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**WESLEY AFRICA, AND ALL OTHERS SIMILARLY  
SITUATED**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

WESLEY AFRICA, an individual, on  
behalf of himself and all others  
similarly situated,

Plaintiff,

vs.

VISION PATH, INC, d/b/a HUBBLE,  
a Delaware corporation; and  
DOES 1-25, inclusive

Defendants.

Case No.: 2:23-CV-04570-GW-MRW

**THIRD AMENDED COMPLAINT**

- 1. Violations of Civ. Code §1770, *et seq.***
- 2. Violations of Bus. & Prof. Code  
§§17200 and 17500**
- 3. Strict Products Liability –  
Manufacturing Defect**
- 4. Strict Products Liability – Design  
Defect**
- 5. Strict Products Liability – Failure to  
Warn**
- 6. Negligence – Products Liability**
- 7. Medical Negligence**
- 8. Negligence**
- 9. Fraud – Concealment**

**DEMAND FOR JURY TRIAL**

## **INTRODUCTION**

This lawsuit involves two business owners who knowingly, willfully and intentionally developed an entire contact lens company around a business model that they expressly knew, *from the very get-go*, violated well established laws and was inevitably going to hurt people. Instead of observing industry standards and heeding the advice of esteemed professionals who cautioned them, as early as 2015, about the illegality and harmfulness of their “get rich quick” scheme, Defendant consciously disregarded known, clear and very substantial risks in favor of turning a quick and easy profit. While the damage Defendant has done is widespread and stretches from coast to coast, the instant case is meant to prevent future similar harm and bring redress to the citizens of the State of California who, unfortunately, fell victim to Defendants’ fraudulent, deceptive and unlawful business practices.

## **PARTIES & JURISDICTION**

1. Plaintiff WESLEY AFRICA (“Plaintiff”) is an individual who at all times relevant hereto was a resident of the County of Ventura, in the State of California.

2. Defendant VISION PATH, INC. d/b/a HUBBLE (“Defendant” or “Hubble”) is a corporation that at all times relevant hereto was incorporated under the laws of the State of Delaware, with its principal place of business in New York. Upon information and belief, Defendant is, and at all times relevant hereto was, or if not should have been, licensed and/or certified pursuant to Division 2 (commencing with Section 500) of the California Business and Professions Code (“Bus. & Prof.”) as a Nonresident Ophthalmic Lens Dispenser. At all times relevant hereto, Defendant was subject to the provisions, requirement and obligations set forth in, among other applicable laws, the Contact Lens Consumer Fairness Act (15 U.S.C. §7601 *et seq.*), and the Contact Lens Rule (16 C.F.R. §315, *et seq.*).

3. Plaintiff is ignorant of whether or how many other fictitious names were used by Defendant in California and/or the United States during the Class Period

1 (defined below), but it is believed other businesses were or may have been operated  
2 under different names, by Defendant, but did business in the same illegal manner, as  
3 alleged herein.

4 4. Plaintiff does not know the true names and capacities, whether  
5 individual, corporate, associate, or otherwise of defendant DOES 1 through 20,  
6 inclusive. Such fictitious defendants are sued pursuant to the provisions of CCP §474.  
7 Plaintiff is informed and believes, and based upon such information and belief alleges,  
8 that each fictitious defendant was in some way responsible for, participated in, or  
9 contributed to the matter and things of which Plaintiff complains herein, and in some  
10 form and under some theory, is or are subject to liability therefor. When the exact  
11 nature and identity of such fictitious defendants is determined, Plaintiff will seek leave  
12 to amend this Complaint to set forth same.

13 5. All of the wrongs and liabilities alleged herein occurred and/or arose in  
14 the County of Ventura, in the State of California. As such, this Court has jurisdiction  
15 over this action pursuant to Code of Civil Procedure (“CCP”) §410.10, and venue is  
16 proper in the Superior Court of California, for the County of Ventura, pursuant to CCP  
17 §395.5.

#### 18 **GENERAL ALLEGATIONS**

19 6. At all times relevant hereto, Defendant owned and operated a business  
20 that manufactures and sells contact lenses to consumers, like Plaintiff, who are  
21 prescribed contact lenses through their own eye doctors. As a result of the very nature  
22 of Defendant’s business, Defendant is or reasonably should be familiar with and  
23 operating in compliance with, among other applicable laws, the Fairness to Contact  
24 Lens Consumers Act (15 U.S.C. §7601 *et seq.*) (hereinafter “FCLCA”), and the  
25 Contact Lens Rule (16 C.F.R. §315, *et seq.*) (hereinafter “CL Rule”). Moreover, as a  
26 result of the business/trade in which they are engaged, Defendant owes their  
27 consumers a duty of reasonable care in the handling, verifying, and filling of its  
28 customer’s contact lens prescriptions, as well as in the sale of their lenses.

1           7. As a seller of contact lenses bound by both the FCLCA and CL Rule,  
2 Defendant agreed to or is required to verify all prescriptions it fills prior to filling  
3 them, and is required to fill all prescriptions, in accordance with the requirements of,  
4 *inter alia*, 15 U.S.C. §7603 *et seq.* and/or 16 C.F.R. §315.5.

5           8. Defendant sells its contact lenses to consumers through its subscription  
6 service. Consumers, like Plaintiff, are lured into subscribing to Defendant's service  
7 with a risk-free trial whereby they receive a one-month supply of contact lenses for  
8 \$1.00 and, after that month, are enrolled in a monthly subscription service that  
9 automatically renews each month ("Subscription Service"). Defendant advertises this  
10 free trial as one that can be canceled at any time, including before the first month  
11 during which consumers are billed for their monthly subscription. Upon information  
12 and belief, at all times relevant hereto, the monthly subscription price for Defendant's  
13 services was between \$30-39 per month ("Subscription Dues").

14           9. Once enrolled in Defendant's Subscription Service, consumers, like  
15 Plaintiff, submit to Defendant a contact lens prescription from their personal medical  
16 providers to be filled by Defendant. These prescriptions from personal medical  
17 providers typically prescribe brands of contact lenses *not* made by Defendant. For  
18 example, in Plaintiff's case, his doctor prescribed him Acuvue brand lenses. These  
19 prescriptions also prescribe specific "base curve", "diameter", "power", and other  
20 values that correspond directly to each consumer's respective eye sizes and vision  
21 strengths. In Plaintiff's case, his doctor prescribed him lenses with a base curve value  
22 of 8.8 and a diameter value of 14.0.

23           10. Without advising consumers prior to filling their prescriptions and/or  
24 sending them their lenses, Defendant fills their prescriptions using Defendant's own  
25 brand of contact lenses instead of the brand actually prescribed by the consumers'  
26 personal medical providers. Moreover, without first advising consumers prior to  
27 filling their prescriptions and/or sending them their lenses, Defendant only delivers to  
28 consumers contact lenses with a base curve value of 8.6 and a diameter value of 14.2,

1 regardless of the base curve and/or diameter values prescribed by each consumer's  
2 respective medical provider. To make matters worse, Defendant takes no steps to  
3 verify a proper fit of their lenses, and/or confirm that no complications exist, once  
4 each consumer begins to wear and use Hubble contact lenses. Nor do they warn  
5 consumers of the dangers and safety risks associated with using a contact lens not  
6 properly fit or filled in accordance with their prescribing doctor's prescription.  
7 Defendant does not care about the safety, wellbeing or eyesight of their consumers as  
8 long as consumers pay their monthly Subscription Dues.

