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7 Attorneys for Defendant
FLORA CLASSIQUE, INC.

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

11 WESLEY GIBSON; and ALEXIS
12 GIBSON, individually and as surviving
13 parents and as successors-in-interest to
Decedent Wyatt G. Gibson;

14 Plaintiffs,

15 vs.

16 WALMART INC.; FLORA
17 CLASSIQUE, INC.; MEREDITH
CORPORATION; DOES 1 through 20;
ROE Corporations 1 through 20; and
DOE Employees 1 through 20, inclusive,

18 Defendants.

Case No. 5:22-cv-00238

**NOTICE OF REMOVAL OF
ACTION PURSUANT TO 28 U.S.C.
§§ 1332, 1441(B) AND 1446 BY
DEFENDANT FLORA CLASSIQUE,
INC.**

JURY TRIAL DEMANDED

Complaint Filed: January 7, 2022

19 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

20 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1332, 1441(b) and
21 1446, Defendant Flora Classique, Inc. (“Defendant”) hereby removes this action
22 entitled *Wesley Gibson et al. v. Walmart Inc., et al.*, currently pending in the Superior
23 Court of California, County of Riverside, Case Number CVSW2200259 to the United
24 State District Court for the Central District of California, Eastern Division. This
25 Court has original subject matter jurisdiction under 28 U.S.C. §§ 1332 and 1441 *et*
26 *seq.* Complete diversity of citizenship exists between the parties, and it is facially
27 evident from Plaintiffs’ Complaint that the amount in controversy exceeds \$75,000,
28 exclusive of interest and costs. In support of this removal, Defendant further states:

1 1. This is a civil action filed on or about January 7, 2022 by Wesley Gibson
2 and Alexis Gibson, individually and as surviving parents and as successors-in-interest
3 to Decedent Wyatt G. Gibson (“Plaintiffs”) in the Superior Court of California,
4 County of Riverside, Case Number CVSW2200259, captioned *Wesley Gibson; and*
5 *Alexis Gibson, individually and as surviving parents and as successors-in-interest to*
6 *Decedent Wyatt G. Gibson v. Walmart Inc.; Flora Classique, Inc.; Meredith*
7 *Corporation; Does 1 through 20; Roe Corporations 1 through 20; and Doe*
8 *Employees 1 through 20, inclusive.*

9 2. This is a wrongful death product liability action. Plaintiffs’ Complaint
10 asserts causes of action for (1) Strict Products Liability – Design Defect, (2) Strict
11 Products Liability – Manufacturing Defect, (3) Strict Products Liability – Failure to
12 Warn, and (4) Negligence – Products Liability. Plaintiffs seek to recover damages,
13 including punitive damages, from the defendants for alleged injuries.

14 **I. THE PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN**
15 **SATISFIED**

16 3. Pursuant to 28 U.S.C. § 1446(a), Defendant attaches to this Notice of
17 Removal a copy of all process, pleadings, and orders entered in this case. (*See Exhibit*
18 *“A,” attached hereto.*)

19 4. Plaintiffs commenced this action in the aforementioned state court on or
20 about January 7, 2022. No defendants have been served. Therefore, this removal is
21 timely filed pursuant to 28 U.S.C. § 1446(b) and (c). *See Jacob v. Mentor Worldwide,*
22 *LLC, 393 F. Supp. 3d 912, 921 (C.D. Cal. 2019); Zirkin v. Shandy Media, Inc., No.*
23 *2:18-cv-09207-ODW (SSx), 2019 U.S. Dist. LEXIS 24540, at *10 (C.D. Cal. Feb. 14,*
24 *2019).*

25 5. Venue for this action is proper in this Court under 28 U.S.C. § 1441(a)
26 because the Central District of California, Eastern Division, is the “district and
27 division embracing the place where such action is pending.” *See* 28 U.S.C. § 1441(a)
28 and 28 U.S.C. § 84(c)(1).

1 6. Promptly following the filing of this Notice of Removal, written notice of
2 the removal of this action will be served on Plaintiffs’ counsel, as required by 28
3 U.S.C. § 1446(d).

4 7. A true and correct copy of this Notice of Removal will also be promptly
5 filed with the Superior Court of California, County of Riverside, pursuant to 28
6 U.S.C. § 1446(d).

7 **II. REMOVAL IS PROPER BECAUSE THIS COURT HAS ORIGINAL**
8 **JURISDICTION PURSUANT TO 28 U.S.C. § 1332(A)**

9 **A. COMPLETE DIVERSITY OF CITIZENSHIP EXISTS BETWEEN**
10 **THE PARTIES**

11 8. There is complete diversity of citizenship between Plaintiffs and all
12 named defendants. 28 U.S.C. § 1332(a)(3).

13 9. Defendant Flora Classique, Inc. is now, and was at the time of the filing
14 of this action, a corporation organized and existing under the laws of the State of
15 California, with its principal place of business in the State of California, and is
16 therefore a citizen of the State of California for purposes of determining diversity.
17 (Plaintiffs’ Complaint ¶ 6.) *See* 28 U.S.C. § 1332(c)(1).

18 10. Defendant Walmart Inc. is now, and was at the time of the filing of this
19 action, a corporation organized and existing under the laws of the State of Delaware,
20 with its principal office in the State of Arkansas, and is therefore a citizen of the State
21 of Delaware and Arkansas for purposes of determining diversity. (Plaintiffs’
22 Complaint ¶ 5.) *See* 28 U.S.C. § 1332(c)(1).

23 11. Defendant Meredith Corporation is now, and was at the time of the filing
24 of this action, a corporation organized and existing under the laws of the State of
25 Iowa, with its principal place of business in the State of Iowa, and is therefore a
26 citizen of the State of Iowa for purposes of determining diversity. (Plaintiffs’
27 Complaint ¶ 7.) *See* 28 U.S.C. § 1332(c)(1).

28 12. The citizenship of the Doe and Roe defendants shall not be considered

1 for purposes of determining diversity jurisdiction, as these are fictitious defendants.
2 *See* 28 U.S.C. § 1441(b) (“In determining whether a civil action is removable on the
3 basis of the jurisdiction under section 1332(a) of this title, the citizenship of
4 defendants sued under fictitious names shall be disregarded.”).

5 13. At all times relevant to this action, the defendants have been citizens of
6 the State of California, the State of Delaware, the State of Arkansas or the State of
7 Iowa. At all times relevant to this action, Plaintiffs have not been citizens of the State
8 of California, the State of Delaware, the State of Arkansas or the State of Iowa;
9 instead, Plaintiffs are and have been citizens of the State of Georgia. *See Strotek Corp*
10 *v. Air Transport Ass’n of Am.*, 300 F.3d 1129 (9th Cir. 2002) (in actions removed
11 based on diversity jurisdiction, diversity of citizenship must exist when the complaint
12 is filed and when removal is effected). Therefore, complete diversity of citizenship
13 exists between the parties.

