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8 Attorneys for the Representative Plaintiffs  
9 And the Plaintiff Class(es)

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 STANLEY F. SIDDLE and MICHAEL E. )  
14 LIPSON, individually and on behalf of all those )  
15 similarly situated, )

16 Plaintiffs, )

17 v. )

18 THE DURACELL COMPANY, )  
19 COSTCO WHOLESALE CORPORATION, )  
20 TECHNOMATE MANUFACTORY, LTD., )  
21 PRO-TEK INDUSTRIES, LLC. )

22 Defendants, )

**Case No. 4:19-cv-00568-JD**

**THIRD AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES,  
RESTITUTION, INJUNCTIVE AND  
EQUITABLE RELIEF**

**CLASS ACTION**

**JURY TRIAL DEMANDED**

23 Representative Plaintiffs STANLEY F. SIDDLE and MICHAEL E. LIPSON allege as  
24 follows:

25 **INTRODUCTION**

26 1. This is a class action brought by Representative Plaintiffs on behalf of themselves and a  
27 national class, of all persons who purchased Duracell-branded LED flashlight model 350L bearing  
28 date codes 1533, 1534 and/or 1535, manufactured by DURACELL licensee TECHNOMATE  
MANUFACTORY, packaged with DURACELL batteries included, marketed in collaboration  
with and distribution by DURACELL's retail partner COSTCO, within four years of the date this  
action was initially filed, January 31, 2019.

1 2. These flashlights are defective: they rapidly drain batteries in less than 30 days when  
2 turned OFF.

3 3. THE DURACELL COMPANY is an American manufacturing company, with principal  
4 executive offices in Chicago, Illinois (and subsidiaries in China).

5 4. TECHNOMATE MANUFACTORY, LTD. is a Hong Kong manufacturer, representing  
6 itself on letterhead to consumers as PRO-TEK INDUSTRIES, LLC in California.  
7

8 5. COSTCO WHOLESALE CORPORATION is the second largest retailer in the world,  
9 based in Washington, operating an international chain of membership-only warehouse clubs.

10 6. In 2013, DURACELL, TECHNOMATE/PRO-TEK and COSTCO executives collaborated  
11 in the development of a plan to manufacture Duracell-branded LED flashlights to be sold with  
12 Duracell-manufactured batteries, inside packages designed and marketed for sale by COSTCO.

13 7. DURACELL, as required by the Lanham Act, 15 U.S.C. §1051-1127, DURACELL has at  
14 all times relevant retained and bore a duty to exercise its rights to quality control over the design  
15 and manufacture of all Duracell-branded flashlights so as to ensure that all goods bearing the  
16 DURACELL mark are of the same quality.  
17

18 8. COSTCO's participation in the packaging design, marketing representations and  
19 distribution of these defective Duracell-branded flashlights far exceeded that of a mere passive  
20 retailer, beginning with its discussions in 2013 with DURACELL and TECHNOMATE/PRO-TEK  
21 to develop, manufacture and distribute Duracell-branded flashlights packaged with DURACELL  
22 batteries for COSTCO; COSTCO contributed to the creation and implementation of the package  
23 misrepresentations for the Duracell-branded LED flashlights and batteries as emergency products  
24 -- identifying COSTCO as the Wholesaler, Importer and Distributor of these products, with unique  
25 product-ID codes and specific to COSTCO exclusively, appearing in multiple languages with  
26 addresses in multiple countries, including COSTCO in the United States (Seattle, Washington),  
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1 Canada, Mexico, the United Kingdom, Spain, Iceland, France, Japan, Korea, Taiwan and  
2 Australia.

3 9. At all times herein relevant, Defendants together have engaged in a concerted scheme to  
4 manufacture, market and distribute the defective Duracell-branded LED flashlight model 350L  
5 bearing date codes 1533, 1534 and/or 1535. All of these LED flashlights were marketed by  
6 Defendants inside sealed multi-packs containing three or four flashlights, fully visible through the  
7 so-called transparent “Plastic Blister Packaging,” fully sealed to the color-printed cardboard  
8 backing containing marketing materials and product specifications

9  
10 10. Each of these sealed retail packages of Duracell-branded LED flashlights included a full  
11 set of DURACELL AAA-size “COPPERTOP Alkaline-Manganese Dioxide” batteries (presently  
12 designated as model MN2400), one full set for each of the flashlights, all made prominently  
13 visible in the clear plastic packaging. Conveniently, these “bonus” sets of DURACELL batteries  
14 can be immediately installed and used for powering the enclosed LED flashlights by the  
15 consumers. In stark contrast to the legally compliant and industry-standard licensing transparency  
16 practices, nowhere *on* these Duracell-branded LED Flashlights, nor anywhere on the packaging,  
17 does any name other than DURACELL and COSTCO appear -- not the name or existence of any  
18 licensee, manufacturer, or customer service provider -- other than DURACELL and COSTCO.  
19 Certainly nothing on the product packaging or point-of-purchase in-store displays discloses that  
20 these flashlights are produced anyone other than DURACELL or COSTCO, such that, at the time  
21 of purchase, the objective representation to Plaintiffs (as well as any and all consumers reasonably  
22 relying on this representation) is that DURACELL is the manufacturer of the Duracell-branded  
23 flashlights and the Duracell-branded batteries inside marketed by COSTCO absent any disclosure  
24 that the manufacturer could be a mere licensee. Similarly, there is no indication on the packaging,  
25 or in any of the marketing of these defective Duracell-branded LED flashlights, that the 888-910-  
26  
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1 2280 “Customer Service” phone number provided connects consumers to anyone other than  
2 DURACELL (rather than in fact to TECHNOMATE/PRO-TEK in California, operating a  
3 warehouse, shipping operation and answering mail as TECHNOMATE).

4 11. The Duracell-branded LED flashlight model 350L bearing date codes 1533, 1534 and/or  
5 1535 all share a catastrophic and pervasive design and/or manufacturing defect that rapidly drains  
6 the installed batteries, with power turned OFF, thus rendering these flashlights inoperable until  
7 reloaded with more batteries, as further described below.

9 12. Defendants’ admission of its knowledge of this defect in the model 350L bearing date  
10 codes 1533, 1534 and/or 1535 is revealed on the packaging of later variants of the Duracell-  
11 branded LED flashlights, (e.g. models 380, 500, 1000, 1500.) -- marketed by Defendants  
12 COSTCO, TECHNOMATE/PRO-TEK and DURACELL as being free of this design and/or  
13 manufacturing defect.

14 13. The packaging and marketing for the defective Duracell-branded LED flashlights promotes  
15 the reliability of these products, assuring consumers that these products are “ideal” for use in  
16 “emergencies” and boasting about their performance, specifically the ability to provide light  
17 continuously for up to 1 hour and 30 minutes at the high-intensity setting, and up to 7 hours at the  
18 low-intensity setting, when used with DURACELL AAA alkaline batteries. Any flashlight that  
19 drains batteries in 30-days when stored in the OFF-position is not ideal for emergencies, but  
20 actually increases the danger due to consumers’ false confidence induced by the  
21 misrepresentations of emergency reliability appearing on the packaging – the collaborative design  
22 of COSTCO, DURACELL AND TECHNOMATE/PRO-TEK.

23 14. However, **the defective Duracell-branded LED flashlights model 350L bearing date**  
24 **codes 1533, 1534 and/or 1535 do not actually have the performance characteristics**  
25 **represented by Defendants’ promises related to either these Duracell-branded flashlights:**  
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1 they do not provide consumers with the advertised operation times. Instead, these flashlights fail  
2 to turn on at all, or turn on and fade out in seconds, after being stored and not in use for 30 days or  
3 less. Specifically, these flashlights are defective in that **their flawed end caps continuously and**  
4 **rapidly drain electric power when their LED lights are switched OFF**, thus causing the  
5 batteries (Duracell-branded or any other equivalents) inside these flashlights to become fully  
6 depleted and dead, in less than 30 days.

