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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JORDAN NELSON, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

WHELE, LLC d/b/a PERCH,

Defendant.

Case No.

**CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Jordan Nelson (“Plaintiff”) brings this action on behalf of herself and all others  
2 similarly situated against Defendant Whele, LLC (“Defendant”) for the manufacture, marketing,  
3 and sale of Mighty Bliss electric heating pads. Plaintiff makes the following allegations pursuant  
4 to the investigation of her counsel and based upon information and belief, except as to the  
5 allegations specifically pertaining to herself, which are based on personal knowledge.

### 6 **NATURE OF ACTION**

7 1. This is a class action against Defendant for the manufacture and sale of its electric  
8 heating pads (the “Products”)<sup>1</sup>, all of which suffer from an identical defect in design. Specifically,  
9 the Products overheat during charging or use and create the potential for a burn or fire hazard.  
10 Such a design defect is extraordinarily dangerous and has rendered the Products unsuitable for their  
11 principal and intended purpose.

12 2. Due to the dangerous nature of the defect, Defendant initiated a recall (the “Recall”)  
13 of its electric heating pads.<sup>2</sup> However, the Recall is grossly inadequate, as it does not provide  
14 consumers, like Plaintiff, with immediate monetary relief, and it fails to provide sufficient notice to  
15 consumers.

16 3. Plaintiff brings her claims against Defendant individually and on behalf of a class of  
17 all other similarly situated purchasers of the Products for (1) violation of California’s Consumers  
18 Legal Remedies Act (“CLRA”), Civil Code §§ 1750, *et. seq.*; (2) violation of California’s Unfair  
19 Competition Law, Cal. Bus. & Prof. Code §§ 17200-17210; (3) fraud; (4) unjust enrichment; (5)  
20 breach of implied warranties; and (6) violations of the Magnuson-Moss Warranty Act.

### 21 **PARTIES**

22 4. Plaintiff Jordan Nelson is, and at all times relevant to this action has been, a resident  
23 of Pleasant Hill, California. In approximately April 2022, Ms. Nelson purchased the Mighty Bliss  
24 Blue Electric Heating Pad, Large (12” x 24”) online from Amazon. Ms. Nelson purchased the  
25 Product because she believed it was fit for use as an electric heating pad. However, the Product

26 <sup>1</sup> The Mighty Bliss electric heating pads products at issue include the following: Blue Electric  
27 Heating Pad, Large (12” X 24”); Blue Electric Heating Pad, Extra-Large (20” X 24”); and Grey  
Electric Heating Pad, Large (12” X 24”).

28 <sup>2</sup> <https://www.mightyblissheatingpadrecall.expertinquiry.com>.

1 Ms. Nelson purchased was not fit for use as an electric heating pad due to the Product's defect  
2 concerning overheating. Ms. Nelson would not have purchased the Product had she known that the  
3 Product was unfit to perform its intended purpose, rendering the Product useless.

4 5. The Product that Ms. Nelson purchased malfunctioned shortly after she purchased  
5 it, causing rashes, and skin irritation. Ms. Nelson no longer uses the Product because of the  
6 significant injury risk and fire hazard posed by the Defect. The Lot No. shown on the Product  
7 purchased by Ms. Nelson is 211103 and is included in Defendant's product recall.

8 6. Ms. Nelson reviewed the Product's packaging prior to purchase. Defendant  
9 disclosed on the packaging that the Product was an electric heating pad and described features  
10 typical of electric heating pads but did not disclose the Defect. Had there been a disclosure, Ms.  
11 Nelson would not have bought the Product because the Defect would have been material to her, or  
12 at the very least, she would have purchased the Product at a substantially reduced price. Ms.  
13 Nelson relied on the packaging in making her purchase decision. Ms. Nelson continues to desire to  
14 purchase the Product from Defendant and knows that the composition of the Product may change  
15 over time. She is unable, however, to determine if the Product is safe and will perform as intended.