14 14. At all times relevant to this action, Plaintiffs are and have been citizens of
15 the State of Georgia. Plaintiffs’ Complaint alleges that Wesley Gibson and Alexis
16 Gibson are residents of the State of Georgia. (*See* Complaint ¶¶ 1 and 2.) Residence
17 is *prima facie* evidence of one’s domicile. *Sadeh v. Safeco Ins. Co.*, 2012 U.S. Dist.
18 LEXIS 81454, at *4 (C.D. Cal. 2012), citing *State Farm Mut. Auto. Ins. Co. v. Dyer*,
19 19 F.3d 514, 520 (10th Cir. 1994). In addition to current residence, courts will
20 consider other factors in determining citizenship. *Lew v. Moss*, 797 F.2d 747, 750 (9th
21 Cir. 1986) (“The courts have held that the determination of an individual’s domicile
22 involves a number of factors (no single factor controlling), including: current
23 residence, voting registration and voting practices, location of personal and real
24 property, location of brokerage and bank accounts, location of spouse and family,
25 membership in unions and other organizations, place of employment or business,
26 driver’s license and automobile registration, and payment of taxes. *Wright & Miller*,
27 *supra* § 3612, at 529-31 (citing authorities). *See also Bruton v. Shank*, 349 F.2d 630,
28 631 n.2 (8th Cir. 1965); *S.S. Dadzie v. Leslie*, 550 F. Supp. 77, 79 n.3 (E.D. Pa. 1982);

1 *Mizell v. Eli Lilly & Co.*, 526 F. Supp. 589, 592-93 (D. S.C. 1981); *Griffin v.*
2 *Matthews*, 310 F. Supp. 341, 342-43 (M.D. N.C. 1969), *aff'd*, 423 F.2d 272 (4th Cir.
3 1970).) According to publicly available records, Plaintiffs currently reside in
4 Calhoun, Georgia in the County of Gordon. Plaintiffs have resided at the same
5 address in Georgia since at least 2015 and the only reported residences for Plaintiffs
6 are in the State of Georgia. There are 14 Georgia addresses associated with Plaintiffs
7 from 1989 to January 19, 2022. Since January 2015 through the present, Plaintiffs
8 have had utilities in Calhoun, Georgia. There are two telephone numbers associated
9 with Plaintiffs, both 706 area codes, which is associated with northern and west
10 Georgia. (*See* Declaration of Arameh Zargham O’Boyle (“O’Boyle Declaration”)
11 attached here as Exhibit “B”). Such an extensive and continuous period of residence
12 and meaningful contacts is sufficient to establish that Plaintiffs have been citizens of
13 the State of Georgia at all times relevant to this action. *See Dejong v. Prod. Assocs.*,
14 2015 U.S. Dist. LEXIS 35286, at *14-15 (C.D. Cal. 2012) (relying on attorney
15 declaration setting forth the results of a public records background search as sufficient
16 evidence to establish plaintiff’s citizenship).

17 15. Most importantly for purposes of diversity, Plaintiffs are not citizens of
18 the State of California, the State of Delaware, the State of Arkansas or the State of
19 Iowa – where the defendants in this action are citizens – nor has there been any
20 allegation that Plaintiffs were ever citizens of the State of California, the State of
21 Delaware, the State of Arkansas or the State of Iowa. Thus, complete diversity of
22 citizenship exists between the parties because the defendants are citizens of the State
23 of California, the State of Delaware, the State of Arkansas or the State of Iowa and
24 Plaintiffs are citizens of the State of Georgia.

25 **B. THE AMOUNT IN CONTROVERSY REQUIREMENT IS**
26 **SATISFIED**

27 16. It is apparent from the allegations of the Complaint that Plaintiffs seek an
28 amount in controversy in excess of \$75,000, exclusive of costs and interest. “A notice

1 of removal ‘need not contain evidentiary submissions’ but only plausible allegations
2 of the jurisdictional elements.” *Acad. of Country Music v. Cont’l Cas. Co.*, 991 F.3d
3 1059 (9th Cir. 2021) (citations omitted); *Sanchez v. Monumental Life Ins. Co.*, 102
4 F.3d 398, 404 (9th Cir. 1996) (a removing defendant need only show that the amount
5 in controversy “more likely than not” exceeds the jurisdictional minimum of \$75,000).
6 When the amount in controversy is not clearly specified in the complaint, the court
7 may consider facts in the complaint as well as in the removal petition. *See Simmons v.*
8 *PCR Tech.*, 209 F.Supp.2d 1029, 1031 (N.D. Cal. 2002); *Singer v. State Farm Mut.*
9 *Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997); accord *Roe v. Michelin N. Am., Inc.*,
10 613 F.3d 1058, 1063 (11th Cir. 2010) (stating that the Court “found no case in any
11 other circuit that purports to prohibit a district court from employing its judicial
12 experience or common sense in discerning whether the allegations in a complaint
13 facially establish the jurisdictionally required amount in controversy.”).

14 17. Although Defendant denies any liability to Plaintiffs, the Complaint’s
15 allegations of wrongful death of a minor child plainly place more than \$75,000 in
16 controversy. *See Campbell v. Bridgestone/Firestone, Inc.*, 2006 WL 707291, at *2
17 (E.D. Cal. Mar. 17, 2006) (apparent from the complaint that amount in controversy
18 met where plaintiffs asserted strict products liability, negligence, and breach of
19 warranty claims against multiple defendants and complaint sought compensatory
20 damages for wage loss, hospital and medical expenses, general damages, and loss of
21 earning capacity). Plaintiffs’ Complaint also seeks punitive damages. (Compl. ¶¶ 3,
22 37), *See Amador v. John Crane, Inc.*, 2014 U.S. Dist. LEXIS 49999, at *18 (C.D. Cal.
23 Apr. 7, 2014) (noting that “punitive damages are part of the amount in controversy in
24 a civil action.”).

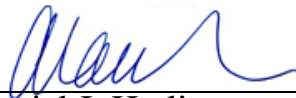
25 18. Based on the foregoing, the state court action may be removed to this
26 Court in accordance with the provisions of 28 U.S.C. §§ 1332 and 1441 *et. seq.*
27 because 1) this is a civil action pending within the jurisdiction of this Court; 2) this
28 action is between citizens of different states; and 3) the amount in controversy exceeds

1 \$75,000, exclusive of interest and costs.

2 WHEREFORE, Defendant Flora Classique, Inc. hereby respectfully removes
3 this action entitled *Wesley Gibson v. Walmart Inc., et al.*, currently pending in the
4 Superior Court of California, County of Riverside, Case Number CVSW2200259, to
5 the United State District Court for the Central District of California, Eastern Division.

6
7 Dated: February 7, 2022

MINTZ LEVIN COHN FERRIS GLOVSKY AND
POPEO, P.C.

8
9 

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11
12 Attorneys for Defendant
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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF RIVERSIDE**

10 WESLEY GIBSON; and
11 ALEXIS GIBSON,
individually and as surviving parents and as
12 successors-in-interest to Decedent Wyatt G.
Gibson;

13 Plaintiffs,

14 vs.