9 11. Defendant designed and, at all times relevant hereto, implemented a  
10 system for verifying prescriptions that was fatally flawed and knowingly, intentionally  
11 and fraudulently meant to skirt the verification requirements of the FCLCA and CL  
12 Rule. Specifically, in order to verify consumers' prescriptions, Defendant Hubble  
13 calls prescribers' offices between 5:00PM-8:00AM, and often on weekends, using a  
14 pre-recorded, automated voice message (hereinafter "Robocall(s)"). The Robocalls  
15 use a robotic voice with purposefully strange pronunciations and peculiar word  
16 phrasing, which are meant to confuse the listener. In some instances, music (like hold  
17 music) plays over the Robocall's recorded message so the listener cannot hear or  
18 understand what is being said. The messages left by these Robocalls frequently fail to  
19 include required information, such as the patient's name or the brand of lens originally  
20 prescribed. The messages left by these Robocalls are also frequently gargled, choppy  
21 or otherwise cutoff at the exact points in each call where certain required information  
22 – like the patient's name, prescription information, or Defendant's company name or  
23 call-back number – is supposedly provided. On the off chance that the call-back  
24 number was decipherable for a prescriber and the prescriber calls back, the phone  
25 number provided by Defendant leads prescribers to another automated, pre-recorded  
26 line that automatically disconnected the call instead of connecting the prescriber to a  
27 live person or voicemailbox, so that the prescriber could either verify, deny or modify  
28 the prescription in question.

1           12. At all times relevant hereto, Defendant has also maintained a practice of  
2 seeking prescription verifications from doctors who were not actually the respective  
3 consumer's prescriber, and sometimes from persons who were not doctors at all. Since  
4 the Robocalls used by Defendant were often gargled and unintelligible at the point  
5 where their call back number was provided, or otherwise directed prescribers to call  
6 an automated line that immediately hung up on them, this ensured that Defendant  
7 would never receive a denial from the actual prescriber in response to a prescription  
8 verification request.

9           13. Regardless of whether they called the correct prescriber's office,  
10 Defendant systematically left these unintelligible automated voice messages between  
11 5:00PM-8:00AM, and often on weekends, as a further way of ensuring that no  
12 prescribing doctor would ever call back (or other respond in a manner deemed  
13 acceptable by the FCLCA or CL Rule) within eight (8) regular clock hours (as  
14 opposed to "Business Hours" as that term is defined under the FCLCA or CL Rule.

15           14. In addition to the foregoing and at all times relevant hereto, in some  
16 instances, Defendant took no steps whatsoever to verify a consumer's prescription,  
17 even though they were required to do so by law or otherwise voluntarily agreed to.

18           15. In addition to the foregoing and at all times relevant hereto, Defendant  
19 has maintained a custom and practice of not verifying prescriptions that have expired.  
20 As a result, consumers continue to receive prescription lenses as part of their  
21 Subscription Service, even though the prescription that is being filled for them by  
22 Defendant has expired and, therefore, is no longer valid. By way of example, in  
23 Plaintiff's case, his prescription was written on February 4, 2020, and expired on  
24 February 4, 2021. He submitted his first *and only* prescription to Defendant on or  
25 around August 20, 2020, yet he continued receiving the exact same prescription,  
26 without any reverification by Defendant, through the time he canceled his  
27 Subscription Service in September of 2021. Upon information and belief, Defendant  
28 maintained this same practice with respect to all consumers.

1           16. Defendant expressly knew as early as 2015 that the practices and  
2 verification methods described in ¶¶10-15, above, were unlawful, fraudulent and  
3 exposed consumers to a substantial risk of serious physical and financial harm.

4           17. Plaintiff and consumers paid their monthly Subscription Dues for  
5 Defendant's Subscription Service believing that they were receiving (or going to  
6 receive) the correct, properly fitted contact lenses pursuant to prescriptions written by  
7 their personal medical providers, which were properly verified and filled by  
8 Defendant. They would not have purchased or maintained a Subscription Service from  
9 Defendant or used Defendant's lenses had they been informed of Defendant's practice  
10 of not properly verifying the contact lens prescriptions; substituting consumers'  
11 prescribed brands for Hubble brand lenses; and/or, selling lenses with different base  
12 curve, diameter, power, and/or other values as compared to those same values as  
13 prescribed by their doctors. Moreover, neither Plaintiff nor consumers had any reason  
14 to know, or way of knowing, that Defendant's verification process did not comply  
15 with industry standards or applicable law because Plaintiff and consumers were not  
16 familiar with the laws and requirements applicable to contact lens prescriptions and,  
17 therefore, reasonably relied upon Defendant's representations. Similarly, Plaintiff had  
18 no way of knowing that Defendant was concealing facts which would be material to  
19 their decision to purchase contact lenses from Defendant. Had Plaintiff and consumers  
20 known of Defendant's misrepresentations and concealment, they would not have  
21 purchased contact lenses from Defendant.

22           18. Defendant maintained the practices described above with actual  
23 knowledge that they were filling prescriptions that were not validly fit or verified in  
24 accordance with applicable law and, therefore, could not be filled pursuant to the  
25 FCLCA and CL Rule. Defendant also knew that it was filling prescriptions that were  
26 substantially different (with respect to brand, base curve, diameter, etc.) than those  
27 which were prescribed by each consumer's doctor. By filling those prescriptions as  
28 though they had been properly verified, Defendant was purposefully and knowingly



1 misrepresenting and/or concealing that the consumer's respective lens prescription  
2 had been lawfully verified and was filled exactly as prescribed by his/her treating  
3 doctor. Thus, Defendant acted with the intent to continue receiving from Plaintiff and  
4 consumers the dues collectable from their Subscription Service despite never actually  
5 providing the goods and/or services for which Plaintiff and consumers agreed to pay.  
6 Not only did Defendant's entire business model and established process(es) for filling  
7 prescriptions violate federal regulations and applicable statutory law, but both fell  
8 below the norms and standards governing the contact lens industry.

9       19. In short, Defendant created and implemented a website, ordering process,  
10 and verification system that effectively substituted one-size-fits-all, Hubble-brand  
11 contact lenses for the lenses originally prescribed by the consumers' eye care  
12 practitioners, thereby violating both the FCLCA and the CL Rule. Defendant led  
13 consumers to believe they had provided Hubble with their relevant prescription  
14 information, and that Hubble would communicate with the consumers' eye care  
15 practitioners to verify and ensure consumers received lenses with their proper  
16 prescription, and then used verification practices that made it unduly difficult (and  
17 sometimes impossible) for prescribers to confirm that consumers' prescription  
18 information was correct, or to deny the verification when the prescription was not  
19 correct. At no point did Defendant ever disclose that Plaintiff or consumers would  
20 receive a standard, one-size-fits-all, Hubble-brand lens instead of the brand, size and  
21 power prescribed by their doctor. All of Defendant's conduct, as explained above and  
22 hereinbelow, was likely to deceive its customers.

