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11 *Attorneys for Plaintiffs*

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

15 JESSICA STEWART and JOHN D. KELLER,
 16 individually and on behalf of all others similarly
 situated,

17 Plaintiffs,

18 v.

19 CAMELBAK PRODUCTS, LLC and
 20 CAMELBAK INTERNATIONAL, LLC,

21 Defendants.
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Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Jessica Stewart and John D. Keller (“Plaintiffs”), individually and on behalf of
2 themselves and all others similarly situated, by and through their attorneys, make the following
3 allegations pursuant to the investigation of their counsel and based upon information and belief,
4 except as to allegations specifically pertaining to themselves and their counsel, which are based on
5 personal knowledge.

6 **NATURE OF THE ACTION**

7 1. This is a class action suit brought against Defendants CamelBak Products, LLC
8 (“CamelBak Products”) and CamelBak International, LLC (“CamelBak International”)
9 (collectively, “CamelBak”) for manufacturing, distributing, and selling defective CamelBak eddy
10 Water Bottles, including the CamelBak eddy Water Bottle 32 oz, CamelBak eddy Water Bottle 25
11 oz, CamelBak eddy Water Bottle 20 oz, Camelbak eddy Kids Water Bottle 12 oz, CamelBak Kids
12 Vacuum Insulated Stainless Water Bottle 12 oz, CamelBak eddy Kids Insulated Water Bottle 12
13 oz, CamelBak eddy Insulated Water Bottle 20 oz, CamelBak eddy Vacuum Insulated Stainless
14 Water Bottle 20 oz, and CamelBak eddy Glass Water Bottle 24 oz (collectively, the “CamelBak
15 eddy”).

16 2. CamelBak warranted that the CamelBak eddy is “spill-proof.” Among other
17 representations, CamelBak claims that consumers who purchase the CamelBak eddy will “[e]njoy
18 spill-proof sipping at work or on the trail.” However, the design of the CamelBak eddy – which
19 “use[s] patented bite valves” to “prevent leaks and allow easy sipping” – is fundamentally
20 defective. The bottles are not “spill-proof” because water may run, flow, or fall out of the bottles
21 (*i.e.* leak).

22 3. Plaintiffs bring this action on behalf of themselves and a class of all similarly
23 situated purchasers of the CamelBak eddy in the United States for: (i) violation of the Magnuson-
24 Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*; (ii) breach of express warranty; (iii) breach of the
25 implied warranty of merchantability; (iv) unjust enrichment; (v) violation of California’s
26 Consumers Legal Remedies Act (“CLRA”), Cal. Civil Code §§ 1750, *et seq.*; (vi) violation of
27 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
28 (vii) violation of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500, *et*

1 *seq.*; (viii) negligent misrepresentation; (ix) fraud; (x) violation of New York’s General Business
2 Law (“GBL”) § 349; and (xi) violation of New York’s General Business Law (“GBL”) § 350.

3 **PARTIES**

4 4. Plaintiff John D. Keller is a natural person and citizen of the State of New York who
5 resides in Churchville, New York. On January 5, 2018, Plaintiff Keller purchased a CamelBak
6 eddy Water Bottle 25 oz for \$12.82 from Amazon.com. Prior to his purchase, Plaintiff Keller
7 reviewed the labeling, packaging, and marketing materials for the CamelBak eddy and saw the
8 representation that it is purportedly “spill-proof.” Plaintiff Keller understood these claims to be
9 representations and warranties by Defendants that the CamelBak eddy is purportedly “spill-proof”
10 and free of defects that would cause water to run, flow, or fall out of the bottle (*i.e.*, leak). Plaintiff
11 Keller reasonably relied on Defendants’ representation that the CamelBak eddy is “spill-proof”
12 when he purchased the CamelBak eddy. However, Plaintiff Keller’s water bottle is defective
13 because it leaks and has actually leaked during prior use. Plaintiff Keller’s water bottle leaks when
14 placed sideways. It also leaks when placed in backpacks or bags. Plaintiff Keller relied on these
15 representations and warranties in deciding to purchase the CamelBak eddy, and these
16 representations were part of the basis of the bargain, in that he would not have purchased the
17 CamelBak eddy if he had known that it was not, in fact, “spill-proof.” Plaintiff Keller also
18 understood that in making the sale, the retailer was acting with the knowledge and approval of
19 CamelBak and/or as the agent of CamelBak. Plaintiff Keller also understood that his purchase
20 involved a direct transaction between himself and CamelBak, because his CamelBak eddy came
21 with packaging and other materials prepared by CamelBak, including representations and
22 warranties that his CamelBak eddy is purportedly “spill-proof.”