15 WALMART INC.;
16 FLORA CLASSIQUE, INC.;
MEREDITH CORPORATION; DOES 1
17 through 20;
ROE Corporations 1 through 20;
18 and DOE Employees 1 through 20, inclusive,

19 Defendants.

Case No.: **CVSW2200259**
Dept. No.:

**COMPLAINT FOR WRONGFUL DEATH
AND SURVIVAL DAMAGES:**

- 1. **STRICT PRODUCTS LIABILITY –
DESIGN DEFECT**
- 2. **STRICT PRODUCTS LIABILITY –
MANUFACTURING DEFECT**
- 3. **STRICT PRODUCTS LIABILITY –
FAILURE TO WARN**
- 4. **NEGLIGENCE – PRODUCTS
LIABILITY**

20
21 Plaintiffs, **WESLEY GIBSON** and **ALEXIS GIBSON**, individually and as surviving
22 parents and as successors-in-interest to Decedent, Wyatt G. Gibson, by and through their
undersigned counsel, **TURNBULL, HOLCOMB & LEMOINE, P.C.**, hereby file this Complaint
23 for Wrongful Death and Survival Damages against Defendants alleging as follows:

24 *////*
25

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1 **I. PARTIES, JURISDICTION, AND VENUE**

2 1. At all relevant times, Plaintiff **WESLEY GIBSON** was and is a resident of the
3 State of Georgia. Wesley Gibson is the surviving father and a successor-in-interest of Wyatt G.
4 Gibson, deceased.

5 2. At all relevant times, Plaintiff **ALEXIS GIBSON** was and is a resident of the State
6 of Georgia. Alexis Gibson is the surviving mother and successor-in-interest of Wyatt G. Gibson,
7 deceased.

8 3. Plaintiffs **WESLEY GIBSON** and **ALEXIS GIBSON** bring this action as
9 successors-in-interest to the claims for damages resulting from the personal injuries suffered by
10 Wyatt G. Gibson, deceased, as a survival action, pursuant to Code of Civil Procedure sections
11 377.30 *et seq.* In addition, because of their relationship to Wyatt G. Gibson, deceased, Plaintiffs
12 join in this action their wrongful death claims and action, pursuant to California Code of Civil
13 Procedure sections 377.60, *et seq.*

14 4. The Declaration of Successors-in-Interest is attached as Exhibit A.

15 5. At all relevant times, Defendant **WALMART INC.** (“Walmart”) was and is a
16 corporation organized and existing under the laws of the State of Delaware, with its principal office
17 in the State of Arkansas. Defendant Walmart is registered to do business in the State of California.
18 Walmart can be served with process via its agent for service of process, C T Corporation System,
19 330 North Brand Blvd, Suite 700, Glendale, California 91203.

20 6. At all relevant times, Defendant **FLORA CLASSIQUE, INC.** (“Flora”) was and
21 is a corporation organized and existing under the laws of the State of California, with its principal
22 office in the State of California and doing business as a manufacturer, importer, and distributor of
23 home fragrances in Riverside County, California. Flora can be served with process via its agent
24 for service of process, Monica Bumgarner, 36595 Kevin Road, Suite 139, Wildomar, California
25 92595.

 7. At all relevant times, Defendant **MEREDITH CORPORATION** (“Meredith”) was and is a corporation organized and existing under the laws of the State of Iowa, with its principal office in the State of Iowa and doing business as a manufacturer, retailer, seller, and distributor of home fragrances in the State of California. Meredith is registered to do business in the State of California. Meredith can be served with process via its agent for service of process, C T Corporation System, 330 North Brand Blvd, Suite 700, Glendale, California 91203.

 8. Plaintiffs are ignorant of the true names or capacities of Defendants sued herein under the fictitious name of DOES 1 to 20.

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1 9. The true names and/or capacities, whether individual, corporate, associate,
2 governmental or otherwise of Defendants DOES 1 to 20, inclusive and each of them are unknown
3 to Plaintiffs, who therefore sue those Defendants by such fictitious names. When the true names
4 and/or capacities of the DOE Defendants are ascertained, Plaintiffs will amend this Complaint
5 accordingly.

6 10. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
7 designated herein as a DOE was responsible, negligently or in some other actionable manner, for
8 the events and happenings herein referred to which proximately caused the damages to Plaintiffs
9 as hereinafter alleged, either through said Defendants' own negligence or through the conduct of
10 their agents, servants, employees, or representatives in some other manner.

11 11. Plaintiffs are informed and believe and based thereon allege that at all relevant
12 times Defendants and each of them were the agents, servants, employees, representatives and/or
13 joint-venturers of their co-Defendants and were, as such acting within the course, scope, and
14 authority of said agency, services, employment, representation, and/or joint venture in that each
15 and every Defendant, as aforesaid when acting as principal, was negligent in the selection and
16 hiring of each and every other Defendant as an agent, servant, employee, representative, and/or
17 joint-venturer.

18 12. Plaintiffs are informed and believe, and based thereon allege that at all times
19 mentioned herein each of Defendants, including Defendant DOES 1 to 20, inclusive, and each of
20 them were the agents, servants, employees, and representatives of each of the remaining
21 Defendants and were at all times material hereto acting within the authorized course and scope of
22 said agency, service, employment and/or representation, and/or that all of said acts, conduct, and
23 omissions were subsequently ratified by their respective principals and the benefits thereof
24 accepted by such principals.

25 **II. GENERAL ALLEGATIONS**

 13. In early 2021, Plaintiffs purchased the Better Homes and Gardens Essential Oil
Infused Aromatherapy Room Spray with Gemstones, Lavender & Chamomile ("Subject BHG
Aromatherapy Product"), from a Walmart located in and around Calhoun, Georgia.

 14. The Subject BHG Aromatherapy Product was meant to impart a pleasant smell to
the consumer and to be inhaled or otherwise absorbed by the human body.

 15. Aromatherapy sprays are marketed to the public as to be effective in relieving
stress, promoting restful sleep, and promoting overall health and well-being.

 16. The Subject BHG Aromatherapy Product was manufactured in India.

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1 17. At all times relevant, Defendants were responsible for the design, manufacture,
2 inspection, testing, quality control, distribution, and retail sale of the Subject BHG Aromatherapy
Product.

3 18. At all times relevant, Defendants were required to develop proper design,
4 manufacturing, inspection, testing, quality control, and distribution practices that would prevent
5 contamination of the Subject BHG Aromatherapy Product with bacteria, including *Burkholderia*
pseudomallei.

6 19. Upon information and belief, the design, manufacturing, inspection, testing, quality
7 control, and distribution practices conducted by Defendants was done without consideration for
8 the presence of bacteria.

9 20. At all times relevant, Defendants were required to follow Good Manufacturing
10 Practices (“GMP”) with respect to the manufacture and distribution of the Subject BHG
Aromatherapy Product.

11 21. Upon information and belief, Defendants failed to follow GMP with respect to the
12 manufacture and distribution of the Subject BHG Aromatherapy Product.

13 22. In March 2021, an adult in Kansas was identified as infected with *Burkholderia*
14 *pseudomallei*, a deadly bacterium rarely found in North America. The adult later died from the
infection.

15 23. In June 2021, the United States Centers for Disease Control and Prevention
16 (“CDC”) identified two non-travel-related *Burkholderia pseudomallei* infections, an adult located
in Minnesota and a four-year-old located in Texas.

