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9
 10 UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 R.R., a minor, through his guardian *ad litem*,

13 Plaintiff,

14 vs.

15 EVENFLO COMPANY, INC.,

16 Defendant.

Case No. 4:20-cv-3392-LB

**COMPLAINT – DEFECTIVE
PRODUCT**

DEMAND FOR JURY TRIAL

17
18 **INTRODUCTION**

19 1. In 2013 and 2014, Monique Chaves (“Guardian Chavez”) used a dangerously
 20 defective Evenflo “Snugli Comfort” Baby Carrier (the “Baby Carrier”) to carry her son, R.R.
 21 (“Plaintiff R.R.”),¹ which caused hip dysplasia in the infant. As a result of this preventable
 22 injury, Plaintiff R.R. suffered greatly, having to wear a stiff brace for a minimum of 8 hours a day
 23 for approximately one year. Plaintiff R.R.’s treaters continue to monitor his hip dysplasia and
 24 warn that surgery may be required.

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 26
 27 ¹ Concurrently with the filing of the Complaint, Monique Chaves has petitioned the Court to be
 28 recognized as Plaintiff R.R.’s guardian *ad litem* pursuant to Federal Rule of Civil Procedure
 17(c)(1).

1 period, Evenflo sold, marketed, and/or distributed the Baby Carriers within the Northern District
2 of California. Having systematically and purposefully directed products to the State of
3 California, which products gave rise to Plaintiff's causes of actions herein, Defendant is subject to
4 the personal jurisdiction of this Court.

5 **FACTUAL ALLEGATIONS**

6 9. Evenflo designed, manufactured, labeled, marketed, sold and distributed the Baby
7 Carrier giving rise to the Plaintiff's injuries.

8 10. Guardian Chaves carried Plaintiff R.R. in the Baby Carrier beginning in 2013,
9 from the time he was approximately two weeks old on a daily basis, multiple times per day, and
10 often for extended periods of time during each use, until Plaintiff R.R. was approximately eight
11 months old.

12 11. Guardian Chaves' use of the Baby Carrier was consistent with the intended use for
13 which it was designed, marketed, and sold.

14 12. Despite Guardian Chaves' use of the Baby Carrier in the manner intended by
15 Evenflo and reasonably foreseeable by Evenflo, the Baby Carrier caused Plaintiff R.R. to develop
16 hip dysplasia. Plaintiff R.R. has experienced and will continue to suffer on an ongoing basis
17 significant mental and physical pain and suffering, and permanent injury, which have required or
18 may require corrective surgery.

19 13. As a result of the hip dysplasia, Plaintiff R.R. had to be put into a stiff body brace
20 at one year of age. He was confined to that body cast for 8-12 hours a day for a year.

21 **History of Evenflo and Its Baby Carriers**

22 14. Evenflo, then known as Pyramid Rubber Company, began manufacturing products
23 for babies in 1920.² The company formally became known as Evenflo Company, Inc. in 1995,
24 following the merger of Evenflo Juvenile Products and Evenflo Juvenile Furniture Company.³

