

1 **FARUQI & FARUQI, LLP**  
2 Lisa Omoto (SBN 303830)  
3 1901 Avenue of the Stars, Suite 1060  
4 Los Angeles, CA 90067  
5 Telephone: (424) 256-2884  
6 Facsimile: (424) 256-2885  
7 E-mail: lomoto@faruqilaw.com

8 *Attorneys for Plaintiff Stacy Dorcas*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN BERNARDINO**

11 STACY DORCAS, individually and on behalf of  
12 all others similarly situated,

13 Plaintiff,

14 v.

15 ATERIAN, INC.,

16 Defendant.

Case No.:

**CLASS ACTION COMPLAINT**

1. **Violation of California Civil Code §1750, et seq.**
2. **Violation of California Business and Professions Code § 17200, et seq.**
3. **Violation of California Business and Professions Code § 17500, et seq.**
4. **Violation of California Commercial Code § 2313**
5. **Violation of California Commercial Code § 2314**
6. **Common Law Fraud**
7. **Intentional Misrepresentation**
8. **Negligent Misrepresentation**
9. **Quasi-Contract/Unjust Enrichment/Restitution**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

1 Plaintiff Stacy Dorcas (“Plaintiff”) by and through her counsel, brings this Class Action  
2 Complaint against Defendant Aterian, Inc. (“Aterian” or “Defendant”), on behalf of herself and all  
3 others similarly situated, and alleges upon personal knowledge as to her own actions, and upon  
4 information and belief as to counsel’s investigations and all other matters, as follows:

5 **NATURE OF THE ACTION**

6 1. Plaintiff brings this consumer protection class action lawsuit against Defendant, based  
7 on Defendant’s representations regarding all Mueller branded products (the “Products”).

8 2. Specifically, on the packaging for all the Products, Aterian places an Austrian flag and  
9 the word “Austria” (together, the “Austrian Representations”).

10 3. Plaintiff and others have relied on the Austrian Representations when purchasing the  
11 Products, believing that the Products are made or designed in Austria. However, unbeknownst to  
12 consumers, the Products are neither made nor designed in Austria.

13 4. Had Plaintiff and consumers known that the Products were neither made nor designed  
14 in Austria, they would not have purchased the Products, or would have paid significantly less for the  
15 Products. Therefore, Plaintiff and other consumers have suffered injury in fact as a result of the  
16 Austrian Representations.

17 5. Plaintiff brings this class action lawsuit on behalf of herself and all others similarly  
18 situated. Plaintiff seeks to represent a California Subclass, a California Consumer Subclass, and a  
19 Nationwide Class (defined *infra* in paragraphs 23-25) (collectively referred to as “Classes”).

20 6. Plaintiff, on behalf of herself and other consumers, is seeking damages, restitution,  
21 declaratory and injunctive relief, and all other remedies the court deems appropriate.

22 **JURISDICTION AND VENUE**

23 7. This Court has original jurisdiction over this case pursuant to California Constitution,  
24 Article VI § 10, because this case is a cause not given by statute to other trial courts.

25 8. This Court has personal jurisdiction over Defendant because Defendant has sufficient  
26 minimum contacts in California or otherwise intentionally did avail itself of the markets within  
27 California, through sale of its Products to California consumers. Defendant has distributed the

1 Products throughout California, including in this County.

2 9. Venue is proper in this County pursuant to California Code of Civil Procedure section  
3 395(a) given that Defendant does not reside in California. In addition, venue is appropriate pursuant  
4 to Cal. Civ. Code section 1780(d) because Defendant conducts business in this County, given that  
5 Defendant has sold the Products to putative class members in this County.

6 **PARTIES**

7 10. Plaintiff Stacy Dorcas is a citizen of California. In or around August 2019, Plaintiff  
8 purchased a Mueller whistling tea kettle from Amazon.com. Additionally, Plaintiff purchased a  
9 Mueller onion chopper in November 2019 from Amazon.com. Plaintiff purchased these Products,  
10 reasonably believing that, based on the Austrian Representations, the Products were made or designed  
11 in Austria. Plaintiff would not have purchased the Products, or would have paid significantly less for  
12 them, had she known that the Products were neither made nor designed in Austria. Plaintiff therefore  
13 has suffered injury in fact and has lost money as a result of Defendant’s practices, as described herein.