16 7. Defendant Whele, LLC is a Delaware limited liability company and, upon  
17 information and belief, has its principal place of business at 222 Berkeley Street, Boston, MA  
18 02116. Defendant manufactures, markets, and distributes the Products throughout the United  
19 States.

20 **JURISDICTION AND VENUE**

21 8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
22 § 1332(d) because there are more than 100 class members and the aggregate amount in controversy  
23 exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least one Class member is a  
24 citizen of a state different from Defendant.

25 9. This Court has personal jurisdiction over Defendant because Defendant conducts  
26 substantial business within California such that Defendant has significant, continuous, and  
27 pervasive contacts with the State of California.

1 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant  
2 does substantial business in this District, and a substantial part of the events giving rise to  
3 Plaintiff’s claims took place within this District because Plaintiff purchased her Product in this  
4 District.

5 **COMMON FACTUAL ALLEGATIONS**

6 **The Overheating Defect**

7 11. Defendant sells electric heating pads and deep-tissue massage products. Among the  
8 various products sold by Defendant are its Mighty Bliss electric heating pads, which are the  
9 Products at issue here. The Products include those manufactured between July 2021 through July  
10 2022, and include the MB-001 (NA-H1121B/NA-H21B), MB-002 (NA-H21C), and PE-MtyBlis-  
11 HeatPad-12x24-Gry-V2 E-MtyBlis-HeatPad-12x24-Gry (NA-H1121B/NA-H21B) models.

12 12. The Products were made with a defect (hereinafter, the “Defect”) involving  
13 functional electric components of the heating pad. The Defect results in the electric heating pad  
14 overheating, causing burning or sparking, posing a significant injury hazard. In fact, Defendant has  
15 already received at least 31 complaints of shocks, burns, and rashes or irritation injuries resulting  
16 from the Defect.<sup>3</sup> Between July 2021 and September 2022, Defendant received at least **286**  
17 **complaints** related to the Defect. The Defect is substantially likely to materialize during the useful  
18 life of the Products.

19 13. With over 500,000 units sold at approximately \$30 each, Defendant profited  
20 enormously from its failure to disclose the Products’ Defect sooner.

21 14. The Defect at issue here renders the Products unsafe to operate. Defendant had  
22 exclusive knowledge of the Defect, which was not known to Plaintiff or class members.

23 15. Defendant made partial representations to Plaintiff and class members while  
24 suppressing the safety defect. Specifically, by displaying the Products and describing their  
25 features, the product packaging implied that the Products were suitable for use as an electric  
26 heating pad, without disclosing that they had a critical safety-related defect that could result in  
27 harm to users of the Products.

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28 <sup>3</sup> *Id.*

1 **Defendant’s Inadequate Recall**

2 16. On October 24, 2022, Defendant issued a recall of the Products.

3 17. The recall was due to a serious injury hazard associated with the Products.  
4 Specifically, Defendant admitted that its Products had a defect in design and materials that resulted  
5 in the electric heating pads overheating, causing burning or sparking, posing a significant injury  
6 hazard.

7 18. Defendant issued a recall of over 500,000 Products in the United States.

8 19. The recall allowed Defendant to *say* it was doing right by its customers, but in fact  
9 the recall protected Defendant’s profits by suppressing returns:

10 (a) Upon information and belief, a majority of the purchases of the Mighty Bliss  
11 Products occurred through Amazon. However, the Mighty Bliss Amazon webpage<sup>4</sup> demonstrates  
12 that Defendant provides no information relating to the Products recall or the Defect. Although  
13 Defendant posted information relating to the Products recall and Defect on the Mighty Bliss  
14 website<sup>5</sup>, the information only reaches a limited portion of Mighty Bliss purchasers; and

15 (b) Defendant has not offered immediate refunds to consumers, but instead, has  
16 had consumers engage in an at-length claims process to confirm that the units at issue are no longer  
17 in use and does not provide adequate relief to consumers. It also requires consumers to still be in  
18 possession of the Products.

19 **Defendant’s Pre-Sale Knowledge Of The Defect**

20 20. At least one year prior to issuing the recall, Defendant had received numerous  
21 reports of the Products’ Defect.

