

Fill in this information to identify the case:

Debtor Gaiam Americas, Inc.

United States Bankruptcy Court for the: _____ District of Delaware
(State)

Case number 21-11207

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** Ken Wigchert
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 3234572110 Contact phone _____
Contact email mcusumano@bordinsemmer.com Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ 2,000,000. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Personal Injury; Defendants owe money in damages

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

- No
- Yes. Check all that apply:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). Amount entitled to priority
\$ _____
- Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____
- Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____
- Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____
- Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____
- Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. \$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

- No
- Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 11/30/2021
MM / DD / YYYY

/s/Benjamin A. Sampson
Signature

Print the name of the person who is completing and signing this claim:

Name Benjamin A. Sampson
First name Middle name Last name

Title Attorney

Company Bordin Semmer LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 556-7696 | International 001-310-823-9000

Debtor: 21-11207 - Gaiam Americas, Inc.		
District: District of Delaware		
Creditor: Ken Wigchert Joshua Bordin-Wosk and Benjamin A. Sampson and Bordin Semmer LLP 6100 Center Drive Suite 1100 Los Angeles, CA, 90045 USA Phone: 3234572110 Phone 2: Fax: Email: mcusumano@bordinsemmer.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: Personal Injury; Defendants owe money in damages	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 2,000,000	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Benjamin A. Sampson on 30-Nov-2021 4:33:35 p.m. Eastern Time Title: Attorney Company: Bordin Semmer LLP		

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

SPRI PRODUCTS, INC., an Illinois corporation; TARGET, a Minnesota corporation; and DOES 1 through 35; inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

KEN WIGCHERT, an individual,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Orange County Superior Court, Central Justice Center
700 Civic Center Drive West, Santa Ana, CA 92701

CASE NUMBER: (Número del Caso):
30-2020-01153512-CU-PL-CJC
Judge John C. Gastelum

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Benjamin A. Sampson (SBN 291797) Bordin Semmer LLP, 6100 Center Drive, Suite 1100, Los Angeles California
90045; 323.457.2110; 323.457.2120 (bsampson@bordinsemmer.com)

DATE: 08/03/2020 DAVID H. YAMASAKI, Clerk of the Court, by Katie Trent, Deputy (Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).) Katie Trent

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- 4. by personal delivery on (date)



1 BORDIN SEMMER LLP
Joshua Bordin-Wosk, State Bar No. 241077
2 jbordinwosk@bordinsemmer.com
Benjamin A. Sampson, State Bar No. 291797
3 bsampson@bordinsemmer.com
6100 Center Drive, Suite 1100
4 Los Angeles, California 90045
Telephone: (323) 457-2110
5 Facsimile: (323) 457-2120

6 Attorneys for Plaintiff,
KEN WIGCHERT

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **ORANGE COUNTY SUPERIOR COURT**

10 KEN WIGCHERT, an individual,
11 Plaintiff,

12 v.

13 SPRI PRODUCTS, INC., an Illinois corporation;
14 TARGET, a Minnesota corporation; and DOES 1
15 through 35; inclusive,
16 Defendants.

) Case No.: 30-2020-01153512-CU-PL-CJC
)
) **PLAINTIFF KEN WIGCHERT'S**
) **COMPLAINT FOR DAMAGES**

-)
) **(1) STRICT PRODUCT LIABILITY**
) **(Failure to Warn);**
) **(2) STRICT PRODUCT LIABILITY**
) **(Design Defect);**
) **(3) NEGLIGENCE;**
) **(4) STRICT PRODUCT LIABILITY**
) **(Failure to Warn);**
) **(5) STRICT PRODUCT LIABILITY**
) **(Design Defect); and**
) **(6) NEGLIGENCE**

)
) **PUNITIVE DAMAGES**
) **DEMAND FOR JURY TRIAL**

) Assigned for all purposes

) **Judge John C. Gastelum**

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21
22 Plaintiff, KEN WIGCHERT, for his Complaint against Defendants, SPRI PRODUCTS,
23 INC., an Illinois corporation; TARGET, a Minnesota corporation; and DOES 1 through 35;
24 inclusive with knowledge as to himself and otherwise on information and belief, hereby complains
25 and alleges as follows:

26 **PARTIES, JURISDICTION AND VENUE**

27 1. Plaintiff KEN WIGCHERT (hereinafter, "PLAINTIFF") was, and at all times
28 relevant to this Complaint, an individual residing in Orange County, California.

