donald Basemore bring this cause of action individually and on behalf of the members of the Missouri Subclass.

455. The Missouri Merchandising Practices Act ("MMPA") was created to protect Missouri consumers from deceptive and unfair business practices.

456. Philips' conduct described herein constitutes the act, use or employment of deception, false promise, misrepresentation, unfair practice and the concealment, suppression and omission of material facts in connection with the sale and advertisement of merchandise, the Recalled Products, in trade or commerce in Missouri, making it unlawful under Mo. Rev. Stat. § 407.020.

457. Plaintiffs Basemore, Brown, and the Missouri Class members purchased the Recalled Products for personal purposes and suffered ascertainable losses of money or property as the result of the use or employment of a method, act or practice declared unlawful by Mo. Rev. Stat. § 407.020. Plaintiffs Basemore, Brown, and the Missouri Class members acted as reasonable consumers would have acted under the circumstances and Philips' conduct declared unlawful by Mo. Rev. Stat. § 407.020 would cause reasonable persons to enter into the transactions (purchasing the Recalled Products) that resulted in the damages.

458. Accordingly, pursuant to Mo. Rev. Stat. § 407.025, Plaintiffs Basemore, Brown, and the Missouri Class members are entitled to recover their actual damages, which can be calculated with a reasonable degree of certainty using sufficiently definitive and objective evidence. Those damages are: (a) the difference between the values of the Recalled Products as represented (their prices) paid and their actual values at the time of purchase ($0.00), or (b) the cost to replace the Recalled Products, and (c) other miscellaneous incidental and consequential damages. In addition, given the nature of Philips conduct, the Court should exercise its discretion to award Plaintiffs Basemore, Brown, and the Missouri Class Members punitive damages,

attorneys' fees based on the amount of time reasonably expended and equitable relief necessary or proper to protect them from Philips' unlawful conduct.

COUNT 30
Montana Unfair Trade Practices and Consumer Protection Act of 1973
Mont. Code Ann. §§ 30-14-101, *et seq.*
On Behalf of the Montana Subclass

459. Plaintiffs incorporate by reference all preceding paragraphs.

460. Plaintiff Worman brings this cause of action individually and on behalf of the members of the Montana Subclass.

461. The Montana Unfair Trade Practices and Consumer Protection Act makes it unlawful to engage in "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Mont. Code Ann. § 30-14-103.

462. Defendants engaged in unlawful methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and Montana Subclass members, in violation of Mont. Code Ann. §§ 30-14-103, including by concealing the true risks of the Recalled Products.

463. The above unfair or deceptive acts or practices by Defendants were conducted in "trade" or "commerce," as defined by *id.,* § 30-14-102(8).

464. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous.

465. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiffs and the Montana Subclass members.

466. Plaintiff Worman and Montana Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

467. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff Worman and Montana Subclass members suffered an ascertainable loss of money or property, real or personal, as described above.

468. Plaintiff Worman and Montana Subclass members seek relief under Mont. Code Ann. § 30-14-133, including, but not limited to injunctive relief, damages, treble damages, and attorneys' fees and costs.

COUNT 31
Nebraska Consumer Protection Act
Neb. Rev. Stat. § 59-1601, *et seq*.
On Behalf of the Nebraska Subclass

469. Plaintiffs incorporate by reference all preceding paragraphs.

470. Plaintiff Glaub brings this cause of action individually and on behalf of the members of the Nebraska Subclass.

471. The Nebraska Consumer Protection Act makes it unlawful to engage in "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Neb. Rev. Stat. § 59-1602.

472. Defendants engaged in unlawful methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and Nebraska Subclass Members, in violation of Neb. Rev. Stat. § 59-1602, including by concealing the true risks of the Recalled Products.

473. The above unfair or deceptive acts or practices by Defendants were conducted in "trade" or "commerce."

474. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous.

475. Defendants' actions were negligent, knowing and willful, and/or wanton and

reckless with respect to the rights of Plaintiff Glaub and the Nebraska Subclass members.

476. Plaintiff Glaub and Nebraska Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

477. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff Glaub and Nebraska Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

478. Plaintiff Glaub and Nebraska Subclass members seek relief under Neb. Rev. Stat. § 59-16-0, including, but not limited to injunctive relief, damages, and attorneys' fees and costs.

COUNT 32
Nevada Deceptive Trade Practices Act
Nev. Rev. Stat. §§598.0903, *et seq.*
On Behalf of the Nevada Subclass

479. Plaintiffs incorporate by reference all preceding paragraphs.

480. Plaintiffs Poland, McNulty, and Burlison bring this cause of action individually and on behalf of the members of the Nevada Subclass.

481. Philips' conduct in the course of its business described herein constitutes deceptive trade practices as set forth in Nev. Rev. Stat. § 598.0915, because Philips: (a) knowingly made false representations as to the characteristics, ingredients, uses and benefits of the Recalled Products by falsely representing they are a safe and effective treatment for Obstructive Sleep Apnea and other breathing conditions; (b) represented that the Recalled Products were of a particular standard, quality or grade by falsely representing they are a safe and effective treatment for Obstructive Sleep Apnea and other breathing conditions; and (c) knowingly made other false representations in the transactions that resulted in Plaintiffs Burlison, Poland, McNulty, and the Nevada SubClass Members' ownership and use of the Recalled Products.

482. Philips also engaged in deceptive trade practices in the course of its business under Nev. Rev. Stat. § 598.0923 by knowingly failing to disclose a material fact, the existence of the defective foam, in connection with the sales of the Recalled Products. Philips also engaged in deceptive trade practices in the course of its business under Nev. Rev. Stat. § 598.0925 by making an assertion of scientific, clinical or quantifiable fact, that the Recalled Products are a safe and effective treatment for Obstructive Sleep Apnea and other breathing conditions, in advertisements that would cause reasonable persons to believe the assertion was true when it did not have in its possession factually objective scientific, clinical or quantifiable evidence substantiating the assertion.

483. Pursuant to Nev. Rev. Stat. § 41.600, Plaintiffs Burlison, Poland, McNulty, and the Nevada Class are entitled to recover for these deceptive trade practices the damages they have sustained: (a) the difference between the values of the Recalled Products as represented (their prices) and their actual values at the time of purchase ($0.00), or (b) the cost to replace the Recalled Products, and (c) other miscellaneous incidental and consequential damages. In addition, they are entitled to recover any equitable relief the Court deems appropriate and their costs in the action and reasonable attorneys' fees.

484. Pursuant to Nev. Rev. Stat. § 598.0977, Plaintiffs Burlison, Poland, McNulty, and the Nevada Subclass members over age 60 are entitled to recover the damages they suffered as a result of Philips's deceptive trade practices: (a) the difference between the values of the Recalled Products as represented (their prices) paid and their actual values at the time of purchase ($0.00), or (b) the cost to replace the Recalled Products, and (c) other miscellaneous incidental and consequential damages. In addition, they are entitled to recover punitive damages, if appropriate, and reasonable attorneys' fees.

COUNT 33
New Hampshire Consumer Protection Act
N.H. Rev. Stat. Ann. § 358-A:1, *et seq*.
On Behalf of the New Hampshire Subclass

485. Plaintiffs incorporate by reference all preceding paragraphs.

486. Plaintiffs Vlahos and Lizotte brings this cause of action individually and on behalf of the members of the New Hampshire Subclass.

487. The New Hampshire Consumer Protection Act makes it unlawful to engage in "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." N.H. Rev. Stat. Ann. § 358-A:2.

488. Defendants engaged in unlawful methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiffs Vlahos and Lizotte and New Hampshire Subclass Members, in violation of N.H. Rev. Stat. Ann. § 358-A:2, including by concealing the true risks of the Recalled Products.

489. The above unfair or deceptive acts or practices by Defendants were conducted in "trade" or "commerce."

490. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous.

491. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiffs Vlahos and Lizotte and the New Hampshire Subclass members.

492. Plaintiffs Vlahos and Lizotte and New Hampshire Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

493. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiffs Vlahos and Lizotte and New Hampshire Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

494. Plaintiffs Vlahos and Lizotte and New Hampshire Subclass members seek relief under N.H. Rev. Stat. Ann. § 358-A:10, including, but not limited to injunctive relief, damages, treble damages, and attorneys' fees and costs.

495. A copy of this complaint is being sent to the New Hampshire Attorney General.

COUNT 34
New Jersey Consumer Fraud Act
N.J. Stat. Ann. §§ 56:8-1, *et seq*.
On Behalf of the New Jersey Subclass

496. Plaintiffs incorporate by reference all preceding paragraphs.

497. The New Jersey Consumer Fraud Act ("NJCFA") makes unlawful "[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice." N.J. Stat. Ann. § 56:8-2.

498. Defendants engaged in unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiffs Ryan and Jacobs and New Jersey Subclass Members, in violation of N.J. Stat. Ann. §§ 56:8-2, including by making statements or representations that were false or misleading

regarding the quality of the Recalled Products, and concealing the true risks of the Recalled Products.

499. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous.

500. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiffs Ryan and Jacobs and New Jersey Subclass members.

501. Plaintiffs Ryan and Jacobs and New Jersey Subclass members relied on Defendants' representations and omissions in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known of the true risks of purchasing or using the Recalled Products.

502. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiffs Ryan and Jacobs and New Jersey Subclass Members suffered an ascertainable loss of money or property, real or personal, as described above, including the purchase of the Recalled Products and the costs or repairing or replacing the Recalled Products in a timely manner.

503. Plaintiffs Ryan and Jacobs and New Jersey Subclass members seek relief under N.J. Stat. Ann. §§ 56:8-2.11 and 56:8-19, including, but not limited to a refund of all moneys acquired by Defendants for the Recalled Product, injunctive relief, damages, treble damages, and attorneys' fees and costs.

COUNT 35
New Mexico Unfair Practices Act
N.M. Stat. Ann. §§ 57-12-1, *et seq.*
On Behalf of the New Mexico Subclass

504. Plaintiffs incorporate by reference all preceding paragraphs.

505. Plaintiffs Jo Dawn Ward and Myron Fields bring this cause of action individually and on behalf of the members of the New Mexico Subclass.

506. The New Mexico Unfair Trade Practices Act, N.M. STAT. ANN. §§ 57-12-1, et seq. ("New Mexico UTPA") makes unlawful any "[u]nfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce." N.M. STAT. ANN. § 57:12-3. Trade or commerce includes the "sale or distribution of any services." N.M. STAT. ANN. § 57-12-2(C).

507. Defendants engaged in unfair or deceptive trade practices and unconscionable trade practices, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiffs and New Mexico Subclass Members, in violation of N.M. Stat. Ann. § 57-12-3, including by making statements or representations that were false or misleading regarding the quality of the Recalled Products and concealing the true risks of the Recalled Products.

508. The above unfair or deceptive acts or practices by Defendants were conducted in or affecting "commerce," as defined by *id.,* § 57-12-2(C).

509. The above unfair or deceptive trade practices and unconscionable trade practices by Defendants were immoral, unethical, oppressive, and unscrupulous, and the type that may, tend to, or does deceive or mislead any person.

510. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiffs and the New Mexico Subclass members.

511. Plaintiffs Ward and Fields and New Mexico Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

512. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiffs Ward and Fields and New Mexico Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

513. By engaging in the practices discussed above, including, but not limited to, Defendants' undisclosed defects, Defendants have violated N.M. Stat. Ann. § 57-12-2.

514. Plaintiffs Ward and Fields and New Mexico Subclass members seek relief under N.M. Stat. Ann. § 57-12-10, including, but not limited to injunctive relief, damages, and attorneys' fees and costs.

COUNT 36
N.Y. Gen. Bus. Law § 349
On Behalf of the New York Subclass

515. Plaintiffs incorporate by reference all preceding paragraphs.

516. Plaintiffs Scunziano and Gold bring this cause of action individually and on behalf of the members of the New York Subclass.

517. Plaintiffs Scunziano and Gold and the New York Subclass Members are "persons" within the meaning of New York General Business Law ("New York GBL"). N.Y. Gen. Bus. Law § 349(h).

518. Defendants are a "person," "firm," "corporation," or "association" within the meaning of N.Y. Gen. Bus. Law § 349.

519. New York's General Business Law § 349 makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce." N.Y. GEN. BUS. LAW § 349. Defendants' conduct, as described in this Complaint, constitutes "deceptive acts or practices" within the meaning of the New York GBL. All of Defendants' deceptive acts and practices, which were intended to mislead consumers in a material way in the process of purchasing Recalled Products, constitute conduct directed at consumers and "consumer-oriented." Further, Plaintiffs Scunziano and Gold and the New York Subclass Members suffered injury as a result of the deceptive acts or practice.

520. Defendants' actions, as set forth above, occurred in the conduct of business, trade or commerce.

521. Defendants participated in unfair or deceptive trade practices that violated the New York GBL as described below and alleged throughout the Complaint. By concealing the true risks of the Recalled Products, Defendants knowingly and intentionally misrepresented and omitted material facts in connection with the sale of the Recalled Products. Defendants systematically misrepresented, concealed, suppressed, or omitted material facts relating to the Recalled Products in the course of their business.

522. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Recalled Products.

523. Defendants' unfair and deceptive acts or practices occurred repeatedly in Defendants' trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

524. Defendants knew that the risks inherent in the Recalled Products made them not suitable for their intended use.

525. Defendants knew or should have known that their conduct violated the New York GBL.

526. Had Plaintiffs Scunziano and Gold and the New York Subclass Members known the truth about the Recalled Products, they would not have purchased the Recalled Products. Plaintiffs did not receive the benefit of their bargain as a result of Defendants' misconduct.

527. Defendants owed Plaintiffs Scunziano and Gold and the New York Subclass Members a duty to disclose the truth about the Recalled Products because Defendants: (a) possessed exclusive, specific and superior knowledge of the true risks of the Recalled Products; (b) intentionally concealed the foregoing from Plaintiffs Scunziano and Gold and the New York Subclass Members; and/or (c) made incomplete representations regarding the Recalled Products, while purposefully withholding material facts from Plaintiffs Scunziano and Gold and the New York Subclass Members that contradicted these representations.

528. Plaintiffs and the New York Subclass Members suffered injury in fact to a legally protected interest. As a result of Defendants' conduct, Plaintiffs and the New York Subclass Members were harmed and suffered actual damages.

529. Defendants' violations present a continuing risk to Plaintiffs Scunziano and Gold and the New York Subclass Members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

530. Pursuant to N.Y. Gen. Bus. Law § 349(h), Plaintiff and the New York Subclass Members seek actual damages or $50, whichever is greater, in addition to discretionary three times actual damages up to $1,000 for Defendants' willful and knowing violation of N.Y. Gen. Bus. Law § 349. Plaintiffs and the New York Subclass Members also seek attorneys' fees, an order enjoining Defendants' deceptive conduct, and any other just and proper relief available under the New York GBL.

COUNT 37
North Carolina Unfair and Deceptive Trade Practices Act
N.C. Gen. Stat. §§ 75-1.1, *et seq.*
On Behalf of the North Carolina Subclass

531. Plaintiffs incorporate by reference all preceding paragraphs.

532. Plaintiff Tony Jones brings this cause of action individually and on behalf of the members of the North Carolina Subclass.

533. North Carolina's Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, et seq. ("NCUDTPA"), prohibits a person from engaging in "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce[.]" The NCUDTPA provides a private right of action for any person injured "by reason of any act or thing done by any other person, firm or corporation in violation of" the NCUDTPA. N.C. Gen. Stat. § 75-16.

534. Defendants engaged in unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and North Carolina Subclass Members, in violation of N.C. Gen. Stat. § 75-1.1(a), including by making false representations or concealing the true risks of the Recalled Products.

535. The above unfair or deceptive acts or practices by Defendants were conducted in or affecting "commerce," as defined by *id.,* § 75-1.1(b).

536. The above unfair or deceptive acts or practices by Defendants were reasonably calculated to deceive class members and other consumers, and made with intent to deceive.

537. The above unfair or deceptive acts or practices by Defendants did in fact deceive class members and other consumers, causing them damage.

538. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous.

539. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the North Carolina Subclass members.

540. Plaintiff Tony Jones and North Carolina Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

541. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiffs and North Carolina Class Members suffered an ascertainable loss of money or property, real or personal.

542. Plaintiff Tony Jones and North Carolina Subclass members seek relief under N.C. Gen. Stat. §§ 75-16 and 75-16.1, including, but not limited to injunctive relief, damages, treble damages, and attorneys' fees and costs.

COUNT 38
North Dakota Consumer Protection Act
N.D. Cent. Code § 51-15-01, *et seq*.
On Behalf of the North Dakota Subclass

543. Plaintiffs incorporate by reference all preceding paragraphs.

544. Plaintiff Byers brings this cause of action individually and on behalf of the members of the North Dakota Subclass.

545. Under North Dakota law, the use of deceptive or unconscionable acts or practices in connection with the sale or advertisement of any merchandise is unlawful. N.D. Cent. Code § 51-15-02.

546. Defendants engaged in unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff Byers and North Dakota Subclass Members, in violation of N.D. Cent. Code § 51-15-01, et. seq., including by misrepresenting the true quality of the Recalled Products, concealing the true risks of the Recalled Products.

547. The above unfair methods of competition and unfair or deceptive acts or practices

by Defendants were immoral, unethical, oppressive, and unscrupulous.

548. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff Byers and the North Dakota Subclass members.

549. Plaintiff Byers and North Dakota Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

550. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff Byers and North Dakota Subclass Members suffered an ascertainable loss of money or property, real or personal, as described above.

551. Plaintiff Byers and North Dakota Subclass members seek relief under N.D. Cent. Code. § 51-15-09, *et seq*., including, but not limited to injunctive relief, compensatory damages, treble damages, and attorneys' fees and costs. N.D. Cent. Code. § 51-15-09.

COUNT 39
Ohio Consumer Sales Practices Act
Ohio Rev. Code Ann. §§ 1345.01, *et seq.*
On Behalf of the Ohio Subclass

552. Plaintiffs incorporate by reference all preceding paragraphs.

553. Plaintiff Ward brings this cause of action individually and on behalf of the members of the Ohio Subclass.

554. Ohio make it unlawful to "commit an unfair or deceptive act or practice in connection with a consumer transaction" Ohio Rev. Code Ann. § 1345.02.

