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erroneously sued as IFIT INC. d/b/a  
10 NORDICTRACK

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13

14 MATTHEW TREINISH, individually,  
15 and on behalf of all others similarly  
16 situated,

17 Plaintiff,

18 vs.

19 IFIT INC. d/b/a NORDICTRACK and  
DOES 1-10 Inclusive,

20 Defendants.  
21  
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Case No. 2:22-cv-04687

**DEFENDANT’S NOTICE OF  
REMOVAL**

**[CAFA REMOVAL]**

Filed concurrently with:

- i. Declaration of Nick Kriz;
- ii. Civil Cover sheet;
- iii. Disclosure Statement and Certification and Notice of Interested Parties; and
- iv. Proof of Service

1           **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR**  
2 **THE CENTRAL DISTRICT OF CALIFORNIA:**

3           **PLEASE TAKE NOTICE** that Defendant iFIT Inc. (“Defendant”), erroneously  
4 sued as IFIT INC. d/b/a Nordictrack, by its counsel, hereby gives notice of removal of  
5 this action, pursuant to 28 U.S.C. §§ 1332(d), 1441, and 1453, from the Superior Court of  
6 the State of California for the County of Los Angeles to the United States District Court  
7 for the Central District of California on the following grounds:

8                           **PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL**

9           1.       On June 8, 2022, Plaintiff Matthew Treinish (“Plaintiff”) filed a putative class  
10 action complaint in the Superior Court of the State of California for the County of Los  
11 Angeles, captioned *Matthew Treinish, individually, and on behalf of all others similarly*  
12 *situated v. IFit Inc. d/b/a Nordictrack and DOES 1-10 Inclusive*, Case No. 22STCV18798  
13 (the “Complaint”). A true and correct copy of the Complaint is attached hereto as **Exhibit**  
14 **A.**

15           2.       Defendant was served with the Complaint on June 9, 2022. A true and correct  
16 copy of the Summons is attached hereto as **Exhibit B.**

17           3.       This Notice of Removal is being filed within 30 days of Defendant’s receipt  
18 of the Complaint. Thus, this notice is timely. *See* 28 U.S.C. § 1446(b).

19           4.       As discussed in more detail below, based on the allegations of the Complaint,  
20 there are at least 100 class members, there is minimal diversity, and Defendant’s analysis  
21 of records shows that the amount in controversy exceeds \$5,000,000, making removal  
22 under 28 U.S.C. § 1332(d)(2) appropriate. *See Kuxhausen v. BMW Financial Services NA*  
23 *LLC*, 707 F.3d 1136, 1139 (9th Cir. 2013) (the time period starts to run only when the basis  
24 for removal is “revealed affirmatively in the initial pleading”); *Harris v. Bankers Life &*  
25 *Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005) (notice of removability is determined by the  
26 “four corners of the applicable pleading, not through subjective knowledge or a duty to  
27 make further inquiry.”)

28       ///

**BACKGROUND**

1  
2 5. The Complaint alleges five causes of action, both on behalf of Plaintiff  
3 individually and on behalf of all others similarly situated: (1) Violation of Unfair  
4 Competition Law (the “UCL”), California Business and Professions Code §§ 17200 *et seq.*;  
5 (2) Breach of Warranty in Violation of Song-Beverly Consumer Warranty Act, California  
6 Civil Code §§ 1790 *et seq.*; (3) Breach of Implied Warranty in Violation of Song-Beverly  
7 Consumer Warranty Act, California Civil Code §§ 1790 *et seq.*; (4) Breach of Warranty in  
8 Violation of Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2310 *et seq.*; and (5) Breach of  
9 Implied Warranty in Violation of Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2310 *et*  
10 *seq.* (See generally Complaint.)

11 6. By his Complaint, Plaintiff alleges that he “brings this class action  
12 Complaint against Defendant . . . to stop Defendant’s practice of selling warranties with  
13 its treadmills which they have no intention of honoring, and to obtain redress for a class  
14 of consumers (“Class Members”) who were misled by Defendants [sic] within the  
15 applicable statute of limitations period.” (Compl. ¶ 1.) Plaintiff further alleges that  
16 “Defendants [sic] represented to consumers that a warranty would accompany the  
17 purchase of its treadmills (“the Class Products”), whereby Defendant would repair any of  
18 the Class Products for a certain period of time at no charge to consumers.” (Compl. ¶ 2.)  
19 Plaintiff further alleges that he “and others similarly situated were exposed to these  
20 representations.” (Compl. ¶ 4.) Plaintiff further alleges that “Defendants [sic]  
21 misrepresented to Plaintiff and others similarly situated by failing to disclose in either  
22 their representations or the contract itself that Defendants [sic] would not honor the  
23 warranty.” (Compl. ¶ 5.)