23       20. Contact lenses are an important mechanism that enable people, who are  
24 hard of sight, to see. They are also placed inside the consumer's body when in use. As  
25 a result of both factors and many others, consumers like Plaintiff have an extremely  
26 strong interest in knowing both what product they are using, and that it was the correct  
27 product prescribed by their doctor, when transacting business with their contact lens  
28 provider. Plaintiff and consumers also have a strong interest in knowing that contact



1 lenses prescribed by licensed medical professionals are properly fit and/or verified by  
 2 the entity filling their prescriptions prior to being used. All of these facts are material  
 3 to Plaintiff's and other consumers' decision on whether or not to purchase lenses from  
 4 one vendor versus another. Misrepresenting or concealing such material facts is not  
 5 only unlawful, but unfair, deceptive, dangerous, and reckless. Such conduct poses a  
 6 direct threat to the health and safety of Plaintiff and consumers.

7 21. With all of the knowledge of the wrongfulness of their conduct described  
 8 herein (see, *inter alia*, ¶¶10-16 above), and with knowledge of the aforementioned  
 9 risks associated with such conduct, Defendant ignored those risks in favor of earning  
 10 a higher profit from its consumers, including Plaintiff.

#### 11 **FACTS SPECIFIC TO PLAINTIFF'S INDIVIDUAL CLAIMS**

12 22. Plaintiff suffered eye and neurological injuries after beginning to use  
 13 Hubble contact lenses he received from Defendant as part of a Subscription Service.  
 14 Specifically, he has suffered and/or currently continues to suffer from, among other  
 15 conditions: headaches/migraines, facial numbness and swelling, eye itchiness, eye  
 16 dryness, eye irritation, dizziness, pain and blurred vision. Plaintiff even lost his vision  
 17 completely, for a brief and temporary period. While he has regained full vision in both  
 18 eyes, he still experiences and deals with many, if not all, of the conditions explained  
 19 above.

20 23. Plaintiff was eventually diagnosed with contact-related ulcers and/or  
 21 abrasions. On February 6, 2022, he received an email from Hubble that stated:

22 "Dear Hubble customer:

23 We are writing as part of a settlement with the Federal Trade Commission  
 24 (FTC) because, as a customer of Hubble (Vision Path, Inc.), you may have  
 25 received Hubble contact lenses that were not fit on your eyes or prescribed.  
 26 The FTC says that we may not have properly verified your prescription with  
 your doctor before sending you contact lenses.

27 You shouldn't wear contact lenses that weren't prescribed for you or  
 28 properly fitted for your eyes because it could cause injuries or other

1 complications. And you should always check with your eye doctor before  
2 trying a new type or brand of contact lenses.

3 For more information, visit [www.ftc.gov/contacts](http://www.ftc.gov/contacts). To learn more about the  
4 FTC's case, you can visit here.

5 Sincerly [sic],  
6 Steve Druckman, CEO"

7 24. This email marked the very first time Plaintiff was provided with any  
8 information that his eye injuries and neurological issues might have been related to  
9 his purchase of contact lenses from the Defendant.

10 25. As a result of the injuries and conditions described hereinabove, Plaintiff  
11 has sought and received treatment from numerous eye doctors, including optometrists  
12 and ophthalmologists, thus incurring substantial medical expenses for treatment and  
13 medications he has been prescribed. His enjoyment of life has sharply decreased as a  
14 result of, among many other factors related to his eye injuries/conditions: having to  
15 be bed ridden for lengthy periods of time; not being able to spend and/or enjoy time  
16 with his wife and children (who are 3 and 6 years old); not being able to socialize with  
17 his friends or family; not being able to drive; not being able to participate in his  
18 favorite hobby of Brazilian ju-jitsu (due to the risks of being poked in the eye while  
19 sparring/competing) and other recreational activities he previously enjoyed, for  
20 several months; and not being able to perform videography services for private clients  
21 due to pain, discomfort and other issues that arise when he looks at computer screens  
22 for long periods.

23 26. At all relevant times, Plaintiff has been employed as a manufacturer  
24 trainer at a pharmaceutical company. He has missed substantial work due to his  
25 injuries and inability to see, and in order to attend doctor visits related to his eye  
26 conditions. Upon his return, he was temporarily placed on light duty as a result of his  
27 eye issues. His job requires that he look at computer monitors/screens for much of his  
28 workday, but doing so causes him pain, ranging from discomfort on some days, to

1 debilitating pain on others; as well as headaches. Moreover, Plaintiff's job requires  
2 that he work in a sterile environment, which he cannot do, as open wounds and/or  
3 infections are not allowed in the sterile environment due to the risks of contamination.  
4 As a result of the foregoing, Plaintiff has been unable to progress in his career as he  
5 had previously planned or hoped prior to using Defendant's contact lenses and has  
6 consequently earned less income than he would have but for Defendant's conduct. In  
7 addition, Plaintiff's inability to perform videography services for his private clients  
8 has caused him harm in the form of lost income he would have earned if not for  
9 Defendant's actions.

10 27. Plaintiff's eye injuries and continuing issues are a direct and proximate  
11 result of Defendant's conduct described above, including, but not limited to, their  
12 failure to: properly verify Plaintiff's prescription; reverify it after it had expired; fit  
13 him in accordance with the law and industry standards; and advise him that they were  
14 filling his prescription with Hubble, and not Acuvue, brand contact lenses.

15 28. When he originally enrolled in Defendant's Subscription Service,  
16 Plaintiff had no reason to know or way of knowing that the brand of contact lenses he  
17 would be receiving would be Hubble brand lenses as opposed to the brand prescribed  
18 by his treating doctor.

19 29. When he originally enrolled in Defendant's Subscription Service,  
20 Plaintiff had no reason to know or way of knowing that Defendant's business custom  
21 and practice was to not verify consumer's prescriptions – as explained above – was  
22 unlawful and designed and implemented in such a way that guaranteed verification of  
23 prescriptions regardless of whether they were actually properly verified by the  
24 consumer's respective treating doctor. Nor did Plaintiff have any reason to know or  
25 way of knowing that Defendant never verified prescriptions upon their expiration, as  
26 required by the FCLCA and CL Rule.

1           30. Had Plaintiff been aware of the facts set forth above, Plaintiff would  
2 never have enrolled in Defendant's Subscription Service or used the contact lenses  
3 provided by Hubble.

4                                   **CLASS ACTION ALLEGATIONS**

5           31. Class Definition. Plaintiff seeks to certify and represent the following  
6 class: All persons residing in California who, during the Class Period, purchased and  
7 paid for a Subscription Service from Defendant. These persons shall hereinafter be  
8 referred to as the "Class" or "Class Members" as context requires. The period of time  
9 between April 25, 2019, and the date upon which this case is settled or a judgment is  
10 entered, shall hereinafter be referred to as the "Class Period."

