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11 *Attorneys for Plaintiff*

12
 13 **UNITED STATES DISTRICT COURT**
 14 **EASTERN DISTRICT OF CALIFORNIA**
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16 NICOLE MARROQUIN, individually and on
 17 behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 L'OREAL USA, INC.,

21 Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Nicole Marroquin (“Plaintiff”) brings this action on behalf of herself and all others
2 similarly situated against Defendant L’Oreal USA, Inc. (“L’Oreal”) for the manufacture,
3 marketing, and sale of the Clarisonic face brush products identified below. Plaintiff makes the
4 following allegations pursuant to the investigation of her counsel and based upon information and
5 belief, except as to the allegations specifically pertaining to herself, which are based on personal
6 knowledge.

7 **NATURE OF ACTION**

8 1. This is a class action against Defendant L’Oreal USA, Inc., for the manufacture and
9 sale of its Clarisonic face brushes (collectively, the “Clarisonics”), all of which suffer from an
10 identical defect in design. Specifically, the Clarisonics are not waterproof, which causes the
11 Clarisonics to suffer from a battery defect. This defect renders the Clarisonics unusable because
12 the defect renders them nonfunctional.

13 2. In widespread advertising and marketing, L’Oreal touts that its Clarisonic face
14 brushes are waterproof. In numerous places, including the packaging of the Clarisonics, Defendant
15 represents that the Clarisonics are waterproof and can be used in the “shower, bath, or sink.”

16 3. However, the Clarisonics are not waterproof. Instead, the Clarisonics have a
17 waterproofing defect that leads to battery failure. Numerous consumers have reported that their
18 Clarisonics would no longer charge, or turn on at all.

19 4. Plaintiff and consumers like her have all experienced the same defect – battery
20 failure – after using the Clarisonics to wash their face according to the directions on the package.
21 However, despite numerous complaints, L’Oreal has not publicly acknowledged the defect or
22 attempted to fix it. Instead, when consumers take advantage of the Clarisonics’ warranty,
23 Clarisonic sends replacement Clarisonics that suffer from the same defect.

24 5. Plaintiff brings claims against Defendant individually and on behalf of a class of all
25 other similarly situated purchasers of the Clarisonics for (1) violation of California’s Consumers
26 Legal Remedies Act (“CLRA”), Civil Code §§ 1750, *et. seq.*; (2) violation of California’s Unfair
27 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-17210; (3) unjust enrichment, (4)
28

1 breach of implied warranty under the Song-Beverly Act, (5) breach of implied warranty, (6)
2 violation of the Magnuson-Moss Warranty Act (“MMWA”), and (7) breach of express warranty.

3 **PARTIES**

4 6. Plaintiff Nicole Marroquin is, and at all times relevant to this action has been, a
5 resident of Clovis, California. In December 2018, Ms. Marroquin purchased a Clarisonic Mia 1
6 from an Ulta located in Clovis, California for approximately \$129.00. Before purchasing her
7 Clarisonic Plaintiff Marroquin reviewed information about the Clarisonic, including the
8 representation that the Clarisonic was waterproof. When purchasing her Clarisonic, Plaintiff
9 Marroquin also reviewed the accompanying labels and marketing materials, and understood them
10 as representations and warranties by Defendant that the Clarisonic was waterproof. Plaintiff
11 Marroquin relied on these representations and warranties in deciding to purchase Defendant’s
12 Clarisonic over comparable products. Accordingly, these representations and warranties were part
13 of the basis of the bargain, in that she would not have purchased the Clarisonic on the same terms
14 had she known these representations were not true. In making her purchase, Plaintiff Marroquin
15 paid a substantial price premium due to the false and misleading waterproof claims. However,
16 Plaintiff Marroquin did not receive the benefit of her bargain, because Defendant’s Clarisonics are
17 not waterproof as advertised. Plaintiff Marroquin also understood that in making the sale, her
18 retailer was acting with the knowledge and approval of Defendant and/or as the agent of
19 Defendant. Plaintiff Marroquin further understood that each purchase involved a direct transaction
20 between herself and Defendant, because her Clarisonic came with packaging and other materials
21 prepared by Defendant, including representations and warranties regarding the waterproof claims.
22 Plaintiff Marroquin may purchase a Clarisonic in the future if the defect is resolved, however,
23 Plaintiff has no way to be certain that Defendant’s representations are true when she sees the
24 products on the store shelves.