8 15. In contrast, batteries installed in non-defective LED flashlights do not suffer this parasitic  
9 power drain defect

10 16. As a result of this inherent and pervasive defect in these Duracell-branded LED flashlights,  
11 consumers who trusted the DURACELL brand and counted on their LED flashlights to work **are**  
12 **being literally left in the dark, just when they need their flashlights most – during critical**  
13 **emergency or even life-and-death situations**, such as power outages, failed or tripped fuses,  
14 household fires, home intruder alerts, vehicle breakdowns, or natural disasters like earthquakes,  
15 hurricanes, tornadoes, snow storms, floods, landslides and fast-moving outdoor fires, or even acts  
16 of terrorism and riots, domestically and while travelling globally – in any times of crisis during  
17 which having immediate access to a working flashlight, with batteries holding their full charge,  
18 can be essential for having a bright light to save oneself and one’s family. The defective Duracell-  
19 branded LED flashlights fail to turn on at all, or they do not provide the expected high-intensity  
20 light for anywhere near the advertised operation times – precisely during the **“emergencies”** these  
21 products are marketed and sold as being essential and ideal for such emergencies by Defendants.

24 17. Plaintiffs reasonably relied on Defendants’ misrepresentations that these defective  
25 Duracell-branded flashlights were “ideal for emergencies”– and based on such reasonable reliance,  
26 placed the Duracell batteries in storage inside the flashlights they came packaged with, in the OFF  
27 position, ready for use in a future emergency, as every reasonable consumer foreseeably would do.

1 18. Those consumers fortunate enough to have tested their defective Duracell-branded LED  
2 flashlights a month or so after first installing sets of DURACELL batteries in them, discovered  
3 that these batteries had become mostly or fully depleted, thus rendering their LED flashlights  
4 nearly or completely dead – prior to needing to use them in an emergency -- thus alerting such  
5 consumers to the need to replace the prematurely depleted batteries. Consumers, however, still  
6 have no idea that the defective Duracell-branded LED flashlights they have strategically placed in  
7 their homes, places of work or vehicles over the past four years, have actually long been dead and  
8 will not help them in the event of an actual emergency.

10 19. Prior to the filing of this Complaint, **consumers from all over the United States reported**  
11 **and complained** about the rapid power drain of the DURACELL batteries sold with and included  
12 in the packaging with the defective Duracell-branded LED flashlights, as well as the subsequently  
13 replaced batteries. Thousands of consumer complaints were made nationwide directly to COSTO,  
14 directly to DURACELL, and directly to TECHNOMATE/PRO-TEK, as well as posted  
15 electronically on consumer-product message websites, eliminating any doubt that Defendants and  
16 each of them, at all times since at least 2014, were fully aware of the prevalence of this defect.

18 20. In fact, Defendants, and all of them, were fully aware, or should have been aware, of this  
19 design or manufacturing defect, as evidenced by the large number of consumer complaints made  
20 via their customer service phone numbers, emails, professional consumer product reporting  
21 websites and amateur product review websites and online videos, as well as the innumerable  
22 public postings on websites maintained and/or monitored by Defendants.

24 21. In the wake of such widespread complaints, Defendants DURACELL, COSTCO and  
25 TECHNOMATE/PRO-TEK changed the marketing on the packaging for the subsequent, non-  
26 defective models of Duracell-branded flashlights, such as the **models 380 and 500**, now stating:  
27 ***“Eliminates power drain of batteries in off position,”*** as well as ***“NO BATTERY DRAIN***  
28

1 **IN OFF POSITION**” -- revealing explicit admissions by the Defendants of their knowledge of  
2 the rapid parasitic battery drain defect in the previous Duracell-branded LED model 350L bearing  
3 date codes 1533, 1534 and/or 1535 -- and utilizing the known defect in those flashlights to *further*  
4 profit by promoting consumer purchases of Duracell-branded non-defective flashlights (packaged  
5 with DURACELL batteries) sold through its distribution partners, including COSTCO.  
6

7 22. Further admissions have been made to customers who suspected that their Duracell-  
8 branded LED model 350L flashlights bearing date codes 1533, 1534 and/or 1535 were defective  
9 and called the tech support number (888-910-2280, provided on the packaging and in the user  
10 manuals). Once connected to a service center, and after complaining about the rapid battery drain  
11 issue, consumers were informed that **the end caps of their flashlights had defective power**  
12 **switches.**  
13

14 23. Despite Defendants’ awareness of this pervasive defect (and the feasibility of replacing the  
15 end caps containing the defective power switches), no comprehensive notification nor national  
16 recall action has ever been undertaken, by any entity in the chain of distribution, including  
17 DURACELL, TECHNOMATE/PRO-TEK or COSTCO, to warn consumers in order to either  
18 remove these defective, wasteful and potentially very dangerous Duracell-branded LED flashlights  
19 from circulation, or to replace all the defective end caps in these Duracell-branded LED flashlights  
20 model 350L bearing date codes 1533, 1534 and/or 1535.  
21

22 24. Instead, Defendants have evidently chosen to maximize their profits and avoid the costs of  
23 fixing or replacing all the defective flashlights they sold – **at the expense of their trusting**  
24 **customers being literally left in the dark**, often in dangerous situations. As another damaging  
25 result of this pervasive defect, millions of needlessly drained batteries accumulate in dumps,  
26 landfills, or recycling centers, while their otherwise unnecessary manufacturing, packaging and  
27 transportation continue to contribute to global warming and natural resource depletion.  
28

1 25. By this scheme, DURACELL, TECHNOMATE/PRO-TEK, and COSTCO collaborated in  
2 creating the packaging that misrepresents the defective Duracell-branded flashlights which drain  
3 batteries in the OFF position as “ideal for emergencies” **without disclosing the crucial parasitic**  
4 **battery drain defect known to Defendants,**”, notwithstanding the maelstrom of complaints from  
5 their customers, and knowing that comparable non-Duracell branded products did not have this  
6 built-in defect (virtually effortless to correct with minor engineering/manufacturing corrections at  
7 negligible cost), Defendants continued, year after year, to market these three successive models of  
8 defective LED flashlights.  
9

10 26. Defendants communicate with consumers through several internet websites, such as  
11 [www.duracell.com/en-us/](http://www.duracell.com/en-us/) and [www.youtube.com/user/OfficialDuracell/videos](http://www.youtube.com/user/OfficialDuracell/videos), that contain  
12 extensive promotions of safety preparedness -- using DURACELL batteries, of course.  
13

14 27. DURACELL’s website also links to a parallel website apparently operated by  
15 TECHNOMATE dedicated specifically to marketing flashlights ([www.duracellflashlights.com](http://www.duracellflashlights.com)),  
16 with an FAQ section (<http://duracellflashlights.com/faq/>) that both misleads consumers about the  
17 rapid battery drain defect, and offers them entirely counter-helpful advice, while contradicting  
18 well-established safety preparedness practices, as detailed below. (*see Exhibit 7*)  
19

20 28. No disclosure to consumers appears anywhere on either the Duracell.com website nor the  
21 [duracellflashlights.com](http://duracellflashlights.com) website identifying TECHNOMATE as the actual foreign manufacturer,  
22 nor is there any implication on the product packaging that any company other than DURACELL is  
23 the manufacturer of these Duracell-branded flashlights – thus inducing Plaintiffs and consumers  
24 universally to reasonably believe that these Duracell-branded LED flashlights are a COSTCO  
25 product manufactured by DURACELL – as the names of these two defendants, and *only* these two  
26 names, appear multiple times on each package – with a customer support number in California.  
27

28 29. For those consumers who might suspect that their DURACELL batteries are being rapidly

1 drained inside the defective Duracell-branded LED model 350L flashlights bearing date codes  
2 1533, 1534 and/or 1535, even when they are turned OFF, Defendants concede in the FAQ section:  
3 “*For best battery performance, remove the batteries from the flashlight when not in use.*” (see  
4 Exhibit 7) . However, if consumers were to follow this suggestion, it would substantially defeat  
5 the most important purpose of pocket-sized flashlights for which they were being marketed and  
6 sold – to be instantly available to reliably provide powerful portable light in emergency situations.  
7 Plaintiff putative class members have no “advance warning,” of course, when they face home  
8 intrusions, vehicle breakdowns, earthquakes, tornadoes, floods, landslides, fires or any other  
9 unexpected emergencies or disasters. Therefore, they are not provided with a timely “heads-up” to  
10 first find their DURACELL batteries, then find and review their user manuals to follow all the  
11 required steps, including having to unscrew the end caps of their Duracell-branded LED  
12 flashlights and remove the battery holder modules, without dropping and losing them, then  
13 correctly orient the polarity of multiple batteries into the holder module (that requires each of them  
14 to point in a different direction), then slide the battery holder module back into the flashlight, in  
15 the correct direction, and finally align and screw the end cap back on. This entire process would  
16 have to be performed by consumers with limited lighting and likely in total darkness – before the  
17 class member consumers or their family members are able to turn on their flashlights and get the  
18 bright LED light desperately needed to help escape to safety in a natural disaster or to fix a  
19 dangerous problem like having to replace a blown tire on the side of the road at night. All of this  
20 is well understood by Defendants, as discussed further below and evidenced by Defendants’ own  
21 online publications. (see Exhibit 13)

