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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

ANDREA KATZ on behalf of herself and all)
persons similarly situated,) **CLASS ACTION COMPLAINT**
and) **(Jury Trial Demanded)**
JOEL KATZ on behalf of himself and all)
persons similarly situated,) Case No. _____
Plaintiffs,)
Judge _____
vs.)
)
GARMIN LTD.)
Mühlentalstrasse 2, 8200 Schaffhausen,)
Switzerland,)
and)
GARMIN INTERNATIONAL, INC.)
1200 East 151st Street, Olathe, KS, 66062,)
Defendants.)

CLASS ACTION COMPLAINT

Plaintiffs Andrea Katz (“Mrs. Katz”) and Joel Katz (“Mr. Katz”), (collectively “Plaintiffs”) by their undersigned counsel, on behalf of herself and himself and all persons similarly situated who purchased and used Garmin Forerunner 610 watches, allege as follows for this Complaint:

SUMMARY OF THE ACTION

This action involves conduct by Defendants Garmin Ltd. and Garmin International, Inc. their agents and employees, arising out of the design, manufacturing, marketing, distribution, sale and service of the Garmin Forerunner 610 watch (the “Forerunner 610” or the “Watch”) by Defendants. Defendants, their agents and employees, engaged in an ongoing, intentional, deceptive course of business conduct with respect to the design, manufacture, marketing, distribution, sales and servicing of the Forerunner 610 as alleged in detail below. As a result, the Plaintiffs and Class members sustained damages in an aggregate amount that is not presently determinable but will be proven at the trial of the within action.

JURISDICTION AND VENUE

1. Jurisdiction and venue are properly vested in this Court because a substantial portion of the acts, events, and/or failure to act giving rise to the claims alleged herein occurred in this judicial district. In addition, the defendant has substantial business contacts with the State of Utah.

2. This action is brought pursuant to 28 U.S.C. § 1332 and § 1367. Jurisdiction is vested in this Court in that there is complete diversity among the parties, and the amount in controversy exceeds the required jurisdictional limits of this Court.

3. Venue is proper pursuant 28 U.S.C. § 1391.

PARTIES

4. Plaintiff Andrea Katz resides and is domiciled at 4819 Last Stand Drive, Park City, Utah 84098. At the time Plaintiff purchased the Watch on or about December 12, 2012, Plaintiff resided and was domiciled at 2735 N. Pine Grove, Chicago, IL 60614.

5. Plaintiff Joel Katz resides and is domiciled at 4819 Last Stand Drive, Park City, Utah 84098. At the time Plaintiff was gifted the Watch on or about December 25, 2012, Plaintiff resided and was domiciled at 2735 N. Pine Grove, Chicago, IL 60614.

6. Defendant Garmin Ltd. is, and at all times mentioned in this Complaint was, a corporation organized and existing under the laws of the country of Switzerland, with its principal place of business located at Mühlentalstrasse 2, 8200 Schaffhausen, Switzerland. Defendant Garmin Ltd. is domiciled in Switzerland. At all relevant times, Garmin Ltd. carried on, had and continues to have substantial business contact with the United States and the State of Illinois. Defendant Garmin Ltd. can sue and be sued in this Court.

7. Defendant Garmin International, Inc. (hereinafter “Garmin Inc.”) is, and at all times mentioned in this Complaint was, a subsidiary of Garmin Ltd., a corporation organized and existing under the laws of the State of Kansas, with its principal place of business located at 1200 East 151st Street, Olathe, KS, 66062. Defendant Garmin Inc. is domiciled in Kansas. At all

relevant times, Garmin Inc. carried on, had and continues to have substantial business contact with the State of Illinois. Indeed, the world's only Garmin retail location is located on the “Magnificent Mile” (Michigan Avenue) in Chicago, Illinois. Defendant Garmin Inc. can sue and be sued in this Court.