24 7. Based on these allegations, Plaintiff seeks actual damages, punitive  
25 damages, “any and all statutory enhanced damages,” attorneys’ fees, and “[a]ll other  
26 relief, general or special, legal and equitable, to which Plaintiff and Class Members may  
27 be justly entitled as deemed by the Court.” (Compl., Prayer for Relief ¶¶ (e)-(h) and (j).)

28 ///

**GROUND FOR REMOVAL**

8. Under the Class Action Fairness Act (“CAFA”), United States District Courts have original jurisdiction over putative class actions where (1) there are at least 100 putative class members, (2) the amount in controversy exceeds \$5,000,000 and (3) any proposed class member and any defendant are citizens of different states. See 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B), 1453. This includes any class action filed under Federal Rule of Civil Procedure 23 or “similar State statute or rule of judicial procedure,” such as California Code of Civil Procedure § 382. See 28 U.S.C. § 1332(d)(1)(B). (See also Compl. ¶ 22.) Each of the requirements for jurisdiction under CAFA is satisfied here.

9. Because CAFA was enacted to facilitate federal courts’ adjudication of certain class actions, “no antiremoval presumption attends cases invoking CAFA.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014); see also *Greene v. Harley-Davidson, Inc.*, 965 F.3d 767, 772 (9th Cir. 2020); *Jordan v. Nationstar Mortg. LLC*, 781 F.3d 1178, 1184 (9th Cir. 2015) (reversing remand order “[i]n light of the Supreme Court’s clear statement in *Dart Cherokee* that Congress intended for no antiremoval presumption to attend CAFA cases”).

**This Is A Class Action With More Than 100 Class Members**

10. Plaintiff has alleged a nationwide class action. (Compl. ¶¶ 22-37.)

11. Plaintiff alleges that “the proposed class is composed of thousands of persons.” (Compl. ¶ 27.)

12. Thus, the putative class that Plaintiffs purport to represent consists of at least 100 individuals.

**There is Minimal Diversity**

13. Although diversity removal ordinarily requires complete diversity between plaintiffs and defendants, removal of a class action under CAFA only requires “minimal diversity” — i.e., at least one member of a class of plaintiffs must be diverse from one defendant. See 28 U.S.C. § 1332(d)(2)(A). This requirement is readily satisfied here.

1 14. For purposes of diversity jurisdiction, a corporation is a citizen of each state  
2 where it is incorporated and the state where it has its principal place of business. 28 U.S.C.  
3 § 1332(c). The “principal place of business” of a corporation is the corporation’s “nerve  
4 center”— i.e., the place where a corporation’s high level officers direct, control and  
5 coordinate its activities on a day-to-day basis. *Hertz Corp. v. Friend*, 559 U.S. 77, 91-95  
6 (2010) (rejecting all prior tests in favor of the “nerve center” test).

7 15. Plaintiff alleges that Defendant is a Delaware corporation with its principal  
8 place of business in Logan, Utah. (Compl. ¶ 9.)

9 16. Plaintiff further alleges that he is a citizen and resident of California. (Compl.  
10 ¶ 8.)

11 17. In the Complaint, in addition to the named Defendant, Plaintiff also sued  
12 Defendant DOES 1 to 10 under fictitious names. For purposes of removal, “the citizenship  
13 of defendants sued under fictitious names shall be disregarded.” 28 U.S.C. § 1441(b)(1).<sup>1</sup>

14 18. Accordingly, minimal diversity of citizenship exists under CAFA. *See* 28  
15 U.S.C. § 1332(d)(2)(A).

16 **The Amount in Controversy Exceeds \$5,000,000**

17 19. Under CAFA, the claims of class members are aggregated to determine if the  
18 amount in controversy, including statutory attorney fees, exceeds \$5,000,000. 28 U.S.C.  
19 §§ 1332(d)(2), (d)(6); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998)  
20 (statutory attorney fees added when calculating amount in controversy); *Berry v. American*  
21 *Express Pub., Corp.*, 381 F.Supp.2d 1118, 1124 (C.D. Cal. 2005) (amount in controversy  
22 can be based either on the aggregate value of the class members’ claims or on the costs to  
23 defendants of providing whatever relief is sought).

24  
25  
26 <sup>1</sup> Because the basis for federal jurisdiction is CAFA, which requires only  
27 minimal diversity, there is no need for consent to federal jurisdiction by any  
28 additional defendants, known or unknown. *See* 28 U.S.C. § 1453(b) (“A class  
action may be removed to a district court of the United States in accordance with  
section 1446 . . . except that such action may be removed by any defendant without  
the consent of all defendants.”).