22 21. Indeed, Defendant has publicly disclosed that from at least July 2021 to September  
23 2022, Defendant received over **286 complaints** related to the Products’ Defect.

24 22. Defendant, however, did not issue a recall on the Products until October 24, 2022.

25 23. Thus, Defendant was on notice of the Products’ Defect for at least 15 months prior  
26 to issuing the recall.

27 <sup>4</sup> [https://www.amazon.com/stores/MIGHTYBLISS/page/90994D21-7E4C-452A-AB97-849D3AD3768E?ref\\_ast\\_bln](https://www.amazon.com/stores/MIGHTYBLISS/page/90994D21-7E4C-452A-AB97-849D3AD3768E?ref_ast_bln)

28 <sup>5</sup> <https://www.mightyblissheatingpadrecall.expertinquiry.com/>



1 (c) whether Defendant has been unjustly enriched as a result of the unlawful  
2 conduct alleged in this Complaint such that it would be inequitable for Defendant to retain the  
3 benefits conferred upon Defendant by Plaintiff and the Class;

4 (d) whether Plaintiff and the Class sustained damages with respect to the  
5 common law claims asserted, and if so, the proper measure of their damages.

6 32. With respect to the California Subclass, additional questions of law and fact  
7 common to the members that predominate over questions that may affect individual members  
8 include whether Defendant violated the California Consumer Legal Remedies Act as well as  
9 California's Unfair Competition law.

10 33. Plaintiff's claims are typical of those of the Class because Plaintiff, like all members  
11 of the Class, purchased, in a typical consumer setting, Defendant's Products, and Plaintiff sustained  
12 damages from Defendant's wrongful conduct.

13 34. Plaintiff will fairly and adequately protect the interests of the Class and Subclasses  
14 and has retained counsel that is experienced in litigating complex class actions. Plaintiff has no  
15 interests that conflict with those of the Class or the Subclass.

16 35. A class action is superior to other available methods for the fair and efficient  
17 adjudication of this controversy.

18 36. The prosecution of separate actions by members of the Class and the Subclasses  
19 would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct  
20 for Defendant. For example, one court might enjoin Defendant from performing the challenged  
21 acts, whereas another might not. Additionally, individual actions could be dispositive of the  
22 interests of the Class and the Subclasses even where certain Class or Subclass members are not  
23 parties to such actions.

24 **COUNT I**  
25 **(Violation of California's Consumers Legal Remedies Act ("CLRA"),**  
26 **California Civil Code § 1750, et seq.)**

27 37. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged  
28 above.

1           38. Plaintiff brings this claim individually and on behalf of the members of the  
2 proposed Class and Subclass against Defendant.

3           39. Civil Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have  
4 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not  
5 have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she  
6 does not have.” Civil Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a  
7 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of  
8 another.” Civil Code § 1770(a)(9) prohibits “advertising goods or services with intent not to sell  
9 them as advertised.”

10           40. Defendant violated Civil Code § 1770(a)(5), (a)(7) and (a)(9) by holding out  
11 Products as fit for use as electric heating pads, when in fact the products were defective, dangerous,  
12 and useless.

13           41. The defect at issue here involves a critical safety-related component of the Products,  
14 and it was unsafe to operate the Products with the defect.

15           42. Defendant had exclusive knowledge of the Defect, which was not known to Plaintiff  
16 or class members.

17           43. Defendant made partial representations to Plaintiff and class members, while  
18 suppressing the safety defect. Specifically, by displaying the Product and describing its features,  
19 the product packaging and Defendant’s website implied that the Product was suitable for use as an  
20 electric heating pad, without disclosing that the Products had a critical safety-related defect that  
21 could result in harm to users of the Product.

22           44. Plaintiff and the members of the California Subclass have suffered harm as a result  
23 of these violations of the CLRA because they have incurred charges and/or paid monies for the  
24 Products that they otherwise would not have incurred or paid.