8. Garman Ltd. and Garmin Inc. are hereinafter collectively referred to as “Garmin” or “Defendants.”

CLASS ACTION ALLEGATIONS

9. This action has been brought, and may be properly maintained, under Federal Rules of Civil Procedure 23(a)(1)-(4), 23(b)(3) on behalf of a class of all persons and entities who purchased Forerunner watches, including, but not limited to, the Forerunner 610 series of watches, in the State of Illinois and the United States (the “Class”).

10. This action is properly maintainable as a class action. The Class is so numerous that joinder of all members is impractical. On information and belief, there are in excess of tens of thousands of members of the Class. On *Amazon.com* alone, more than 300 reviews of the Forerunner 610 exist; of these, nearly 10% report problems with the Garmin Watches identical to that experienced by Plaintiffs.

11. There are questions of law or fact common to the Class. These questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. The questions of law and fact include but are not limited to:

- a. Whether the Defendants’ conduct breached the material terms of the contracts entered into with Class members, with specific regard to defects in design,

manufacturing and servicing, as alleged herein;

- b. Whether Defendants expressly or impliedly warranted the Forerunner 610 at the times Class members purchased said watches and, if so, whether any such warranties were breached;
- c. Whether Defendants violated the covenants of good faith and fair dealing implied in its contract with the Class members; and
- d. Whether Defendants actions amount to willful and wanton misconduct; and
- e. Whether Plaintiffs and the Class sustained damages, and if so, the proper measure and amount thereof.

12. Plaintiffs' claims are typical of the claims of all other Class members inasmuch as all members of the Class are similarly affected by Defendants' wrongful conduct complained of herein.

13. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel experienced in complex class litigation and consumer class motions. Accordingly, Plaintiffs foresee no difficulty in managing this action as a class action.

14. A class action in this instance is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual class members are relatively small, the expense and burden of individual litigation make it impossible or impracticable for the Class to individually address the wrongs done to them.

15. Plaintiffs further state that the prosecution of the separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class. In addition, individual adjudications with respect to individual members of the Class would, as a practical matter, contravene the interest of the other members not parties to the adjudications and/or would substantially impair or impede their ability to protect their interests.

SUBSTANTIVE ALLEGATIONS

16. Defendants were, and at all times mentioned in this Complaint, are in the business of, *inter alia*, designing, manufacturing, assembling, inspecting, marketing, distributing, selling and servicing various types of innovative GPS technology for use in fitness and outdoor recreation, including a touchscreen GPS sport watch commonly known as the Forerunner.

17. In 2003, Defendants began to manufacture, produce, market and sell the Garmin Forerunner line of sport watches to the public directly and through its authorized resellers throughout the State of Utah and the United States.

18. In 2011, Defendants began to manufacture, produce, market and sell the Garmin Forerunner 610 model of sport watches to the public directly and through its authorized resellers throughout the State of Utah and the United States.

19. The Forerunner 610 as sold includes a plastic watchband (“Plastic Watchband”) attached to the watch face by two metal pins (“Metal Pins”).

20. Upon information and belief, at all times relevant hereto, Defendants designed, manufactured, assembled, inspected, marketed, distributed, sold and serviced at retail and/or through authorized resellers for resale the Forerunner 610.

21. Upon information and belief, the Forerunner 610 was a tremendous sales success for Defendants because of its GPS functionality, computer interface and contemporary design.

22. On or about December 12, 2012, Mrs. Katz purchased a Forerunner 610 from the Garmin retail store on 663 N. Michigan Avenue, Chicago, IL for approximately \$350.00.

23. Garmin marketing materials featured professional athletes endorsing the Forerunner 610. These athletes included Matt Lieto, Ben Collins, and Olympic silver medalist Meb Keflezighi. In one such advertisement, Meb Keflezighi states the Forerunner 610 helps you “be the best you can be in preparation for a marathon.”