555. Defendants engaged in unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and Ohio Subclass Members, in violation of Ohio Rev. Code Ann. §§ 1345.021 *et seq*., including by misrepresenting the true quality of the Recalled

Products and concealing the true risks of the Recalled Products.

556. The above unfair methods of competition and unfair or deceptive acts or practices by Defendants were immoral, unethical, oppressive, and unscrupulous.

557. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff Ward and Ohio Subclass members.

558. Plaintiff Ward and Ohio Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

559. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff and Ohio Subclass Members suffered an ascertainable loss of money or property, real or personal, as described above.

560. Plaintiff Ward and Ohio Subclass members seek relief under Ohio Rev. Code § 1345.09, *et seq*., including, but not limited to injunctive relief, damages, and attorneys' fees and costs.

COUNT 40
Oklahoma Consumer Protection Act
Okla. Stat. tit. 15, § 751, *et seq.*
On Behalf of the Oklahoma Subclass

561. Plaintiffs incorporate by reference all preceding paragraphs.

562. Plaintiff Wells brings this cause of action individually and on behalf of the members of the Oklahoma Subclass.

563. The Oklahoma Consumer Protection Act makes it unlawful to make a misrepresentation, omission or other practice that has deceived or could reasonably be expected to deceive or mislead a person to the detriment of that person," or engage in "any practice which

offends established public policy or if the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." Okla. Stat. tit. 15, § 752.

564. Defendants engaged in unfair methods of competition and unfair or deceptive acts or practices, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and Oklahoma Subclass Members, in violation of Okla. Stat. tit. 15, § 752, including by concealing the true risks of the Recalled Products.

565. The above unfair methods of competition and unfair or deceptive acts or practices by Defendants were conducted as part of a "consumer transaction," as defined by Okla. Stat. tit. 15, § 752.

566. The above unfair methods of competition and unfair or deceptive acts or practices by Defendants were immoral, unethical, oppressive, and unscrupulous.

567. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff Wells and the Oklahoma Subclass members.

568. Plaintiff Wells and Oklahoma Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

569. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff Wells and Oklahoma Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

570. Plaintiff Wells and Oklahoma Subclass members seek relief under Okla. Stat. tit. 15, § 75, *et seq*., including, but not limited to injunctive relief, restitution, statutory damages, compensatory damages, civil penalties and attorneys' fees and costs.

COUNT 41
Oregon Unlawful Trade Practices Law
Or. Rev. Stat. §§ 646.605, *et seq.*
On Behalf of the Oregon Subclass

571. Plaintiffs incorporate by reference all preceding paragraphs.

572. Plaintiff Mclean brings this cause of action individually and on behalf of the members of the Oregon Subclass.

573. Oregon make it unlawful to for any person to employ "any unconscionable tactic in connection with selling, renting or disposing of real estate, goods or services, or collecting or enforcing an obligation." Or. Rev. Stat. § 646.607(1).

574. Defendants engaged in unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and Oregon Subclass Members, in violation of Or. Rev. Stat. §§ 646.605, *et seq*., including by misrepresenting the true quality of the Recalled Products, concealing the true risks of the Recalled Products..

575. The above unfair methods of competition and unfair or deceptive acts or practices by Defendants were conducted in "[t]rade" and/or "commerce," as defined by Or. Rev. Stat. § 646.605(8).

576. The above unfair methods of competition and unfair or deceptive acts or practices by Defendants were immoral, unethical, oppressive, and unscrupulous.

577. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Oregon Subclass members.

578. Plaintiff Mclean and Oregon Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

579. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff Mclean and Oregon Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

580. Plaintiff Mclean and Oregon Subclass members seek relief under Or. Rev. Stat. § 646.638, *et seq*., including, but not limited to injunctive relief, restitution, statutory damages, compensatory damages, punitive damages, civil penalties and attorneys' fees and costs.

COUNT 42
Pennsylvania Unfair Trade Practices and Consumer Protection Law
73 P.S. §§ 201-1, *et seq*.
On Behalf of the Pennsylvania Subclass

581. Plaintiffs incorporate by reference all preceding paragraphs.

582. Plaintiff Koenck brings this cause of action individually and on behalf of the members of the Pennsylvania Subclass.

583. Plaintiff Koenck and the Pennsylvania Subclass Members purchased their Recalled Products primarily for personal, family or household purposes within the meaning of 73 P.S. § 201-9.2.

584. All of the acts complained of herein were perpetrated by Defendants in the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

585. The Pennsylvania Unfair Trade Practices and Consumer Protection Law ("Pennsylvania CPL") prohibits unfair or deceptive acts or practices, including, "[e]ngaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding." 73 P.S. § 201-2(4). Defendants engaged in unlawful trade practices, and unfair or deceptive acts or practices that violated Pennsylvania CPL.

586. Defendants participated in unfair or deceptive trade practices that violated the Pennsylvania CPL as described below and alleged throughout the Complaint. By concealing the

true risks of the Recalled Products, Defendants knowingly and intentionally misrepresented and omitted material facts in connection with the sale the Recalled Products. Defendants systematically misrepresented, concealed, suppressed, or omitted material facts relating to the Recalled Products in the course of their business.

587. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the Recalled Products.

588. Defendants' unfair and deceptive acts or practices occurred repeatedly in Defendants' trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

589. Defendants knew that the risks inherent in the Recalled Products made them not suitable for their intended use.

590. Defendants knew or should have known that their conduct violated the Pennsylvania CPL.

591. Had Plaintiff Koenck and the Pennsylvania Subclass Members known the truth about the Recalled Products, they would not have purchased the Recalled Products. Plaintiff did not receive the benefit of their bargain as a result of Defendants' misconduct.

592. Defendants owed Plaintiff and the Pennsylvania Subclass Members a duty to disclose the truth about the Recalled Products because Defendants: (a) possessed exclusive, specific and superior knowledge of the true risks of the Recalled Products; (b) intentionally concealed the foregoing from Plaintiff and the Pennsylvania Subclass Members; and/or (c) made incomplete representations regarding the Recalled Products, while purposefully withholding

material facts from Plaintiff and the Pennsylvania Subclass Members that contradicted these representations.

593. Plaintiff Koenck and the Pennsylvania Subclass Members suffered injury in fact to a legally protected interest. As a result of Defendants' conduct, Plaintiff Koenck and the Pennsylvania Subclass Members were harmed and suffered actual damages.

594. Defendants' violations present a continuing risk to Plaintiff Koenck and the Pennsylvania Subclass Members, as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

595. Defendants are liable to Plaintiff and the Pennsylvania Subclass Members for treble their actual damages or $100, whichever is greater, and attorneys' fees and costs under 73 P.S. § 201-9.2(a). Plaintiff Koenck and the Pennsylvania Subclass Members are also entitled to an award of punitive damages given that Defendants' conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference to the rights of others.

COUNT 43
Rhode Island Unfair Trade Practice and Consumer Protection Act
R.I. Gen. Laws §§ 6-13.1-1, *et seq*.
On Behalf of the Rhode Island Subclass

596. Plaintiffs incorporate by reference all preceding paragraphs.

597. Plaintiff Lamontagne brings this cause of action individually and on behalf of the members of the Rhode Island Subclass.

598. The Rhode Island Unfair Trade Practice and Consumer Protection Act ("Rhode Island Act") identifies several types of "unfair" and/or "deceptive trade practices, but also incorporates by reference "the Federal Trade Commission's and federal courts' interpretations of section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1)," rather than set forth specific definitions of those operative terms. R.I. Gen. Laws § 6-13.1-2.

599. Rhode Island has adopted a three-part test to determine whether an act is "deceptive": (1) a representation, omission, or practice, that (2) is likely to mislead consumers acting reasonably under the circumstances, and (3), the representation, omission, or practice is material," meaning the representation is important to the consumer and likely to affect their decisions with respect to the product.

600. Defendants engaged in unlawful, unfair, and deceptive acts and practices, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and Rhode Island Subclass Members, in violation of R.I. Gen. Laws §§ 6-13.1-1, *et seq*., including by misrepresenting the true quality of the Recalled Products and concealing the true risks of the Recalled Products.

601. The above unfair methods of competition and unfair or deceptive acts or practices by Defendants were conducted in "[t]rade" and/or "commerce," as defined by R.I. Gen. Laws § 6-13.1-1(5).

602. The above unfair methods of competition and unfair or deceptive acts or practices by Defendants were immoral, unethical, oppressive, and unscrupulous.

603. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Rhode Island Subclass members.

604. Defendants' actions were material to Plaintiff and Rhode Island Subclass members, who relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

605. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff and Rhode Island Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

606. Plaintiff and Rhode Island Subclass members seek relief under R.I. Gen. Laws §§ 6-13.1-5.2, including, but not limited to injunctive relief, restitution, statutory damages, compensatory damages, punitive damages, and attorneys' fees and costs.

COUNT 44
South Carolina Unfair Trade Practices Act
S.C. Code Ann. §§ 39-5-10, *et seq.*
On Behalf of the South Carolina Subclass

607. Plaintiffs incorporate by reference all preceding paragraphs.

608. Plaintiffs Harris Jenkins and Vicki Chambers bring this cause of action individually and on behalf of the members of the South Carolina Subclass.

609. The South Carolina Unfair Trade Practices Act adopts the interpretations given by the Federal Trade Commission and the Federal Courts to Section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) to determine what conduct constitutes unfair or deceptive acts and practices. S.C. Code Ann. § 39-5-20.

610. Defendants engaged in unlawful methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiffs Jenkins and Chambers and South Carolina Subclass Members, in violation of S.C. Code Ann. § 39-5-20, including by concealing the true risks of the Recalled Products.

611. The above unfair or deceptive acts or practices by Defendants were conducted in "trade" or "commerce," as defined by S.C. Code Ann. § 39-5-10(b).

612. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous.

613. The above unfair and deceptive practices and acts by Defendants have impacted the South Carolina public at large if Defendants are not forced to cease engaging in such acts and practices, they are likely to continue.

614. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiffs Chambers and Jenkins and the South Carolina Subclass members.

615. Plaintiffs Chambers and Jenkins and South Carolina Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

616. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiffs and South Carolina Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

617. Plaintiffs and South Carolina Subclass members seek relief under S.C. Code § 39-5-140, including, but not limited to restitution, statutory damages, compensatory damages, punitive damages, civil penalties and attorneys' fees and costs.

COUNT 45
Tennessee Consumer Protection Act
Tenn. Code Ann. §§ 47-18-101, *et seq*.
On Behalf of the Tennessee Subclass

618. Plaintiffs incorporate by reference all preceding paragraphs.

619. Plaintiff Craig brings this cause of action individually and on behalf of the members of the Tennessee Subclass.

620. The Tennessee Consumer Protection Act ("TNCPA") was enacted to "protect consumers…from those who engage in unfair or deceptive acts or practices in the conduct of any trade or commerce in part or wholly within [Tennessee]." Tenn. Code Ann. § 47-18-102(2).

621. The TNCPA makes unlawful, among other things, "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have" and "[r]epresenting that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another." Tenn. Code Ann. § 47-18-104.

622. Defendants engaged in unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and Tennessee Subclass Members, in violation of Tenn. Code Ann. §§ 47-18-101, *et seq*., including by making statements or representations that were false or misleading regarding the quality of the Recalled Products and concealing the true risks of the Recalled Products .

623. Defendants intended that other persons rely on the above unfair and deceptive practices and acts by Defendants were material misrepresentations of a presently existing or past fact, and their reliance was reasonable.

624. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous.

625. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Tennessee Subclass members.

626. Plaintiff Craig and Tennessee Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

627. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff Craig and Tennessee Subclass members suffered an ascertainable loss of money or property, real or personal, as described above.

628. Plaintiff Craig and Tennessee Subclass members seek relief under Tenn. Code § 47-18-108-109, including, but not limited to injunctive relief, compensatory damages, statutory damages, punitive damages, statutory damages, civil penalties and attorneys' fees and costs.

COUNT 46
Utah Consumer Sales Practices Act
Utah Code Ann. §§ 13-11-1, *et seq.*
On Behalf of the Utah Subclass

629. Plaintiffs incorporate by reference all preceding paragraphs.

630. Plaintiff Nagy brings this cause of action individually and on behalf of the members of the Utah Subclass.

631. The Utah Consumer Sales Practices Act, Utah Code Ann. §§ 13-11-1, *et seq*. makes it unlawful to, among other things, "knowingly or intentionally" "indicate[] that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not" or "that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not." Utah Code Ann. § 13-11-4.

632. A "Consumer transaction" means a sale, lease, assignment, award by chance, or other written or oral transfer or disposition of goods, services, or other property, both tangible and intangible (except securities and insurance) to, or apparently to, a person for…primarily personal, family, or household purposes." Utah Code Ann. § 13-11-3.

633. Defendants engaged in unfair or deceptive trade practices and unconscionable trade practices, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and Utah Subclass Members, in violation of Utah Code Ann. §§ 13-11-1, *et seq*.,

including by making statements or representations that were false or misleading regarding the quality of the Recalled Products and concealing the true risks of the Recalled Products.

634. The above unfair or deceptive trade practices and unconscionable trade practices by Defendants were immoral, unethical, oppressive, and unscrupulous, and the type that may, tend to, or does deceive or mislead any person.

635. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and the Utah Subclass members.

636. Plaintiff Nagy and Utah Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

637. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff Nagy and Utah Subclass Members suffered an ascertainable loss of money or property, real or personal, as described above.

638. By engaging in the practices discussed above, including, but not limited to, Defendant's undisclosed defects, Defendant has violated Utah Code Ann. §§ 13-11-1, *et seq*.

639. Plaintiff Nagy and Utah Subclass members seek relief under Utah Code Ann. § 13-11-17 and -19, including, but not limited to injunctive relief, compensatory damages, statutory damages, civil penalties and attorneys' fees and costs.

COUNT 47
Vermont Consumer Fraud Act
Vt. Stat. Ann. tit. 9, §§ 2451, *et seq*.
On Behalf of the Vermont Subclass

640. Plaintiffs incorporate by reference all preceding paragraphs.

641. Plaintiff Martin brings this cause of action individually and on behalf of the members of the Vermont Subclass.

642. The Vermont Consumer Fraud Act makes it unlawful to engage in "[u]nfair methods of competition and unfair or deceptive acts or practices in commerce." Vt. Stat. Ann. tit. 9, § 2453, et. seq.

643. Defendants engaged in unlawful methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and Vermont Subclass Members, in violation of Vt. Stat. Ann. tit. 9, § 2453 including by concealing the true risks of the Recalled Products.

644. The above unfair or deceptive acts or practices by Defendants were conducted in "trade" or "commerce."

645. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous.

646. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff Martin and the Vermont Subclass members.

647. Plaintiff Martin and Vermont Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of the Recalled Products had they known that the Recalled Products were defective.

648. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff Martin and Vermont Subclass Members suffered an ascertainable loss of money or property, real or personal, as described above.

649. Plaintiff Martin and Vermont Subclass members seek relief Vt. Stat. Ann. tit. 9, § 2461(b). including, but not limited to injunctive relief, damages, treble damages, and attorneys' fees and costs.

COUNT 48
Virginia Consumer Protection Act
Va. Code Ann. §§ 59.1-196, *et seq.*
On Behalf of the Virginia Subclass

650. Plaintiffs incorporate by reference all preceding paragraphs.

651. Plaintiffs Rose and Gorris bring this cause of action individually and on behalf of the members of the Virginia Subclass.

652. Virginia Consumer Protection Act, Va. Code Ann. §§ 59.1-196, *et seq*. ("VCPA") was enacted to "promote fair and ethical standards of dealings between suppliers and the consuming public."

653. Philips committed the following acts declared unlawful and prohibited by Va. Code Ann. § 59.1-200: (a) misrepresenting the qualities, characteristics, ingredients, uses and benefits of the Recalled Products by falsely representing they are a safe and effective treatment for Obstructive Sleep Apnea and other breathing conditions; (b) misrepresenting that the Recalled Products were of a particular standard, quality or grade by falsely representing they are a safe and effective treatment for Obstructive Sleep Apnea and other breathing conditions; and (c) using other deception, false promise or misrepresentation in connection with the transactions that resulted in Plaintiffs Gorris, Rose, and the Virginia Class members' ownership and use of the Recalled Products.

654. Because they suffered loss as a result of Philips' violations of the VCPA, Plaintiffs Gorris, Rose, and the Virginia Class members may each recover actual damages or $500, whichever is greater, pursuant to Va. Code Ann. § 59.1-204. Because Philips' violations were willful, the jury may increase the damages to an amount not exceeding three times the actual damages or $1,000, whichever is greater. The actual damages are: (a) the difference between the values of the Recalled Products as represented (their prices) and their actual values at the time of

purchase ($0.00), or (b) the cost to replace the Recalled Products, and (c) other miscellaneous incidental and consequential damages. In addition, Plaintiffs Gorris, Rose, and the Virginia Class members are entitled to recover reasonable attorneys' fees and court costs. The Court may award additional relief pursuant to Va. Code Ann. § 59.1-205.

COUNT 49
Washington Consumer Protection Act
Wash. Rev. Code § 19.86.020, *et. seq*.
On Behalf of the Washington Subclass

655. Plaintiff Lopez incorporates by reference all preceding paragraphs.

656. Plaintiff Lopez brings this cause of action individually and on behalf of the members of the Washington Subclass.

657. The Washington Consumer Protection Act makes it unlawful to engage in "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Wash. Rev. Code § 19.86.020.

658. Defendants engaged in unfair methods of competition and unfair or deceptive acts or practices, with respect to the sale and advertisement of the Recalled Products purchased by Plaintiff and Washington Subclass Members, in violation of Wash. Rev. Code §§ 19.86.010, *et seq.*, including by concealing the true risks of the Recalled Products.

659. The above unfair methods of competition and unfair or deceptive acts or practices by Defendants were conducted as part of "trade" or "commerce" as defined by Wash. Rev. Code § 19.86.010.

660. The above unfair methods of competition and unfair or deceptive acts or practices by Defendants were immoral, unethical, oppressive, and unscrupulous.

661. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiffs and the Washington Subclass members.

