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GUNNAR OPTIKS, LLC
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 GASTON PROCOPIO GIMENEZ,
individually and on behalf of all others
12 similarly situated,

13 Plaintiffs,

14 vs.

15 GUNNAR OPTIKS, LLC,

16 Defendants.
17

CASE NO.

**DEFENDANT GUNNAR OPTIKS,
LLC'S NOTICE OF REMOVAL OF
ACTION PURSUANT TO 28 U.S.C.
§§ 1332, 1441, 1446, 1453
(DIVERSITY JURISDICTION –
CAFA)**

*Removed from the Superior Court of
California, San Diego County, Case No.
37-2023-00007453-CU-FR-CTL*

Complaint Filed: Feb. 22, 2023

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1 Defendant Gunnar Optiks, LLC (“Gunnar Optiks”) hereby removes to this
2 Court the action entitled *Gimenez v. Gunnar Optiks, LLC*, Case No. 37-2023-
3 00007453-CU-FR-CTL, from the Superior Court of the State of California for the
4 County of San Diego. As set forth below, the Court has jurisdiction over this
5 action pursuant to the Class Action Fairness Act of 2005 (“CAFA”), codified in
6 relevant part at 28 U.S.C. §§ 1332(d) and 1453. In support of removal, Gunnar
7 Optiks states as follows:

8 **I. BACKGROUND**

9 1. On February 22, 2023, Plaintiff Gaston Procopio Gimenez
10 (“Plaintiff”) filed a complaint entitled *Gimenez v. Gunnar Optiks, LLC*, Case No.
11 37-2023-00007453-CU-FR-CTL in the Superior Court of the State of California
12 for the County of San Diego (hereinafter the “State Court Action”). *See* Exhibit A
13 (“Compl.”).¹ The State Court Action is a putative class action in which Plaintiff
14 alleges Gunnar Optiks advertised, and continues to advertise, false information
15 related to its blue light-filtering glasses. *Id.* at ¶3. Plaintiff further alleges that he
16 represents a class of consumers who were misled by such statements. *Id.* at ¶¶22,
17 25.

18 2. Plaintiff claims that such practices constitute untrue or misleading
19 advertising under California’s Consumer Legal Remedies Act (Cal. Civ. Code §
20 1750); California’s False Advertising Law (Cal. Bus. & Prof. Code § 17500);
21 California’s Song-Beverly Consumer Warranty Act (Cal. Civ. Code § 1791); and
22 California’s Unfair Competition Law (Cal. Bus. & Prof. Code § 17200); as well as
23 various common law claims.

24 ///

25 ///

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27 ¹ In accordance with 28 U.S.C. § 1446(a), a true and correct copy of the Complaint
28 filed in the Superior Court of the State of California for the County of San Diego,
and all pleadings, process, and orders served on, or obtained by, Gunnar Optiks are
attached to the concurrently filed declaration of Timothy K. Branson.

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1 3. Plaintiff’s Complaint seeks to certify the following class: “all
2 consumers who purchased the Product from Defendant (the ‘Class’).” Ex. A at
3 ¶22.

4 4. Gunnar Optiks is the only named defendant in the State Court Action.

5 5. This Notice of Removal is timely as the complaint has not yet been
6 properly served on Gunnar Optiks, and so the 30-day period within which to
7 remove has not yet begun. *See, e.g., Murphy Bros., Inc. v. Michetti Pipe Stringing,*
8 *Inc.*, 526 U.S. 344, 350 (1999) (“defendant’s period for removal will be no less
9 than 30 days from service”); *Horvath v. JP Morgan Chase & Co.*, 2022 WL
10 80474, at *2 (S.D. Cal. Jan. 7, 2022) (“actual notice of the action is insufficient;
11 rather, the defendant must be notified of the action...by formal process, before the
12 removal period begins to run”).

13 6. The Court has jurisdiction over this matter pursuant to 28 U.S.C.
14 §1332(d)(2).

15 7. Removal to the United States District Court for the Southern District
16 of California is proper pursuant to 28 U.S.C. §§ 84(a) and 1391(a) because the
17 State Court Action was filed in San Diego County.

18 **II. INTRADISTRICT ASSIGNMENT**

19 8. Plaintiff filed this case in the Superior Court of the State of California
20 for the County of San Diego. Therefore, this case may properly be removed to the
21 Southern District of California. *See* 28 U.S.C. § 1441(a).

22 **III. THIS CASE IS REMOVABLE UNDER CAFA**

23 9. Pursuant to Section 4 of CAFA, 28 U.S.C. § 1332(d)(2):
24 The district courts shall have original jurisdiction of any
25 civil action in which the matter in controversy exceeds
26 the sum or value of \$5,000,000, exclusive of interest and
27 costs, and is a class action in which – (A) any member of
28 a class of plaintiffs is a citizen of a State different from
any defendant.

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1 10. This Court has jurisdiction over this action pursuant to CAFA, and
2 this case may be removed by Gunnar Optiks pursuant to the provisions of 28
3 U.S.C. § 1441(a), in that it is a civil class action wherein: (1) the proposed class is
4 alleged to contain “thousands if not tens of thousands” of members (*see* Ex. A at
5 ¶23); (2) the defendant is not a state, state official or other governmental entity; (3)
6 the total amount in controversy exceeds \$5,000,000; and (4) there is diversity
7 between at least one class member and the defendant. 28 U.S.C. §1332(d).