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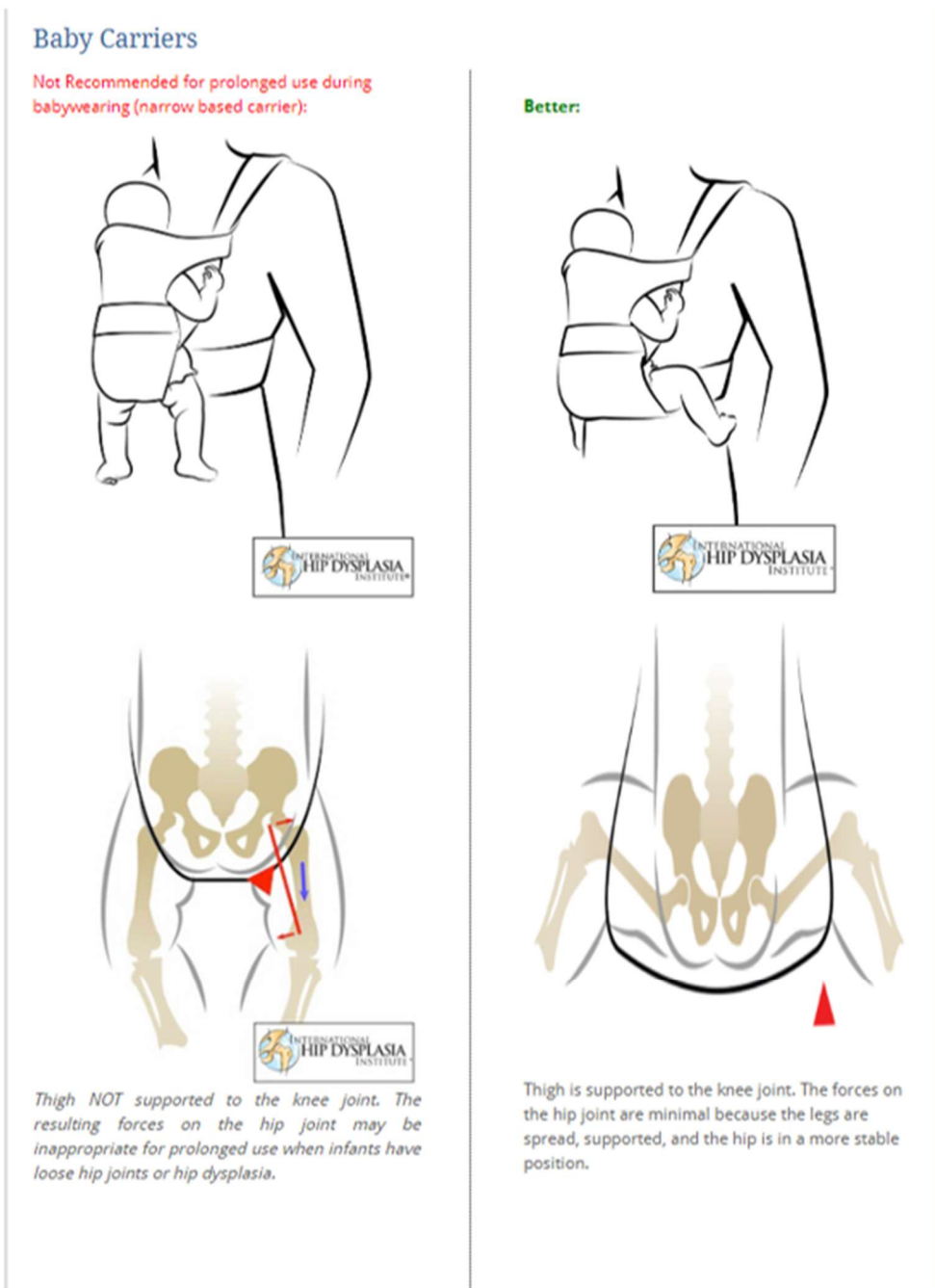
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28 ² See <https://www.evenflo.com/about/about-us.html>.

³ *Id.*

20. If an infant's hips are forced into a straight, stretched-out position too early, there is a risk that the ball of the hips may deform the edges of the socket, or slip out of the socket altogether. The risk of developing these disorders is greatest in the first six months of an infant's life.¹² To prevent this, the International Hip Dysplasia Institute advises that "[w]hen babies are carried, especially for prolonged periods of time, the hips should be allowed to spread apart with



¹² <https://hipdysplasia.org/developmental-dysplasia-of-the-hip/prevention/baby-carriers-seats-and-other-equipment/>.

1 the thighs supported and the hips bent.”¹³ The diagram above illustrates the problem, and the safe
2 position.¹⁴

3 21. According to Dr. Charles Price from the International Hip Dysplasia Institute,
4 “The first six months of life is the only time that [hip dysplasia] can be easily prevented.
5 Numerous research studies have shown that positioning of the baby’s hips during this time has
6 tremendous influence on hip development. Incorrect positioning can prevent natural
7 improvement or even cause the hips to dislocate. Straightening the legs and binding them
8 together can cause serious harm.”¹⁵

9 22. The International Hip Dysplasia Institute notes that: “[t]here is evidence that
10 carrying a baby on the mother’s body (or father’s body) is likely to influence hip development
11 during the first six months of life when the baby is carried for many hours each day for purposes
12 of bonding, or infant care.” Given the known propensity for infants to develop hip dysplasia if
13 not carried in a safe manner, the International Hip Dysplasia Institute has acknowledged certain
14 models of baby carriers as “hip healthy.” Notably, the Evenflo Baby Carrier is not a “hip
15 healthy” product.