25 7. In early 2020, Plaintiff’s Clarisonic Mia 1 ceased working and would no longer
26 charge.

27 8. Defendant L’Oreal USA, Inc. is a Delaware corporation with its principal place of
28 business at 10 Hudson Yards 30th Floor, New York, New York, 10001. Defendant markets a wide

1 assortment of beauty products throughout North America. L’Oreal has annual sales of \$29.8
2 billion globally. Defendant manufactures, distributes, and sells the Clarisonics throughout the
3 United States, and is responsible for the advertising, marketing, and packaging of the Clarisonics.

4 **JURISDICTION AND VENUE**

5 9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
6 § 1332(d) because there are more than 100 class members and the aggregate amount in controversy
7 exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least one Class member is a
8 citizen of a state different from Defendant.

9 10. This Court has personal jurisdiction over Defendant because Defendant conduct
10 substantial business within California such that Defendant has significant, continuous, and
11 pervasive contacts with the State of California.

12 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant
13 does substantial business in this District, a substantial part of the events giving rise to Plaintiff’s
14 claims took place within this District because Plaintiff purchased her Clarisonic in this District and
15 resides in this District.

16 **COMMON FACTUAL ALLEGATIONS**

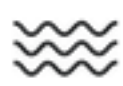
17 12. Defendant L’Oreal is the world’s largest cosmetics company, manufacturing over
18 30 makeup, hair, fragrance, and skincare brands. Among the various skincare products sold by
19 L’Oreal are the Clarisonic Mia 1, Clarisonic Mia 2, Clarisonic Prima, Clarisonic Mia Smart, and
20 Clarisonic Mia Men (collectively the “Clarisonics”). The Clarisonics are manufactured by
21 L’Oreal and marketed, distributed, and sold under its “Clarisonic” brand. Every Clarisonic is
22 marketed as being waterproof, and from a functional and manufacturing standpoint, the Clarisonics
23 are nearly identical:
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Top Row: Mia 1, Mia 2, and Mia Prima Bottom Row: Mia Smart and Mia Men

13. Every Clarisonic features the waterproof warranty:

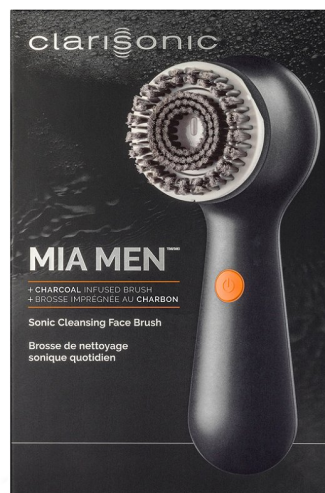
 **WATERPROOF**
Use it in the shower, bath or sink

 **WATERPROOF**
Use it in the shower, bath or sink

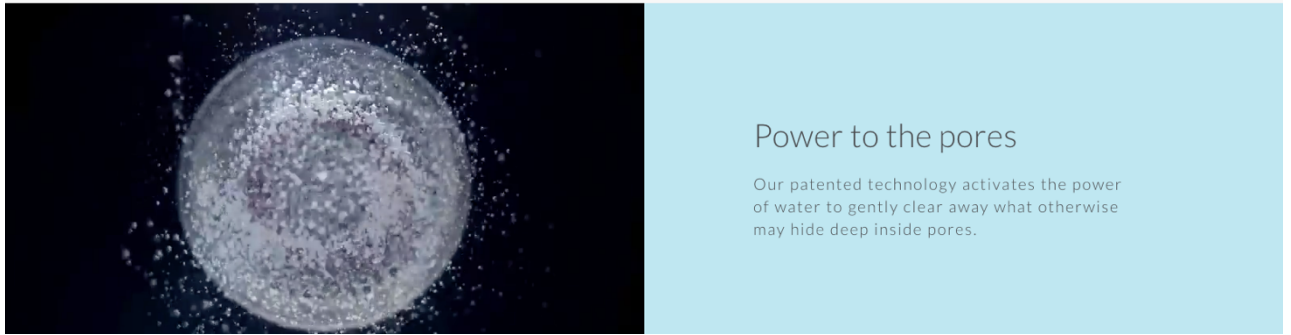
1 The waterproof warranty is material to consumers because if the Clarisonics are not waterproof, the
2 electronic components will fail. Indeed, Defendant has admitted that failure of the waterproofing can
3 cause the internal component to fail:

4 “Our devices are not repairable, nor are the batteries replaceable. Clarisonic
5 devices are sealed to be waterproof so they can be used freely near water and in the
6 shower. If the waterproof seal is broken the likelihood of water leaking into the
7 device is high, further compromising the device’s internal components.”

8 14. The packaging for the Clarisonics reinforces that fact the Clarisonics are intend for
9 use in water because they all picture water running on or behind the Clarisonic pictured on the
10 package:



1 15. Similarly, the fact that the Clarisonics stop functioning and will not charge is
2 material to consumers. Consumers purchase the Clarisonics because the powered face brushes are
3 intended to be more effective than other methods of facial cleansing:
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1 As such, the defect renders the Clarisonics useless because they will not operate once the defect
2 appears.

3 16. The defect presents itself when the Clarisonics stop turning on and fail to charge.
4 Consumers have reported that their Clarisonics will abruptly stop functioning within the useful life
5 of the Clarisonics, despite being used according to direction, and will no longer charge.

6 17. The Clarisonics were made defectively, rendering the Clarisonics unusable and
7 causing them to stop functioning. Defendant was undoubtedly aware of the Clarisonics' defective
8 nature because numerous consumers have made warranty claims under Clarisonics' one-year
9 warranty. The defect is substantially likely to materialize during the useful life of the Clarisonics.

10 18. With thousands of units sold at approximately \$99 to \$169 each, Defendant has
11 profited enormously from its failure to disclose the defect. Defendant's Clarisonic sales continue
12 to this day.

13 19. The defect at issue here involves a critical function and component of the
14 Clarisonics, and no reasonable consumer would spend hundreds of dollars on an electronic face
15 brush had he or she known it was substantially likely to manifest a defect during the Clarisonics'
16 useful lifespan, rendering it useless. Defendant had exclusive knowledge of the defect, which was
17 not known to Plaintiff for class members.

18 20. Defendant made representations to Plaintiff and class members while suppressing
19 the Clarisonics' defective nature. Specifically, by displaying the Clarisonics and describing their
20 features, the product packaging implied that the Clarisonics were suitable for use as an electronic
21 face brush that would be suitable for use "in the shower, bath, or sink," without disclosing that they
22 had a critical defect that could result in the Clarisonics being rendered completely useless.

23 **A. Defendant's Pre-Sale Knowledge of the Defect**

24 21. Defendant has known about the defect for at least three years, as is evidenced by
25 numerous complaints concerning the Clarisonics' defect on its own website. Defendant is clearly
26 aware of all of the complaints posted to its own website because Defendant monitors its own
27 website and also has an internal customer service team dedicated to consumer comments and
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1 complaints. Below is a small sample of the Clarisonics' reviews/complaints posted on Defendant's
2 website clarisonic.com:

3 For example, two years ago, one Mia 1 purchaser reported:

4 "My old Clarisonic died after 5 years. Got a new Mia. First one wouldn't charge.
5 Clarisonic sent a replacement. Second one doesn't work either. But since I've
6 already had one replaced I can't have another replacement sent out. I have to wait
7 for a refund. Then order a new one, and they are no longer on sale. Not too happy
8 about the situation. Probably look for some thing else. Super disappointed in the
9 product."

7 Three years ago, another Mia 1 owner commented:

8 "I purchased a Mia 12/2015. I loved it and used it daily. It stopped working by
9 9/2016. I returned it under warranty. They sent me a new one (albeit with a pathetic
10 usb charger). That one has lasted 11 months. While I like the product the quality is
11 an insult for the price. The Mia was actually my second Clarisonic, I had the pro
12 first, and my first lasted under 2 years. Great product, terrible durability."