8 11. As a preliminary matter, Gunnar Optiks denies that it has any liability
9 to Plaintiff or to the class he seeks to represent, denies that Plaintiff is an adequate
10 class representative for the class that he seeks to represent, and denies that Plaintiff
11 or the putative class members are entitled to recover any of the damages or other
12 relief requested in the Complaint. Gunnar Optiks also submits that the Complaint’s
13 allegations do not satisfy the requirements for class certification. That said, based
14 on the allegations as pled in the Complaint, which must be considered true for
15 purposes of removal, and for the reasons set forth below, all requirements of
16 CAFA are satisfied.

17 **A. The Proposed Class Contains Many Thousands of Members.**

18 12. Plaintiff seeks to represent a class consisting of “thousands if not tens
19 of thousands” of members. *See* Ex. A at ¶23.

20 **B. Gunnar Optiks Is Not A State, State Official, or Other Government**
21 **Entity.**

22 13. Gunnar Optiks is not a state, state official, or other governmental
23 entity.

24 **C. The Amount-In-Controversy Requirement is Satisfied.**

25 14. To satisfy the amount in controversy, Gunnar Optiks need only
26 establish that Plaintiff’s putative class claims exceed the jurisdictional amount by a
27 preponderance of the evidence. *See Rodriguez v. AT&T Mobility Servs. LLC*, 728
28 F.3d 975, 977 (9th Cir. 2013) (“[T]he proper burden of proof imposed upon a

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1 defendant to establish the amount in controversy is the preponderance of the
2 evidence standard.”).

3 15. Plaintiff in his complaint seeks restitution of monies paid to Gunnar
4 Optiks; compensatory, statutory, and punitive damages in an unspecified amount;
5 and attorneys’ fees.

6 16. The purported class is “all consumers who purchased the Product
7 from Defendant (the ‘Class’).” Plaintiff further alleges that “members of the Class
8 number in the thousands if not tens of thousands.”

9 17. The amount in controversy readily exceeds the \$5 million threshold
10 requirement under CAFA based on Gunnar Optiks’s sales in 2022 alone.

11 **D. The Minimal Diversity Requirement Is Satisfied.**

12 18. While diversity removal normally requires complete diversity
13 between plaintiffs and defendants, removal of a putative class action under CAFA
14 requires only “minimal diversity” – *i.e.*, that at least one plaintiff be diverse from
15 one defendant. 28 U.S.C. § 1332(d)(2)(A).

16 19. As explained above, the putative class alleged in this case includes
17 “all consumers who purchased the Product from Defendant”—regardless of
18 location, residency, or citizenship. Ex. A at ¶22.

19 20. Named Plaintiff Gaston Procopio Gimenez alleges he is a resident of
20 Spain. Ex. A at ¶10.

21 21. Defendant Gunnar Optiks, LLC is a California limited liability
22 company with its headquarters and principal place of business in Carlsbad,
23 California. Gunnar Optiks sells its products to California residents, to non-
24 California residents throughout the United States, and to non-California residents
25 internationally. Gunnar Optiks’s products are carried in major retailers like Best
26 Buy and Gamestop, and can also be found online.

27 22. Accordingly, all the jurisdictional requirements for CAFA removal
28 are satisfied.

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IV. CONCLUSION

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23. For the reasons stated above, removal pursuant to CAFA, 28 U.S.C. § 1332(d)(2), is appropriate.

24. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the clerk of the Superior Court of California, County of San Diego.

25. Pursuant to 28 U.S.C. § 1446(d), Gunnar Optiks is providing written notice of the removal of this action to Plaintiff by serving Plaintiff’s counsel.

26. Pursuant to 28 U.S.C. § 1446(a), copies of all processes, pleadings, and orders served on Gunnar Optiks are being filed with the Court contemporaneously with this Notice of Removal.

27. By filing this Notice of Removal, Gunnar Optiks does not waive any jurisdictional objection or other defenses available to it under the law.

28. Gunnar Optiks does not concede in any way that the allegations in Plaintiff’s Complaint are accurate, or that Plaintiff is entitled to compensatory or statutory damages, attorney fees, or any other relief, or that class treatment is appropriate for this case.

WHEREFORE, Gunnar Optiks removes this action to this Court from the Superior Court of the State of California for the County of San Diego.

Dated: April 14, 2023

GORDON REES SCULLY
MANSUKHANI

By: /s/ Timothy K. Branson
Timothy K. Branson
Patrick J. Mulkern
Attorneys for Defendant
GUNNAR OPTIKS, LLC

EXHIBIT A

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County of San Diego
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Clerk of the Superior Court
By Mary Kaneshiro, Deputy Clerk

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 GASTON PROCOPIO GIMENEZ, individually
and on behalf of all others similarly situated,

11 Plaintiffs,

12 v.

13 GUNNAR OPTIKS, LLC,

14 Defendant.

) Case No. 37-2023-00007453-CU-FR-CTL

) **CLASS ACTION**

) **COMPLAINT FOR DAMAGES AND**
) **EQUITABLE RELIEF**

) **DEMAND FOR JURY TRIAL**

1 Plaintiff Gaston Procopio Gimenez (“Plaintiff”), by and through his attorneys, individually
2 and on behalf of himself and classes of those similarly situated, makes the following allegations
3 against defendant Gunnar Optiks, LLC (“GUNNAR” or “Defendant”):

4 **JURISDICTION AND VENUE**

5 1. Defendant is within the jurisdiction of this Court in that they are headquartered in
6 and transact millions of dollars of business in the State of California and in San Diego County.
7 As a result, Defendant has obtained the benefits of the laws of the State of California and its
8 construction building materials market.