1           20. The U.S. Supreme Court has held that, as specified in 28 U.S.C. § 1446(a), a  
2 defendant’s notice of removal need include only “a plausible allegation that the amount in  
3 controversy exceeds the jurisdictional threshold”; the notice need not contain evidentiary  
4 submissions. *Dart Cherokee*, 135 S. Ct. at 553. In assessing the amount in controversy,  
5 the court must assume that the allegations of the complaint are true and that a jury will  
6 return a complete verdict for the plaintiff. *Kenneth Rothschild Trust v. Morgan Stanley*  
7 *Dean Witter*, 199 F.Supp.2d 993, 1001 (C.D. Cal. 2002).

8           21. Plaintiff, on behalf of the putative class, asserts that “Defendants [sic]  
9 represented to consumers that a warranty would accompany the purchase of its treadmills  
10 (“the Class Products”), whereby Defendant would repair any of the Class Products for a  
11 certain period of time at no charge to consumers.” (Compl. ¶ 2.) Plaintiff further alleges  
12 that he “and others similarly situated were exposed to these representations.” (Compl. ¶  
13 4.) Plaintiff further alleges that “Defendants [sic] misrepresented to Plaintiff and others  
14 similarly situated by failing to disclose in either their representations or the contract itself  
15 that Defendants [sic] would not honor the warranty.” (Compl. ¶ 5.) Plaintiff further  
16 alleges that these “misrepresentations to Plaintiff and others similarly situated induced  
17 them to purchase Defendants’ Class Products.” (Compl. ¶ 6.) With all of the above  
18 stated allegations, Plaintiff explains that “all claims in this matter arise from the identical,  
19 false, affirmative written statements that Defendant would provide warranties to the Class  
20 Members, when in fact, such representations were false.” (Compl. ¶ 29.)

21           22. Plaintiff’s Complaint seeks a wide range of damages, including actual  
22 damages, punitive damages, statutory enhanced damages, attorney’s fees and “all other  
23 relief, general or special, legal and equitable, to which Plaintiff and Class Members may  
24 be justly entitled. . .” on behalf of virtually all persons who purchased a NordicTrack  
25 brand treadmill from June 8, 2018 (four years prior to the filing of this lawsuit) to the  
26 present. (Compl., Prayer for Relief ¶¶ (e)-(h) and (j).) But the Complaint does not  
27 specify the purported amount of these damages. And where a complaint does not specify  
28 the amount of the alleged damages, the removing defendant need only show by a

1 preponderance of the evidence that the amount in controversy exceeds the statutory  
2 minimum. *Lewis v. Verizon Communications, Inc.*, 2010 U.S. App. LEXIS 23725, \*2  
3 (9th Cir. 2010) (Verizon); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th  
4 Cir. 2007).

5 23. This does not require that the removing defendant concede liability or prove  
6 the amount of damages plaintiff is likely to recover. Rather, “[t]he amount in controversy  
7 is simply an estimate of the total amount in dispute, not a prospective assessment of  
8 defendant’s liability.” *Verizon*, 2010 U.S. App. LEXIS 23725, \*12; *McPhail v. Deere &*  
9 *Co.*, 529 F.3d 947, 956 (10th Cir. 2008). Thus, to carry its burden, the removing  
10 defendant merely needs to show “that the potential damages could exceed the  
11 jurisdictional amount.” *Verizon*, 2010 U.S. App. LEXIS 23725, \*2 (emphasis added).

12 24. Defendant expressly denies Plaintiff’s allegations and denies that Plaintiff or  
13 any putative class members are entitled to any damages at all or other relief or recovery.  
14 But if Plaintiff’s allegations were true, the potential damages, i.e., the amount in  
15 controversy, would easily exceed \$5,000,000.

16 25. Plaintiff seeks for himself, and all other purchasers of a NordicTrack  
17 treadmill nationwide from June 8, 2018 to the present, actual damages, punitive damages,  
18 statutory enhanced damages (civil penalty) of up to twice the actual damages, and any  
19 and all other relief, legal or equitable, available under the Song-Beverly Consumer  
20 Warranty Act, California Civil Code §§ 1790 *et seq.* (Compl., Prayer for Relief ¶¶ (e)-(h)  
21 and (j).) Among the available monetary remedies, the Song-Beverly Consumer Warranty  
22 Act allows consumers to be reimbursed the purchase price paid by the buyer, less the  
23 amount directly attributable to the buyer’s use before discovery of the nonconformity.  
24 Cal. Civ. Code § 1793.2(d)(1).

