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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; BENJAMIN  
COGAN, an individual; JESSE  
HORWITZ, an individual; and  
DOES 1-25, inclusive

Defendants.

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

**FOURTH 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**
- 10. Fraud – Intentional Misrepresentation**
- 11. Fraud – Negligent Misrepresentation**
- 12. Breach of Contract**
- 13. Conspiracy to Commit Fraud**

**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, Defendants consciously disregarded known, clear and very substantial risks in favor of turning a quick and easy profit. While the damage Defendants have 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 (“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 Hubble 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 Hubble 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 Hubble in California and/or the United States during the Class

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

4 4. Defendant BENJAMIN COGAN (“Cogan”) is an individual who, upon  
5 information and belief, currently resides in the State of New York. Defendant Cogan  
6 cofounded Hubble with Defendant Jesse Horwitz, in or around May of 2016. During  
7 the relevant time period, Defendant Cogan was, *inter alia*, Defendant Hubble’s  
8 president, chief executive officer (“CEO”), a member of Defendant Hubble’s board  
9 of directors (and the chairman thereof), and an equity owner. Upon information and  
10 belief, Defendant Cogan also served in other roles for Hubble during the relevant time  
11 period, which roles constitute a managing agent under applicable law.

12 5. Defendant JESSE HORWITZ (“Horwitz”) is an individual who, upon  
13 information and belief, currently resides in the State of New York. Defendant Horwitz  
14 cofounded Hubble with Defendant Cogan in or around May of 2016. During the  
15 relevant time period, Defendant Horwitz was, *inter alia*, a member of Defendant  
16 Hubble’s board of directors and an equity owner. Upon information and belief,  
17 Defendant Horwitz also served in other roles for Hubble during the relevant time  
18 period, which roles constitute a managing agent under applicable law.

19 6. There exists, and at all times herein mentioned there existed, a unity of  
20 interest and ownership between Defendants Hubble, Cogan and Horwitz (hereinafter  
21 collectively “Defendants”) such that any individuality and separateness between  
22 Defendants have ceased. Plaintiff is informed and believes, and based thereon alleges,  
23 that despite the formation of the purported corporate entity, Defendants are, in reality,  
24 one and the same, including, but not limited to because:

- 25 a. Hubble is, and/or during the relevant time period was, completely  
26 dominated and controlled by Cogan and Horwitz, who used Hubble to  
27 personally commit and perpetuate the frauds alleged herein, violate the  
28 laws set forth in this complaint, circumvent statutes, breach contracts,

1 avoid liabilities, cause substantial harm, and/or achieve numerous  
2 wrongful or inequitable results;

3 b. Defendants Hubble, Cogan and Horwitz derive actual and significant  
4 monetary benefits by and through one another's unlawful conduct, and  
5 by using one another as the funding source for their own personal  
6 undertakings, all of which are wrongful, have fraudulent motives and  
7 further/achieve strictly unlawful purposes;

8 c. Defendant Hubble does or did not during the relevant time period comply  
9 with all corporate formalities;

10 d. Defendant Hubble's, Cogan's and Horwitz's business affairs were, at all  
11 times relevant hereto, so mixed and intermingled that the same cannot  
12 reasonably be segregated or distinguished. Hubble is, and at all times  
13 relevant hereto was, used by Defendants Cogan and Horwitz as a mere  
14 shell and conduit for their own intentionally wrongful, fraudulent and  
15 harmful conduct such that Defendants, and each of them, are, and at all  
16 times relevant hereto were, the alter egos of one another. Adherence to  
17 the corporate form in this case would, therefore, only serve to perpetuate  
18 a fraud and sanction Defendants' egregious and joint wrongdoings.

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

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

## GENERAL ALELGATIONS

9. At all times relevant hereto, Defendant Hubble owned and operated a business that manufactures and sells contact lenses to consumers, like Plaintiff, who are prescribed contact lenses by their own licensed eye doctors (hereinafter “Prescriber(s)”<sup>1</sup>). As a result of the very nature of Defendant Hubble’s business, Defendant Hubble is or reasonably should be familiar with, and operating in compliance with, among other applicable laws, the Fairness to Contact Lens Consumers Act (15 U.S.C. §7601 et seq.) (hereinafter “FCLCA”), and the Contact Lens Rule (16 C.F.R. §315, et seq.) (hereinafter “CL Rule”). Moreover, as a result of the business/trade in which they are engaged, Defendant Hubble owes their consumers a duty of reasonable care in the handling, verifying, and filling of consumers’ contact lens prescriptions, as well as in the sale of their lenses. Defendant is not a “Prescriber” as defined by 16 C.F.R. §315.2.

10. As a seller of contact lenses bound by both the FCLCA and CL Rule, Defendant Hubble must either directly receive from consumers their “Contact Lens Prescription” (as defined by 16 C.F.R. §315.2), or must verify all prescription information from those written prescriptions in accordance with 16 C.F.R. 315.5, before they are allowed to sell contact lenses to any consumers. Moreover, as a seller of contact lenses bound by both the FCLCA and CL Rule, Defendant Hubble may only sell contact lenses in accordance with the prescriptions directly presented by

<sup>1</sup> This term shall also adopt the meaning of “Prescriber” as set forth in 16 C.F.R. 315.2: “Prescriber means, with respect to contact lens prescriptions, an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses in compliance with any applicable requirements established by the Food and Drug Administration...”

1 consumers, or verifies in accordance with the requirements of, *inter alia*, 15 U.S.C.  
2 §7603 *et seq.* and/or 16 C.F.R. §315.5.

3 11. According to 16 C.F.R. §315.2, “Contact lens” means “any contact lens  
4 for which State or Federal Law requires a prescription” (hereinafter “Contact  
5 Len(es)”). According to 16 CFR §315.2, a “Contact Lens Prescription” means “a  
6 prescription issued in accordance with state and federal law, which includes, in  
7 relevant part, at least the following information: 1) name of the patient; 2) date of  
8 examination; 3) the issue date and expiration date of the prescription; 4) the name,  
9 address, phone number and fax number of the prescriber; 5) the power, material or  
10 manufacturer or both of the prescribed contact lens; 6) the **base curve** of the  
11 prescribed contact lens; 7) the **diameter** of the prescribed contact lens; and 8) In the  
12 case of a private label contact lens, the name of the manufacturer, **trade name of the**  
13 **private label brand**, and, if applicable, trade name of equivalent brand name”  
14 (emphasis added for context). The term “Contact Lens Prescription” shall hereinafter  
15 be used to refer to a document containing all the foregoing information and meeting  
16 all the foregoing requirements. The information set forth in items 1-8, above, shall  
17 hereinafter be referred to collectively as “Contact Lens Prescription Information.” In  
18 Plaintiff’s case his Prescriber prescribed, in relevant part, Acuvue Vistakon brand  
19 lenses with a base curve of 8.8mm and diameter of 14.0mm. His prescription was  
20 valid between February 20, 2020 and February 20, 2021, and thereafter expired.

21 12. Sellers like Defendant Hubble are prohibited from altering<sup>2</sup> any  
22 information on a Contact Lens Prescription by, for example, substituting a different  
23 brand, base curve or diameter in place of the brand, base curve and/or diameter  
24 prescribed by the consumer’s respective Prescriber.

25 13. Regardless of whether a Contact Lens Prescription is presented directly  
26 to a seller by the consumer or properly verified by the seller (as explained below), it

27 \_\_\_\_\_  
28 <sup>2</sup> There is one very limited exception to this rule, but it is not relevant to, or at issue for purposes of, this lawsuit.



1 is illegal to sell contact lenses not in accordance with a Contact Lens Prescription. In  
2 other words, selling ophthalmic goods not in accordance with a Contact Lens  
3 Prescription, and/or selling those goods pursuant to a “prescription” that is/was altered  
4 by a seller, is equivalent to not selling Contact Lenses at all. Consequently, it is  
5 misleading to the average consumer to pass off or represent any good as a “contact  
6 lens” when those goods are not sold in accordance with a Contact Lens Prescription.

7 14. There is no such thing as a one-size-fits-all contact lens because contact  
8 lens wearers are like snowflakes; everyone is delicate and unique, must be viewed  
9 under a microscope to recognize the distinctions and qualities, and reacts differently  
10 to various environmental factors. For these reasons, the process of purchasing Contact  
11 Lenses begins at an optometrist’s office with the consumer being fit for an appropriate  
12 lens by his/her prescribing doctor (the “Prescriber”). The CL Rule expressly defines  
13 “Contact lens fitting” as: “the process that begins after an initial eye examination for  
14 contact lenses and ends when a successful fit has been achieved or, in the case of a  
15 renewal prescription, ends when the prescriber determines that no change in the  
16 existing prescription is required, and such term may include: (1) An examination to  
17 determine lens specifications; (2) Except in the case of a renewal of a contact lens  
18 prescription, an initial evaluation of the fit of the contact lens on the eye; and (3)  
19 Medically necessary follow-up examinations.” (This process will hereinafter be  
20 referred to as a “Contact Lens Fitting”).)

21 15. Prescribers evaluate numerous factors when deciding on an appropriate  
22 lens to prescribe, including, but not limited to, the size and shape of the consumer’s  
23 eyeballs, the nature and extent of vision issues the lenses are meant to correct, the  
24 thickness and edge qualities of each different lens (and how each attribute is likely to  
25 interact with the consumer’s respective eyes), and the materials and lubricants used to  
26 make and maintain each different type of lens. Prescribers do not prescribe contact  
27 lenses that they have not seen on their patients’ eyes. Thus, using “fitting kits” that  
28 they receive from various contact lens manufacturers/seller, Prescribers sample

1 different lenses on each consumer's eyeballs during a Contact Lens Fitting to find the  
2 lens with the best size, fit, strength, lubricant, edge qualities, and other relevant  
3 attributes for the given consumer. Once a proper fit is achieved and a suitable lens is  
4 identified, the Prescriber issues the consumer's written Contact Lens Prescription  
5 directly to the consumer so the consumer may then have the prescription filled by a  
6 contact lens seller, like Defendant Hubble. As a seller of contact lenses, Defendant  
7 Hubble expressly knows, or reasonably should know, what a Contact Lens Fitting is  
8 and why it is vital to both the process of prescribing a proper contact lens and the  
9 health and safety of the consumer. Defendant Hubble did not perform any Contact  
10 Lens Fittings because they are not Prescribers.

11 16. Plaintiff is informed and believes, and based thereon alleges, that at no  
12 time relevant hereto did Defendant ever distribute to Prescribers any "fitting kits" for  
13 Hubble lenses. As a result of never sending Prescribers any fitting kits, Defendant  
14 Hubble expressly knew, or reasonably should have known, that Prescribers had no  
15 way of performing a "Contact Lens Fitting" using Hubble lenses and, consequently,  
16 had no way of achieving a successful fit of Hubble lenses on any consumer's eyes.  
17 Given how standard and important the Contact Lens Fitting is in the contact lens  
18 industry, it follows that Defendant Hubble expressly knew, or reasonably should have  
19 known, that no Prescribers actually prescribe (or reasonably could prescribe) Hubble  
20 lenses. Defendant Hubble's company documents and internal policies confirm their  
21 knowledge of this fact. As explained below, Defendants' (including their founders)  
22 knowledge of this fact actually served as the foundation of their entire business model.

23 **DEFENDANT'S PURPOSEFULLY UNLAWFUL BUSINESS MODEL**

24 17. Defendant Hubble sells one-size-fits-all, daily-use "contact lenses" to  
25 consumers through its online subscription service. As explained in greater detail  
26 below, every one of these "lenses" is a Hubble brand daily use lens with a base curve  
27 of 8.6mm and diameter of 14.2mm. Defendant Hubble refers to this line of goods as  
28 *Hubble Classic* "contact lenses" even though, as explained below, they do not



1 constitute Contact Lenses as that term is defined by law (see ¶11, above). Consumers,  
2 like Plaintiff, are lured into subscribing to Defendant Hubble’s service with a risk-free  
3 trial whereby they receive a roughly one-month supply of *Hubble Classic* “contact  
4 lenses” for \$1.00 and, after that month, are enrolled in a monthly subscription service  
5 that automatically sends them lenses and renews each month or in other similar  
6 intervals chosen by the consumer (“Subscription Service”). Defendant Hubble  
7 advertises this trial as one that can be canceled at any time, including before the first  
8 month during which consumers are billed for their monthly subscription. Upon  
9 information and belief, at all times relevant hereto, the monthly subscription price for  
10 Defendant Hubble’s services was between \$30-39 per month (“Subscription Dues”).