24. Garmin marketing materials touted the suitability of the Forerunner 610 in a variety of intense physical activities, including its ability to conduct “interval training”, analyze bicycling and running routes, and measure aerobic fitness. One marketing video specifically mentioned the “heart rate training” features for high intensity workouts. Images in advertisements show athletes utilizing the Forerunner 610 in a variety of environments, including the beach and wilderness.

25. Garmin marketing materials also claim the Forerunner 610 can withstand harsh outdoor conditions. Specifically, Garmin videos describe the “resistant touch screen for durability” as “rugged”. Another print advertisement states that the Forerunner 610 is “not just a pretty face. Stands up to rain, sweat and the occasional drink station dousing...”

26. In reliance upon these aforementioned claims, Mrs. Katz purchased the Forerunner 610 as a gift for her husband, Mr. Katz, for its reliability in distance tracking, route navigation, and aerobic monitoring in a variety of weather conditions.

27. Mrs. Katz subsequently gifted the watch to her husband on or about December 25, 2012.

28. As an avid marathon runner, Mr. Katz used the Watch for the marketed purposes during his running sessions.

29. In February, 2013, in the course of running, the Plastic Watchband detached from the Watch as a result of the Metal Pin(s) either falling out or breaking. Because Mr. Katz noticed the Watch falling from his wrist, he was able to recover and not lose the Watch itself.

30. Shortly after the Plastic Watchband detached, Mr. Katz visited the Garmin retail store in Chicago where Mrs. Katz initially purchased the Watch. The trip to the store on the Magnificent Mile from Mr. Katz's home in Chicago resulted in Mr. Katz incurring approximately \$30 in transportation costs via cab. After listening to Mr. Katz's explanation of the incident, Garmin replaced the two Metal Pins connecting the Plastic Watchband free of charge at the store location's upstairs technicians' center.

31. In May 2013, again in the course of one of his running sessions, the Plastic Watchband detached a second time from the Watch. Again, Mr. Katz barely avoided losing the Watch. Also again, Mr. Katz incurred approximately \$30 in transportation costs via cab travelling to the Garmin retail store in Chicago from his house. As before, after listening to Mr. Katz' explanation of the incident, Garmin replaced the two Metal Pins connecting the Plastic

Watchband free of charge at the store location's upstairs technicians' center free of charge.

32. Just weeks after the second incident, in May 2013, and in the course of another running session, the Plastic Watchband detached for the third time.

33. Mr. Katz yet again incurred the time and expense of traveling for a third time to the Garmin retail store from his home on or about July 1, 2013. This time, instead of simply replacing the Metal Pins connecting the Plastic Watchband, a Garmin employee recommended to Mr. Katz that he purchase a new Velcro watchband – at his own expense – as a more resilient alternative to the Plastic Watchband which had been sold with the Watch.

34. Frustrated over the time and cost expended in three trips to the Garmin store related to the faulty Plastic Watchband, Mr. Katz purchased a Velcro watchband for \$30.58 on or about July 1, 2013. Mr. Katz also incurred approximately \$15 in transportation costs via automobile travelling to the Garmin retail store in Chicago from his house.

35. The Velcro Watchband proved an inadequate substitute for the Plastic Watchband. Sweat accumulated on the Velcro Watchband causing an unpleasant odor, deterring Mr. Katz from utilizing the Watch. Washing the Velcro Watchband to prevent the unpleasant odor quickly destroyed the ability of the Velcro Watchband to function properly.

36. The Plastic Watchband, designed, manufactured and incorporated into the Watch by Defendants is defective and not fit for the particular purpose for which it was designed. The Plastic Watchband has an unacceptable rate of failure in that it detaches from the Forerunner 610, resulting in the loss or damage of the Watch or the need for the consumer to spend his/her time and money to replace or fix the Plastic Watchband.