14 11. Defendant Aterian, Inc. is a corporation which is incorporated in Delaware with its  
15 principal place of business in New York, New York. Defendant labels, distributes, sells, and  
16 advertises the Products across the country, including in California. Defendant has maintained  
17 substantial distribution and sales in this County.

18 **FACTUAL ALLEGATIONS**

19 **A. Background**

20 12. Defendant markets and sells home and kitchen tools and gadgets under its Mueller  
21 Austria product line. Defendant sells the Products directly to consumers through its online website,  
22 muellerdirect.com as well as through Amazon.com.

23 13. As depicted below in a representative example, on the front of each of the Products,  
24 Aterian places an Austrian flag and the word “Austria” on the packaging of all the Products (together,  
25 the “Austrian Representations”).

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14. The Austrian Representations indicate to a customer that the Products are made or designed in Austria.

15. Defendant knew or should have known that Plaintiff and other consumers, in purchasing the Product, would rely on the Austrian Representations and believe them to mean that the Products were made or designed in Austria, and would rely on these representations and be induced into purchasing the Products as a result of the Austrian Representations.

16. Defendant knew or should have known that the Products were neither made nor designed in Austria given that, during the relevant statute of limitations period, Defendant directly and/or through their agents and affiliate have designed, labeled, packaged, marketed, distributed and

1 sold the Products throughout the country including but not limited to in California. Defendant further  
2 knew what representations it has made about the Products, as all of those representations appeared on  
3 the Products' packaging, labeling, and Defendant's advertisements.

4 17. Plaintiff and other consumers did not know, and had no reason to know, that the  
5 Austrian Representations are incorrect.

6 18. Plaintiff and other consumers would not have purchased the Products, or would have  
7 paid significantly less for the Products, had they known that the Austrian Representations were  
8 incorrect. Therefore, Plaintiff and other consumers purchasing the Products have suffered injury in  
9 fact and have lost money as a result of Defendant's practices, as described herein.

10 19. Each consumer has been exposed to the same or substantially similar practice, as at all  
11 relevant times: (1) Defendant uniformly placed the Austrian Representations on the packaging and  
12 online advertising for each of the Products; and (2) each of the Products were neither made nor  
13 designed in Austria.

14 20. Plaintiff and other consumers have paid an unlawful premium for the Products.  
15 Plaintiff and other consumers would have paid significantly less for the Products, or would not have  
16 purchased them at all, had they known that the Products' were neither made nor designed in Austria.  
17 Therefore, Plaintiff and other consumers purchasing the Products suffered injury-in-fact and lost  
18 money as a result of Defendant's practices as described herein.

19 21. As a result of its business practice, and the harm caused to Plaintiff and other  
20 consumers, Defendant should be required to pay for all damages caused to consumers, including  
21 Plaintiff. Furthermore, Defendant should be enjoined from engaging in these practices.

22 22. Despite being misled by Defendant, Plaintiff wishes to continue purchasing the  
23 Products, but cannot rely on the Austrian Representations in the future. Although Plaintiff regularly  
24 visits Amazon.com, where Defendant's Products are sold, because she was misled in the past by  
25 Defendant, absent an injunction, she will be unable to rely with confidence on Defendant's  
26 representations in the future and will therefore abstain from purchasing the Products, even though she  
27 would like to purchase them. In addition, members of the proposed classes run the risk of continuing  
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1 to purchase the Products, under the assumption that the Products are made or designed in Austria.  
2 Until Defendant or their agents manufacture the Products in Austria, or is enjoined from making the  
3 representations described herein, Plaintiff and other consumers will continue to bear this ongoing  
4 injury.

5 **CLASS ACTION ALLEGATIONS**

6 23. Plaintiff brings this case as a class action that may be properly maintained under  
7 California Code of Civil Procedure § 382 and other applicable laws, on behalf of herself and all  
8 persons in the United States, its territories, or any United States military facility or exchange, who  
9 from December 9, 2018, until the present, purchased the Products (“Nationwide Class”).