9 2. Venue is proper in this County because Defendant has conducted substantial
10 business in this County, and the transactions in question occurred in this County. Further: (1)
11 they operate within this County; (2) they are qualified with the California Secretary of State to
12 do business and are doing business in California, and in this County; and (3) because many of
13 the acts complained of occurred and arose in California, and specifically, this county.
14 Additionally, Defendant CPC is either a citizen of California, has sufficient minimum contacts in
15 California, or otherwise intentionally avails itself of the California market so as to render the
16 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
17 play and substantial justice.

18 **NATURE OF THE ACTION**

19 3. This is a class action for damages relating to the Defendant’s formulation,
20 manufacture, testing, marketing, promotion, distribution, and sale of its defective blue light
21 blocking eyeglasses product including, but not limited to, the Gunnar Onyx Vinyl Crystalline
22 Glasses (the “Gunnar Glasses” or the “Product”).

23 4. Defendant advertises the Gunnar Glasses as doctor recommended to “block blue
24 light”, “reduce digital eyestrain”, “prevent dry eyes”, “minimize glare”, and sleep better.”¹

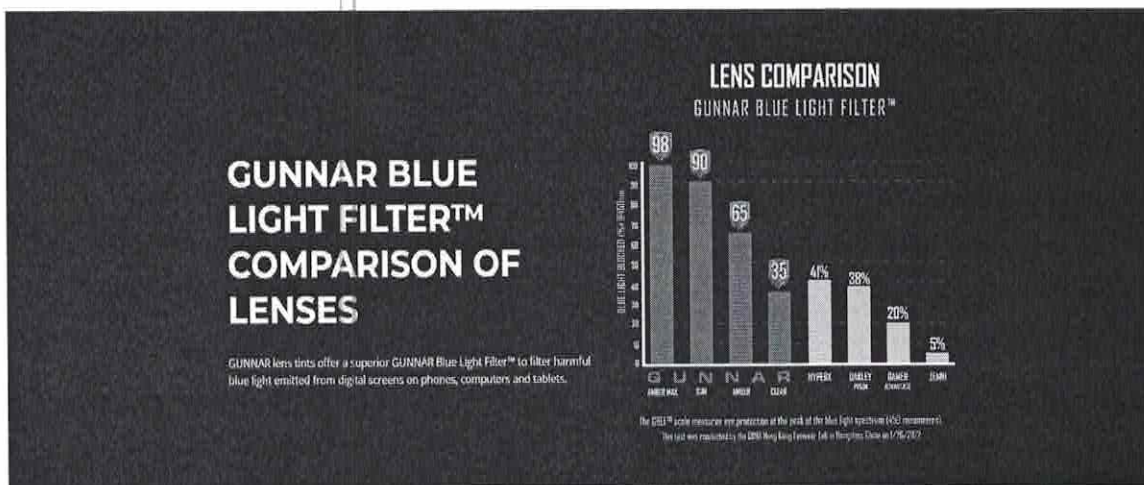
25 5. Gunnar Glasses have quickly grown to be one of the most widely sold blue light
26 blocking eyewear products in the country, primarily due to Defendant’s marketing. This
27 includes the notable packaging and influential ambassadors backing Gunnar Glasses’—

28 ¹ <https://gunnar.com/pages/technology> (Last visited on January 25, 2023)

1 advertising in various channels, including through social media and big names like “Call of
2 Duty” and “Marvel” endorsements, and that it was featured on “Shark Tank” and recommended
3 by “Rolling Stone” magazine.²

4 6. The Product is sold throughout the United States in hundreds of thousands of
5 retail locations, including by electronic stores and mass retailers, as well as through online
6 retailers and Defendant’s own website, www.gunnar.com.

7 7. When used as intended, the Product does not protect the consumer as Defendant
8 claims with their “Gunnar Blue Light Filter (“GBLF”)” or protect it as represented in comparison
9 with other named brands, such as “Hyperx”, “Oakley”, “Gamer” and “Zenni”. Per Defendant’s
10 lens comparison, their GBLF consists of four levels of blue light protection, 98%, 90%, 65%,
11 and 35%, which Defendant’s website makes clear relates to the percentage of blue light it claims
12 is blocked by the Product. The “GBLF scale measures eye protection at the peak of the blue
13 light spectrum.”³



2 ² <https://gunnar.com/> (Last visited January 25, 2023)

3 ³ <https://gunnar.com/pages/technology> (Last visited January 25, 2023)

FACTUAL ALLEGATIONS

1
2 12. Defendant manufactures, markets, and sells Gunnar Glasses. They are packaged in
3 widely recognized, bright colors, and with big name collaborations. Defendant’s Product is sold
4 for approximately from \$24.99 to almost \$100 per pair of glasses. It is sold in a variety of
5 designs, including, but not limited to, 6-Siege Ash Edition, 6-Siege Intercept, Apex, Atherton,
6 Attache, Attache Reading Glasses, Berkeley, Call of Duty Convert Edition, Call of Duty Tactical
7 Edition, Clip On, Cruz (children’s lineup), and a variety of Cruz designs for kids including a Cruz,
8 Black Panther Edition, Collection for St. Jude, Spider-Man Miles Morales Edition and many more
9 design but all with the same options of GBLF to choose from: 35%, 65%, 90% or 98%.⁴

10 13. While purchased by all manner of consumers, the eye-catching packaging, and fun
11 designs that Gunnar offers in its Product have had special appeal for younger adults and children.

