

**IN THE CIRCUIT COURT FOR THE  
FIFTEENTH JUDICIAL DISTRICT  
IN AND FOR PALM BEACH COUNTY,  
FLORIDA**

JILL LIPSKY and LINDA DAY, individually  
and on behalf of all others similarly situated,

CIRCUIT CIVIL DIVISION

Plaintiffs,

Case No.:

v.

AMERICAN BEHAVIORAL RESEARCH  
INSTITUTE, LLC, d/b/a RELAXIUM

Defendant.

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**CLASS ACTION COMPLAINT**

The Plaintiffs, Jill Lipsky and Linda Day (hereinafter, “Plaintiffs”), by and through undersigned counsel, hereby sue the Defendant, American Behavioral Research Institute, LLC, d/b/a Relaxium (“Defendant”), a limited liability company. Plaintiffs allege the following based upon the investigation of counsel, except as to allegations pertaining to themselves, which are based upon personal knowledge:

**JURISDICTION AND VENUE**

1. This is a putative class action lawsuit against Defendant related to its subscription plans for a purported sleep aid supplement product known as RELAXIUM® (the “Product”). Those plans, and the claims related to the Product are deceptive and/or unlawful.

2. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter controversy exceeds the sum or value of \$50,000.00 exclusive of interest, costs, and attorney’s fees.

3. This Court has personal jurisdiction over the Defendant because the Defendant is headquartered, operating, present, and/or doing business within this jurisdiction and because the complained of conduct of Defendant occurred within Palm Beach County, Florida.

4. Venue is proper in this Court because pursuant to Fla. Stat. § 47.051 Defendant (1) is a limited liability company, organized in the State of Florida doing business in this judicial circuit; and (2) has an agent or other representative in Florida. A substantial portion of the facts giving rise to this action occurred within this Circuit.

### **PARTIES**

5. Plaintiff Jill Lipsky is a natural person, and a citizen of the State of California.

6. Plaintiff Linda Day is a natural person, and a citizen of the State of Washington.

7. Defendant American Behavioral Research Institute LLC, d/b/a Relaxium (“Defendant” or “Relaxium”) is a Florida limited liability company, having its principal office at 1515 North Federal Highway, Suite 300, Boca Raton, Florida 33432, and is duly organized and existing pursuant to law. Relaxium conducts substantial business in Florida and throughout the United States. At all relevant times, Relaxium has been engaged in the marketing, distribution, and sale of the Product in Florida and throughout the United States.

### **DEMAND FOR JURY TRIAL**

8. Plaintiffs respectfully demand a jury trial on all counts and issues so triable.

### **FACTUAL ALLEGATIONS**

#### **A. Relaxium’s Deceptive Marketing Practices and Misrepresentations are Designed to Lure Consumers in with False Promises of Better Sleep**

9. Throughout the Class Period, on the Product’s website and product packaging, Defendant has misrepresented the Product as being an all-natural sleep support aid that has been

clinically studied and scientifically proven to improve consumers’ sleep, as shown in the exemplar image of the Product’s bottle below:



✓ CLINICALLY TESTED  
✓ PROVEN EFFECTIVE

<b>Supplement Facts</b>		
Serving Size 2 Capsules	Servings Per Container 60	
	Amount per serving	%DV†
Magnesium (as Magnesium Oxide, Magnesium Citrate and Magnesium Glycinate)	100 mg	25%
L-Tryptophan	500 mg	†
Valerest® Proprietary Blend of Valerian ( <i>Valeriana officinalis</i> ) (root) extract 5:1, Hops ( <i>Humulus lupulus</i> ) (aerial part) extract 10:1	228.9 mg	†
Ashwagandha ( <i>Withania somnifera</i> ) (root and leaf) extract (standardized to 8 % withanolide glycoside conjugates)	125 mg	†
GABA (Gamma Amino Butyric Acid)	100 mg	†
Chamomile ( <i>Matricaria recutita</i> ) (flower)	75 mg	†
Passionflower ( <i>Passiflora incarnata</i> ) (whole herb)	75 mg	†
Melatonin	5 mg	†

† Daily Value (DV) not established.

**OTHER INGREDIENTS:** Rice Flour, Vegetable Cellulose (Capsule)  
Valerest® is a registered trademark of the American Behavioral Research Institute, USA  
**CONTAINS NO:** GMO, gluten, nuts, yeast, sugar, dairy, eggs, tree nuts, fish, shellfish, soy, corn, wheat, barley, or artificial ingredients

10. The Product is also described by Defendant as a “novel” and “proprietary” formulation made of “various herbs and known sleep inducers.” The “key ingredients” include melatonin, L-tryptophan, gamma-aminobutyric acid (GABA) and “several herbal extracts” (described by Defendant as “Ashwagandha, Valerest®, a blend of hops and valerian, Chamomile Passionflower”).