17 24. On or about October 21, 2021, recalls of BHG-branded Aromatherapy Room Spray
18 with Gemstones in six scents were initiated: Lavender & Chamomile (84140411420); Lemon &
Mandarin (84140411421); Lavender (84140411422); Peppermint (84140411423); Lime &
19 Eucalyptus (84140411424); and Sandalwood & Vanilla (84140411425).

20 25. These spray bottles were sold at Walmart stores in Calhoun, Georgia, and in
Alabama, Colorado, Florida, Iowa, Illinois, Indiana, Kansas, Minnesota, Missouri, New Mexico,
21 Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, and Wisconsin.

22 **A. *Burkholderia pseudomallei* and Melioidosis**

23 26. *Burkholderia pseudomallei* is a rare and deadly bacterium found predominately in
Southeast Asia. The bacterium is extremely rare in North America.

24 27. *Burkholderia pseudomallei* only occurs naturally in the United States in Puerto
25 Rico and the U.S. Virgin Islands.

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1 28. Infection with *Burkholderia pseudomallei* is a serious health risk for death.
2 Eradication of the organism following infection is difficult. The organism is intrinsically resistant
3 to many antibiotics.

4 29. The mortality rate for children infected with *Burkholderia pseudomallei* has been
5 reported to be as high as 35 percent.

6 30. Infection with *Burkholderia pseudomallei* is the causative agent of melioidosis.

7 31. Melioidosis is found only in individuals who have been exposed to environments
8 containing *Burkholderia pseudomallei*. Infection is acquired through cutaneous inoculation,
9 inhalation, and aspiration. It is very rare for people to get the disease from another person.

10 32. Only approximately a dozen cases of melioidosis are identified each year in the
11 United States and have primarily occurred among travelers and immigrants coming from places
12 where the disease is widespread, such as Southeast Asia.

13 33. Melioidosis can present with an array of clinical signs and symptoms, including,
14 but not limited to, localized pain or swelling; high fever; ulceration; cough; chest pain; headache;
15 respiratory distress; abdominal discomfort; joint pain; disorientation; weight loss; central nervous
16 system/brain infection; seizures, and death. More than 50 percent of cases present with pneumonia.

17 34. Due to its nonspecific symptoms, melioidosis can initially be mistaken for other
18 diseases, which can delay proper treatment.

19 **B. Wyatt G. Gibson's Infection and Death**

20 35. Plaintiffs' five-year-old son, Wyatt G. Gibson, deceased, was exposed to the
21 Subject BHG Aromatherapy Product in the normal course of use in the household, as intended by
22 the designers, manufacturers, distributors, and retailers of the product.

23 36. In early July 2021, Wyatt G. Gibson, deceased, became ill with fatigue, nausea,
24 vomiting, weakness, shallow breathing, and moderate dehydration.

25 37. Wyatt G. Gibson, deceased, died from a confirmed case of *Burkholderia*
pseudomallei (melioidosis) on or about July 16, 2021.

38. The initial death certificate for Wyatt G. Gibson, deceased, incorrectly showed
COVID-19 as the cause of his demise; however, post-mortem testing has identified melioidosis as
the cause of Wyatt G. Gibson's death.

39. Samples taken by the CDC from a bottle of the Subject BHG Aromatherapy Product
confirmed the presence of *Burkholderia pseudomallei*.

40. Based on genomic analysis, the CDC concluded that the four cases of melioidosis
in Georgia, Kansas, Minnesota, and Texas in 2021 closely match, indicating they all most likely

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1 share a common source of exposure, more specifically BHG-branded Aromatherapy Room Spray
2 with Gemstones.

3 41. Genomic analysis of the four patient isolates grouped closely with strains from
4 Southeast Asia.

5 **III. CAUSES OF ACTION**

6 **A. Count One: Strict Product Liability against Defendants – Design Defect**

7 42. Plaintiffs incorporate and re-allege by reference all preceding paragraphs of the
8 Complaint as if fully stated herein.

9 43. At all times relevant, Defendants were engaged in the design, development, testing,
10 manufacture, assembly, promotion, marketing, distribution, and/or sale of the Subject BHG
11 Aromatherapy Product.

12 44. The Subject BHG Aromatherapy Product was defective at the time it was designed,
13 manufactured, assembled, distributed, and sold. The Subject BHG Aromatherapy Product was
14 defective in that its design allowed it to become contaminated with the rare and deadly
15 *Burkholderia pseudomallei* which causes melioidosis, a condition that is difficult to diagnose and
16 can be fatal.

17 45. The Subject BHG Aromatherapy Product purchased and used by Plaintiffs was
18 expected to reach, and did reach, Plaintiffs, the intended consumers, and ultimate consumers,
19 without substantial change to the condition in which it was distributed and sold by Defendants.

20 46. At the time the Subject BHG Aromatherapy Product left Defendants' possession,
21 the Subject BHG Aromatherapy Product was defective, and its condition made it unreasonably
22 dangerous for Plaintiffs, including Wyatt G. Gibson, deceased. The Subject BHG Aromatherapy
23 Product was defective in that its design allowed bacteria, including *Burkholderia pseudomallei*, to
24 collect and multiply in the product. Said bacteria could subsequently, and did, come into contact
25 with consumers, like Wyatt G. Gibson, deceased, through aerosolization, fluid leakage, or other
means.

47. Defendants intended for the Subject BHG Aromatherapy Product to be used as a
household product, as it was by Plaintiffs.

48. Defendants knew or should have known that the Subject BHG Aromatherapy
Product would be used as a household product, as it was by Plaintiffs.

49. The Subject BHG Aromatherapy Product was used by Plaintiffs in the manner in
which it was intended to be used, and thus, it was reasonably foreseeable that the Subject BHG
Aromatherapy Product would be used as a household product.

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1 50. At all times relevant, neither Plaintiffs nor Wyatt G. Gibson, deceased, could have
2 discovered the design defects associated with the Subject BHG Aromatherapy Product through the
3 exercise of due diligence, nor could they have been expected to perceive the danger posed by the
4 Subject BHG Aromatherapy Product. Thus, the dangerous condition of the Subject BHG
Aromatherapy Product was unknowable to Plaintiffs and Wyatt G. Gibson, deceased.

5 51. The Subject BHG Aromatherapy Product, as designed by Defendants, transmitted
6 bacteria, including *Burkholderia pseudomallei*, directly to consumers during routine household
7 use, including Wyatt G. Gibson, deceased, through aerosolization, fluid leakage, or other means.

8 52. The foreseeable risks of transmitting bacteria to consumers during household use,
9 including Wyatt G. Gibson, deceased, far outweigh any utility of using the Subject BHG
10 Aromatherapy Product. The foreseeable risks also far outweigh any cost of designing,
11 manufacturing, and producing an alternative design of the Subject BHG Aromatherapy Product
12 that is not defective.

13 53. The foreseeable risks of harm posed by the Subject BHG Aromatherapy Product
14 could have been reduced or avoided by the adoption of a reasonable alternative design by
15 Defendants, and the omission of an alternative design renders the Subject BHG Aromatherapy
16 Product not reasonably safe for its intended use.

17 54. Plaintiffs and Wyatt G. Gibson, deceased, had a reasonable expectation that the
18 Subject BHG Aromatherapy Product would not be unreasonably dangerous and defective, and that
19 the device would not cause Wyatt G. Gibson, deceased, to develop an infection.