37. Defendants knew or should have known about the design and manufacturing defect of the Forerunner 610. Despite such knowledge, Defendants failed and/or refused to recall said Forerunner 610's, or replace said Plastic Watchbands for free; and failed to remedy the problem, instead recommending for purchase a lesser quality Velcro band different than the Plastic Watchband which was misrepresented to be suitable for the purpose for which it was intended.

COUNT I
(BREACH OF CONTRACT)

38. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth set forth herein.

39. Plaintiffs, and all other similarly situated Class members, contracted to purchase the Forerunner 610.

40. Plaintiffs and all other Class members purchased a Forerunner 610 as set forth herein.

41. In order to provide the bargained for consideration, the Defendants were required to, *inter alia*, provide for purchase to Plaintiffs and Class members a Forerunner 610 that was free of design defects and that would operate and function as intended.

42. Defendants breached their agreements with Plaintiffs and Class members by, *inter alia*, selling a defective Forerunner 610 product to Plaintiffs and Class members.

43. Plaintiff and all other Class members have, as a direct and proximate result, been damaged due to Defendants' misconduct as alleged herein; and for all of which they are entitled

to an award of damages in an amount to be determined at trial of the within action.

COUNT II
(BREACH OF EXPRESS WARRANTY)

44. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth herein.

45. By and through the representations of fact and guarantees alleged herein, the Defendants, their agents and employees, expressly warranted to the Plaintiffs and the Class that the Forerunner 610s purchased were each of good, merchantable quality and would be free from defects in the manner represented by the Defendants.

46. Plaintiffs and all other members of the Class relied upon the Defendants' representations and guarantees which formed a material part of the Plaintiffs' and Class' bargain when they, in reliance thereon, purchased the Garmin Watches from the Defendants.

47. Notwithstanding the Defendants' guarantees and express warranties, the Defendants failed to provide the Forerunner 610's as expressly warranted, represented and agreed and, as a direct, proximate and foreseeable result thereof, Plaintiffs and the Class are now the owners of Forerunner 610's which are defective.

48. Defendants breached their express warranties when they sold these defective Forerunner 610's.

49. As a direct and proximate result of the Defendants' breaches, Plaintiffs and the Class have been damaged in an amount to be determined at trial.

COUNT III
(BREACH OF IMPLIED WARRANTY)

50. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

51. By and through the representations and guarantees alleged herein, Defendants impliedly warranted to the Plaintiffs and the Class that the Forerunner 610's that were offered, advertised, sponsored, promoted, and sold to Plaintiffs and the Class would be capable of performing as represented and were of good, merchantable quality and would be free from defects in the manner represented by the Defendants.

52. Plaintiffs and the Class, relying upon Defendants' guarantees and implied warranties, purchased Forerunner 610's for good and valuable consideration.

53. Notwithstanding Defendants' guarantees and implied warranties, the Forerunner 610's purchased by Plaintiffs and the Class were not as warranted and were defective. Accordingly, Defendant' breached their implied warranties to the Plaintiffs and to the Class.

54. As a direct, proximate and foreseeable result of the Defendants' breaches, the Plaintiffs and the Class have been damaged in an amount to be determined at trial.

COUNT IV
(VIOLATIONS OF ILLINOIS STATUTORY LAW)

55. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth herein.

56. By engaging in the conduct described herein, Defendants have violated the Illinois Consumer Fraud and Deceptive Business Practices Act § 815 ILCS 505/1 *et seq.*, by, among other things:

- a. Engaging in unfair methods of competition and unfair or deceptive acts or practices as defined in § 815 ILCS 505(2) by the use or employment of deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact in the conduct of trade or commerce. This unlawful conduct included statements by Defendants pertaining to the “very reliable” nature of the Forerunner 610 representing that the watches were free from design and manufacturing defects.
- b. Breaching the Implied Warranty of Merchantability under § 810 ILCS 5/2-314 which requires that goods must be of fair average quality within the description and fit for the ordinary purposes for which such goods are used. The numerous incidents of Plastic Watchbands detaching from Forerunner 610’s indicates these goods are not of “fair average quality.” Because these goods were intended for use in physical activities, detachment of the Plastic Watchband from the Watch during the course of such activity makes it unfit for the purpose for which the Forerunner 610 is ordinarily used.
- c. Breaching the Implied Warranty of Fitness for Particular Purpose under §810 ILCS 5/2-315 by having reason to know at the time of sale of any particular purpose for

which the goods are required and that the buyer was relying on the seller's skill or judgment to select or furnish suitable goods. The Defendants had reason to know that the Forerunner 610 was to be worn on the wrist during the course of physical activities in order to navigate and track various performance statistics. The Defendants clearly marketed the Forerunner 610 for these purposes. Defendants knew that Plaintiffs relied on Defendants' judgment in selecting a suitable product, evidenced by the advertisements portraying Defendants as a premier provider of such goods. The malfunctioning Plastic Watchbands breached this implied warranty for a particular purpose by preventing users from using the watch for its particular purposes, including but not limited to, accessing navigational and other tracking information.

- d. Engaging in unfair or deceptive trade practices including, but not limited to, continuing to promote, sell and market the Forerunner 610 to consumers, including the Plaintiffs and the Class, all to their damage in amounts as will be proven at trial.

57. The Plaintiffs and the Class have suffered damage as a result of the Defendants' violations of the Illinois Consumer Fraud and Deceptive Business Practices Act and request that this Court award damages in an amount to be proven at trial and for all other relief which Plaintiffs and the Class may be entitled.

COUNT V
(VIOLATIONS OF UTAH CONSUMERS SALES PRACTICE ACT)

58. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth herein.

59. By engaging in the conduct described herein, Defendants have violated the Utah statutory law by, among other things:

- a. Engaging in deceptive acts or practices as defined in Utah's Consumer Sales Practices Act, Utah Code Ann. §13-11-4, by indicating that the Watch has performance characteristics, uses, and benefits that it does not and by indicating that the Watch is of a particular standard, quality or grade that it is not. This unlawful conduct included, but is not limited to, statements by Defendants pertaining to the "very reliable" nature of the Forerunner 610 representing that the watches were free from design and manufacturing defects.
- b. Breaching the Implied Warranty of Merchantability under Utah Code Ann. §71A-2-314 which requires that goods must be of fair average quality within the description and fit for the ordinary purposes for which such goods are used. The numerous incidents of Plastic Watchbands detaching from Forerunner 610's indicates these goods are not of "fair average quality." Because these goods were intended for use in physical activities, detachment of the Plastic Watchband from the Watch during the course of such activity makes it unfit for the purpose for which the Forerunner 610 is ordinarily used.

- c. Breaching the Implied Warranty of Fitness for Particular Purpose under Utah Code Ann. §71A-2-315 by having reason to know at the time of sale of any particular purpose for which the goods are required and that the buyer was relying on the seller's skill or judgment to select or furnish suitable goods. The Defendants had reason to know that the Forerunner 610 was to be worn on the wrist during the course of physical activities in order to navigate and track various performance statistics. The Defendants clearly marketed the Forerunner 610 for these purposes. Defendants knew that Plaintiffs and the Class relied on Defendants' judgment in selecting a suitable product, evidenced by the advertisements portraying Defendants as a premier provider of such goods. The malfunctioning Plastic Watchbands breached this implied warranty for a particular purpose by preventing users from using the watch for its particular purposes including, but not limited to, accessing navigational and other tracking information.
- d. Engaging in unfair or deceptive trade practices including, but not limited to, continuing to promote, sell and market the Forerunner 610 to consumers, including the Plaintiffs and the Class, all to their damage in amounts as will be proven at trial.

60. The Plaintiffs and the Class have suffered damage as a result of the Defendants' violations of the Utah's Consumer Sales Practices Act and requests that this Court award damages in an amount to be proven at trial and for all other relief which Plaintiffs and the Class may be entitled.