11. At all relevant times herein, Defendant made or continues to make the following false, misleading, and deceptive statements on the Defendant’s websites (www.tryrelaxium.com,

www.tryrelaxiumtoday.com, www.getrelaxium.com, and www.relaxium.com), commercials, product webpages and/or packaging:

- a. 'Natural Sleep Support Clinically Studied to Help You: FALL ASLEEP FASTER[,] STAY ASLEEP LONGER[,] WAKE REFRESHED AND ALERT'
- b. The Product 'Addresses the Root Cause of Sleeplessness & Stress'
- c. The Product can 'assure the deep rejuvenating sleep your body and mind needs'
- d. The Product 'is Clinically Shown to Help You Sleep the First Night & Every Night!'
- e. 'Relaxium® Sleep's effectiveness was scientifically proven to help you: Fall asleep faster ... Sleep through the night ... Wake up completely refreshed ... Enhance focus & concentration.'
- f. 'Compared to Placebo, Relaxium® was Associated with Statistically Significant Findings: Fall Asleep Faster by 140% [,] Sleep Longer Without Interruption by 266% [,] Wake Refreshed and Alert by 69% [,] Improve Concentration by 80%'
- g. 'Best of all, you can expect Relaxium® to start working the very first night you take it! And within a matter of days, you should find that your sleep patterns have become more regular. Right away you'll experience:
  - An easier time falling and staying asleep
  - Deeper, more restful sleep
  - Waking up feeling refreshed, energized, and rejuvenated
  - Better mood balance
  - Fewer aches and pains
  - A stronger immune system
  - Better digestion
  - And so much more!'

12. Reasonable consumers, like Plaintiffs, understand that the “Clinically Proven, Proven Effective” claim means the Product has been clinically tested and proven to work as advertised—i.e., proven to help consumers fall asleep faster, stay asleep longer, or wake up feeling refreshed.

13. But the clinical study Defendant relies on to make these claims does not prove the Product’s effectiveness.

14. Indeed, the actual published study, which is provided by Defendant on its websites, demonstrates that the Product does not work as advertised.<sup>1</sup> The study itself notes that it is a “relatively small study” which found that “the contribution of each of the 6 sleep-inducing or anxiety/ stress-reducing components cannot be determined with this study.”

15. Defendant further misleads consumers in what is designed to be a letter to consumers from Dr. Eric Ciliberti, M.D. (the Product’s developer), with the subject "My Triple-Action Approach with Clinically Studied Valerest®."

16. According to Defendant, Valerest® is the Product’s proprietary formula which "works to induce sleep safely and naturally and backed by a University Clinical Study. In the study, Valerest® was measured against melatonin alone and a popular pharmaceutical drug. The conclusion showed that Valerest significantly improved the quality of sleep.” See <https://www.relaxiumsleep.com/ingredients.php>. However, Defendant does not provide a copy of or link to the study, making it difficult for consumers to evaluate the validity of such bold claims.

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<sup>1</sup> The published study is available here: <http://www.annepublishers.com/articles/JISD/1103-A-Study-to-Evaluate-the-Effects-of-Relaxium.pdf>.

17. In sum, Defendant's statements about the efficacy of the Product are false. The misrepresentations described above were uniformly made and would be important to a reasonable consumer, like Plaintiffs, in deciding whether to purchase the Product. Reasonable consumers, like Plaintiffs, would not have purchased the Product unless they were deceived into believing the Product has actually been proven effective in improving sleep.

**B. Relaxium's Automatic Renewal Scheme is Designed to Trap Consumers Into Paying for Unwanted and Ineffective Product**

18. In addition to the ineffective nature of the Product, Defendant further harms consumers by surreptitiously enrolling consumers into a renewing subscription for the Product, making it impossible for consumers to cancel the automatic renewal.

19. At all relevant times, Defendant operated and continues to operate various websites offering various dietary supplements for sale, including RELAXIUM® Sleep. These websites include: [www.tryrelaxium.com](http://www.tryrelaxium.com), [www.tryrelaxiumtoday.com](http://www.tryrelaxiumtoday.com), [www.getrelaxium.com](http://www.getrelaxium.com), and [www.relaxium.com](http://www.relaxium.com). Defendant also operated a toll-free telephone line whereby individuals could purchase the Product by phone.

20. Consumers, including Plaintiffs and the putative Class, who purchase the Product directly from Defendant are automatically enrolled by Defendant as members of the "Rest Assured Club," which sends a supply every one, two, three or six months. Notably, consumers who wish to order the Product from one of Defendant's official websites can enter a phone number and email address in connection with seeing how much the Product costs. Defendant does not disclose what the company will do with the contact information if the consumer chooses not to purchase the Product.