11 18. Defendant Hubble has, at all times relevant hereto, maintained a pattern  
12 and practice of never requesting, obtaining or directly receiving complete Contact  
13 Lens Prescriptions from consumers, while simultaneously never allowing consumers  
14 to provide *all of the information required to verify* their Contact Lens Prescriptions.  
15 As explained in much greater detail below (see ¶¶44-56), this was all done  
16 intentionally and by design. From their knowledge that no Prescriber ever actually  
17 prescribed Hubble lenses (see ¶14-16, above), Defendants knew they could not legally  
18 sell many – if any – Hubble lenses, so they prohibited consumers from providing them  
19 information that would have given them actual notice that no lenses could lawfully be  
20 sold to a given consumer. Thus, Defendant Hubble’s entire business model and  
21 Subscription Service ordering process were premised upon the notion, “you don’t ask  
22 questions you don’t want the answer to.” Defendants knew asking the questions they  
23 did not want to answer, but were required by law to ask and verify, would prohibit  
24 them from making money from unsuspecting consumers who had no reason to know  
25 of the intricate, complex laws governing the sale of Contact Lenses or the dangers of  
26 wearing Contact Lenses other than those prescribed by their Prescriber.

27 19. Thus, to enroll in Defendant Hubble’s Subscription Service and set up  
28 their subscription, consumers simply enter their prescribed lens powers – *and only*

1 *their lens powers* – within two dialogue boxes appearing under a heading on  
2 Defendant’s order page titled “Your Prescription” (or “Enter Your Prescription” on  
3 more recent iterations of their website). At no time did Defendant Hubble ever allow  
4 consumers to enter themselves or orally provide the brand, base curve, diameter,  
5 material, manufacturer, expiration date, or any other Contact Lens Prescription  
6 Information other than the name of their Prescriber (but only if that Prescriber is  
7 already listed in Defendant Hubble’s very limited, pre-populated drop-down menu of  
8 Prescribers).

9       20. Based in part on the foregoing, Defendant Hubble’s use of the “Your  
10 Prescription” language on their website and elsewhere, alone, is misleading because  
11 a Contact Lens Prescription, as defined by applicable law, must include far more  
12 information than just the consumer’s lens power(s) (see ¶10-11, above) before it can  
13 be verified and filled by a seller like Defendant Hubble. Furthermore, to the average  
14 consumer who is not apprised of the detailed and complex statutory scheme governing  
15 the sale of Contact Lenses, using the “Your *Prescription*” language while only  
16 providing spaces for consumers to list their lens power(s), but none of the other  
17 information required on a Contact Lens Prescription, is inherently deceptive and  
18 misleading because it suggests to the average consumer that they are providing all  
19 *required* information from, and would receive the same Contact Lenses listed on,  
20 “[*Their*] Prescription”, when in fact they are not. It is also deceptive and misleading  
21 (and reckless) for a contact lens seller to not ask for complete Contact Lens  
22 Prescription Information while purporting to sell consumers “contact lenses”, since  
23 the sale of Contact Lenses requires, and Contact Lenses can only be sold in accordance  
24 with, a Contact Lens Prescription. Thus, Defendant Hubble is passing their goods off  
25 as “contact lenses” with knowledge that those good are not being sold in accordance  
26 with a Contact Lens Prescription and, thus, are not Contact Lenses as defined by 16  
27 C.F.R. §315.2.

28       21. After obtaining consumers’ prescribed lens powers and Prescriber

1 names, and without advising consumers prior to selling them their lenses, Defendant  
2 Hubble fills their prescriptions using Defendant Hubble's own brand of "contact  
3 lenses" instead of the brand actually prescribed by the consumer's respective  
4 Prescriber. Moreover, without first advising consumers prior to selling their lenses,  
5 Defendant Hubble only delivers to consumers lenses with a base curve value of 8.6mm  
6 and a diameter value of 14.2mm, regardless of the base curve and/or diameter values  
7 prescribed by each consumer's Prescriber. (Both acts constitute independent instances  
8 of prescription alteration in violation of 16 C.F.R. §315.5(f).) Nowhere did Defendant  
9 Hubble ever represent that consumers shall receive Hubble brand lenses with a base  
10 curve of 8.6mm and diameter of 14.2mm irrespective of what they were prescribed by  
11 their Prescriber. No statements or warnings by Defendant Hubble advised consumers  
12 that Defendant Hubble, by law, can only sell consumers the Contact Lenses prescribed  
13 by their Prescribers in accordance with their Contact Lens Prescription, or that it is  
14 illegal to sell "contact lenses" not in accordance with a consumer's Contact Lens  
15 Prescription. Nowhere did Defendant Hubble advise consumers of the grave risks,  
16 dangers and potential harms associated with wearing lenses other than those  
17 prescribed by one's Prescriber. Simply put, at no point in time has Defendant Hubble  
18 ever advised consumers that "we can't sell you Hubble lenses unless your doctor  
19 prescribed you Hubble lenses" or anything substantially similar thereto. All of this  
20 information was concealed from consumers on purpose because Defendants do not  
21 care about the safety, wellbeing or eyesight of their consumers, or the legality (or lack  
22 thereof) of every sale they have ever made, so long as consumers pay their  
23 Subscription Dues on time each month. The failure to include such information in  
24 clear and easily understood language is incredibly deceptive and misleading in light  
25 of Defendant Hubble's repeated use of the terms "Contacts", "Contact Lenses" and  
26 "Your Prescription", as explained in above. Such deception is amplified and  
27 exacerbated by the reasonable consumer's ignorance of the complex and intricate laws  
28 governing the contact lens industry.

22. For all or nearly all of the relevant time period, Defendant actively prohibited consumers from “directly providing” their Contact Lens Prescriptions and purposely ignored and/or disregarded any Contact Lens Prescriptions or Contact Lens Prescription Information they actually received. This was part of their company policy of not asking questions they did not want the answers to. Defendant Hubble recently added to their order page a statement in tiny, faint, barely legible letters that says “You may email your prescription to prescriptions@hubblecontacts.com after you check out.” Upon information and belief, on the off chance a consumer is able to recognize this tiny link, *and* realizes that they have yet to provide all information required before Defendant Hubble can fill their Contact Lens Prescription, *and* thereafter uploads their Contact Lens Prescription directly to Defendant Hubble, Defendant Hubble still ignores or otherwise disregards any Contact Lens Prescriptions they receive via email.

23. As a result of *not* receiving Contact Lens Prescriptions directly from consumers, Defendant Hubble was at all times required by law to “verify” each consumer’s complete Contact Lens Prescription Information with each consumer’s Prescriber before Defendant Hubble could lawfully sell the consumer his or her Contact Lenses. Notwithstanding any legal requirements, Defendant Hubble has also, at all times relevant hereto, represented to consumers that they would verify Contact Lens Prescriptions with consumers’ Prescribers. Specifically, the terms and conditions that Defendant Hubble forces consumers to agree to as part of their Subscription Service states, in relevant part, that Defendant Hubble will verify each consumer’s Contact Lens Prescription. Defendant Hubble imposed this requirement upon themselves with the specific intent *not* to follow through on their promise to perform legally compliant verifications and with express and actual knowledge that they lacked, *and by design actively prohibited consumers from providing*, Contact Lens Prescription Information sufficient to perform a contact lens verification in accordance with the CL Rule and FCLCA.

24. At no time relevant hereto has Defendant Hubble ever actually obtained from any consumer, or allowed consumers to provide, *all* the information required to constitute a complete Contact Lens Prescription or verify that Contact Lens Prescription Information pursuant to 16 C.F.R. §315.5. Instead, after receiving each consumer's lens power(s) and Prescriber's name through their online order system, Defendant Hubble unilaterally and surreptitiously fills in for each consumer's "prescription" the rest of the blanks – for brand name, material, manufacturer, base curve, diameter, and expiration date – that Defendant Hubble actively prohibits consumers from filling in (or otherwise providing) themselves. Specifically, and in relevant part, Defendant Hubble unilaterally fills in these blanks with Hubble brand lenses, a base curve of 8.6mm, a diameter of 14.2mm, and no expiration date. Such conduct constitutes prescription writing without performing a lens fitting or having a license to do so and, further, prescription alteration in violation of 16 C.F.R. §315.5(f). Regardless, Defendant Hubble is stepping into the shoes of every consumer's Prescriber and surreptitiously writing and filling for each consumer a so-called "prescription" for Hubble brand lenses with a base curve of 8.6mm and a diameter of 14.2mm irrespective of the lenses each consumer was actually prescribed. Defendant Hubble – with both actual and constructive knowledge that Hubble lenses were not the ones actually prescribed (as explained in ¶¶44-56) – then attempts to "verify" these unilaterally written/alterd "prescriptions" for their one-size-fits-all, Hubble brand lenses with a base curve of 8.6mm and a diameter of 14.2mm.

25. However, Defendant Hubble designed and, at all times relevant hereto, implemented a system for verifying prescriptions that was fatally flawed, knowingly, intentionally and fraudulently meant to skirt the verification requirements of the FCLCA and CL Rule, and did not result in compliant verifications under those laws. Specifically, in order to purportedly verify consumers' Contact Lens Prescriptions, Defendant Hubble calls Prescribers' offices between 5:00PM-8:00AM, and often on weekends, using a pre-recorded, automated voice message (hereinafter

1 “Robocall(s)”). The Robocalls use a robotic voice with purposefully strange  
2 pronunciations and peculiar phrasing of basic words, which are meant to confuse the  
3 listener. In some instances, music (like hold music) plays over the Robocall’s recorded  
4 message so the listener cannot hear or understand what is being said. The messages  
5 left by these Robocalls often fail to include all required Contact Lens Prescription  
6 Information, such as the patient’s name or the brand of lens originally prescribed. The  
7 messages left by these Robocalls are also frequently gargled, choppy or otherwise  
8 cutoff at the exact points in each call where certain required information – like the  
9 patient’s name, prescription information, or Defendant Hubble’s company name or  
10 call-back number – is supposedly provided. On the off chance that the call-back  
11 number was decipherable for a Prescriber and the Prescriber calls back, the phone  
12 number provided by Defendant Hubble leads Prescribers to another automated, pre-  
13 recorded line that automatically disconnects the call instead of connecting the  
14 Prescriber to a live person or voicemailbox, so that the Prescriber could either verify,  
15 deny or modify the prescription in question. Defendants, and each of them,  
16 intentionally made it impossible for Prescribers to contact them in response to the  
17 purposefully unintelligible and flawed verification requests, much less within the time  
18 limits established by the FCLCA and CL Rule.

19 26. At all times relevant hereto, Defendant Hubble has also maintained a  
20 practice of seeking prescription verifications from doctors who were not actually the  
21 respective consumer’s Prescriber, and sometimes from persons who were not doctors  
22 at all. Since the Robocalls used by Defendant Hubble were often gargled and  
23 unintelligible at the point where their call back number was provided, or otherwise  
24 directed Prescribers to call an automated line that immediately hung up on them or  
25 was never otherwise used, this ensured that Defendant Hubble would never receive a  
26 denial from the actual Prescriber in response to a prescription verification request.

27 27. Regardless of whether they called the correct Prescriber’s office,  
28 Defendant Hubble systematically and intentionally left these unintelligible automated



1 Robocall voice messages between 5:00PM-8:00AM, and often on weekends, as a  
2 further way of ensuring that no Prescriber would or could ever call back (or otherwise  
3 respond in a manner authorized by the FCLCA or CL Rule) within the eight (8)  
4 “Business Hours” allowed under the FCLCA or CL Rule. In addition, Defendant  
5 Hubble in some instances took no steps whatsoever to verify a consumer’s Contact  
6 Lens Prescription, but sold them lenses as though they had.