23 5. Plaintiff Jessica Stewart is a natural person and citizen of the State of California who
24 resides in Oakland, California. On September 13, 2017, Plaintiff Stewart purchased two 12 oz
25 CamelBak eddy Kids Water Bottles for \$13.00 and \$12.99 from Amazon.com. Prior to her
26 purchase, Plaintiff Stewart reviewed the labeling, packaging, and marketing materials for the
27 CamelBak eddys and saw the representation that they were purportedly “spill-proof.” Plaintiff
28

1 Stewart understood these claims to be representations and warranties by Defendants that the
2 CamelBak eddy is purportedly “spill-proof” and free of defects that would cause water to run,
3 flow, or fall out of the bottle (*i.e.*, leak). Plaintiff Stewart reasonably relied on Defendants’
4 representation that the CamelBak eddy is “spill-proof” when she purchased the CamelBak eddys.
5 However, Plaintiff Stewart’s water bottles are defective because they leak and have actually leaked
6 during prior use. Plaintiff Stewart’s water bottles leak when placed sideways. They also leak
7 when placed in backpacks or bags. The bottles have also leaked while flying. Plaintiff Stewart
8 relied on these representations and warranties in deciding to purchase the CamelBak eddys, and
9 these representations were part of the basis of the bargain, in that she would not have purchased the
10 CamelBak eddys if she had known they were not, in fact, “spill-proof.” Plaintiff Stewart also
11 understood that in making the sale, the retailer was acting with the knowledge and approval of
12 CamelBak and/or as the agent of CamelBak. Plaintiff Stewart also understood that her purchase
13 involved a direct transaction between herself and CamelBak, because the CamelBak eddys came
14 with packaging and other materials prepared by CamelBak, including representations and
15 warranties that the CamelBak eddys are purportedly “spill-proof.”

16 5. Defendant CamelBak Products, LLC is a Delaware limited liability company with its
17 principal place of business at 2000 South McDowell Suite 200, Petaluma, California. CamelBak
18 Products does business throughout California and the entire United States. CamelBak Products is a
19 market leader in hydration products, such as hydration packs and water bottles.

20 6. Defendant CamelBak International, LLC is a California limited liability company
21 with its principal place of business at 2000 South McDowell Suite 200, Petaluma, California.
22 Camel International is 100% owned by CamelBak Products, LLC. CamelBak International does
23 business throughout California and the entire United States. CamelBak International is a market
24 leader in hydration products, such as hydration packs and water bottles.

25 7. Defendants jointly make decisions regarding the marketing, advertising, packaging,
26 manufacture, and design of the CamelBak eddy. Defendants share a social media presence on
27 Facebook and Instagram, where they collectively refer to themselves as “CamelBak.” CamelBak
28 International does not maintain an independent social media account. Similarly, Defendants run a

1 single LinkedIn account under the name “CamelBak.” Defendants’ job listings do not distinguish
2 between CamelBak Products and CamelBak International. Finally, Defendants share a retail
3 presence. Their products are simply listed under “CamelBak” on retail websites. Further, the
4 CamelBak eddys are physically branded with the singular term “CamelBak,” and do not include
5 reference to CamelBak Products or CamelBak International as individual entities.

6 **JURISDICTION AND VENUE**

7
8 8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
9 § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of
10 the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, and a least one
11 member of the proposed class is a citizen of a state different from Defendants.

12 9. This Court has personal jurisdiction over Defendants because they have continuous
13 and systematic contacts with the State of California as to essentially render them “at home” in this
14 State, and Defendants’ principal places of business are located in this State. Moreover, Defendants
15 have purposefully availed themselves of the laws and benefits of doing business in this State, and
16 Plaintiffs’ claims arise out of the Defendants’ forum-related activities. Furthermore, a substantial
17 portion of the events giving rise to Plaintiffs’ claims occurred in this State, including Plaintiff
18 Stewart’s purchase of the CamelBak eddy.

19 10. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because
20 a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this
21 District. Plaintiff Stewart resides in this District and purchased two CamelBak eddys in this
22 District. Moreover, Defendants’ principal place of business is located in this District.

23 **COMMON FACTUAL ALLEGATIONS**

24 **A. CamelBak Repeatedly Misrepresents That The CamelBak Eddy Is**
25 **“Spill-Proof”**

26 11. The representation that the CamelBak eddy is “spill-proof” is core to Defendants’
27 marketing for the CamelBak eddy, and it appears throughout the product’s labeling and packaging.
28

1 12. For example, Defendants’ marketing materials for the CamelBak eddy contains a
2 video from March 2, 2016, which states that “all CamelBak eddy bottles come with our spill-proof
3 bite valve.” It goes on to state that “all bottles are spill-proof.”



12 13. Additionally, the CamelBak eddy is packaged for distribution with a cardboard
13 hangtag. The cardboard hangtag states that the CamelBak eddy is “spill proof:”



24 14. The claim that CamelBak eddy has a “spill-proof bite valve” appears on all
25 CamelBak eddy packaging:



15. CamelBak’s website claims that consumers of the CamelBak eddy will “[e]njoy spill-proof sipping.”

DESCRIPTION

Enjoy spill-proof sipping at work or on the trail with the 0.75-liter CamelBak eddy® water bottle. 100% free of BPA, BPS and BPF.