21. There are at least two mechanisms by which consumers are overcharged for the Product and surreptitiously enrolled in the auto-renewal program:

- a) Consumers purchase the Product or a trial bottle of the Product at full price or discounted price directly from Defendant via telephone or one of Defendant's websites and Defendant automatically charges the consumer's credit card or payment method, enrolls the customer in the Rest Assured Club, then begins charging the customer's payment method for sending a supply every one, two, three or six months.
- b) Consumers purchase the Product directly from Defendant and pay a \$7.95 shipping and handling fee for a trial bottle, and if they do not let Defendant know within 17 calendar days of the purchase date that they are not satisfied with the Product and return the unused bottle, are enrolled in the Rest Assured Club and charged or sent a supply every one, two, three or six months.

22. Regardless of whether consumers, including Plaintiffs and the putative Class, purchase the Product at a discounted rate or initially pay for just shipping and handling, Defendant fails to comply with the law, and constitutes unjust enrichment. In fact, the purchase process misleads reasonable consumers into thinking they are not being signed up for auto-renewing shipments and charges.

23. Defendant fails to present the automatic renewal terms or continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled in "visual proximity" to the request for consent to the offer when purchases are made online. Nor does Defendant present the terms "in temporal proximity" to the request for consent to the offer when consumers purchase the Product by phone.

24. Defendant did not request that Plaintiffs and the Class consent to the offer prior to charging their payment methods.

25. Defendant fails to clearly and conspicuously provide the auto-renewal terms prior to shipping the Product or charging customers include the following:

- a) That the subscription or purchasing agreement will continue until the consumer cancels;
- b) The description of the cancellation policy that applies to the offer;
- c) The recurring charges that will be charged to the consumer's payment method as part of the auto-renew plan or arrangement, and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known;
- d) The length of the auto-renew term or that the service is continuous, unless the length of the term is chosen by the consumer; and,
- e) The minimum purchase obligation, if any.

26. Defendant's post-order conduct is also misleading, deceptive, and unfair. Specifically, after consumers purchase the Product directly from Defendant, Defendant provides a confirmation of the purchase (the "Acknowledgment").

27. The Acknowledgment does not inform customers who purchase the Product from one of Defendant's websites that he or she has been enrolled in the Rest Assured Club, an auto-renew policy nor any other type of membership or subscription program that will automatically charge the purchaser's payment method on a recurring and bi-monthly basis.

28. The Acknowledgment also does not contain any information to inform the consumer about Defendant's enrollment of the consumer into the auto-renew program, the auto-renewal policy or cancellation policy. Indeed, nothing in the Acknowledgment would lead a reasonable consumer to conclude that they are part of an auto-renew program.



29. Additionally, in violation of Cal. Bus. & Prof. C. 17602(a)(3), the Acknowledgment email sent to Plaintiffs and the California Subclass fails to clearly and conspicuously state:

- a. That the auto-renewal or continuous service will automatically renew unless the consumer cancels;
- b. The length and additional terms of the renewal period;
- c. At least one method by which consumers can cancel the auto-renewal or continuous service;
- d. A direct link in the body of the Acknowledgment (in cases where it is provided electronically) that directs the consumer to the cancellation process, or another reasonably accessible electronic method that directs the consumer to the cancellation process if no link exists; and,
- e. Contact information for Defendant.

30. Also, Defendant makes it systematically confusing and difficult to cancel the auto-renew for the Product and continues to charge consumers that have attempted to cancel. For example, Defendant does not make its contact information readily available to consumers, and even when they do reach the company, they get no response.

31. Indeed, Defendant makes it nearly impossible for consumers to cancel their subscriptions or otherwise stop Defendant from charging their payment methods.

32. Defendant is aware that its auto-enrollment scheme is deceiving consumers. Through the Better Business Bureau (“BBB”), Defendant has received hundreds of complaints

from customers.<sup>2</sup> The complaints listed on the BBB website echo Plaintiffs' experience, as customers complain that they were unaware they would be automatically enrolled in a monthly subscription plan and could not cancel. Indeed, the BBB states the following "Pattern of Complaint" for Relaxium: "BBB files contain a pattern of complaints from consumers that allege, they signed up for a free trial online and only provided their credit card information to pay for shipping and handling in the amount of \$7.95 however; consumers state that in many cases their card was charged in amounts of \$89.98 to \$189.80."<sup>3</sup>

**C. Defendant Misled and Harmed Plaintiffs**

33. On or about November 17, 2022, Plaintiff Jill Lipsky purchased the Product from Relaxium's website ([www.tryrelaxium.com](http://www.tryrelaxium.com)), reasonably believing she was simply buying a "14-night trial" at a discounted price. At the time of her purchase she was automatically enrolled in Relaxium's subscription program without her knowledge or consent (much less the required affirmative consent). At the time of her purchase and surreptitious enrollment in an auto-renewal program, Plaintiff Lipsky provided her credit card information to Defendant. She paid, via credit card, \$40.45 (a purported discount of 25%) for the 14-day supply of the Product.