25 26. Plaintiff also seeks for himself, and all other purchasers of a NordicTrack  
26 treadmill nationwide from June 8, 2018 to the present, any and all equitable relief  
27 available under the UCL for unlawful, unfair, and fraudulent business practices. (Compl.  
28 ¶ 55 (citing Cal. Bus. & Prof. Code § 17203, Prayer for Relief ¶ (j).) Plaintiff alleges that

1 Defendant’s misrepresentations induced him and others similarly situated to purchase a  
2 NordicTrack treadmill. (Compl. ¶ 6.) Under the UCL, Plaintiff and other consumer  
3 purchasers can obtain restitution of the money they paid to buy a NordicTrack treadmill.  
4 Cal. Bus. & Prof. Code § 17203; *see also Korea Supply Co. v. Lockheed Martin Corp.*,  
5 29 Cal. 4th 1134, 1144-45 (2003) (A UCL order for restitution is one “compelling a UCL  
6 defendant to return money obtained through an unfair business practice to those persons  
7 in interest from whom the property was taken, that is, to persons who had an ownership  
8 interest in the property or those claiming through that person.”).

9 27. Plaintiff’s individual and class claims under Song-Beverly Consumer  
10 Warranty Act and the UCL potentially encompass all sales of NordicTrack brand  
11 treadmills to consumers in the United States between June 8, 2018 (four years prior to the  
12 filing of this lawsuit) and the present. From June 8, 2018 to June 30, 2018, Defendant’s  
13 sales of just the NordicTrack Commercial 2950 model treadmill (the same model  
14 allegedly purchased by Plaintiff) to consumers like Plaintiff were greater than \$60  
15 million, and far in excess of the \$5 million threshold for CAFA jurisdiction. (Declaration  
16 of Nick Kriz, ¶ 7.) This amount does not even take into account the direct to consumer  
17 sales of other models of NordicTrack treadmills during the same time period.

18 28. The foregoing estimation—which presents “a plausible allegation that the  
19 amount in controversy exceeds the jurisdictional threshold,” *Dart Cherokee*, 135 S. Ct. at  
20 553—does not even include injunctive relief, which is equitable relief sought in the  
21 Complaint under the UCL. (Compl. ¶ 55, Prayer for Relief ¶¶ (c)-(d), (j).) The cost of  
22 injunctive relief is to be included in the amount in controversy. *Chavez v. JP Morgan*  
23 *Chase & Co.*, 88 F.3d 413, 416 (9th Cir. 2018) (“The amount in controversy may include  
24 ‘damages (compensatory, punitive, or otherwise) and the cost of complying with an  
25 injunction, as well as attorneys’ fees awarded under fee shifting statutes.”) (*quoting*  
26 *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 648 (9th Cir. 2016)).

27 29. Plaintiff’s request for statutory attorney’s fees further increases the amount  
28 in controversy. *Galt*, 142 F.3d at 1156 (statutory attorney fees are included for



determining amount in controversy).

30. Thus, the monetary relief in controversy far exceeds \$5 million, without even considering the injunctive relief and attorney’s fees that Plaintiff seeks.

**COMPLIANCE WITH REMOVAL STATUTE AND LOCAL RULES**

31. This Notice of Removal was properly filed in the United States District Court for the Central District of California because the Superior Court of the State of California for the County of Los Angeles is located in this judicial district. See 28 U.S.C. § 1441(a).

32. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. See 28 U.S.C. § 1446(a).

33. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and orders served upon Defendant in this action is attached hereto as **Exhibit C**.

**Notice to State Court and Adverse Party**

34. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Plaintiff and a copy, along with a Notice of Filing of the Notice of Removal, is being filed with the Clerk of the Superior Court of the State of California for the County of Los Angeles.

WHEREFORE, Defendant hereby gives notice that this action is removed from the Superior Court of the State of California for the County of Los Angeles to this United States District Court for the Central District of California.

DATED: July 8, 2022

**FOLEY & LARDNER LLP**  
Jaikaran Singh

*/s/ Jaikaran Singh*

\_\_\_\_\_  
Jaikaran Singh  
Attorneys for Defendant IFIT  
INC. erroneously sued as IFIT  
INC. d/b/a NORDICTRACK

# **EXHIBIT A**

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Stuart Rice

Electronically FILED by Superior Court of California, County of Los Angeles on 06/08/2022 12:59 PM Sherri R. Carter, Executive Officer/Clerk of Court, by J. Covarrubias, Deputy Clerk

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*Attorneys for Plaintiff, MATTHEW TREINISH*

SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
UNLIMITED JURISDICTION

MATTHEW TREINISH, individually, and  
on behalf of all others similarly situated,

Plaintiff,

vs.

IFIT INC. d/b/a NORDICTRACK and  
DOES 1-10 Inclusive,

Defendants.

Case No. **22STCV18798**

**CLASS ACTION COMPLAINT**

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*);
- (2) Breach of Warranty in Violation of Song-Beverly Consumer Warranty Act (Cal. Civil Code §§ 1790 *et seq.*);
- (3) Breach of Implied Warranty in Violation of Song-Beverly Consumer Warranty Act (Cal. Civil Code §§ 1790 *et seq.*);
- (4) Breach of Warranty in Violation of Magnuson-Moss Warranty Act (15 U.S.C. §§ 2310 *et seq.*); and
- (5) Breach of Implied Warranty in Violation of Magnuson-Moss Warranty Act (15 U.S.C. §§ 2310 *et seq.*).