20 55. The Subject BHG Aromatherapy Product used by Plaintiffs as a household product
21 did not perform as safely as an ordinary consumer would have expected it to perform when used
22 in an intended or reasonably foreseeable way.

23 56. The use of the Subject BHG Aromatherapy Product as a household product was a
24 substantial factor and the cause in fact of Wyatt G. Gibson's injuries, specifically, his contraction
25 of an infection, his development of melioidosis, his subsequent pain and suffering, and eventual
death.

 57. As a direct and proximate result of the use of the Subject BHG Aromatherapy
Product as a household product and its defective design, Wyatt G. Gibson, deceased, suffered
catastrophic injury, pain and suffering, disability, and death.

 58. The conduct of Defendants was a substantial factor and proximate cause of the
serious personal injuries and death sustained by Plaintiffs' decedent, Wyatt G. Gibson. After the
initial injury, Decedent Wyatt G. Gibson survived for an appreciable period of time. Plaintiffs

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1 Wesley Gibson and Alexis Gibson, as surviving parents and successors-in-interest to Decedent
2 Wyatt G. Gibson, seek all damages otherwise accruing to Decedent in a survival action brought
3 pursuant to the California Code of Civil Procedure section 377.34 (including pain, suffering, and
4 disfigurement under subdivision b).

4 59. Plaintiffs have lost a son due to injuries he sustained as a result of the conduct of
5 Defendants. By virtue of his preventable and untimely death, Plaintiffs have suffered loss of future
6 financial support, loss of future household services, and loss of love, companionship, comfort,
7 care, assistance, protection, affection, society, moral support, expectations of future support, as
8 well as other benefits and assistance that Decedent would have provided to them and which will
9 be stated according to proof, in accordance with California Code of Civil Procedure section 377.61.

9 60. As further direct and proximate result of the conduct of Defendants and each of
10 them, Plaintiffs have incurred economic damages in an amount to be determined according to
11 proof in accordance with California Code of Civil Procedure section 377.61.

11 61. As a direct and proximate result of the conduct of Defendants and each of them,
12 Plaintiffs seek to recover all damages to which they are entitled and which will be stated according
13 to proof, pursuant to California Code of Civil Procedure section 425.10.

13 **B. Count Two: Strict Liability against Defendants – Manufacturing Defect**

14 62. Plaintiffs incorporate and re-allege by reference all preceding paragraphs of the
15 Complaint as if fully stated herein.

15 63. At all times relevant, Defendants were engaged in the design, development, testing,
16 manufacture, assembly, promotion, marketing, distribution, and/or sale of the Subject BHG
17 Aromatherapy Product.

17 64. The Subject BHG Aromatherapy Product was defective in its manufacture in that
18 the device was exposed to *Burkholderia pseudomallei* at the time that the device was manufactured
19 and/or shipped.

20 65. Upon information and belief, Defendants did not intend for the Subject BHG
21 Aromatherapy Product to be contaminated with deadly bacteria at the time of manufacture and/or
22 assembly.

22 66. The Subject BHG Aromatherapy Product purchased and used by Plaintiffs was
23 expected to reach, and did reach, Plaintiffs, the intended consumers, and ultimate consumers,
24 without substantial change to the condition in which it was distributed and sold by Defendants.

24 67. At the time the Subject BHG Aromatherapy Product left Defendants' possession,
25 the Subject BHG Aromatherapy Product was defective, and its condition made it unreasonably

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1 dangerous for Plaintiffs, including Wyatt G. Gibson, deceased. The Subject BHG Aromatherapy
2 Product was defective in that its design and manufacture allowed bacteria, including *Burkholderia*
3 *pseudomallei*, to collect and multiply in the device. Said bacteria could subsequently, and did,
4 come into contact with consumers, like Wyatt G. Gibson, deceased, through aerosolization, fluid
leakage, or other means.

5 68. Defendants intended for the Subject BHG Aromatherapy Product to be used as a
household product, as it was by Plaintiffs.

6 69. Defendants knew or should have known that the Subject BHG Aromatherapy
7 Product would be used as a household product, as it was by Plaintiffs.

8 70. The Subject BHG Aromatherapy Product was used by Plaintiffs in the manner in
9 which it was intended to be used, and thus, it was reasonably foreseeable that the BHG
Aromatherapy Product would be used as a household product.

10 71. At all times relevant, neither Plaintiffs nor Wyatt G. Gibson, deceased, could have
11 discovered the design and manufacturing defects associated with the Subject BHG Aromatherapy
12 Product through the exercise of due diligence, nor could they have been expected to perceive the
13 danger posed by the Subject BHG Aromatherapy Product. Thus, the dangerous condition of the
Subject BHG Aromatherapy Product was unknowable to Plaintiffs and Wyatt G. Gibson, deceased.

14 72. The Subject BHG Aromatherapy Product, as designed by Defendants, transmitted
15 bacteria, including *Burkholderia pseudomallei*, directly to consumers during household use,
including Wyatt G. Gibson, deceased, through aerosolization, fluid leakage, or other means.

16 73. The foreseeable risks of transmitting bacteria to consumers during household use,
17 including Wyatt G. Gibson, deceased, far outweigh any utility of using the Subject BHG
18 Aromatherapy Product. The foreseeable risks also far outweigh any cost of designing,
19 manufacturing, and producing an alternative design of the Subject BHG Aromatherapy Product
that is not defective.

20 74. Defendants manufactured, assembled, distributed, and/or sold the Subject BHG
21 Aromatherapy Product with bacteria, including *Burkholderia pseudomallei*, present in and/or on
22 the product. The contamination occurred on the production line or elsewhere while in Defendants'
possession or control.

23 75. Defendants' failure to ensure proper sanitation, failure to ensure proper
24 workmanship, failure to ensure adequate testing of component parts, and/or failure to ensure
25 adequate labeling for the Subject BHG Aromatherapy Product caused the unit to be manufactured
in a manner that made the device defective and unreasonably dangerous.

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1 76. Plaintiffs and Wyatt G. Gibson, deceased, had a reasonable expectation that the
2 BHG Aromatherapy Product would not be unreasonably dangerous and defective, and that the
device would not cause Wyatt G. Gibson, deceased, to develop a bacterial infection.

3 77. The use of the Subject BHG Aromatherapy Product as a household product was a
4 substantial factor and the cause in fact of Wyatt G. Gibson’s injuries, specifically, his contraction
5 of an infection, his development of melioidosis, his subsequent pain and suffering, and eventual
death.

6 78. As a direct and proximate result of the use of the Subject BHG Aromatherapy
7 Product as a household product and its defective design and manufacture, Wyatt G. Gibson,
8 deceased, suffered catastrophic injury, pain and suffering, disability, and death.

9 79. The conduct of Defendants was a substantial factor and proximate cause of the
10 serious personal injuries and death sustained by Plaintiffs' Decedent, Wyatt G. Gibson. After the
initial injury, Decedent Wyatt G. Gibson survived for an appreciable period of time. Plaintiffs
11 Wesley Gibson and Alexis Gibson, as surviving parents and successors-in-interest to Decedent
Wyatt G. Gibson, seek all damages otherwise accruing to Decedent in a survival action brought
12 pursuant to the California Code of Civil Procedure section 377.34 (including pain, suffering, and
13 disfigurement under subdivision b).