22  
23  
24  
25 30. To “*remove the batteries from flashlights when not in use,*” and store them separately, as  
26 the Duracell FAQ web page speciously suggests, makes them axiomatically **NOT ideal** for  
27 emergencies, as Plaintiff putative class members would need to be able to perform the above  
28

1 described precision tasks at lightning speed, and do so perfectly, from the first attempt, most likely  
2 in complete darkness, even if they might be elderly, partially disabled, already injured as a result  
3 of the emergency they are trying to survive, or trembling in terror and disoriented during the  
4 moment of great danger, like an earthquake, a flash-flood or an encircling fiery inferno. To be of  
5 any help to anyone when disaster strikes, usually without any warning, it is indisputable that  
6 batteries must already be securely installed inside their flashlights and tested to make sure they  
7 work as installed, and thus always ready to be turned ON, to instantly provide powerful portable  
8 LED lighting. This is also fully consistent with the reasonable expectations of an average  
9 reasonable LED flashlight consumer.

11 31. All theThe defective Duracell-branded flashlight models still appearLED model 350L  
12 flashlights bearing date codes 1533, 1534 and/or 1535 appeared available for purchase online at  
13 various websites and are being promoted through DURACELL's own website with direct links to  
14 duracellflashlights.com (as of 2019-01-31, at <http://duracellflashlights.com/products/>), including  
15 detailed descriptions of their features and technical specifications, as well as providing download  
16 links for their user manuals (*see* Exhibits 6 - 12)::

18 a. In the CAUTION section of the **model 250** user manual, the website states:

19 *“Remove batteries from equipment which is not to be used for an extended period*  
20 *of time.”* However, the website fails to define *“an extended period of time”* -- an  
21 ambiguous term which could mean completely different lengths of time to different  
22 consumers: from months or years, up to the advertised shelf life of DURACELL  
23 batteries, and thus a legally and practically illusory statement. Most importantly, as  
24 of the filing of this Complaint, **Defendants still fail to disclose that the Duracell-**  
25 **branded model 250 flashlight has a defect and will start depleting batteries the**  
26 **moment they are installed, even with power turned OFF, and will likely fully**  
27

1 drain the installed batteries in less than 30 days, thus rendering this flashlight  
2 useless in an emergency, contrary to Duracell advertising.

- 3 b. In the second CAUTION section of the **model 300** and **350** manuals, the website  
4 states: “*Remove batteries from appliances that will not be used for long periods of*  
5 *time (months or longer),*” which actually precisely means “longer than two (2)  
6 months.” However, the website **fails to disclose that the Duracell-branded**  
7 **model 300 and 350350L flashlights** bearing date codes 1533, 1534 and/or 1535  
8 **have a defect and that they will likely start depleting batteries the moment**  
9 **they are installed, even with the power turned OFF**, and will likely fully drain  
10 the installed batteries in less than 30 days, rather than when installed “*for long*  
11 *periods of time (months or longer),*” as claimed in the user manuals, thus rendering  
12 these flashlights useless in an emergency, contrary to Defendants’ marketing.  
13  
14 c. In the second CAUTION section of the manual for **model 380**, the first of the  
15 newer models known to announce on its packaging that it “*Eliminates power*  
16 *drain of batteries in off position,*” the duracellflashlights.com website again  
17 states: “*Remove batteries from appliances that will not be used for long periods of*  
18 *time (months or longer),*” which appears to be an erroneous and entirely counter-  
19 helpful “leftover” misdirection from the older, defective models’ user manuals.  
20  
21 d. Most importantly, despite already having invested in constructing elaborate web  
22 pages and a quite popular YouTube channel to promote to consumers, and educate  
23 them about all the DURACELL batteries and Duracell-branded LED flashlights,  
24 including the Model 350L bearing date codes 1533, 1534 and/or 1535 Defendants  
25 knew to have a battery drain defect, Defendants still:  
26  
27

- 28 i. failed to warn current and prospective consumers about the defect;

- ii. provided either vague or deceptive “cautions” in the applicable user manuals, that would not actually help consumers avoid having their batteries become fully depleted inside their defective Duracell-branded flashlights (while these “cautions” also completely contradicted reasonable and universally accepted flashlight-safety preparedness practices);
- iii. failed to proactively offer customers in possession of defective flashlights still covered by applicable warranty periods with a fix for the battery drain defect (via a free replacement end cap, or a complete replacement of these defective flashlights free of charge);
- iv. failed to deliver free replacement end cap(s), or a complete free replacement of the defective flashlight(s) to some consumers who called the service center, placed the order and were promised to receive these free replacement items from Defendants within 10 days, instead waiting for almost a year - with no updates on the status of their orders;
- v. failed to notify owners of the older defective flashlights, those outside of the stated warranty periods, that they should upgrade and purchase one of the newer Duracell-branded flashlight models that are free of the battery drain defect.

32. The actual performance characteristics of the defective Duracell-branded LED model 350L flashlights bearing date codes 1533, 1534 and/or 1535 are dramatically and catastrophically inferior to those advertised by DURACELL and its manufacturing and retail partners: whole sets of DURACELL batteries begin to be needlessly drained, the moment they are installed in these flashlights, and they continue to be drained, when turned OFF, until they are completely dead, in less than 30 days. Therefore, the only accurate and honest “caution” that Defendants could have

1 provided on the related packaging and in their user manuals *would have been:*

2 *“These Duracell-branded LED flashlights, not made by Duracell, but made by*  
3 *TECHNOMATE in China, under license and without technical supervision or verification*  
4 *by Duracell, might likely drain power from batteries the moment they are installed, even*  
5 *with the LED lights turned OFF, and they might likely fully deplete a set of batteries in less*  
6 *than 30 days.*

7 *Consumers should remove batteries from these flashlights immediately after each use and*  
8 *store them separately from the flashlights, if they desire to enjoy the 10-year advertised*  
9 *shelf life from DURACELL batteries, either included with or subsequently purchased for*  
10 *use with these Duracell-branded LED flashlights.*

11 *These flashlights are NOT suitable for emergency use, and should not be relied on*  
12 *to provide bright light for advertised periods of time in the event of emergencies.”*

13 As mocked-up above, the Defendants should have fully disclosed the licensing arrangements for  
14 the LED flashlights being sold as DURACELL products, as well as the true actual manufacturer of  
15 all the products contained in the relevant COSTCO package(s), as is done by other honest  
16 corporations. Obviously, if such disclosures were made by Defendants, consumers would refuse  
17 to purchase the defective Duracell-branded LED flashlights.