662. Plaintiff and Washington Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

663. As a direct and proximate result of Defendants' unfair methods of competition and unfair or deceptive acts or practices, Plaintiff and Washington Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

664. Plaintiff and Washington Subclass members seek relief under Wash. Rev. Code §§ 19.86.090, including, but not limited to injunctive relief, restitution, statutory damages, compensatory damages, civil penalties and attorneys' fees and costs.

COUNT 50
Wisconsin False Advertising Act
Wis. Stat. § 100.18
On Behalf of the Wisconsin Subclass

665. Plaintiffs incorporate by reference all preceding paragraphs.

666. Plaintiff Alt brings this cause of action individually and on behalf of the members of the Wisconsin Subclass.

667. Wisconsin law prohibits companies from making "untrue, deceptive, or misleading" statements in any "notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, [or] label" in selling merchandise. Wis. Stat. § 100.18(1).

668. Defendants made "untrue, deceptive or misleading" statement with respect to the sale and advertisement of the Recalled Products purchased by Plaintiffs and Wisconsin Subclass Members, in violation of Wash. Rev. Code §§ 19.86.010, *et seq.*, including by concealing the true risks of the Recalled Products.

669. The above untrue, deceptive, or misleading acts or practices by Defendants were immoral, unethical, oppressive, and unscrupulous.

670. Defendants' actions were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff Alt and the Wisconsin Subclass members.

671. Plaintiff Alt and Wisconsin Subclass members relied on Defendants' representations in that they would not have purchased, chosen, and/or paid for all or part of Recalled Products had they known that the Recalled Products were defective.

672. As a direct and proximate result of Defendants' unfair methods of competition and unfair or deceptive acts or practices, Plaintiff Alt and Wisconsin Class Members suffered an ascertainable loss of money or property, real or personal, as described above.

673. Plaintiff Alt and Wisconsin subclass members have suffered pecuniary loss and seek damages, including double damages, costs, and attorneys' fees. Wis. Stat. § 108.18(11)(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request, individually and on behalf of the Class and Subclasses, that this Court:

A. determine that the claims alleged herein may be maintained as a class action under Rule 23(a), (b)(2), and/or (b)(3) of the Federal Rules of Civil Procedure on behalf of the Nationwide Class and Subclasses defined above, and designate Plaintiffs as the class representatives and Plaintiffs' counsel as counsel for the Nationwide Class and Subclasses;

B. award equitable and injunctive relief, including but not limited to, requiring Defendants to institute a medical monitoring program for Class and Subclass members, restitution, and disgorgement of profits;

C. award all actual, general, special, incidental, punitive, and consequential damages to which Plaintiffs and Class members are entitled;

D. award pre-judgment and post-judgment interest on such monetary relief;

E. award reasonable attorneys' fees and costs; and

F. grant such further and other relief that this Court deems appropriate.

JURY DEMAND

Plaintiffs and the Class demand a trial by jury on all issues so triable.

Dated: August 16, 2021

Respectfully Submitted,

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EXHIBIT B

	First Name	Last Name	Device	State
1	Diana	Lapham	Philips DreamStation GO CPAP, APAP	AK
2	Elliott	Baez	Philips DreamStation CPAP, Auto CPAP, BiPAP	AL
3	Adam	Berry	Philips DreamStation CPAP, Auto CPAP, BiPAP	AL
4	Rodney	Bragg	Philips DreamStation ASV	AL
5	Allandra	Carpenter	Philips DreamStation CPAP, Auto CPAP, BiPAP	AL
6	George	Elijah	Philips DreamStation CPAP, Auto CPAP, BiPAP	AL
7	Mark	English	Philips DreamStation CPAP, Auto CPAP, BiPAP	AL
8	Coby	Hirschler	Philips DreamStation CPAP, Auto CPAP, BiPAP	AL
9	Ernest	Holland	Philips DreamStation CPAP, Auto CPAP, BiPAP	AL
10	Charmaris	Mack	REMStar System One	AL
11	Darryl	Mann	Philips SystemOne, ASV4	AL
12	Justin	Messick	Philips DreamStation CPAP, Auto CPAP, BiPAP	AL
13	Jack	Morgan	Philips REMStar SE Auto CPAP	AL
14	Billy	Ramsey	Philips DreamStation CPAP, Auto CPAP, BiPAP	AL
15	John	Wynn	Philips DreamStation CPAP, Auto CPAP, BiPAP	AL
16	Marcus	Gardner	Philips DreamStation CPAP, Auto CPAP, BiPAP	AR
17	Gary	Garrett	Philips DreamStation CPAP, Auto CPAP, BiPAP	AR
18	Matt	Jones	Philips DreamStation CPAP, Auto CPAP, BiPAP	AR
19	Christina	Mitchell	Philips DreamStation CPAP, Auto CPAP, BiPAP	AR
20	Robert Wayne	Morphew	Philips DreamStation CPAP, Auto CPAP, BiPAP	AR
21	Christopher	Parent	Philips DreamStation CPAP, Auto CPAP, BiPAP	AR
22	Hans	Pfeil	Philips DreamStation CPAP, Auto CPAP, BiPAP	AR
23	Scott	Sickles	Philips DreamStation CPAP, Auto CPAP, BiPAP	AR
24	Jason	Siebert	Philips DreamStation CPAP, Auto CPAP, BiPAP	AR
25	Michael	Birchall	Philips Trilogy 100 Ventilator	AZ
26	Sean	Douglas	Philips DreamStation CPAP, Auto CPAP, BiPAP	AZ
27	Jacob	Geller	Philips Trilogy 100 Ventilator	AZ
28	Toni	Hurley	Philips DreamStation CPAP, Auto CPAP, BiPAP	AZ
29	Sean	Purdy	Philips DreamStation CPAP, Auto CPAP, BiPAP	AZ
30	Sue H	Savitt	Philips DreamStation CPAP, Auto CPAP, BiPAP	AZ
31	Maria	Saylor	Philips DreamStation CPAP, Auto CPAP, BiPAP	AZ
32	Susan	Bartholome	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
33	Richard	Bartle	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
34	Madeleine	Belanger	Philips SystemOne (Q Series) Remstar Auto A-Flex	CA
35	Anita	Bell	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
36	Peter	Bernasconi	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
37	Patricia	Bess-Ellis	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
38	Susan	Bowman	Philips REMStar SE Auto CPAP	CA
39	Ulonda	Brewster	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
40	Anthony	Browne	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
41	Terry	Campbell	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
42	Joseph	Chambers	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
43	Susann	Coffman	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
44	Andre	Crenshaw	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
45	Salvatore	D\'Amico	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
46	Brad	Davis	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
47	Loretta	Ervin	Philips Trilogy 100 Ventilator	CA
48	Wilfredo	Gonzalez	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
49	Steven	Goodwin	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
50	Thomas	Hardy	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
51	Paul	Kirchubel	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
52	Raquel	Mckuen	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
53	Stanley	Medeiros	Philips SystemOne Remstar Auto Aflex	CA
54	John	Miller	REMStar Auto A Flex	CA
55	Michael	Myers	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
56	William	O'Leary	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
57	Lou	Polcari	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
58	William	Torres	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA
59	John	Ucker	Philips DreamStation ASV	CA
60	Sherri	Wesley	Philips DreamStation CPAP, Auto CPAP, BiPAP	CA

61	Paul	Balon	Philips REMStar SE Auto CPAP	CO
62	Wally	Brauer	Philips DreamStation Auto CPAP	CO
63	Barry	Holliefield	Philips DreamStation CPAP, Auto CPAP, BiPAP	CO
64	Janet	Mullen	Philips Trilogy 100 Ventilator	CO
65	Andrew	Esposito	Philips DreamStation CPAP, Auto CPAP, BiPAP	CT
66	Linda	Ness	Philips DreamStation CPAP, Auto CPAP, BiPAP	CT
67	Kathryn	Piscitello	Philips DreamStation ASV	CT
68	Scott	Roncarti	Philips DreamStation CPAP, Auto CPAP, BiPAP	CT
69	Earle	Wright	Philips DreamStation CPAP, Auto CPAP, BiPAP	CT
70	Karla	Gilchrist Saunders	Philips DreamStation CPAP, Auto CPAP, BiPAP	DC
71	Charles	Pinck	Philips DreamStation GO CPAP, APAP	DC
72	Eric	Kraus	Philips DreamStation CPAP, Auto CPAP, BiPAP	DE
73	Michael	Pantano	REMStar Pro C Flex	DE
74	Joyce	Akridge	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
75	Richard	Bielinski	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
76	Mark	Blair	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
77	Cesar	Blanco	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
78	Billy	Bowen Jr	System one REMstar Pro C-flex+	FL
79	Nina	Boyd	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
80	Robert	Bradley	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
81	Carol	Bryant	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
82	Dana	Burkett	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
83	Andres	Cardona	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
84	Steve	Crowley	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
85	Sandra	Decker	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
86	Michael	Derrick	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
87	Vance	Devane	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
88	Rita	Gonzalez	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
89	Patricio	Gonzalez	Philips Garbin Plus, Aeris, LifeVent Ventilator	FL
90	Benjamin	Hart	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
91	Richard	Holloway	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
92	David	Hollows	Philips SystemOne, ASV4 & DreamStation CPAP	FL
93	Quintina	Holmes	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
94	Kenneth	Howse	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
95	Nancy	Infield	Philips SystemOne (Q Series)	FL
96	Mary	Klett	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
97	Ronald	Knight	Philips REMStar SE Auto CPAP	FL
98	Richard	Maya	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
99	Estrilia	Merry	Philips Trilogy 100 Ventilator	FL
100	Tyrone	Millen	Philips REMStar SE Auto CPAP	FL
101	Ron	Palermo	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
102	Norma	Pérez	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
103	Karen	Perkins	Philips DreamStation GO CPAP, APAP	FL
104	Lewis	Piper	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
105	Bart	Plaskoff	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
106	David	Pruitt	Philips DreamStation CPAP, Auto CPAP, BiPAP & REMstar	FL
107	Freddie	Rohland	Philips Auto BiPAP	FL
108	Henry	Rosenfelder	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
109	Michael	Rossignol	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
110	Miki	Sigmon	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
111	Brian	Smith	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
112	William	Taylor	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
113	Kathy	Thomas	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
114	Danial	Turner	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
115	Joseph	Underwood	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
116	Karl	Welhart	Philips DreamStation CPAP, Auto CPAP, BiPAP	FL
117	Clyde	Gilbert	Philips REMStar SE Auto CPAP	GA
118	Lloyd	Grant	Philips REMStar SE Auto CPAP (System One)	GA
119	Bruce	Kubler	Philips DreamStation CPAP, Auto CPAP, BiPAP	GA
120	Walter	Notheis	Philips DreamStation ASV	GA
121	Michael	Slentz	Philips DreamStation CPAP, Auto CPAP, BiPAP	GA

122	Diane	Strickland	Philips DreamStation CPAP, Auto CPAP, BiPAP	GA
123	Dean	De Jesus	Philips DreamStation BiPAP	HI
124	Richard	Puhalla	Philips DreamStation CPAP, Auto CPAP, BiPAP	HI
125	David	Allen	Philips DreamStation CPAP, Auto CPAP, BiPAP	IA
126	James	Berg	Philips DreamStation CPAP, Auto CPAP, BiPAP	IA
127	Sandy	Dix	Philips DreamStation CPAP, Auto CPAP, BiPAP	IA
128	Douglas	Dix	Philips DreamStation CPAP, Auto CPAP, BiPAP	IA
129	Rich	Goodwin	Philips SystemOne (Q Series)	IA
130	Milne	Rundle	REMStar PRO-DOM	IA
131	Tim	Carpenter	Philips DreamStation CPAP	IL
132	Tishla	Daniel	Philips DreamStation CPAP, Auto CPAP, BiPAP	IL
133	Pattiyal	Lukose	Philips DreamStation CPAP, Auto CPAP, BiPAP	IL
134	Denis	Murphy	Philips DreamStation CPAP, Auto CPAP, BiPAP	IL
135	Dennis	Smentek	Philips DreamStation ASV	IL
136	Vicki	Tunks	Philips DreamStation CPAP, Auto CPAP, BiPAP & SystemOne BiPAP Auto	IL
137	Shawn	Woodruff	Philips DreamStation CPAP, Auto CPAP, BiPAP	IL
138	Neil	Younkin	Philips DreamStation CPAP, Auto CPAP, BiPAP	IL
139	Daryal	Higgins	Philips Trilogy 100 Ventilator	IN
140	Leroy	Langel	Philips DreamStation CPAP, Auto CPAP, BiPAP	IN
141	Stacy	Smith	Philips DreamStation CPAP, Auto CPAP, BiPAP	IN
142	Andrew	Swain	Philips DreamStation CPAP, Auto CPAP, BiPAP	IN
143	Nancie	Veldhuizen	Philips DreamStation CPAP, Auto CPAP, BiPAP	IN
144	Tony	Allred	Philips DreamStation CPAP, Auto CPAP, BiPAP	KS
145	Andrew	Fisher	Philips DreamStation CPAP, Auto CPAP, BiPAP	KS
146	Brent	Holladay	Philips DreamStation CPAP, Auto CPAP, BiPAP	KS
147	Adam	Ricketts	Philips DreamStation CPAP, Auto CPAP, BiPAP	KS
148	Rebecca	Vallejo	Philips DreamStation CPAP, Auto CPAP, BiPAP	KS
149	Mia	Coleman	Philips DreamStation CPAP, Auto CPAP, BiPAP	KY
150	Earlene	Conner	Philips DreamStation CPAP, Auto CPAP, BiPAP	KY
151	Lagena	Ison	Philips DreamStation CPAP, Auto CPAP, BiPAP	KY
152	Terry	Jackson	Philips SystemOne, ASV4	KY
153	Jacob	Klein	Philips DreamStation GO CPAP, APAP	KY
154	Brianna	Ledbetter	Philips DreamStation CPAP, Auto CPAP, BiPAP	KY
155	Aaron	Mason	Philips DreamStation CPAP, Auto CPAP, BiPAP	KY
156	Jose	Rodriguez	Philips DreamStation CPAP, Auto CPAP, BiPAP	KY
157	Larry	Stromberg	Philips Trilogy 100 Ventilator	KY
158	Anthony	Antoine	Philips DreamStation CPAP, Auto CPAP, BiPAP	LA
159	Stephanie	Dove	Philips DreamStation CPAP, Auto CPAP, BiPAP	LA
160	Shannon	Finley	Philips DreamStation CPAP, Auto CPAP, BiPAP	LA
161	Scott	Hill	Philips DreamStation CPAP, Auto CPAP, BiPAP	LA
162	Levert	Kemp	Philips DreamStation CPAP, Auto CPAP, BiPAP	LA
163	Fawad	Khan	Philips DreamStation GO CPAP, APAP	LA
164	Marjorie	Mcgee	Philips DreamStation CPAP, Auto CPAP, BiPAP	LA
165	Mary	Mingo	Philips DreamStation CPAP, Auto CPAP, BiPAP	LA
166	Keith	Pellerin	Philips DreamStation CPAP, Auto CPAP, BiPAP	LA
167	Pedro	Ramos	Philips REMStar SE Auto CPAP	LA
168	Christian	Rice	Philips DreamStation CPAP, Auto CPAP, BiPAP	LA
169	David	Rollins	Philips DreamStation CPAP, Auto CPAP, BiPAP	LA
170	Jairo	Santanilla, Sr.	Philips DreamStation CPAP, Auto CPAP, BiPAP	LA
171	Scott	Bordeleau	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
172	Lennart	Bourin	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
173	Elizabeth	Chaves	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
174	Francis	Crowley	Philips REMStar SE Auto CPAP & DreamStation	MA
175	Jessica	Deisenrieder	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
176	Mark	Horenstein	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
177	Carol	Larkin	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
178	Christopher	Mackin	Philips DreamStation CPAP, Auto CPAP, BiPAP & DreamStation Go	MA
179	Seth	Mills	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
180	Thomas	Patria	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
181	Deven	Pearson	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
182	Theresa	Stevenson	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA

183	Anne	Sullivan-Soydan	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
184	Nancy	Sutcliffe	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
185	Harry	Traxler Ii	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
186	Lori	Tritto	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
187	Melissa	Westbrook	Philips DreamStation CPAP, Auto CPAP, BiPAP	MA
188	James	Colbert	Philips DreamStation CPAP, Auto CPAP, BiPAP	MD
189	Robert	Ketchum	Philips DreamStation CPAP, Auto CPAP, BiPAP	MD
190	Alexander	Mehner	Philips DreamStation CPAP, Auto CPAP, BiPAP	MD
191	Gracie	Moss	Philips DreamStation CPAP, Auto CPAP, BiPAP	MD
192	Elliott	Ratliff	Philips DreamStation CPAP, Auto CPAP, BiPAP	MD
193	David	Sherman	Philips DreamStation CPAP, Auto CPAP, BiPAP	MD
194	Kenneth	Wease	Philips DreamStation CPAP, Auto CPAP, BiPAP	MD
195	Cathy	Whitten	Philips DreamStation CPAP, Auto CPAP, BiPAP	MD
196	John	Wood	Philips SystemOne (Q Series)	MD
197	Boris	Zusin	Philips DreamStation CPAP, Auto CPAP, BiPAP	MD
198	Peggy	Bayliss	Philips DreamStation CPAP, Auto CPAP, BiPAP	ME
199	William	Picher	Philips DreamStation CPAP, Auto CPAP, BiPAP	ME
200	Belinda	Conarty	Philips SystemOne, ASV4	MI
201	Yana	Freeman	Philips DreamStation CPAP, Auto CPAP, BiPAP	MI
202	Maurice	Groce	Philips DreamStation CPAP, Auto CPAP, BiPAP	MI
203	Eric	Heard	REMStar System One	MI
204	Crystal	Martin	Philips DreamStation CPAP, Auto CPAP, BiPAP	MI
205	Martin	Nowak	Philips DreamStation CPAP, Auto CPAP, BiPAP	MI
206	Bonnie	Schuon	Philips DreamStation ASV	MI
207	Rosie	Wade	Philips DreamStation CPAP, Auto CPAP, BiPAP	MI
208	Amy	Louhela	Philips DreamStation CPAP, Auto CPAP, BiPAP	MN
209	Pat	Spicer	Philips DreamStation ST, AVAPS	MN
210	James	Boyle	Philips DreamStation CPAP, Auto CPAP, BiPAP	MO
211	Delores	Brown	Philips DreamStation Auto CPAP	MO
212	Beverly	Brown	Philips DreamStation CPAP, Auto CPAP, BiPAP	MO
213	Charles	Coleman	Philips DreamStation CPAP, Auto CPAP, BiPAP	MO
214	Denise	Dunn	Philips DreamStation CPAP, Auto CPAP, BiPAP	MO
215	Selina	Jones-Kerney	Philips DreamStation CPAP, Auto CPAP, BiPAP	MO
216	Candace	Symons	Philips DreamStation CPAP, Auto CPAP, BiPAP	MO
217	Naima	Wartts	Philips DreamStation CPAP, Auto CPAP, BiPAP	MO
218	Debbie	Bass	Philips DreamStation CPAP, Auto CPAP, BiPAP	MS
219	Ivan	Foster	Philips DreamStation CPAP, Auto CPAP, BiPAP	MS
220	Angela	Harris	Philips DreamStation CPAP, Auto CPAP, BiPAP	MS
221	Kimberly	Morgan	Philips DreamStation CPAP	MS
222	Forrest	Stafford	Philips DreamStation CPAP	MS
223	Marion	Aldridge	Philips DreamStation CPAP, Auto CPAP, BiPAP	NC
224	Robert	Browning	Philips DreamStation CPAP, Auto CPAP, BiPAP	NC
225	Sandy	Bullard	Philips DreamStation CPAP, Auto CPAP, BiPAP	NC
226	Michele	Clark	Philips DreamStation CPAP, Auto CPAP, BiPAP	NC
227	Ronnie	Emory	Philips DreamStation ASV	NC
228	Michael	Friedman	Philips DreamStation CPAP, Auto CPAP, BiPAP	NC
229	Charles	Jones	Philips DreamStation CPAP, Auto CPAP, BiPAP	NC
230	Michael	Levi	Philips DreamStation CPAP, Auto CPAP, BiPAP	NC
231	Susan	Levi	Philips DreamStation CPAP, Auto CPAP, BiPAP	NC
232	Sal	Petruso	Philips DreamStation CPAP, Auto CPAP, BiPAP	NC
233	John	Scoff	Philips DreamStation CPAP, Auto CPAP, BiPAP	NC
234	Rose	Sullivan	Philips DreamStation ASV	NC
235	Gerald	Fleck	Philips DreamStation CPAP, Auto CPAP, BiPAP	NE
236	Robert	Mccollough	Philips DreamStation CPAP, Auto CPAP, BiPAP	NE
237	Shae	Baddour	Philips DreamStation CPAP, Auto CPAP, BiPAP	NH
238	William	Vlahos	Philips DreamStation CPAP, Auto CPAP, BiPAP	NH
239	Andrew	Christopher	Philips DreamStation CPAP, Auto CPAP, BiPAP	NJ
240	Antonio	Demarco	Philips DreamStation CPAP, Auto CPAP, BiPAP	NJ
241	Susanne	Dennis	Philips DreamStation CPAP, Auto CPAP, BiPAP	NJ
242	Alvaro	Duenas	Philips DreamStation CPAP, Auto CPAP, BiPAP	NJ
243	Mario	Gillio	Philips DreamStation CPAP, Auto CPAP, BiPAP	NJ

244	Lori	Guido	Philips DreamStation CPAP, Auto CPAP, BiPAP	NJ
245	Stephanie	Henderson	Philips DreamStation CPAP, Auto CPAP, BiPAP	NJ
246	Lonnie	Moore	Philips DreamStation CPAP, Auto CPAP, BiPAP	NJ
247	Steven	Muller	Philips DreamStation CPAP, Auto CPAP, BiPAP	NJ
248	Vivian	Ordner	Philips DreamStation CPAP, Auto CPAP, BiPAP	NJ
249	Jason	Schultz	Philips DreamStation CPAP, Auto CPAP, BiPAP	NJ
250	Adam	Seidman	Philips DreamStation CPAP, Auto CPAP, BiPAP	NJ
251	William	Slavin	Philips DreamStation CPAP, Auto CPAP, BiPAP	NJ
252	Darryl	Fortson	Philips DreamStation Auto CPAP & (2) BiPAP	NV
253	Katrina	Fries	Philips SystemOne, ASV4	NV
254	Lois	Grant	Philips DreamStation CPAP, Auto CPAP, BiPAP	NV
255	Avner	Mandler	Philips DreamStation CPAP, Auto CPAP, BiPAP	NV
256	Judy	Mantooth	Philips DreamStation CPAP, Auto CPAP, BiPAP	NV
257	Tandra	Martinez	Philips DreamStation CPAP, Auto CPAP, BiPAP	NV
258	Susan	Mayle	Philips DreamStation CPAP, Auto CPAP, BiPAP	NV
259	Bobbie	Norred	Philips DreamStation CPAP, Auto CPAP, BiPAP	NV
260	Matthew E	Osa	Philips DreamStation CPAP, Auto CPAP, BiPAP	NV
261	Vincent	Panuccio	Philips SystemOne (Q Series)	NV
262	John	Poland	Philips DreamStation CPAP, Auto CPAP, BiPAP	NV
263	Jackie	Richardson	Philips DreamStation CPAP, Auto CPAP, BiPAP	NV
264	Brian	Seitz	Philips DreamStation CPAP	NV
265	Yasser	Ali	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
266	Peter	Arlotta	Philips DreamStation GO CPAP, APAP	NY
267	Carl	Cangialosi	Philips DreamStation ASV	NY
268	Joseph	Capparelli	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
269	James	Carroll	Philips SystemOne (Q Series)	NY
270	Phyllis	Domino	Philips Trilogy 100 Ventilator	NY
271	William	Frantz	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
272	Vicky	Gallo	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
273	Thomas	Gramuglia	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
274	Peter	Guastamacchia	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
275	Thomas	Kelly	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
276	Vicki	Kidd-Juma	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
277	Kathryn	Kocurek	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
278	Bruce	Korotkin	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
279	Luigi	Lifrieri	Philips DreamStation ST, AVAPS	NY
280	Angela	Scunziano	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
281	Luke	Sinclair	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
282	Grant	Taylor	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
283	William	Weller	Philips REMStar SE Auto CPAP	NY
284	Robert	Zablinis	Philips DreamStation CPAP, Auto CPAP, BiPAP	NY
285	Larry	Combs	Philips DreamStation CPAP, Auto CPAP, BiPAP	OH
286	Deborah	Dear	Philips SystemOne, ASV4	OH
287	Molly	Foraker	Philips DreamStation CPAP, Auto CPAP, BiPAP	OH
288	James	Hepburn	Philips DreamStation CPAP, Auto CPAP, BiPAP	OH
289	Richard	Jones	Philips DreamStation CPAP, Auto CPAP, BiPAP	OH
290	Laura	Mitchell	Philips DreamStation ST, AVAPS	OH
291	Tammy	Nunnery	Philips DreamStation CPAP, Auto CPAP, BiPAP	OH
292	Robert	Pfeffenberger	Philips DreamStation ST, AVAPS	OH
293	Douglas	Sandorf	Philips DreamStation CPAP, Auto CPAP, BiPAP	OH
294	Sherry	Sprague	Philips SystemOne (Q Series) BiPAP Pro	OH
295	Matthew	Ward	Philips DreamStation CPAP, Auto CPAP, BiPAP	OH
296	Maria	Hilton	Philips DreamStation CPAP, Auto CPAP, BiPAP	OK
297	Mark	Ketchum	Philips SystemOne (Q Series)	OK
298	Gary	Brokaw	Philips DreamStation CPAP, Auto CPAP, BiPAP	OR
299	Kevin	Dearth	Philips DreamStation CPAP, Auto CPAP, BiPAP	OR
300	Margaret	Hall	Philips Trilogy 100 Ventilator	OR
301	Terry	Hummel	Philips DreamStation CPAP, Auto CPAP, BiPAP	OR
302	Terry	Johnson	Philips DreamStation ASV	OR
303	Gary	Kots	Philips DreamStation CPAP, Auto CPAP, BiPAP	OR
304	Marla	Matlock	Philips DreamStation CPAP, Auto CPAP, BiPAP	OR

305	Bob	Peavler	Philips DreamStation CPAP, Auto CPAP, BiPAP	OR
306	Kendall	Uhlenhopp	Philips DreamStation CPAP, Auto CPAP, BiPAP	OR
307	Feliciano	Angeli	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
308	Karon	Behlin	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
309	Stephen	Burns	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
310	Gene	Carr	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
311	Armonde	Casagrande	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
312	Charles	Cooper	Philips DreamStation ASV	PA
313	Joseph	Corrato	Philips SystemOne, ASV4	PA
314	Paul	Crispin	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
315	Donald	Cubler	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
316	David	Dienert	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
317	Patricia	Digangi	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
318	Jane	Edel	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
319	Mark	Ferguson	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
320	Dena	Focht	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
321	William	Garcia	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
322	Rob	Grenier	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
323	Russell	Guthrie	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
324	Trevor	Hahn	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
325	Michael	Halick	Philips SystemOne (Q Series)	PA
326	Michelle	Harrison	Philips DreamStation ASV	PA
327	Kevin	Houck	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
328	Jonathan	Jones	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
329	Lynn	Koenck	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
330	David	Krueger	Philips DreamStation ST, AVAPS	PA
331	James	Laufenberg	Philips DreamStation Hum Core Pack DOM	PA
332	Lance	Lewis	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
333	Thomas	Love	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
334	Gustino	Martini	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
335	Patricia	Nardolillo	Philips DreamStation Auto CPAP	PA
336	Rocco	Piliero	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
337	Lisa	Piper-Smith	Philips Trilogy 100 Ventilator	PA
338	Joseph	Podlogar	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
339	Richard	Rauch Jr.	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
340	Mario	Reyes	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
341	Travis	Reynolds	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
342	Christopher	Rhodes	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
343	John	Siroki	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
344	Renn	Sminkey	Philips DreamStation ASV	PA
345	William	Tolan	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
346	Walter	Truckley, Jr.	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
347	Timothy	Wagner	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
348	Donna	Yount	Philips DreamStation CPAP, Auto CPAP, BiPAP	PA
349	Fernando	Arteaga	Philips DreamStation CPAP, Auto CPAP, BiPAP	PR
350	Antonio	Perez Bonano	Philips DreamStation CPAP, Auto CPAP, BiPAP	PR
351	Lawrence	Geller	Philips DreamStation CPAP, Auto CPAP, BiPAP	RI
352	Jeffrey	Whitman	Philips DreamStation CPAP, Auto CPAP, BiPAP	RI
353	Betty	Birchmore-Woods	Philips DreamStation CPAP, Auto CPAP, BiPAP	SC
354	James	Brunson	Philips DreamStation CPAP, Auto CPAP, BiPAP	SC
355	Robert	Crawford	Philips DreamStation CPAP, Auto CPAP, BiPAP	SC
356	James	Jones	Philips DreamStation CPAP, Auto CPAP, BiPAP	SC
357	Paul	Rogers	Philips DreamStation CPAP, Auto CPAP, BiPAP	SC
358	Anne	Temme	Philips DreamStation CPAP, Auto CPAP, BiPAP	SC
359	William	Woodard	Philips REMStar SE Auto CPAP	SC
360	Scott	Boatman	Philips REMStar SE Auto CPAP	TN
361	Michael	Curry	Philips DreamStation Auto CPAP	TN
362	Victor	Green	Philips DreamStation CPAP, Auto CPAP, BiPAP	TN
363	Renee	Hendrian	Philips DreamStation Auto CPAP	TN
364	Aaron	Hunt	Philips DreamStation CPAP, Auto CPAP, BiPAP	TN
365	Jason	Krause	Philips DreamStation CPAP, Auto CPAP, BiPAP	TN

366	Ryan	Long	Philips DreamStation CPAP, Auto CPAP, BiPAP	TN
367	Carmela	Merriman	Philips DreamStation CPAP, Auto CPAP, BiPAP	TN
368	Sean	Pierce	Philips DreamStation CPAP, Auto CPAP, BiPAP	TN
369	Chris	Piersol	Philips DreamStation CPAP, Auto CPAP, BiPAP	TN
370	Brian	Ranger	Philips DreamStation Auto CPAP	TN
371	Barbara	Santomauro	Philips DreamStation CPAP, Auto CPAP, BiPAP	TN
372	Adam	Snyder	Philips DreamStation CPAP, Auto CPAP, BiPAP	TN
373	Stephen	Sterback	Philips Continuous Flow	TN
374	Byron	Anderson	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
375	Mark	Barnett	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
376	Estella	Carter	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
377	Christopher	Chenevert	Philips SystemOne (Q Series)	TX
378	Barbara	Davidson	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
379	Juan	Delgado	Philips DreamStation ST, AVAPS	TX
380	Brian	Fuller	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
381	Fernando	Gonzalez	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
382	Colby	Jarrett	System One BiPAP AutoSV Adv SystemOne	TX
383	Troy	Jones	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
384	Diane	Kaufman	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
385	Nathan	Martinez	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
386	Paul	Panzera	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
387	Davis	Parsons	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
388	Wayne	Perritt	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
389	Charles	Steele	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
390	Michael	Stephens	Philips SystemOne, ASV4	TX
391	Joann	Vallejo	Philips DreamStation	TX
392	Steven	Wagner	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
393	Wesley	Williams	Philips DreamStation CPAP, Auto CPAP, BiPAP	TX
394	Melissa	Wardrop	Philips Trilogy 100 Ventilator	UT
395	Nancy	Butler	Philips DreamStation CPAP, Auto CPAP, BiPAP	VA
396	Orval	Cottrill	Philips DreamStation CPAP, Auto CPAP, BiPAP	VA
397	Dale	Duchene	Philips DreamStation CPAP, Auto CPAP, BiPAP	VA
398	Mariana	Eastwood Hatch	Philips DreamStation CPAP, Auto CPAP, BiPAP	VA
399	Joshua	Ferguson	Philips SystemOne (Q Series)	VA
400	Charlie	Martin	Philips DreamStation CPAP, Auto CPAP, BiPAP	VA
401	John	Mason	Philips DreamStation CPAP, Auto CPAP, BiPAP	VA
402	Aimee	Morrissey	Philips DreamStation CPAP, Auto CPAP, BiPAP	VA
403	Delano	Reid	Philips DreamStation CPAP, Auto CPAP, BiPAP	VA
404	Cameron	Rose	Philips DreamStation CPAP, Auto CPAP, BiPAP	VA
405	Steven	Schultz	Philips DreamStation CPAP, Auto CPAP, BiPAP	VA
406	Sherry	Slayton	Philips DreamStation CPAP, Auto CPAP, BiPAP	VA
407	Eileen	Suehr	Philips DreamStation CPAP, Auto CPAP, BiPAP	VA
408	Annette	Torregrosa	Philips DreamStation CPAP, Auto CPAP, BiPAP	VA
409	Melinda	Beebe	Philips DreamStation CPAP, Auto CPAP, BiPAP	VT
410	Korbin	Hayes	Philips DreamStation ASV	VT
411	Robert	Anderson	Philips DreamStation CPAP, Auto CPAP, BiPAP	WA
412	Vicki	Bowles	Philips DreamStation CPAP, Auto CPAP, BiPAP	WA
413	Dustin	Caldart	Philips DreamStation CPAP, Auto CPAP, BiPAP	WA
414	Laroi	Carter, Jr.	Philips DreamStation CPAP, Auto CPAP, BiPAP	WA
415	Kay	Cockerill	Philips DreamStation CPAP, Auto CPAP, BiPAP	WA
416	Elizabeth	Engel	Philips DreamStation CPAP, Auto CPAP, BiPAP	WA
417	Marcy	Engelstein	Philips DreamStation CPAP, Auto CPAP, BiPAP	WA
418	Kirsten	Gillespie	Philips DreamStation CPAP, Auto CPAP, BiPAP	WA
419	Pat	Lannoye	Philips REMStar SE Auto CPAP	WA
420	Duane	Alt	Philips SystemOne, ASV4	WI
421	Michele	Falk	Philips REMStar SE Auto CPAP	WI
422	Alan	Owan	Philips DreamStation CPAP, Auto CPAP, BiPAP	WI
423	Carlos	Romero	Philips DreamStation CPAP, Auto CPAP, BiPAP	WI
424	Leanne	Sandmeyer	Philips DreamStation CPAP, Auto CPAP, BiPAP & DreamStation Go	WI
425	Scott	Tiedke	Philips DreamStation CPAP	WI
426	Malena	Keneda	Philips DreamStation CPAP, Auto CPAP, BiPAP	WV

427	Douglas	Landers	Philips DreamStation CPAP	WV
428	Mark	Pickens	Philips DreamStation CPAP, Auto CPAP, BiPAP	WV
429	Michael	Spencer	Philips DreamStation CPAP, Auto CPAP, BiPAP	WV
430	Todd	Tyree	Philips DreamStation CPAP, Auto CPAP, BiPAP	WV
431	Thomas	Vallaningham	Philips DreamStation Auto CPAP	WV
432	Rachael	Dimaio	Philips DreamStation CPAP, Auto CPAP, BiPAP	WY

EXHIBIT B

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October 8, 2021

VIA EMAIL

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Re: ***Conley –Demand Letter***

Dear Counsel:

I write in response to your letter dated September 8, 2021, in which you purport to notify Philips North America LLC ("Philips NA") and Philips RS North America LLC ("Philips RS NA") (collectively, "Philips") of a potential claim on behalf of your client, Daniel F. Conley, and purportedly on behalf of hundreds of individuals identified in Exhibit B to your letter and of "all similarly situated U.S. purchasers of the above-described Hazardous Devices" (collectively, "Plaintiffs") under "under *all* state consumer protection statutes in the United States that require or may require such notice, including Alabama Deceptive Trade Practices Act (Ala. Code §§ 8-19-1, *et seq.*); Alaska Unfair Trade Practices and Consumer Protection Act (Alaska Stat. §§ 45.50.471, *et seq.*); California's Consumer Legal Remedies Act (Cal. Civ. Code § 1750), California's Song-Beverly Act (Cal. Civ. Code § 1790 et seq.), Florida Deceptive and Unfair Trade Practices Act (Fla. Stat. §§ 501.201 et seq.), Georgia Fair Business Practices Act (Ga. Stat. Ann. §§ 10-1-390, et seq.), Illinois Consumer Fraud Act (815 Ill. Comp. Stat. 505/1, et seq.), Indiana Deceptive Consumer Sales Act (Ind. Code §24-5-0.5-2 et seq), Maine Unfair Trade Practices Act (Me. Rev. Stat. Ann. Tit. 5, §§ 205A, *et seq.*), Massachusetts Consumer Protection Act (Mass. Gen. Laws ch. 93A, §§ 1, et seq.), Michigan Consumer Protection Act (Mich. Comp. Laws § 445.903 et seq.), Mississippi Consumer Protection Act (Miss. Code Ann. §§ 75-24-1, *et seq.*), New York GBL §§ 349 -350, North Carolina Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat. §§ 75-1.1, et seq.), Ohio Consumer Sales Practices Act (Ohio Rev. Code Ann. §§ 1345.01, et seq.), Pennsylvania Unfair Trade Practices and Consumer Protection Law (73, Pa. Cons. Stat. Ann. §§ 201-1, et seq.), the Texas Deceptive Trade Practices- Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.01, et seq., West Virginia Code §§ 46A-6-101, *et seq.*, and Wyoming Consumer Protection Act (Wyo. Stat. Ann. §§ 40-12-101 *et seq.*)" (emphasis added).