7 28. In addition to the foregoing and at all times relevant hereto, Defendant  
8 Hubble has maintained a custom and practice of not verifying prescriptions that have  
9 expired. As a result, consumers continue to receive goods passed off as “contact  
10 lenses” as part of their Subscription Service, even though the prescription that is being  
11 filled for them by Defendant Hubble has expired and, therefore, is no longer valid. By  
12 way of example, in Plaintiff’s case, his prescription was written on February 4, 2020,  
13 and expired on February 4, 2021. He submitted his first *and only* prescription to  
14 Defendant Hubble on or around August 20, 2020, yet he continued receiving the exact  
15 same prescription, without any reverification by Defendant Hubble, through the time  
16 he canceled his Subscription Service in September of 2021. Upon information and  
17 belief, Defendant Hubble maintained this same practice with respect to all consumers.

18 29. As set forth in much greater detail below (see ¶¶44-56), Defendant  
19 Hubble expressly knew, as early as 2015, that the practices and verification methods  
20 described above were unlawful, fraudulent and exposed consumers to a substantial  
21 risk of serious physical and financial harm. As a result of never sending any fitting  
22 kits to Prescribers, Defendants, and each of them, knew that Prescribers had no way  
23 of confirming a successful fit of Hubble lenses on a patient’s eyes and, consequently,  
24 that Prescribers never actually prescribed Hubble lenses. With and as a result of that  
25 same knowledge, Defendants actively blocked consumers from directly providing  
26 their Contact Lens Prescriptions listing other brands, base curves or diameters. From  
27 their knowledge that no Prescribers actually prescribe Hubble lenses, Defendants, and  
28 each of them, knew that altering Contact Lens Prescription Information (or otherwise

1 writing their own “prescriptions” for each consumer) was the only way for them to  
2 attempt to “verify” a “prescription” for Hubble lenses. However, as detailed in ¶¶44-  
3 56, below, Defendants and each of them also expressly knew that their verification  
4 procedure did not result in proper verifications of the “prescriptions” they had altered.  
5 From the foregoing, Defendants also expressly knew, or reasonably should have  
6 known, that the failure to directly receive a consumer’s Contact Lens Prescription or  
7 properly verify ALL of the consumer’s respective Contact Lens Prescription  
8 Information (as opposed to the information they unlawfully altered) meant they were  
9 not selling “contact lenses in accordance with a contact lens prescription” and, thus,  
10 were not selling Contact Lenses at all. It follows that Defendants’ use of the words  
11 “Contacts” or “Contact Lens(es)” on their website, order page and elsewhere, was  
12 incredibly deceptive, misleading and dangerous. Additionally, by passing off the  
13 unprescribed, unverified goods they sold as “contact lenses”, Defendants  
14 misrepresented the certification of those goods in violation of Civil Code 1770(a)(2).

15 30. Plaintiff and consumers paid their monthly Subscription Dues for  
16 Defendant Hubble’s Subscription Service believing that they were receiving (or going  
17 to receive) the same Contact Lenses prescribed by their Prescribers, and which were  
18 properly verified and sold by Defendant Hubble in accordance with applicable law.  
19 Indeed, passing goods off as “contact lenses” necessarily presupposes that those goods  
20 are being sold in accordance with a Contact Lens Prescription. Plaintiff and consumers  
21 would not have purchased or maintained a Subscription Service from Defendant  
22 Hubble or used Defendant Hubble’s lenses had they been informed of Defendants’  
23 practice of unilaterally altering prescriptions, not properly verifying those altered  
24 prescriptions, and/or selling purported “contact lenses” not in accordance with their  
25 own Contact Lens Prescriptions. Moreover, neither Plaintiff nor consumers had any  
26 reason to know, or way of knowing, that Defendant Hubble’s verification process did  
27 not comply with applicable law because Defendants took overt steps to conceal it from  
28 the public eye, and Plaintiff and consumers were/are not familiar with the complex

1 laws and requirements applicable to the sale of Contact Lenses. As a result, Plaintiff  
2 and consumers both reasonably relied upon and interpreted Defendant's statements  
3 and language concerning "[Their] Prescriptions" and receipt of "Contact Lenses", as  
4 explained above. Neither Plaintiff nor consumers had any way of knowing that  
5 Defendant was concealing facts material to their decision to purchase prescription  
6 Contact Lenses. Had Plaintiff and consumers known of Defendants'  
7 misrepresentations and concealments, they would not have purchased any goods from  
8 Defendant Hubble or would have otherwise behaved differently in deciding whether  
9 or not to transact business with Defendants. Similarly, had Plaintiff and consumers  
10 known they were purchasing a product that was illegal for them to buy or Defendant  
11 Hubble to sell, and/or which could cause serious bodily injury, they never would have  
12 purchased contact lenses from, or would have otherwise behaved differently in  
13 deciding whether or not to transact business with, Defendants.

14 31. As set forth in much greater detail below (see ¶¶44-56), Defendants  
15 maintained the practices described above with actual knowledge that they were selling  
16 "contact lenses" not in accordance with a Contact Lens Prescription. Defendants also  
17 knew that it was filling prescriptions that were substantially different (with respect to  
18 brand, base curve, diameter, etc.) than those which were prescribed by each  
19 consumer's doctor and, furthermore, the health and safety risks associated with doing  
20 so. By filling those prescriptions as though they had been properly verified, Defendant  
21 Hubble was purposefully and knowingly misrepresenting and/or concealing that the  
22 consumer's respective lens prescription had been lawfully verified and were being  
23 sold in accordance with the law; i.e., exactly as prescribed by his/her Prescriber. Thus,  
24 Defendants acted with the intent to continue receiving from Plaintiff and consumers  
25 the dues collectable from their Subscription Service despite never actually providing  
26 the goods – i.e, Contact Lenses – and/or services for which Plaintiff and consumers  
27 agreed to pay. Not only did Defendant Hubble's entire business model and established  
28 process(es) for selling "contact lenses" violate federal regulations and applicable

1 statutory law, but both fell below the norms and standards governing the Contact Lens  
2 industry.

3 32. In short, Defendant created and implemented a website, ordering process,  
4 and verification system that effectively substituted one-size-fits-all, Hubble-brand  
5 “contact lenses” for the lenses originally prescribed by the consumers’ eye care  
6 practitioners, thereby violating both the FCLCA and the CL Rule. Defendants led  
7 consumers to believe they had provided Hubble with their relevant Contact Lens  
8 Prescription Information, and that Hubble would communicate with the consumers’  
9 Prescribers to verify and ensure consumers received lenses with their proper Contact  
10 Lens Prescription, and then used verification practices that made it unduly difficult  
11 (and sometimes impossible) for Prescribers to respond to Defendant Hubble’s  
12 verification requests. At no point did Defendants ever disclose that consumers would  
13 receive a standard, one-size-fits-all, Hubble-brand lens instead of the brand, base  
14 curve and diameter prescribed by their Prescriber. To the extent they might have or  
15 attempted to, any such statements were deceptive and misleading based on  
16 Defendant’s use of the terms “Your Prescription” and “Contact Lens(es)”, as  
17 described above, and a reasonable consumer’s understanding of those terms. All of  
18 Defendants’ conduct, as explained above and hereinbelow, was likely to, and did,  
19 deceive consumers.

20 33. Contact Lenses are an important mechanism that enable people, who are  
21 hard of sight, to see. They are also placed inside the consumer’s body when in use. As  
22 a result of both factors and many others, consumers like Plaintiff have an extremely  
23 strong interest in knowing both what product they are using, and that it was the correct  
24 product prescribed by their doctor, when transacting business with their contact lens  
25 seller. Plaintiff and consumers also have a strong interest in knowing that contact  
26 lenses prescribed by licensed medical professionals are properly fit and/or verified by  
27 the entity filling their prescriptions prior to being used, and that they are using lenses  
28 properly fit and prescribed by a licensed prescriber. Moreover, reasonable consumers

1 have a strong interest in knowing that the products they are purchasing are being  
2 bought and sold legally. Reasonable consumers, like Plaintiff and the class of  
3 consumers he seeks to represent, would not have purchased goods from Defendant  
4 knowing those goods were being sold in violation of applicable law, were not the  
5 goods prescribed by their Prescriber, and/or that their use could seriously threaten  
6 their eyesight and/or overall health or wellbeing. All of these facts are material to  
7 Plaintiff's and other consumers' decision to purchase (or not purchase) lenses from  
8 one vendor versus another. Misrepresenting or concealing such material facts is not  
9 only unlawful, but unfair, deceptive, dangerous, and reckless. Such conduct poses a  
10 direct threat to the health and safety of Plaintiff and consumers.

11 34. With all of the knowledge of the wrongfulness of their conduct described  
12 herein (see, *inter alia*, ¶¶11-33 above, and ¶¶44-56 below), and with knowledge of the  
13 aforementioned risks associated with such conduct, Defendants ignored those risks in  
14 favor of earning a higher profit from consumers, including Plaintiff and the class.

15 **FACTS SPECIFIC TO PLAINTIFF'S INDIVIDUAL CLAIMS**

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

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

26 "Dear Hubble customer:

27 We are writing as part of a settlement with the Federal Trade Commission  
28 (FTC) because, as a customer of Hubble (Vision Path, Inc.), you may have

1 received Hubble contact lenses that were not fit on your eyes or prescribed.  
2 The FTC says that we may not have properly verified your prescription with  
3 your doctor before sending you contact lenses.

4 You shouldn't wear contact lenses that weren't prescribed for you or  
5 properly fitted for your eyes because it could cause injuries or other  
6 complications. And you should always check with your eye doctor before  
7 trying a new type or brand of contact lenses.

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

10 Sincerely [sic],  
Steve Druckman, CEO"

11 37. This email marked the very first time Plaintiff was provided with any  
12 information that his eye injuries and neurological issues might have been related to  
13 his purchase of contact lenses from Defendant Hubble.

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

26 39. At all relevant times, Plaintiff has been employed as a manufacturer  
27 trainer at a pharmaceutical company. He has missed substantial work due to his  
28 injuries and inability to see, and in order to attend doctor visits related to his eye



1 conditions. Upon his return, he was temporarily placed on light duty as a result of his  
2 eye issues. His job requires that he look at computer monitors/screens for much of his  
3 workday, but doing so causes him pain, ranging from discomfort on some days, to  
4 debilitating pain on others; as well as headaches. Moreover, Plaintiff's job requires  
5 that he work in a sterile environment, which he cannot do, as open wounds and/or  
6 infections are not allowed in the sterile environment due to the risks of contamination.  
7 As a result of the foregoing, Plaintiff has been unable to progress in his career as he  
8 had previously planned or hoped prior to using Defendant Hubble's contact lenses and  
9 has consequently earned less income than he would have but for Defendants' conduct.  
10 In addition, Plaintiff's inability to perform videography services for his private clients  
11 has caused him harm in the form of lost income he would have earned if not for  
12 Defendants' actions.

13 40. Plaintiff's eye injuries and continuing issues are a direct and proximate  
14 result of Defendants' conduct described above, including, but not limited to, their  
15 alteration of Plaintiff's prescription; failure to properly verify Plaintiff's Contact  
16 Lense Prescription; failure to reverify it after it had expired; and failure advise him  
17 that they were selling him Hubble "contact lenses", and not the Acuvue Contact  
18 Lenses that he was actually prescribed.

19 41. When he originally enrolled in Defendant Hubble's Subscription  
20 Service, Plaintiff had no reason to know or way of knowing that the brand of "contact  
21 lenses" he would be receiving would be Hubble brand lenses as opposed to the brand  
22 prescribed by his treating doctor.

23 42. When he originally enrolled in Defendant Hubble's Subscription  
24 Service, Plaintiff had no reason to know or way of knowing that Defendant's business  
25 custom and practice was to not verify consumer's Contact Lens Prescriptions – as  
26 explained above – was unlawful and designed and implemented in such a way that  
27 guaranteed verification of prescriptions regardless of whether they were actually  
28 properly verified by the consumer's respective Prescriber. Nor did Plaintiff have any

1 reason to know or way of knowing that Defendant Hubble never verified Contact Lens  
2 Prescriptions upon their expiration, as required by the FCLCA and CL Rule.

3 43. Had Plaintiff been aware of the facts set forth above, Plaintiff would  
4 never have enrolled in Defendant Hubble's Subscription Service or used the "contact  
5 lenses" sold by Hubble.