11           32. Numerosity. The members of the class are so numerous that joinder of  
12 all such persons is impracticable and the disposition of their claims as a class will  
13 benefit the parties and the court. While the exact number of Class Members is  
14 unknown to Plaintiff at this time and can only be ascertained through appropriate  
15 discovery, Plaintiff is informed and believes, and on that basis alleges, that the Class  
16 consists of at least 200 members.

17           33. Ascertainability. The proposed Class can easily be ascertained through  
18 records that Defendant is required to maintain for a period of three (3) years, pursuant  
19 to 16 C.F.R. §315.5(h)(1-4) and 15 U.S.C. §7603(b). Moreover, the records must be  
20 available for inspection by the Federal Trade Commission and Defendant has already  
21 been the subject of at least one (1) recent FTC investigation. Thus, the identities of  
22 Class members and Subclass members over the last four (4) years or more are, or by  
23 law, should be ascertainable.

24           34. Commonality. There is a well-defined community of interest in questions  
25 of law involving and affecting the putative Class and proposed Subclasses, in that  
26 Defendant – on a class-wide basis – violated in the same manner with respect to all  
27 Class and/or Subclass members the same local, state and federal laws governing the  
28

1 Contact Lens industry. Questions of law common to the Class as a whole include, but  
2 are not limited to:

- 3 a. Whether Defendant violated 15 U.S.C. §7601 *et seq.* and/or 16 C.F.R.  
4 §315, *et seq.*, by failing to properly verify Class Members' prescriptions;
- 5 b. Whether, by failing to properly verify Class Members' prescriptions,  
6 Defendant engaged in unfair or unlawful conduct, or conduct likely to  
7 deceive consumers in violation of the California Consumer Legal  
8 Remedies Act (commencing at Title 1.5 of the California Civil Code  
9 ("CLRA"));
- 10 c. Whether, by failing to properly verify Class Members' prescriptions  
11 prior to filling them, Defendant engaged in unfair, unlawful or fraudulent  
12 business practices in violation of California Business & Professions  
13 Code §§17200 and/or 17500, *et seq.*;
- 14 d. Whether Defendant violated 15 USC §7603 *et seq.* and or 16 C.F.R.  
15 §315.5(e-f) *et seq.* by altering contact lens prescriptions from what was  
16 written on Class Members' prescriptions by their prescriber;
- 17 e. Whether Defendant violated 15 U.S.C. §7603 *et seq.* and/or 16 C.F.R.  
18 §315.5(e-f), *et seq.*, by filling prescriptions with contact lenses of a brand  
19 not prescribed by the Class Member's respective treating physician;
- 20 f. Whether, by filling prescriptions with contact lenses of a brand not  
21 prescribed by the Class Member's respective treating physician,  
22 Defendant engaged in unfair, unlawful or fraudulent business practices,  
23 or conduct likely to deceive consumers in violation of the CLRA;
- 24 g. Whether, by filling prescriptions with contact lenses of a brand not  
25 prescribed by the Class Member's respective treating physician,  
26 Defendant engaged in unfair, unlawful or fraudulent business practices  
27 in violation of California Business & Professions Code §§17200 and/or  
28 17500, *et seq.*; and,

1 h. Whether Defendant violated 15 U.S.C. §7601 *et seq.* and/or 16 C.F.R.  
2 §315, *et seq.*, by failing to properly fit Class Members for lenses prior to  
3 filling their prescriptions.

4 35. Typicality. Plaintiff's claims are typical of the claims of the Class  
5 Members. Plaintiff and Class Members were both subjected to the same wrongful acts,  
6 including misrepresentations, omissions, concealment, business practices, and/or  
7 conduct of Defendant as alleged herein. As a consequence, Plaintiff has sustained  
8 injuries, damages and harm similar to those sustained by the Class.

9 36. Adequacy of Representation. The Plaintiff can adequately represent all  
10 members of the class. Plaintiff maintains no interests antagonistic or diametrically  
11 opposed to those of the Class. Moreover, Counsel for Plaintiff is highly experienced  
12 in litigating and managing class actions and will competently represent Plaintiff's and  
13 the Class' interests to the fullest extent.

14 37. Superiority of Class Adjudication. A single class action is superior to  
15 numerous individual actions as a means of adjudicating the claims alleged herein.  
16 Plaintiff is informed and believes, and on that basis alleges, that the persons in the  
17 putative class are so numerous that joinder of all such persons is impracticable and  
18 that the disposition of their claims as a class will benefit the parties and the Court.  
19 Common questions of law or fact affecting the class in its entirety predominate over  
20 questions affecting only individual members such that a class action is the superior  
21 method for fairly and efficiently adjudicating the instant controversy. Moreover, the  
22 prosecution of separate actions by individual Class Members would create a risk of  
23 inconsistent and/or varying adjudications with respect to the individual members of  
24 the Class, establishing incompatible standards of conduct for Defendant and resulting  
25 in the impairment of the Class' rights.

26 ///

27 ///

28 ///

**FIRST CAUSE OF ACTION**

**VIOLATION OF CLRA**

***Civil Code §1770, et seq.***

***(Alleged by Plaintiff on behalf of himself and the Class, against Defendant)***

38. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

39. Plaintiff and Class Members purchased Subscription Services from Defendant through which they were to acquire from Defendant contact lenses as prescribed by their respective treating physicians.

40. When filling monthly prescriptions as part of Plaintiff's and Class Members' Subscription Services, Defendant failed to disclose that they had not verified, or otherwise misrepresented that they had properly verified, Plaintiff's and Class Member's prescriptions prior to filling them. As a result of the foregoing, Defendant misrepresented the source, sponsorship, approval or certification of goods, misrepresented that their contact lenses were of a particular standard, quality or grade with knowledge that they were not, and/or misrepresented the certification of those goods by another, in violation of, *inter alia*, Civil Code §1770(a)(2-3), (5) and (7). Defendant also advertised their services with the intent not to sell them as advertised, in violation of Civil Code §1770(a)(9). Moreover, that a prescription has been properly verified in accordance with the law and filled in accordance with their doctor's prescription, is a fact material to Plaintiff's decision to purchase and maintain a Subscription Service from Defendant.

41. 15 USC §7603(c) provides, in relevant part, that "when seeking verification of a contact lens prescription, a seller shall provide the prescriber with the following information: (2) Contact lens power, *manufacturer*, base curve or appropriate designation, and diameter when appropriate."

42. 15 USC §7603(f) states that "[a] seller may not alter a contact lens prescription. Notwithstanding the preceding sentence, if the same contact lens is



1 manufactured by the same company and sold under multiple labels to individual  
2 providers, the seller may fill the prescription with a contact lens manufactured by that  
3 company under another label.”