As a threshold matter, your purported notice is clearly defective to the extent it seeks to notify Philips of the claims of your clients and others "similarly situated" under a litany of state consumer protection statutes. Your notice clearly is insufficient to provide notice of a claim under the many state warranty statutes tacked on to the end of your letter, given that you fail to explain which statutes apply to which of your clients or identify how any of the statutes you list have been violated.

Further, your notice is insufficient to constitute a compliant demand notice under statutes requiring plaintiffs to serve a compliant demand notice *prior* to filing suit, because it was sent weeks *after* your clients filed suit, rendering it defective. *See, e.g.* M.G.L. ch. 93A, § 9 (requiring notice "30 days prior to filing suit."); Cal. Civ. Code § 1782 (a) (notice and demand required "[t]hirty days or more prior to the commencement of an action for damages"); Ga. Stat. Ann. § 10-1-399(b) (demand must be

delivered "[a]t least 30 days prior to the filing of any such action"); Ind. Code §§ 24-5-0.5-5 and 24-5-0.5-2(a)(5)-(8)(notice and demand required "30 days prior to filing suit."); Tex. Bus. & Com. Code § 17.505 (a) (requiring that, "[a]s a prerequisite to filing a suit seeking damages under [the DTPA] . . . a consumer shall give written notice to the person at least 60 days before filing the suit"); Me. Rev. Stat. Ann. tit. 5 § 213(1-A)(demand must be delivered "[a]t least 30 days prior to the filing of an action for damages"); *Broderick v. Dairyland Ins. Co.*, 2012 WY 22, ¶ 22, 270 P.3d 684, 692 (Wyo. 2012) ("An uncured unlawful deceptive trade practice is defined as an unlawful deceptive trade practice of which the consumer 'has given notice to the alleged violator pursuant to W.S. § 40–12–109' and either no offer to cure has been made within 15 days or there has been no cure within a reasonable amount of time after the acceptance of the offer.") (citing Wyo. Stat. Ann. § 40–12–102(a)(ix)); Miss. Code § 75-24-15(2) ("In any private action brought under this chapter, the plaintiff must have first made a reasonable attempt to resolve any claim through an informal dispute settlement program approved by the Attorney General," which includes pre-suit notice); Ala. Code § 8-19-10(e) (requiring notice "[a]t least 15 days prior to the filing of any action under this section"); Alaska Stat. § 45.50.535 (b)(requiring pre-suit notice where, as here, the consumer seeks an injunction).

The letter also fails to reasonably describe the unfair or deceptive act or practice relied upon and the injury suffered, including by failing to provide basic information about the nature of the transaction at issue or your clients' alleged reliance. *See, e.g.,* M.G.L. ch. 93A, § 9 (requiring, inter alia, that the pre-litigation "written demand for relief… reasonably describ[e] the unfair or deceptive act or practice relied upon and the injury suffered."); Cal. Civil Code § 1782(a)(1) (demand must "[n]otify the person alleged to have employed or committed methods, acts, or practices declared unlawful by Section 1770 of the *particular* alleged violations of Section 1770.") (emphasis added); Tex. Bus. & Com. Code § 17.505(a) (demand must advise "the person in reasonable detail of the consumer's specific complaint and the amount of economic damages, damages for mental anguish, and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant"); Ga. Stat. Ann. § 10-1-399(b) (demand must "identify[] the claimant and reasonably describe[e] the unfair or deceptive act or practice relied upon and the injury suffered"); Wyo. Stat. Ann. § 40-12-109 (demand "shall state fully the nature of the alleged unlawful deceptive trade practice and the actual damage suffered therefrom."); Me. Rev. Stat. Ann. tit. 5 § 213(1-A) (demand must "identify[]the claimant and reasonably describe[e] the unfair and deceptive act or practice relied upon and the injuries suffered"); Ala. Code § 8-19-10(e) (demand must "identify[] the claimant and reasonably describe[e] the unfair or deceptive act or practice relied upon and the injury suffered").

Notably, the letter fails to provide any information at all about the unnamed "similarly situated" individuals on whose behalf you purport to assert this claim. Thus, the letter fails to describe, among other key elements of import, with respect to any of these "similarly situated" individuals, whether or which received reimbursement for some or all of any payments made from a government entity or third party, what role (if any) each individual played in the selection of the referenced devices (which are prescription medical devices sold, leased or provided by a durable medical device provider or insurer and not sold directly by Philips to individuals), the identity of the device used by each individual, its current condition, and/or the nature and history of each individual's alleged use of the device. The absence of any such information in the letter reflects another fundamental failure to undertake to meet the requirements of a written demand as set out in the various statutes you cite.

For these reasons, your letter also lacks sufficient detail to satisfy the basic elements of an unfair practices claim under the statutes you cite, which require a plaintiff to prove an unfair or deceptive practice, causation, and injury. *See, e.g., Fitzpatrick v. Gen. Mills, Inc.*, 635 F.3d 1279, 1283 (11th Cir. 2011) (Fla. law) (plaintiff must prove "that an objective reasonable person would have been

deceived"); *In re St. Jude Med., Inc.*, 522 F.3d 836 (8th Cir. 2008) (Minn. law) (defendant can introduce evidence of non-reliance to negate causal nexus); *Mayberry v. Bristol-Meyers Squibb Co.,* 2009 WL 5216968, at *8-9 (D.N.J. Dec. 30, 2009) (Miss. law) (dismissing claim under Mississippi statute upon finding of insufficient allegations of a causal connection between the defendants' deception and the plaintiffs' injuries); *Tiismann v. Linda Martin Homes Corp.*, 637 S.E.2d 14, 17 (Ga. 2006) (to prevail under the GFBPA, a plaintiff must prove an unfair or deceptive practice, causation, and injury); *Heller Fin. v. INA*, 573 N.E.2d 8 (Mass. 1991) (plaintiff must show causal connection between misrepresentation and injury);*McCormick Piano & Organ Co. v. Geiger,* 412 N.E.2d 842, 853 (Ind. App. 1980) (defining actual damages in an action under the IDCSA as "the difference in value between that which the plaintiff parted with and that which he received"); W. Va. Code § 46A-6-106(b) (plaintiff who bases a claim on an affirmative misrepresentation must show that it "caused him or her to enter into the transaction," and that, for an omission, the plaintiff must show that his or her loss was "proximately caused" by the omission.").

Given the defects and utter lack of detail in your purported demand, Philips is under no obligation to provide an exhaustive account of the many fatal defects inherent in the claims you purport to assert under the laundry list of statutes you cite. However, Philips notes that your purported claims fail to satisfy a variety of additional requirements under many of those statutes. For example, the purported claims also would fail under those statutes which require a plaintiff to prove reliance. *See, e.g.*, *Hardison v. Biomet, Inc.*, No. 5:19-CV-00069-TES, 2020 WL 4334108, at *19 (M.D. Ga. July 27, 2020) ("claimant alleg[ing] that a defendant violated the GFBPA as a result of a misrepresentation . . . must demonstrate that he was injured as the result of his intermediary's reliance upon the alleged misrepresentation"); *Bumpers v. Cmty. Bank*, 747 S.E.2d 220 (N.C. 2013) (when a claim under North Carolina unfair and deceptive practices act stems from an alleged misrepresentation, the plaintiff must show reasonable reliance in order to demonstrate proximate causation); *Princess Cruise Lines, Ltd. v. Superior Court*, 101 Cal. Rptr. 3d 323 (Cal. Ct. App. 2009) (interpreting California Consumer Legal Remedies Act as imposing reliance requirement); *Toy v. Metropolitan Life Ins. Co.*, 928 A.2d 186 (Pa. 2007) (reliance is an element of claim under Pennsylvania UDAP); *GxG Management, LLC v. Young Bros. and Co.*, Inc., 457 F. Supp. 2d 47 (D. Me. 2006) (granting defendant's motion for summary judgment on a UDAP claim because reliance was not shown); *Evans v. Ameriquest Mortg. Co.*, 2003 WL 734169, at *3 (Mich. App. 2003) (noting that several of the "unfair, unconscionable, or deceptive methods, acts or practices" actionable under statute "expressly require some form of reasonable reliance by the consumer").

Further, state consumer protection statutes often exempt transactions and conduct subject to regulatory oversight and authorization, like the medical devices at issue here. These claims involve medical devices and a related recall, all of which arise in a heavily regulated area with direct oversight by the U.S. Food and Drug Administration (the "FDA"). Your letter fails to address or reconcile the provisions of the cited statutes that exempt transactions subject to regulatory oversight or specifically authorized by regulatory authorities. *See, e.g.*, O.C.G.A. § 10-1-396(1) (Georgia Fair Business Practices Act does not apply to "[a]ctions or transactions specifically authorized under laws administered by or rules and regulations promulgated by any regulatory agency of this state or the United States."); M.G.L. ch. 93A, § 3 (exempting "transactions or actions otherwise permitted under laws as administered by" state and federal regulatory boards, but Massachusetts courts have read this exemption narrowly to require the defendant to "show that such scheme affirmatively permits the practice which is alleged to be unfair or deceptive."); 815 Ill. Comp. Stat. § 505/10b(1) (exempting "[a]ctions or transactions specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this State or the United States."); Mich. Comp. Laws § 445.904(1) (exempting "a transaction or conduct specifically authorized under laws administered by a regulatory board").

Some states also require a plaintiff to prove how the alleged conduct harms the general consuming public. *See, e.g., Ly v. Nystrom*, 615 N.W.2d 302 (Minn. 2000) (imposing public interest test under Minnesota statute); *Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank,* 647 N.Y.S.2d 20 (N.Y. 1995) (New York unfair practices law requires a showing of a broader impact on consumers at large); *Marrale v. Gwinnett Place Ford,* 271 Ga. App. 303, 306-07 (1995) (under Georgia statute, harm to public must be shown because statute should not be treated as an additional remedy for private wrongs).

Finally, to the extent Plaintiffs seek to maintain a class action under the Mississippi statute, such an action is impermissible under Miss. Code § 75-24-15(4) ("Nothing in this chapter shall be construed to permit any class action or suit, but every private action must be maintained in the name of and for the sole use and benefit of the individual person.").

For these principal reasons, Philips is under no obligation to respond to your letter as your purported claims are not actionable under the statutes you cite and, to the extent those statutes require notice as a prerequisite to state a claim or to seek multiple damages, your letter fails to satisfy the timing and content requirements applicable to such demand letters.

By way of further response, Philips notes that, as the devices at issue are medical devices, as noted above, the recall process is subject to oversight by the FDA. FDA authorization is needed for the design changes that will be required for several of the key repair and replacement options that Philips Respironics has proposed. Last month, Philips received authorization from the FDA to commence rework of the affected first-generation DreamStation devices. Philips notes that it has implemented a registration process with respect to the repair/replacement program that it has made available to all customers affected by the recall. That program is designed to provide for the repair or replacement of affected devices. If your clients have not done so already, they should register for the repair/replacement program to avail themselves of the benefits of that program as a means of addressing the issues raised by the recall that are the subject of your deficient letter. They can register online at https://www.philipssrcupdate.expertinquiry.com/.

Sincerely,

/s/ Daniel S. Savrin

Daniel S. Savrin

DSS/

EXHIBIT C

LYNCH CARPENTER

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May 16, 2022

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Dear Counsel:

On behalf of clients represented by Co-Lead Counsel, Plaintiffs' Steering Committee, Co-Liaison Counsel, the Settlement Committee, the Leadership Development Committee, and the Plaintiffs' Time and Expense Subcommittee, including those clients listed in filed complaints and listed or will be listed on the tolling agreements with Philips (collectively "Plaintiffs"), we are providing you notice of Plaintiffs' claims prior to the filing of forthcoming consolidated or master complaints. As you are aware, Plaintiffs have asserted claims against Defendants Philips Koninklijke, N.V., Philips North America, and Philips RS North America, and other Philips-related entities (collectively "Philips"), seeking damages and other relief related to Philips' recall of CPAP machines, BiPAP machines, and ventilators ("Recalled Products") in June 2021, due to the presence of a toxic and carcinogenic PE-PUR foam within the Recalled Products that degrades and can enter the airways of the user. We are sending this demand letter to comply with certain requirements under state law for various consumer protection laws and warranty

laws. By sending this letter, we are not conceding that any of these demand requirements apply in this matter, as Philips has been on notice of nationwide class action claims ***for nearly a year*** with hundreds of lawsuits brought against Philips.

The basis for the claims is fully set forth in the complaints that have been filed to date, but to briefly summarize, Plaintiffs are consumers who used the Recalled Products and have out-of-pocket costs and other injuries in connection with their use of the Recalled Products, including costs associated with the purchase or rental of the Recalled Product, costs of purchasing accessories such as replacement masks, hoses, and other accessories, and costs of obtaining a replacement device. Moreover, Plaintiffs have all been exposed to toxic carcinogens that require ongoing medical monitoring and further medical costs. Philips has long been aware of the problems with the Recalled Products but did nothing until the recall in June 2021.

I. Notice of Claims

This letter provides written notice of Plaintiffs' claims for violation of the following consumer protection laws. All claims are brought on behalf of Plaintiffs and all those similarly situated.

- Alabama Deceptive Trade Practices Act, Ala. Code. §§ 8-19-1, *et seq.*,
- Alaska Unfair Trade Practices and Consumer Protection Act, Alaska Stat. §§ 45.50.471, *et seq.*,
- California Consumer Legal Remedies Act, Cal. Civ. Code. §§ 1750, *et seq.*
- Massachusetts General Laws Chapter 93A;
- Georgia Fair Business Practices Act, Ga. Code Ann. §§ 10-1-390, *et. seq.*
- Indiana Deceptive Consumer Sales Act, Ind. Code. §§ 24-5-0.5-1, *et seq.*
- Maine Unfair Trade Practices Act, Me. Rev. Stat. Ann. Tit. 5, §§ 205A, *et seq.*
- Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq*.
- Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. Com. Code §§ 17.41, *et seq.*
- West Virginia Code §§ 46A-6-101, *et seq.*
- Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101, *et seq*.

This letter also provides notice on behalf of Plaintiffs and those similarly situated of a breach of the applicable warranty laws where the Recalled Products have been sold or provided.

Plaintiffs, on behalf of themselves and those similarly situated, seek all available damages, including, without limitation, the return of the purchase price of their Recalled Products and all accessories with interest from the time they were purchased; the reimbursement for any and all costs associated with obtaining a replacement device; costs associated with ongoing medical monitoring; all available damages and penalties (including treble damages and punitive damages); reasonable costs and attorneys' fees; and any other damages ordered by the courts. In addition, Plaintiffs and the Class will seek appropriate injunctive and declaratory relief relating to the Recalled Products, including, without limitation, notice to the Class regarding the defect, and replacement or repair of the Recalled Products.

A. Alabama Deceptive Trade Practices Act Demand

Philips' actions described herein and in the attached Complaint constitute deceptive acts or practices that violate Alabama Code § 8-19-5. Philips' violations include, but are not limited to, the following provisions:

- Ala. Code § 8-19-5(5): Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have;

- Ala. Code § 8-19-5(7): Representing that goods are of a particular standard, quality, or grade, if they are of another;

- Ala Code § 8-19-5(9): Advertising goods with intent not to sell them as advertised; and

- Ala Code § 8-19-5(27): Engaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.

Philips has failed to abide by its consumer protection obligations to Plaintiff John Cook and others in Alabama, and has failed to adequately compensate Plaintiffs for the damage caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief for all members of the Alabama Subclass set forth in the Class Action Complaint within 15 days of your receipt of this letter, including, without limitation, the return of the purchase price of the Recalled Products and Accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties including statutory and treble damages; and reasonable costs and attorneys' fees.

We note that the pre-suit notice requirement of this statute does not apply if Philips does not "maintain a place of business or keep assets within" Alabama. Ala. Code. § 8-9-10(e). We are unaware of any place of business maintained by Philips or assets kept by Philips in Alabama.

B. Alaska Unfair Trade Practices and Consumer Protection Act Demand

Pursuant to Alaska Stat. § 45.50.535, Plaintiffs intend to seek an injunction against Defendants for their failure to reimburse others for the costs of replacement machines, failure to return the purchase price of the Recalled Products, and any other injunctive relief related to the recall as appropriate. Philips' actions constitute deceptive acts or practices that violate Alaska Stat. Ann. § 45.50.471. Philips' violations, include, but are not limited to, the following provisions:

- Alaska Stat. Ann. § 45.50.471(4): Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that the person does not have;

- Alaska Stat. Ann. § 45.50.417(6): Representing that goods are of a particular standard, quality, or grade, if they are of another;

- Alaska Stat. Ann. § 45.50.417(8): Advertising goods with intent not to sell them as advertised; and

- Alaska Stat. Ann. § 45.50.417(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived, or damaged.