16. Similarly, Defendants’ website features the following “specification” for the CamelBak eddy:

CLOSURE:

Spill-Proof

1 17. Commercial retailers also consistently and prominently represent that the CamelBak
2 eddy is “spill-proof” on their retail websites. For example, Target’s website includes “spill-proof”
3 as a feature of the product:

4 **Highlights**

- 5 • 100% free of BPA, BPS and BPF
- 6 • Holds 25oz/.75L
- 7 • Spill-proof
- 8 • Dishwasher Safe: All parts are top-rack dishwasher safe

9 Amazon features a similar representation “from the manufacturer:”



11 **Design!**



13 **Spill-Proof
Water Bottle**



15 **Integrated
Carry Loop**

16 Bed Bath & Beyond’s retail website also contains this representation:

17 **Details**

18 Keep your child happy without worrying about spills when he or she sips from the
19 CamelBak Kid's eddy Goal! Water Bottle. Adorned with a fun airplane graphic, this water
20 bottle features a one-piece drink valve that is a step up from a sippy cup.

- 21 • CamelBak Kid's eddy Water Bottle is a great step up from your little one's sippy cup
- 22 • Spill-proof

23 18. Each of these representations are false and misleading. As discussed below, the
24 CamelBak eddy is not “spill-proof” because it leaks.
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1 **B. Defendants Are Aware That The CamelBak Eddy Is Not “Spill-**
2 **Proof”**

3 19. The Internet is replete with consumer complaints about the CamelBak eddy leaking.

4 For example, five years ago, one victim wrote on CamelBak’s website:

5 I purchased mine in October or November of 2013 and the spout and lid
6 have both been acting up for the past few months. If I fill the bottle up
7 to high, it leaks. If it’s empty and I flip it upside down, it leaks. Even if
8 I re-position the straw and make sure everything is tightly in place, IT
9 LEAKS! If I haven’t drank from the bottle in say 10-15 minutes and
10 press the chew valve, water comes flowing out like crazy.

11 Four years ago, on CamelBak’s website, another victim wrote:

12 [T]he straw leaks a lot and renders it useless! Buy a different
13 camelback!

14 Six years ago, on May 29, 2013, CamelBak responded to a complaint by a third victim, who wrote:

15 I have a Camelbak Eddy, it is leaking so much, my kids can’t take it to
16 school. What is your return policy.

17 On November 20, 2013, CamelBak responded to a fourth victim, who wrote:

18 [M]y girls have many camelbak eddys and they all leak, how do I go
19 about fixing this? Thanks!

20 Similarly, on March 24, 2015, CamelBak responded to a complaint made by a fifth victim, who
21 wrote:

22 [H]ey Camelbak! just wondering why your Eddy water bottles leak?
23 I’ve had three... two of which started leaking out the top in a few
24 months, and the latest one within a few days. I’m not really into picking
25 up a water bottle and discovering it’s left a puddle.. and then having it
26 leak all over me. stop ripping off your customers please!

27 On April 1, 2016, a sixth victim wrote:

28 I have 3 camelbak water bottles that continue to leak! I was under the
 understanding that these bottles were indestructible and the best,
 however with a constantly leaky bottle, I am having hard time buying
 this concept!

 20. The above reviews are just a sampling of negative feedback consumers have left
29 Defendants about their leaking CamelBak eddy water bottles.

 21. Like most companies who offer customers an opportunity to post reviews on their
30 websites and social media platforms, Defendants regularly monitor online customer reviews

1 because they provide valuable data regarding quality control issues, customer satisfaction, and
2 marketing analytics. Like most manufacturers, Defendants pay particular attention to poor and
3 negative reviews. As such, Defendants were aware of the above-referenced consumer complaints
4 shortly after each complaint was posted.

5 22. Defendants pay close attention when customers make similar complaints about a
6 product, as repeated complaints may indicate a systematic problem. Defendants also know that it
7 is often the case that for every person who complains about a defect, there are additional
8 consumers who experience the same defect but who did not complain. Here, the reports and
9 complaints put Defendants on notice of the defect in the water bottles.

10 23. The failure to disclose this defect is a material omission to which Defendants had
11 exclusive knowledge of and was not known to Plaintiffs or class members.

12 24. Defendants made partial representations to Plaintiffs and class members while
13 suppressing the defect in the CamelBak eddy water bottles. Specifically, by displaying the
14 CamelBak eddy water bottles and describing its features and use, the product packaging implied
15 that the CamelBak eddy would not leak, without disclosing that the water bottles were not “spill-
16 proof.”

17 25. As addressed above, Defendants are aware of these complaints, and know that the
18 CamelBak eddy is prone to leaking. For example, in a document created on August 28, 2012,
19 Defendants have acknowledged that the CamelBak eddy leaks when exposed to a change in
20 altitude:

21 **Can I use the CamelBak® eddy™ in high-altitude/ low-pressure environments (i.e. airplanes, mountain
22 altitudes, etc)?**

23 Yes, but with special care because pressure can force liquid out through the straw. Keep the bottle right
24 side up with the bite valve in the closed position. Remove the straw for additional protection. Expect a
25 bit of “spurt” during the first sip. You may also twist the cap open to release any pressure and then close
26 before your first sip.