6 **FACTS RELATED TO DEFENDANTS COGAN & HORWITZ**

7 44. Although Defendant Hubble was originally incorporated in 2016,  
8 Defendants Cogan and Horwitz actually began conceptualizing, planning, forming  
9 and/or organizing Defendant Hubble in 2015. As Defendant Cogan stated in a podcast  
10 recorded by "Venture Unplugged" which is currently published publicly online<sup>3</sup>,  
11 Defendants Cogan and Horwitz "spent a ton of time during the summer of 2015"  
12 trying to get in touch with manufacturers of contact lenses in the United States to  
13 "figure out who had a great product" to sell to the market. They also purportedly spent  
14 a lot of time "researching the [contact lens] space from a regulatory perspective." In  
15 fact, "[Defendants Cogan and Horwitz] spent more time on that than maybe anything  
16 else before launch."

17 45. During the course of performing the aforementioned research they  
18 purportedly conducted "before launch" in 2015, Defendants Cogan and Horwitz  
19 contacted, among others, the Chief Medical Officer and Vice President of Clinical  
20 And Regulatory Affairs for a highly respected contact lens manufacturer located in  
21 the southeastern United States (this business shall hereinafter be referred to as  
22 "Company A" and the individual that was contacted shall hereinafter be referred to as  
23 "Witness A"). Witness A has been a Doctor of Optometry for over 35 years. Witness  
24 A is a fellow in the American Academy of Optometry, and a Diplomate in its Section  
25 on Cornea, Contact Lenses and Refractive Technologies.

26 46. In an email sent to Witness A on December 1, 2015, from the email  
27 address bencogan1@gmail.com, Defendant Cogan stated that "[he was] part of a new

28 <sup>3</sup> <https://ventureunplugged.com/ben-cogan-founder-hubble-contacts-podcast-mayra-ceja/>

1 company looking to import/distribute contact lenses in the U.S. [... and] was hoping  
2 to be able to chat with [Witness A] about this partnership opportunity.”

3 47. At their request, Witness A spoke to Defendants Cogan and Horwitz,  
4 over the phone a few days later. During their phone call, Defendants Cogan and  
5 Horwitz specifically told Witness A that they are setting up a business that sells  
6 generic contact lenses without a prescription and further detailed their entire business  
7 model (nearly all of which is detailed and explained above). Specifically, Defendants  
8 Cogan and Horwitz told Witness A that Defendant Hubble “might go through the  
9 Doctor if they had to [to obtain prescription verifications from doctors], but were  
10 really going to try and avoid that by using loopholes in the Fairness to Contact Lens  
11 Consumers Act, which allow [them] to change a patient’s branded prescription to their  
12 private label brand, and fax it over to the doctor after 5pm on Fridays or weekends,  
13 and, if there was no response within 8 hours, fill the prescription anyway.” Defendants  
14 Cogan and Horwitz further elaborated to Witness A that they planned “to call and  
15 leave messages [seeking prescription verifications] that could not be understood and  
16 then just go ahead and ship their brand of contact lenses to the patients” once they  
17 inevitably never received a call back from the patient’s prescriber. Moreover,  
18 Defendants Cogan and Horwitz told Witness A that they “did not want to carry  
19 multiple brands of contact lenses so [they] would create their own private label brand  
20 of contact lenses and would switch patients over to their brand without having to  
21 involve the patient’s doctor.”

22 48. In response to the foregoing, Witness A repeatedly told Defendants  
23 Cogan and Horwitz that “everything you just described to me is illegal, so no,  
24 [Company A] does not want anything to do with [them].” Witness A further explained  
25 that Witness A had “a great deal of concern with [Defendants’] business model, as  
26 differences in materials, modules, parameters, manufacturing, powers, edges, design,  
27 etc. could all impact the fit and therefore the safety of the product and patient’s  
28 health.” Witness A then referred Defendants Cogan and Horwitz to a portion of the

1 Johnson & Johnson<sup>4</sup> website that has a specific article explaining why there is no such  
2 thing as a generic contact brand or prescription. During the call, Witness A also told  
3 Defendants Cogan and Horwitz that they “need to have an attorney check [their]  
4 exposure for liability because, if [they] implemented their business plan and did so to  
5 intentionally get around the patients’ doctors, and an adverse event occurred with a  
6 product that the prescribing doctor had never written a prescription for, nor fit on the  
7 patient, nor examined the lens on the patient’s eye, then the liability for any potential  
8 adverse event would rest with [Defendants].” Witness A explained that such adverse  
9 events could include, but were not limited to, corneal ulcers from debris and toxins  
10 being trapped under the lenses, and corneal abrasions from lenses moving around too  
11 much, which could also lead to serious eye infections and other very harmful  
12 complications.

13 49. During the call, Witness A asked Defendants Cogan and Horwitz if,  
14 consistent with industry standards, they planned to provide doctors with fitting sets of  
15 Hubble lenses to evaluate on patient’s eyes prior to being prescribed. Defendants  
16 Cogan and Horwitz responded in the negative. Witness A then advised that there  
17 would be no way any doctor could write a prescription for their lenses, as the standard  
18 of care requires that lenses must be fit on the wearers, and that fit confirmed by the  
19 prescriber, before lenses could be prescribed or used.

20 50. Witness A further admonished Defendants Cogan and Horwitz that  
21 “Contact lenses are not like shaving razors or tube socks that anyone can just pick up  
22 and use. They are regulated by the US FDA as a prescription medical device for a  
23 reason, because people can lose their vision and impact their health and safety if the  
24 contact lenses they are using are not the correct ones prescribed by their doctor.”  
25 Witness A also exclaimed that there is no such thing as a generic contact lens because  
26 every lens fits every patient differently and that even a 50-micron (0.05mm) change

27 \_\_\_\_\_  
28 <sup>4</sup> Johnson & Johnson is commonly known amongst experts as one of the leaders and pioneers in the  
contact lens industry

1 in the specifications of a lens could make it go from extremely tight and comfortable,  
2 to extremely loose and uncomfortable. “Either fit,” explained Witness A, “could result  
3 in substantial injuries to the wearer’s eyes.”

4 51. Towards the end of the call, Witness A provided Defendants Cogan and  
5 Horwitz with multiple published, peer-reviewed journal references on the safety  
6 aspects and requirements of a valid prescription. Witness A then concluded the call  
7 by telling Defendants Cogan and Horwitz that their “business model did not fit well  
8 with [Witness A’s] company, which directs their efforts to providing products directly  
9 to doctors, and that it is not in [Company A’s] business model, nor the best interests  
10 of the health and safety of patients, to go around a patient’s prescribing doctor, just so  
11 that [Defendants] can sell their brand directly to consumers.”

12 52. When the call originally commenced, Witness A was told and thus  
13 believed that the only parties present on the line were Defendants Cogan and Horwitz.  
14 However, after reiterating for the final time that what Defendants Cogan and Horwitz  
15 planned to do was illegal and going to hurt people, Witness A heard multiple people  
16 in the background whispering, shuffling papers around and creating other noise, as if  
17 in a panic. The call then ended. Plaintiff identifies DOES 1-5 as the unannounced,  
18 unidentified persons who were heard in the background during that call. Upon  
19 information and belief, DOES 1-5 are each officers, directors, and/or managing agents  
20 of Defendant Hubble, and/or played a vital role in Defendant Hubble’s formation,  
21 incorporation and prior and/or ongoing business operations.

22 53. Years later, in or around July of 2019, Witness A was contacted by a  
23 contact lens company for which Witness A previously worked, but for which Witness  
24 A never wrote a single Contact Lens Prescription for any patient. This company  
25 advised Witness A that it had received no fewer than 6 calls from Defendant Hubble  
26 seeking to verify prescriptions purportedly written by Witness A, using Witness A's  
27 license, for several patients that were not actually Witness A’s patients (and that  
28 Witness A had never even met). These phone calls and the automated voice messages

1 that were left were largely unintelligible and placed by Defendant Hubble/received by  
2 Witness A's former company in the evenings and on weekends.

3 54. In May of 2021, Witness A received approximately 4-6 phone calls from  
4 Defendant Hubble asking Witness A to verify prescriptions that Witness A supposedly  
5 wrote for Hubble contact lenses. The patients referenced in each call were people  
6 Witness A had never met or heard of. The messages left by Defendant Hubble in May  
7 of 2021 were, once again, highly unintelligible and left outside of normal business  
8 hours. Witness A, like many other doctors around the country, then called Defendant  
9 Hubble to demand that Witness A never receive another verification request because  
10 Witness A never has, and never would, prescribe Defendant Hubble brand contact  
11 lenses. Witness A then looked up the names of the patients with prescriptions that  
12 Defendant Hubble called Witness A attempting to verify. Each "patient" was actually  
13 a convicted felon who was (or still is) serving time in a federal penitentiary.

14 55. Based on the foregoing, each Defendant knew, as of December of 2015  
15 and potentially earlier, that their business model was illegal, was likely to hurt people,  
16 and breached every standard accepted and observed in the contact lens industry.  
17 Witness A carefully and meticulously explained how each individual aspect of  
18 Defendants' model – from prescription verification, to unilateral prescription  
19 modification, to selling a one-size-fits-all contact lens – violated both the FCLCA and  
20 CL Rule and, further, identified the precise injuries that users of Defendants' lenses  
21 risked suffering from as a result of using a one-size-fits-all lens not verified or  
22 properly fit by their prescribing doctor. Upon information and belief, Witness A was  
23 but one of many professionals around the country who cautioned Defendants, and  
24 each of them, of the exact same health, safety and legal risks.

25 56. As shown above, with actual, express knowledge of both the illegality of  
26 their conduct *and* the substantial health and safety risks they were creating for  
27 consumers by engaging in such conduct, Defendants have ignored every warning they  
28 have been given since December of 2015 in favor of turning a profit and benefiting



1 themselves. Defendants, and each of them, have willfully, knowing and consciously  
2 disregarded known health and safety risks and, in so doing, have subjected Plaintiff  
3 and consumers everywhere to cruel and unjust physical, mental, emotional and  
4 financial hardship.

5 **CLASS ACTION ALLEGATIONS**

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

12 58. Numerosity. The members of the class are so numerous that joinder of  
13 all such persons is impracticable and the disposition of their claims as a class will  
14 benefit the parties and the court. While the exact number of Class Members is  
15 unknown to Plaintiff at this time and can only be ascertained through appropriate  
16 discovery, Plaintiff is informed and believes, and on that basis alleges, that the Class  
17 consists of at least 20,000 members.

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

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

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

- 3 a. Whether Defendants violated 15 U.S.C. §7601 *et seq.* and/or 16 C.F.R.  
4 §315, *et seq.*, by selling Class Members “contact lenses” *not* in  
5 accordance with their Contact Lens Prescriptions;
- 6 b. Whether Defendants violated 15 U.S.C. §7601 *et seq.* and/or 16 C.F.R.  
7 §315, *et seq.*, by failing to properly verify Class Members’ Contact Lens  
8 Prescriptions prior to selling them purported “contact lenses”;
- 9 c. Whether Defendants violated 15 USC §7603 *et seq.* and/or 16 C.F.R.  
10 §315 *et seq.* by unilaterally altering Class Members Contact Lens  
11 Prescriptions prior to selling them purported “contact lenses”;
- 12 d. Whether, based on any or all of the foregoing alleged violations,  
13 Defendants engaged in unfair or unlawful conduct, or conduct likely to  
14 deceive consumers in violation of the California Consumer Legal  
15 Remedies Act (commencing at Title 1.5 of the California Civil Code  
16 (“CLRA”));
- 17 e. Whether Defendants violated the CLRA by intentionally developing a  
18 knowingly defective and fraudulent verification procedure then passing  
19 off the goods they sold to Class members as if they had been properly  
20 verified (through their defective, fraudulent procedures) and thus could  
21 be lawfully sold;
- 22 f. Whether, based on any or all of the alleged violations identified in ¶60(a-  
23 c), above, Defendants engaged in unfair, unlawful or fraudulent business  
24 practices in violation of California Business & Professions Code (“B&P  
25 Code”) §§17200 and/or 17500, *et seq.*;
- 26 g. Whether Defendants engaged in unfair, unlawful or fraudulent business  
27 practices in violation of B&P Code §§17200 and/or 17500, *et seq.*, by  
28 intentionally developing a knowingly defective and fraudulent

1 verification procedure then passing off the goods they sold to Class  
2 members as if they had been properly verified (through their defective,  
3 fraudulent procedures) and thus could be lawfully sold;

4 h. Whether, based on the alleged violations identified in ¶60(a-c),  
5 Defendants' use of the terms "Your *Prescription*" and "Contact  
6 Lens(es)" in public forums was deceptive to, misleading to, or likely to  
7 deceive or mislead, consumers in violation of the CLRA;

8 i. Whether Defendant Hubble breached its agreement/obligation to verify  
9 Class Members' Contact Lens Prescription(s).