18 33. In fact, even if these defective Duracell-branded LED model 350L flashlights bearing date  
19 codes 1533, 1534 and/or 1535 were being given away for free, they would expose consumers to  
20 financial losses and frustration of constantly having to replace batteries, as well as, at the very  
21 least, the great stress whenever these defective flashlights failed to turn on duringin an emergency  
22 situations, and very likely directly result in other great potential harm to consumers in such  
23 emergency situations. It would be like giving away deliberately defective lifejackets to trusting  
24 boat owners: if a boat owner or his passengers have no other lifejackets (because of reliance on  
25 the lifejackets as they were marketed), they would now be more endangered, by being left without  
26 a product able to save them when the boat sinks in a storm. Defendants not only know, but  
27 actively promote the notion that one of the primary reasons consumers should and do desire  
28 compact household LED flashlights, is to have them immediately available, inside multiple rooms

1 of their homes, in their backpacks, purses and vehicles, instantly operable in case of emergencies.  
2 This also explains why consumers eagerly purchase(d) LED flashlights in multi-packs, containing  
3 a total of 3 or 4 LED flashlightunits each (along with the matching sets of Duracell batteries):  
4 consumers install(ed) the batteries in the flashlights and then – to place(d) them in numerous  
5 strategic locations around their homes and their cars – to be ready for use immediately, to shine a  
6 bright light, whenever a disaster might strike.  
7

8 34. Inability to keep batteries installed inside LED flashlights, without having them rapidly  
9 drain the batteries, **renders such LED flashlights entirely unsuitable for emergency use** – and  
10 fraudulently failing to fulfill the advertised promises on the product packaging of models like the  
11 **350L** (“*Emergency Strobe Light,*” on front and “*Compact design makes it ideal for home, car,*  
12 *outdoors and **emergencies,**” on back).*

13 35. At DURACELL’s web page <https://www.duracell.com/en-us/program/duracell->  
14 [powerforward/](https://www.duracell.com/en-us/program/duracell-powerforward/), under the heading **Storm Preparedness**, DURACELL declares

15  
16 *“Storms and natural disasters are **unpredictable**. You never know when one can affect you*  
17 *or someone you love. That’s why Duracell encourages everyone to review the Duracell*  
18 *Emergency Checklist or visit [www.Ready.gov](http://www.Ready.gov). Your Emergency Preparedness kit **could***  
19 *save your life. Make sure it’s packed with plenty of food, water, **flashlights** (and/or*  
20 *lanterns) **and plenty of trusted Duracell batteries** to outlast the storm. Follow @Duracell*  
21 *on Twitter for real time updates about storms, preparedness, and PowerForward*  
22 *deployments.”*

23 Further down that **Storm Preparedness** web page, DURACELL states:

24 *“**Natural disasters like hurricanes, tornados and floods are happening more frequently***  
25 ***every year, causing power outages for millions of people.**”*

26 DURACELL is thus clearly aware that disasters strike without warning and they endanger the  
27 lives of millions of Americans, including DURACELL’s loyal customers. DURACELL then  
28

1 expresses its highly commendable corporate commitment to help communities in desperate need,  
2 as promoted on their website (and via YouTube videos):

3 *“To assist those in need and to help communities recover, Duracell created the*  
4 *PowerForward program. Since 2011, Duracell PowerForward has been helping affected*  
5 *communities across the country by distributing free Duracell batteries, charging mobile*  
6 *devices, and providing Internet access to those in need so they can connect with family.”*

7 Without doubt, these are truly beneficial community outreach programs. However,  
8 DURACELL’s stated commitment to save lives rings hollow and remains little more than  
9 corporate brand marketing, shamelessly leveraging the devastation experienced by disaster victims  
10 – **unless DURACELL and all of its manufacturing and retail partners also take immediate**  
11 **steps to remove from circulation and/or repair every single one of its defective and**  
12 **dangerous Duracell-branded LED model 350L flashlights bearing date codes 1533, 1534**  
13 **and/or 1535.**

15 36. Unfortunately, these supposedly essential life-saving Duracell-branded flashlights will,  
16 more likely than not, leave class members in desperate trouble, possibly resulting in loss of life.  
17 Every day these defective LED flashlights remain in their possession, they are endangering, rather  
18 than helping millions of consumers who trusted DURACELL brand reputation and advertised  
19 promises, but will end up in the dark during a crisis, with fully or mostly depleted batteries in their  
20 defective Duracell LED flashlights.

22 37. All of the above further confirms that Defendants were fully aware of the battery drain  
23 defects in the Duracell-branded LED model 350L flashlights bearing date codes 1533, 1534 and/or  
24 1535

26 38. It is also remarkable that COSTCO, among DURACELL’s retail distribution partners, was  
27 previously already successfully selling large volumes of non-Duracell-branded compact LED  
28 flashlights that were free of defects, for many years (sold in single or multi-packs, marketed and

1 packaged similarly to the later Duracell-branded models, and sometimes including complete,  
2 ready-to-use sets of DURACELL batteries). These compact non-Duracell branded LED  
3 flashlights were much cheaper, brighter and much more efficient than the previous generation of  
4 non-LED flashlights that used incandescent or halogen light bulbs (such as those made by  
5 **Maglight**, a trusted USA-based manufacturer and designer of flashlights, and sold through  
6 COSTCO for decades, prior to 2014) which drained batteries many times faster when in use,  
7 compared to the efficient new LED modules.  
8

9 39. As a result of Defendants' knowing and calculated collaboration summarized above, the  
10 performance of Representative Plaintiffs' and class members' Duracell-branded LED model 350L  
11 flashlights bearing date codes 1533, 1534 and/or 1535, was defective and fatally flawed, leaving  
12 Plaintiff class members with dead batteries and no light when they try to use them, often in  
13 emergency situations.  
14

15 40. Representative Plaintiffs, on behalf of themselves and all members of each of the  
16 respective classes, seek damages, interest thereon, restitution, injunctive and other equitable relief,  
17 reasonable attorneys' fees and costs as a remedy for Defendants' numerous dangerous, unlawful  
18 and/or deceptive business practices, as detailed herein.  
19

## 20 **JURISDICTION AND VENUE**

21 41. Jurisdiction is proper in this Court due to the existence of federal questions of law and  
22 under the Class Action Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of individual  
23 class members exceed the sum or value of \$5,000,000.00, exclusive of interest and costs, and this  
24 is a class action in which members of the Nationwide plaintiff classes are citizens of many, if not  
25 all states. As Defendants and all of them do substantial business in California, supplemental  
26 jurisdiction to adjudicate issues pertaining to California state law is proper in this Court under 28  
27 U.S.C. § 1367.  
28

1 42. Venue is proper in this Court under 28 U.S.C. §1391(b)(2) because the Northern District of  
2 California is a district where Representative Plaintiff, and many similarly Plaintiff class members  
3 situated, purchased Defendants’ defective products and thus where a substantial part of the events  
4 giving rise to the present claims under 28 U.S.C. §1406(a) occurred.

5  
6  
7 **REPRESENTATIVE PLAINTIFFS**

8 43. Plaintiff STANLEY SIDDLE and MICHAEL LIPSON are adult residents in the State of  
9 California, referred to in this Complaint as the “Representative Plaintiffs.” Prior to discovering  
10 the product defects summarized above, Representative Plaintiffs purchased Duracell-branded LED  
11 flashlights, model 350L, from COSTCO for personal use, including specifically for use in  
12 emergencies and natural disasters that are quite frequent in California, as advertised as being ideal  
13 for emergencies by the Defendants. These purchases were made within this judicial district, and  
14 as the purchasers and owners of these products, the Representative Plaintiffs were damaged by  
15 Defendants’ conduct, as set forth herein.

16  
17 44. Additionally, after discovering the defect in these Duracell-branded LED flashlights,  
18 Representative Plaintiffs reported, personally or had reported on their behalf, to DURACELL,  
19 TECHNOMATE, PRO-TEK and COSTCO in 2018 and 2019, the danger these defective  
20 flashlights posed for all consumers who had purchased them in reliance on the representations of  
21 reliability of the flashlights in emergency situations and the longevity of the Duracell batteries  
22 stored within these LED flashlights, to hold charge for emergency use, as well as the urgent need  
23 for a nationwide process through which consumers such as themselves could be compensated  
24 and/or have the flashlights replaced or repaired through a number of inexpensive, practical means.  
25 Responses to these notices were returned on “Technomate Manufactory” letterhead by Mike  
26 Shapiro from Pro-Tek Industries on June 14, 2018.  
27  
28

1 45. Furthermore, after having reported the parasitic battery drain in the defective Duracell-  
2 branded LED flashlights, in 2018 and March 2019, reasonably expecting Defendants to have taken  
3 corrective action to resolve the defect, and seeking to confirm whether Defendants had in fact  
4 taken corrective action to resolve the defect, Representative Plaintiffs purchased through their  
5 counsel on their behalves, on or about April 1, 2019, Duracell-branded LED model 350  
6 flashlights.  
7

8 46. Representative Plaintiffs are, and were at all times relevant herein, members of the  
9 National class.