**(Amount to Exceed \$25,000)**

**Jury Trial Demanded**

1 Plaintiff MATTHEW TREINISH (“Plaintiff”), individually and on behalf of all others  
2 similarly situated, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant IFIT INC.  
5 (hereinafter “Defendant”) to stop Defendant’s practice of selling warranties with its treadmills,  
6 which they have no intention of honoring, and to obtain redress for a class of consumers (“Class  
7 Members”) who were misled by Defendants within the applicable statute of limitations period.

8 2. Defendants represented to consumers that a warranty would accompany the  
9 purchase of its treadmills (“the Class Products”), whereby Defendant would repair any of the  
10 Class Products for a certain period of time at no charge to consumers.

11 3. Warranties are of particular value to consumers because they provide a guarantee  
12 of the value of a good after it is purchased.

13 4. Plaintiff and other consumers similarly situated were exposed to these  
14 representations.

15 5. Defendants misrepresented to Plaintiff and others similarly situated by failing to  
16 disclose in either their representations or the contract itself that Defendants would not honor the  
17 warranty.

18 6. Defendants’ misrepresentations to Plaintiff and others similarly situated induced  
19 them to purchase Defendants’ Class Products.

20 7. Defendants took advantage of Plaintiff and similarly situated consumers unfairly  
21 and unlawfully.

22 **THE PARTIES**

23 8. Plaintiff MATTHEW TREINISH is a citizen and resident of the State of  
24 California, County of Los Angeles.

25 9. Defendant IFIT INC. is a corporation that does business in California under the  
26 fictitious name NORDICTRACK, including within Los Angeles County, and is incorporated in  
27 Delaware and headquartered in Logan, Utah.

28



1 from the date of purchase.

2 17. On at least three occasions, Plaintiff’s treadmill came to a complete stop while  
3 he was running on it at full speed, and would not turn back on.

4 18. Plaintiff has contacted Defendant to have his treadmill fixed numerous times.  
5 Each time Defendant agreed to send an employee to service the treadmill, however this  
6 process took four weeks or longer each time Plaintiff’s treadmill broke.

7 19. As a result, Plaintiff has had significant periods of time where he cannot use the  
8 treadmill which he paid valuable consideration for.

9 20. The repeated malfunctioning of Plaintiff’s treadmill constitutes a breach of  
10 Defendant’s warranty to Plaintiff.

11 21. Had Plaintiff known that Defendant would breach its warranty, he would not  
12 have purchased the Commercial 2950 model treadmill from Defendant.

13

14

**CLASS ACTION ALLEGATIONS**

15 22. Plaintiff brings this action, on behalf of himself and all others similarly situated,  
16 and thus, seeks class certification under California Code of Civil Procedure Rule 382, et seq.  
17 and Cal. Civil Code § 1781, et seq.

18 23. The class Plaintiff seeks to represent (the “Class”) is defined as follows:

19 All consumers, who, between the applicable statute of limitations  
20 and the present, purchased Defendant’s Class Products, and had  
21 that Class Product come to a complete stop while it was running,  
and would not turn back on.

22 24. As used herein, the term “Class Members” shall mean and refer to the members  
23 of the Class described above.

24 25. Excluded from the Class are Defendant, its affiliates, employees, agents, and  
25 attorneys, and the Court.

26 26. Plaintiff reserves the right to amend the Class, and to add additional subclasses,  
27 if discovery and further investigation reveals such action is warranted.

28

1           27.     Upon information and belief, the proposed class is composed of thousands of  
2 persons. The members of the class are so numerous that joinder of all members would be  
3 unfeasible and impractical.

4           28.     No violations alleged in this complaint are contingent on any individualized  
5 interaction of any kind between class members and Defendant.

6           29.     Rather, all claims in this matter arise from the identical, false, affirmative written  
7 statements that Defendant would provide warranties to the Class Members, when in fact, such  
8 representations were false.

9           30.     There are common questions of law and fact as to the Class Members that  
10 predominate over questions affecting only individual members, including but not limited to:

- 11           (a)     Whether Defendants engaged in unlawful, unfair, or deceptive business  
12 practices in advertising warranties with its products to Plaintiff and other  
13 Class Members with no intention of honoring them;
- 14           (b)     Whether Defendants made misrepresentations with respect to their  
15 warranties for their products;
- 16           (c)     Whether Defendants violated California Bus. & Prof. Code § 17200, *et*  
17 *seq., et seq.*, California Civ. Code § 1790, *et seq.*, and 15 U.S.C. § 2310,  
18 *et seq.*;
- 19           (d)     Whether Plaintiff and Class Members are entitled to equitable and/or  
20 injunctive relief;
- 21           (e)     Whether Defendants' unlawful, unfair, and/or deceptive practices harmed  
22 Plaintiff and Class Members; and
- 23           (f)     The method of calculation and extent of damages for Plaintiff and Class  
24 Members.