27 Similar language still appears on Defendants’ website as of October 17, 2019.

28 26. On October 4, 2013, Defendants posted a link to their Facebook page, telling
CamelBak users to “take care” while flying with their water bottles and “at cruising altitude, [to]
release pressure by loosening cap or sipping frequently to avoid the fountain effect!”

1 27. Furthermore, Defendants’ online Frequently Asked Questions (“FAQ”) even
2 contains a section on the CamelBak eddy leaking:

3
4 QUESTION
HOW CAN I FIX MY LEAKY WATER BOTTLE?

5
6
7
8 ANSWER

9 If your eddy bottle is leaking, you might have an object trapped in the vent valve. Turn the
10 cap over, and look under the round, grey, rubber flap. If you carefully peel back the
11 rubber seal and clean out the inner workings of the vent valve, the leak should stop.
Important: Don’t remove the rubber gasket for cleaning purposes, because it’s
impossible to reattach.

12 Variations of this FAQ have been available since at least 2013.

13 28. Despite Defendants’ knowledge of the leaking defect, they have not recalled the
14 bottles or otherwise sought to remedy the fact that the bottles are not “spill-proof.” Instead,
15 Defendants continue to prominently market the CamelBak eddy with the claim that the product is
16 “spill-proof.”

17 **CLASS ACTION ALLEGATIONS**

18 29. Plaintiffs seek to represent a class defined as all persons in the United States who
19 purchased a CamelBak eddy (the “Class”). Excluded from the Class are persons who made such
20 purchases for the purpose of resale.

21 30. Plaintiff Stewart also seeks to represent a subclass of all Class members who
22 purchased a CamelBak eddy in the State of California (the “California Subclass”).

23 31. Plaintiff Keller also seeks to represent a subclass of all Class members who
24 purchased a CamelBak eddy in the State of New York (the “New York Subclass”).

25 32. Members of the Class are so numerous that their individual joinder herein is
26 impracticable. On information and belief, members of the Class number in the millions. The
27 precise number of Class members and their identities are unknown to Plaintiffs at this time but may
28

1 be determined through discovery. Class members may be notified of the pendency of this action
2 by mail and/or publication through the distribution records of Defendants.

3 33. Common questions of law and fact exist as to all Class members and predominate
4 over questions affecting only individual Class members. Common legal and factual questions
5 include, but are not limited to, whether Defendants' labeling, marketing, and advertising is false
6 and misleading; whether Defendants have violated the Magnusson-Moss Warranty Act 15 U.S.C.
7 2301, *et seq.*; whether Defendants have violated California's Consumers Legal Remedies Act,
8 Civil Code §§ 1750, *et seq.*; whether Defendants have violated California's Unfair Competition
9 Law, Bus. & Prof. Code §§ 17200, *et seq.*, and have committed other tortious acts as described
10 herein.

11 34. The claims of the named Plaintiffs are typical of the claims of the Class in that the
12 named Plaintiffs purchased CamelBak eddys in reliance on the representations and warranties
13 described above and suffered a loss as a result of that purchase.

14 35. Plaintiffs are adequate representatives of the Class and Subclasses because their
15 interests do not conflict with the interests of the Class and Subclass members they seek to
16 represent, they have retained competent counsel experienced in prosecuting class actions, and they
17 intend to prosecute this action vigorously. The interests of Class members will be fairly and
18 adequately protected by Plaintiffs and their counsel.

19 36. The class mechanism is superior to other available means for the fair and efficient
20 adjudication of the claims of Class members. Each individual Class member may lack the
21 resources to undergo the burden and expense of individual prosecution of the complex and
22 extensive litigation necessary to establish Defendants' liability. Individualized litigation increases
23 the delay and expense to all parties and multiplies the burden on the judicial system presented by
24 the complex legal and factual issues of this case. Individualized litigation also presents a potential
25 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
26 management difficulties and provides the benefits of single adjudication, economy of scale, and
27 comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment
28

1 of the liability issues will ensure that all claims and claimants are before this Court for consistent
2 adjudication of the liability issues

3 37. Plaintiffs bring all claims in this action individually and on behalf of members of the
4 Class and Subclasses against Defendants.

5 **COUNT I**
6 **(Violation Of The Magnusson-Moss Warranty Act,**
7 **15 U.S.C. §§ 2301, *et seq.*)**

8 38. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
9 paragraphs of this complaint.

10 39. Plaintiffs bring this claim individually and on behalf of the members of the
11 proposed Class and the California and New York Subclasses against Defendants.

12 40. The CamelBak eddy is a consumer product as defined in 15 U.S.C. § 2301(1).

13 41. Plaintiffs and Class members are consumers as defined in 15 U.S.C. § 2301(3).

14 42. Defendants are suppliers and warrantors as defined in 15 U.S.C. § 2301(4) and (5).

15 43. In connection with the sale of the CamelBak eddy, Defendants issued written
16 warranties as defined in 15 U.S.C. § 2301(6), which warranted that the CamelBak eddy was “spill-
17 proof.”

18 44. In fact, the CamelBak eddy is defective because it leaks.

19 45. By reason of Defendants’ breach of warranties, Defendants violated the statutory
20 rights due Plaintiffs and Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C.
21 §§ 2301 *et seq.*, thereby damaging Plaintiffs and Class members.