14 80. Plaintiffs have lost a son due to injuries he sustained as a result of the conduct of
Defendants. By virtue of his preventable and untimely death, Plaintiffs have suffered loss of future
15 financial support, loss of future household services, and loss of love, companionship, comfort,
16 care, assistance, protection, affection, society, moral support, expectations of future support, as
well as other benefits and assistance that the decedent would have provided to them and which
17 will be stated according to proof, in accordance with California Code of Civil Procedure section
18 377.61.

19 81. As further direct and proximate result of the conduct of Defendants and each of
20 them, Plaintiffs have incurred economic damages in an amount to be determined according to
proof in accordance with California Code of Civil Procedure section 377.61.

21 82. As a direct and proximate result of the conduct of Defendants and each of them,
22 Plaintiffs seek to recover all damages to which they are entitled and which will be stated according
to proof, pursuant to California Code of Civil Procedure section 425.10.

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C. Count Three: Strict Products Liability against Defendants – Failure to Warn

83. Plaintiffs incorporate and re-allege by reference all preceding paragraphs of the Complaint as if fully stated herein.

84. At all times relevant, Defendants were engaged in the design, development, testing, manufacture, assembly, promotion, marketing, distribution, and/or sale of the BHG Aromatherapy Product.

85. The Subject BHG Aromatherapy Product was defective at the time it was designed, manufactured, assembled, distributed, and sold.

86. The Subject BHG Aromatherapy Product was defective in that its design and manufacture allowed it to become contaminated with deadly bacteria.

87. The Subject BHG Aromatherapy Product was defective and unreasonably dangerous in that the warnings, instructions, labels, and materials failed to adequately warn distributors, retailers, and/or consumers about the product’s serious risk of causing infection from aerosolization and/or fluid leakage from the device.

88. Defendants failed to timely and adequately warn distributors, retailers, and consumers of the serious risks of the Subject BHG Aromatherapy Product, including: (i) that the Subject BHG Aromatherapy Product was contaminated with bacteria, specifically, *Burkholderia pseudomallei*, at the time the unit was manufactured; (ii) that the Subject BHG Aromatherapy Product could harbor and grow bacteria, including *Burkholderia pseudomallei*; and (iii) that the bacteria, including *Burkholderia pseudomallei*, can reach the consumer during an operation through aerosolization, fluid leakage, or other means.

89. The Subject BHG Aromatherapy Product purchased and used by Plaintiffs was expected to reach, and did reach, Plaintiffs, the intended consumers, and ultimate consumers, without substantial change to the condition in which it was distributed and sold by Defendants.

90. At the time the Subject BHG Aromatherapy Product left Defendants’ possession, the Subject BHG Aromatherapy Product was defective, and its condition made it unreasonably dangerous for Plaintiffs, including Wyatt G. Gibson, deceased. The Subject BHG Aromatherapy Product was defective in that its design and manufacture allowed bacteria, including *Burkholderia pseudomallei*, to collect and multiply in the device. Said bacteria could subsequently, and did, come into contact with consumers, like Wyatt G. Gibson, deceased, through aerosolization, fluid leakage, or other means.

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1 91. Defendants intended for the Subject BHG Aromatherapy Product to be used as a
2 household product, as it was by Plaintiffs.

3 92. Defendants knew or should have known that the Subject BHG Aromatherapy
4 Product would be used as a household product, as it was by Plaintiffs.

5 93. The Subject BHG Aromatherapy Product was used by Plaintiffs in the manner in
6 which it was intended to be used, and thus, it was reasonably foreseeable that the Subject BHG
7 Aromatherapy Product would be used as a household product.

8 94. At all times relevant, neither Plaintiffs nor Wyatt G. Gibson, deceased, could have
9 discovered the design defects associated with the Subject BHG Aromatherapy Product through the
10 exercise of due diligence, nor could they have been expected to perceive the danger posed by the
11 Subject BHG Aromatherapy Product. Thus, the dangerous condition of the Subject BHG
12 Aromatherapy Product was unknowable to Plaintiffs and Wyatt G. Gibson, deceased.

13 95. The Subject BHG Aromatherapy Product, as designed by Defendants, transmitted
14 bacteria, including *Burkholderia pseudomallei*, directly to consumers during household use,
15 including Wyatt G. Gibson, deceased, through aerosolization, fluid leakage, or other means.

16 96. The foreseeable risks of transmitting bacteria to consumers during household use,
17 including Wyatt G. Gibson, deceased, far outweigh any utility of using the Subject BHG
18 Aromatherapy Product. The foreseeable risks also far outweigh any cost of designing,
19 manufacturing, and producing an alternative design of the Subject BHG Aromatherapy Product
20 that is not defective.

21 97. The foreseeable risks of harm posed by the Subject BHG Aromatherapy Product
22 could have been reduced or avoided by the adoption of a reasonable alternative design by
23 Defendants, and the omission of an alternative design renders the Subject BHG Aromatherapy
24 Product not reasonably safe for its intended use.

25 98. Plaintiffs and Wyatt G. Gibson, deceased, had a reasonable expectation that the
Subject BHG Aromatherapy Product would not be unreasonably dangerous and defective, that
Defendants provided all proper warnings, instructions, and labels regarding the product, and that
the product would not cause Wyatt G. Gibson, deceased, to contract a bacterial infection.

 99. If Plaintiffs and/or Wyatt G. Gibson, deceased, had been made aware of the
significant risks of *Burkholderia pseudomallei* infection associated with the use of the Subject
BHG Aromatherapy Product, Plaintiffs would not have purchased and used the product in their
household.

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1 100. As a direct and proximate result of the use of the Subject BHG Aromatherapy
2 Product as a household product and its defective design, manufacture, and Defendants’ failure to
3 warn, Wyatt G. Gibson, deceased, suffered catastrophic injury, pain and suffering, disability, and
4 death.

4 101. The conduct of Defendants was a substantial factor and proximate cause of the
5 serious personal injuries and death sustained by Plaintiffs’ Decedent, Wyatt G. Gibson. After the
6 initial injury, Decedent Wyatt G. Gibson survived for an appreciable period of time. Plaintiffs
7 Wesley Gibson and Alexis Gibson, as surviving parents and successors-in-interest to Decedent
8 Wyatt G. Gibson, seek all damages otherwise accruing to Decedent in a survival action brought
9 pursuant to the California Code of Civil Procedure section 377.34 (including pain, suffering, and
10 disfigurement under subdivision b).

9 102. Plaintiffs have lost a son due to injuries he sustained as a result of the conduct of
10 Defendants. By virtue of his preventable and untimely death, Plaintiffs have suffered loss of future
11 financial support, loss of future household services, and loss of love, companionship, comfort,
12 care, assistance, protection, affection, society, moral support, expectations of future support, as
13 well as other benefits and assistance that Decedent would have provided to them and which will
14 be stated according to proof, in accordance with California Code of Civil Procedure section 377.61.