25           45. On November 14, 2022, prior to the filing of this Complaint, Plaintiff’s counsel sent  
26 Defendant a CLRA notice letter, which complies in all respects with California Civil Code  
27 §1782(a). The letter also provided notice of breach of express and implied warranties. The letter  
28 was sent via certified mail, return receipt requested, advising Defendant that they were in violation



1 of the CLRA and demanding that it cease and desist from such violations and make full restitution  
2 by refunding the monies received therefrom. The letter stated that it was sent on behalf of Plaintiff  
3 and all other similarly situated purchasers. Wherefore, Plaintiff seeks damages, restitution, and  
4 injunctive relief for this violation of the CLRA.

5 **COUNT II**  
6 **(Violation of California’s Unfair Competition Law,**  
7 **Business & Professions Code §§ 17200, *et seq.*)**

7 46. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged  
8 above.

9 47. Plaintiff brings this claim individually and on behalf of the members of the  
10 proposed Class and Subclass against Defendant.

11 48. By committing the acts and practices alleged herein, Defendant has violated  
12 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-17210, as to the  
13 California Subclass, by engaging in unlawful, fraudulent, and unfair conduct.

14 49. Defendant has violated the UCL’s proscription against engaging in unlawful  
15 conduct as a result of its violations of the CLRA, Cal. Civ. Code § 1770(a)(5) and (a)(7) as alleged  
16 above.

17 50. Defendant’s acts and practices described above also violate the UCL’s proscription  
18 against engaging in fraudulent conduct.

19 51. As more fully described above, Defendant’s misleading marketing, advertising,  
20 packaging, and labeling of the Products is likely to deceive reasonable consumers.

21 52. Defendant’s acts and practices described above also violate the UCL’s proscription  
22 against engaging in unfair conduct.

23 53. Plaintiff and the other California Subclass members suffered a substantial injury by  
24 virtue of buying the Products that they would not have purchased absent Defendant’s unlawful,  
25 fraudulent, and unfair marketing, advertising, packaging, and omission about the defective nature  
26 of the Products, or by virtue of paying an excessive premium price for the unlawfully, fraudulently,  
27 and unfairly marketed, advertised, packaged, and labeled product.

1           54.     There is no benefit to consumers or competition from deceptively marketing and  
2 omitting material facts about the defective nature of the Products.

3           55.     Plaintiff and the other California Subclass members had no way of reasonably  
4 knowing that the Products they purchased were not as marketed, advertised, packaged, or labeled.  
5 Thus, they could not have reasonably avoided the injury each of them suffered.

6           56.     The gravity of the consequences of Defendant’s conduct as described above  
7 outweighs any justification, motive, or reason therefore, particularly considering the available legal  
8 alternatives that exist in the marketplace, and such conduct is immoral, unethical, unscrupulous,  
9 offends established public policy, or is substantially injurious to Plaintiff and the other members of  
10 the California Subclass.

11           57.     Plaintiff and the members of the California Subclass have suffered an injury in fact  
12 resulting in the loss of money and/or property as a proximate result of the violations of law and  
13 wrongful conduct of Defendant alleged herein, and they lack an adequate remedy at law to address  
14 the unfair conduct at issue here. Legal remedies available to Plaintiff and class members are  
15 inadequate because they are not equally prompt and certain and in other ways efficient as equitable  
16 relief. Damages are not equally certain as restitution because the standard that governs restitution  
17 is different than the standard that governs damages. Hence, the Court may award restitution even if  
18 it determines that Plaintiff fails to sufficiently adduce evidence to support an award of damages.  
19 Damages and restitution are not the same amount. Unlike damages, restitution is not limited to the  
20 amount of money Defendant wrongfully acquired plus the legal rate of interest. Equitable relief,  
21 including restitution, entitles the plaintiff to recover all profits from the wrongdoing, even where  
22 the original funds taken have grown far greater than the legal rate of interest would recognize.  
23 Legal claims for damages are not equally certain as restitution because claims under the UCL entail  
24 few elements. In short, significant differences in proof and certainty establish that any potential  
25 legal claim cannot serve as an adequate remedy at law.