22 46. Plaintiffs and Class members were injured as a direct and proximate result of
23 Defendants’ breach because: (a) they would not have purchased the CamelBak eddy on the same
24 terms if the true facts were known about the product; (b) they paid a price premium for the
25 CamelBak eddy due to Defendants’ promises that it was “spill-proof;” and (c) the CamelBak eddy
26 did not have the characteristics as promised by Defendants.
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1 **COUNT II**
2 **(Breach Of Express Warranty)**

3 47. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
4 paragraphs of this complaint.

5 48. Plaintiffs bring this claim individually and on behalf of the members of the
6 proposed Class and the California and New York Subclasses against Defendants.

7 49. Defendants, as the designer, manufacturer, marketer, distributor, and/or seller,
8 expressly warranted that the CamelBak eddy is “spill-proof.”

9 50. In fact, CamelBak eddy is not fit for such purpose because each of these express
10 warranties are false and misleading.

11 51. As a direct and proximate cause of Defendants’ breach of express warranty,
12 Plaintiffs and Class members have been injured and harmed because: (a) they would not have
13 purchased the CamelBak eddy on the same terms if the true facts were known about the product;
14 (b) they paid a price premium for the CamelBak eddy due to Defendants’ promises that it was
15 “spill-proof;” and (c) the CamelBak eddy did not have the characteristics as promised by
16 Defendants.

17 **COUNT III**
18 **(Breach Of Implied Warranty Of Merchantability)**

19 52. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
20 paragraphs of this complaint.

21 53. Plaintiffs bring this claim individually and on behalf of the members of the
22 proposed Class and California and New York Subclasses against Defendants.

23 54. Defendants, as the designer, manufacturer, marketer, distributor, and/or seller,
24 impliedly warranted that the CamelBak eddy is “spill-proof.”

25 55. Defendants breached the warranty implied in the contract for the sale of the
26 CamelBak eddy because they could not pass without objection in the trade under the contract
27 description, the goods were not of fair average quality within the description, the goods were not fit
28 for the ordinary purposes for which such goods are used, and the goods do not conform to the

1 promises or affirmations of fact made on the label. As a result, Plaintiffs and Class members did
2 not receive the goods as impliedly warranted by Defendants to be merchantable.

3 56. Plaintiffs and Class members purchased the CamelBak eddy in reliance upon
4 Defendants' skill and judgment and the implied warranties of fitness for the purpose.

5 57. The CamelBak eddy was not altered by Plaintiffs or Class members.

6 58. The CamelBak eddy was defective when it left the exclusive control of Defendants.

7 59. Defendants knew that the CamelBak eddy would be purchased and used without
8 additional testing by Plaintiffs and Class members.

9 60. The CamelBak eddy was defectively designed and unfit for its intended purpose,
10 and Plaintiffs and Class members did not receive the goods as warranted.

11 61. As a direct and proximate cause of Defendants' breach of express warranty,
12 Plaintiffs and Class members have been injured and harmed because: (a) they would not have
13 purchased the CamelBak eddy on the same terms if the true facts were known about the product;
14 (b) they paid a price premium for the CamelBak eddy due to Defendants' promises that it was
15 "spill-proof;" and (c) the CamelBak eddy did not have the characteristics as promised by
16 Defendants.

17 **COUNT IV**
18 **(Unjust Enrichment)**

19 62. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
20 paragraphs of this complaint.

21 63. Plaintiffs bring this claim individually and on behalf of the members of the
22 proposed Class and California and New York Subclasses against Defendants.

23 64. Plaintiffs and Class members conferred benefits on Defendants by purchasing the
24 CamelBak eddy.

25 65. Defendants have been unjustly enriched in retaining the revenues derived from
26 Plaintiffs' and Class members' purchases of the CamelBak eddy. Retention of those moneys under
27 these circumstances is unjust and inequitable because Defendants misrepresented that the
28

1 CamelBak eddy is “spill-proof.” This misrepresentation caused injuries to Plaintiffs and Class
2 members, because they would not have purchased the CamelBak eddy if the true facts were known.

3 66. Because Defendants’ retention of the non-gratuitous benefits conferred on them by
4 Plaintiffs and Class members is unjust and inequitable, Defendants must pay restitution to Plaintiffs
5 and Class members for its unjust enrichment, as ordered by the Court.

6 **COUNT V**
7 **(Violation Of California’s Consumers Legal Remedies Act,**
8 **California Civil Code §§ 1750, et seq.)**

9 67. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
10 paragraphs of this complaint.

11 68. Plaintiff Stewart bring this claim individually and on behalf of the members of the
12 proposed California Subclass against Defendants.

13 69. California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5), prohibits
14 “[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses,
15 benefits, or quantities which they do not have or that a person has a sponsorship, approval, status,
16 affiliation, or connection which he or she does not have.”

17 70. California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(7), prohibits
18 “[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods
19 are of a particular style or model, if they are of another.”

20 71. California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(9),
21 disallows “[a]dvertising goods or services with intent not to sell them as advertised.”