In addition to an injunction, Plaintiffs will also be seeking the return of the purchase price of the Recalled Products and accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties including statutory and treble damages; and reasonable costs and attorneys' fees.

C. <u>California Consumer Legal Remedies Act Demand</u>

Philips has violated and continues to violate numerous subsections of the Consumer Legal Remedies Act, including, but not limited to, the following:

- Cal. Civ. Code § 1770(a)(5): Representing that goods have characteristics, uses, and benefits which they do not have;

- Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular standard, quality, or grade, if they are of another;

- Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as advertised; and

- Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in accordance with a previous representation when they have not.

Philips has failed to abide by its consumer protection obligations to Plaintiffs and others from California, and has failed to provide adequate compensation for the damage caused to them by the Recalled Products. Plaintiffs demand full and appropriate relief for themselves and all members of the California within thirty (30) calendar days of your receipt of this letter, including, without limitation, the return of the purchase price of the Recalled Products and accessories, the return of the purchase price of the Recalled Products and accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties including statutory, treble damages, and punitive damages; and reasonable costs and attorneys' fees.

D. Georgia Fair Business Practices Act Demand

Philips' actions described herein and in the attached Complaint constitute unfair or deceptive acts or practices that violate Ga. Code Ann. § 10-1-393(a). Additionally Philips' violations, include, but are not limited to, the following provisions which are intended to be illustrative of unfair or deceptive practices:

- Ga. Code Ann. § 10-1-393(b)(5): Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have;

- Ga. Code Ann. § 10-1-393(b)(7): Representing that goods are of a particular standard, quality, or grade, if they are of another; and

- Ga. Code Ann. § 10-1-393(b)(9): Advertising goods with intent not to sell them as advertised.

Philips has failed to abide by its consumer protection obligations to Plaintiffs and others from Georgia and has failed to provide adequate compensation for the damages caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief for all Georgians within 30 days of your receipt of this letter, including, without limitation, the return of the purchase price of the Recalled Products and accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties including statutory and treble damages; and reasonable costs and attorneys' fees.

We note that the pre-suit notice requirement of this statute does not apply if Philips does not "maintain a place of business or keep assets within" Georgia. Ga. Code Ann. § 10-1-399(b). We are unaware of any place of business or assets kept by Philips in Georgia.

E. Indiana Deceptive Consumer Sales Act Demand

Philips' actions described herein and in the Class Action Complaint constitute unfair, abusive, or deceptive acts, omissions, or practices under Indiana Code § 24-5-0.5-3. Additionally,

Philips' violations, include, but are not limited to, the following provisions which are intended to be illustrative of unfair or deceptive trade practices:

- Ind. Code. § 24-5-0.5-3(b)(1): That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have; and

- Ind. Code. § 24-5-0.5-3(b)(2): That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

Philips has failed to abide by its consumer protection obligations to Plaintiffs and others from Indiana and has failed to provide adequate compensation to Plaintiffs and others from Indiana for the damage caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief including, without limitation, the return of the purchase price of the Recalled Products and accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties, including statutory and treble damages, and reasonable costs and attorneys' fees.

We note that the sending of this notice is not required because Philips' deceptive acts are incurable and uncured.

F. Maine Unfair Trade Practices Act Demand

Philips' actions described herein and in the attached Complaint constitute unfair or deceptive acts or practices that violate Me. Rev. Stat. Ann., tit. 5, § 207. Philips has failed to abide by its consumer protection obligations to Plaintiffs and others from Maine listed and has failed to provide adequate compensation for the damage caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief within 30 days of your receipt of this letter, including, without limitation, the return of the purchase price of the Recalled Products and accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties including statutory and treble damages; and reasonable costs and attorneys' fees.

G. Massachusetts General Laws Chapter 93A Demand

Philips' actions described herein constitute unfair and deceptive business practices that violate Massachusetts General Laws Chapter 93A. Philips has violated c. 93A because, among other things, Philips knew or should have known that the defects were present in the Recalled Products, but knowingly and/or recklessly misrepresented to consumers that the Recalled Products were free from defects, were merchantable and fit for their ordinary purposes, and took no action to adequately warn Plaintiffs and others from Massachusetts or appropriately remedy the defects. Instead, Philips concealed and failed to warn customers and potential customers that

the carcinogenic PE-PUR foam in the in Recalled Products can degrade and enter the airways of the Recalled Machines resulting in users breathing in toxic particles. Accordingly, Plaintiffs demands full and appropriate relief for all consumers from Massachusetts , including but not limited to actual and/or statutory damages per violation under c. 93A.

H. Mississippi Consumer Protection Act Demand

Philips' actions described herein and in the Class Action Complaint constitute unfair or deceptive trade practices that violate Miss. Code Ann. § 74-25-5(a). Additionally Philips' violations, include, but are not limited to, the following provisions which are intended to be illustrative of unfair or deceptive trade practices:

- Miss. Code Ann. § 74-25-5(2)(e): Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that h does not have;

- Miss. Code Ann. § 74-25-5(2)(f): Representing that goods are of a particular standard, quality, or grade, if they are of another; and

- Miss. Code Ann. § 74-25-5(2)(g): Advertising goods with intent not to sell them as advertised.

Philips has failed to abide by its consumer protection obligations and has failed to provide adequate compensation to Plaintiffs and the Mississippi Subclass for the damage caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief for all consumers from Mississippi including, without limitation, the return of the purchase price of the Recalled Products and accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties, and reasonable costs and attorneys' fees.

Pursuant to Miss. Code Ann. § 74-24-15(2), Plaintiffs request that Philips engage an informal dispute settlement program approved by the Mississippi Attorney General. If Philips is interested in participating in such a program, please advise.

I. Texas Deceptive Trade Practices Act Demand

Philips' actions described herein and in the attached Complaint constitute false, misleading, or deceptive acts or practices that violate Tex. Bus. & Com. Code § 17.46(a). Additionally, Philips' violations, include, but are not limited to, the following provisions which are intended to be illustrative of false, misleading, or deceptive practices:

- Tex. Bus. & Com. Code § 17.46(b)(5): Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not

have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have;

- Tex. Bus. & Com. Code § 17.46(b)(7): Representing that goods are of a particular standard, quality, or grade, if they are of another; and

- Tex. Bus. & Com. Code § 17.46(b)(7): Advertising goods with intent not to sell them as advertised.

These acts in violation of Section 17.46 are actionable pursuant to Tex. Bus. & Com. Code § 17.50 (a)(1) because they were relied upon by Plaintiffs to their detriment. Philips actions as described herein also constitute breaches of express and implied warranties and unconscionable actions or an unconscionable course of action that are actionable pursuant to Tex. Bus. & Com. Code § 17.50 (a)(2) & (3).

Philips has failed to abide by its consumer protection obligations and has failed to provide adequate compensation to Plaintiffs and others from Texas for the damage caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief within 60 days of your receipt of this letter, including, without limitation, the return of the purchase price of the Recalled Products and accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties including treble damages; and reasonable costs and attorneys' fees.

J. <u>West Virginia Consumer Protection Act Demand</u>

Philips' actions described herein and in the Class Action Complaint constitute unfair or deceptive trade practices that violate W. Va. Code, § 46A-6-10. Plaintiffs and others from West Virginia demand full relief to be provided within 45 days of the receipt of this letter including, without limitation, the return of the purchase price of the Recalled Products and accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties, including statutory damages, and reasonable costs and attorneys' fees.

K. <u>Wyoming Consumer Protection Act Demand.</u>

Philips' actions described herein and in the attached Class Action Complaint are deceptive trade practices that violate Wyo. Code. Ann. § 40-12-105. Philips' violations, include, but are not limited to:

- Wyo. Code Ann. § 40-12-105(a)(i): Represents that merchandise is of a particular standard, grade, style or model, if it is not;

- Wyo. Code Ann. § 40-12-105(a)(x): Advertises merchandise with intent not to sell it as advertised; and

- Wyo. Code Ann. § 40-12-105(a)(xv): Engages in unfair or deceptive acts or practices.

Philips has failed to abide by its consumer protection obligations to Plaintiffs and others from Wyoming, and has failed to provide adequate compensation to for the damage caused to them by Philips' Recalled Products. Based upon the above, Plaintiffs demand full and appropriate relief within 60 days of your receipt of this letter, including, without limitation, the return of the purchase price of the Recalled Products and accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device, all costs of ongoing medical monitoring, and all other available damages and penalties, and reasonable costs and attorneys' fees.

L. Breach of Warranties

This letter is also to provide you notice that Philips as breached its express or implied warranties as set forth herein and in the Class Action Complaint, in violation of the following laws:

Jurisdiction	**Authority**
Alabama	Ala. Code § 7-2-313, 7-2-314, *et seq*.
Alaska	Alaska. Stat. § 45.02.314, 45.02.725, *et seq*.
Arizona	Ariz. Rev. Stat. Ann. §§ 47-2313, § 47-2314, *et seq*.
Arkansas	Ark. Code Ann. §§ 4-2-314, *et seq*.; Ark. Code Ann. § 4-2-313(1), *et seq*.
California	Cal. Comm. Code §§ 2313, 2314, *et seq*.
Colorado	Colo. Rev. Stat. §§ 4-2-313, 4-2-314, *et seq*.
Connecticut	Conn. Gen. Stat. Ann. § 42a-2-313, 42a-2-314 *et seq*.
Delaware	Del. Code Ann. tit. 6, §§ 2-313, 2-314, *et seq*.;
District of Columbia	D.C. Code Ann. §§ 28:2-725, 28:2-314, *et seq*.
Florida	Fla. Stat. Ann. §§ 672.313, 672.314, *et seq*.
Georgia	Ga. Code Ann. §§ 11-2-313, 11-2-314, *et seq*.;
Hawaii	Haw. Rev. Stat. §§ 490:2-313; 490:2-314, *et seq*.
Idaho	Id. Code §§ 28-2-313, 28-2-314, *et seq*.
Illinois	Ill. Comp. Stat. Ann. Ch. 810, 5/2-313, 5/2-314, *et seq*.
Indiana	Indiana Code Ann. §§ 26-1-2-3131, 26-1-2-314, et seq.
Iowa	Iowa Code Ann. §§ 554.2318, 554.2314, *et seq*.
Kansas	Kan. Stat. Ann. §§ 84-2-313, 84-2-314, *et seq*.
Kentucky	Ky. Rev. Stat. Ann. §§ 355.2-313, 355.2-314, *et seq*.
Louisiana	La. Civ. Code Ann. art. 2520, *et seq*. (and is liable for redhibitory defects); La. Rev. Stat. Ann. § 9:2800.58, *et seq*.
Maine	Me. Rev. Stat. Ann. tit. 11, §§ 2-313, 2-314, *et seq*.

Maryland	Md. Code Ann., Com. Law §§ 2-313, 2-314, *et seq.*
Massachusetts	Mass. Gen. Laws Ann. Ch. 106, §§ 2-313, 2-314, *et seq.*
Michigan	Mich. Comp. Laws Ann. §§ 4440.2313, 440.2314, *et seq.*
Minnesota	Minn. Stat. Ann. §§ 336.2-313, 336.2-314, *et seq.*
Mississippi	Miss. Code Ann. §§ 75-2-313, 75-2-314, *et seq.*
Missouri	Mo. Rev. Stat. Ann. §§ 400.2-313, 400.2-314, *et seq.*
Montana	Mont. Code Ann. §§ 30-2-313, 30-2-314, et seq.
Nebraska	Neb. Rev. Stat. §§ 2-313, 2-314, *et seq.*
Nevada	Nev. Rev. Stat. §§ 104.2313, 104.2314, *et seq.*;
New Hampshire	N.H. Rev. Stat. Ann. §§ 382-A:2-313, 382-A:2-314, *et seq.*
New Jersey	N.J. Stat. Ann. §§ 12A:2-313; 12A:2-314, *et seq.*
New Mexico	N.M. Stat. Ann. §§ 55-2-313(1); 55-2-314, *et seq.*
New York	N.Y. U.C.C. Law §§ 2-313, 2-314, *et seq.*
North Carolina	N.C. Gen. Stat. Ann. §§ 25-2-313, 25-2-314, *et seq.*
North Dakota	N.D. Cent. Code §§ 41-02-30, 41-02-31, *et seq.*
Ohio	Ohio Rev. Code Ann. §§ 1302.26, 1302.27, *et seq.*
Oklahoma	Okla. Stat. Tit. 12A, §§ 2-313, 2-314 *et seq.*
Oregon	Or. Rev. Stat. §§ 72.3130, 72.3140, *et seq.*
Pennsylvania	13 Pa. Stat. Ann. §§ 2313, 2314 *et seq.*
Puerto Rico	P.R. Laws. Ann. Tit. 31, § 3841, *et seq.*
Rhode Island	R.I. Gen. Laws §§ 6A-2-313, 6A-2-314, *et seq.*
South Carolina	S.C. Code Ann. §§ 36-2-313, 36-2-314, *et seq.*
South Dakota	S.D. Codified Laws §§ 57-A-2-313;57A-2-314, *et seq.*
Tennessee	Tenn. Code Ann. §§ 47-2-313, 47-2-314, *et seq.*
Texas	Tex. Bus. & Com. Code Aim. §§ 2.313, 2.314, *et seq.*
Utah	Utah Code Ann. §§ 70A-2-313, 70A-2-314, *et seq.*
Vermont	Vt. Stat. Ann. tit. 9A, §§ 2-313, 2-314, *et seq.*
Virginia	Va. Code §§ 8.2-313, 8.2-314, *et seq.*;
Washington	RCW §§ 62A.2-313, 62A.2-314 et seq.;
West Virginia	W. Va. Code §§ 46-2-313, 46-2-314, *et seq.*
Wisconsin	Wis. Stat. Ann. §§ 402.313, 402.314, *et seq.*
Wyoming	Wyo. Stat. Ann. §§ 34.1-2-313, 34.1-2-314, *et seq.*

We look forward to your response.

Respectfully,

LYNCH CARPENTER, LLP

/s/ Kelly K. Iverson
Kelly K. Iverson

SEEGER WEISS LLP

/s/ Christopher A. Seeger
Christopher A. Seeger

LEVIN SEDRAN & BERMAN LLP

/s/ Sandra L. Duggan
Sandra L. Duggan

CHIMICLES SCHWARTZ KRINER & DONALDSON-SMITH LLP

/s/ Steven A. Schwartz
Steven A. Schwartz

EXHIBIT D

June 15, 2022

VIA E-MAIL

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Re: *Demand Letter*

Dear Counsel:

I write in response to your letter dated May 16, 2022, which you state was sent in an effort to "comply with certain requirements under state law for various consumer protection laws and warranty laws," including pre-suit notice requirements.

As an initial matter, the letter fails to address, much less account for, the fact that Philips RS North America LLC ("Respironics") has undertaken to remediate and cure the issues that are the genuine and proper subject of your letter by providing no cost repair and replacement of devices, to date, to over 1.1 million US-based device users. Such efforts were begun prior to the filing of suit by you or any other counsel and were undertaken entirely independent of your letter or that of any other counsel. Respironics is actively working to provide additional replacement devices, to obtain clearance from the FDA for additional replacement efforts, and where provision of a replacement device has not been approved and replacement in the foreseeable future appears impracticable, has communicated with the FDA about a potential refund program.

Additionally, the laws you reference in your letter set out specific requirements with respect to the provision of such *pre-suit* notice. Your letter—which acknowledges that it was sent nearly a year after the first suits were filed, and was tendered in anticipation of the June 20, 2022 deadline for filing a Consolidated Master Class Action Complaint in an MDL proceeding that had been pending for over seven (7) months—inherently does not comply with the referenced statutes' requirements for the provision of *pre-suit* notice. The letter's references to "filed complaints," "the attached Complaint," and "the attached Class Action Complaint" (though there were no attachments to the letter) reinforce both the failure to provide *pre-suit* notice as required by the referenced statutes and the perfunctory manner in which the letter was prepared and tendered.

The letter, as outlined below, also does not comply with other requirements of those statutes—or the spirit of those statutes—which contemplate the provision of material information about individual claimants and their individual alleged injuries to enable the pre-suit assessment of claims and to encourage the provision by the recipient of an offer to remediate or address the alleged claim to avoid litigation. Your

perfunctory May 16, 2022 letter, accordingly, fails to meet the notice "requirements under state law" that are referenced in that very same letter.

Moreover, we note that the letter was improperly addressed to several entities that are referred to collectively as "Philips" (i.e., "Philips Koninklijke, N.V., Philips North America, and any other unnamed "Philips-related entities"). Ltr. at 1. Only Respironics was responsible for the manufacture, distribution and warranty of the devices that are the subject of your letter. Thus, Respironics is the only proper addressee. Tellingly, no effort is made in the letter to explain why there would even be a basis for a claim against the other "Philips" entities, reflective of the fact that they are not proper subjects of your letter or the claims that have been made or that are planned to be incorporated into the forthcoming Consolidated Master Class Action Complaint.

With respect to Respironics, the letter fails to acknowledge or account for the material efforts made by Respironics to remediate or cure matters related to the CPAP machines, BiPAP machines, and ventilators (hereinafter referred to as "Respironics Medical Devices") that, while not identified with any detail, are understood to be the focus of your letter. As the Respironics Medical Devices are medical devices, Respironics is required to obtain clearance from the U.S. Food and Drug Administration (FDA), which has primary jurisdiction with respect to the devices at issue, for the provision of repaired or replacement devices. Respironics actively worked—and continues to work—to obtain clearance for the provision of repaired or replacement devices for the Respironics Medical Devices. To date, as noted, over 1.1 million replacements for Respironics Medical Devices have been provided to US-based device users.[1]

While a two-year warranty against defects in material and workmanship was typically provided with Respironics Medical Devices, in conjunction with the recall, Respironics has made its no-cost repair and replacement program available to *all* device users regardless of whether the device was within the warranty period or otherwise would not qualify for repair or replacement under the warranty as a legal or factual matter. While Respironics would have legal and factual defenses with respect to those individuals in a litigation context, including that their claims are beyond the applicable warranty period, and defenses including, among others, concerning care and use of the devices, damage caused by accident, misuse, abuse, alteration, water ingress or other handling and use issues, the nature of an alleged "defect," matters unrelated to material and workmanship, harm caused to the device by third parties or products manufactured by third parties, Respironics has put aside such defenses solely for purposes of the repair and replacement program and undertaken to provide repaired or replacement devices to all device users (to the extent cleared to do so by the FDA).[2]

In short, unlike in a litigated context, Respironics is offering—where permitted to do so by the FDA—a repaired or replacement device to all Respironics Medical Device users. That offer has been fulfilled

[1] These basic facts confirm the patent inaccuracy of your contention that neither Respironics nor other Philips entities took action to provide an "appropriately remedy" in response to what you identify as purported "defects." Ltr. at 6. Rather, this *post facto* appears designed to create the appearance of compliance with the state law notice requirements, and the appearance of an issue that has not been remediated when Respironics has, independently, been working on remediation. The letter is improper and cannot serve as a basis for the provision of notice or the pursuit of enhanced damages or attorneys' fees.