10 24. Plaintiff also seeks to represent a subclass defined as all California citizens, who from  
11 December 9, 2018 until the present, purchased the Products (“California Subclass”).

12 25. Plaintiff also seeks to represent a subclass defined as all California citizens, who from  
13 December 9, 2018 until the present, purchased the Products for personal, family, or  
14 household purposes (“California Consumer Subclass”).

15 26. Excluded from the Classes are Defendant, the officers and directors of the Defendant  
16 at all relevant times, members of their immediate families and their legal representatives, heirs,  
17 successors or assigns and any entity in which Defendant has or had a controlling interest. Any judge  
18 and/or magistrate judge to whom this action is assigned, and any members of such judges’ staffs and  
19 immediate families are also excluded from the Classes. Also excluded from the Classes is the  
20 Mediator Louis M. Meisinger, and their employees, legal representatives, heirs, successors, assigns,  
21 or any members of their immediate family.

22 27. Plaintiff hereby reserves the right to amend or modify the class definitions with greater  
23 specificity or division after having had an opportunity to conduct discovery.

24 28. Plaintiff is a member of all Classes.

25 29. Numerosity: The proposed Classes are so numerous that joinder of all members would  
26 be impractical. Further, Defendant’s sales of the Products across the country during the class period  
27 are in the millions of dollars. Accordingly, members of the Classes are so numerous that their  
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1 individual joinder herein is impractical. While the precise number of class members and their  
2 identities are unknown to Plaintiff at this time, these Class members are identifiable and ascertainable.

3 30. Common Questions Predominate: There are questions of law and fact common to the  
4 proposed Classes that will drive the resolution of this action and will predominate over questions  
5 affecting only individual Class members. These questions include, but are not limited to, the  
6 following:

- 7 a. Whether Defendant misrepresented material facts and/or failed to disclose material  
8 facts in connection with the packaging, marketing, distribution, and sale of the  
9 Products;
- 10 b. Whether Defendant's packaging and advertising constituted false or deceptive  
11 advertising;
- 12 c. Whether Defendant engaged in unfair, unlawful and/or fraudulent business  
13 practices;
- 14 d. Whether Defendant's unlawful conduct, as alleged herein, was intentional and  
15 knowing;
- 16 e. Whether Plaintiff and the Classes are entitled to damages and/or restitution, and in  
17 what amount;
- 18 f. Whether Defendant is likely to continue using false, misleading or unlawful  
19 conduct such that an injunction is necessary; and
- 20 g. Whether Plaintiff and the Classes are entitled to an award of reasonable attorneys'  
21 fees, interest, and costs of suit.

22 31. Defendant has engaged in a common course of conduct giving rise to violations of the  
23 legal rights sought to be enforced uniformly by Plaintiff and Class members. Similar or identical  
24 statutory and common law violations, business practices, and injuries are involved. The injuries  
25 sustained by members of the proposed Classes flow, in each instance, from a common nucleus of  
26 operative fact, namely, Defendant's deceptive packaging and advertising of the Products. Each  
27 instance of harm suffered by Plaintiff and Class members has directly resulted from a single course  
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1 of conduct. Therefore, individual questions, if any, pale in comparison to the numerous common  
2 questions presented in this action.

3 32. Superiority: Because of the relatively small size of the individual Class members’  
4 claims, no Class member could afford to seek legal redress on an individual basis. Furthermore,  
5 individualized litigation increases the delay and expense to all parties and multiplies the burden on  
6 the judicial system presented by the complex legal and factual issues of this case. Individualized  
7 litigation also presents a potential for inconsistent or contradictory judgments. A class action is  
8 superior to any alternative means of prosecution.

9 33. Typicality: Plaintiff’s claims are typical of the claims of the Classes she seeks to  
10 represent in that Plaintiff and members of the Classes have been and continue to be exposed to  
11 Defendant’s misleading labeling, have purchased Products relying on the misleading labeling, and  
12 have suffered losses as a result of such purchases.