1 2. Defendant SPRI PRODUCTS, INC. (hereinafter, “SPRI”) was, and at all times
2 relevant to this Complaint, was a corporation conducting business in Orange County.

3 3. Defendant, TARGET, is, and at all relevant times mentioned herein was, a
4 corporation conducting business in Orange County, California.

5 4. Defendants, DOES 1 through 35, inclusive, are and at all times herein mentioned
6 were, individuals, corporations, partnerships, or business enterprises doing business in the State of
7 California;

8 5. The true names and capacities, whether individual, corporate, associate, or
9 otherwise, of Defendants DOES 1 through 35, inclusive, are unknown to PLAINTIFF, who
10 therefore sue said Defendants by such fictitious names. PLAINTIFF will ask leave of court to
11 amend this Complaint to show their true names and capacities when the same have been
12 ascertained. PLAINTIFF is informed and believes and thereon alleges that each of the Defendants
13 designated herein as DOES 1 through 35, inclusive, is responsible in some manner for the events
14 and happenings referred to herein which caused the damages hereinafter alleged;

15 6. Reference to “Defendants” shall include the named Defendants and the “DOE”
16 Defendants;

17 7. PLAINTIFF is informed and believes and thereon alleges that at all times herein
18 mentioned each of the Defendants, including the fictitiously named Defendants, were the agents
19 and employees of each of the remaining Defendants and were at all times acting within the purpose
20 and scope of said agency and employment;

21 8. PLAINTIFF is informed and believes, and based thereon alleges, that at all material
22 times, one or more of each named and/or unnamed Defendants was in some fashion, by contract or
23 otherwise, the predecessors, affiliates, alter egos, assigns, joint-venturers, co-venturers or partners
24 of one or more of the remaining named and/or unnamed Defendants, and as hereinafter alleged,
25 were acting within that capacity;

26 9. PLAINTIFF is informed and believes, and thereby alleges, that each Defendant,
27 acted as an integrated enterprise with the others, were alter egos of each other, were joint
28 employers of the PLAINTIFF, were acting as partners, were successors in interest of the other,

1 and/or were a joint venture during the employment of PLAINTIFF. Further, each of the
2 Defendants aided, abetted, incited, compelled, and/or coerced one another, and/or conspired with
3 one another, to do the acts alleged herein;

4 10. Pursuant to Article VI, Section 10 of the California Constitution, subject matter
5 jurisdiction is proper in the Superior Court of California, County of Orange;

6 11. Pursuant to Section 395 of the California *Code of Civil Procedure*, venue is proper
7 in the Superior Court of California for the County of Orange, because the Defendants conducted
8 business in Orange County and the acts, omissions, and transactions giving rise to this action
9 occurred in substantial part in Orange County, California.

10 **FACTUAL BACKGROUND**

11 12. This action arises from an incident on April 3, 2020, in which PLAINTIFF was
12 severely injured when the door attachment and/or fitness cable of exercise equipment known as the
13 Ignite by SPRI Pro Resistance Cord – suddenly and without warning – struck him in the face. At
14 the time of the incident, PLAINTIFF was performing curls like the model on the front of the box
15 the SPRI Pro Resistance Cord came in and PLAINTIFF was looking straight ahead. PLAINTIFF
16 sustained immediate loss of vision in his right eye. As of the filing of the instant Complaint,
17 PLAINTIFF’S vision in his right eye remains severely compromised.

18 13. PLAINTIFF alleges upon information and belief that SPRI designs, manufactures
19 and distributes various fitness products and markets itself as an industry trendsetter in handheld
20 fitness products. PLAINTIFF further alleges upon information and belief that SPRI has conducted
21 business in Orange County at all times relevant to this action.

22 14. PLAINTIFF alleges upon information and belief that TARGET is one of the largest
23 retailers operating more than 1,200 stores in the United States, with approximately 278 stores in
24 California alone. PLAINTIFF further alleges upon information and belief that TARGET has
25 conducted business in Orange County at all times relevant to this action.

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ALLEGATIONS COMMON TO ALL CAUSES OF ACTION
Design, Manufacture and Distribution of the Exchange Handle System

15. PLAINTIFF alleges upon information and belief that SPRI designed the Ignite by SPRI Pro Resistance Cord and its door attachment.

16. PLAINTIFF alleges upon information and belief that SPRI manufactured the Ignite by SPRI Pro Resistance Cord and its door attachment.