11 Similarly, a third Mia 1 owner stated:

12 "I love my Mia, but warning if you buy one... I got mine as a gift for Christmas so
13 about 7 months ago and a couple of weeks ago it stopped working.... I don't have
14 the receipt (it was a gift) and customer service says that because it was made over
15 a year ago and I don't have proof that I bought it less than a year ago I am out of
16 luck. Seems that they should be able to do something about this. It's an expensive
17 item and it's very unfortunate that it has died a 1/2 yr later."

16 In response to some of these reviews, Defendant's customer service team responded:

17 "Clarisonic devices cannot be overcharged; therefore, keeping it charged whenever
18 it is not in use will not harm it or lessen the battery life! We hope these tips are
19 helpful and we look forward to hearing back from you!"

19 Further, they stated:

20 "Our devices are not repairable, nor are the batteries replaceable. Clarisonic devices
21 are sealed to be waterproof so they can be used freely near water and in the shower.
22 If the waterproof seal is broken the likelihood of water leaking into the device is
23 high, further compromising the device's internal components."

22. Similar reviews can be found for all of the Clarisonics:

24 For example, on Defendant's Mia Prima listing feature the following reviews:

25 "The product does not work after only a month of use"

26 "the device is not working - DOESN'T CHARGE AFTER ONE MONTH"

27 "I was loving this until it just gave out on me in a matter of a few weeks, just
28 returned it, super disappointed."

1 “I got a clarisonic last year as a gift. I was very excited about this product and it
2 quickly became a staple in my routine. Unfortunately, it died and when I tried to
3 charge it, it didn’t work. It didn’t even register the charger. I reached out for
4 customer support and was told that my warranty would have just expired a week
ago. All they could offer me was \$10s off a new one. Great product but only lasts
a year!”

5 The reviews on the Mia Smart share the same complaints:

6 “This product is really nice until it stops working. I had bought one and used it for
7 no more than a month and it just stopped charging. I then exchanged it for a new
8 one.. well this one lasted a good 6 months until it also stopped working. I read so
9 many reviews about these devices breaking down, but wanted to see for myself.
10 Unfortunately everyone was right. This device is too expensive to just break down
the way they do. Now I just use the device without turning it on as the brush heads
work very well. Still so disappointing... I recommend finding another brand of a
cleansing brush. Don’t waste your money or time.”

11 “It's unbelievable that a product which costs so much money would be so poorly
12 made and defective. At first, I had to replace the device after less than 6 months of
13 light wear and proper usage. And, with the warranty, I was able to replace it. I had
14 hoped that my first device was defective. Now, after another 6 months, I'm forced
15 to replace it again! It's without question that I could cleanse my skin with another
product in a similar manner, but for significantly less money- and you can bank
on that I'm never buying from Clarisonic ever again.”

16 “The Mia Smart was sent to me for a warranty replacement of an Alpha Fit. The
17 battery of the Alpha Fit would not hold a charge and the Mia was sent to me to
18 replace it. After using the Mia Smart for one month, the battery stopped working.
I called customer service and was advised that there is no new warranty on the
new replacement device (mia smart) since it replaced the alpha.

19 “In all seriousness, I can't help but think the Mia Smart was knowingly sent to me
20 with a defective battery. There are too many reviews indicating this and clarisonic
21 most likely knows the units affected by the issue. I would have been fine with a
22 simple Mia and wondered why the higher end model was provided. These products
are not cheap it is unfortunate defective products are provided to replace defective
products.”

23 Reviews on Amazon.com for Defendant’s Mia Men feature the same complaints:
24

25 “I like how it cleaned my face however after three months the unit failed to charge
26 again i’m very disappointed in the quality of this unit and will not buy a second one
if it’s only going to last three months.”

27 “I used it to wash my face. For one charge and it stopped working. Will not
28 recharge. This is ridiculous.”

1 **B. The Similarity of Complaints Is Further Indicia Of Defendant’s Pre-Sale**
2 **Knowledge**

3 23. Defendant’s management also knows (or should know) about the defect because of
4 the similarity of complaints posted to clarisonic.com made through Defendant’s warranty, which
5 Defendant’s employees monitor and respond to. The fact that so many customers made similar
6 complaints about the Clarisonics indicates that the complaints were not the result of user error or an
7 anomalous incident, but instead a systemic problem with the Clarisonics. Here, the reports and
8 complaints from consumers – whether made directly to Defendant’s employees or posted on
9 retailers’ websites – were similar enough to put Defendant’s management on notice that the
10 incidents described were the result of a design defect, and that the Clarisonics were experiencing
11 unusually high levels of complaints about the defect.