13 34. Adequacy: Plaintiff is an adequate representative of the Classes because her interests  
14 do not conflict with the interests of the members of the Classes she seeks to represent, she has retained  
15 competent counsel experienced in prosecuting class actions, and she intends to prosecute this action  
16 vigorously. The interests of the members of the Classes will be fairly and adequately protected by  
17 the Plaintiff and her counsel.

18 35. Defendant has also acted, or failed to act, on grounds generally applicable to Plaintiff  
19 and the proposed Classes, supporting the imposition of uniform relief to ensure compatible standards  
20 of conduct toward the members of the Classes.

21 **FIRST CAUSE OF ACTION**  
22 **Violation of California’s Consumers Legal Remedies Act (“CLRA”),**  
23 **California Civil Code §§ 1750, et seq.**  
*(for the California Consumer Subclass)*

24 36. Plaintiff repeats the allegations contained in paragraphs 1-35 above as if fully set forth  
25 herein.

26 37. Plaintiff brings this claim individually and on behalf of the members of the proposed  
27 California Consumer Subclass against Defendant.



1           38.     The Products are “goods” within the meaning of Cal. Civ. Code § 1761(a), and the  
2 purchases of such products by Plaintiff and members of the California Consumer Subclass constitute  
3 “transactions” within the meaning of Cal. Civ. Code § 1761(e).

4           39.     Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have  
5 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have....”  
6 By advertising the Products with the Austrian Representations, Defendant has represented and continues  
7 to represent that the Products have characteristics and benefits which they do not have: that the Products  
8 are made or designed in Austria. Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

9           40.     Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a  
10 particular standard, quality, or grade, or that goods are of a particular style of model, if they are  
11 another.” By advertising the Products with the Austrian Representations, Defendant has represented and  
12 continues to represent that the Products are of a particular standard, quality, and/or grade when they are  
13 not. Therefore, Defendant has violated section 1770(a)(7) of the CLRA.

14           41.     Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not  
15 to sell them as advertised.” By advertising the Products with the Austrian Representations, and then not  
16 selling the Products to meet those standards, Defendant has violated section 1770(a)(9) of the CLRA.

17           42.     At all relevant times, Defendant knew or reasonably should have known that the  
18 Products were neither made nor designed in Austria and that Plaintiff and other members of the  
19 California Consumer Subclass would reasonably and justifiably rely on Defendant’s marketing and  
20 advertising in purchasing the Products.

21           43.     Plaintiff and members of the California Consumer Subclass have reasonably and  
22 justifiably relied on Defendant’s conduct when purchasing the Products. Moreover, based on the very  
23 materiality of Defendant’s conduct, reliance on such conduct is a material reason for the decision to  
24 purchase the Products and may be presumed or inferred for Plaintiff and members of California  
25 Consumer Subclass.

26           44.     Plaintiff and members of the California Consumer Subclass suffered injuries caused  
27 by Defendant because they would not have purchased the Products, or would have paid significantly  
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1 less for the Products, had they known that Defendant’s conduct was misleading.

2 45. Under Cal. Civ. Code § 1780(a), Plaintiff and members of the California Consumer  
3 Subclass seek damages, restitution, declaratory and injunctive relief, and all other remedies the court  
4 deems appropriate for Defendant’s violations of the CLRA.

5 46. Pursuant to Cal. Civ. Code § 1782, on October 23, 2021, counsel for Plaintiff mailed  
6 a notice and demand letter by certified mail, with return receipt requested, to Defendant (see **Exhibit**  
7 **“A”**). Defendant received this letter on October 25, 2021. Because Defendant has failed to rectify or  
8 remedy the damages caused within 30 days of receipt, Plaintiff is timely filing this Class Action  
9 Complaint seeking injunctive relief under the CLRA.

10 **SECOND CAUSE OF ACTION**  
11 **Violation of California’s Unfair Competition Law (“UCL”),**  
12 **California Business & Professions Code §§ 17200, et seq.**  
*(for the California Subclass and California Consumer Subclass)*

13 47. Plaintiff repeats the allegations contained in paragraphs 1-35 above as if fully set  
14 forth herein.