22 72. Defendants violated this provision by misrepresenting that the CamelBak eddy is
23 “spill-proof.”

24 73. Plaintiff Stewart and the California Subclass suffered injuries caused by Defendants
25 because: (a) they would not have purchased the CamelBak eddy on the same terms if the true facts
26 were known about the product; (b) they paid a price premium for the CamelBak eddy due to
27 Defendants’ promises that it was “spill-proof;” and (c) the CamelBak eddy did not have the
28 characteristics as promised by Defendants.

1 81. Defendants violated the “fraudulent” prong of the UCL by making
 2 misrepresentations about the CamelBak eddy, as described herein.

3 82. Defendants’ violation has continuing and adverse effects because Defendants’
 4 unlawful conduct is continuing, with no indication that Defendants intend to cease this fraudulent
 5 course of conduct. The public – and class members – are subject to ongoing harm because the
 6 deceptive and misleading “spill-proof” claims are still in use by Defendants today.

7 83. Plaintiff Stewart and the California Subclass lost money or property as a result of
 8 Defendants’ UCL violations because: (a) they would not have purchased the CamelBak eddy on
 9 the same terms if the true facts were known about the product; (b) they paid a price premium for
 10 the CamelBak eddy due to Defendants’ promises that it was “spill-proof;” and (c) the CamelBak
 11 eddy did not have the characteristics as promised by Defendants.

12 **COUNT VII**

13 **(Violation Of California’s False Advertising Law,
 14 California Business & Professions Code §§ 17500, *et seq.*)**

15 84. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
 16 paragraphs of this complaint.

17 85. Plaintiff Stewart brings this claim individually and on behalf of the members of the
 18 proposed California Subclass against Defendants.

19 86. California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*,
 20 makes it “unlawful for any person to make or disseminate or cause to be made or disseminated
 21 before the public in this state, ... in any advertising device ... or in any other manner or means
 22 whatever, including over the Internet, any statement, concerning ... personal property or services,
 23 professional or otherwise, or performance or disposition thereof, which is untrue or misleading and
 24 which is known, or which by the exercise of reasonable care should be known, to be untrue or
 25 misleading.”

26 87. Defendants committed acts of false advertising, as defined by §17500, by
 27 misrepresenting that the CamelBak eddy is “spill-proof.”
 28

1 88. Defendants knew or should have known, through the exercise of reasonable care
2 that their representations about the CamelBak eddy were untrue and misleading.

3 89. Defendants' actions in violation of § 17500 were false and misleading such that the
4 general public is and was likely to be deceived.

5 90. Plaintiff Stewart and the California Subclass lost money or property as a result of
6 Defendants' FAL violations because: (a) they would not have purchased the CamelBak eddy on
7 the same terms if the true facts were known about the product; (b) they paid a price premium for
8 CamelBak eddy due to Defendants' promises that it was "spill-proof;" and (c) the CamelBak eddy
9 did not have the characteristics as promised by Defendants.

10 **COUNT VIII**
11 **(Negligent Misrepresentation)**

12 91. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
13 paragraphs of this complaint.

14 92. Plaintiffs bring this claim individually and on behalf of the members of the
15 proposed Class and California and New York Subclasses against Defendants.

16 93. As discussed above, Defendants misrepresented that the CamelBak eddy is "spill-
17 proof."

18 94. At the time Defendants made these representations, Defendants knew or should
19 have known that these representations were false or made them without knowledge of their truth or
20 veracity.

21 95. At an absolute minimum, Defendants negligently misrepresented and/or negligently
22 omitted material facts about the CamelBak eddy.

23 96. The negligent misrepresentations and omissions made by Defendants, upon which
24 Plaintiffs and Class members reasonably and justifiably relied, were intended to induce and
25 actually induced Plaintiffs and Class members to purchase the CamelBak eddy.

26 97. Plaintiffs and Class members would not have purchased the CamelBak eddy if the
27 true facts had been known.

1 98. The negligent actions of Defendants caused damage to Plaintiffs and Class
2 members, who are entitled to damages and other legal and equitable relief as a result.

3 **COUNT IX**
4 **(Fraud)**

5 99. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
6 paragraphs of this complaint.

7 100. Plaintiffs bring this claim individually and on behalf of the members of the
8 proposed Class and California and New York Subclasses against Defendants.

9 101. As discussed above, Defendants provided Plaintiffs and Class members with false or
10 misleading material information and failed to disclose material facts about the CamelBak eddy
11 being “spill-proof.” These misrepresentations and omissions were made with knowledge of their
12 falsehood.

13 102. The misrepresentations and omissions made by Defendants, upon which Plaintiffs
14 and Class members reasonably and justifiably relied, were intended to induce and actually induced
15 Plaintiffs and Class members to purchase the CamelBak eddy.

16 103. The fraudulent actions of Defendants caused damage to Plaintiffs, Class members,
17 and Subclass members who are entitled to damages and other legal and equitable relief as a result.

18 **COUNT X**
19 **(Violation of New York’s General Business Law § 349)**

20 104. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
21 paragraphs of this complaint.