12 24. Defendant also would have had notice of the defect as a result of warranty claims,
13 product returns, replacements, or requests for refunds.

14 25. In short, by 2017 at the latest, information from customer complaints and returns
15 directly to Defendant, negative reviews on Defendant’s website, and negative reviews on the
16 website of retailers, whether alone or in aggregate, would have put Defendant on notice of the
17 defect.

18 26. As a result of Defendant’s actions, Plaintiff and Class Members have suffered
19 injury in fact, have been damaged, and have suffered a loss of money or property for having paid
20 more money than they otherwise would have for a defectively designed product.

21 **CLASS REPRESENTATION ALLEGATIONS**

22 27. Plaintiff seeks to represent a class defined as all persons in the United States who
23 purchased the Clarisonics (the “Class”). Excluded from the Class are persons who made such
24 purchases for purpose of resale.

25 28. Plaintiff also seeks to represent a subclass of all Class Members who purchased the
26 Clarisonics in the State of California (the “California Subclass”). Excluded from the Class are
27 persons who made such purchases for purpose of resale.

1 29. Subject to additional information obtained through further investigation and
2 discovery, the above-described Classes may be modified or narrowed as appropriate, including
3 through the use of multi-state subclasses.

4 30. At this time, Plaintiff does not know the exact number of members of the
5 aforementioned Class and Subclass (“Class Members” and “California Subclass Members,”
6 respectively); however, given the nature of the claims and the number of retail stores in the United
7 States selling Defendant’s Clarisonics, Plaintiff believes that Class and California Subclass
8 Members are so numerous that joinder of all members is impracticable.

9 31. There is a well-defined community of interest in the questions of law and fact
10 involved in this case. Questions of law and fact common to the Class Members that predominate
11 over questions that may affect individual Class Members include:

12 (a) Whether Defendant misrepresented and/or failed to disclose material facts
13 concerning the Clarisonics;

14 (b) Whether Defendant’s conduct was unfair and/or deceptive;

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

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

20 32. With respect to the California Subclass, additional questions of law and fact
21 common to the members that predominate over questions that may affect individual members
22 include whether Defendant violated California’s Consumer Legal Remedies Act, Unfair
23 Competition Law and False Advertising Law.

24 33. Plaintiff’s claims are typical of those of the Class because Plaintiff, like all Class
25 Members, purchased, in a typical consumer setting, Defendant’s Clarisonics, and Plaintiff
26 sustained damages from Defendant’s wrongful conduct.

1 48. By committing the acts and practices alleged herein, Defendant has violated
2 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17210, as to the
3 California Subclass, by engaging in unlawful, fraudulent, and unfair conduct.

4 49. Defendant has violated the UCL's proscription against engaging in unlawful
5 conduct as a result of its violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7) and (a)(9) as
6 alleged above.

7 50. Defendant's acts and practices described above also violate the UCL's proscription
8 against engaging in fraudulent conduct.

9 51. As more fully described above, Defendant's misleading marketing, advertising,
10 packaging, and labeling of the Clarisonics are likely to deceive reasonable consumers.

11 52. Defendant's acts and practices described above also violate the UCL's proscription
12 against engaging in unfair conduct.

13 53. Plaintiff and the other California Subclass Members suffered a substantial injury by
14 virtue of buying the Clarisonics that they would not have purchased absent Defendant's unlawful,
15 fraudulent, and unfair marketing, advertising, packaging, and omission about the defective nature
16 of the Clarisonics, or by virtue of paying an excessive premium price for the unlawfully,
17 fraudulently, and unfairly marketed, advertised, packaged, and labeled product.

18 54. There is no benefit to consumers or competition from deceptively marketing and
19 omitting material facts about the defective nature of the Clarisonics.