15 48. Plaintiff brings this claim individually and on behalf of the members of the proposed  
16 California Subclass and California Consumer Subclass against Defendant.

17 49. UCL §17200 provides, in pertinent part, that “unfair competition shall mean and  
18 include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or  
19 misleading advertising . . . .”

20 50. Under the UCL, a business act or practice is “unlawful” if it violates any established  
21 state or federal law.

22 51. Defendant’s false and misleading advertising of the Products is therefore “unlawful”  
23 because it violates the CLRA, California’s False Advertising Law (“FAL”), and other applicable laws  
24 as described herein.

25 52. As a result of Defendant’s unlawful business acts and practices, Defendant has  
26 unlawfully, unfairly and/or fraudulently obtained money from Plaintiff, and members of both the  
27 California Subclass and California Consumer Subclass.

1           53.     Under the UCL, a business act or practice is “unfair” if the Defendant’s conduct is  
2 substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive,  
3 and unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity  
4 of the harm to the alleged victims.

5           54.     Defendant’s conduct has been and continues to be of no benefit to purchasers of the  
6 Products, as it was and continues to be false, misleading, unfair, and unlawful. Representing that the  
7 Products are made or designed in Austria when they are not is of no benefit to customers. Therefore,  
8 Defendant’s conduct was and continues to be “unfair.”

9           55.     As a result of Defendant’s unfair business acts and practices, Defendant has and  
10 continues to unfairly obtain money from Plaintiff, and members of both the California Subclass and  
11 California Consumer Subclass.

12          56.     Under the UCL, a business act or practice is “fraudulent” if it actually deceives or is  
13 likely to deceive members of the consuming public.

14          57.     Defendant’s conduct here was and continues to be fraudulent because it has the effect  
15 of deceiving consumers into believing that the Products are made or designed in Austria when they  
16 are not. Because Defendant has misled Plaintiff and members of both the California Subclass and  
17 California Consumer Subclass, Defendant’s conduct is “fraudulent.”

18          58.     As a result of Defendant’s fraudulent business acts and practices, Defendant has and  
19 continues to fraudulently obtain money from Plaintiff, and members of both the California Subclass  
20 and California Consumer Subclass.

21          59.     Plaintiff requests that this Court cause Defendant to restore this unlawfully, unfairly,  
22 and fraudulently obtained money to Plaintiff, and members of both the California Subclass and  
23 California Consumer Subclass, to disgorge the profits Defendant made on these transactions, and to  
24 enjoin Defendant from violating the UCL or violating it in the same fashion in the future as discussed  
25 herein. Otherwise, Plaintiff, and members of both the California Subclass and California Consumer  
26 Subclass may be irreparably harmed and/or denied an effective and complete remedy if such an order  
27 is not granted.

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**THIRD CAUSE OF ACTION**  
**Violation of California’s False Advertising Law (“FAL”),**  
**California Business & Professions Code §§ 17500, et seq.**  
*(for the California Subclass and California Consumer Subclass)*

60. Plaintiff repeats the allegations contained in paragraphs 1-35 above as if fully set forth herein.

61. Plaintiff brings this claim individually and on behalf of the members of the proposed California Subclass and California Consumer Subclass against Defendant.

62. California’s FAL makes it “unlawful for any person...to make or disseminate or cause to be made or disseminated before the public... in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement, concerning ... personal property...which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...” Cal. Bus. & Prof. Code § 17500.

63. Defendant has disseminated to the public, including Plaintiff and members of both the California Subclass and California Consumer Subclass, false and misleading statements concerning the nature of the Products, specifically that the Products are made or designed in Austria when they are not. Because Defendant has disseminated false and misleading information regarding the Products and Defendant knows or should have known through the exercise of reasonable care that these representations are false and misleading, Defendant has violated the FAL.

64. Furthermore, Defendant knows or should have known through the exercise of reasonable care that such statements are unauthorized, inaccurate, and misleading.

65. As a result of Defendant’s false advertising and marketing, Defendant fraudulently obtained money from Plaintiff and members of both the California Subclass and California Consumer Subclass.