[2] For avoidance of doubt, Respironics, as well as the other Philips entities, deny any liability related to the allegations raised in your letter and reserve all rights to assert any available defenses and objections should you elect, as anticipated, to further pursue litigation of the purported claims referenced in your legally deficient letter.

to over 1.1 million US-based device users and stands as remediation and a cure for any and all claims—warranty or otherwise—that they might have possessed. For others whose device has been registered and are in process—the provision of devices will, per the FDA, follow a prioritization approach based on information provided by or on behalf of the device users. Those repairs/replacements that are in the process of being fulfilled will, too, as noted herein, stand as remediation and cure for any and all claims (warranty or otherwise). While the repair and replacement program was instituted independent from any litigation, the repair and replacement program and its associated benefits to device users stands as an offer to cure—and actual cure—of any and all claims purported to be addressed in your letter.

Subject to the foregoing, we outline below major deficiencies in your letter which highlight why the letter otherwise does not "comply with certain requirements under state law for various consumer protection laws and warranty laws."

I. The Letter Fails to Meet Notice Requirements

A. Notice is Required Prior to Suit; Notice Sent Over Seven (7) Months After the MDL was Formed and Almost Eleven (11) Months After the Filing of the First Lawsuits Is Non-Compliant

As noted above, your letter and the purported notice contained therein is non-compliant as a matter of timing because the statutes you cite require Plaintiffs to serve a compliant demand notice *prior* to filing suit. To that end, your letter acknowledges that "Philips has been on notice of nationwide class action claims ***for nearly a year*** with hundreds of lawsuits brought against Philips." Ltr. at 2 (emphasis in original). You also admit that "[t]he basis for the claims" set forth in your letter are "set forth in the complaints that have been filed to date. . ." *Id.* These passages (among others in the letter) make plain that your letter is abjectly non-compliant with regard to any statutory requirement that notice be provided *pre-suit*. The letter also fails to comply with the requirement under many statutes that the pre-suit notice concern *uncured* conduct, because as discussed above the alleged conduct (none of which is described in detail in the letter) has been cured or is in the process of being cured through the repair or replacement program.

A review of several of the statutes at issue, including but not limited to those set out in outline below, makes plain that the May 16, 2022 letter did not, by dint of timing alone, comply with either the requirements or intent of statutes cited in the letter. Nor does the letter contain any facts that would excuse the pre-suit notice requirements set forth in the statutes:

- **Alabama**: Ala. Code § 8-19-10(e) (requiring notice "[a]t least 15 days prior to the filing of any action under this section"); *Smith v. Apple, Inc.*, No. 08-AR-1498-S, 2009 WL 3958096, at *1 (N.D. Ala. Nov. 4, 2009) (granting motion to dismiss for failure to state a claim where plaintiff failed to provide defendant with pre-suit notice of the alleged breach of warranty).

- **Alaska**: Alaska Stat. § 45.50.535(b) (requiring pre-suit notice where, as here, consumer seeks injunctive relief).

- **California**: Cal. Civ. Code § 1782 (a) (notice and demand required "[t]hirty days or more prior to the commencement of an action for damages").

- **Massachusetts**: M.G.L. ch. 93A, § 9 (requiring notice "30 days prior to filing suit"); *Burns v. DeFelice Corporation*, No. 17-P-879, 2018 WL 1659808, at *4 (Mass. App. Ct. Apr. 6, 2018) (93A suit rightfully dismissed where plaintiffs sent demand letter and filed the complaint the same day); *York v. Sullivan*, 369 Mass. 157, 164 (1975) ("'the thirty-day requirement is a prerequisite' to suit").

- **Georgia**: Ga. Stat. Ann. § 10-1-399(b) (demand must be delivered "[a]t least 30 days prior to the filing of any such action").

- **Indiana**: Ind. Code §§ 24-5-0.5-5 and 24-5-0.5-2(a)(5)-(8) (notice and demand required "30 days prior to filing suit"); *Lemon v. Anonymous Physician*, No. 1:04CV2083LJMWTL, 2005 WL 2218359, at *2 (S.D. Ind. Sept. 12, 2005) (granting motion to dismiss for failure to state a claim for breach of implied warranties where plaintiff "failed to allege that they had given [defendant] notice of breach prior to filing suit"); *Mackey v. Belden, Inc.,* No. 4:21-CV-00149-JAR, 2021 WL 3363174, at *13 (E.D. Mo. Aug. 3, 2021) (applying Indiana law and holding that a "claim for an uncured act requires notice to the supplier").

- **Florida**: *North Brevard County Hospital District v. Metrus Energy-Atlantis, LLC*, 2020 WL 10459467, at *4 (M.D. Fla. July 10, 2020) (dismissing breach of warranty claims for failure to provide pre-suit notice of breach, explaining that "[i]n Florida, to state a claim for breach of an express warranty and warranty for a particular purpose, the plaintiff must allege notice to the seller of the breach." (citing Fla. Stat. § 672.607(3)(a))).

- **Maine**: Me. Rev. Stat. Ann. tit. 5 § 213(1-A) (demand must be delivered "[a]t least 30 days prior to the filing of an action for damages").

- **Mississippi**: Miss. Code § 75-24-15(2) ("In any private action brought under this chapter, the plaintiff must have first made a reasonable attempt to resolve any claim through an informal dispute settlement program approved by the Attorney General," which includes pre-suit notice).[3]

- **Texas**: Tex. Bus. & Com. Code § 17.505 (a) ("As a prerequisite to filing a suit seeking damages under [the DTPA] . . . a consumer shall give written notice to the person at least 60 days before filing the suit advising the person in reasonable detail of the consumer's specific complaint and the amount of economic damages, damages for mental anguish, and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.").

- **West Virginia**: WV ST § 46A-5-108(a) ("An action may not be brought . . . until 45 days after the consumer has informed the creditor, debt collector, seller, or lessor in writing and by certified mail, return receipt requested . . . of the alleged violation and the factual basis for the violation."); *Stanley v. Huntington Nat. Bank*, 2012 WL 254135, at *7 (N.D.W. Va. Jan. 27, 2012) ("A plaintiff's failure to comply with this "mandatory prerequisite . . . bars [such plaintiff] from bringing a [WVCCPA] claim."); *Heater v. General Motors*, 2021 WL 4896546, at *3 (N.D.W. Va. Oct. 20, 2021)

[3] The letter states that "[p]ursuant to Miss. Code Ann. § 74-24-15(2), Plaintiffs request that Philips engage [*sic*] an informal dispute settlement program approved by the Mississippi Attorney General. If Philips is interested in participating in such a program, please advise." Ltr. at 7. As noted, the Mississippi Code contemplates *pre-suit* notice as an avenue to engage in pre-suit informal dispute resolution. The Plaintiffs you represent have already filed suit, a Settlement Master has already been appointed by the MDL Court, and the parties have already agreed to engage in dispute resolution. While your *post hoc* attempt to fulfill the Mississippi notice requirements after filing suit is without merit, through the Settlement Master or otherwise, Respironics is prepared to engage in dispute resolution discussions beginning with the tender and offer of a repair/replacement outlined in this response letter.

(granting motion to dismiss WVCCPA claim because plaintiff failed to provide timely pre-suit notice in form of demand letter).

- **Wyoming**: W.S. 40-12-105; W.S. 40-12-109 (noting that as a prerequisite to filing a complaint under that statute, a plaintiff must serve a compliant demand letter prior to filing suit alleging an "uncured unlawful deceptive trade practice" and pre-suit notice "shall state fully the nature of the alleged unlawful deceptive trade practice and the actual damage suffered therefrom"); *Broderick v. Dairyland Ins. Co.*, 270 P.3d 684, 692 (Wyo. 2012) (citing Wyo. Stat. Ann. § 40–12–102(a)(ix) ("An uncured unlawful deceptive trade practice is defined as an unlawful deceptive trade practice of which the consumer 'has given notice to the alleged violator pursuant to W.S. § 40–12–109' and either no offer to cure has been made within 15 days or there has been no cure within a reasonable amount of time after the acceptance of the offer.").

As the foregoing examples demonstrate, your letter (which is deficient for the additional reasons outlined herein) not only was sent months after you first filed suit in contravention of express statutory requirements, but also was tendered in a manner antithetical to the purpose of these statutes' pre-suit notice requirements to (a) encourage and enable pre-litigation resolution of consumer disputes and (b) limit recoverable damages by consumers who do not accept good faith pre-litigation settlement offers. *See, e.g.*, *Outboard Marine Corp. v. Superior Court*, 52 Cal. App. 3d 30, 40-41 (1975) (the California Consumer Legal Remedies Act's notice requirements are intended to "provide and facilitate pre-complaint settlements of consumer actions wherever possible and to establish a limited period during which such settlement may be accomplished," and "[t]his clear purpose may only be accomplished by literal application of the notice provisions"); *Casavant v. Norwegian Cruise Line Ltd.*, 460 Mass. 500, 505 (2011) (citation omitted) ("[O]ne function of the demand letter 'is to encourage negotiation and settlement by notifying prospective defendants of claims arising from allegedly unlawful conduct.'"); *Budach v. NIBCO, Inc.*, No. 2:14-CV-04324-NKL, 2015 WL 6870145, at *3–5 (W.D. Mo. Nov. 6, 2015) (pre-suit notice "promotes the resolution of warranty issues outside of the adversarial judicial process"); *Carrozza v. CVS Pharmacy, Inc.,* 992 F.3d 44, 50 (1st Cir. 2021) ("The purpose of the demand letter is to facilitate the settlement and damage assessment aspects of c. 93A and as such the letter and notice therein is a procedural requirement, the absence of which is a bar to suit."). In sum, the failure to provide compliant notice in your letter not only renders the notice deficient, it also contravenes the purpose and intent of requiring pre-suit notice letters.

B. Filing a Lawsuit Does Not Fulfill the Pre-Suit Notice Requirements

The letter's attempt to fulfill the pre-suit notice requirements after hundreds of suits already have been filed fails to fulfill the pre-suit notice requirements. Thus, the Plaintiffs cannot assert claims pursuant to those statutes which require pre-suit notice. The statutes your letter cites, both by their express terms and as numerous courts have held, do not countenance the sue first, send letter (many months) later approach you have attempted here. Likewise, courts have held that filing suit does not satisfy the statutory *pre-suit* notice requirements. *See, e.g.*, *Hobbs v. General Motors Corp.*, 134 F. Supp. 2d 1277, 1285 (N.D. Ala. 2001) ("the filing of a lawsuit is not considered to be sufficient notice under Alabama Law"); *Tasion Commc'ns, Inc. v. Ubiquiti Networks, Inc.,* No. C-13-1803 EMC, 2014 WL 1048710, at *4 (N.D. Cal. Mar. 14, 2014) ("the notice must be provided before the lawsuit—notice that is after, or contemporaneous with, the filing of the lawsuit is insufficient"); *McKay v. Novartis Pharmaceutical Corp.*, 751 F.3d 694, 706 (5th Cir. 2014) (internal quotations omitted) ((1) "general notification of problems . . . do not suffice"; (2) "commencement of litigation does not satisfy the notice requirement"; and (3) "the notification requirement must be satisfied before litigation"); *Connick v. Suzuki Motor Co., Ltd.*, 675 N.E.2d 584, 590 (Ill. 1997) ("the section 2-607 notice requirement was not fulfilled by filing a breach of warranty complaint"); *Willard v. Home Depot, U.S.A.*, 2009 WL 4730644, at *3 (rejecting plaintiff's contention that the filing of "similar

lawsuits" established the required notice); *Gorman v. American Honda Motor Co, Inc.*, 839 N.W.2d 223, 230 (Mich. Ct. App. 2013) (plaintiff failed to fulfill pre-suit notice requirement where plaintiff did not provide defendant with notice of their breach of warranty claim until they filed a lawsuit); *Waters v. Electrolux Home Products, Inc.*, 154 F. Supp. 3d 340, 354 (N.D.W. Va. 2015) ("the WVCCPA requires a plaintiff to provide notice 'in writing and by certified mail,' not by filing a complaint"). That filing suit is not a substitute for pre-suit notice is a hornbook maxim. *See* 18 Williston on Contracts § 52:42 (4th ed.) ("[T]he fact that the buyer has filed an action seeking damages for the breach of warranty has not been regarded as tantamount to the statutory notice").

The suggestion in your letter that statutory *pre-suit* notice is not required or that Plaintiffs can unilaterally disregard such notice because of the prior pendency of litigation (including in this case, suits filed by your firms) is inconsistent with both the statutes' requirements and court's interpretation of those statutory requirements. Notice by prior lawsuit, much like post-suit notice, does not comport with the pre-suit notice "requirements under state law for various consumer protection laws and warranty laws" or cure the deficiencies with respect to the timing and content of your letter. Purporting to rely on prior litigation as prior notice has been deemed non-compliant and also undertaken in violation of both the spirit and the letter of statutory pre-suit notification requirements. *See, e.g.*, *Bakopoulos v. Mars Petcare US, Inc.*, No. 20 CV 6841, 2022 WL 846603, at *3 (N.D. Ill. Mar. 22, 2022) (noting that sending notice "just days" before plaintiff asked to be added to ongoing litigation would not constitute "pre-suit notice in good faith" because "plaintiffs' letter would have given [defendant] no time to engage in settlement, cure the defect, or minimize damages"); *Budach,* 2015 WL 6870145, at *4 (providing a summons and complaint "is hardly within the spirit of . . . the Uniform Commercial Code requirement of the giving of timely notice").

II. The Letter Does Not Undertake to Set Out Information Required to Meet the Minimum Standards for a State Consumer Protection Statute Notice or Demand Letter

Your purported notice letter also is defective to the extent it seeks to notify Respironics (or other Philips entities) about Plaintiffs' claims (and those of others who are purportedly "similarly situated") under the litany of state consumer protection statutes you invoke. The letter is devoid of detail with respect to numerous elements that are fundamental to providing a compliant notice and demand under the cited state consumer protection laws. Given the utter lack of detail and repetition of broad conclusory language, your letter seems designed to "paper the record" rather than undertake, by any reasonable measure, to comply with the state consumer protection laws notice requirements. Neither Respironics (nor the other Philips entities) are under an obligation to respond further or to provide an exhaustive account of the many fatal flaws inherent in your letter. Respironics, however, identifies below certain primary deficiencies in Plaintiffs' letter:

A. The Letter Fails to Identify Plaintiffs or Detail Facts Surrounding Their Claims

As a threshold matter, your letter is devoid of any details regarding the identity or circumstances of all but one of the parties on whose behalf you purport to send the letter. With respect to all but one of those individuals, there is no identifying information provided, no information provided about the device(s) at issue, or any aspect of their experience or purported claim. Instead, all the letter provides by way of identifying information is the following broad definition of the term "Plaintiffs": "clients represented by Co-Lead Counsel, Plaintiffs' Steering Committee, Co-Liaison Counsel, the Settlement Committee, the Leadership Development Committee, and the Plaintiffs' Time and Expense Subcommittee, including those clients listed in filed complaints and listed or will be listed on the tolling agreements with Philips (collectively "Plaintiffs")." Ltr. at 1. Neither that open-ended definition nor the allusion to filed complaints suffices to identify a claimant and/or their individual claim, let alone satisfy other claims identification and explanation

requirements under state consumer protection laws. *See, e.g.*, *Passatempo v. McMenimen*, 461 Mass. 279, 960 N.E.2d 275, 293 (2012) (affirming the dismissal of a Chapter 93A claim where the demand letter "did not mention [the defendant's] name and failed to identify or describe any unfair or deceptive act or practice committed by [the defendant]").

There is an isolated reference under the Alabama heading to John Cook, but no further information is provided beyond his name. *See* Ltr. at 3. The letter fails to provide even the most basic information that would be necessary in order to understand Mr. Cook's situation. To the extent that it is John Cook referenced as a named plaintiff in *Daniel F. Conley, et al. v. Koninklijke Philips N.V., et al.;* Case No. 1:21-cv-11328 (filed on Aug. 16, 2021 in U.S. District Court for the District of Massachusetts), he already is a plaintiff in a lawsuit so the letter logically is not pre-suit notice of his claim.[4]

Beyond the issues concerning "John Cook," the letter fails to describe, among other key elements of import, with respect to Mr. Cook or any of the "Plaintiffs" or any purported "similarly situated" individuals, whether or which purchased or leased a device, whether or which received reimbursement for some or all of any payments made from a government entity or third party, what role (if any) each individual played in the selection of the referenced devices (which are prescription medical devices sold, leased or provided by a durable medical device provider or insurer and not sold directly by Respironics, or any other Philips entity, to individuals), the identity of the device used by each individual, when each device was obtained, its current condition, the nature and history of each individual's alleged use of the device and/or information concerning each individual's health or physical condition. *See, e.g.*, *Spring v. Geriatric Auth. of Holyoke*, 394 Mass. 274, 288 (1985) (noting that 93A, § 9, provides that a written demand for relief must "reasonably" describe the unfair practice complained of and the "injury suffered"); *Sotelo v. Rawlings Sporting Goods Co., Inc.,* No. CV 18-9166-GW(MAAX), 2019 WL 4392528, at *7 (C.D. Cal. May 8, 2019) (finding that plaintiff's pre-suit notice in suit pursuant to the Consumers Legal Remedies Act was deficient to the extent it sought to bring claims for products other than those identified in the notice).