12 14. Defendant’s own marketing touts itself as “the only patented gaming and computer
13 eyewear recommend by doctors to protect and enhance your vision.” In fact, it claims “GUNNAR
14 blue light glasses address all short and long-term side effects of digital eye strain, including
15 headaches, dry eyes, blurry vision, glare, negative effects of artificial blue light, eye strain and
16 fatigue. The result, “improved, focus and performance.”⁵

17 15. Additionally, “gamers and streamers” endorsements have boosted Gunnar’s robust
18 sales, with figures such as Parallaxstella, FOXA, Nate Hill, among many other promoting the
19 product.⁶

20 16. First introduced in 2008, the Product is sold today in 38 countries, in the U.S. by
21 major retailers throughout the nation, including chain electronic stores and mass merchandisers, as

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25 ⁴ <https://gunnar.com/collections/shop-all> (Last visited on January 25, 2023)

26 ⁵ <https://gunnar.com/pages/technology> (Last visited on January 25, 2023)

27 ⁶ <https://gunnar.com/pages/ambassadors> (Last Visited January 25, 2023)

1 well as by many online retailers. It has A listers as customers such as Facebook, Google,
2 Microsoft and Zappos.⁷

3 17. Defendant's Product page at www.gunnar.com represents that "GUNNAR offers a
4 real-world solution to keep your eyes safe and actually improve your experience while using
5 phones, computers and tablets." "With GUNNAR blue blocker glasses, you'll enhance your vision
6 to reach peak performance."

7 18. However, Defendant's marketing claims are false and misleading and omit material
8 information. When used as intended, Gunnar Glasses caused adverse reactions to consumers.

9 19. Further, the Product does not block anywhere near the amount of blue light
10 represented in Defendant's website and marketing materials. This has been true since at least
11 when Plaintiff bought his glasses (if not before) and continues to this day.

12 20. Plaintiff and Class members sustained damages as a direct and proximate result of
13 Defendant's negligence and wrongful conduct and omissions in connection with the research,
14 formulation, manufacture, testing, marketing, and sale of the Product. Defendant has failed to
15 provide adequate and accurate information on the Product packaging or in other marketing
16 materials. Moreover, Defendant has failed to take proper action to mitigate the adverse effects
17 caused by its Product.

18 21. Plaintiff and other Class members relied on Defendant's misrepresentations and
19 omissions regarding the benefits of the Product. Plaintiff and the Class have been damaged by
20 Defendant's deceptive and unfair conduct and wrongful inaction in that they purchased the
21 Product which they would not have otherwise purchased or would not have paid as much for had
22 Defendant not misrepresented the benefits of the Product or warned them of the potential harms
23 caused by the Product.

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25 ⁷ [https://gunnars.com.ph/about-](https://gunnars.com.ph/about-gunnar/#:~:text=The%20idea,who%20was%20fascinated%20by%20technology)
26 [gunnar/#:~:text=The%20idea,who%20was%20fascinated%20by%20technology](https://gunnars.com.ph/about-gunnar/#:~:text=The%20idea,who%20was%20fascinated%20by%20technology). (Last visited January 25,
27 2023)

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CLASS DEFINITION AND ALLEGATIONS

22. Plaintiff seeks to represent as class defined as all consumers who purchased the Product from Defendant (the “Class”).

23. Members of the Class are so numerous that their individual joinder herein is impracticable. According to information and belief, members of the Class number in the thousands if not tens of thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant and third-party retailers and vendors.

24. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to, whether Defendant’s marketing of the Product was misleading and omitted material information.

25. The claims of the named Plaintiff are typical of the claims of the Class and any subclasses he seeks to represent in that the named Plaintiff was exposed to Defendant’s misleading advertising, purchased the Product, and was damaged as a result of that purchase.

26. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class members he seeks to represent, he has retained competent counsel experienced in prosecuting class actions, and they intend to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and his counsel.

27. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members. Each individual member of the Class may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant’s liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential

1 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
2 management difficulties and provides the benefits of single adjudication, economy of scale, and
3 comprehensive supervision by a single court on the issue of Defendant’s liability. Class treatment
4 of the liability issues will ensure that all claims and claimants are before this Court for consistent
5 adjudication of the liability issues.

6 **FIRST CAUSE OF ACTION**
7 **(California’s Consumer Legal Remedies Act, Cal. Civil Code §§ 1750, et seq.)**

8 28. Plaintiff repeats the allegations contained in the paragraphs above as if fully set
9 forth herein.

10 29. Plaintiff brings this individually and on behalf of the Class.

11 30. Plaintiff and class members are consumers who purchased Gunnar Glasses for
12 eyecare purposes. Accordingly, Plaintiff and Class members are “consumers” as that term is
13 defined by the CLRA in *Cal. Civ. Code § 1761(d)*. Plaintiff and Class members are not
14 sophisticated experts with independent knowledge of the formulation, design and effects of the
15 Product.

16 31. At all relevant times, the Product constituted a “good” as that term is defined in
17 *Cal. Civ. Code § 1761(a)*.

18 32. At all relevant times, Defendant was a “person” as that term is defined in *Civ. Code*
19 *§ 1761(c)*.