10 47. Representative Plaintiffs bring this action on behalf of themselves, and as a class action,  
11 pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all persons similarly  
12 situated and proximately damaged by the unlawful conduct described herein.  
13

14 48. Representative Plaintiffs properly installed the DURACELL batteries included within  
15 the flashlight packaging into each Duracell-branded flashlight, and confirmed initially that  
16 the flashlights appeared to perform as represented. Plaintiffs then stored these flashlights  
17 at normal ambient room temperatures, each one switched OFF, with batteries installed and  
18 ready for use in the event of a future emergency or any other, ordinary utilization for the  
19 purpose of having efficient and powerful portable LED lighting.  
20

21 49. To Representative Plaintiffs' surprise and dismay, within less than 30 days, he  
22 discovered that every one of the Duracell-branded LED flashlights he had purchased failed  
23 to turn on when he tried to use them. Upon removal from the flashlights and further  
24 inspection, the DURACELL batteries from every one of these flashlights were completely  
25 drained. Representative Plaintiffs confirmed that all the DURACELL batteries that had  
26 come packaged with the flashlights were in fact dead or nearly dead, even though  
27  
28

1 Representative Plaintiffs never kept them turned on, other than for very short periods of  
2 time.

3 50. Quite perplexed by this outcome, and relying on Defendants' advertising on the  
4 Duracell-branded flashlight packaging, they purchased additional fresh DURACELL  
5 and/or Kirkland brand AAA alkaline batteries from COSTCO (sold in large multi-packs),  
6 which they then installed into each of the flashlights and stored them, as before, for future  
7 use.  
8

9 51. However, just as the first time, Representative Plaintiffs discovered that again,  
10 approximately a month later, each and every one of the Duracell-branded LED flashlights  
11 failed to turn on and all of the installed batteries were dead or nearly dead upon testing.  
12

13 52. Notably, prior to purchasing the Duracell-branded LED flashlights, Representative  
14 Plaintiffs had previously purchased and/or used similar LED flashlights, without the  
15 DURACELL brand name. These LED flashlights were purchased from retailers including  
16 COSTCO and were of substantially similar design, build, appearance, functionality and  
17 packaging – but were not marketed under the DURACELL brand name. Representative  
18 Plaintiffs still own and regularly use some of these non-Duracell brand LED flashlights to  
19 the present day, and all of these LED flashlights have performed normally, with  
20 DURACELL and/or other brand name batteries, including Costco's Kirkland brand,  
21 installed in them – always turning on and reliably providing powerful beams of light after  
22 multiple years of storage, with no evidence of battery drain.  
23  
24  
25

26 53. Upon subsequently returning to COSTCO, Representative Plaintiffs examined the  
27 packaging of the Duracell-branded LED flashlight **model 380**, and at a later time **model 500**,  
28

1 and discovered that the packaging on these later Duracell-branded flashlights stated:  
2 “*Eliminates power drain of batteries in off position*” and “**NO BATTERY DRAIN IN**  
3 **OFF POSITION**” – thus implicitly acknowledging the previous design and/or  
4 manufacturing defects, the feasibility of their resolution, and representing their correction.  
5

#### 6 DEFENDANTS

7  
8 54. **THE DURACELL COMPANY**, also known as DURACELL, INC., is an American  
9 manufacturing company, with principal executive offices at 181 W. Madison Street, Suite 4400, in  
10 Chicago, Illinois (with subsidiaries in the United Kingdom (UK) and China), that produces  
11 batteries and smart power systems, with annual revenue in 2015 reportedly of \$2 billion.  
12 DURACELL’s arrangements for the manufacture and sale of the defective Duracell-branded LED  
13 flashlights, including the model 350L flashlights bearing date codes 1533, 1534 and 1535, far  
14 exceeded the passive role of merely licensing its trademark, to include retention of authority and  
15 exercise of control by DURACELL, as well as DURACELL’s active engagement in the marketing  
16 of these defective products. DURACELL’s active involvement and control is illustrated in its  
17 “*Corrective Action Plan for Defective Products and Product Recall Process*” (an apparently  
18 standard module in DURACELL’s licensing agreements), incorporating DURACELL’s  
19 involvement in the quality control process. DURACELL’s integrated involvement in the  
20 marketing and sale of the defective LED flashlights is illustrated in the co-packaging of  
21 DURACELL-manufactured batteries with the TECHNOMATE-manufactured flashlights;  
22 DURACELL’s participation, review and approval of the product packaging (including the use of  
23 its trademark) -- with no references of any kind to TECHNOMATE, nor any disambiguation of  
24 *batteries versus flashlights* as having different actual manufacturers. DURACELL’s official  
25 *duracell.com* website’s direct links to the marketing of the Duracell-branded flashlights and retail  
26  
27  
28

1 partners where they can be purchased, absent any disclosure of their manufacturer being anyone  
2 other than DURACELL; and specific and extensive representations at the *duracellflashlights.com*  
3 website, deliberately disguising any distinction between DURACELL batteries and DURACELL  
4 flashlights, while making absolutely no mention, whatsoever, about the existence of  
5 TECHNOMATE, or it being the actual manufacturer of DURACELL-branded flashlights.<sup>1</sup>

6 55.

7  
8 56. **COSTCO WHOLESALE CORPORATION**, headquartered at 999 Lakeside Drive in  
9 Issaquah, Washington, is an American multinational corporation operating a chain of membership-  
10 only warehouse clubs, trading as “COSTCO.” It is ranked #15 on the Fortune 500 rankings of the  
11 largest United States corporations by revenue. As of November 2018, COSTCO is the second  
12 largest retailer in the world after Walmart, operating 766 warehouses (including 533 in the United  
13 States and Puerto Rico, 100 in Canada, 39 in Mexico, 28 in the United Kingdom, 26 in Japan, 15  
14 in South Korea, 13 in Taiwan, 10 in Australia, 2 in Spain, 1 in Iceland, and 1 in France), with  
15 2018 revenues of \$141.6 billion. COSTCO’s participation in the distribution of these defective  
16 Duracell-branded flashlights far exceeded that of a mere passive retailer, beginning with its  
17 discussions in 2013 with DURACELL and TECHNOMATE about the manufacture of the  
18 Duracell-branded flashlights packaged with DURACELL batteries for COSTCO, and including  
19 COSTCO’s active involvement in the design and creation of the packaging for the Duracell-  
20 branded flashlights and batteries, specifically identifying COSTCO as the Importer and Distributor  
21 of these products, with a product ID unique and specific to COSTCO, appearing in multiple  
22  
23  
24

---

25 <sup>1</sup> “**Dependability** is synonymous with the Duracell name. Since 1964, **people have counted on**  
26 **Duracell’s** batteries and quality products to help power their lives and **make them feel safer and more**  
27 **secure. Duracell LED Flashlights are no exception.** Browse through our lineup of the best portable  
lighting products designed for durability and priced with value in mind.”

1 | languages with addresses in multiple countries, including the United States (Seattle, Washington),  
2 | Canada, Mexico, the United Kingdom, Spain, Iceland, France, Japan, Korea, Taiwan and  
3 | Australia. Indeed, the packaging of these Duracell-branded flashlights sold through COSTCO's  
4 | competitors, Home Depot and Amazon, further evidence COSTCO's significant involvement in  
5 | the chain of design, marketing and distribution of the defective flashlights.

6 |  
7 | 57. **TECHNOMATE MANUFACTORY, LTD**, (referred to herein as TECHNOMATE) is a  
8 | manufacturing company, headquartered at 13/F, Efficiency House, 35 Tai Yau Street, San Po  
9 | Kong, Kowloon, Hong Kong, with manufacturing facilities located at No. 116, Shang Bei Road,  
10 | Tian Tou Bei Chong Villiage, Heng Li Town, Dong Guan City, Guangdong, China, and operating  
11 | in California as PRO-TEK INDUSTRIES, LLC. TECHNOMATE identifies itself on its website  
12 | as being “currently one of the biggest manufacturers of Aluminum LED flashlights in the  
13 | industry.” TECHNOMATE partnered with DURACELL, COSTCO and PRO-TEK in creating the  
14 | Duracell-branded flashlights' chain of marketing and distribution to Plaintiff and the class member  
15 | consumers. Despite failing to register with the California Secretary of State as doing business in  
16 | California, TECHNOMATE represents itself to consumers on TECHNOMATE letterhead as  
17 | PRO-TEK INDUSTRIES in California in response to consumer complaints sent *only* to  
18 | TECHNOMATE at its address in Hong Kong.