4 43. 16 C.F.R. §315.5(f) states: “A seller may not alter a contact lens  
5 prescription. In the context of prescription verification, alteration includes, but is not  
6 limited to, providing the prescriber with the name of a manufacturer or brand other  
7 than that specified by the patient’s prescription, unless such name is provided because  
8 the patient entered or orally provided it when asked for the manufacturer or brand  
9 listed on the patient’s prescription. Notwithstanding the preceding sentences, for  
10 private label contact lenses, a seller may substitute for contact lenses specified on a  
11 prescription identical contact lenses that the same company manufactures and sells  
12 under different labels.”

13 44. When filling monthly prescriptions as part of Plaintiff’s and Class  
14 Members’ Subscription Services, Defendant failed to disclose to Plaintiff and Class  
15 Members or their prescribing doctors that they would be receiving Hubble lenses  
16 regardless of the type of lenses they were actually prescribed. By engaging in the  
17 conduct described above, Defendant advertised its services with an intent not to sell  
18 them as advertised, and concealed from Plaintiff and Class Members information  
19 material to the transactions in question which they were required by law to disclose,  
20 all in violation of, *inter alia*, Civil Code §1770(a)(9), *et seq.*

21 45. At all times relevant hereto, Plaintiff and Class Members paid Defendant  
22 a monthly subscription fee of between \$30-39 due to Defendant’s use and/or  
23 employment of the practices described above, all of which are declared to be illegal  
24 by Civil Code §1770 *et seq.* It follows that Plaintiff and Class Members suffered  
25 financial harm each and every month that they paid Defendant a subscription fee and  
26 received a set of contact lenses that were not the brand they were originally prescribed,  
27 not verified pursuant to 15 USC §7603, 16 C.F.R §315.5, or both. The amount of said  
28 harm shall be determined according to proof at trial.

1           46. Defendant's acts and practices, as herein described, present a continuing  
2 threat to members of the public in that Defendant continues to engage in these unfair  
3 and deceptive practices and will not cease unless and until this Court issues an  
4 injunction.

5           47. Both Plaintiff and Class Members suffered harm and that harm was a  
6 direct and proximate result of Defendant's conduct described hereinabove.

7           48. As a result of the foregoing, Defendant should be enjoined from engaging  
8 in the unfair, deceptive and unlawful business practices described hereinabove.

9           49. Defendant had actual knowledge that filling an unverified contact lens  
10 prescription was unlawful and hazardous to Plaintiff's health; that purporting to verify  
11 prescriptions the way they did, as explained above, did not comply with the law; and,  
12 that filling a contact lens prescription using a brand not prescribed by the consumer's  
13 doctor was both illegal and presented a serious health and safety threat of harm to the  
14 person using the lenses. The high probability of harm was known in advance to  
15 Defendant's officers, directors, and/or managing agents, who nevertheless performed,  
16 ordered, authorized, and/or ratified the aforementioned despicable conduct. Upon  
17 information and belief, these individuals include, but are not limited to, Defendant's  
18 cofounders Jesse Horwitz ("Horwitz") and Benjamin Cogan ("Cogan"), CEO Steve  
19 Druckman, Secretary Joseph Vladeck, and Chief Financial Officer Griffin Chase. By  
20 filling those prescriptions each and every month and collecting dues from Plaintiff  
21 and the Class, Defendant engaged in conduct that was oppressive, fraudulent,  
22 despicable, and carried out with a willful and knowing disregard of the rights, health  
23 and safety of Plaintiff and the Class. As such, Plaintiff and the Class are entitled to an  
24 award of punitive damages in an amount to be determined according to proof at trial.

25           50. On or around June 30, 2023, Plaintiff, through his attorneys of record,  
26 delivered to Defendant a notice and demand pursuant to Civil Code §1782(a). As of  
27 the filing of this First Amended Complaint, Defendant has failed to make an  
28 appropriate repair, correction, or replacement, or to provide any other reasonable

remedy, in response to Plaintiff's June 30, 2023 notice and demand. Accordingly, this First Amended Complaint is being filed pursuant to Civil Code §1782(d).

## **SECOND CAUSE OF ACTION**

### **UNFAIR AND UNLAWFUL BUSINESS PRACTICES**

***B&P Code §§17200, 17500, et seq.***

***(Alleged by Plaintiff on behalf of himself and the Class, against Defendant)***

51. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

52. In transacting business with Plaintiff and Class Members, Defendant engaged in acts that are unlawful, unfair, fraudulent, deceptive, and/or anti-competitive in violation of B&P Code §17200 et seq. Said unlawful, unfair, fraudulent, deceptive, and/or anti-competitive conduct included, but was not limited to, the following:

- a. Filling prescriptions that were not properly verified, or reverified after expiring, in accordance with the requirements of 15 U.S.C. §7603, *et seq.*, and/or 16 C.F.R. §315.5 and/or other applicable law;
- b. Establishing, implementing and maintaining a business custom and practice for verifying (or purporting to verify) contact lens prescriptions whereby Defendant calls prescribers seeking verification of prescriptions after regular business hours (as defined in, and in violation of, 16 C.F.R. §§315.2, 315.5 *et seq.*) using a purposefully unintelligible automated voice recording (in violation of 16 C.F.R. §315.5(d));
- c. Unilaterally, without advising Plaintiff or Class Members, filling prescriptions with Hubble brand lenses instead of the brand of lens actually prescribed, thereby deceiving Plaintiff and Class Members and altering their prescriptions in violation of, *inter alia*, 15 U.S.C. §7603, *et seq.*;

1 d. Failing to identify the brand of contact lens that they were providing  
2 to the consumer in violation of 15 USC §7603(c) and/or (f), and/or 16  
3 C.F.R. § 315.5(f);

4 e. Unilaterally altering (or otherwise disregarding) the base curve,  
5 diameter, power, and/or other values on consumers' actual  
6 prescriptions and filling unilaterally modified prescriptions, rather  
7 than the ones actually written by the consumer's respective prescriber,  
8 in violation of 15 USC §7603(c) and/or (f), and/or 16 C.F.R. §  
9 315.5(f);

10 53. Defendant's use of various forms of advertising media to advertise, call  
11 attention to or give publicity to the sale of their goods and services, and other practices,  
12 as set forth above, which are not as advertised or as otherwise represented, constitutes  
13 unfair competition, unfair, deceptive, untrue, or misleading advertising, under B&P  
14 Code §17500.

15 54. As a result of their unlawful and/or unfair business practices Defendant  
16 has realized and continues to realize the unlawful monetary gains and unfair benefits  
17 accrued at the expense of Plaintiff's and Class Members' Subscription Service dues  
18 and fees, in an amount according to proof at trial. In addition, Plaintiff and Class  
19 Members have suffered actual harm in the form of the dues and fees they paid for the  
20 Subscription Services and contact lenses that were supplied in violation of the law.

21 55. Defendant has been/is continuing to be unjustly enriched through their  
22 wrongful conduct as alleged herein.

23 56. Plaintiff and the Class are entitled to relief, including full restitution  
24 and/or disgorgement of all revenues, earnings, profits, compensation and benefits  
25 which may have been obtained by Defendant as a result of the business acts or  
26 practices alleged hereinabove, and an order enjoining Defendant to cease and desist  
27 from engaging in those same practices.