25           31.     Plaintiff is a member of the class he seeks to represent

26           32.     The claims of Plaintiff are not only typical of all class members, they are  
27 identical.

28

1 33. All claims of Plaintiff and the class are based on the exact same legal theories.

2 34. Plaintiff has no interest antagonistic to, or in conflict with, the class.

3 35. Plaintiff is qualified to, and will, fairly and adequately protect the interests of  
4 each Class Member, because Plaintiff was induced by Defendants' misrepresentations during  
5 the Class Period. Defendants' unlawful, unfair and/or fraudulent actions concerns the same  
6 business practices described herein irrespective of where they occurred or were experienced.  
7 Plaintiff's claims are typical of all Class Members as demonstrated herein.

8 36. Plaintiff will thoroughly and adequately protect the interests of the class, having  
9 retained qualified and competent legal counsel to represent himself and the class.

10 37. Common questions will predominate, and there will be no unusual manageability  
11 issues.

12 **FIRST CAUSE OF ACTION**

13 **Violation of Unfair Competition Law**

14 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

15 38. Plaintiff incorporates by reference each allegation set forth above.

16 39. Actions for relief under the unfair competition law may be based on any business  
17 act or practice that is within the broad definition of the UCL. Such violations of the UCL occur  
18 as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required  
19 to provide evidence of a causal connection between a defendant's business practices and the  
20 alleged harm--that is, evidence that the defendant's conduct caused or was likely to cause  
21 substantial injury. It is insufficient for a plaintiff to show merely that the defendant's conduct  
22 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of  
23 unfair competition covers any single act of misconduct, as well as ongoing misconduct.

24 **UNFAIR**

25 40. California Business & Professions Code § 17200 prohibits any "unfair ...  
26 business act or practice." Defendant's acts, omissions, misrepresentations, and practices as  
27 alleged herein also constitute "unfair" business acts and practices within the meaning of the  
28



1 UCL in that its conduct is substantially injurious to consumers, offends public policy, and is  
2 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any  
3 alleged benefits attributable to such conduct. There were reasonably available alternatives to  
4 further Defendant's legitimate business interests, other than the conduct described herein.  
5 Plaintiff reserves the right to allege further conduct which constitutes other unfair business acts  
6 or practices. Such conduct is ongoing and continues to this date.

7 41. In order to satisfy the "unfair" prong of the UCL, a consumer must show that the  
8 injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or  
9 competition; and, (3) is not one that consumers themselves could reasonably have avoided.

10 42. Here, Defendant's conduct has caused and continues to cause substantial injury  
11 to Plaintiff and members of the Class. Plaintiff and members of the Class have suffered injury  
12 in fact due to Defendant's decision to sell defective treadmills in breach of its warranty with  
13 Plaintiff and Class Members. Moreover, Plaintiff and Class Members were deprived of the use  
14 of their Class Products for significant periods of time. Thus, Defendant's conduct has caused  
15 substantial injury to Plaintiff and the members of the Class.

16 43. Moreover, Defendant's conduct as alleged herein solely benefits Defendant  
17 while providing no benefit of any kind to any consumer. Defendant warranted to Plaintiff and  
18 Class Members that it would provide them with treadmills that were free from defects. In fact,  
19 however, Defendant sold Plaintiff and Class Members treadmills which were substantially  
20 defective, in that the treadmills would shut off and come to a complete stop while in use, and  
21 would not turn back on. Thus, the injury suffered by Plaintiff and the members of the Class are  
22 not outweighed by any countervailing benefits to consumers.

23 44. Finally, the injury suffered by Plaintiff and members of the Class is not an injury  
24 that these consumers could reasonably have avoided. Plaintiff and Class Members had no way  
25 to determine that Defendant would actually sell them defective treadmills, as evidenced by  
26 Defendant's warranty that its treadmills were in fact no defective. Plaintiff and Class Members  
27 relied on this warranty, and changed their positions by purchasing Class Products. Defendants  
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1 failed to take reasonable steps to inform Plaintiff and class members that its treadmills were  
2 defective. As such, Defendants took advantage of Defendants’ position of perceived power in  
3 order to deceive Plaintiff and the Class. Therefore, the injury suffered by Plaintiff and members  
4 of the Class is not an injury which these consumers could reasonably have avoided.

5 45. Thus, Defendants’ conduct has violated the “unfair” prong of California Business  
6 & Professions Code § 17200.