34. After Plaintiff Lipsky completed her initial purchase, Defendant provided Plaintiff Lipsky with a confirmation of her purchase. The confirmation did not provide any reference, let alone a disclosure, that it would charge Plaintiff Lipsky's credit card, send her additional bottles of the Product, or enroll her in any auto-renew program. Rather, the confirmation simply lists

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<sup>2</sup> See Relaxium's BBB Profile (stating 356 complaints closed in last 3 years and 227 complaints closed in last 12 months), available at <https://www.bbb.org/us/fl/boca-raton/profile/vitamins-and-supplements/relaxium-0633-90052703>).

<sup>3</sup> *Id.*

“Items in Your Order” and lists the Product Name, Base, Quantity, Price, Sub Total, Shipping, Sales Tax, and Total Billed.

35. As a result of Defendant’s misrepresentations and lack of disclosures, Plaintiff Lipsky was unaware that Defendant had enrolled her in an “automatic renewal” program under which she would be charged for the Product each month. Plaintiff Lipsky believed she was just making a one-time purchase.

36. After Plaintiff Lipsky’s initial purchase in November 2022, Defendant began automatically charging her for renewals.

37. In December 2022, after she was billed again, she sought to cease the automatically renewing and recurring charges, but there was no online cancellation procedure by which to do so. Nor was she able to locate contact information for Defendant. She was eventually forced to contact her bank to get Defendant to stop billing her.

38. On or about April 29, 2023, Plaintiff Linda Day purchased the Product from Relaxium’s website ([www.tryrelaxium.com](http://www.tryrelaxium.com)), reasonably believing she was simply buying a “14-night trial” at a discounted price. At the time of her purchase she was automatically enrolled in Relaxium’s subscription program without her knowledge or consent (much less the required affirmative consent). At the time of her purchase and surreptitious enrollment in an auto-renewal program, Plaintiff Day provided her credit card information to Defendant. She paid, via credit card, \$7.95 for a 14-day supply of the Product.

39. After Plaintiff Day completed her initial purchase, Defendant provided Plaintiff Day with a confirmation of her purchase. The confirmation did not provide any reference, let alone a disclosure, that Defendant would charge Plaintiff Day’s credit card, send her additional bottles of the Product, or enroll her in any auto-renew program. Rather the confirmation simply

lists “Items in Your Order” and lists the Product Name, Base, Quantity, Price, Sub Total, Shipping, Sales Tax, and “Total Billed.”

40. As a result of Defendant’s misrepresentations and lack of disclosures, Plaintiff Day was unaware that Defendant had enrolled her in an “automatic renewal” program under which she would be charged for product each month. Plaintiff Day believed she was just making a one-time purchase.

41. On May 16, 2023, Defendant automatically charged Plaintiff Day \$119.90 for a renewal, without Plaintiff Day’s consent.

42. Plaintiffs did not know they were enrolling in a subscription program or that they would be automatically billed thereafter. Had Plaintiffs known Defendant would automatically enroll them in a paid subscription program with recurring charges to her payment method, they would not have purchased the Product from Defendant (much less agree to recurring purchases).

43. Additionally, prior to their purchases, Plaintiffs read Defendant’s false and misleading statements about the Product’s efficacy and clinical proof. Had Plaintiffs known the Product is both incapable of working as promised and not clinically or scientifically proven, they would not have purchased it.

44. Plaintiffs have suffered an injury in fact and have lost money as a result of Defendant’s conduct.

### **CLASS ALLEGATIONS**

45. Plaintiffs bring this action on behalf of themselves and all others similarly situated.

46. Plaintiffs seek to represent a class composed of and defined as follows (the “Class”):

All persons in the United States of America who purchased the Product for personal use and not for re-sale, since June 23, 2019.

47. Plaintiff Lipsky also seeks to represent a California subclass composed of and defined as follows (the “California Subclass”):

All Class members who reside in the State of California.

48. Plaintiff Day also seeks to represent a Washington subclass composed of and defined as follows (the “Washington Subclass”):

All Class members who reside in the State of Washington.

49. Specifically excluded from the proposed Class and Subclasses are Defendant, its officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, successors, assigns, or other persons or entities related to or affiliated with Defendant and/or its officers and/or directors, or any of them. Also excluded from the proposed Class and Subclasses are the Court, the Court’s immediate family, and Court staff.

50. Plaintiffs reserve the right to modify or refine the Class definitions based upon discovery of new information or in order to accommodate any concerns of the Court.

51. **Ascertainable Class:** The members of the Class and Subclasses are readily ascertainable. The Class definitions identify groups of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description. Additionally, Defendant’s business records will identify Class members who purchased directly from Defendant.

52. **Numerosity:** The proposed Class and Subclasses are so numerous that joinder of all members would be impracticable. The precise number of Class members is unknown at this time but can be readily determined from public records and Defendant’s records. Plaintiffs reasonably estimate that the Class and Subclasses are likely to include tens, if not hundreds of thousands of members.