14 103. As further direct and proximate result of the conduct of Defendants and each of
15 them, Plaintiffs have incurred economic damages in an amount to be determined according to
16 proof in accordance with California Code of Civil Procedure section 377.61.

16 104. As a direct and proximate result of the conduct of Defendants and each of them,
17 Plaintiffs seek to recover all damages to which they are entitled and which will be stated according
18 to proof, pursuant to California Code of Civil Procedure section 425.10.

18 **D. Count Four: Negligence against Defendants**

19 105. Plaintiffs incorporate and re-allege by reference all preceding paragraphs of the
20 Complaint as if fully stated herein.

21 106. Defendants owed a duty of reasonable care to Plaintiffs, Wyatt G. Gibson,
22 deceased, and all reasonably foreseeable users of the Subject BHG Aromatherapy Product, when
23 they designed, tested, assembled, manufactured, marketed, distributed, and sold the Subject BHG
24 Aromatherapy Product. This duty of reasonable care required Defendants to ensure that the unit
25 was in full compliance with industry regulations and standards and was not defective or
unreasonably dangerous for its intended purpose and other foreseeable uses.

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1 107. Defendants breached this duty of care by designing, testing, assembling,
2 manufacturing, distributing, and selling the Subject BHG Aromatherapy Product in a manner that
3 made the unit defective and unreasonably dangerous for its intended and foreseeable use. This
4 defect stems from the Subject BHG Aromatherapy Product's propensity to permit the colonization
5 and growth of bacteria and the ability of said bacteria to reach the ordinary consumer through
aerosolization, fluid leakage, or other means.

6 108. Defendants further breached their duty of care by allowing the Subject BHG
7 Aromatherapy Product units, including the unit used by Plaintiffs, to become contaminated with
8 *Burkholderia pseudomallei* while still in Defendants' possession and control, and then sold to the
end-user without being properly disinfected.

9 109. Defendants knew or reasonably should have known that the Subject BHG
10 Aromatherapy Product was dangerous or was likely to be dangerous when used in a reasonably
foreseeable manner.

11 110. Defendants knew or reasonably should have known that users of the Subject BHG
12 Aromatherapy Product would not realize the danger of potential transmission of bacteria, to the
consumer.

13 111. Defendants failed to adequately warn of the danger of potential bacterial
14 transmission and failed to adequately instruct on the safe use of the Subject BHG Aromatherapy
Product.

15 112. A reasonable manufacturer under the same or similar circumstances would have
16 warned of the danger and instructed on the safe use of the Subject BHG Aromatherapy Product.

17 113. Defendants owed Plaintiffs and Wyatt G. Gibson, deceased, a duty of reasonable
18 care to discover these defects and properly, adequately, and timely warn consumers, including
Plaintiffs and Wyatt G. Gibson, deceased, about these defects.

19 114. Defendants failed to properly and timely warn Plaintiffs and Wyatt G. Gibson,
20 deceased, about these defects, thereby breaching their duty of care.

21 115. Defendants owed a duty to Plaintiffs and Wyatt G. Gibson, deceased, and all
22 foreseeable users to issue a timely recall of all BHG Aromatherapy Product in use throughout the
United States when Defendants became aware that the BHG Aromatherapy Product had become
23 contaminated.

24 116. Defendants breached their duty by failing to timely recall all BHG Aromatherapy
25 Product units, despite their knowledge that the units had been exposed to deadly bacteria and were
possibly contaminated.

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1 117. A reasonable manufacturer under the same or similar circumstances would have
2 recalled the BHG Aromatherapy Product, given the potential risks to consumers.

3 118. Defendants owed Plaintiffs and Wyatt G. Gibson, deceased, a duty of reasonable
4 care to follow good manufacturing, assembling, and distributing processes so as to prevent their
5 consumer products from becoming contaminated with deadly bacteria.

6 119. Defendants breached their duty by failing to follow good manufacturing,
7 assembling, and distributing processes so as to prevent their consumer products from becoming
8 contaminated with deadly bacteria.

9 120. As a direct and proximate result of the use of the Subject BHG Aromatherapy
10 Product as a household product and Defendants' negligence, Wyatt G. Gibson, deceased, suffered
11 catastrophic injury, pain and suffering, disability, and death.

12 121. The conduct of Defendants was a substantial factor and proximate cause of the
13 serious personal injuries and death sustained by Plaintiffs' Decedent, Wyatt G. Gibson. After the
14 initial injury, Decedent Wyatt G. Gibson survived for an appreciable period of time. Plaintiffs
15 Wesley Gibson and Alexis Gibson, as surviving parents and successors-in-interest to Decedent
16 Wyatt G. Gibson, seek all damages otherwise accruing to Decedent in a survival action brought
17 pursuant to the California Code of Civil Procedure section 377.34 (including pain, suffering, and
18 disfigurement under subdivision b).

19 122. Plaintiffs have lost a son due to injuries he sustained as a result of the conduct of
20 Defendants. By virtue of his preventable and untimely death, Plaintiffs have suffered loss of future
21 financial support, loss of future household services, and loss of love, companionship, comfort,
22 care, assistance, protection, affection, society, moral support, expectations of future support, as
23 well as other benefits and assistance that Decedent would have provided to them and which will
24 be stated according to proof, in accordance with California Code of Civil Procedure section 377.61.

25 123. As further direct and proximate result of the conduct of Defendants and each of
them, Plaintiffs have incurred economic damages in an amount to be determined according to
proof in accordance with California Code of Civil Procedure section 377.61.

124. As a direct and proximate result of the conduct of Defendants and each of them,
Plaintiffs seek to recover all damages which they are entitled and which will be stated according
to proof, pursuant to California Code of Civil Procedure section 425.10.

IV. PUNITIVE DAMAGES

125. Plaintiffs incorporate and re-allege by reference all preceding paragraphs of the
Complaint as if fully stated herein.

1 126. Defendants’ conduct, as set forth more fully above, demonstrates, oppression,
2 fraud, malice, willful and wanton conduct or, in the alternative, despicable conduct in conscious
3 disregard of the rights and safety of Wyatt G. Gibson, deceased, and other consumers exposed to
4 the Subject BHG Aromatherapy Product.

5 127. Defendants’ acts of malice in this case warrants an award of punitive damages in
6 favor of Plaintiffs under California Civil Code section 3294.

7 **V. PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, and each of them, as
9 follows:

10 1. For the wrongful death claimants, the non-economic damages caused by the
11 wrongful death of Wyatt G. Gibson, deceased, in an amount in excess of the minimum
12 jurisdictional amount of this Court, according to proof, at trial, including but not limited to
13 damages for Plaintiffs’ loss of Decedent’s love, companionship, comfort, care, assistance,
14 protection, affection, society, and moral support;

15 2. For the wrongful death claimants, the economic damages caused by the wrongful
16 death of Wyatt G. Gibson, deceased, being the loss of the financial support that Decedent would
17 have contributed to Plaintiffs, the loss of gifts or benefits that he would have given to his parents,
18 funeral and burial expenses and the reasonable value of household services that Decedent would
19 have provided, in an amount according to proof at trial;

20 3. Under California Code of Civil Procedure section 377.34, as amended by Senate
21 Bill No. 447, for the successors in interests of Wyatt G. Gibson, deceased, the non-economic
22 damages for Wyatt G. Gibson’s pain, suffering, and disfigurement.