20 33. At all relevant times, Plaintiff’s purchase of the Product, and the purchases of the
21 Product by other Class members, constituted “transactions” as that term is defined in *Cal. Civ.*
22 *Code § 1761(e)*. Defendant’s actions, inactions, representations, omissions, and conduct has
23 violated, and continues to violate the CLRA, because they extend to transactions that intended to
24 result, or which have resulted in, the sale of the Product to consumers.

25 34. The policies, acts, omissions, and practices described in this Complaint were
26 intended to and did result in the sale of the Product to Plaintiff and the Class. Defendant’s
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1 practices, acts, omissions, policies, and course of conduct violated the CLRA §1750 *et seq.* as
2 described above.

3 35. Defendant represented that the Product had approval, characteristics, uses, and
4 benefits which it did not have in violation of *Cal. Civ. Code § 1770(a)(5)*.

5 36. Defendant represented that the Product was of a particular standard or quality when
6 Defendant was aware it was of another, in violation of *Cal. Civ. Code § 1770(a)(7)*.

7 37. Defendant violated *Cal. Civ. Code §§ 1770(a)(5) and (a)(7)* by representing that
8 the Product were glasses that would block a certain amount of blue light when, in fact, the Product
9 does not have these effects and did not block anywhere near the claimed amount of blue light.

10 38. Defendant advertised the Product with the intent not to sell it as advertised in
11 violation of § 1770(a)(9) of the CLRA. Defendant did not intend to sell the Product as advertised
12 because Defendant knew that the Product would not block the blue light as advertised. As such,
13 Defendant knew use of the Product would not prevent eye strain, dry eyes, irritation and other
14 damages to consumers as claimed.

15 39. Plaintiff and Class members suffered injuries caused by Defendant's
16 misrepresentations and omissions because: (a) Plaintiff and Class members would not have
17 purchased the Product or would not have paid as much for the Product if they had known the true
18 facts; (b) Plaintiff and Class members purchased the Product due to Defendant's
19 misrepresentations and omissions; and (c) the Product did not have the level of quality,
20 effectiveness, or value as promised.

21 40. Plaintiff and the Class seek an order enjoining Defendant's unfair or deceptive acts
22 or practices, equitable relief, an award of attorneys' fees and costs under *Cal. Civ. Code § 1780(e)*,
23 and any other just and proper relief available under the CLRA.

24 41. Prior to the filing of this Complaint, a CLRA notice letter was served on Defendant
25 which complies in all respects with *Cal. Civ Code § 1782(a)*. A true and correct copy of
26 Plaintiff's letter is attached as Exhibit A. The letter was sent to Defendant via certified mail,
27 return receipt requested, advising Defendant that it is in violation of the CLRA and must correct,
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1 repair, replace, or otherwise rectify the goods alleged to be in violation of § 1770. In the event
2 that the relief requested has not been provided within thirty (30) days, Plaintiff will amend this
3 Complaint to include a request for damages pursuant to the CLRA.

4 **SECOND CAUSE OF ACTION**
5 **(California’s False Advertising Law, Cal. Bus. & Prof. Code §§17500, *et seq.*)**

6 42. Plaintiff repeats the allegations contained in the paragraphs above as if fully set
7 forth herein.

8 43. Plaintiff brings this cause of action individually and on behalf of the Class.

9 44. California’s FAL (Bus. & Prof. Code §§17500, *et seq.*) makes it “unlawful for any
10 person to make or disseminate or cause to be made or disseminated before the public in this state, .
11 . . in any advertising device . . . or in any other manner or means whatever, including over the
12 Internet, any statement, concerning . . . personal property or services, professional or otherwise, or
13 performance or disposition thereof, which is untrue or misleading and which is known, or which
14 by the exercise of reasonable care should be known, to be untrue or misleading.”

15 45. Defendant committed acts of false advertising, as defined by the FAL, by using
16 false and misleading statements, and material omissions, to promote the sale of the Product, as
17 described above, and including, but not limited to, representing that the Product blocked a certain
18 percentage of blue light, when Defendant knew or should have known that use of the Product did
19 not block the claimed amount of blue light and thus did not prevent eye strain, dry eyes, irritation
20 and other damages to consumers as claimed..

21 46. Defendant knew or should have known, through the exercise of reasonable care,
22 that its statements were untrue and misleading.

23 47. Defendant’s actions and omissions in violation of the FAL were false and
24 misleading such that the general public is and was likely to be deceived.

25 48. As a direct and proximate result of these acts and omissions, consumers have been
26 and are being harmed. Plaintiff and members of the Class have suffered injury and actual out-of-
27 pocket losses as a result of Defendant’s FAL violation because: (a) Plaintiff and Class members

1 would not have purchased the Product or would not have paid as much for it if they had known the
2 true facts; (b) Plaintiff and Class members purchased the Product due to Defendant's
3 misrepresentations and omissions; and (c) the Product did not have the level of quality,
4 effectiveness, or value as promised.

5 49. Plaintiff brings this action pursuant to Bus. & Prof. Code § 17535 for injunctive
6 relief to enjoin the practices described herein and to require Defendant to issue corrective
7 disclosures to consumers. Plaintiff and the Class are therefore entitled to: (a) an order requiring
8 Defendant to cease the acts of unfair competition alleged herein; (b) full restitution of all monies
9 paid to Defendant as a result of its deceptive practices; (c) interest at the highest rate allowable by
10 law; and (d) the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California
11 Code of Civil Procedure §1021.5.