53. **Commonality and Predominance:** A well-defined community of interest in the questions of law or fact involving and affecting all members of the Class exists, and common questions of law or fact are substantially similar and predominate over questions that may affect only individual Class members. The questions of law and fact common to Plaintiffs and the Class include, among others, the following:

- a. Whether Defendant's statements about the Product were false, misleading, and deceptive;
- b. Whether Defendant's conduct constitutes unfair, unlawful, and/or fraudulent practices prohibited by the laws of California or Washington;
- c. Whether Defendant's conduct caused Plaintiffs to suffer economic harm;
- d. The extent of class-wide injury and the measure of damages for those injuries;

54. **Typicality:** Plaintiffs are members of the Class and Subclasses they seek to represent. Their claims are typical of the Class members' claims because they all were injured as a result of Defendant's conduct.

55. **Adequacy of Representation:** Plaintiffs are adequate representatives of the Class and Subclasses they seek to represent and will fairly and adequately protect the interests of the Class. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel, experienced in litigation of this nature, to represent them and the Class and Subclasses. There are no conflicts between Plaintiffs and the unnamed Class members. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

56. To prosecute this case, Plaintiffs have chosen the undersigned counsel, which is very experienced in class action litigation and has the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

57. **Superiority.** A class action is superior to individual actions in part because of the non-exhaustive factors listed below:

- a. Joinder of all Class members would create extreme hardship and inconvenience for Class members as they reside throughout the nation;
- b. Individual claims by Class members are impractical because the costs to pursue individual claims may exceed the value of what any one Class member has at stake. As a result, individual Class members may have no interest in prosecuting and controlling separate actions;
- c. There are no known individual Class members who are interested in individually controlling the prosecution of separate actions;
- d. The interests of justice will be well served by resolving the common disputes of potential Class members in one forum;
- e. Individual suits would not be cost effective or economically maintainable as individual actions; and
- f. This action is manageable as a class action.

58. The Class is not so large that it would be unmanageable, and no difficulties are foreseen providing notice to individual claimants. Class members can be readily identified using records and information kept by Defendant in the usual course of business and within its control.

**COUNT I**  
**Unjust Enrichment**

59. Plaintiffs hereby incorporate by reference and re-allege herein the allegations contained in all preceding paragraphs of this complaint.

60. Plaintiffs bring this claim individually and on behalf of the members of the Class against Defendant.

61. Plaintiffs and the Class members conferred benefits on Defendant by purchasing the Product.

62. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiffs' and the Class members' purchases of the Product. Retention of those monies under these circumstances is unjust and inequitable because of Defendant's allegedly deceptive and/or misleading practice of renewing Plaintiffs' and Class members' subscriptions for the Product.

63. Specifically, Defendant failed to disclose the material terms of the Product's subscriptions which induced Plaintiffs and the Class members to purchase the Product's subscriptions under false and/or misleading pretenses. Defendant's actions caused injuries to Plaintiffs and the Class members because they would not have purchased the Product at all if the true facts were known.

64. Because Defendant's retention of the non-gratuitous benefits conferred on them by Plaintiffs and Class members is unjust and inequitable, Defendant has been unjustly enriched in an amount to be determined at trial.

**COUNT II**  
**Violations of the False Advertising Law**  
**California Bus. and Prof. Code § 17500, *et seq.***

65. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as if fully set forth herein.

66. Plaintiff Lipsky brings this claim under California's False Advertising Law (the 'FAL') on behalf of herself and members of the California Subclass.

67. The purpose of the FAL is to protect consumers from false or misleading advertising or promotions. The FAL prohibits the false or deceptive advertising of products to consumers in any form of media, when the company placing the advertisements knows, or should



have known, that the advertisement would be likely to mislead consumers about a material aspect of a product.

68. Plaintiff Lipsky has standing to pursue this claim because, as alleged above, Plaintiff Lipsky has suffered injury in fact and has lost money or property as a result of Defendant's actions as set forth herein. Specifically, prior to filing this action, Plaintiff Lipsky purchased the Product for her own personal use. In so doing, she relied on Defendant's misrepresentations and omissions of material facts, as alleged in detail above. Plaintiff Lipsky was unaware that the Product does not and cannot work as advertised. She was also unaware that Defendant was enrolling her into a paid subscription program and would be automatically charging her credit card. Plaintiff Lipsky would not have purchased the Product had she known Defendant's representations about its efficacy were false, or if she had known she would be automatically billed for subsequent purchases.

69. Defendant uses advertising on the product packaging, its website, and through various media outlets (including television commercials) to promote the Product.

70. In advertising the Product, Defendant made false and misleading statements in order to induce consumers into purchasing the Product and failed to make material disclosures that the Product worked as advertised or that consumers who purchased the Product directly from Defendant would have their debit or credit cards automatically charged for subsequent purchases.

71. Defendant's advertising and label claims are deceptive or misleading within the meaning of the FAL because it makes affirmative representations about the promised benefits of the Product, and omits any kind of adequate disclosure of material facts to consumers about the validity of those statements and, as to the California Subclass, about enrollment into a subscription or the recurring charges.