23 4. For the successors to the interests of Wyatt G. Gibson, deceased, the economic
24 damages, including past hospital, medical, and other health care and other expenses incurred prior
25 to his death, according to proof at trial;

5. As to the survival action on behalf of Wyatt G. Gibson, deceased, punitive
damages;

6. All damages recoverable under California law;

7. For costs of suit incurred herein; and,

8. Such other and further relief as the Court deems just and proper.

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This 7th day of January, 2021.

TURNBULL, HOLCOMB & LEMOINE, PC

M. Alan Holcomb
M. Alan Holcomb
California Bar No. 311171
945 East Paces Ferry Road, NE, Suite 2275
Atlanta, GA 30326
Telephone: 404-793-2566
Email: aholcomb@turnbullfirm.com
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby request a jury trial on all issues, causes of action, and forms of relief in this Complaint.

DATED: January 7, 2022.

TURNBULL, HOLCOMB & LEMOINE, PC

M. Alan Holcomb
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Attorneys for Plaintiffs

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EXHIBIT A


DECLARATION

We, WESLEY GIBSON and ALEXIS GIBSON, in accordance with the provisions of Section 377.32 of the California Code of Civil Procedure, declare and state that:

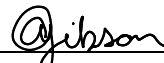
1. The Decedent’s name is Wyatt Gary Gibson (“Wyatt Gibson”).
2. The Decedent died on or about July 16, 2021, in or around Chattanooga, Tennessee.
3. No proceeding is now pending in California or any other State for the administration of Wyatt Gibson’s estate.
4. These declarants, as the surviving parents of Decedent Wyatt Gibson, are the Decedent’s Successors in Interest as defined in California Code of Civil Procedure § 377.11 and succeeds to the Decedent’s interest in the action of proceeding.
5. We were living at the time of Decedent’s death. No other person has a superior right to commence this action.
6. Attached to this declaration as Exhibit 1 is a certified copy of the death certificate of Decedent.

We declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed, this 09 day of November, 2021, in Calhoun, Georgia.



 Wesley Gibson



 Alexis Gibson

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TENNESSEE DEPARTMENT OF HEALTH
CERTIFICATE OF DEATH

STATE FILE NUMBER 2021 048368

1. Decedent's Legal Name WYATT GARY GIBSON		2. Sex MALE		3. Date of Death 07/16/2021	
4. Time of Death (Approx.) 12:10 PM		5a. Age .5		6. Date of Birth 01/29/2016	
7. Birthplace DALTON, GA		8a. Place of Death INPATIENT			
8b. Facility Name ERLANGER MEDICAL CENTER		8c. City or Town CHATTANOOGA		8d. County of Death HAMILTON	
9. Marital Status NEVER MARRIED		10. Surviving Spouse (name prior to first marriage)		11a. Decedent's Usual Occupation CHILD	
11b. Kind of Business/Industry CHILD		12. Social Security Number 856-27-4061		13a. Residence-State or Foreign Country GEORGIA	
13b. County GORDON		13c. City or Town CALHOUN		13d. Street and Number 330 ARTESIAN WELL ROAD NW	
13e. Inside City Limits? NO		13f. Zip Code 30701		14. Was Decedent ever in US Armed Forces? NO	
15. Decedent's Education 8TH GRADE OR LESS		16. Decedent of Hispanic Origin? NO, NOT SPANISH/HISPANIC/LATINO		17. Decedent's Race WHITE	
18. Father's Name WESLEY CHASE GIBSON			19. Mother's Name Prior to First Marriage ALEXIS LEAH FREEMAN		
20a. Informant's Name ALEXIS GIBSON		20b. Relationship to Decedent MOTHER		20c. Mailing Address 330 ARTESIAN WELL ROAD NW, CALHOUN, GA 30701	
21a. Method of Disposition CREMATION REMOVAL FROM STATE		21b. Place of Disposition DALTON CREMATORY		21c. Location DALTON, GA	
22a. Signature of Funeral Director /e/ STONEWALL PONDER		22b. License Number 16285		22c. Signature of Embalmer	
22d. License Number		23a. Name and Address of Funeral Home PONDER FUNERAL HOME - DALTON, 138 MELROSE DRIVE, DALTON, GA 30721		23b. License Number 1352	
24. Registrar's Signature /e/ EDWARD G BISHOP III			25. Date Filed 07/23/2021		
26. Certifier 26a. <input checked="" type="checkbox"/> PHYSICIAN - TO THE BEST OF MY KNOWLEDGE, DEATH OCCURRED AT THE DATE, TIME AND PLACE, AND DUE TO THE CAUSE(S) AND MANNER STATED. 26b. <input type="checkbox"/> MEDICAL EXAMINER - ON THE BASIS OF EXAMINATION, AND/OR INVESTIGATION, IN MY OPINION, DEATH OCCURRED AT THE DATE, TIME, AND PLACE, AND DUE TO THE CAUSE(S) AND MANNER STATED.					
27a. Certifier /e/ MARVIN HALL		27b. License Number 25655		27c. Date Signed 07/21/2021	
27d. Name and Address MARVIN HALL 910 BLACKFORD STREET, CHATTANOOGA, TN 37377					
28. Part I. ENTER THE CHAIN OF EVENTS (DISEASES, INJURIES, OR COMPLICATIONS) THAT DIRECTLY CAUSED THE DEATH. DO NOT ENTER TERMINAL EVENTS SUCH AS CARDIAC ARREST, RESPIRATORY ARREST, OR VENTRICULAR FIBRILLATION WITHOUT SHOWING THE ETIOLOGY. ENTER ONLY ONE CAUSE ON A LINE.				Approximate Interval: Onset to Death	
IMMEDIATE CAUSE (Final disease or condition resulting in death). Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST.				6 DAYS	
a. ACUTE RESPIRATORY DISTRESS SYNDROME				7 DAYS	
b. COVID 19 PNEUMONIA					
c.					
d.					
Part II. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN PART I CEREBRAL HYPOXIC ISCHEMIC INJURY, SEPTIC SHOCK				28a. Was an Autopsy Performed? NO	
				28b. Were Autopsy Findings Available to Complete the Cause of Death?	
30. Manner of Death NATURAL		31. Did Tobacco Use Contribute to Death? NO		32. If Female: N/A	
33. If Transportation Injury, Specify:		34a. Date of Injury		34b. Time of Injury	
		34c. Injury at Work?		34d. Place of Injury	
		34e. Describe How Injury Occurred		34f. Location of Injury	

PH-1659E

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I hereby certify the above to be a true and correct representation of the record or document on file in this department. This certified copy is valid only when printed on security paper showing the red embossed seal of the Tennessee Department of Health. Alteration or erasure voids this certification. Reproduction of this document is prohibited.

Tennessee Code Annotated 68-3-101 et seq., Vital Records Act of 1977

Edward A. Bishop III *Don Brice*



1 3 2 7 9 5 6 9

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Parents Allege Their Child Died After Exposure to Contaminated Better Homes and Gardens Room Spray](#)