19 |  
20 | 58. **PRO-TEK INDUSTRIES, LLC.**'s California Secretary of State filings identify its  
21 | principal office to be 5453 E. Centralia Street, Long Beach, California, whose agent for service of  
22 | process is registered as Philip A. Toomey at 841 Apollo Street, Suite 450, El Segundo, California,  
23 | 90245. PRO-TEK participated in the design and creation of the packaging for the Duracell-  
24 | branded flashlights and batteries, specifically identifying PRO-TEK's phone number as the  
25 | “Customer Service for North America” for these Duracell-branded defective flashlights, and  
26 | representing itself as TECHNOMATE on letterhead to U.S. consumers.  
27 |  
28 |



1 class will be determined by analysis of Defendants' records;

2 b. Commonality: The Representative Plaintiffs and the class members share a  
3 community of interests in that there are numerous common questions and issues  
4 of fact and law which predominate over questions and issues solely affecting  
5 individual members, including, but not necessarily limited to:

- 6 i. Whether Defendants had a duty to have disclosed to consumers the parasitic  
7 battery drain when the defective Duracell-branded LED model 350L  
8 flashlights (bearing date codes 1533, 1534 and/or 1535) are turned OFF;  
9  
10 ii. Whether Defendants failed to disclose or concealed material information  
11 concerning the parasitic battery drain when the defective Duracell-branded  
12 flashlights are turned OFF;  
13  
14 iii. Whether Defendants breached any express or implied warranties;  
15  
16 iv. Whether Defendants engaged in fraud;  
17  
18 v. Whether Defendants' conduct and business practices violate the Consumer  
19 Legal Remedies Act ("CLRA") California Civil Code §§1750, *et seq.*;  
20  
21 vi. Whether Defendants' conduct and business practices violate the Unfair  
22 Competition Law ("UCL") California Civil Code §§17200, *et seq.*;  
23  
24 vii. Whether Defendants' conduct and business practices constituted deceptive  
25 trade practices;  
26  
27 viii. The total number of Duracell-branded LED model 350L flashlights bearing  
28 date codes 1533, 1534 and/or 1535 purchased by retail consumers during  
the relevant claim period;  
ix. The total number of the Duracell-branded LED model 350L flashlights  
bearing date codes 1533, 1534 and/or 1535 sold to retail consumers in the

United States by COSTCO;

- x. The total number of the Duracell-branded LED model 350L flashlights models 250, 300 bearing date codes 1533, 1534 and 350/or 1535 sold to retail consumers in the United States by DURACELL through its website;
- xi. The total number of the Duracell-branded LED model 350L flashlights models 250, 300 bearing date codes 1533, 1534 and 350/or 1535 sold to retail consumers in the United States by TECHNOMATE through its website;
- xii. ;
- xiii. The liability of each of the named Defendants for their participation in the chain of distribution, and the merits of any defenses to liability uniquely available to each named Defendant;
- xiv. The profits realized from consumers' purchases of the defective Duracell-branded flashlights by each of the Defendants;
- xv. Whether Representative Plaintiffs' and class members are entitled to relief, the amount and nature of such relief, including injunctive relief and/or restitution.
- c. Typicality: The Representative Plaintiffs' claims are typical of the claims of the class. Representative Plaintiffs and all members of the class sustained economic damages arising out of and caused by Defendants' common course of conduct in violation of law, as alleged herein.
- e. Adequacy of Representation: The Representative Plaintiffs in this class action are adequate representatives of the class in that the Representative Plaintiffs have the same interest in the litigation of this case as class members, are committed to

1 vigorous prosecution of this case and have retained competent counsel who is  
2 experienced in conducting class action litigation of this nature. The Representative  
3 Plaintiffs are not subject to any individual defenses unique from those conceivably  
4 applicable to other class members or the class in its entirety. The Representative  
5 Plaintiffs anticipates no management difficulties in this litigation.

6 Superiority of the Class Action procedure: Since the damages suffered by  
7 individual class members, while not inconsequential, may be relatively small, the  
8 expense and burden of individual litigation by each member makes or may make it  
9 impractical for members of the class to seek redress individually for the wrongful  
10 conduct alleged herein. Should separate actions be brought or be required to be  
11 brought, by each individual member of the class, the resulting multiplicity of  
12 lawsuits would cause undue hardship and expense for the Court and the litigants.  
13 The prosecution of separate actions would also create a risk of inconsistent rulings  
14 that might be dispositive of the interests of other class members who are not parties  
15 to the adjudications and/or may substantially impede their ability to adequately  
16 protect their interests.

### 17 **COMMON FACTUAL ALLEGATIONS**

18  
19  
20 63. Defendants collectively and individually each participated in causing the defective  
21 Duracell-branded LED model 350L flashlights bearing date codes 1533, 1534 and/or 1535 to be  
22 designed, manufactured, co-packaged with DURACELL batteries, marketed, distributed and sold  
23 to retail consumers during the relevant claim period.

24  
25 64. On information and belief, thousands of these defective Duracell-branded LED model  
26 350L flashlights bearing date codes 1533, 1534 and/or 1535, have been purchased by retail  
27 consumers in California and throughout the United States within the claim period.

1 65. Despite the reasonable expectations of consumers, including Representative Plaintiffs and  
2 Plaintiff putative class members, as detailed above, Defendants knew and/or should have known—  
3 and yet refused to timely disclose—that the Duracell-branded LED model 350L flashlights bearing  
4 date codes 1533, 1534 and/or 1535 were and are defective, including, but not limited to, defects in  
5 their design and manufacturing which cause(d) them to rapidly drain the batteries with power  
6 turned OFF.  
7

8 66. Indeed, numerous consumers, including Plaintiff putative class members, experienced  
9 and/or reported the parasitic battery drain defect present in the Duracell-branded LED model 350L  
10 flashlights bearing date codes 1533, 1534 and/or 1535.

11 67. Specifically, Defendants and each of them were put on notice through complaints made to  
12 their respective customer service departments, as well as public internet postings by consumers,  
13 including Plaintiff putative class members, describing the parasitic battery drain design and/or  
14 manufacturing defect in the Duracell-branded LED model 350L flashlights bearing date codes  
15 1533, 1534 and/or 1535.  
16

17  
18 **FIRST CLAIM FOR RELIEF**  
**FRAUD/FRAUDULENT CONCEALMENT**

19 68. Representative Plaintiffs incorporate in this cause of action every allegation of the  
20 preceding paragraphs, with the same force and effect as though fully set forth herein.  
21

22 69. Representative Plaintiffs, on behalf of themselves and all purchasers of the Duracell-  
23 branded LED model 350L flashlights bearing date codes 1533, 1534 and/or 1535 as described  
24 herein, allege that Defendants each materially participated in the making of false statements of  
25 fact, specifically each concealing the material fact that these flashlights sold with the DURACELL  
26 batteries were not made by DURACELL but rather by a foreign licensee TECHNOMATE  
27 MANUFACTORY, LTD. with “customer support in North America” provided not by  
28

1 DURACELL, but by PRO-TEK INDUSTRIES, LLC., in addition to the following affirmative  
2 false representations by:

- 3 a. THE DURACELL COMPANY, that Duracell-branded flashlights would be ready  
4 for use in an emergency, and knowingly concealing the material fact of the parasitic  
5 battery drain when the defective Duracell-branded LED flashlights were turned  
6 OFF;  
7
- 8 b. TECHNOMATE MANUFACTORY, LTD, that Duracell-branded flashlights  
9 “design makes it ideal for...emergencies,” falsely representing that these flashlights  
10 would be ready for use in an emergency, and knowingly concealing the material  
11 fact of the parasitic battery drain when the defective Duracell-branded LED  
12 flashlights were turned OFF,  
13
- 14 c. COSTCO WHOLESALE CORPORATION, that Duracell-branded flashlights  
15 “design makes it ideal for...emergencies” falsely representing that these flashlights  
16 would be ready for use in an emergency, and knowingly concealing the material  
17 fact of the parasitic battery drain when the defective Duracell-branded LED  
18 flashlights were turned OFF,  
19
- 20 d. PRO-TEK INDUSTRIES, LLC., that Duracell-branded flashlights “design makes it  
21 ideal for...emergencies” falsely representing that these flashlights would be ready  
22 for use in an emergency.