20 55. Plaintiff and the other California Subclass Members had no way of reasonably
21 knowing that the Clarisonics they purchased were not as marketed, advertised, packaged, or
22 labeled. Thus, they could not have reasonably avoided the injury each of them suffered.

23 56. The gravity of the consequences of Defendant's conduct as described above
24 outweighs any justification, motive, or reason therefore, particularly considering the available legal
25 alternatives which exist in the marketplace, and such conduct is immoral, unethical, unscrupulous,
26 offends established public policy, or is substantially injurious to Plaintiff and the California
27 Subclass Members.

28

1 seller's implied warranty that the goods are merchantable, as defined in that Act. In addition, every
2 sale of consumer goods in this State is accompanied by both a manufacturer's and retail seller's
3 implied warranty of fitness when the manufacturer or retailer has reason to know that the goods as
4 represented have a particular purpose (here, to be used as electronic face brushes) and that the
5 buyer is relying on the manufacturer's or retailer's skill or judgment to furnish suitable goods
6 consistent with that represented purpose.

7 66. The Clarisonics are "consumer goods" within the meaning of Cal. Civ. Code §
8 1791(a).

9 67. Plaintiff and the Class Members who purchased one or more of the Clarisonics are
10 "retail buyers" within the meaning of Cal. Civ. Code § 1791.

11 68. Defendant is in the business of manufacturing, assembling, producing and/or selling
12 the Clarisonics to retail buyers, and therefore are a "manufacturer" and "seller" within the meaning
13 of Cal. Civ. Code § 1791.

14 69. Defendant impliedly warranted to retail buyers that the Clarisonics were
15 merchantable in that they would: (a) pass without objection in the trade or industry under the
16 contract description, and (b) were fit for the ordinary purposes for which the Clarisonics are used.
17 For a consumer good to be "merchantable" under the Act, it must satisfy both of these elements.
18 Defendant breached these implied warranties because the Clarisonics were defective. Therefore,
19 the Clarisonics would not pass without objection in the trade or industry and were not fit for the
20 ordinary purpose for which they are used.

21 70. Plaintiff and Class Members purchased the Clarisonics in reliance upon Defendant's
22 skill and judgment in properly packaging and labeling the Clarisonics.

23 71. The Clarisonics were not altered by Plaintiff or Class Members.

24 72. The Clarisonics were defective at the time of sale when they left the exclusive
25 control of Defendant. The defect described in this complaint was latent in the Clarisonics and not
26 discoverable at the time of sale.

27 73. Defendant knew that the Clarisonics would be purchased and used without
28 additional testing by Plaintiff and Class Members.

1 with its dealers. The dealers were not the intended beneficiaries of the warranties associated with
2 the Clarisonics. Plaintiff and Class members were the intended beneficiaries of the warranties
3 associated with the Clarisonics.

4 85. As a direct and proximate cause of Defendant's breach of the implied warranty,
5 Plaintiff and the Class Members have been injured and harmed because they would not have
6 purchased the Clarisonics if they knew the truth about the Clarisonics and the Clarisonics they
7 received were worth substantially less than the Clarisonics they were promised and expected.

8 **COUNT VI**

9 **Violation Of The Magnuson-Moss Warranty Act,
10 15 U.S.C. §§ 2301, *et seq.***

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

13 87. Plaintiff brings this claim individually and on behalf of the members of the
14 proposed Class and California Subclass against Defendant.

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

16 89. Plaintiff and the Class and California Subclass Members are consumers as defined
17 in 15 U.S.C. § 2301(3).

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

19 91. In connection with the marketing and sale of the Clarisonics, Defendant impliedly
20 warranted that the Clarisonics were fit for use as electronic face brushes. The Clarisonics were not
21 fit for use as electronic face brushes due to the defect described in the allegations above.

22 92. By reason of Defendant's breach of warranties, Defendant violated the statutory
23 rights due Plaintiff and the Class and California Subclass Members pursuant to the Magnuson-
24 Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, thereby damaging Plaintiff and the Class and
25 California Subclass Members.

26 93. Plaintiff and the Class and California Subclass Members were injured as a direct
27 and proximate result of Defendant's breach because they would not have purchased the Clarisonics
28 if they knew the truth about the defective nature of the Clarisonics.