22 105. Plaintiff Keller brings this claim individually and on behalf of the members of the
23 New York Subclass against Defendants.

24 106. New York’s General Business Law § 349 prohibits deceptive acts or practices in the
25 conduct of any business, trade, or commerce.

26 107. In its sale of goods throughout the State of New York, Defendants conduct business
27 and trade within the meaning and intendment of New York’s General Business Law § 349.
28

1 108. Plaintiff Keller and members of the New York Subclass are consumers who
2 purchased products from Defendants for their personal use.

3 109. By the acts and conduct alleged herein, Defendants have engaged in deceptive,
4 unfair, and misleading acts and practices, which include, without limitation, misrepresenting that
5 the CamelBak eddy is “spill-proof” as stated on its packaging.

6 110. The foregoing deceptive acts and practices were directed at consumers.

7 111. The foregoing deceptive acts and practices are misleading in a material way because
8 they fundamentally misrepresent the characteristics of the CamelBak eddy to induce consumers to
9 purchase same.

10 112. By reason of this conduct, Defendants engaged in deceptive conduct in violation of
11 New York’s General Business Law.

12 113. Defendants’ action is the direct, foreseeable, and proximate cause of the damages
13 that Plaintiff Keller and members of the New York Subclass have sustained from having paid for
14 and used Defendants’ products.

15 114. As a result of Defendants’ violations, Plaintiff Keller and members of the New York
16 Subclass have suffered damages because: (a) they would not have purchased the CamelBak eddy
17 on the same terms if they knew that the “spill-proof” claims were not true; (b) they paid a price
18 premium for the CamelBak eddy due to the “spill-proof” claims; and (c) the CamelBak eddy does
19 not have the characteristics, uses, benefits, or quantities as promised in that it is not “spill-proof.”

20 115. On behalf of himself and other members of the New York Subclass, Plaintiff Keller
21 seeks to recover his actual damages or fifty dollars, whichever is greater, three times actual
22 damages, and reasonable attorneys’ fees.

23 **COUNT XI**

24 **(Violation Of New York’s General Business Law § 350)**

25 116. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
26 paragraphs of this complaint.

27 117. Plaintiff Keller brings this claim individually and on behalf of the members of the
28 New York Subclass against Defendants.

1 118. New York’s General Business Law § 350 prohibits false advertising in the conduct
2 of any business, trade, or commerce.

3 119. Pursuant to said statute, false advertising is defined as “advertising, including
4 labeling, of a commodity ... if such advertising is misleading in a material respect.”

5 120. Based on the foregoing, Defendants have engaged in consumer-oriented conduct
6 that is deceptive or misleading in a material way which constitutes false advertising in violation of
7 Section 350 of New York’s General Business Law.

8 121. Defendants’ false, misleading, and deceptive statements and representations of fact
9 were and are directed to consumers.

10 122. Defendants’ false, misleading, and deceptive statements and representations of fact
11 were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

12 123. Defendants’ false, misleading, and deceptive statements and representations of fact
13 have resulted in consumer injury or harm to the public interest.

14 124. As a result of Defendants’ false, misleading, and deceptive statements and
15 representation of fact, Plaintiff Keller and the New York Subclass have suffered and continue to
16 suffer economic injury.

17 125. As a result of Defendants’ violations, Plaintiff Keller and members of the New York
18 Subclass have suffered damages due to said violation because: (a) they would not have purchased
19 the CamelBak eddy on the same terms if they knew that the “spill-proof” claims were not true; (b)
20 they paid a price premium for the CamelBak eddy due to the “spill-proof” claims; and (c) the
21 CamelBak eddy does not have the characteristics, uses, benefits, or quantities as promised in that
22 the CamelBak eddy is not “spill-proof.”

23 126. On behalf of himself and other members of the New York Subclass, Plaintiff Keller
24 seeks to recover his actual damages or five hundred dollars, whichever is greater, three times actual
25 damages, and reasonable attorneys’ fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendants, as follows:

- a. For an order certifying the nationwide Class the California Subclass, and the New York Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff Stewart as the representative of the Class and California Subclass, and Plaintiff Keller as representative of the Class and the New York Subclass, and further appointing Plaintiffs’ attorneys as Class Counsel to represent the Class, California Subclass, and New York Subclass Members;
- b. For an order declaring the Defendants’ conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiffs, the Class, and the Subclasses on all counts asserted herein;
- d. For compensatory 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 awarding Plaintiffs and the Class and Subclasses their reasonable attorneys’ fees and expenses and costs of suit;
- h. Damages, restitution, and/or disgorgement in an amount to be determined at trial; and
- i. For such other and further relief as the Court may deem proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury of all issues so triable.

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Dated: January 10, 2020

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Neal J. Deckant
 Neal J. Deckant

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Neal J. Deckant (State Bar No. 322946)
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Attorneys for Plaintiffs

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

I, Neal J. Deckant, declare as follows:

1. I am counsel for Plaintiffs, and I am a partner at Bursor & Fisher, P.A. I make this declaration to the best of my knowledge, information, and belief of the facts stated herein.