26           58.     Injunctive relief is also appropriate, and indeed necessary, to require Defendant to  
27 provide full and accurate disclosures regarding the Products so that Plaintiff and Class members  
28 can reasonably rely on Defendant’s packaging as well as those of Defendant’s competitors who

1 may then have an incentive to follow Defendant’s deceptive practices, further misleading  
2 consumers.

3 59. Pursuant to California Business and Professional Code § 17203, Plaintiff and the  
4 California Subclass seek an order of this Court that includes, but is not limited to, an order  
5 requiring Defendant to: (a) provide restitution to Plaintiff and the other California Subclass  
6 members; (b) disgorge all revenues obtained as a result of violations of the UCL; (c) pay Plaintiff’s  
7 and the California Subclass’ attorney’s fees and costs.

8 **COUNT III**  
9 **(Fraud by Omission)**

10 60. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged  
11 above.

12 61. Plaintiff brings this claim individually and on behalf of the members of the  
13 proposed Class and Subclass against Defendant.

14 62. This claim is based on fraudulent omissions concerning the safety of consumers  
15 who use the Products. As discussed above, Defendant failed to disclose that the Products had a  
16 dangerous Defect.

17 63. The false and misleading omissions were made with knowledge of their falsehood.  
18 Defendant is a nationwide distributor of electric heating pads and deep-tissue massage products  
19 who knew of reports of the Products’ defective and dangerous nature. Nonetheless, Defendant  
20 continued to sell its worthless electric heating pads to unsuspecting consumers.

21 64. The false and misleading omissions were made by Defendant, upon which Plaintiff  
22 and members of the proposed Class and California Subclass reasonably and justifiably relied, and  
23 were intended to induce and actually induced Plaintiff and members of the proposed Class and  
24 California Subclass to purchase the Products.

25 65. The fraudulent actions of Defendant caused damage to Plaintiff and members of the  
26 proposed Class and Subclass, who are entitled to damages and punitive damages.

**COUNT IV**  
**(Unjust Enrichment)**

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3 66. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged  
4 above.

5 67. Plaintiff brings this claim individually and on behalf of the members of the  
6 proposed Class and Subclasses against Defendant.

7 68. Plaintiff and Class members conferred benefits on Defendant by purchasing the  
8 Products.

9 69. Defendant has been unjustly enriched in retaining the revenues derived from  
10 Plaintiff and Class members' purchases of the Products. Retention of those moneys under these  
11 circumstances is unjust and inequitable because Defendant failed to disclose that the Products were  
12 unfit for use as electric heating pads. These omissions caused injuries to Plaintiff and Class  
13 members because they would not have purchased the Products if the true facts were known.

14 70. Retention of those moneys also is unjust and inequitable because, as alleged above,  
15 Defendant commenced an ineffective recall that was calculated to result in few returns, and no  
16 refunds, thereby protecting profits Defendant collected from selling the defective products.

17 71. Plaintiff and members of the putative class have been injured as a direct and  
18 proximate result of Defendant's inequitable conduct. Plaintiff and members of the putative class  
19 lack an adequate remedy at law with respect to this claim and are entitled to non-restitutionary  
20 disgorgement of the financial profits that Defendant obtained as a result of its unjust conduct.

21 72. Plaintiff and the members of the California Subclass have suffered an injury in fact  
22 resulting in the loss of money and/or property as a proximate result of the violations of law and  
23 wrongful conduct of Defendant alleged herein, and they lack an adequate remedy at law to address  
24 the unfair conduct at issue here. Legal remedies available to Plaintiff and class members are  
25 inadequate because they are not equally prompt and certain and in other ways efficient as equitable  
26 relief. Damages are not equally certain as restitution because the standard that governs restitution  
27 is different than the standard that governs damages. Hence, the Court may award restitution even if  
28 it determines that Plaintiff fails to sufficiently adduce evidence to support an award of damages.