72. Through its deceptive and unlawful marketing practices, Defendant has improperly and illegally obtained money from Plaintiff Lipsky and the California Subclass.

73. Pursuant to section 17203 of the UCL, Plaintiff Lipsky and the California Subclass seek restitution and an order of this Court enjoining Defendant from engaging in the unlawful business practices alleged herein in connection with the sale of the Product.

**COUNT III**  
**Violations of the Consumer Legal Remedies Act**  
**California Civ. Code §§1750, *et seq.***

74. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as if fully set forth herein.

75. Plaintiff Lipsky brings this claim under California’s Consumer Legal Remedies Act (the ‘CLRA’) on behalf of herself and members of the California Subclass.

76. The CLRA prohibits “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.” Cal. Civ. C. §1770(a).

77. The CLRA is “liberally construed and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices . . .” Cal. Civ. C. 1760.

78. Plaintiff Lipsky has standing to pursue this claim because, as alleged above, Plaintiff has suffered injury in fact and has lost money or property as a result of Defendant’s actions as set forth herein. Specifically, prior to filing this action, Plaintiff Lipsky purchased the Product for her own personal use. In so doing, she relied on Defendant’s misrepresentations and material omissions of material facts, as alleged above. Plaintiff Lipsky was unaware that the Product does not and cannot work as advertised. She was also unaware that Defendant was

enrolling her into a paid subscription program and would be automatically charging her credit card. Plaintiff Lipsky would not have purchased the Product had she known Defendant's representations about its efficacy were false, or if she had known she would be automatically billed for subsequent purchases.

79. At all times relevant hereto, Plaintiff Lipsky was and is a "consumer" as defined in Civil Code section 1761(d), and Defendant was and is a "supplier or seller" as defined by the CLRA.

80. At all relevant times hereto, Defendant was and is a "person" as defined in Civil Code section 1761(c).

81. At all relevant times hereto, Defendant's conduct as described herein involves consumer "transactions" as defined in Civil Code section 1761(e).

82. As alleged in detail above, Defendant violated has violated Civil Code section 1770(a) under the following subdivisions:

- a) Representing the Product has "sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which [they do] not have" in violation of Cal. Civ. Code § 1770(a)(5);
- b) Representing the Product is "of a particular standard, quality, or grade . . . if [they are] of another" in violation of Cal. Civ. Code § 1770(a)(7); and,
- c) Advertising, marketing and labeling the Product with the "intent not to sell [it] as advertised" in violation of Cal. Civ. Code § 1770(a)(9).

83. Defendant's representations and omissions were uniformly made on the Product packaging and Defendant's various websites for the Product, and would be important to reasonable consumers in their purchasing decisions.

84. As a direct and proximate result of Defendant's misrepresentations and omissions, Defendant has caused injury to Plaintiff Lipsky and the California Subclass who were misled into purchasing the Product and caused further injury to Plaintiff Lipsky and the California Subclass by charging them for subsequent purchases without their consent.

85. Defendant's actions as described herein were done with the intention of deceiving Plaintiff Lipsky and the California Subclass and depriving them of their legal rights and money.

86. Defendant's actions as described herein were done with conscious disregard of Plaintiff Lipsky and the California Subclass's rights and Defendant has acted wantonly and maliciously in its concealment of same.

87. Defendant's wrongful business practices constitute a continuing course of conduct in violation of the CLRA since Defendant continues to: (1) falsely and deceptively advertise and sell the Product, and (2) wrongfully and deceptively charge Plaintiff Lipsky and members of the California Subclass with illegal renewal fees.

88. Plaintiff Lipsky is concurrently filing the declaration of venue required by California Civil Code section 1780(d).

89. On January 13, 2023, Plaintiff Lipsky sent notice advising Defendant it violated and continues to violate, section 1770(a) of the CLRA (the "Notice"). The Notice complies in all respects with Civil Code section 1782. Plaintiff Lipsky sent the Notice by Certified U.S. Mail, return-receipt requested to Defendant and Defendant's principal place of business. Plaintiff Lipsky's Notice advised Defendant it must correct, repair, replace, or otherwise rectify its conduct alleged to be in violation of Section 1770, including that Defendant refrain from engaging in the methods, acts, and practices alleged herein.

90. Because Defendant failed to remedy the deficiencies identified in the Notice within thirty (30) days of receipt, pursuant to sections 1782(a) and (d) of the CLRA, Plaintiff Lipsky is entitled to seek restitution, actual damages, and punitive damages.

**COUNT IV**  
**Violations of California's Automatic Renewal Law**  
**California Bus. and Prof. Code § 17600, *et seq.***

91. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as if fully set forth herein.

92. Plaintiff Lipsky brings this claim under California's Automatic Renewal Law (the 'ARL') on behalf of herself and the California Subclass.