7 **FRAUDULENT**

8 46. California Business & Professions Code § 17200 prohibits any “fraudulent ...  
9 business act or practice.” In order to prevail under the “fraudulent” prong of the UCL, a  
10 consumer must allege that the fraudulent business practice was likely to deceive members of  
11 the public.

12 47. The test for “fraud” as contemplated by California Business and Professions  
13 Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a §  
14 17200 violation can be established even if no one was actually deceived, relied upon the  
15 fraudulent practice, or sustained any damage.

16 48. Here, not only were Plaintiff and the Class members likely to be deceived, but  
17 these consumers were actually deceived by Defendant. Such deception is evidenced by the fact  
18 that Defendant sold Plaintiff and Class Members defective treadmills despite warranting that its  
19 treadmills were in fact defect-free. For the same reason, it is likely that Defendant’s fraudulent  
20 business practice would deceive other members of the public.

21 49. As explained above, Defendant deceived Plaintiff and other Class Members by  
22 falsely warranting that its treadmills were defect-free.

23 50. Thus, Defendants’ conduct has violated the “fraudulent” prong of California  
24 Business & Professions Code § 17200.

25 **UNLAWFUL**

26 51. California Business and Professions Code Section 17200, et seq. prohibits “any  
27 unlawful...business act or practice.”  
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1 52. As explained above, Defendants deceived Plaintiff and other Class Members by  
2 falsely warranting that its treadmills are defect-free.

3 53. Such conduct constitutes breach of warranty in violation of Cal. Civ. Code §  
4 1790. Defendant’s conduct therefore caused and continues to cause economic harm to Plaintiff  
5 and Class Members.

6 54. These representations by Defendant are therefore an “unlawful” business  
7 practice or act under Business and Professions Code Section 17200 *et seq.*

8 55. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts  
9 entitling Plaintiff and Class Members to judgment and equitable relief against Defendants, as  
10 set forth in the Prayer for Relief. Additionally, pursuant to Business and Professions Code  
11 section 17203, Plaintiff and Class Members seek an order requiring Defendants to immediately  
12 cease such acts of unlawful, unfair, and fraudulent business practices and requiring Defendant  
13 to correct its actions.

14 **SECOND CAUSE OF ACTION**

15 **Breach of Warranty In Violation of the Song-Beverly Consumer Warranty Act**

16 **(Cal. Civ. Code § 1790, *Et Seq.*)**

17 85. Plaintiff incorporates by reference each allegation set forth above.

18 86. Pursuant to Cal Civ. Code. §1793.2, Plaintiff has presented the treadmill to  
19 Seller and/or other authorized service dealers of Defendant within the term of protection and  
20 has tendered the subject treadmill for the above-mentioned defects that substantially affect the  
21 use, value, and safety of the alignment.

22 87. Defendant, through Seller and/or other authorized dealerships, have been unable  
23 to repair said defects in a reasonable number of attempts.

24 88. Pursuant to Cal Civ. Code. §1793.2, Plaintiff is entitled to a refund of the full  
25 purchase price of the treadmill, including all collateral charges and finance charges, and/or a  
26 replacement treadmill, plus all attorney fees and costs.

27 89. Defendant has willfully violated the provisions of this act by knowing of its  
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1 obligations to refund or replace Plaintiff's treadmill, but failing to fulfill them.

2 **THIRD CAUSE OF ACTION**

3 **Breach of Implied Warranty In Violation of the Song-Beverly Consumer Warranty Act**  
4 **(Cal. Civ. Code § 1790, *Et Seq.*)**

5 90. Plaintiff incorporates by reference each allegation set forth above.

6 91. The treadmill purchased by Plaintiff was subject to an implied warranty of  
7 merchantability as defined in Cal. Civ. Code §1790 running from the Defendants to the intended  
8 consumer, Plaintiff herein.

9 92. Defendant is a suppliers of consumer goods as persons engaged in the business  
10 of making a consumer product directly available to Plaintiff.

11 93. Defendant is prohibited from disclaiming or modifying any implied warranty  
12 under Cal. Civ. Code §1790.

13 94. Pursuant to Cal. Civ. Code §1790, Plaintiff's treadmill was impliedly warranted  
14 to be fit for the ordinary use for which the treadmill was intended.

15 95. The treadmill was warranted to pass without objection in the trade under the  
16 contract description, and was required to conform to the descriptions of the treadmill contained  
17 in the contracts and labels.

18 96. The above described defects in the treadmill caused it to fail to possess even the  
19 most basic degree of fitness for ordinary use.

20 97. As a result of the breaches of implied warranty by Defendant, Plaintiff have  
21 suffered and continue to suffer various damages.