1 Damages and restitution are not the same amount. Unlike damages, restitution is not limited to the  
2 amount of money Defendant wrongfully acquired plus the legal rate of interest. Equitable relief,  
3 including restitution, entitles the plaintiff to recover all profits from the wrongdoing, even where  
4 the original funds taken have grown far greater than the legal rate of interest would recognize.  
5 Legal claims for damages are not equally certain as restitution because claims under the UCL entail  
6 few elements. In short, significant differences in proof and certainty establish that any potential  
7 legal claim cannot serve as an adequate remedy at law.

8 **COUNT V**  
9 **(Breach of Implied Warranty Under the Song-Beverly Act, Cal. Civ. Code § 1790 *et seq.* and**  
10 **California Commercial Code § 2314)**

11 73. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged  
12 above.

13 74. Plaintiff brings this claim individually and on behalf of the members of the  
14 proposed Class and Subclasses against Defendant.

15 75. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790, *et seq.*,  
16 and California Commercial Code § 2314, every sale of consumer goods in this State is  
17 accompanied by both a manufacturer's and retail seller's implied warranty that the goods are  
18 merchantable, as defined in that Act. In addition, every sale of consumer goods in this State is  
19 accompanied by both a manufacturer's and retail seller's implied warranty of fitness when the  
20 manufacturer or retailer has reason to know that the goods as represented have a particular purpose  
21 (here, to be used as electric heating pads) and that the buyer is relying on the manufacturer's or  
22 retailer's skill or judgment to furnish suitable goods consistent with that represented purpose.

23 76. The Products at issue here are "consumer goods" within the meaning of Cal. Civ.  
24 Code § 1791(a).

25 77. Plaintiff and the Class members who purchased one or more of the Products are  
26 "retail buyers" within the meaning of Cal. Civ. Code § 1791.  
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1           78. Defendant is in the business of manufacturing, assembling, producing and/or selling  
2 the Products to retail buyers, and therefore are a “manufacturer” and “seller” within the meaning of  
3 Cal. Civ. Code § 1791.

4           79. Defendant impliedly warranted to retail buyers that the Products were merchantable  
5 in that they would: (a) pass without objection in the trade or industry under the contract  
6 description, and (b) were fit for the ordinary purposes for which the Products are used. For a  
7 consumer good to be “merchantable” under the Act, it must satisfy both of these elements.  
8 Defendant breached these implied warranties because the Products were unsafe and defective.  
9 Therefore, the electric heating pads would not pass without objection in the trade or industry and  
10 were not fit for the ordinary purpose for which they are used.

11           80. Plaintiff and Class members purchased the Products in reliance upon Defendant’s  
12 skill and judgment in properly packaging and labeling the Products.

13           81. The Products were not altered by Plaintiff or Class members.

14           82. The Products were defective at the time of sale when they left the exclusive control  
15 of Defendant. The Defect described in this complaint was latent in the Products and not  
16 discoverable at the time of sale.

17           83. Defendant knew that the Products would be purchased and used without additional  
18 testing by Plaintiff and Class members.

19           84. As a direct and proximate cause of Defendant’s breach of the implied warranty,  
20 Plaintiff and Class members have been injured and harmed because they would not have purchased  
21 the Products if they knew the truth about the products, namely, that they were unfit for use as  
22 electric heating pads.

23   **COUNT VI**  
24   **(Breach of Implied Warranty Under the Uniform Commercial Code**  
  **U.C.C. §§ 2-314, et seq.)**

25           85. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged  
26 above.

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1           86. Plaintiff brings this claim individually and on behalf of the members of the  
2 proposed Class and Subclasses against Defendant.

3           87. Defendant, as the designer, manufacturer, distributor, and/or seller, impliedly  
4 warranted that the Products were merchantable with respect to goods of that kind.

5           88. Defendant breached the warranty implied in the contract for the sale of the Products  
6 because they could not pass without objection in the trade under the contract description, the goods  
7 were not of fair average quality within the description, the goods were not fit for the ordinary  
8 purpose for which such goods are used, the goods are not adequately contained, packaged, and  
9 labeled, and the goods do not conform to the promises or affirmations of fact made on the container  
10 and label. As a result, Plaintiff and members of the Class and Subclass did not receive the goods as  
11 impliedly warranted by Defendant to be merchantable.