10 61. Typicality. Plaintiff's claims are typical of the claims of the Class  
11 Members. Plaintiff and Class Members were both subjected to the same wrongful acts,  
12 including misrepresentations, omissions, concealments, business practices, and/or  
13 conduct of Defendants as alleged herein. As a consequence, Plaintiff has sustained  
14 injuries, damages and harm similar to those sustained by the Class.

15 62. Adequacy of Representation. Plaintiff can adequately represent all  
16 members of the class. Plaintiff maintains no interests antagonistic or diametrically  
17 opposed to those of the Class. Moreover, Counsel for Plaintiff is highly experienced  
18 in litigating and managing class actions and will competently represent Plaintiff's and  
19 the Class' interests to the fullest extent.

20 63. Superiority of Class Adjudication. A single class action is superior to  
21 numerous individual actions as a means of adjudicating the claims alleged herein.  
22 Plaintiff is informed and believes, and on that basis alleges, that the persons in the  
23 putative class are so numerous that joinder of all such persons is impracticable and  
24 that the disposition of their claims as a class will benefit the parties and the Court.  
25 Common questions of law or fact affecting the class in its entirety predominate over  
26 questions affecting only individual members such that a class action is the superior  
27 method for fairly and efficiently adjudicating the instant controversy. Moreover, the  
28 prosecution of separate actions by individual Class Members would create a risk of

1 inconsistent and/or varying adjudications with respect to the individual members of  
2 the Class, establishing incompatible standards of conduct for Defendants and resulting  
3 in the impairment of the Class' rights.

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF CLRA**

6 ***Civil Code §1770, et seq.***

7 ***(Alleged by Plaintiff on behalf of himself and the Class, against all Defendants)***

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

10 65. Plaintiff and Class Members purchased Subscription Services from  
11 Defendant Hubble through which they were to acquire from Defendant Hubble  
12 Contact Lenses as prescribed by their respective Prescriber.

13 66. When purporting to fill Class Members' Contact Lens Prescriptions as  
14 part of their Subscription Services, Defendants failed to disclose that they had not  
15 verified, or otherwise misrepresented that they had properly verified, Plaintiff's and  
16 Class Member's Contact Lens Prescriptions prior to filling them. As a result of the  
17 foregoing, Defendants misrepresented the source, sponsorship, approval or  
18 certification of goods, misrepresented that their "contact lenses" were of a particular  
19 standard, quality or grade – i.e., were Contact Lenses – with knowledge that they were  
20 not, and/or misrepresented the certification of those goods by another, in violation of,  
21 *inter alia*, Civil Code §1770(a)(2-3), (5) and (7). By stating they would verify every  
22 prescription using their knowingly and intentionally flawed "verification" system that  
23 Defendants expressly knew did not result in lawful verifications, Defendant Hubble  
24 also advertised its services with the intent not to sell them as advertised, in violation  
25 of Civil Code §1770(a)(9). By referring to and advertising the goods they sold as  
26 "Contact Lenses" with knowledge that they were not being sold in accordance with a  
27 Contact Lens Prescription that was either presented directly by the Consumer or  
28 verified in accordance with the law (and thus were not Contact Lenses), Defendant

1 Hubble advertised the goods they were selling with the express intent to not sell them  
2 as advertised, in violation of Civil Code §1770(a)(9). By simply delivering to Plaintiff  
3 and Class Members goods advertised as “contact lenses”, Defendants, through their  
4 conduct, necessarily represented that the goods they were selling were being sold in  
5 accordance with a Contact Lens Prescription that was either presented directly by the  
6 Consumer or verified in accordance with the law.

7         67. When purporting to fill monthly prescriptions as part of Plaintiff’s and  
8 Class Members’ Subscription Services, Defendants failed to disclose to Plaintiff and  
9 Class Members that they would be receiving Hubble brand lenses with a base curve  
10 of 8.6mm and diameter of 14.2mm regardless of the lenses prescribed by their  
11 Prescriber. When purporting to fill monthly prescriptions as part of Plaintiff’s and  
12 Class Members’ Subscription Services, Defendants failed to disclose to Plaintiff and  
13 Class Members that Defendants can only sell Hubble lenses if they are prescribed  
14 Hubble Lenses with a base curve of 8.6mm and diameter of 14.2mm if that is what  
15 they are prescribed. When purporting to fill monthly prescriptions as part of Plaintiff’s  
16 and Class Members’ Subscription Services, Defendants failed to disclose to Plaintiff  
17 and Class Members that Defendants cannot sell Hubble lenses unless they were  
18 prescribed Hubble lenses. When purporting sell “contact lenses” as part of Plaintiff’s  
19 and Class Members’ Subscription Services, Defendants failed to disclose to Plaintiff  
20 and Class Members the risk of bodily injury associated with using contact lenses that  
21 differed from those actually prescribed by one’s Prescriber. Each of Defendants’  
22 aforementioned failures to disclose were, both by themselves and collectively, very  
23 deceptive and misleading on their own, but especially so in light of Defendants’  
24 repeated use of the terms “Your Prescription” and “contact lens(es)” on their website  
25 and elsewhere.

26         68. The fact that Contact Lenses are being sold in accordance with both the  
27 law and with the Contact Lens Prescription written and/or verified by one’s Prescriber  
28 is a fact material to Plaintiff’s decision to purchase and maintain a Subscription

1 Service from Defendants. Had Plaintiff known Defendants were selling goods in  
2 violation of the law, as described above, he would have behaved differently when  
3 deciding whether to transact business with Defendant Hubble. Had Plaintiff known  
4 Defendants were selling goods that could potentially cause him bodily injury, he  
5 would have behaved differently when deciding whether to transact business with  
6 Defendant Hubble. In fact, Plaintiff would not have transacted business with  
7 Defendant Hubble whatsoever had any of the true facts been known. Moreover,  
8 neither Plaintiff nor Class Members would have purchased a Subscription Service  
9 from Defendants had they known about Defendants' fatally flawed verification  
10 process that was knowingly, intentionally and fraudulently meant to skirt the  
11 verification requirements of the FCLCA and CL Rule, and did not result in compliant  
12 prescription verifications under those laws.

13 69. By engaging in the conduct described above, Defendant Hubble, at the  
14 instruction and leadership of Defendants Cogan and Horwitz, advertised its goods  
15 with an intent not to sell them as advertised, and concealed from Plaintiff and Class  
16 Members information material to the transactions in question, which they were  
17 required by law to disclose, all in violation of, *inter alia*, Civil Code §1770(a)(9), *et*  
18 *seq.* Defendants Cogan and Horwitz were, on numerous occasions, informed that  
19 Defendant Hubble's goods could not be sold as advertised, and that it would not be  
20 possible to sell the goods without violating the law and causing consumers substantial  
21 harm. Notwithstanding this clear knowledge, Defendants, and each of them,  
22 developed and carried out the fraudulent scheme to advertise the products and goods  
23 as though they were being sold in accordance with the law and in accordance with the  
24 consumers' Contact Lens Prescriptions, while knowing and intending that the goods  
25 being sold were illegal to sell and not being sold in accordance with those Contact  
26 Lens Prescriptions.

27 70. At all times relevant hereto, Plaintiff and Class Members paid Defendant  
28 Hubble a monthly subscription fee of between \$30-39 due to Defendants' use and/or



1 employment of the practices described above, all of which are declared to be illegal  
2 by Civil Code §1770 et seq. It follows that Plaintiff and Class Members suffered  
3 financial harm each and every month that they paid Defendant Hubble a subscription  
4 fee and received from Defendant Hubble purported “contact lenses” that were not in  
5 accord with their respective Contact Lens Prescriptions, and/or not verified pursuant  
6 to 15 USC §7603 and/or 16 C.F.R. §315.5. The amount of said harm shall be  
7 determined according to proof at trial. The foregoing harm was a direct and proximate  
8 result of Defendants’ conduct described hereinabove.

9         71. Defendants’ acts and practices, as herein described, present a continuing  
10 threat to members of the public in that Defendant Hubble continues to engage in these  
11 unfair and deceptive practices and will not cease unless and until this Court issues an  
12 injunction. As a result, Defendants should be enjoined from engaging in the unfair,  
13 deceptive and unlawful business practices described hereinabove.

14         72. Defendants had actual knowledge that filling an unverified contact lens  
15 prescription, and purporting to sell “contact lenses” not in accordance with one’s  
16 Contact Lens Prescription, was unlawful and hazardous to Plaintiff’s health; that  
17 purporting to verify prescriptions the way they did, as explained above, did not comply  
18 with the law; and, that filling a Contact Lens Prescription with a brand, base curve or  
19 diameter not prescribed by the consumer’s doctor was both illegal and presented a  
20 serious health and safety threat of harm to the person using the lenses. The high  
21 probability of harm was known in advance to all Defendants, including Defendant  
22 Hubble’s officers, directors, and/or managing agents, who nevertheless performed,  
23 ordered, authorized, and/or ratified the aforementioned despicable conduct. Upon  
24 information and belief, these individuals include, but are not limited to, Defendant  
25 Hubble’s cofounders, Defendants Horwitz and Cogan, CEO Steve Druckman,  
26 Secretary Joseph Vladeck, and Chief Financial Officer Griffin Chase. By filling those  
27 prescriptions each and every month and collecting dues from Plaintiff and the Class,  
28 Defendants engaged in conduct that was oppressive, fraudulent, despicable, and

1 carried out with a willful and knowing disregard of the rights, health and safety of  
2 Plaintiff and the Class. As such, Plaintiff and the Class are entitled to an award of  
3 punitive damages in an amount to be determined according to proof at trial. In addition  
4 to the above, Defendants Cogan and Horwitz are also liable under this cause of action  
5 under conspiracy theory of liability for their willful conspiracy to violate the law as  
6 detailed in this Cause of Action, and as detailed in paragraphs 44-56, and paragraphs  
7 154-159, all of which are fully incorporated herein by reference. Defendants Horwitz  
8 and Cogan were aware of their and Defendant Hubble's plan to violate the law as  
9 stated in this Cause of action. Defendants Horwitz and Cogan agreed with each other  
10 and Defendant Hubble and intended to carry out and did carry out the wrongful acts  
11 as detailed in this Cause of Action, with the express intent and desire to violate the  
12 law so they could earn a profit at the expense of consumers' health and wellbeing.

13 73. On or around June 30, 2023, Plaintiff, through his attorneys of record,  
14 delivered to Defendant Hubble a notice and demand pursuant to Civil Code §1782(a).  
15 As of the filing of this Amended Complaint, Defendant Hubble has failed to make an  
16 appropriate repair, correction, or replacement, or to provide any other reasonable  
17 remedy, in response to Plaintiff's June 30, 2023 notice and demand. Accordingly, this  
18 First Amended Complaint is being filed pursuant to Civil Code §1782(d).