23 70. Defendants and each of them individually knew that the concealment of the identity of the  
24 actual manufacturer of the Duracell-branded flashlights was material to the consumer class  
25 members, and that the foregoing affirmative statements were false at the time they made them  
26 (because of the known parasitic battery drain defect present in these flashlights), that the  
27 statements were made to induce the plaintiffs to purchase the defective flashlights and to induce  
28

1 | them to depend upon their reliability, and that Representative Plaintiffs and the Plaintiff putative  
2 | class members were damaged when the defective flashlights did not work as described, and were  
3 | all further damaged when they had to buy more and more DURACELL batteries to power these  
4 | defective flashlights as they repeatedly fully drained Duracell (and/or other brand) batteries in 30  
5 | days or less.

6 |  
7 | 71. Representative Plaintiffs, on behalf of all purchasers of Duracell-branded LED model 350L  
8 | flashlights bearing date codes 1533, 1534 and/or 1535, as described herein, allege that COSTCO  
9 | made or displayed false statements of fact (i.e. that these flashlights would be ready in an  
10 | emergency, as set forth above), that Defendants knew the statements were false because of the  
11 | numerous complaints from consumers who had purchased the Duracell-branded LED model 350L  
12 | flashlights bearing date codes 1533, 1534 and/or 1535 received from consumers directly by  
13 | Defendants and/or as broadly posted on public internet sites, that Defendants manufactured,  
14 | distributed, marketed, and sold these defective Duracell-branded LED model 350L flashlights  
15 | bearing date codes 1533, 1534 and/or 1535, knowing they were indeed defective, and those  
16 | actions were taken to induce the Representative Plaintiffs and all those similarly situated (the  
17 | Plaintiff putative class members) to purchase these defective Duracell-branded flashlights, and to  
18 | induce them to depend upon their reliability, and that Representative Plaintiffs and the Plaintiff  
19 | putative class members were damaged when these defective flashlights did not work as described,  
20 | as they repeatedly fully drained the flashlight batteries in 30 days or less.

21 |  
22 |  
23 | 72. At all relevant times herein, Defendants individually and collectively omitted the material  
24 | facts as specifically set forth above and/or made the specific misrepresentations of material facts  
25 | set forth above as to each named Defendant to the Representative Plaintiffs and Plaintiff putative  
26 | class members regarding the true nature and scope of the parasitic battery drain inherent in the  
27 | defective Duracell-branded LED model 350L flashlights bearing date codes 1533, 1534 and/or  
28 |

1 1535. Defendants knew those material omissions and/or material misrepresentations of facts were  
2 false or misleading when nondisclosed or made.

3 73. Defendants knowingly concealed the material fact of the parasitic battery drain when the  
4 defective Duracell-branded LED model 350L flashlights bearing date codes 1533, 1534 and/or  
5 1535 were turned OFF, and they continued to make the material misrepresentation of fact knowing  
6 that when stored inside the defective Duracell-branded LED flashlights with power turned OFF,  
7 the batteries would be fully depleted in 30 days or less.

9 74. Defendants made these misrepresentations of material facts and concealed the material  
10 facts alleged herein intentionally and/or recklessly, so as to induce reliance thereupon.

11 75. Representative Plaintiffs and Plaintiff putative class members would have acted differently  
12 had the falsity of the misrepresentations and/or omitted facts been disclosed to them.

13 76. As a direct and proximate result of Defendants' misrepresentation, concealment, and  
14 suppression of the foregoing material facts, Representative Plaintiffs and Plaintiff putative class  
15 members have sustained damage by purchasing replacement defective and/or non-defective  
16 Duracell LED flashlights with DURACELL batteries included.

17 77. The total amount of damages suffered by Representative Plaintiffs and Plaintiff putative  
18 class members will be proven at trial. Further, Representative Plaintiffs and Plaintiff putative class  
19 members are entitled to and hereby seek rescission, interest, costs of suit, attorneys' fees and/or  
20 other relief the court deems appropriate.

21 78. Finally, at all times herein mentioned, Defendants intended to cause or acted with reckless  
22 disregard of the probability of causing damage to Representative Plaintiffs and Plaintiff putative  
23 class members, and because Defendants are guilty of oppressive, fraudulent and/or malicious  
24 conduct, Representative Plaintiffs and Plaintiff putative class members are entitled to an award of  
25 exemplary or punitive damages against Defendants in an amount adequate to deter such conduct in  
26  
27  
28

1 the future.

2 **SECOND CLAIM FOR RELIEF**  
3 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**  
4 **(California Civil Code §1750, et seq.)**

5 *(against DURACELL, TECHNOMATE and COSTCO only)*

6 79. Representative Plaintiffs incorporate in this cause of action every allegation of the  
7 preceding paragraphs, with the same force and effect as though fully set forth herein.

8 80. This claim for relief is brought pursuant to the CLRA (the Consumer Legal Remedies Act,  
9 California Civil Code §§1750, et al.). Representative Plaintiffs are "consumers," as that term is  
10 defined by Civil Code §1761(d) because they bought the Duracell-branded LED model 350L  
11 flashlights models 250, 300 bearing date codes 1533, 1534 and 350/or 1535, and replacement  
12 DURACELL batteries therefor, for personal, family, or household purposes.

13 81. Representative Plaintiffs have engaged in a "transaction" with these Defendants, as that  
14 term is defined by Civil Code §1761(e).

15 82. These Defendants' conduct constitutes an unfair method of competition and unfair and  
16 deceptive acts and practices under the CLRA, and were undertaken in transactions intended to  
17 result in, and which in fact resulted in, the sale of goods to consumers – namely, to repeatedly sell  
18 replacement DURACELL batteries to consumers who previously purchased the defective  
19 Duracell-branded LED model 350L flashlights bearing date codes 1533, 1534 and/or 1535, and/or  
20 sell replacement flashlights for these defective flashlights (which in turn might have also been  
21 defective).  
22  
23

24 83. By engaging in the conduct alleged above, these Defendants violated California Civil Code  
25 §1770 by, *inter alia*, misrepresenting and concealing the nature and scope of the parasitic battery  
26 drain defect as Representative Plaintiff Plaintiffs bore the cost of multiple sets of replacement  
27 DURACELL batteries, and/or purchasing replacement flashlights, and/or otherwise incurred  
28

1 damages.

2 84. By concealing the parasitic battery drain inherent in the defective Duracell-branded LED  
3 flashlights from the Representative Plaintiffs and the Plaintiff putative class members, these  
4 Defendants misrepresented that these LED flashlights therefore have particular characteristics,  
5 uses and benefits or qualities, and are of a particular standard, quality or grade, in violation of  
6 Civil Code § 1770.  
7

8 85.

9 86. Pursuant to §1782 of the CLRA, written notices were sent to each of these Defendants  
10 regarding its violations of the CLRA, thereby providing these Defendants with an opportunity to  
11 correct or otherwise rectify the problems alleged herein within 30 days of receipt of that notice.

12 Representative Plaintiffs, on behalf of themselves and the Plaintiff putative class, now seek  
13 this Court's Order requiring these Defendants to, *inter alia*: (a) cease violating the CLRA by  
14 modifying the defective Duracell-branded LED model 350L flashlights bearing date codes 1533,  
15 1534 and/or 1535 not yet sold to the consumers in a manner that prevents these flashlights from  
16 suffering the parasitic battery drain issue when they are turned OFF, (b) notify putative class  
17 members that the rapid parasitic battery drain in the previously purchased defective Duracell-  
18 branded LED flashlights is the result of design and/or manufacturing defects, and (c)  
19 reimburse provide putative class members for the purchase price of the defective Duracell-branded  
20 LED flashlights models 250, 300 and 350, and the cost of replacement with new DURACELL  
21 batteries for the defective Duracell-branded LED flashlights, free of charge, for the life of the  
22 affected flashlights, and (d) offer *replacement*, in the alternative, replace these defective  
23 Duracell-branded LED model 350L flashlights, bearing date codes 1533, 1534 and/or 1535 (or  
24 their defective components, i.e end caps), such that consumers will no longer experience parasitic  
25 battery drain or be exposed to the danger of having their trusted-brand LED flashlights fail to turn  
26 on and provide reliable light in the event of emergencies, such as natural disasters, which  
27 DURACELL had promoted these products to be specifically ideally suited and purchased for.