12 **THIRD CAUSE OF ACTION**

13 **Breach of Song-Beverly Consumer Warranty Act For Breach Of Express Warranty**
14 **(Cal. Civ. Code §§ 1791.2 & 1793.2)**

15 50. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

16 60. This claim is brought by the Plaintiff on behalf of himself and the Class under
17 the Song-Beverly Consumer Warranty Act ("SBCWA") for breach of express
18 warranty.

19 61. The Plaintiff and members of the Class are "buyers" within the meaning of
20 the SBCWA. *See Cal. Civ. Code § 1791(b)*.

21 62. The Gunnar Glasses are "consumer goods" within the meaning of *Cal. Civ.*
22 *Code § 1791(a)*.

23 63. Defendant is a "manufacturer" within the meaning of *Cal. Civ. Code §1791(j)*.
24 Plaintiff and members of the Class bought Gunnar Glasses manufactured and distributed by
25 Defendant.

26 73. As set forth in detail above, Defendants provided the Express Warranty to the
27 Plaintiff and members of the Class members within the meaning of Cal. Civ. Code §§ 1791.2
28 and 1793.2 as set forth herein.

1 74. Specifically, Defendant promised that these Gunnar Glasses would block blue
2 light.

3 75. As set forth above in detail, the Product is defective because it does not block
4 blue light as claimed by Defendant.

5 76. Defendant’s express warranties, and its affirmations of fact and promises made to
6 Plaintiffs and the Class regarding the Product, became part of the basis of the bargain between
7 Defendant and Plaintiffs and the Class, thereby creating an express warranty that Defendant would
8 conform to those affirmations of fact, representations, promises and descriptions.

9 77. However, the Product does not do these things as addressed above, including that
10 the it does not lock the amount of blue light as represented by Defendant.

11 78. As a result of Defendant manufacturing the Gunnar Glasses, the Plaintiff and
12 members of the Class have received goods containing defective materials that substantially impair
13 use, value and safety of their Product and as a result Plaintiff and members of the Class have
14 been damaged by incurring out-of-pocket expenses, loss of use of their Product and other
15 damages.

16 79. Pursuant to *Cal. Civ. Code §§ 1793.2 and 1794*, the Plaintiff and other members of
17 the Class are entitled to damages and other legal and equitable relief including, at their election, the
18 purchase price of or a buyback of their Defective Inverter.

19 80. Pursuant to *Cal. Civ. Code § 1794*, the Plaintiff and members of the California are
20 also entitled to costs and reasonable attorneys’ fees.

21 **FOURTH CAUSE OF ACTION**
22 **Breach of the Implied Warranty of Merchantability in Violation of California’s Song-**
23 **Beverly Consumer Warranty Act**
24 **(Cal. Civ. Code §§ 1791.1 & 1792)**

25 80. Plaintiff repeats and reallege the allegations above as if fully set forth herein.

26 81. This claim is brought by the Plaintiff on behalf of himself and the Class under the
27 SBCWA for breach of the implied warranty of merchantability.

28 82. The Plaintiff and members of the Class are “buyers” within the meaning of the
SBCWA and parties to the original sale. See *Cal. Civ. Code § 1791(b)*.

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1 Defendant and Plaintiffs and the Class, thereby creating an express warranty that Defendant would
2 conform to those affirmations of fact, representations, promises and descriptions.

3 106. However, the Product does not do these things as addressed above, including that
4 the it does not lock the amount of blue light as represented by Defendant.

5 107. Plaintiff and proposed Class members were injured as a direct and proximate result
6 of Defendant's breach because (a) they would not have purchased the Product or would not have
7 paid as much for it had they known the true facts and (b) the Product did not have the
8 characteristics, uses, or benefits as promised.

9 **SEVENTH CAUSE OF ACTION**
10 **(Breach of Implied Warranty of Merchantability)**

11 108. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth
12 herein.

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

15 110. Defendant, as the designer, manufacturer, distributor, and seller, impliedly
16 warranted that the Product was fit for its intended purpose in that the Product would act as a blue
17 light blocker. Defendant did so with the intent to induce Plaintiffs and Class members to purchase
18 the Product.

19 111. Defendant breached its implied warranties because the Product does not have the
20 characteristics, uses, or benefits as promised.

21 112. Plaintiffs and proposed Class members were injured as a direct and proximate
22 result of Defendant's breach because they would not have purchased the Product or would not
23 have paid as much for it had they known that it does not have the characteristics, uses, or benefits
24 as promised.

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EIGHTH CAUSE OF ACTION

(Unjust Enrichment)

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113. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

114. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendant.

115. Plaintiff and members of the Class conferred benefits on Defendant by purchasing the Product.

116. Defendant has been unjustly enriched in retaining revenues derived from Plaintiffs' and Class members' purchases of the Product. Retention of that revenue under these circumstances is unjust and inequitable because Defendant misrepresented and omitted facts concerning the characteristics, uses, and benefits of the Product and caused Plaintiffs and Class members to purchase the Product and to pay more for the Product, which they would not have done had the true facts been known.

117. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiffs and members of the Class is unjust and inequitable, Defendant must pay restitution to Plaintiff and members of the Class for its unjust enrichment, as ordered by the Court.

NINETH CAUSE OF ACTION

(Negligence)

118. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

119. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendant.

120. Defendant negligently manufactured, designed, tested, researched, developed, labeled, packaged, distributed, promoted, marketed, advertised, and sold the Product.