16 **FIRST CLAIM FOR RELIEF**
17 **NEGLIGENCE – NEGLIGENT DESIGN**

18 23. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
19 this Complaint as if the same were set forth at length herein.

20 24. Evenflo had a duty to individuals, including Plaintiff R.R., to use reasonable care
21 in designing, testing, manufacturing, marketing, labeling, packaging, and selling the Baby
22 Carrier.

23 25. Evenflo’s duty of care to Plaintiff R.R. was heightened since he is a child.

24 26. Evenflo was negligent in failing to use reasonable care in designing, testing,
25 manufacturing, marketing, labeling, packaging and selling the Baby Carrier.

26
27 ¹³ *Id.*

28 ¹⁴ *Id.*

¹⁵ <https://boba.com/blogs/boba-reads/an-interview-with-dr-charles-price-from-the-international-hip-dysplasia-institute>.

**FOURTH CLAIM FOR RELIEF
STRICT LIABILITY – DESIGN DEFECT**

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3 47. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
4 this Complaint as if the same were set forth at length herein.

5 48. At the time the Baby Carrier left Evenflo’s control, the Baby Carrier was defective
6 in design and unreasonably dangerous for its intended use, for any reasonably foreseeable use,
7 and it created a risk of harm that would not be contemplated by any foreseeable user.

8 49. The harm caused by the Baby Carrier far outweighed any benefit, rendering
9 Evenflo’s product dangerous to an extent beyond that which an ordinary consumer would
10 contemplate. The Baby Carrier was and is more dangerous than alternative products, and Evenflo
11 could have designed the Baby Carrier to make it less dangerous. At the time Evenflo designed,
12 marketed, and sold the Baby Carrier, the state of the industry’s knowledge was such that a less
13 risky design or formulation was attainable.

14 50. The Baby Carrier’s design was defective because the Baby Carrier did not perform
15 as safely as an ordinary consumer would have expected it to perform when it was used in an
16 intended or reasonably foreseeable way.

17 51. At the time the Baby Carrier left Evenflo’s control, there was a practical,
18 technically feasible and safer alternative design that would have prevented the harm to Plaintiff
19 without substantially impairing the reasonably anticipated or intended function of the Baby
20 Carrier.

21 52. The benefits of the Baby Carrier’s design are outweighed by the risks of the
22 design. The gravity of the potential harm resulting from the use of the Baby Carrier is great, and
23 the likelihood that this harm would occur is significant. At the time of manufacture, there existed
24 feasible, alternative, safer designs that were not overly costly and did not have disadvantages.

25 53. The Baby Carrier’s design and/or its failure to perform safely was a substantial
26 factor in causing Plaintiff’s harm.

27 54. As a direct and proximate result of the Baby Carrier’s design defects, Plaintiff has
28 suffered and in the future will continue to suffer on an ongoing basis severe personal injuries,

1 pain and suffering, severe emotional distress, financial or economic loss, including, but not
2 limited to, obligations for medical services and expenses, lost income and earning capacity, and
3 other damages.

4 55. Evenflo is strictly liable to Plaintiff for designing, testing, manufacturing,
5 marketing, labeling, packaging and selling a defective Baby Carrier.

6 **FIFTH CLAIM FOR RELIEF**
7 **STRICT LIABILITY – FAILURE TO WARN**

8 56. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
9 this Complaint as if the same were set forth at length herein.

10 57. The Baby Carrier was not accompanied by sufficient warnings to inform users,
11 such as Guardian Chaves and Plaintiff R.R., of the risks of harm not readily recognizable while
12 using the Baby Carrier in a reasonably foreseeable manner.

13 58. At the time of manufacture, Evenflo could have provided warnings or instructions
14 regarding the full and complete risks of the Baby Carrier, because Evenflo knew or should have
15 known of the unreasonable risks of harm associated with the use of the product.

16 59. The known risks presented a substantial danger to Plaintiff when the Baby Carrier
17 was used in an intended or foreseeable way.

18 60. Guardian Chaves and Plaintiff R.R. could not have reasonably discovered the
19 defects and risks associated with the Baby Carrier prior to or at the time of use. Guardian Chaves
20 and Plaintiff R.R. relied upon the skill, expertise, and judgment of Evenflo.