66. Plaintiff requests that this Court cause Defendant to restore this money to Plaintiff and members of both the California Subclass and California Consumer Subclass, to disgorge the profits

1 Defendant made on these transactions, and to enjoin Defendant from violating the FAL or violating  
2 it in the same fashion in the future as discussed herein. Otherwise, Plaintiff and members of both the  
3 California Subclass and California Consumer Subclass may be irreparably harmed and/or denied an  
4 effective and complete remedy if such an order is not granted.

5 **FOURTH CAUSE OF ACTION**  
6 **Breach of Express Warranty,**  
7 **California Commercial Code § 2313**  
8 *(for the California Subclass and California Consumer Subclass)*

9 67. Plaintiff repeats the allegations contained in paragraphs 1-35 above as if fully set forth  
10 herein.

11 68. Plaintiff brings this claim individually and on behalf of the members of the proposed  
12 California Subclass and California Consumer Subclass against Defendant.

13 69. California Commercial Code § 2313 provides that “(a) Any affirmation of fact or  
14 promise made by the seller to the buyer which relates to the goods and becomes part of the basis of  
15 the bargain creates an express warranty that the goods shall conform to the affirmation or promise,”  
16 and “(b) any description of the goods which is made part of the basis of the bargain creates an express  
17 warranty that the goods shall conform to the description.” Cal. Comm. Code § 2313.

18 70. Defendant has warranted that the Products are made or designed in Austria based on  
19 the Austrian Representations. These representations are affirmations made by Defendant to  
20 consumers. These representations became part of the basis of the bargain to purchase the Products  
21 and have created an express warranty that the Products would conform to these affirmations. In the  
22 alternative, the representations regarding the Products are descriptions of goods which were made as  
23 part of the basis of the bargain to purchase the Products, and which have created an express warranty  
24 that the Products would conform to the product descriptions.

25 71. Plaintiff and members of both the California Subclass and California Consumer  
26 Subclass have reasonably and justifiably relied on Defendant’s express warranties that the Products  
27 are made or designed in Austria, believing that that the Products do in fact conform to those  
28 warranties.



1 promise and/or affirmation of fact on the packaging and labeling of the Products.

2 81. However, the Products do not conform to the promises and/or affirmations of fact  
3 made by Defendant on the packaging and labeling of the Products. To the contrary, the Products are  
4 neither made nor designed in Austria.

5 82. Therefore, Defendant has breached its implied warranty of merchantability in regard  
6 to the Products.

7 83. If Plaintiff and members of both the California Subclass and California Consumer  
8 Subclass had known that the Products did not conform to Defendant's promises or affirmations of  
9 fact, they would not have purchased the Products, or would not have been willing to pay the premium  
10 price associated with Products. Therefore, as a direct and/or indirect result of Defendant's breach,  
11 Plaintiff and members of both the California Subclass and California Consumer Subclass have  
12 suffered injury and deserve to recover all damages afforded under the law.

13 **SIXTH CAUSE OF ACTION**  
14 **Common Law Fraud**  
*(for the Classes)*

15 84. Plaintiff repeats the allegations contained in paragraphs 1-35 above as if fully set forth  
16 herein.

17 85. Plaintiff brings this claim individually and on behalf of the members of the Classes  
18 against Defendant.

19 86. Defendant has willfully, falsely, knowingly, or recklessly represented that the Products  
20 are made or designed in Austria when the Products are neither made nor designed in Austria.  
21 Therefore, Defendant has made misrepresentations as to the Products.

22 87. Defendant's misrepresentations are material (i.e., the type of misrepresentations to  
23 which a reasonable person would attach importance and would be induced to act thereon in making  
24 purchase decisions), because they relate to the geographical origin of the appliances, which  
25 consumers value. In this situation, consumers value and are willing to pay more for home and kitchen  
26 tools and gadgets that are made in Austria as opposed to other countries, such as China.

27 88. Defendant knows that the Products are neither made nor designed in Austria.