2. The complaint filed in this action is filed in the proper place for trial because Defendants have continuous and systematic contacts with the State of California as to essentially render them “at home” in this State, and Defendants’ principal places of business are located in this State. Moreover, Defendants have purposefully availed themselves of the laws and benefits of doing business in this State, and Plaintiff’s claims arise out of the Defendants’ forum-related activities. Furthermore, a substantial portion of the events giving rise to Plaintiffs’ claims occurred in this State, including Plaintiff Stewart’s purchase of two CamelBak eddy Water Bottles. Plaintiff Stewart also resides in this District.

3. Plaintiff Stewart alleges that on September 13, 2017, she purchased two 12 oz CamelBak eddy Water Bottles for \$13.00 and \$12.99 from Amazon.com. *See* Compl. ¶ 5. Prior to her purchase, Plaintiff reviewed the labeling, packaging, and marketing materials for the CamelBak eddys and saw the representation that they were purportedly “spill-proof.” *See id.* Plaintiff Stewart understood these claims to be representations and warranties by Defendants that the CamelBak eddy is purportedly “spill-proof” and free of defects that would cause water to run, flow, or fall out of the bottle (*i.e.*, leak). *See id.* Plaintiff Stewart reasonably relied on Defendants’ representation that the CamelBak eddy is “spill-proof” when she purchased the CamelBak eddys. *See id.* However, Plaintiff Stewart’s water bottles are defective because they leak and have actually leaked during prior use. *See id.*

4. Plaintiff Stewart alleges that Defendants’ misrepresentations played a substantial part, and so had been a substantial factor, in her decision to purchase the CamelBak eddys, in that “she would not have purchased the CamelBak eddys if she had known that they were not, in fact, ‘spill-proof.’” *See id.*

1 I declare under the penalty of perjury under the laws of the United States and the State of
2 California that the foregoing is true and correct, executed on January 10, 2020 at Walnut Creek,
3 California.

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6 */s/ Neal J. Deckant*

Neal J. Deckant
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EXHIBIT A



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SUITE 940
WALNUT CREEK, CA 94596
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NEAL J. DECKANT
Tel: 925-300-4455
Fax: 925-407-2700
ndeckant@bursor.com

January 10, 2020

Via Certified Mail – Return Receipt Requested

CamelBak Products, LLC
2000 S. McDowell Blvd.
Suite 200
Petaluma, CA 94954

CamelBak International, LLC
2000 S. McDowell Blvd.
Suite 200
Petaluma, CA 94954

Re: *Notice and Demand Letter Pursuant to U.C.C. §§ 2-313, 2-314, 2-607;
the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.; and
California’s Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, et seq.*

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action by CamelBak Products, LLC and CamelBak International, LLC (collectively, “CamelBak”) pursuant to U.C.C. § 2-607(3)(a) concerning breaches of express and implied warranties related to our clients, John Keller and Jessica Stewart, and a class of all similarly situated purchasers of CamelBak eddy Water Bottles, including the CamelBak eddy Water Bottle 32 oz, CamelBak eddy Water Bottle 25 oz, CamelBak eddy Water Bottle 20 oz, Camelbak eddy Kids Water Bottle 12 oz, CamelBak Kids Vacuum Insulated Stainless Water Bottle 12 oz, CamelBak eddy Kids Insulated Water Bottle 12 oz, CamelBak eddy Insulated Water Bottle 20 oz, CamelBak eddy Vacuum Insulated Stainless Water Bottle 20 oz, and CamelBak eddy Glass Water Bottle 24 oz (the “Class”). This letter also serves as a notice of violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, 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.

Our clients purchased CamelBak eddy Water Bottles, which CamelBak repeatedly misrepresented and warranted was “spill-proof.” Ours client understood this to mean that water would not run, flow, or fall out of their CamelBak eddy water bottles (*i.e.*, leak). However, due to a defect, CamelBak eddy Water Bottles leak, and have actually leaked for our clients during prior use. Accordingly, CamelBak violated the California CLRA and breached express and implied warranties made to our client and the Class. *See* U.C.C. §§ 2-313, 2-314; California Civil Code §§ 1750, *et seq.*

On behalf of our clients and the Class, we hereby demand that CamelBak immediately (1) issue a mandatory recall of CamelBak eddy Water Bottles and (2) make full restitution to all purchasers of the CamelBak eddy of all purchase money obtained from sales thereof.

We also demand that CamelBak preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the design, packaging, labeling, manufacturing, and redesign process for the CamelBak eddy Water Bottles;
2. All tests of the CamelBak eddy Water Bottles, whether performed by CamelBak or any other third-party entities;
3. All documents concerning the pricing, advertising, marketing, and/or sale of the CamelBak eddy Water Bottles;
4. All communications with customers involving complaints or comments concerning the CamelBak eddy Water Bottles;
5. All documents concerning communications with any retailer involved in the marketing or sale of the CamelBak Water Bottles; and
6. All documents concerning the total revenue derived from sales of the CamelBak eddy Water Bottles.

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 that as an indication that you are not interested in doing so.

Very truly yours,



Neal J. Deckant