22 **THIRD CLAIM FOR RELIEF**  
23 **BREACH OF STATUTORY EXPRESS WARRANTY**  
24 **(Magnuson-Moss Warranty Act, 15 U.S.C. §2301, *et seq.*)**

24 87. Representative Plaintiffs incorporate in this cause of action every allegation of the  
25 preceding paragraphs, with the same force and effect as though fully set forth herein.

26 88. Representative Plaintiffs and the Plaintiff putative class members are “consumers” within  
27 the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. §2301(3).  
28

1 89. Defendants are each a “supplier” and “warrantor” within the meaning of 15 U.S.C.  
2 §§2301(4)-(5).

3 90. The defective Duracell-branded LED model 350L flashlights bearing date codes 1533,  
4 1534 and/or 1535, are “consumer products” within the meaning of 15 U.S.C. §§2301(1).

5 91. Each of Defendant’s warranties is a “written warranty” within the meaning of 15 U.S.C.  
6 §§2301(6).

7  
8 92. Defendants breached the warranty by, *inter alia*, selling the Duracell-branded LED model  
9 350L flashlights bearing date codes 1533, 1534 and/or 1535, with defective designs and/or  
10 defective manufacturing such that they would drain the batteries within 30 days or less while  
11 normally installed in the flashlights with power turned OFF.

12 93. Defendants’ breach of warranty deprived Representative Plaintiffs and thousands of  
13 Plaintiff putative class members of the benefits of their bargains.

14 94. The amount in controversy in this action exceeds \$50,000, exclusive of interest and costs.

15 95. There are more than 100 members each of the proposed classes/subclasses.

16 96. Defendants have had a reasonable opportunity to cure their breach of written warranty, and  
17 failed to do so.

18 97. As a direct and proximate result of Defendants’ breach of express warranty, Representative  
19 Plaintiffs and the Plaintiff putative class members sustained damages and other losses in an  
20 amount to be determined at trial.

21 98. Further, Representative Plaintiffs and Plaintiff putative class members are entitled to and  
22 hereby seek rescission, interest, costs of suit, attorneys’ fees and/or other relief the court deems  
23 appropriate.

24  
25  
26 **FOURTH CLAIM FOR RELIEF**  
27 **BREACH OF EXPRESS WARRANTY**

28 99. Representative Plaintiffs incorporate in this cause of action every allegation of the

1 preceding paragraphs, with the same force and effect as though fully set forth herein.

2 100. Defendants warranted that each of the Duracell-branded LED model 350L  
3 flashlights bearing date codes 1533, 1534 and/or 1535, was free of defects when it sold these  
4 products to Representative Plaintiffs and class members.

5 101. This warranty became part of the basis of the bargain. Accordingly, Defendants'  
6 warranty is an express warranty.  
7

8 102. Defendants breached this warranty by, *inter alia*, knowingly concealing the  
9 material fact of the parasitic battery drain in the defective Duracell-branded LED flashlights when  
10 they are stored under normal conditions with power turned OFF.

11 103. Defendants were on notice of the defects *vis-à-vis* direct complaints from Plaintiff  
12 putative class members, the internet message boards and product support forums maintained by  
13 Defendants, and from published product reviews on countless websites.  
14

15 104. As a direct and proximate result of Defendants' breach of express warranty,  
16 Representative Plaintiffs and Plaintiff putative class members sustained damages and losses in an  
17 amount to be determined at trial. Further, Representative Plaintiffs and Plaintiff putative class  
18 members are entitled to and hereby seek rescission, interest, costs of suit, attorneys' fees and/or  
19 other relief the Court deems appropriate.  
20

21 FIFTH CLAIM FOR RELIEF  
22 UNFAIR BUSINESS PRACTICES PURSUANT TO THE UNFAIR COMPETITION ACT

23 105. Representative Plaintiffs incorporate in this cause of action every allegation of the  
24 preceding paragraphs, with the same force and effect as though fully set forth herein.  
25

26 106. Representative Plaintiffs bring this cause of action, seeking equitable and statutory  
27 relief to stop the misconduct of Defendants, as complained of herein, and seeking restitution from  
28 Defendants for the unfair, unlawful and fraudulent business practices described herein.

1 107. The knowing conduct of Defendants, as alleged herein, constitutes an unlawful  
2 and/or fraudulent business practice, as set forth in California Business & Professions Code §§  
3 17200-17208 (the "UCL"). Such violations include, but are not necessarily limited to fraudulent  
4 and deceitful conduct and violations of California Civil Code §§ 1709-1711 and the Consumer  
5 Legal Remedies Act, California Civil Code §§ 1770(a)(5), (a)(7), and (a)(9).

6  
7 108. Defendants' knowing violations of the UCL continue to this day.

8 109. Defendants' knowing failure to adopt policies in accordance with and/or adhere to  
9 these laws, all of which are binding upon and burdensome to Defendants' competitors, engenders  
10 an unfair competitive advantage for Defendants, thereby constituting an unfair business practice,  
11 as set forth in California Business & Professions Code §§ 17200-17208

12 110. By engaging in these unlawful business practices, Defendants have enjoyed an  
13 advantage over their competition and a resultant disadvantage to the public for the entire four-  
14 year claim period set forth in Business & Professions Code §17208.

15  
16 111. Defendants' knowing failure to adopt policies in accordance with and/or adhere to  
17 these laws, all of which are binding upon and burdensome to Defendants' competitors, engenders  
18 an unfair competitive advantage for Defendants, thereby constituting an unfair business practice,  
19 as set forth in California Business & Professions Code §§ 17200-17208.

20 112. Defendants have clearly established a policy of accepting a certain amount of  
21 collateral damage, as represented by the damages to Representative Plaintiffs herein alleged, as  
22 incidental to its business operations, rather than accept the alternative costs of full compliance  
23 with fair, lawful and honest business practices ordinarily borne by responsible competitors of  
24 Defendants and as set forth in legislation and the judicial record.

25  
26 113. Representative Plaintiffs request that this Court enter such orders or judgments as  
27 may be necessary to enjoin Defendants from continuing these unfair, unlawful, and/or deceptive  
28

1 | practices and to restore to Representative Plaintiffs any money Defendants acquired by unfair  
2 | competition, including restitution and/or restitutionary disgorgement, as provided in California  
3 | Business & Professions Code § 17200, *et seq.*; and for such other relief set forth below.

4 |  
5 | **REQUEST FOR RELIEF**

6 | **WHEREFORE**, the Representative Plaintiffs, on behalf of themselves and each member of the  
7 | proposed nationwide class, respectfully requests that this Court enter judgment in Plaintiffs' favor  
8 | and for the following specific relief against Defendants, and each of them, jointly and separately,  
9 | as follows:

- 10 |  
11 | 1. That the Court declare, adjudge, and decree that this action is a proper class action  
12 | and certify the proposed class and/or any other appropriate subclasses under F.R.C.P. Rule 23  
13 | (b)(1), (b)(2), and/or (b)(3), including appointment of Representative Plaintiffs' counsel as Class  
14 | Counsel;
- 15 | 2. For an award to Representative Plaintiffs and members of both classes of compensatory  
16 | and special damages in an amount to be proven at trial;
- 17 | 3. That Defendants be found to have made negligent misrepresentations and/or material  
18 | omissions of fact to the Representative Plaintiffs and members of both classes;
- 19 | 4. That the Court enjoin Defendants, ordering them to cease and desist from unlawful  
20 | activities in further violation of California Business and Professions Code § 17200, *et seq.*;
- 21 | 4. For equitable relief enjoining Defendants from engaging in the wrongful conduct alleged  
22 | herein;
- 23 | 5. For interest on the amount of any and all economic losses, at the prevailing legal rate;
- 24 | 6. For an award of punitive and/or exemplary damages, in an amount sufficient to deter  
25 | such conduct in the future;
- 26 | 7. For an award of reasonable attorneys' fees;
- 27 |  
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8. For costs of suit and any and all other such relief as the Court deems just and proper;

9. For all other Orders, findings, and determinations identified and sought in this

Complaint.

**JURY DEMAND**

Representative Plaintiffs and members of each of the Plaintiff classes hereby demand trial  
by jury on all issues triable of right by jury.

Respectfully submitted,

DATED: August 20, 2020

By: 

TIMOTHY P. RUMBERGER, Esq.  
Law Offices of Timothy P. Rumberger Law  
Counsel for Representative Plaintiffs  
and Class Counsel for all putative Class Members