///

1 132. Defendant omitted, suppressed, and/or concealed material facts concerning the
2 amount of blue light blocked, dangers and risk of injuries associated with the use of the Product.
3 Furthermore, Defendant was willfully blind to, ignored, downplayed, avoided, and/or otherwise
4 understated the nature of the risks associated with the Product in order to continue to sell the
5 Product.

6 133. At the time Defendant made these misrepresentations and/or omissions, they knew
7 or should have known that the Product was unreasonably dangerous and not what Defendant had
8 represented to Plaintiff and Class members.

9 134. Defendant's misrepresentations and/or omissions were undertaken with an intent
10 that Plaintiff and Class members rely upon them.

11 135. Plaintiff relied on and were induced by Defendant's misrepresentations, omissions,
12 and/or active concealment of the dangers of the Product to Purchase and use the Product.

13 136. Plaintiff did not know that these representations were false and therefore were
14 justified in their reliance.

15 137. As a direct and proximate consequence of Defendant's negligent, willful, wanton,
16 and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts described
17 herein, Plaintiff and Class members sustained injuries and damages as alleged herein.

18 138. Had Plaintiff and Class members been aware of the increased risk of injury
19 associated with the Product and the relative efficacy of the Product compared with other readily
20 available products, they would not have purchased the Product or would not have paid as much for
21 it.

22 139. Defendant's negligence was a substantial factor in causing Plaintiff's harm and that
23 of Class members.

24 140. Plaintiff and Class members are entitled to compensatory damages, and exemplary
25 and punitive damages together with interest, and such other and further relief as this Court deems
26 just and proper.

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PRAYER FOR RELIEF

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

- a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representative of the Class and Plaintiff’s attorneys as Class Counsel to represent the Class;
- b. For an order declaring that Defendant’s conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiff and the Class on all causes of action asserted herein;
- d. For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For an order enjoining Defendant from continuing the unlawful practices detailed herein; and
- h. For an order awarding Plaintiff and the Class their reasonable attorneys’ fees and expenses and costs of suit.

DEMAND FOR JURY TRIAL

Plaintiff hereby demand a trial by jury on all issues so triable.

DATED: February 21, 2023

BISNAR|CHASE LLP

By: *Ian M. Silvers*
 BRIAN D. CHASE
 IAN M. SILVERS
Counsel for Plaintiffs

EXHIBIT B

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ian M. Silvers SBN: 246416 BISNAR CHASE 1301 Dove Street, Suite 120, Newport Beach, CA 92660 TELEPHONE NO. 949-752-2999 FAX NO. (Optional): 949-752-2777 E-MAIL ADDRESS isilvers@bisnarchase.com ATTORNEY FOR (Name): Gaston Procopio Gimenez	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 02/22/2023 at 08:35:04 AM Clerk of the Superior Court By Mary Kaneshiro, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Hall of Justice Courthouse	
CASE NAME: Gaston Procopio Gimenez v. Gunnar Optiks, LLC	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: 37-2023-00007453-CU-FR-CTL JUDGE: Judge Joel R. Wohlfeil DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|---|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
|---|---|
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 9
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 21, 2023

Ian M. Silvers

(TYPE OR PRINT NAME)

Ian M. Silvers

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

<p>Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i></p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability <i>(not asbestos or toxic/environmental)</i> (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD</p> <p>Non-PI/PD/WD (Other) Tort Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice <i>(not medical or legal)</i> Other Non-PI/PD/WD Tort (35)</p> <p>Employment Wrongful Termination (36) Other Employment (15)</p>	<p>Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract <i>(not unlawful detainer or wrongful eviction)</i> Contract/Warranty Breach—Seller Plaintiff <i>(not fraud or negligence)</i> Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage <i>(not provisionally complex)</i> (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute</p> <p>Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i></p> <p>Unlawful Detainer Commercial (31) Residential (32) Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i></p> <p>Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41)</p> <p>Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment <i>(non-domestic relations)</i> Sister State Judgment Administrative Agency Award <i>(not unpaid taxes)</i> Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case</p> <p>Miscellaneous Civil Complaint RICO (27) Other Complaint <i>(not specified above)</i> (42) Declaratory Relief Only Injunctive Relief Only <i>(non-harassment)</i> Mechanics Lien Other Commercial Complaint Case <i>(non-tort/non-complex)</i> Other Civil Complaint <i>(non-tort/non-complex)</i></p> <p>Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition <i>(not specified above)</i> (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition</p>
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EXHIBIT C

EXHIBIT D

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
DIVISION: Central	
TELEPHONE NUMBER: (619) 450-7073	
PLAINTIFF(S) / PETITIONER(S): Gaston Procopio Gimenez	
DEFENDANT(S) / RESPONDENT(S): Gunnar Optiks LLC	
GIMENEZ VS GUNNAR OPTIKS LLC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE (CIVIL)	CASE NUMBER: 37-2023-00007453-CU-FR-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Joel R. Wohlfeil

Department: C-73

COMPLAINT/PETITION FILED: 02/22/2023

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	07/28/2023	02:00 pm	C-73	Joel R. Wohlfeil

Due to the COVID-19 pandemic, all Case Management Conferences (CMCs) are being conducted virtually unless there is a court order stating otherwise. Prior to the hearing date, visit the "virtual hearings" page for the most current instructions on how to appear for the applicable case-type/department on the court's website at www.sdcourt.ca.gov.