COUNT VI
(VIOLATIONS OF LANAHAM ACT and UTAH TRUTH IN ADVERTISING ACT (UTAA))

61. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth herein.

62. By engaging in the conduct described herein, Defendants have violated the Lanham Act (15 U.S.C. §1125(a)) and the Utah Truth in Advertising Act (Utah Code Ann. § 13-11a-3(1)) with regards to the false representations the Defendants have made in commerce as to the durability of the Forerunner 610.

63. Among other false representations the Defendants have:

- a. distributed marketing materials touting the suitability of the Forerunner 610 in a variety of intense physical activities, including, but not limited to, its ability to conduct “interval training”, analyze bicycling and running routes, and measure aerobic fitness. Images in advertisements show athletes utilizing the Forerunner 610 in a variety of environments, including the beach and wilderness.
- b. marketed that the Forerunner 610 can withstand harsh outdoor conditions. Specifically, Garmin videos describe the “resistant touch screen for durability” as “rugged”. Another print advertisement states that the Forerunner 610 is “not just a pretty face. Stands up to rain, sweat and the occasional drink station dousing...”.

64. The Defendants advertisements to consumers as described herein contain false and misleading statements.

65. The Defendants' false and misleading statements go to an inherent quality or characteristic of the Defendants' product.

66. Upon information and belief, the Defendants' false and misleading statements have influenced consumers' purchasing decisions in this District and elsewhere and will continue to do so unless enjoined.

67. The Plaintiffs and the Class have suffered and will continue to suffer actual damages as a result of Defendants violations of the Lanham Act (15 U.S.C. §1125(a)) and the Utah Truth in Advertising Act (Utah Code Ann. § 13-11a-3(1)) and request this Court award damages in an amount to be proven at trial and for all other relief which Plaintiffs and the Class may be entitled.

COUNT VII
(ALTERNATIVE CLAIM FOR NEGLIGENCE)

68. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth herein.

69. Defendants had a duty to exercise reasonable care in the design, manufacture, assembly, sale and/or distribution of their Forerunner 610's into the stream of commerce, including, but not limited to, a duty to assure that their product was free of defects.

70. Defendants failed to exercise ordinary care in the design, manufacture, assembly sale, testing, quality control, quality assurance, and/or distribution of its Forerunner 610's in that the Defendants knew or should have known that the Plastic Watchband is defective and not fit for the particular purpose for which it was designed and that it has an unacceptable rate of

failure. Specifically, the Plastic Watchband detaches during its normal and intended use, resulting in the loss of the Watch, or the need for the consumer to cause the Watch to be fixed and/or replace the Plastic Watchband at the consumer's own expense of time and/or funds.

71. Defendants were negligent in the design, manufacture, testing, advertising, marketing and sale of their Forerunner 610 series of sports watches in that, among other things, they:

- a. Failed to use due care in designing and manufacturing the Plastic Watchband used on with the Forerunner 610;
- b. Failed to warn, or adequately warn, Plaintiff and the Class, about the high rate of failure of the Plastic Watchband used with the Forerunner 610; and
- c. Were otherwise careless and negligent.

72. Despite Defendants' knowledge of the defective nature, and high rate of failure, of the Plastic Watchband used on the Forerunner 610, Defendants continued to market the Forerunner 610 to consumers, including the Plaintiffs and class, leading to time and/or funds expended by the consumers to remedy the defective product.

73. As a direct and proximate cause of Defendants' negligence, Plaintiffs and the Class have been damaged as alleged herein, and as will be proven at the trial of this matter.

COUNT VIII
(ALTERNATIVE CLAIM FOR NEGLIGENT MISREPRESENTATION)

74. Plaintiffs repeat and reallege each of the foregoing paragraphs as if fully set forth herein.

75. The Defendants represented to the Plaintiffs and the Class that the Forerunner 610 was free from all defects and designed fit for the particular purpose for which it was intended.