93. Defendant's uniform conduct of enrolling purchasers of the Product, including Plaintiff Lipsky and the California Subclass, into the Rest Assured Club or any similar plan or arrangement in which a consumer's debit, credit, or other payment method is charged at the end of a definite term in exchange for shipment of the Product, is an "automatic renewal" under Cal. Bus. & Prof. C. §17601(a).

94. As alleged in detail above, Defendant violated the ARL in numerous, independent ways:

- a) Defendant failed to present the terms of its automatic renewal or continuous service offer in a clear and conspicuous manner before fulfilling the subscription and in visual proximity to the request for consent to the offer, as required by Cal. Bus. & Prof. C. §17602(a)(1);
- b) Defendant charged Plaintiffs' and the California Subclass's debit or credit cards, or the consumer's account with a third party, for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to

the agreement containing the automatic renewal offer terms or continuous offers, as required by Cal. Bus. & Prof. C. §17602(a)(2);

- c) Defendant failed to provide an acknowledgment that includes the automatic renewal offer terms regarding how to cancel, and to allow Plaintiff and the California Subclass to cancel the automatic renewal or continuous service before they paid for it, as required by Cal. Bus. & Prof. C. §17602(a)(3); and,
- d) Defendant failed to provide a cost-effective, timely, and easy-to-use mechanism for cancellation described in Cal. Bus. & Prof. C. 17602(a)(3) as required by Cal. Bus. & Prof. C. §17602(b).

95. At the time of purchase, Plaintiff Lipsky was unaware that Defendant was enrolling her into a paid subscription program and would be automatically charging her credit card. Indeed, Defendant failed to adequately disclose that by purchasing a trial bottle of the Product, Plaintiff Lipsky (and the California Subclass) would be automatically enrolled in a subscription program and charged for subsequent purchases thereafter. Plaintiff Lipsky would not have purchased the Product had she known Defendant was automatically enrolling her in a subscription program and that Defendant would automatically charge her credit card for recurring purchases. Even if Defendant had disclosed the automatic enrollment and recurring billing (it did not), Defendant made it unreasonably difficult for Plaintiff Lipsky and the California Subclass to cancel the subscription and stop Defendant from charging their payment methods.

96. As a result of Defendant's misconduct described herein and detailed above, pursuant to Cal. Bus. & Prof. C. §17603, all recurring shipments of the Product are treated as unconditional gifts and Plaintiff Lipsky and the California Subclass are entitled to restitution of all amounts that Defendant charged or caused to be charged to Plaintiff Lipsky's and California

Subclass members' payment methods during the applicable statute of limitations period and continuing until Defendant's statutory violations cease.

97. As a result of Defendant's misconduct, pursuant to Cal. Bus. & Prof. C. §17535, Plaintiff Lipsky and the California Subclass are entitled to an injunction enjoining Defendant (a) from making automatic renewal offers that do not comply with California law; (b) from making charges to customers' payment methods without prior affirmative consent to an agreement containing "clear and conspicuous" disclosure of automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer; and, (c) from making automatic renewal offers that fail to provide an online, easy-to-use mechanism for cancellation.

**COUNT V**  
**Conversion**

98. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as if fully set forth herein.

99. Plaintiffs bring this claim on behalf of themselves and the Class against Defendant.

100. Plaintiffs and members of the Class have an ownership right to the monies paid to Defendant for the Product.

101. Defendant has wrongfully asserted dominion over the payments illegally obtained by them for the Product. Defendant has done so every time Defendant charged Plaintiffs and Class members for the Product.

102. As a direct and proximate cause of Defendant's conversion, Plaintiffs and members of the Class suffered damages in the amount of the payments made each time Defendant charged their debit or credit cards.

**COUNT VI**  
**Violations of the Unfair Competition Law – Unfair Prong**  
**California Bus. and Prof. Code § 17200, *et seq.***

103. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as if fully set forth herein.

104. Plaintiff Lipsky brings this claim under the ‘unfair’ prong of the UCL, on behalf of herself and the California Subclass.

105. Defendant’s business practices, as alleged herein, are unfair because its conduct described herein is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. The gravity of the harm to consumers is not outweighed by the utility of Defendant’s conduct.

106. Defendant’s business practices are also unfair because they undermine public policy, which is tethered to specific statutory provisions, including California’s Automatic Renewal Law.

107. Lastly, Defendant’s business practices are unfair because: (1) the injury to the consumer is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3) consumers could not reasonably have avoided the injury because they did not know the Product does not and cannot work as advertised and they did not know they would be automatically billed after the initial purchase.

108. There were reasonably available alternatives to further Defendant’s legitimate business interests, other than the conduct described above.

109. Defendant’s wrongful business practices constituted, and constitute, a continuing course of conduct of unfair competition since Defendant is continuing to sell the Product and



surreptitiously enroll purchasers in a paid subscription program whereby it charges purchasers' debit and credit cards without the cardholders' authorization.