1 89. Defendant intended that Plaintiff and members of the Classes rely on these  
2 representations, as evidenced by Defendant prominently featuring the Austrian Representation on the  
3 Products' labeling, packaging, and advertising.

4 90. Plaintiff and members of the Classes have reasonably and justifiably relied on  
5 Defendant's misrepresentations when purchasing the Products, have been unaware of the true nature  
6 of the Products, and, had the correct facts been known, would not have purchased the Products, or  
7 would not have purchased them at the premium prices at which they were offered.

8 91. As a direct and proximate result of Defendant's fraud, Plaintiff and members of the  
9 Classes have suffered economic losses and other general and specific damages, including, but not  
10 necessarily limited to, the monies paid to Defendant, and any interest that would have accrued on  
11 those monies, all in an amount to be proven at trial.

12 **SEVENTH CAUSE OF ACTION**  
13 **Intentional Misrepresentation**  
14 ***(for the Classes)***

15 92. Plaintiff repeats the allegations contained in paragraphs 1-35 above as if fully set forth  
16 herein.

17 93. Plaintiff brings this claim individually and on behalf of the members of the Classes  
18 against Defendant.

19 94. Defendant has represented that the Products are made or designed in Austria when  
20 they are not. Therefore, Defendant has made misrepresentations about the Products.

21 95. Defendant's misrepresentations regarding the Products are material (i.e., the type of  
22 misrepresentations to which a reasonable person would attach importance and would be induced to  
23 act thereon in making purchase decisions), because they relate to the geographical origin of the  
24 appliances, which consumers value. In this situation, consumers value and are willing to pay more  
25 for home and kitchen tools and gadgets that are made in Austria as opposed to other countries, such  
26 as China.

27 96. During the time the Austrian Representations were made, Defendant knew that the  
28 Products were neither made nor designed in Austria.



1 97. Defendant intended that Plaintiff and members of the Classes rely on these  
2 representations, as evidenced by Defendant prominently featuring the Austrian Representations on  
3 the Products' labeling, packaging, and advertising.

4 98. Plaintiff and members of the Classes have reasonably and justifiably relied on  
5 Defendant's misrepresentations when purchasing the Products.

6 99. As a direct and proximate result of Defendant's misrepresentations, Plaintiff and  
7 members of the Classes have suffered economic losses and other general and specific damages,  
8 including but not limited to the amounts paid for the Products, and any interest that would have  
9 accrued on those monies, all in an amount to be proven at trial.

10 **EIGHTH CAUSE OF ACTION**  
11 **Negligent Misrepresentation**  
12 ***(for the Classes)***

13 100. Plaintiff repeats the allegations contained in paragraphs 1-35 above as if fully set forth  
14 herein.

15 101. Plaintiff brings this claim individually and on behalf of the members of the Classes  
16 against Defendant.

17 102. Defendant has represented that the Products are made or designed in Austria when  
18 they are not. Therefore, Defendant has made misrepresentations about the Products.

19 103. Defendant's misrepresentations regarding the Products are material (i.e., the type of  
20 misrepresentations to which a reasonable person would attach importance and would be induced to  
21 act thereon in making purchase decisions), because they relate to the geographical origin of the  
22 appliances, which consumers value. In this situation, consumers value and are willing to pay more  
23 for home and kitchen tools and gadgets that are made in Austria as opposed to another country, such  
24 as China.

25 104. Defendant knows or has been negligent in not knowing that the Products are neither  
26 made nor designed in Austria. Defendant has no reasonable grounds for believing the representations  
27 are true when made.

28 105. Defendant intended that Plaintiff and members of the Classes rely on these

1 representations, as evidenced by Defendant prominently featuring the Austrian Representations on  
2 the Products' labeling, packaging, and advertising.

3 106. Plaintiff and members of the Classes have reasonably and justifiably relied on  
4 Defendant's negligent misrepresentations when purchasing the Products.

5 107. As a direct and proximate result of Defendant's negligent misrepresentations, Plaintiff  
6 and members of the Classes have suffered economic losses and other general and specific damages,  
7 including but not limited to the amounts paid for the Products, and any interest that would have  
8 accrued on those monies, all in an amount to be proven at trial.