12           89. Plaintiff and members of the Class and Subclass purchased the Products in reliance  
13 upon Defendant's skill and judgment and the implied warranties of fitness for the purpose.

14           90. The Products were not altered by Plaintiff or members of the Class or Subclass in a  
15 manner that would cause a defect in the electric heating pads.

16           91. The Products were defective when they left the exclusive control of Defendant.

17           92. Defendant knew that the Products would be purchased and used without additional  
18 testing by Plaintiff and Class and Subclass Members.

19           93. The Products were defectively designed and unfit for their intended purpose, and  
20 Plaintiff and Class and Subclass Members did not receive the goods as warranted.

21           94. As a direct and proximate result of Defendant's breach of the implied warranty,  
22 Plaintiff and Class and Subclass Members have been injured and harmed because (a) they would  
23 not have purchased the Products on the same terms if they knew that the Products have a safety  
24 Defect; and (b) the Products do not have the characteristics, ingredients, uses or benefits as  
25 promised by Defendant.  
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**COUNT VII**  
**(Violation Of The Magnuson-Moss Warranty Act,  
15 U.S.C. §§ 2301, *et seq.*)**

95. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

96. Plaintiff brings this claim individually and on behalf of the members of the proposed Class and Subclass against Defendant.

97. The Products are consumer products as defined in 15 U.S.C. § 2301(1).

98. Plaintiff and the Class and Subclass members are consumers as defined in 15 U.S.C. § 2301(3).

99. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

100. In connection with the marketing and sale of the Products, Defendant impliedly warranted that the Products were fit for use as electric heating pads. The Products were not fit for use as electric heating pads due to the defect described in the allegations above.

101. By reason of Defendant’s breach of warranties, Defendant violated the statutory rights due to Plaintiff and the Class and Subclass members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, thereby damaging Plaintiff and the Class and Subclass members.

102. Plaintiff and the Class and Subclass members were injured as a direct and proximate result of Defendant’s breach because they would not have purchased the Products if they knew the truth about the defective nature of the Products.

**PRAYER FOR RELIEF**

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

- a. For an order certifying the nationwide Class and California Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Subclass and Plaintiff’s attorneys as Class Counsel to represent the Class and Subclass members;



- 1           b.     For an order declaring the Defendant’s conduct violates the statutes referenced
- 2                 herein;
- 3           c.     For an order finding in favor of Plaintiff, the nationwide Class, and the Subclass on
- 4                 all counts asserted herein;
- 5           d.     For compensatory and punitive damages in amounts to be determined by the Court
- 6                 and/or jury;
- 7           e.     For pre-judgment interest on all amounts awarded;
- 8           f.     For an order of restitution and all other forms of monetary relief;
- 9           g.     For an order awarding Plaintiff and the Class and Subclass their reasonable
- 10                attorneys’ fees and expenses and costs of suit.

**DEMAND FOR TRIAL BY JURY**

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

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Dated: January 30, 2023

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By:                   /s/ L. Timothy Fisher                  

L. Timothy Fisher (State Bar No. 191626)  
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Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
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*Counsel for Plaintiff*

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

I, L. Timothy Fisher, declare as follows:

- 1. I am counsel for Plaintiff, and I am a partner at Bursor & Fisher, P.A. I make this declaration to the best of my knowledge, information, and belief of the facts stated herein.
- 2. The complaint filed in this action is filed in the proper place for trial because many of the acts and transactions giving rise to this action occurred in this District, and because Plaintiff resides in this District.
- 3. Plaintiff Jordan Nelson is a resident of Pleasant Hill, California.
- 4. Defendant Whele, LLC is a Delaware limited liability company and, upon information and belief, has its principal place of business at 222 Berkeley Street, Boston, MA 02116.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct, executed on January 30, 2023, at Walnut Creek, California.

/s/ L. Timothy Fisher  
L. Timothy Fisher