110. Pursuant to section 17203 of the UCL, Plaintiff Lipsky and the California Subclass seek restitution and an order of this Court enjoining Defendant from engaging in the unfair business practices alleged herein in connection with the sale of the Product.

111. Plaintiff Lipsky has standing to pursue this claim because, as alleged above, she has suffered injury in fact and has lost money or property as a result of Defendant's actions as set forth herein. Specifically, prior to filing this action, Plaintiff Lipsky purchased the Product for her own personal use. In so doing, she relied on Defendant's misrepresentations and omissions of material facts, as alleged in detail above. Plaintiff Lipsky was unaware that the Product does not and cannot work as advertised. She was also unaware that Defendant was enrolling her into a paid subscription program and would be automatically charging her credit card. Plaintiff Lipsky would not have purchased the Product had she known Defendant's representations about its efficacy were false, or if she had known she would be automatically billed for subsequent purchases.

112. Defendant has peddled, and continues to peddle, its misrepresentations through a national advertising campaign.

113. In addition, Defendant's use of the packaging and website to call attention to or give publicity to the sale of goods or merchandise which are not as represented constitutes unfair competition, unfair, deceptive, untrue, or misleading advertising, and unlawful business practices within the meaning of the UCL.

114. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described above.

115. Plaintiff Lipsky and the California Subclass were misled and, because the misrepresentations and omissions were uniform and material, presumably believed the Product could and would improve their sleep.

116. Pursuant to section 17203 of the UCL, Plaintiff Lipsky and the California Subclass seek restitution and an order of this Court enjoining Defendant from engaging in the unlawful business practices alleged herein in connection with the sale of the Product.

117. Pursuant to section 17203 of the UCL, Plaintiff Lipsky and the California Subclass seek restitution and an order of this Court enjoining Defendant from engaging in the unlawful business practices alleged herein in connection with the sale of the Product.

#### **COUNT VII**

#### **Violations of the Washington Consumer Protection Act, RCW § 19.86.010, *et seq.***

118. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

119. Plaintiff Day brings this claim against Defendant individually and on behalf of the members of the Washington Subclass.

120. Washington's Consumer Protection Act, RCW § 19.86.010, *et seq.* ('CPA'), protects both consumers and competitors by promoting fair competition in commercial markets for goods and services.

121. To achieve that goal, the CPA prohibits any person from using "unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce ..."  
RCW § 19.86.020.

122. Defendant has violated the CPA through its scheme of misleading consumers to purchase its Product and through tricking consumers into signing up for an automatic renewal scheme with respect to its Product.

123. Defendant's acts and practices constitute unfair methods of competition or are unfair or deceptive because (a) they offend public policy as it has been established by law; (b) are unethical, oppressive, or unscrupulous; and (c) cause substantial injury to consumers; and also (d) have the capacity to deceive a substantial portion of the public to whom they are directed and to whom Defendant holds itself out as operating legally and in accordance with applicable law.

124. Defendant's wrongful conduct occurred in the conduct of trade or commerce--i.e., while Defendant was engaged in the operation of selling purported sleep aid supplements available to the public.

125. Defendant's acts and practices were and are injurious to the public interest because Defendant, in the course of its business, continuously advertised to and solicited the general public in Washington to purchase the Product. This was part of a pattern or generalized course of conduct on the part of Defendant, and many consumers have been adversely affected by Defendant's conduct and the public is at risk.

126. Defendant has profited immensely from its marketing and sale of the Product.

127. As a result of Defendant's conduct, Plaintiff Day and the Washington Subclass members were injured in their business or property--i.e., economic injury.

128. Defendant's unfair or deceptive conduct proximately caused Plaintiff Day's and the Washington Subclass members' injury because, but for the challenged conduct, Plaintiff Day and the Washington Subclass members would not have lost money spent on Defendant's Product.

129. Plaintiff Day, on her own behalf and on behalf of the Washington Subclass, seeks to enjoin further violation and recover actual damages and treble damages, together with the costs of suit, including reasonable attorney's fees.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of themselves and the Class, pray for judgment as follows:

- A. For an order certifying the Class and Subclasses and naming Plaintiffs as representatives of the Class and Subclasses and Plaintiffs' attorneys as Class Counsel to represent the Class and Subclasses;
- B. For an order declaring that Defendant's conduct violates the statutes and common laws referenced herein;
- C. For an order finding in favor of Plaintiffs and the Class on all counts asserted herein;
- D. For actual and/or compensatory damages in amounts to be determined by the Court and/or jury;
- E. For prejudgment interest on all amounts awarded;
- F. For an order of restitution and all other forms of equitable monetary relief;
- G. For injunctive relief as pleaded or as the Court may deem proper; and
- H. For an order awarding Plaintiffs and the Class their reasonable attorney's fees, expenses, and costs of suit.

Dated: June 26, 2023

Respectfully submitted,  
**BURSOR & FISHER, P.A.**

By: /s/ Stephen A. Beck  
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*\*Pro hac vice forthcoming*