22 **FOURTH CAUSE OF ACTION**

23 **Breach of Warranty In Violation of the Magnuson-Moss Warranty Act**  
24 **(15 U.S.C. § 2310, *Et Seq.*)**

25 98. Plaintiff incorporates by reference each allegation set forth above.

26 99. Plaintiff is a purchaser of a consumer product who received the treadmill during  
27 the duration of a written warranty period applicable to the treadmill and who is entitled by the  
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1 terms of the written warranty to enforce against Defendant the obligations of said warranty.

2 100. Defendant is a person engaged in the business of making a consumer product  
3 directly available to Plaintiff.

4 101. Defendant, i.e., seller, are an authorized dealership/agent designed to perform  
5 repairs on treadmills under Defendant’s warranties.

6 102. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section, 2301 et. Seq.  
7 (“Warranty Act”) is applicable to Plaintiff’s Complaint in that the treadmill was manufactured,  
8 sold and purchased after July 4,1975, and costs in excess of ten dollars (\$10.00).

9 103. Plaintiff’s purchase of the treadmill was accompanied by written warranties for  
10 any non-conformities or defects in materials or workmanship, comprising an undertaking in  
11 writing in connection with the purchase of the treadmill and take remedial action free of charge  
12 to Plaintiff with respect to the treadmill in the event that the treadmill failed to meet the  
13 specifications set forth in said undertaking.

14 104. Said warranties were the basis of the bargain of the contract between the Plaintiff  
15 and Defendant for the sale of the treadmill to Plaintiff.

16 105. Said purchase of Plaintiff’s treadmill was induced by, and Plaintiff relied upon,  
17 these written warranties.

18 106. Plaintiff has met all of Plaintiff’s obligations and preconditions as provided in  
19 the written warranties.

20 107. As a direct and proximate result of Defendant’s failure to comply with its express  
21 written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. § 2310(d),  
22 Plaintiff is entitled to bring suit for such damages and other equitable relief.

23 **FIFTH CAUSE OF ACTION**

24 **Breach of Implied Warranty In Violation of the Magnuson-Moss Warranty Act**

25 **(15 U.S.C. § 2310, *Et Seq.*)**

26 108. Plaintiff incorporates by reference each allegation set forth above.

27 109. The alignment purchased by Plaintiff was subject to an implied warranty of  
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1 merchantability as defined in 15 U.S.C. § 2301(7).

2 110. Defendant is a supplier of consumer goods as a person engaged in the business  
3 of making a consumer product directly available to Plaintiff.

4 111. Defendant is prohibited from disclaiming or modifying any implied warranty  
5 when making a written warranty to the consumer or when Defendant has entered into a contract  
6 in writing within ninety (90) days of purchase to perform services relating to the maintenance  
7 or repair of a treadmill.

8 112. Pursuant to 15 U.S.C. § 2308, Plaintiff's treadmill was impliedly warranted to be  
9 substantially free of defects and non-conformities in both material and workmanship, and  
10 thereby fit for the ordinary purpose for which the treadmill was intended.

11 113. The treadmill was warranted to pass without objection in the trade under the  
12 contract description, and was required to conform to the descriptions of the treadmill contained  
13 in the contracts and labels.

14 114. The above described defects in the treadmill render the treadmill unfit for the  
15 ordinary and essential purpose for which the treadmill was intended.

16 115. As a result of the breaches of implied warranty by Defendant, Plaintiff has  
17 suffered and continues to suffer various damages.

18 **MISCELLANEOUS**

19 116. Plaintiff and Class Members allege that they have fully complied with all  
20 contractual and other legal obligations and fully complied with all conditions precedent to  
21 bringing this action or all such obligations or conditions are excused.

22 **PRAYER FOR RELIEF**

23 117. Plaintiff, on behalf of himself and the Class, requests the following relief:

- 24 (a) An order certifying the Class and appointing Plaintiff as Representative  
25 of the Class;
- 26 (b) An order certifying the undersigned counsel as Class Counsel;
- 27 (c) An order requiring Defendant, at their own cost, to notify all Class  
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- Members of the unlawful and deceptive conduct herein;
- (d) An order requiring Defendant to engage in corrective advertising regarding the conduct discussed above;
- (e) Actual damages suffered by Plaintiff and Class Members as applicable from being induced to call Defendants under false pretenses;
- (f) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (g) Any and all statutory enhanced damages;
- (h) All reasonable and necessary attorneys’ fees and costs provided by statute, common law or the Court’s inherent power;
- (i) Pre- and post-judgment interest; and
- (j) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

**REQUEST FOR JURY TRIAL**

118. Plaintiff requests a trial by jury as to all claims so triable.

Dated: June 8, 2022

Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By: Todd M. Friedman  
TODD M. FRIEDMAN, ESQ.

Attorneys for Plaintiff

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Calif. Consumer Claims NordicTrack Fails to Honor Treadmill Warranties](#)

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