19 **SECOND CAUSE OF ACTION**

20 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES**

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

22 ***(Alleged by Plaintiff on behalf of himself and the Class, against all Defendants)***

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

25 75. In transacting business with Plaintiff and Class Members, Defendants,  
26 and at the Individual Defendants' instruction and clear demands, engaged in acts that  
27 are unlawful, unfair, fraudulent, deceptive, and/or anti-competitive in violation of  
28

1 B&P Code §17200 et seq. Said unlawful, unfair, fraudulent, deceptive, and/or anti-  
2 competitive conduct included, but was not limited to, the following:

- 3 a. Selling to consumers Contact Lenses *not* in accordance with a Contact  
4 Lens Prescription that was either presented directly to Defendant  
5 Hubble or properly verified by Defendant Hubble in accordance with  
6 the requirements of 15 U.S.C. §7603, *et seq.*, and/or 16 C.F.R. §315.5  
7 and/or other applicable law;
- 8 b. Selling Contact Lens pursuant to Contact Lens Prescriptions that  
9 expired in violation of 15 U.S.C. §7603, *et seq.*, and/or 16 C.F.R. §315  
10 *et seq.*, and/or other applicable law;
- 11 c. Altering consumers' Contact Lens Prescriptions in violation of 15  
12 U.S.C. §7603, *et seq.*, and/or 16 C.F.R. §315, *et seq.*;
- 13 d. Establishing, implementing and maintaining a business custom and  
14 practice for requesting the verification of Contact Lens Prescriptions  
15 that Defendants expressly knew did not result in the verification of  
16 the prescriptions sought to be verified, as alleged above;
- 17 e. Referring to and advertising the goods they sold as "Contact Lenses"  
18 with knowledge that they were not being sold in accordance with a  
19 Contact Lens Prescription that was either presented directly by the  
20 Consumer or verified in accordance with the law and, thus, were not  
21 "Contact Lenses" as defined by applicable law,

22 76. Defendants' use of various forms of advertising media to advertise, call  
23 attention to or give publicity to the sale of their goods passed off as "Contact Lenses"  
24 sold in accordance with "Your Prescription", as set forth above, which are not as  
25 advertised or as otherwise represented, constitutes unfair competition, unfair,  
26 deceptive, untrue, or misleading advertising, under B&P Code §17500.

27 77. As a result of their unlawful and/or unfair business practices Defendants  
28 have realized and continue to realize the unlawful monetary gains and unfair benefits

1 accrued at the expense of Plaintiff's and Class Members' Subscription Service dues  
2 and fees, in an amount according to proof at trial. In addition, Plaintiff and Class  
3 Members have suffered actual harm in the form of the dues and fees they paid for the  
4 Subscription Services and contact lenses that were supplied in violation of the law.  
5 Defendants have been/are continuing to be unjustly enriched through their wrongful  
6 conduct as alleged herein.

7 78. Plaintiff and the Class are entitled to relief, including full restitution  
8 and/or disgorgement of all revenues, earnings, profits, compensation and benefits  
9 which may have been obtained by Defendants as a result of the business acts or  
10 practices alleged hereinabove, and an order enjoining Defendants to cease and desist  
11 from engaging in those same practices.

12 79. In addition, Defendants' unfair and unlawful business practices listed  
13 above and below each pose a serious and substantial risk to the health, safety and  
14 financial wellbeing of every consumer who uses their lenses. In fact, both Plaintiff  
15 and, on information and belief, numerous members of the Class have already suffered  
16 financial, physical and other bodily harm and will continue to do so in the future, as a  
17 result of Defendants' unfair and unlawful conduct. Other members of the public are  
18 highly likely to suffer financial, physical and other bodily harm similar to that which  
19 Plaintiff has (and many Class Members likely have) already suffered and reasonably  
20 may continue to suffer if Defendants are not enjoined from engaging in such unfair  
21 and unlawful conduct in the future. Consequently, there is no adequate remedy  
22 available at law to curtail and prevent such unfair and unlawful conduct from  
23 occurring. The only remedy adequate to prevent such future harm is an injunction 1)  
24 enjoining such harmful and threatening practices; and 2) requiring Defendant Hubble  
25 to either obtain from consumers their actual Contact Lens Prescriptions or request  
26 from consumers their complete Contact Lens Prescription so Defendant Hubble can  
27 attempt to properly verify said Contact Lens Prescription before selling the respective  
28 consumer any additional goods.

80. Defendants had actual knowledge that selling Contact Lenses not in accordance with a Contact Lens Prescription was unlawful and hazardous to Plaintiff and the Class Members' health; that purporting to verify prescriptions the way they did, as explained above, did not comply with the law; and, that selling goods not in accordance with a consumer's Contact Lens Prescription was both illegal and presented a serious health and safety threat to the consumer. By selling unprescribed lenses each and every month and collecting dues from Plaintiff and the Class, Defendants engaged in conduct that was oppressive, fraudulent, despicable, and carried out with a willful and knowing disregard of the rights, health and safety of Plaintiff and the Class. As such, Plaintiff and the Class are entitled to an award of punitive damages in an amount to be determined according to proof at trial. In addition to the above, Defendants Cogan and Horwitz are also liable under this cause of action under conspiracy theory of liability for their willful conspiracy to violate the law as detailed in this Cause of Action, and as detailed in paragraphs 44-56, and paragraphs 154-159, all of which are fully incorporated herein by reference. Defendants Horwitz and Cogan were aware of their and Defendant Hubble's plan to violate the law as stated in this Cause of action. Defendants Horwitz and Cogan agreed with each other and Defendant Hubble and intended to carry out and did carry out the wrongful acts as detailed in this Cause of Action, with the express intent and desire to violate the law so they could earn a profit at the expense of consumers' health and wellbeing.

### **THIRD CAUSE OF ACTION**

#### **STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT**

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

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

82. 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

1 contact lenses.

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

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

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

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

17 **FOURTH CAUSE OF ACTION**

18 **STRICT PRODUCTS LIABILITY – DESIGN DEFECT**

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

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

22 88. Defendant Hubble manufactured, designed, assembled, tested or failed  
23 to test, inspected or failed to inspect, packaged, labeled, fabricated, analyzed,  
24 distributed, merchandised, recommended, advertised, promoted, marketed, and/or  
25 sold the subject “contact lenses.”

26 89. At all times relevant herein, the subject “contact lenses” contained a  
27 design defect insofar as they did not perform as safely as an ordinary consumer or  
28 user, including Plaintiff, would have expected them to perform when used as intended



1 or misused in a reasonably foreseeable way. Specifically, an ordinary consumer or  
2 user of the subject “contact lenses” would not have expected for the subject lenses to  
3 use substandard materials, including lenses and/or lens lubricant(s) containing  
4 materials that caused eye injuries (including but not limited to, corneal abrasions  
5 and/or ulcers) after fewer than eight (8) hours of use – i.e., the intended or reasonably  
6 foreseeable duration of use for Defendant Hubble’s lenses. Furthermore, the  
7 foreseeable risk of harm inherent in the design of the subject contact lenses could have  
8 been reduced or avoided by the adoption of a reasonable alternative design.  
9 Specifically, upon information and belief, the subject “contact lenses”, as designed,  
10 did not contain effective lens materials and/or lubricant sufficient to allow for the  
11 amount oxygen permeability reasonably needed from a daily-use contact lens. The  
12 “contact lenses” were also designed in such a way to include materials that caused,  
13 among other conditions, corneal abrasions and ulcers, neurological issues, and  
14 blindness, even when used as intended. The benefits of using the design chosen by  
15 Defendants for their “contact lenses” do not outweigh the risk of danger and injury  
16 inherent to those materials, including the risk of causing eye, neurological and other  
17 physical injuries, and/or blindness.

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

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

11 91. Plaintiff was not aware of said design defects at any time prior to the  
12 injuries caused by the subject "contact lenses".

13 92. The defective design of the subject "contact lenses" was a substantial  
14 factor in causing Plaintiff's harm, which includes but is not limited to serious bodily  
15 injuries, lost wages and emotional distress.

16 **FIFTH CAUSE OF ACTION**

17 **STRICT PRODUCTS LIABILITY – FAILURE TO WARN**

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

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

21 94. Defendant Hubble manufactured, designed, assembled, tested or failed  
22 to test, inspected or failed to inspect, packaged, labeled, fabricated, analyzed,  
23 distributed, merchandised, recommended, advertised, promoted, marketed, and/or  
24 sold the subject "contact lenses", which Defendants knew were illegal to sell.

25 95. At all times relevant herein, the subject "contact lenses" lacked sufficient  
26 instructions and/or warnings of potential risks insofar as: the subject "contact lenses"  
27 had potential risks that were known and/or knowable to Defendant in light of scientific  
28 knowledge that was generally accepted in the scientific community at the time of

1 manufacture, distribution and/or sale; the potential risks presented a substantial danger  
2 when the subject “contact lenses” were used as intended or misused in an intended or  
3 reasonably foreseeable way; ordinary consumers or users, such as Plaintiff, would not  
4 have recognized the potential risks; and Defendant Hubble failed to adequately warn  
5 or instruct of the potential risks.

6 96. The subject “contact lenses” were not properly accompanied by warnings  
7 or instructions of their dangerous propensities that were known or reasonably  
8 knowable to Defendant Hubble at the time of sale, including, but not limited to: the  
9 dangers of using “contact lenses” with substandard materials, dangers of using lenses  
10 not prescribed by one’s Prescriber, and the dangers of using unverified and/or  
11 unprescribed goods passed off as “contact lenses” and the serious health risks  
12 associated with wearing “contact lenses” that did not fit properly over the user’s  
13 eyeballs. The reasonably foreseeable use of the subject “contact lenses” was for illegal  
14 daily use, which, as a result of the matters alleged above, posed substantial dangers  
15 not readily recognizable by the ordinary users, including Plaintiff. Specifically,  
16 ordinary users like Plaintiff would have no reason to know that using a lenses not  
17 prescribed by one’s Prescriber and/or daily contact lens for fewer than eight (8)  
18 hours/day would expose them to a serious risk of blindness and neurological, eye and  
19 other physical injuries.

20 97. The subject “contact lenses”, which were designed, manufactured,  
21 supplied, assembled, maintained and/or sold by Defendants, and each of them, was  
22 furthermore defective due to inadequate post-marketing warnings or instructions  
23 because after Defendants, and each of them, learned or reasonably should have learned  
24 of the risks of injury from using their one-size-fits-all “contact lenses” after numerous  
25 consumers complained of same, they failed to promptly respond to and/or warn of the  
26 risks, including failing to issue a recall or provide notice to its consumers.

27 98. At all times relevant herein, Defendants, and each of them, knew or  
28 reasonably should have known that the subject “contact lenses” contained a design

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

22 99. Defendants, and each of them, knew or should have known the subject  
23 “contact lenses” lacked sufficient instructions and/or warnings.

24 100. Plaintiff was not aware of said lack of sufficient instructions and/or  
25 warnings at any time prior to the injuries caused by the subject “contact lenses”.  
26 Plaintiff was not aware of the health risks associated with wearing “contact lenses”  
27 not sold in accordance with the Contact Lens Prescription from his Prescriber.  
28

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

**SIXTH CAUSE OF ACTION**

**NEGLIGENCE – PRODUCTS LIABILITY**

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

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

103. As hereinabove alleged, the subject "contact lenses" were defective in manufacture, design, and inadequate warnings.

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

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

106. Defendant Hubble failed to exercise the amount of care in manufacturing, designing, filling prescriptions for, warning about dangers of using, and selling the subject "contact lenses" that a reasonably careful manufacturer and seller would use in similar circumstances to avoid exposing others, including Plaintiff, to a foreseeable risk of harm. In fact, a reasonably careful seller of "contact lenses" would not sell a product, like Hubble Lense, which were illegal to sell without a prescription (which Plaintiff did not have).

107. At all times relevant hereto, Defendant Hubble knew or reasonably should have known that the subject "contact lenses" were illegal to sell, dangerous when used as intended or misused in a reasonably foreseeable manner. Defendant

1 Hubble knew or reasonably should have known that users of the subject “contact  
2 lenses” would not realize the danger. Defendant Hubble failed to adequately warn of  
3 the danger or instruct on the safe use of the subject “contact lenses”. A reasonable  
4 manufacturer, distributor, and/or seller under the same or similar circumstances would  
5 have warned of the danger or instructed on the safe use of the subject “contact lenses”.

6 108. The negligence and carelessness of Defendant Hubble, as herein alleged,  
7 in manufacturing, designing, supplying, filling prescriptions for, verifying (or failing  
8 to verify), and/or selling the subject “contact lenses”; in failing to recall or retrofit the  
9 subject “contact lenses”; and in failing to warn of the danger or instruct on the safe  
10 use of the subject “contact lenses”, all were substantial factors in causing Plaintiff’s  
11 harm, which includes but is not limited to serious bodily injuries, lost wages and  
12 emotional distress.

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



1 advance to Defendant Hubble's officers, directors, and/or managing agents, who  
2 nevertheless performed, ordered, authorized, and/or ratified the aforementioned  
3 despicable conduct. These individuals include, but are not limited to, Defendant  
4 Hubble's cofounders Defendants Cogan and Horwitz, and, upon information and  
5 belief, CEO Steve Druckman, Secretary Joseph Vladeck, and Chief Financial Officer  
6 Griffin Chase.