COUNT VII
Breach Of Express Warranty

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

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

7 96. In connection with the sale of the Clarisonics, Defendant issued written warranties.
8 Defendant, as the designer, manufacturer, marketer, distributor, and/or seller of the Clarisonics,
9 expressly warranted that the Clarisonics were fit for their intended purpose by making promises
10 and affirmations of fact on their Clarisonics' labeling and packaging, including the waterproof
11 claims.

12 97. The affirmations of fact and promises made by Defendant to Plaintiff and the Class
13 regarding the Clarisonics became part of the basis of the bargain between Defendant and Plaintiff
14 and the Class and Subclass, thereby creating an express warranty that the Clarisonics would
15 conform to those affirmations of fact, representations, promises, and descriptions in that each
16 Clarisonics would be waterproof as specified by the waterproof claims.

17 98. The Clarisonics are not, in fact, waterproof. Instead, the Clarisonics' waterproofing
18 is defect, leading to battery failure that renders the Clarisonics useless.

19 99. Plaintiff and members of the Class suffered economic injury as a direct and
20 proximate result Defendant's breach because: (a) they would not have purchased the Clarisonics on
21 the same terms if they knew that the Clarisonics had been falsely labeled as alleged herein; (b) they
22 paid a price premium for the Clarisonics based on Defendant's express warranties; and (c) the
23 Clarisonics did not have the characteristics, uses, or benefits as promised by Defendant in the
24 waterproof claims. As a result, Plaintiff and members of the Class and the Subclass have been
25 damaged either in the full amount of the purchase price of the Clarisonics or in the difference in
26 value between the Clarisonics as warranted and the Clarisonics as sold.

27 100. On April 14, 2020, prior to filing this action, Defendant was served with a pre-suit
28 notice letter that complied in all respects with U.C.C. §§ 2-313, 2-607. Plaintiff's counsel sent

1 Defendant a letter advising them that they breached an express warranty and demanded that they
2 cease and desist from such breaches and make full restitution by refunding the monies received
3 therefrom. A true and correct copy of Plaintiff's counsel's letter is attached hereto as **Exhibit A.**

4 **PRAYER FOR RELIEF**

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

- 7 a. For an order certifying the Class and California Subclass under Rule 23 of the
8 Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class
9 and California Subclass and Plaintiff's attorneys as Class Counsel to represent the
10 Class and California Subclass members;
- 11 b. For an order declaring the Defendant's conduct violates the statutes referenced
12 herein;
- 13 c. For an order finding in favor of Plaintiff, the Class, and the California Subclass on
14 all counts asserted herein;
- 15 d. For compensatory and punitive damages in amounts to be determined by the Court
16 and/or jury;
- 17 e. For pre-judgment interest on all amounts awarded;
- 18 f. For an order of restitution and all other forms of monetary relief;
- 19 g. For an order awarding Plaintiff and the Class and California Subclass their
20 reasonable attorneys' fees and expenses and costs of suit.

21 **DEMAND FOR TRIAL BY JURY**

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

23
24 Dated: June 5, 2020

BURSOR & FISHER, P.A.

25 By: /s/ Brittany S. Scott
26 Brittany S. Scott

27 L. Timothy Fisher (State Bar No. 191626)
28 Blair E. Reed (State Bar No. 316791)
Brittany S. Scott (State Bar No. 327132)

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Attorneys for Plaintiff

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

I, Brittany S. Scott, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and a member of the bar of this Court. I am an associate at Bursor & Fisher, P.A., counsel of record for Plaintiff in this action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would competently testify thereto under oath.

2. The Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that a substantial portion of the events alleged in the Complaint occurred in the Eastern District of California.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed at Oakland, California this 5th day of June, 2020.