The letter similarly fails to establish a nexus between "Plaintiffs" and the litany of states referenced, thus failing to establish a basis for any claim pursuant to any of the state statutes. The letter simply refers to "Plaintiffs" generally, without alleging any Plaintiffs' names or their nexus to any of the states you mention.

The absence of any such information in the letter reflects another fundamental failure to undertake to meet the requirements of a written demand as set out in the various statutes you cite. Further, given your letter's attempts to lump every individual into a massive definition, there is an inability to identify whether individuals that you consider part of that group (none of whom is identified save for John Cook) include the over 1.1 million US device users who already have obtained a repaired or replacement device from Respironics or who are in line to receive one, such that any alleged "claim" might be deemed addressed and/or satisfied by the offer that Respironics has made to all device users regardless of circumstance.

B. <u>The Letter's Rote Recitation of Conclusory Language Fails to Describe the Unfair or Deceptive Act or Practice Relied Upon and the Injury Suffered.</u>

[4] Respironics has made diligent efforts to obtain information about the prescription for John Cook's device to enable provision of a replacement device but has, to date, not been provided with same. Upon provision of prescription information, Respironics is prepared to provide Mr. Cook with a replacement device in remediation and cure of any claim that is purported to be set out in your letter.

The letter repeats in rote fashion the following parallel or identical conclusory and formulaic language based on the text of 11 different consumer protection statutes: "Philips' actions . . . constitute deceptive acts or practices," including "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have; [r]epresenting that goods are of a particular standard, quality, or grade, if they are of another; [a]dvertising goods with intent not to sell them as advertised; and [e]ngaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce." *See* Ltr. at 3-9.

Your letter, however, does not identify any consumer-facing representation or advertisement, or the language that it contained, that is contended to have contravened the standards repeated in the letter in rote fashion. A consumer protection demand or notice letter that fails to identify the alleged representation or advertisement and how it was alleged to be misleading, inherently fails to meet the minimum threshold for identifying an alleged consumer protection law violation. *See, e.g.*, M.G.L. ch. 93A, § 9 (requiring, inter alia, that the pre-litigation "written demand for relief . . . reasonably describ[e] the unfair or deceptive act or practice relied upon and the injury suffered"); *Casavant v. Norwegian Cruise Line Ltd.,* 460 Mass. at 505 ("Specificity is required to describe the practices complained of . . . "); *Thorpe v. Mutual of Omaha Ins. Co.*, 984 F.2d 541, 544, (1st Cir. 1993) (demand letter was insufficient where it "neither alleged physical harm sustained nor the damages requested"); Cal. Civil Code § 1782(a)(1) (demand must "[n]otify the person alleged to have employed or committed methods, acts, or practices declared unlawful by Section 1770 of the particular alleged violations of Section 1770."); Tex. Bus. & Com. Code § 17.505(a) (demand must advise "the person in reasonable detail of the consumer's specific complaint and the amount of economic damages, damages for mental anguish, and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant"); Ga. Stat. Ann. § 10-1-399(b) (demand must "identify[] the claimant and reasonably describe[e] the unfair or deceptive act or practice relied upon and the injury suffered"); Wyo. Stat. Ann. § 40-12-109 (demand "shall state fully the nature of the alleged unlawful deceptive trade practice and the actual damage suffered therefrom."); Me. Rev. Stat. Ann. tit. 5 § 213(1-A) (demand must "identify[]the claimant and reasonably describe[e] the unfair and deceptive act or practice relied upon and the injuries suffered"); Ala. Code § 8-19-10(e) (same).

Coupling conclusory and formulaic recitations of statutory language—detached from any factual allegations—with catch-all language, as your letter undertakes to do, falls far short of meeting the standards outlined above for complying with state consumer protection law notice requirements.

C. The Letter Fails to Describe any Reliance on Behalf of the Plaintiffs

Given the abject failure to identify alleged misrepresentations or advertisements purported to be at issue and the reliance on recitation of statutory and catch-all language in lieu of alleged facts, the letter also inherently fails to satisfy basic notice letter requirements concerning causation; i.e., alleged reliance on any alleged misrepresentations made. *See, e.g., Princess Cruise Lines, Ltd. v. Superior Court*, 101 Cal. Rptr. 3d 323 (Cal. Ct. App. 2009) (interpreting California Consumer Legal Remedies Act as imposing reliance requirement); *Mayberry v. Bristol-Meyers Squibb Co.,* 2009 WL 5216968, at *8-9 (D.N.J. Dec. 30, 2009) (Miss. law) (dismissing claim under Mississippi statute upon finding of insufficient allegations of a causal connection between the defendants' deception and the plaintiffs' injuries); *Heller Fin. v. INA*, 573 N.E.2d 8 (Mass. 1991) (plaintiff must show causal connection between misrepresentation and injury); W. VA. CODE § 46A-6-106(b) (plaintiff who bases a claim on an affirmative misrepresentation must show that it "caused him or her to enter into the transaction," and that, for an omission, the plaintiff must show that his or her loss was "proximately caused" by the omission").

Given that the letter fails to identify alleged misrepresentations or advertisements, inherently it cannot set out any facts related to reliance or causation. For those states where causation and reliance are elements of a consumer protection law claim, the letter fails to comply on that separate ground.

D. The Letter Fails to Describe Plaintiffs' Injury

The letter also fails with respect to its purported articulation of alleged injury. The letter does not set out a claimed injury with respect to any individual claimant or provide any explanation with respect to how or why a claimed injury could have been experienced on a uniform basis across the multitude of individuals vaguely identified in the definition of "Plaintiffs." Instead, it contains a veritable catalog of different potential prayers for relief without any association to an injury or explanation as to which categories of alleged relief is alleged to be recoverable by whom, why it is recoverable, or what amounts are sought.[5]

The letter's formulaic approach fails to address actual injury by any of the Plaintiffs, much less the nexus between alleged injury and any form or degree of damages. The absence of such information in the letter reflects a failure to comply with the requirements of the statutes or their intended purposes, which is to provide detailed information sufficient to enable pre-suit resolution of the alleged claims. *See supra* Section II. B (citing cases for the proposition that plaintiffs must detail injury with specificity in consumer protection demand letters); *Casavant,* 460 Mass. at 505 (internal quotations omitted) (noting that demand letter should "define the injury suffered and relief demanded in a manner that provides the prospective defendant with an opportunity to review the facts and the law involved to see if the requested relief should be granted or denied and enables him to make a reasonable tender of settlement"); *Marrale v. Gwinnett Place Ford*, 271 Ga. App. 303, 306-07 (1995) (under Georgia statute, harm to public must be shown because statute should not be treated as an additional remedy for private wrongs). On this element, too, the letter fails to comply with the requirements of a demand letter under the "various consumer protections laws" that you attempt to invoke.

III. Were a Proper Letter Sent, State Consumer Protection Statutes Often Exempt Transactions and Conduct—As Here—That is Subject to Regulatory Oversight and Authorization

Many of the state consumer protection statutes you seek to invoke exempt transactions and conduct subject to regulatory oversight and authorization, like the repair/replacement of the medical devices at issue here. These claims involve medical devices and a related recall, all of which arise in a heavily regulated area with direct oversight by the FDA. Your letter fails to address—much less reconcile—the provisions of the cited statutes that exempt transactions subject to regulatory oversight or specifically authorized by regulatory authorities. *See, e.g.*, O.C.G.A. § 10-1-396(1) (Georgia Fair Business Practices Act does not apply to "[a]ctions or transactions specifically authorized under laws administered by or rules and regulations promulgated by any regulatory agency of this state or the United States"); *Chancellor v. Gateway Lincoln-Mercury, Inc.*, 502 S.E.2d 799, 805 (Ga. Ct. App. 1998) (noting that courts have limited

[5] For instance the letter identifies "out-of-pocket costs and other injuries in connection with their use of the Recalled Products, including costs associated with the purchase or rental of the Recalled Product, costs of purchasing accessories such as replacement masks, hoses, and other accessories, and costs of obtaining a replacement device," "ongoing medical monitoring and further medical costs," "the return of the purchase price of the Recalled Products and Accessories, with interest from the time they were purchased; all costs associated with the procurement of a replacement device; all costs of ongoing medical monitoring, and all other available damages and penalties including statutory and treble damages; and reasonable costs . . ." Ltr. at 2-4.

the Georgia Fair Business Practices Act "to the unregulated consumer marketplace" and noting that it does "not apply in regulated areas of activity, because regulatory agencies provide protection or the ability to protect against the known evils in the area of the agency's expertise"); M.G.L. ch. 93A, § 3 (exempting "transactions or actions otherwise permitted under laws as administered by" state and federal regulatory boards); *Smallwood v. Cent. Peninsula Gen. Hosp.*, 151 P.3d 319, 329 (Alaska 2006) ("AS 45.50.481(a)(1) exempts from the UTPA any acts or transactions 'regulated under laws administered by the state, [or] by a regulatory board or commission . . . unless the law regulating the act or transaction does not prohibit the practices declared unlawful in AS 45.50.471.'"). In sum, even putting aside the deficiencies in your letter, several statutes exempt the subject matter of your suit from their scope.

IV. Plaintiffs' Alleged Notice for Breach of Warranty Similarly Fails to Set Out Even the Most Basic Predicates for a Breach of Warranty Notice Concerning the Warranties at Issue, When They Were Issued, or Any Elements Concerning a Specific Plaintiff or an Alleged Breach

The U.C.C. provides that a buyer of goods "must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy." *See* U.C.C. § 2-607(3)(a). Many of the statutes that are referenced in the letter have incorporated this U.C.C. provision to require that a plaintiff give the defendant reasonable *pre-suit* notice before asserting a breach of warranty claim in court.[6] As discussed above, the failure to provide pre-suit notice renders the letter of no effect with respect to these state warranty laws and negates the ability to pursue a claim thereunder.

In addition, for many of the same reasons that the letter fails to comply with the requirements of cited state consumer protection statutes, Plaintiffs' purported notice for breach of warranty claims is deficient and non-compliant. Plaintiffs provide even *less* detail with respect to their breach of warranty claims, offering no more than a threadbare legal conclusion:

> "[t]his letter is also to provide you notice that Philips as [*sic*] breached its express or implied warranties as set forth herein and in the Class Action Complaint, in violation of the following laws"

and by, thereafter, pasting in a chart that does no more than list citations to warranty law provisions of 50 states plus Puerto Rico and the District of Columbia. Ltr. at 9-10.

The notice of claims contemplated by the cited state warranty statutes require far more than this minimalist, barebones approach. What the statutes *minimally* require is a description of the transaction and warranty at issue, an identification of the warranty and its terms, and explanation of how the warranty was allegedly breached and the impact of the breach and the requested remediation. *See, e.g.*, *In re ZF-TRW Airbag Control Units Prod. Liab. Litig.*, No. LAML1902905JAKFFMX, 2022 WL 522484, at *129 (C.D. Cal. Feb. 9, 2022) (citing *Riley v. Ken Wilson Ford, Inc.*, 109 N.C. App. 163, 169 (1993) (noting that "[t]he most important policy behind the notice requirement is to allow the seller the opportunity to cure the breach and minimize its damages. . . . the seller must have a reasonable opportunity to discover facts and prepare for negotiation and his defense to a lawsuit")); *In re Santa Fe Nat. Tobacco Co. Mktg. & Sales Pracs. &*

[6] *See, e.g.*, ALA. CODE § 7-2-607(3)(a); COLO. REV. STAT. § 4-2-607(3)(a); GA. CODE § 11-2-607(3)(a); IDAHO CODE § 28-2-607(3)(a); 810 ILCS 5/2-607(3)(a); ME. REV. STAT. tit. 11, § 2-607(3)(a); MINN. STAT. § 336.2-607(3)(a); N.J. STAT. § 12A:2–607(3)(a); N.Y. U.C.C. Law § 2-607(3)(a); N.C. GEN. STAT. § 25-2- 607(3)(a); R.I. GEN. LAWS § 6A-2-607(3)(a); TENN. CODE § 47-2-607(3)(a); TEX. BUS. & COM. CODE § 2.607(c)(1); VA. CODE § 8.2–607(3)(a); WASH. REV. CODE § 62A.2-607(3)(a).

Prod. Liab. Litig., 288 F. Supp. 3d 1087, 1200 (D.N.M. 2017) (citation omitted) (notice "afford[s] the seller a reasonable opportunity to learn the facts so that he may adequately prepare for negotiation and defend himself in a suit").

In contrast, the letter fails to identify, with respect to *any* plaintiffs, the elements that would support a breach of warranty claim, i.e., the transaction with respect to which the warranty is alleged to apply, the manner in which a warranty was alleged to have been afforded to the claimant, identification of the warranty at issue, allegations concerning how Respironics breached the warranty, and how the alleged breach caused Plaintiffs' damages. In the end, the letter and chart identify no elements of each (or any) breach of warranty claim and no facts in an attempt to support breach of any of these state warranty statutes. Failure to include any of these details amount to a failure to provide the Philips entities with valid notice of Plaintiffs' claims.[7]

V. Over 1.1 Million US-Based Device Users Have Secured the Benefit of a Replacement Device Through Respironics' Repair/Replacement Program Which Has Been Made Available to All Affected Customers as a Tender and Cure of Any Alleged Claim, and Work Continues Apace To Remediate Any and All Potential Claims

In addition to its other shortcomings, the letter portends that "Plaintiffs and the Class will seek appropriate injunctive and declaratory relief relating to the Recalled Products, including, without limitation, notice to the Class regarding the defect, and replacement or repair of the Recalled Products." Ltr. at 3. As stated *supra,* that relief—replacement or repair of the Respironics Medical Devices—has been provided by Respironics, at no cost, to over 1.1 million US-based device users. As you should be well aware from your efforts to impose certain preservation conditions with respect to Respironics' ongoing repair and replacement efforts, Respironics has implemented a registration process with respect to the repair/replacement program that it has made available, free of charge, to all customers affected by the recall, including your clients and any other so-called "similarly situated" individuals.

Your letter fails to identify which Plaintiffs, if any, have already sought repair or replacement of their devices and/or already received a repaired or replacement device. This lack of specificity is fatal to Plaintiffs' claims, does not fulfill the pre-suit statutory notice requirements, and leaves Respironics without the required information to respond to the demand beyond the existing offer of repair or replacement generally provided by Respironics.

If any of the unnamed "Plaintiffs" or "similarly situated" individuals on whose behalf you wrote have not done so already, they should register for the repair/replacement program to avail themselves of the benefits of that program as a means of addressing the issues raised by the recall that are the subject of your deficient letter. They can register online at https://www.philipssrcupdate.expertinquiry.com/ and provide supplemental information for prioritization purposes at: https://www.usa.philips.com/healthcare/resource-catalog/landing/experience-

[7] The approach adopted in the letter also is antithetical to the purposes of these cited notice provisions which are to enable cure of the defects, settlement, and limitation of damages. *See, e.g.*, *Bakopoulos*, 2022 WL 846603, at *2 (noting that "[t]he requirement of pre-suit notice [for breach of warranty] is intended to encourage settlement, cure defects, and minimize damages"); *Dilly v. Corp.*, No. 2:14-CV-03307-DCN, 2016 WL 53828, at *11 (D.S.C. Jan. 4, 2016) (citing cases and PEB Study Group, Uniform Commercial Code Article 2: Preliminary Report 167 (1990) (noting that the purposes of § 2-607 are to effect a cure, or to facilitate an effort to negotiate a settlement, to gather and preserve evidence for possible litigation, and to defeat commercial bad faith).

catalog/sleep/communications/src-update/news/understanding-the-recall-process. As also discussed above, to the extent that the FDA has not cleared a remediation program for certain types of devices, and securing clearance and implementing remediation in the coming months for those devices seems impracticable, Respironics has proposed to the FDA the provision of refunds for a limited volume of devices that are not presently part of the cleared and progressing repair and replacement program.

This repair and replacement program described above constitutes an offer to cure, and a confirmation of cure, in satisfaction of all claims pursuant to the statutes you reference and as a control on efforts to pursue damages or enhanced damages claims or the recovery of attorneys' fees. *See, e.g.*, *Heater v. Gen. Motors, LLC,* No. 1:21CV24, 2021 WL 4896546, at *3 (N.D.W. Va. Oct. 20, 2021) (demand must "put [recipient] on notice of its violative conduct and give it an opportunity to cure the resulting harm"); Cal. Civ. Code § 1782(a)(1)-(2) (requiring the consumer to notify the potential defendant "of the particular alleged violations of Section 1770" and demand that the defendant "correct, repair, replace or otherwise rectify the goods or services alleged to be in violation of Section 1770") (citing Cal. Civ. Code § 1782(a)(1)-(2)); *Benson v. S. California Auto Sales, Inc.*, 239 Cal. App. 4th 1198, 1212 (2015) (noting that plaintiff should not have filed a suit for damages pursuant to the Consumers Legal Remedies Act after defendant offered an appropriate correction, stating that "[i]t is neither efficient nor economical to engage in protracted litigation and to run up attorney fees when an appropriate correction has been offered at the very outset"); *Sotelo v. Rawlings Sporting Goods Co., Inc.*, No. CV 18-9166-GW(MAAX), 2019 WL 4392528, at *6 (C.D. Cal. May 8, 2019) ("The purpose of the CLRA notice requirement is to allow a manufacturer or vendor sufficient opportunity to correct or replace a deficient product."); *Morgan v. AT&T Wireless Servs., Inc.,* 177 Cal. App. 4th 1235, 1261, 99 Cal. Rptr. 3d 768, 789 (2009) (noting that pre-suit notice "requirement exists in order to allow a defendant to avoid liability for damages if the defendant corrects the alleged wrongs within 30 days after notice, or indicates within that 30–day period that it will correct those wrongs within a reasonable time"); *Spring v. Geriatric Auth. of Holyoke*, 394 Mass. 274, 288 (1985) (noting "[t]he purposes of the [93A] letter are twofold: (1) 'to encourage negotiation and settlement by notifying prospective defendants of claims arising from allegedly unlawful conduct' and (2) 'to operate as a control on the amount of damages which the complainant can ultimately recover.' If the defendant makes a reasonable tender of settlement which is rejected by the complainant, the damages recoverable are limited to the amount of tender.").

Sincerely,

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