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1           57. In addition, Defendant's unfair and unlawful business practices listed  
2 above each pose a serious and substantial risk to the health, safety and financial  
3 wellbeing of every consumer who uses their lenses. In fact, both Plaintiff and  
4 numerous members of the Class have already suffered financial, physical and other  
5 bodily harm and will continue to do so in the future, as a result of Defendant's unfair  
6 and unlawful conduct. Other members of the public are highly likely to suffer  
7 financial, physical and other bodily harm similar to that which Plaintiff has (and many  
8 Class Members likely have) already suffered and reasonably may continue to suffer if  
9 Defendant is not enjoined from engaging in such unfair and unlawful conduct in the  
10 future. Consequently, there is no adequate remedy available at law to curtail and  
11 prevent such unfair and unlawful conduct from occurring. An injunction enjoining  
12 such harmful and threatening practices is the only such remedy.

13           58. Defendant had actual knowledge that filling an unverified contact lens  
14 prescription was unlawful and hazardous to Plaintiff's health; that purporting to verify  
15 prescriptions the way it did, as explained above, did not comply with the law; and,  
16 that filling a contact lens prescription using a brand and/or fit not prescribed by the  
17 consumer's doctor was both illegal and presented a serious health and safety threat to  
18 the person using the lenses. By filling those prescriptions each and every month and  
19 collecting dues from Plaintiff and the Class, Defendant engaged in conduct that was  
20 oppressive, fraudulent, despicable, and carried out with a willful and knowing  
21 disregard of the rights, health and safety of Plaintiff and the Class. As such, Plaintiff  
22 and the Class are entitled to an award of punitive damages in an amount to be  
23 determined according to proof at trial.

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**THIRD CAUSE OF ACTION**

**STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT**

***(Alleged by Plaintiff on behalf of himself, against Defendant)***

59. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

60. Defendant manufactured, designed, assembled, tested or failed to test, inspected or failed to inspect, packaged, labeled, fabricated, analyzed, distributed, merchandised, recommended, advertised, promoted, marketed, and/or sold the subject contact lenses.

61. At all times relevant herein, the subject contact lenses designed, manufactured and sold by Defendant contained a manufacturing defect insofar as it differed from the manufacturer's designs, specifications and/or from other typical units of the same product line when it left Defendant's possession. Specifically, the subject contact lenses lacked sufficient and effective materials and lubrication, thus exposing consumers or users to unreasonably high risk of eye injury, blindness and other physical and neurological injuries resulting from the use of defective contact lenses.

62. Defendant knew or reasonably should have known that the subject contact lenses contained a manufacturing defect.

63. Plaintiff was not aware of said manufacturing defect at any time prior to the injuries caused by using the defective contact lenses.

64. The manufacturing defect in the subject contact lenses was a substantial factor in causing Plaintiff's harm, which harm includes, but is not limited to, serious bodily injuries, lost wages and emotional distress.

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**FOURTH CAUSE OF ACTION**

**STRICT PRODUCTS LIABILITY – DESIGN DEFECT**

***(Alleged by Plaintiff on behalf of himself, against Defendant)***

65. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

66. Defendant manufactured, designed, assembled, tested or failed to test, inspected or failed to inspect, packaged, labeled, fabricated, analyzed, distributed, merchandised, recommended, advertised, promoted, marketed, and/or sold the subject contact lenses.

67. At all times relevant herein, the subject contact lenses contained a design defect insofar as they did not perform as safely as an ordinary consumer or user, including Plaintiff, would have expected them to perform when used as intended or misused in a reasonably foreseeable way. Specifically, an ordinary consumer or user of the subject contact lenses would not have expected for the subject contact lenses to use substandard materials, including lenses and/or lens lubricant(s) containing materials that caused eye injuries (including but not limited to, corneal abrasions and/or ulcers) after fewer than eight (8) hours of use – *i.e.*, the intended or reasonably foreseeable duration of use for Defendant’s lenses. Furthermore, the foreseeable risk of harm inherent in the design of the subject contact lenses could have been reduced or avoided by the adoption of a reasonable alternative design. Specifically, upon information and belief, the subject contact lenses, as designed, did not contain effective lens materials and/or lubricant sufficient to allow for the amount oxygen permeability reasonably needed from a daily-use contact lens. The contact lenses were also designed in such a way to include materials that caused, among other conditions, corneal abrasions and ulcers, neurological issues, and blindness, even when used as intended. The benefits of using the design chosen by Defendant for their contact lenses do not outweigh the risk of danger and injury inherent to those materials, including the risk of causing eye, neurological and other physical injuries, and/or blindness.



1           68. At all times relevant herein, Defendant, and each of them, knew or  
2 reasonably should have known that the subject contact lenses contained a design  
3 defect, including that they lacked sufficient and effective materials, and that the design  
4 defect had a high probability of causing harm to users, including physical and  
5 neurological issues and blindness. Despite that knowledge of the high probability of  
6 harm, Defendant failed to use an alternative design for the subject contact lenses,  
7 failed to adequately test the subject contact lenses, failed to provide users with  
8 adequate and effective warnings or instructions regarding the risks of harm, and failed  
9 to recall the defective contact lenses, among other failures. On the contrary, Defendant  
10 purposefully misrepresented the benefits of using their knowingly defective products,  
11 including but not limited to, on online websites, forums and through other marketing  
12 means, in order to be able to sell, distribute, and market an otherwise unsafe or  
13 dangerous product. Said conduct was despicable in that it was carried on by Defendant  
14 with a willful and conscious disregard of the rights or safety of others and was  
15 motivated, in part, by the desire for financial gain and to maximize profits by  
16 imprudently cutting costs. The high probability of harm was known in advance to  
17 Defendant's officers, directors, and/or managing agents, who nevertheless performed,  
18 ordered, authorized, and/or ratified the aforementioned despicable conduct. These  
19 individuals include, but are not limited to, Defendant Hubbles's cofounders Cogan  
20 and Horwitz, and, upon information and belief, CEO Steve Druckman, Secretary  
21 Joseph Vladeck, and Chief Financial Officer Griffin Chase.

22           69. Plaintiff was not aware of said design defects at any time prior to the  
23 injuries caused by the subject contact lenses.

24           70. The defective design of the subject contact lenses was a substantial factor  
25 in causing Plaintiff's harm, which includes but is not limited to serious bodily injuries,  
26 lost wages and emotional distress.

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**FIFTH CAUSE OF ACTION**

**STRICT PRODUCTS LIABILITY – FAILURE TO WARN**

***(Alleged by Plaintiff on behalf of himself, against Defendant)***

71. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if fully set forth and referenced herein.

72. Defendant manufactured, designed, assembled, tested or failed to test, inspected or failed to inspect, packaged, labeled, fabricated, analyzed, distributed, merchandised, recommended, advertised, promoted, marketed, and/or sold the subject contact lenses.