21 61. Had Evenflo provided adequate warnings and instructions and properly disclosed
22 and disseminated the risk associated with the Baby Carrier, Plaintiff could have avoided the risk
23 of developing injuries and could have obtained or used an alternative product.

24 62. Evenflo's failure to warn Plaintiff was a substantial factor in causing Plaintiff's
25 harm.

26 63. As a direct and proximate result of the Baby Carrier's defects, Plaintiff has
27 suffered and in the future will continue to suffer on an ongoing basis severe personal injuries,
28 pain and suffering, severe emotional distress, financial or economic loss, including, but not

1 limited to, obligations for medical services and expenses, lost income and earning capacity, and
2 other damages.

3 64. Evenflo is strictly liable to Plaintiff for designing, testing, manufacturing,
4 marketing, labeling, packaging and selling the defective Baby Carrier.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant and, as appropriate to each cause of action, as follows:

1. compensatory damages, including but not limited to, pain, suffering, emotional distress, loss of enjoyment of life, and other non-economic damages, in an amount to be determined at trial;
2. economic damages in the form of medical expenses, cost of future medical care, out of pocket expenses, lost earnings and earning capacity, and other economic damages in an amount to be determined at trial;
3. restitution and/or disgorgement;
4. an award of costs;
4. pre-judgment interest;
5. post-judgment interest; and
6. any other relief as this Court may deem just and proper.

DATE: May 14, 2020

ANDRUS ANDERSON LLP

By: 
Lori E. Andrus

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Attorneys for Plaintiff

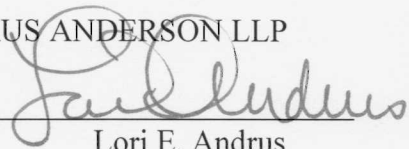
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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action for all claims so triable.

DATE: May 14, 2020

ANDRUS ANDERSON LLP

By: 
Lori E. Andrus

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Attorneys for Plaintiff

JS-CAND 44 (Rev. 07/19)

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

R.R., a minor, through his guardian ad litem

(b) County of Residence of First Listed Plaintiff Contra Costa County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Andrus Anderson LLP
155 Montgomery, St., Ste. 900, S.F., CA 94104

DEFENDANTS

Evenflo Company, Inc.

County of Residence of First Listed Defendant Montgomery County, OH
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	LABOR	PROPERTY RIGHTS	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	790 Other Labor Litigation	SOCIAL SECURITY	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
190 Other Contract	360 Other Personal Injury	IMMIGRATION	862 Black Lung (923)	485 Telephone Consumer Protection Act
195 Contract Product Liability	362 Personal Injury -Medical Malpractice	462 Naturalization Application	863 DIWC/DIWW (405(g))	490 Cable/Sat TV
196 Franchise	CIVIL RIGHTS	465 Other Immigration Actions	864 SSID Title XVI	850 Securities/Commodities/Exchange
REAL PROPERTY	440 Other Civil Rights	PRISONER PETITIONS	865 RSI (405(g))	890 Other Statutory Actions
210 Land Condemnation	441 Voting	HABEAS CORPUS	FEDERAL TAX SUITS	891 Agricultural Acts
220 Foreclosure	442 Employment	463 Alien Detainee	870 Taxes (U.S. Plaintiff or Defendant)	893 Environmental Matters
230 Rent Lease & Ejectment	443 Housing/Accommodations	510 Motions to Vacate Sentence	871 IRS—Third Party 26 USC § 7609	895 Freedom of Information Act
240 Torts to Land	445 Amer. w/Disabilities—Employment	530 General		896 Arbitration
245 Tort Product Liability	446 Amer. w/Disabilities—Other	535 Death Penalty		899 Administrative Procedure Act/Review or Appeal of Agency Decision
290 All Other Real Property	448 Education	OTHER		950 Constitutionality of State Statutes
		540 Mandamus & Other		
		550 Civil Rights		
		555 Prison Condition		
		560 Civil Detainee—Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation—Transfer
- 8 Multidistrict Litigation—Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
22 U.S.C. § 1332

Brief description of cause:

Baby carriers designed by Defendant has resulted in serious injuries to Plaintiff.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 05/19/2020

SIGNATURE OF ATTORNEY OF RECORD

Andrus Anderson