/s/ Brittany S. Scott
Brittany S. Scott

EXHIBIT A

BURSOR & FISHER
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April 14, 2020

Via Certified Mail - Return Receipt Requested

L'Oreal USA, Inc.
c/o Corporation Service Company
80 State St.
Albany, NY 12207

L'Oreal USA, Inc.
c/o Legal Department
101 Hudson Yards, 30th Fl.
New York, NY 10001

Re: *Notice and Demand Letter Pursuant to U.C.C. §§ 2-313, 2-314, 2-607; and California's Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, et seq.; and all other applicable consumer protection statutes*

To Whom it May Concern:

This letter serves as a preliminary notice and demand for corrective action by L'Oreal USA, Inc. ("L'Oreal") pursuant to U.C.C. § 2-607(3)(a) concerning breaches of express and implied warranties on behalf of our client Nicole Marroquin and a class of all similarly situated purchasers of the Clarisonic Mia 1, Clarisonic Mia 2, Clarisonic Prima, Clarisonic Mia Smart, Clarisonic Mia Men (collectively the "Clarisonic Brushes"). This letter also serves as notice of violation of California's Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.*, including subsections 1770(a)(5), (7), and (9), and all other applicable federal and state laws. Should we not receive a response to our offer of resolution set forth below, this letter provides statutory notice of our intent to file a class action lawsuit.

Our client purchased the Clarisonic Mia 1, which Defendant misrepresented and warranted was "waterproof." Our client understood this to mean that their Clarisonic Brushes would be waterproof. However, contrary to Defendant's express and implied representations, the Clarisonic Brushes are not waterproof and suffer from battery defects. Accordingly, Defendant violated the California CLRA and breached express and implied warranties made to our clients and the Class. *See* U.C.C. §§ 2-313, 2-314, 2-607; and California Civil Code §§ 1750, *et seq.* Our client and similarly situated consumers were injured and damaged by purchasing the Clarisonic Brushes.

Moreover, our firm is aware of your settlement in *Novak vs. Pacific BioScience Laboratories et al.*, Case No. BC582188 (Los Angeles Sup. Ct.) (the "Novak Settlement"). That settlement does not preclude this case because it limited the release to a class period from 2009 to 2016. The applicable period here is, at minimum, a class period of 2017 to present. Importantly, the *Novak* Settlement failed to cure the defect at issue. As a result of the *Novak* Settlement, L'Oreal merely provided a warranty extension to Class members. As such, the

warranty at issue in *Novak* remains on the packaging of the Clarisonic Brushes, such that Class members continue to rely on the “waterproof” warranty. Consumers continue to be injured because the Clarisonic Brushes suffer from a battery defect and are not “waterproof.” These ailments render the Clarisonic Brushes unusable.

Bursor & Fisher has a track record of success and substantial experience litigating and certifying contested claims on behalf of nationwide and multi-state classes. We have been court appointed counsel or interim class counsel in more than 30 class actions. We are also not afraid to take cases to trial and have won six out of six class action jury trials for which we have been trial counsel. Among those is our recent May 2019 jury verdict and judgment against Rash Curtis & Associates, which entitled class members to \$267 million in statutory damages. *See Perez v. Rash Curtis & Associates*, Case No. 4:16-cv-03396-YGR (N.D. Cal. Sep. 9, 2019) (final judgment entered for \$267 million).

On behalf of our client and the Class, we hereby demand Defendant immediately (1) make full restitution to all purchasers of the Clarisonic Brushes of all purchase money obtained from sales thereof and (2) issue a mandatory recall of the Clarisonic Brushes.

We also demand that Defendant preserve all documents and other evidence which refer or relate to any of the above-described practices during the applicable class periods, including electronically stored information and including, but not limited to, the following:

1. All documents concerning the design, packaging, labeling, and manufacturing process for the Clarisonic Brushes;
2. All documents concerning the pricing, advertising, marketing, and/or sale of the Clarisonic Brushes;
3. All communications with customers involving complaints or comments concerning the Clarisonic Brushes;
4. All documents concerning communications with any retailer involved in the marketing or sale of the Clarisonic Brushes;
5. All documents concerning communications with any suppliers involved in the manufacturing or sale of the Clarisonic Brushes;
6. All documents produced in *Novak v. Pacific BioScience Laboratories et al.*, Case No. BC582188 (Los Angeles Sup. Ct.); and
7. All documents concerning the total revenue derived from sales of the Clarisonic Brushes.

If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter.

Please contact me right away if you wish to discuss an appropriate way to remedy this matter. If I do not hear from you promptly, I will take this as an indication that you are not interested in discussing this offer of resolution and move forward with litigation.

Very truly yours,



Brittany S. Scott