73. At all times relevant herein, the subject contact lenses lacked sufficient instructions and/or warnings of potential risks insofar as: the subject contact lenses had potential risks that were known and/or knowable to Defendant in light of scientific knowledge that was generally accepted in the scientific community at the time of manufacture, distribution and/or sale; the potential risks presented a substantial danger when the subject contact lenses were used as intended or misused in an intended or reasonably foreseeable way; ordinary consumers or users, such as Plaintiff, would not have recognized the potential risks; and Defendant failed to adequately warn or instruct of the potential risks.

74. The subject contact lenses were not properly accompanied by warnings or instructions of their dangerous propensities that were known or reasonably knowable to Defendant at the time of sale, including, but not limited to: the dangers of using contact lenses with substandard materials, dangers of using lenses not fit as prescribed, and the dangers of using unverified prescription contact lenses. The reasonably foreseeable use of the subject contact lenses was for daily use, which, as a result of the matters alleged above, posed substantial dangers not readily recognizable by the ordinary users, including Plaintiff. Specifically, ordinary users like Plaintiff would have no reason to know that using a daily contact lens for fewer than eight (8)

1 hours/day would expose them to a serious risk of blindness and neurological, eye and  
2 other physical injuries.

3 75. The subject contact lenses, which were designed, manufactured,  
4 supplied, assembled, maintained and/or sold by Defendant, and each of them, was  
5 furthermore defective due to inadequate post-marketing warnings or instructions  
6 because after Defendant, and each of them, learned or reasonably should have learned  
7 of the risks of injury from using their contact lenses after numerous consumers  
8 complained of same, they failed to promptly respond to and/or warn of the risks,  
9 including failing to issue a recall or provide notice to its consumers.

10 76. At all times relevant herein, Defendant, and each of them, knew or  
11 reasonably should have known that the subject contact lenses contained a design  
12 defect, including that they lacked sufficient and effective materials, and that the design  
13 defect had a high probability of causing harm to users, including physical and  
14 neurological issues and blindness. Despite that knowledge of the high probability of  
15 harm, Defendant failed to use an alternative design for the subject contact lenses,  
16 failed to adequately test the subject contact lenses, failed to provide users with  
17 adequate and effective warnings or instructions regarding the risks of harm, and failed  
18 to recall the defective product, among other failures. On the contrary, Defendant  
19 purposefully misrepresented the benefits of using their knowingly defective products,  
20 including but not limited to, on online websites, forums and through other marketing  
21 means, in order to be able to sell, distribute, and market an otherwise unsafe or  
22 dangerous product. Said conduct was despicable in that it was carried on by Defendant  
23 with a willful and conscious disregard of the rights or safety of others and was  
24 motivated, in part, by the desire for financial gain and to maximize profits by  
25 imprudently cutting costs. The high probability of harm was known in advance to  
26 Defendant's officers, directors, and/or managing agents, who nevertheless performed,  
27 ordered, authorized, and/or ratified the aforementioned despicable conduct. These  
28 individuals include, but are not limited to, Defendant Hubbles's cofounders Horwitz

1 and Cogan, and, upon information and belief, CEO Steve Druckman, Secretary Joseph  
2 Vladeck, and Chief Financial Officer Griffin Chase.

3 77. Defendant, and each of them, knew or should have known the subject  
4 contact lenses lacked sufficient instructions and/or warnings.

5 78. Plaintiff was not aware of said lack of sufficient instructions and/or  
6 warnings at any time prior to the injuries caused by the subject contact lenses.

7 79. Defendant's failure to adequately warn or instruct of the potential risks  
8 of the subject contact lenses was a substantial factor in causing Plaintiff's harm, which  
9 includes but is not limited to serious bodily injuries, lost wages and emotional distress.

10 80. Defendant's failure to adequately warn or instruct of the potential risks  
11 of the subject contact lenses was a substantial factor in causing Plaintiff's harm, which  
12 includes but is not limited to serious bodily injuries, lost wages and emotional distress.

13 **SIXTH CAUSE OF ACTION**

14 **NEGLIGENCE – PRODUCTS LIABILITY**

15 ***(Alleged by Plaintiff on behalf of himself, against Defendant)***

16 81. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if  
17 fully set forth and referenced herein.

18 82. As hereinabove alleged, the subject contact lenses were defective in  
19 manufacture, design, and inadequate warnings.

20 83. At all times relevant herein, Defendant was engaged in the business of  
21 manufacturing, designing, supplying, installing, repairing, and/or selling the subject  
22 contact lenses, for use by customers, including members of the public.

23 84. At all times relevant herein, Defendant owed a duty to Plaintiff to  
24 exercise reasonable care in manufacturing, designing, supplying, filling prescriptions  
25 for, and verifying the subject contact lenses, and to ensure that they were safe when  
26 used or misused in a reasonably foreseeable manner.

27 85. Defendant failed to exercise the amount of care in manufacturing,  
28 designing, filling prescriptions for, warning about dangers of using, and selling the

1 subject contact lenses that a reasonably careful manufacturer and seller would use in  
2 similar circumstances to avoid exposing others, including Plaintiff, to a foreseeable  
3 risk of harm.

4 86. At all times relevant hereto, Defendant knew or reasonably should have  
5 known that the subject contact lenses were dangerous when used as intended or  
6 misused in a reasonably foreseeable manner. Defendant knew or reasonably should  
7 have known that users of the subject contact lenses would not realize the danger.  
8 Defendant failed to adequately warn of the danger or instruct on the safe use of the  
9 subject contact lenses. A reasonable manufacturer, distributor, and/or seller under the  
10 same or similar circumstances would have warned of the danger or instructed on the  
11 safe use of the subject contact lenses.

12 87. The negligence and carelessness of Defendant, as herein alleged, in  
13 manufacturing, designing, supplying, filling prescriptions for, verifying (or failing to  
14 verify), and/or selling the subject contact lenses; in failing to recall or retrofit the  
15 subject contact lenses; and in failing to warn of the danger or instruct on the safe use  
16 of the subject contact lenses, all were substantial factors in causing Plaintiff's harm,  
17 which includes but is not limited to serious bodily injuries, lost wages and emotional  
18 distress.

19 88. At all times relevant herein, Defendant knew or reasonably should have  
20 known that the subject contact lenses contained a design defect, including that they  
21 lacked sufficient and effective materials, and that the design defect had a high  
22 probability of causing harm to users, including physical and neurological issues and  
23 blindness. Despite that knowledge of the high probability of harm, Defendant failed  
24 to use an alternative design for the subject contact lenses, failed to adequately test the  
25 subject contact lenses, failed to provide users with adequate and effective warnings or  
26 instructions regarding the risks of harm, and failed to recall the defective product,  
27 among other failures. On the contrary, Defendant purposefully misrepresented the  
28 benefits of using their knowingly defective products, including but not limited to, on

1 online websites, forums and through other marketing means, in order to be able to sell,  
 2 distribute, and market an otherwise unsafe or dangerous product. Said conduct was  
 3 despicable in that it was carried on by Defendant with a willful and conscious  
 4 disregard of the rights or safety of others and was motivated, in part, by the desire for  
 5 financial gain and to maximize profits by imprudently cutting costs. The high  
 6 probability of harm was known in advance to Defendant's officers, directors, and/or  
 7 managing agents, who nevertheless performed, ordered, authorized, and/or ratified the  
 8 aforementioned despicable conduct. These individuals include, but are not limited to,  
 9 Defendant Hubbles's cofounders Cogan and Horwitz, and, upon information and  
 10 belief, CEO Steve Druckman, Secretary Joseph Vladeck, and Chief Financial Officer  
 11 Griffin Chase.