7 **SEVENTH CAUSE OF ACTION**

8 **MEDICAL NEGLIGENCE**

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

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

12 111. As a seller of "'contact lenses'" (or goods passed off as such) Defendant  
13 Hubble owed a duty to Plaintiff to possess and use the level of skill, knowledge and  
14 care that other reasonably careful medical professionals would possess and use in the  
15 same or similar circumstances. Defendant Hubble breached that duty.

16 112. As a proximate result of the negligence of Defendant Hubble, Plaintiff  
17 has sustained injury to his health, strength, and activity, all of which injuries have  
18 caused, and continue to cause, Plaintiff great mental, physical, emotional, and nervous  
19 pain and suffering. Plaintiff is informed and believes and thereon alleges that such  
20 injuries will result in some permanent disability to him. As a result of such injuries,  
21 Plaintiff has sustained general damages.

22 113. As a further proximate result of the negligence of Defendant Hubble,  
23 Plaintiff has incurred, and will continue to incur, medical, hospital, and related  
24 expenses, all to his special damage.

25 114. As a further proximate result of the negligence of the Defendant Hubble,  
26 Plaintiff has been prevented from attending to his usual occupation through the present  
27 and will continue to be so prevented for an indefinite time in the future, all to his  
28 further damage.

1           115. Defendant Hubble deviated from and breached the acceptable standard  
2 of medical care owed to Plaintiff in verifying his Contact Lens Prescriptions and  
3 selling him “contact lenses” (or goods passed off as such), and said deviation and  
4 breach were the direct and proximate cause of the harm suffered by Plaintiff.

5                           **EIGHTH CAUSE OF ACTION**

6                                   **NEGLIGENCE**

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

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

10          117. At all times relevant hereto, Defendant Hubble owed Plaintiff a duty to  
11 act with reasonable care in verifying his Contact Lens Prescriptions and selling him  
12 “contact lenses” (or goods passed off as such). Defendant Hubble’s conduct explained  
13 above – including but not limited to failing to properly fit and/or verify, his Contact  
14 Lens Prescription, and failing to disclose the brand, base curve and diameter of the  
15 lenses Plaintiff would actually receive as part of his Subscription Service – all  
16 breached Defendant Hubble’s duty to act with reasonable care.

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

23          119. As a further proximate result of the negligence of Defendant, Plaintiff  
24 has incurred, and will continue to incur, medical, hospital, and related expenses, all to  
25 his special damage.

26          120. As a further proximate result of the negligence of Defendant Hubble,  
27 Plaintiff has been prevented from attending to his usual occupation through the present  
28

1 and will continue to be so prevented for an indefinite time in the future, all to his  
2 further damage.

3 121. Defendant Hubble deviated from and breached the acceptable standard  
4 of medical care owed to Plaintiff in verifying his Contact Lens Prescriptions and  
5 selling him “contact lenses” (or goods passed off as such), and said deviation and  
6 breach were the direct and proximate cause of the harm suffered by Plaintiff.

7 **NINTH CAUSE OF ACTION**

8 **FRAUD - CONCEALMENT**

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

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

12 123. Defendant Hubble intentionally failed to disclose to Plaintiff certain facts  
13 that were only known to Defendant Hubble and that Plaintiff could not have  
14 discovered, including, but not limited to, the fact that they were filling a prescription  
15 not properly or lawfully verified each and every month as part of Plaintiff’s  
16 Subscription Service; that the brand of lens Plaintiff would receive as part of his  
17 Subscription Service would be Hubble brand and not the brand actually prescribed by  
18 his doctor; and that the size and power of the lenses Plaintiff would receive as part of  
19 his Subscription Service were not the size or power prescribed by his doctor.

20 124. By not disclosing the facts they concealed from Plaintiff, Defendant  
21 Hubble intended to deceive Plaintiff and cause him to purchase a Subscription Service  
22 and use Hubble brand lenses. In particular, Defendants Cogan and Horwitz devised a  
23 fraudulent scheme by which Defendant Hubble represented to Plaintiff and the Class  
24 that Hubble would verify customers’ prescriptions, while concealing the fact that  
25 Hubble were not performing adequate verifications of the prescriptions as required by  
26 law, all for the purpose of inducing Plaintiff and the Class to purchase Hubble’s  
27 Subscription Service. Defendants Cogan and Horwitz never intended for Hubble to  
28 provide the “contact lenses” customers were prescribed, knowing full well that

1 prescribed “contact lenses” were what the customers reasonably expected and what  
2 law required that they receive after proper verification.

3 125. Plaintiff did not know of the concealed facts. Plaintiff would have acted  
4 differently – specifically, he would not have purchased a Subscription Service or paid  
5 for it each month or used Hubble brand “contact lenses” – had he known of the facts  
6 Defendant concealed.

7 126. Plaintiff was harmed and Defendant Hubble’s concealment of the  
8 aforementioned facts was a substantial factor in causing said harm.

9 127. As a proximate result of Defendant Hubble’s concealment, Plaintiff has  
10 sustained injury to his health, strength, and activity, all of which injuries have caused,  
11 and continue to cause, Plaintiff great mental, physical, emotional, and nervous pain  
12 and suffering. Plaintiff is informed and believes and thereon alleges that such injuries  
13 will result in some permanent disability to him. As a result of such injuries, Plaintiff  
14 has sustained general damages.

15 128. As further a proximate result of Defendant Hubble’s concealment,  
16 Plaintiff has incurred, and will continue to incur, medical, hospital, and related  
17 expenses, all to his special damage.

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

24 **TENTH CAUSE OF ACTION**

25 **FRAUD – INTENTIONAL MISREPRESENTATION**

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

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

1           131. Defendant Hubble represented to Plaintiff that he would receive “Contact  
2 Lenses” after providing his “Prescription” information and enrolling in Defendant  
3 Hubble’s Subscription Service. Based on the requirements and terms of the CL Rule  
4 and FCLCA, Defendant Hubble’s use of the terms “Contact Lenses” and  
5 “Prescription” on their website and elsewhere necessarily suggested that the products  
6 they were selling were “contact lenses sold in accordance with a contact lens  
7 prescription for the patient that is either presented to [Defendant] by the [consumer]  
8 or verified by the consumer’s prescriber”, which is the only thing Defendants are  
9 allowed to sell by law. Furthermore, Defendant Hubble represented that it would  
10 verify Plaintiff’s “Prescription” with actual knowledge that its verification system was  
11 purposefully flawed and did not result in actual prescription verification under  
12 governing law. The purpose of that representation and Defendant Hubble’s use of the  
13 words “Your Prescription” was to purposely give Plaintiff a false sense of comfort  
14 and security, and the faux appearance that the goods Defendant Hubble was selling  
15 could lawfully be sold to Plaintiff pursuant to the CL Rule and FCLCA when in fact  
16 they could not.

17           132. Additionally, by simply delivering goods that were passed off as Contact  
18 Lenses, Defendant Hubble further represented through their conduct that the goods  
19 Plaintiff received as part of his Subscription Service were either verified or sold in  
20 accordance with a Contact Lens Prescription that he directly presented to Defendant.

21           133. Defendant Hubble had actual knowledge that neither fact was true  
22 because, as explained above in ¶¶44-56, its ordering process and verification  
23 procedure was purposefully designed with the fraudulent intent to avoid the  
24 Prescription presentation and/or verification requirements imposed by the CL Rule  
25 and FCLCA. In other words, Defendant Hubble’s entire business model was designed  
26 to avoid the very requirements that it knew needed to be satisfied in order for its goods  
27 to be considered “Contact Lenses” as defined by the CL Rule and FCLCA.

28

1           134. Defendant Hubble intended that Plaintiff rely on the misrepresentations  
2 of the status of Defendant Hubble's goods as "Contact Lenses" and Plaintiff, in turn,  
3 did rely. Plaintiff's reliance was reasonable under the circumstances because Plaintiff  
4 had no way of knowing that Defendant Hubble purposefully and intentionally  
5 designed a knowingly flawed verification process and had no reason to suspect that  
6 Defendant would do so. Moreover, as a lay person, Plaintiff was not aware of the  
7 intricate and complex set of laws governing the sale of Contact Lenses. Plaintiff also  
8 had no reason to suspect that Defendant Hubble was selling, and that he was buying,  
9 a product the sale of which is illegal.

10           135. Plaintiff was harmed and Defendant Hubble's misrepresentation as to the  
11 status of the goods they sold to Plaintiff was a substantial factor in causing said harm.  
12 Plaintiff would not have purchased any goods from Defendant Hubble had he known  
13 that the goods he was purchasing were not Contact Lenses as defined by law, were  
14 illegal for Defendant to sell and were highly likely to result in physical and other harm  
15 to Plaintiff's health (including but not limited to his eye health).

16           136. As a direct and proximate result of Defendant Hubble's  
17 misrepresentation of the status of the goods they were unlawfully selling, Plaintiff has  
18 sustained injuries that have caused, and continue to cause, substantial mental,  
19 physical, emotional, and nervous pain and suffering. Plaintiff is informed and believes  
20 and based thereon alleges that such injuries will result or already have resulted in some  
21 permanent disability to him. As a result of such injuries, Plaintiff has also sustained  
22 general damages. As a further result of Defendant Hubble's misrepresentations,  
23 Plaintiff has incurred, and will continue to incur, medical, hospital, and related  
24 expenses, all to his damage. The amount and/or extent of all of the foregoing damages  
25 suffered by Plaintiff shall be determined according to proof at trial.

26           137. As explained above in ¶¶44-56, Defendant Hubble had actual knowledge  
27 that selling "contact lenses" not in accordance with an actual Contact Lens  
28 Prescription was unlawful and hazardous to Plaintiff's health. Defendant Hubble



1 further knew that the goods they were selling were not “contact lenses sold in  
2 accordance with a Contact Lens Presceiprion.” By filling those prescriptions each and  
3 every month and collecting dues from Plaintiff, Defendant Hubble engaged in conduct  
4 that was oppressive, fraudulent, despicable, and carried out with a willful and knowing  
5 disregard of the rights and safety of Plaintiff. Consequently, Plaintiff is entitled to an  
6 award of punitive damages in an amount to be determined at trial.

7 **ELEVENTH CAUSE OF ACTION**

8 **FRAUD – NEGLIGENT MISREPRESENTATION**

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

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

12 139. Defendant Hubble represented to Plaintiff that he would receive “Contact  
13 Lenses” after providing “[his] Prescription” Information and enrolling in Defendant’s  
14 Subscription Service. Based on the requirements and terms of the CL Rule and  
15 FCLCA, Defendant Hubble’s use of the terms “Contact Lenses” and “Prescription”  
16 on their website and elsewhere necessarily suggested that the products they were  
17 selling were “contact lenses sold in accordance with a contact lens prescription for the  
18 patient that is either presented to [Defendant] by the [consumer] or verified by the  
19 consumer’s prescriber”, which is the only thing Defendants are allowed to sell by law.  
20 Furthermore, Defendant Hubble represented that they would verify Plaintiff’s Contact  
21 Lens Prescription with actual knowledge that their verification system was  
22 purposefully flawed and did not result in actual prescription verification under  
23 governing law. The purpose of that representation and Defendant Hubble’s use of the  
24 words “Your Prescription” was to give Plaintiff a false sense of comfort and security,  
25 and the faux appearance that the goods Defendant Hubble was selling could lawfully  
26 be sold to Plaintiff pursuant to the CL Rule and FCLCA, when in fact they could not.

27 140. Additionally, by simply delivering goods that were passed off as Contact  
28 Lenses, Defendant Hubble further represented through their conduct that the goods

1 Plaintiff received as part of his Subscription Service were either verified or sold  
2 pursuant to a Contact Lens Prescription that he directly presented to Defendant Hubble

3 141. Defendant Hubble knew, or in the exercise of due care reasonably should  
4 have known, that they were not selling Contact Lenses in accordance with a “Contact  
5 Lens Prescription” because, as explained above in ¶¶44-56, their entire business  
6 model was designed to avoid the very requirements that they knew needed to be  
7 satisfied in order for their goods to be considered Contact Lenses as defined by the  
8 CL Rule and FCLCA. Based on that knowledge and fraudulent intent, Defendant  
9 Hubble had no reasonable grounds to represent their goods as Contact Lenses or use  
10 the word “Prescription” in connection with any sales.