76. The Defendants' representations as alleged herein were made uniformly and identically to the Plaintiffs and to all members of the Class. The Defendants' representations were transmitted to and reached the Plaintiffs and the Class via a massive advertising campaign through television, radio, newspapers, and similar media channels, and said representations were persuasive and made under circumstances creating an inference that such representations reached each and every member of the Class and were relied upon by the Plaintiff and the Class when purchasing the product and services from Defendants.

77. Said misrepresentations and omissions included, but are not limited to, that the Forerunner 610 was free from design and manufacturing defects and was suitable for outdoor, high-intensity aerobics activities in a variety of harsh environments.

78. The Defendant knew or should have known that the statements regarding the quality of the Forerunner 610 were false and misleading.

79. Plaintiffs and the Class, without knowledge of the falsity of the Defendants statements and representations, justifiably relied upon them and, as a result, paid valuable consideration for the Forerunner 610.

80. Had the Plaintiff and the Class members been made aware of the true nature of the misrepresentations of the Defendant, they would not have paid valuable consideration in exchange therefore.

81. As a direct and proximate result of the wrongful misrepresentations and concealment, the Plaintiffs and the Class have each sustained damages in an amount to be determined at trial.

COUNT IX
(ALTERNATIVE CLAIM FOR UNJUST ENRICHMENT)

82. Plaintiffs repeat and reallege each of the foregoing allegations as if fully set forth herein.

83. Defendants have been unjustly enriched by selling defective Forerunner 610's to Plaintiffs and the Class.

84. Plaintiffs and the Class members unknowingly conferred a benefit on Defendants, of which Defendant had knowledge, in that Defendants had reason to know of the defective nature, and high rate of failure, of the Plastic Watchband used on the Forerunner 610.

85. Because of the misleading, fraudulent and deceptive nature of Defendants' conduct in continuing to promote, sell and market the Forerunner 610 to consumers despite having reason to know of its defective nature and high rate of failure, the Defendants' misleading, fraudulent and deceptive conduct induced the Plaintiffs and the Class to purchase the Watch. Defendants have been enriched, at the expense of unwitting consumers nationwide, by profiting from the unscrupulous conduct described above.

86. The circumstances are such that it would be inequitable for Defendants to retain the benefit of those profits that it obtained from Plaintiffs and members of the Class.

87. Plaintiffs and members of the Class have been damaged by the profits Defendants obtained through the unscrupulous conduct described above.

88. Defendants' retention of money paid by Plaintiffs and the Class as a result of Defendants' unscrupulous conduct described above is inequitable, unconscionable, and unjust.

89. Plaintiffs and other members of the Class are entitled to damages as a result of the unjust enrichment of Defendants to the detriment of Plaintiffs and the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class members request judgment against Defendants as follows:

1. A declaration that this action is properly maintainable as a class action and certifying the Plaintiffs as representative of the Class and their counsel as Class Counsel;
2. Awarding compensatory damages against Defendants in an amount to be determined at trial;
3. Awarding punitive or exemplary or treble damages against Defendants according to proof at trial;
4. Awarding prejudgment interest at the maximum rate allowable by law;
5. Awarding Plaintiffs and the Class their costs and disbursements and reasonable allowances of fees for Plaintiffs' counsel and experts and reimbursement of expenses;
6. Awarding restitution as permitted by law;
7. Ordering the Defendants to forthwith refrain from the further marketing and the sale of the defectively designed and/or manufactured and/or assembled and/or tested equipment;

8. Ordering the recall of all previously manufactured, sold and defectively designed Forerunner 610 watches;
9. Leave to amend this Complaint as interests of justice may allow; and
10. Granting any and all such further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs and the Class by counsel hereby request a trial by jury as to all issues so triable.

March 6, 2014

Respectfully submitted,

/s/ Mark F. James

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