## 12 **SEVENTH CAUSE OF ACTION**

### 13 **MEDICAL NEGLIGENCE**

#### 14 ***(Alleged by Plaintiff on behalf of himself, against Defendant)***

15 89. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if  
 16 fully set forth and referenced herein.

17 90. In filling Plaintiff's contact lens prescriptions, Defendant owed a duty to  
 18 Plaintiff to possess and use the level of skill, knowledge and care that other reasonably  
 19 careful medical professionals would possess and use in the same or similar  
 20 circumstances. Defendant breached that duty.

21 91. As a proximate result of the negligence of Defendant, Plaintiff has  
 22 sustained injury to his health, strength, and activity, all of which injuries have caused,  
 23 and continue to cause, Plaintiff great mental, physical, emotional, and nervous pain  
 24 and suffering. Plaintiff is informed and believes and thereon alleges that such injuries  
 25 will result in some permanent disability to him. As a result of such injuries, Plaintiff  
 26 has sustained general damages.

1           92. As a further proximate result of the negligence of Defendant, Plaintiff  
2 has incurred, and will continue to incur, medical, hospital, and related expenses, all to  
3 his special damage.

4           93. As a further proximate result of the negligence of the Defendant, Plaintiff  
5 has been prevented from attending to his usual occupation through the present and  
6 will continue to be so prevented for an indefinite time in the future, all to his further  
7 damage.

8           94. Defendant deviated from and breached the acceptable standard of  
9 medical care owed to Plaintiff in filling his contact lens prescriptions, and said  
10 deviation and breach were the direct and proximate cause of the harm suffered by  
11 Plaintiff, as described hereinabove.

## 12                                   **EIGHTH CAUSE OF ACTION**

### 13                                   **NEGLIGENCE**

14                           *(Alleged by Plaintiff on behalf of himself, against Defendant)*

15           95. Plaintiff hereby incorporates all prior paragraphs of this Complaint as if  
16 fully set forth and referenced herein.

17           96. At all times relevant hereto, Defendant owed Plaintiff a duty to act with  
18 reasonable care in filling his contact lens prescription. Defendant's conduct explained  
19 above – including but not limited to failing to properly fit, verify, and/or follow up  
20 with Plaintiff about, his contact lens prescription, and failing to disclose the brand  
21 Plaintiff would actually receive as part of his Subscription Service – all breached  
22 Defendant's duty to act with reasonable care.

23           97. As a proximate result of the negligence of Defendant, Plaintiff has  
24 sustained injury to his health, strength, and activity, all of which injuries have caused,  
25 and continue to cause, Plaintiff great mental, physical, emotional, and nervous pain  
26 and suffering. Plaintiff is informed and believes and thereon alleges that such injuries  
27 will result in some permanent disability to him. As a result of such injuries, Plaintiff  
28 has sustained general damages.





1 would adequately verify customers' prescriptions, while concealing the fact that  
2 Hubble would fail to so verify the prescriptions, all for the purpose of inducing  
3 Plaintiff and the Class to purchase Hubble's Subscription Service. Cogan and Horwitz  
4 never intended for Hubble to provide the contact lenses customers were prescribed,  
5 knowing full well that this was what the customers reasonably expected and what  
6 applicable statutes and regulations were intended to require and/or ensure.

7 104. Plaintiff did not know of the concealed facts. Plaintiff would have acted  
8 differently – specifically, he would not have purchased a Subscription Service or paid  
9 for it each month or used Hubble brand contact lenses – had he known of the facts  
10 Defendant concealed.

11 105. Plaintiff was harmed and Defendant's concealment of the  
12 aforementioned facts was a substantial factor in causing said harm.

13 106. As a proximate result of Defendant's concealment, Plaintiff has sustained  
14 injury to his health, strength, and activity, all of which injuries have caused, and  
15 continue to cause, Plaintiff great mental, physical, emotional, and nervous pain and  
16 suffering. Plaintiff is informed and believes and thereon alleges that such injuries will  
17 result in some permanent disability to him. As a result of such injuries, Plaintiff has  
18 sustained general damages.

19 107. As further a proximate result of Defendant's concealment, Plaintiff has  
20 incurred, and will continue to incur, medical, hospital, and related expenses, all to his  
21 special damage.

22 108. Defendant had knowledge that filling an unverified prescription was  
23 unlawful and hazardous to Plaintiff's health. By filling those prescriptions each and  
24 every month and collecting dues from Plaintiff, Defendant engaged in conduct that  
25 was oppressive, fraudulent, despicable, and carried out with a willful and knowing  
26 disregard of the rights and safety of Plaintiff. Consequently, Plaintiff is entitled to an  
27 award of punitive damages in an amount to be determined at trial.

28 / / /

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for the following relief:

**As to his First Cause of Action:**

1. For actual damages suffered by Plaintiff and the Class;
2. For general damages suffered by Plaintiff and the Class;
3. For injunctive relief;
4. Restitution;
5. Penalties; and
6. Attorney's Fees and reasonable costs of suit;

**As to his Second Cause of Action:**

7. For Restitution of all ill-gotten gains obtained from Plaintiff and the Class, according to proof at trial;
8. For injunctive relief; and
9. Attorney's fees and costs pursuant to CCP §1021.6;

**As to his Third through Ninth Causes of Action**

10. For general damages according to proof;
11. For medical, hospital, and related expenses, according to proof;
12. For loss of earnings according to proof;
13. For other special damages according to proof;
14. For injunctive relief;
15. For attorney's fees and costs of suit herein incurred; and

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**As to ALL Causes of Action alleged herein:**

16. For an award of punitive damages; and

17. For such other and further relief as the Court may deem just and proper.

DATED: January 9, 2024

**MICHAEL SULLIVAN & ASSOCIATES,  
LLP**

By: *s/ Ryan J. Carlson*

Eric H. De Wames

Ryan J. Carlson

Attorneys for Plaintiff,

**WESLEY AFRICA, AND ALL**

**OTHERS SIMILARLY SITUATED**

**DEMAND FOR TRIAL BY JURY**

Plaintiff, on behalf of himself and the Class of persons he seeks to represent,  
hereby requests a trial by jury.

DATED: January 9, 2024

**MICHAEL SULLIVAN & ASSOCIATES,  
LLP**

By: *s/ Ryan J. Carlson*

Eric H. De Wames

Ryan J. Carlson

Attorneys for Plaintiff,

**WESLEY AFRICA, AND ALL**

**OTHERS SIMILARLY SITUATED**