11 142. Defendant Hubble intended that Plaintiff rely on the misrepresentations  
12 of the status of its goods as Contact Lenses and Plaintiff, in turn, did rely. Plaintiff’s  
13 reliance was reasonable under the circumstances because Plaintiff had no way of  
14 knowing that Defendant Hubble purposefully and intentionally designed a knowingly  
15 flawed verification process and had no reason to suspect that Defendant would do so.  
16 Moreover, as a lay person, Plaintiff was not aware of the intricate and complex set of  
17 laws governing the sale of Contact Lenses. Plaintiff also had no reason to suspect that  
18 Defendant Hubble was selling, and that he was buying, a product the sale of which is  
19 illegal.

20 143. Plaintiff was harmed and Defendant Hubble’s misrepresentation as to the  
21 status of the goods they sold to Plaintiff was a substantial factor in causing said harm.  
22 Plaintiff would not have purchased any goods from Defendant Hubble had he known  
23 that the goods he was purchasing were not Contact Lenses as defined by law, were  
24 illegal for Defendants to sell and were highly likely to result in physical and other  
25 harm to Plaintiff’s health (including but not limited to his eye health).

26 144. As a direct and proximate result of Defendant Hubble’s  
27 misrepresentation of the status of the goods they were unlawfully selling, Plaintiff has  
28 sustained injuries that have caused, and continue to cause, substantial mental,

1 physical, emotional, and nervous pain and suffering. Plaintiff is informed and believes  
2 and thereon alleges that such injuries will result or already have resulted in some  
3 permanent disability to him. As a result of such injuries, Plaintiff has also sustained  
4 general damages. As a further result of Defendant Hubble's misrepresentations,  
5 Plaintiff has incurred, and will continue to incur, medical, hospital, and related  
6 expenses, all to his damage. The amount and/or extent of all of the foregoing damages  
7 suffered by Plaintiff shall be determined according to proof at trial.

8 145. As explained above in ¶¶44-56, Defendant Hubble had actual knowledge  
9 that selling "contact lenses" not in accordance with an actual Contact Lens  
10 Prescription was unlawful and hazardous to Plaintiff's health. Defendant Hubble  
11 further knew that the goods they were selling were not "contact lenses sold in  
12 accordance with a Contact Lens Presceiprion." By filling those prescriptions each and  
13 every month and collecting dues from Plaintiff, Defendant Hubble engaged in conduct  
14 that was oppressive, fraudulent, despicable, and carried out with a willful and knowing  
15 disregard of the rights and safety of Plaintiff. Consequently, Plaintiff is entitled to an  
16 award of punitive damages in an amount to be determined at trial.

17 **TWELFTH CAUSE OF ACTION**

18 **BREACH OF CONTRACT**

19 ***(Alleged by Plaintiff on behalf of himself & the Class, against Defendant Hubble)***

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

22 147. Plaintiff and the Class entered into an agreement with Defendants which,  
23 in relevant part, required that Defendant verify Plaintiff's and Class Members'  
24 respective Contact Lens Prescriptions as part of Plaintiff's and Class Members'  
25 Subscription Service.

26 148. Plaintiff and Class Members did all, or substantially all, of the significant  
27 things that the agreement required them to do, including paying their monthly dues.  
28 To the extent Plaintiff and/or Class Members failed to do any of the significant things

1 they were required to do, that failure was due entirely to Defendants' conduct in  
2 purposefully and knowingly preventing or precluding them from so performing. In  
3 other words, to the extent Plaintiff and Class Members did not do all, or substantially  
4 all, of the things required by the agreement, that failure was due to Defendant making  
5 the performance of such things impossible such that performance thereof is and must  
6 be excused.

7 149. Defendants knowingly and purposefully failed to verify Plaintiff's and  
8 Class Members' Contact Lens Prescriptions. As explained in greater detail above in  
9 ¶¶44-56, Defendants knew they were not verifying Plaintiff's and Class Members'  
10 Contact Lens Prescriptions in accordance with the law and never intended to do so at  
11 any time relevant hereto. To the contrary, Defendants, at all times relevant hereto,  
12 harbored the specific intent to *not* perform verifications that complied with relevant  
13 law. It logically follows that Defendants expressly intended to enter into agreements  
14 with Plaintiff and the Class the primary and sole purpose of which was to transact  
15 illegal business and/or sell goods that were illegal to sell.

16 150. Plaintiff and Class Members were harmed by Defendants' intentional and  
17 knowing failure to verify their Contact Lens Prescriptions prior to selling them goods  
18 (which were unlawfully passed off as Contact Lenses) because Plaintiff and Class  
19 Members paid for and received a product that was illegal for them to buy and illegal  
20 for Defendants to sell. Defendants' failure to verify, as promised, was a substantial  
21 factor in causing the harm suffered by Plaintiff and Class Members.

22 151. As explained above in ¶¶44-56, Defendants had actual knowledge that  
23 selling "contact lenses" (or goods passed off as such) not in accordance with an actual  
24 Contact Lens Prescription was unlawful. Defendants further knew that the goods they  
25 were selling were not "contact lenses sold in accordance with a contact lens  
26 prescription." By filling those prescriptions each and every month and collecting dues  
27 from Plaintiff and the Class, Defendants engaged in conduct that was oppressive,  
28 fraudulent, despicable, and carried out with a willful and knowing disregard of the

1 rights and safety of Plaintiff. Consequently, Plaintiff and the Class entitled to an award  
2 of punitive damages in an amount to be determined at trial.

3 152. Had Plaintiff and Class Members known they were entering agreements  
4 with Defendants which had an unlawful purpose and involved the illegal sale of goods,  
5 they would have never entered into those agreements in the first place. Accordingly,  
6 Plaintiff and the Class are entitled to all consideration paid to Defendants in  
7 connection with transacting Defendants' illegal business and/or receiving illegal  
8 products. Furthermore, Plaintiff and the Class are entitled to rescind each and every  
9 agreement by and between them and Defendants which had an illegal purpose and  
10 resulted in the illegal sale of goods passed off as "contact lenses", as described above.

11 **THIRTEENTH CAUSE OF ACTION**

12 **CONSPIRACY TO COMMIT FRAUD**

13 ***(Alleged by Plaintiff on behalf of himself, against All Defendants)***

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

16 154. Defendants Cogan and Horwitz were not only aware that the Individual  
17 Defendants and Defendant Hubble were planning to commit fraud, but the Defendants  
18 Cogan and Horwitz likewise developed and orchestrated their scheme by spending  
19 substantial hours scheming and planning on how to evade the legal requirements of  
20 the CL Rule and FCLCA. In so doing, they created, formed, and exerted dominance  
21 over Corporate Defendant Hubble, especially in Hubble's infancy, to carryout their  
22 fraudulent scheme. Upon information and belief, Hubble was created with the or a  
23 primary and sole purpose of being the vehicle to perpetrate the fraudulent scheme that  
24 they had perfected over many months scheming, as explained above in ¶¶44-56.

25 155. Indeed, the Defendants Cogan and Horwitz schemed and planned, and  
26 agreed on how to use Corporate Defendant Hubble to obtain customers through  
27 fraudulent misrepresentations and by intentionally omitting material facts, to  
28 personally financially benefit themselves through their interests in Defendant Hubble.

1 Defendants Cogan and Horwitz knew and were explicitly informed that generic, one-  
2 size-fits-all lenses were not prescribed by any Prescriber and would not pass legal  
3 muster if verified in accordance with the CL Rule and FCLCA. Notwithstanding this  
4 explicit knowledge, Defendants Cogan and Horwitz created Hubble to be the vehicle  
5 that would blatantly represent to consumers that it would obtain verifications as  
6 required by law, and that the so called “contact lenses” were in being sold in  
7 accordance with their subscribers’ prescriptions, as explicitly required by law.

8 156. Defendants Cogan and Horwitz also exerted dominance and control over  
9 Defendant Hubble in their cooperation and plan, by designing, creating, and  
10 implementing Hubble’s processes to evade the legal requirements of obtaining valid  
11 verifications for Plaintiffs’ prescriptions. Upon information and belief, Defendants  
12 Cogan and Horwitz then carried out the fraudulent scheme and instructed Hubble  
13 employees on how to evade the verification process. The Individual Defendants spent  
14 substantial time and resources planning how to work around Hubble’s explicit  
15 promises to get the verifications while knowing and creating illegal and insufficient  
16 protocols verification. Defendants Cogan and Horwitz created these protocols, before  
17 Hubble was even formed, to get around the legal requirements of obtaining a valid  
18 verification for each of its subscribers. Moreover, as another example, Hubble, at the  
19 direction of Defendants Cogan and Horwitz, had planned and then carried out their  
20 scheme to create return phone numbers and other “contact numbers” listed that made  
21 it impossible for a Prescriber to reach out or contact Hubble to inform Hubble that the  
22 lenses Hubble was providing were not adequate. Indeed, at the direction of  
23 Defendants Cogan and Horwitz, Hubble actively took steps to ensure that the  
24 Prescribers could not contact the appropriate staff at Hubble to inform Hubble that  
25 Hubble’s “contact lenses” could not be and were not lawfully verified.

26 157. Notwithstanding their knowledge that none of Hubble’s consumers  
27 would receive contact lenses in conformity with the law or in conformity with their  
28 Prescribers’ prescriptions, Defendants Cogan and Horwitz instructed and controlled



1 Hubble to nevertheless misrepresent to consumers that Hubble would in fact obtain  
2 valid verifications. But at all times, Hubble was being operated as the vehicle to carry  
3 out Defendants Cogan and Horwitz' schemes as they had planned – plans that were  
4 orchestrated prior to Hubble's incorporation and inception.

5 158. As a direct and proximate cause of Defendants' fraudulent actions,  
6 Plaintiffs were significantly harmed, including without limitation, by paying monthly  
7 subscription fees, and receiving "contact lenses" that were not sold in accordance with  
8 a valid Contact Lens Prescription written by their respective Prescriber or lawfully  
9 verified by Defendants.

10 159. As explained above in ¶¶44-56, Defendants had actual knowledge that  
11 selling "contact lenses" not in accordance with an actual Contact Lens Prescription  
12 was unlawful and hazardous to Plaintiff's health. Defendants further knew that the  
13 goods they were selling were not "contact lenses sold in accordance with a Contact  
14 Lens Presceiprion." By filling those prescriptions each and every month and collecting  
15 dues from Plaintiff, Defendants engaged in conduct that was oppressive, fraudulent,  
16 despicable, and carried out with a willful and knowing disregard of the rights and  
17 safety of Plaintiff. Consequently, Plaintiff is entitled to an award of punitive damages  
18 in an amount to be determined at trial.

19  
20 **PRAYER FOR RELIEF**

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

22  
23 **As to his First Cause of Action:**

- 24 1. For actual damages suffered by Plaintiff and the Class;  
25 2. For general damages suffered by Plaintiff and the Class;  
26 3. For injunctive relief;  
27 4. Restitution;  
28 5. Penalties;

6. For an award of punitive damages; and
7. Attorney's Fees and reasonable costs of suit;

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

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

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

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

**As to his Twelfth Cause of Action**

19. For actual damages suffered by Plaintiff and the Class;
20. For rescission of each and every agreement wherein Defendants promised to verify any Contact Lens Prescription
21. For other equitable relief that the Court may deem just and proper; and

**As to his Thirteenth Cause of Action**

22. For actual damages suffered by Plaintiff;
23. For general damages suffered by Plaintiff; and

1 24.For an award of punitive damages;

2  
3 **As to ALL Causes of Action alleged herein:**

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

5  
6 DATED: February 14, 2025

**MICHAEL SULLIVAN & ASSOCIATES, LLP**

7 By:

8 Eric H. De Wames

9 Ryan J. Carlson

10 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: February 14, 2025     **MICHAEL SULLIVAN & ASSOCIATES, LLP**

By: \_\_\_\_\_

Eric H. De Wames  
Ryan J. Carlson  
Attorneys for Plaintiff,  
**WESLEY AFRICA, AND ALL  
OTHERS SIMILARLY SITUATED**