9  
10 **NINTH CAUSE OF ACTION**  
**Quasi Contract/Unjust Enrichment/Restitution**  
*(for the Classes)*

11 108. Plaintiff repeats the allegations contained in paragraphs 1-35 above as if fully set forth  
12 herein.

13 109. Plaintiff brings this claim individually and on behalf of the members of the Classes  
14 against Defendant.

15 110. As alleged herein, Defendant has intentionally and recklessly made false  
16 representations to Plaintiff and members of the Classes to induce them to purchase the Products.  
17 Plaintiff and members of the Classes have reasonably relied on the false representations and have not  
18 received all the benefits promised by Defendant. Plaintiff and members of the Classes therefore have  
19 been falsely induced by Defendant's Austrian Representations on the Products and have paid for them  
20 when they would and/or should not have, or paid more to Defendant for the Products than they  
21 otherwise would and/or should have paid.

22 111. Plaintiff and members of the Classes have conferred a benefit upon Defendant as  
23 Defendant has retained monies paid to it by Plaintiff and members of the Classes.

24 112. The monies received have been obtained under circumstances that are at the expense  
25 of Plaintiff and members of the Classes – i.e., Plaintiff and members of the Classes have not received  
26 the full value of the benefit conferred upon Defendant.

27 113. Therefore, it is inequitable and unjust for Defendant to retain the profit, benefit, or  
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1 compensation conferred upon it without paying Plaintiff and the members of the Classes back for the  
2 difference of the full value of the benefit compared to the value actually received.

3 114. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and  
4 members of the Classes are entitled to restitution, disgorgement, and/or the imposition of a  
5 constructive trust upon all profits, benefits, and other compensation obtained by Defendant from its  
6 deceptive, misleading, and unlawful conduct as alleged herein.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated,  
9 seeks judgment against Defendant, as follows:

10 a) For an order certifying the Nationwide Class, the California Subclass, and the  
11 California Consumer Subclass, under California Code of Civil Procedure § 382, Civil Code § 1781,  
12 and all other applicable laws; naming Plaintiff as representative of all Classes; and naming  
13 Plaintiff's attorneys as Class Counsel to represent all Classes.

14 b) For an order declaring that Defendant's conduct violates the statutes and laws  
15 referenced herein;

16 c) For an order finding in favor of Plaintiff, and all Classes, on all counts asserted  
17 herein;

18 d) For an order awarding all compensatory and punitive damages, including under the  
19 California Consumers Legal Remedies Act on behalf of the California Consumer Subclass, in  
20 amounts to be determined by the Court and/or jury;

21 e) For prejudgment interest on all amounts awarded;

22 f) For interest on the amount of any and all economic losses, at the prevailing legal  
23 rate;

24 g) For an order of restitution and all other forms of equitable monetary relief;

25 h) For injunctive relief as pleaded or as the Court may deem proper;

26 i) For an order awarding Plaintiff and all Classes their reasonable attorneys' fees,  
27 expenses and costs of suit, including as provided by statute such as under California Code of Civil  
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1 Procedure section 1021.5; and

2 j) For any other such relief as the Court deems just and proper.

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**DEMAND FOR TRIAL BY JURY**

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

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Dated: December 09, 2022

**FARUQI & FARUQI, LLP**

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By: /s/ Lisa Omoto

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Lisa Omoto (SBN 303830)  
1901 Avenue of the Stars, Suite 1060  
Los Angeles, CA 90067  
Telephone: (424) 256-2884  
Facsimile: (424) 256-2885  
E-mail: lomoto@faruqilaw.com

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*Attorney for Plaintiff  
Stacy Dorcas*

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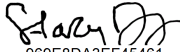
**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, Stacy Dorcas, declare as follows:

1. I am a Plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. This Class Action Complaint is filed in the proper place of trial because Defendant has sold the products at issue in this County, and therefore conducts business in this County.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on 12/8/2022 | 11:40 AM PST at San Gabriel, California.

DocuSigned by:  
  
969E8DA3EF45461...

Stacy Dorcas