A Case Management Statement (JC Form #CM-110) must be completed by counsel for all parties and by all self-represented litigants and timely filed with the court at least 15 days prior to the initial CMC. (San Diego Superior Court (SDSC) Local Rules, rule 2.1.9; Cal. Rules of Court, rule 3.725).

All counsel of record and self-represented litigants must appear at the CMC, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of Alternative Dispute Resolution (ADR) options.

It is the duty of each plaintiff (and cross-complainant) to serve a copy of this Notice of Case Assignment and Case Management Conference (SDSC Form #CIV-721) with the complaint (and cross-complaint), the Alternative Dispute Resolution (ADR) Information Form (SDSC Form # CIV-730), a Stipulation to Use Alternative Dispute Resolution (ADR) (SDSC Form # CIV-359), and other documents on all parties to the action as set out in SDSC Local Rules, rule 2.1.5.

TIME FOR SERVICE AND RESPONSE: The following rules apply to civil cases except for collections cases under California Rules of Court, rule 3.740(a), unlawful detainer actions, proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law (Cal. Rules of Court, rule 3.110; SDSC Local Rules, rule 2.1.5):

- **Service:** The complaint must be served on all named defendants, and proof of service filed with the court within 60 days after filing the complaint. An amended complaint adding a defendant must be served on the added defendant and proof of service filed within 30 days after filing of the amended complaint. A cross-complaint against a party who has appeared in the action must be accompanied by proof of service on that party at the time it is filed. If it adds a new party, the cross-complaint must be served on all parties and proof of service on the new party must be filed within 30 days of the filing of the cross-complaint.
- **Defendant's appearance:** Unless a special appearance is made, each defendant served must generally appear (as defined in Code of Civ. Proc. § 1014) within 30 days of service of the complaint/cross-complaint.
- **Extensions:** The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint (SDSC Local Rules, rule 2.1.6). If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed.

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Official Court Reporters are not normally available in civil matters, but may be requested in certain situations no later than 10 days before the hearing date. See SDSC Local Rules, rule 1.2.3 and Policy Regarding Normal Availability and Unavailability of Official Court Reporters (SDSC Form #ADM-317) for further information.

ALTERNATIVE DISPUTE RESOLUTION (ADR): The court discourages any unnecessary delay in civil actions; therefore, continuances are discouraged and timely resolution of all actions, including submitting to any form of ADR is encouraged. The court encourages and expects the parties to consider using ADR options prior to the CMC. The use of ADR will be discussed at the CMC. Prior to the CMC, parties stipulating to the ADR process may file the Stipulation to Use Alternative Dispute Resolution (SDSC Form #CIV-359).

NOTICE OF E-FILING REQUIREMENTS AND IMAGED DOCUMENTS

Effective April 15, 2021, e-filing is required for attorneys in represented cases in all limited and unlimited civil cases, pursuant to the San Diego Superior Court General Order: In Re Procedures Regarding Electronically Imaged Court Records, Electronic Filing and Access to Electronic Court Records in Civil and Probate Cases. Additionally, you are encouraged to review CIV-409 for a listing of documents that are not eligible for e-filing. E-filing is also encouraged, but not mandated, for self-represented litigants, unless otherwise ordered by the court. All e-filers are required to comply with the e-filing requirements set forth in Electronic Filing Requirements (Civil) (SDSC Form #CIV-409) and Cal. Rules of Court, rules 2.250-2.261.

All Civil cases are assigned to departments that are part of the court's "Imaging Program." This means that original documents filed with the court will be imaged, held for 30 days, and then destroyed, with the exception of those original documents the court is statutorily required to maintain. The electronic copy of the filed document(s) will be the official court record, pursuant to Government Code § 68150. Thus, original documents should not be attached to pleadings filed with the San Diego Superior Court, unless it is a document for which the law requires an original be filed. Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant, or petitioner to serve a copy of this Notice of Case Assignment and Case Management Conference (Civil) (SDSC Form #CIV-721) with the complaint, cross-complaint, or petition on all parties to the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words "IMAGED FILE" in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and may be found on the court's website at www.sdcourt.ca.gov.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	<i>FOR COURT USE ONLY</i>
PLAINTIFF(S): Gaston Procopio Gimenez	
DEFENDANT(S): Gunnar Optiks LLC	
SHORT TITLE: GIMENEZ VS GUNNAR OPTIKS LLC [E-FILE]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2023-00007453-CU-FR-CTL

Judge: Joel R. Wohlfeil

Department: C-73

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|--|--|
| <input type="checkbox"/> Mediation (court-connected)
<input type="checkbox"/> Mediation (private)
<input type="checkbox"/> Voluntary settlement conference (private)
<input type="checkbox"/> Neutral evaluation (private)
<input type="checkbox"/> Other (<i>specify e.g., private mini-trial, private judge, etc.</i>): _____
_____ | <input type="checkbox"/> Non-binding private arbitration
<input type="checkbox"/> Binding private arbitration
<input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial)
<input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
|--|--|

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (*Name*) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

 Name of Plaintiff

 Name of Defendant

 Signature

 Signature

 Name of Plaintiff's Attorney

 Name of Defendant's Attorney

 Signature

 Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 02/22/2023

 JUDGE OF THE SUPERIOR COURT



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2023-00007453-CU-FR-CTL

CASE TITLE: Gimenez vs Gunnar Optiks LLC [E-FILE]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), *and*
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Gunnar Glasses Block Far Less Blue Light Than Advertised, Class Action Claims](#)