17. PLAINTIFF alleges upon information and belief that SPRI distributed the Ignite by SPRI Pro Resistance Cord and its door attachment to TARGET, among other retailers, for subsequent sale to ordinary consumers and users such as PLAINTIFF.

18. PLAINTIFF alleges upon information and belief that, pursuant to a written agreement between SPRI, on the one hand, and TARGET, on the other hand, TARGET offered the Ignite by SPRI Pro Resistance Cord for sale to ordinary consumers such as PLAINTIFF.

19. In April of 2020, PLAINTIFF purchased the Ignite by SPRI Pro Resistance Cord at TARGET'S store located at 26932 La Paz Road, Aliso Viejo, CA 92656.

20. The Ignite by SPRI Pro Resistance Cord purchased by PLAINTIFF, included, among other things, two handles, one fitness cable and one door attachment that encapsulates a round, hard ball at the end. The following is a photograph of the types of the handles, fitness cable and door attachment included in the Ignite by SPRI Pro Resistance Cord that PLAINTIFF purchased from TARGET:



Warnings and Instructions for the SPRI Pro Resistance Cord

1
2 21. The Ignite by SPRI Pro Resistance Cord purchased by PLAINTIFF was contained in
3 a box hereinafter referred to as the “SPRI Packaging.”

4 22. The Ignite by SPRI Pro Resistance Cord purchased by PLAINTIFF included an
5 Exercise Guide that was included in the SPRI Packaging. That Exercise Guide is hereinafter
6 referred to as the “Exercise Guide.”

7 23. The Ignite by SPRI Pro Resistance Cord purchased by PLAINTIFF included a
8 Safety Guide that was included in the SPRI Packaging. That Safety Guide is hereinafter referred to
9 as the “Safety Guide.”

10 24. The Ignite by SPRI Pro Resistance Cord purchased by PLAINTIFF also included a
11 door attachment that was attached in a non-permanent fashion. That door attachment is hereinafter
12 referred to as the “Door Attachment.”

13 25. PLAINTIFF alleges upon information and belief that, before he purchased the Ignite
14 by SPRI Pro Resistance Cord, SPRI designed the exterior of the SPRI Packaging, the Exercise
15 Guide, the Safety Guide and the Door Attachment.

16 26. PLAINTIFF alleges upon information and belief that, before he purchased the Ignite
17 by SPRI Pro Resistance Cord, SPRI made the final determinations of the words and images that
18 appeared on the exterior of the SPRI Packaging, the Exercise Guide, the Safety Guide and the Door
19 Attachment.

20 27. PLAINTIFF alleges upon information and belief that, before he purchased the Ignite
21 by SPRI Pro Resistance Cord, SPRI designed and produced the SPRI Packaging, Exercise Guide,
22 Safety Guide and Door Attachment.

23 28. PLAINTIFF alleges upon information and belief that, before he purchased the Ignite
24 by SPRI Pro Resistance Cord, SPRI made the final determinations of the statements, instructions
25 and demonstrations contained on the SPRI Packaging, Exercise Guide and Safety Guide.

26 29. The warning in numbered paragraph 5 on the back of the Safety Guide states:
27 “Avoid looking directly at the Pro Resistance Cord during exercise.”

28 ///

1 30. PLAINTIFF alleges upon information and belief that the numbered paragraph 5 on
2 the back of the Safety Guide was not sufficiently conspicuous or prominent to be noticed, read,
3 understood and followed by ordinary consumers such as PLAINTIFF.

4 31. The Exercise Guide folds out and displays photographs of a physically fit female
5 and male displaying the numerous uses of the SPRI Pro Resistance Cord. Notably, none of the
6 models are wearing any protective sports eyewear. The SPRI Packaging also displays models that
7 are not wearing protective sports eyewear. Nonetheless, the portion of the Exercise Guide has a
8 warning that states, “Wearing Protective Sports Eyewear (goggles or glasses made with
9 polycarbonate or Trivex lenses) is always recommended when working with resistance cords
10 (tubings) or bands.”

11 32. PLAINTIFF alleges upon information and belief that the warning on a portion of the
12 Exercise Guide was not sufficiently conspicuous or prominent to be noticed, read, understood and
13 followed by ordinary consumers such as PLAINTIFF.

14 33. When PLAINTIFF purchased the Ignite by SPRI Pro Resistance Cord, there were
15 images/demonstrations of the fitness cable being stretched in alignment with or near the user's face
16 on the front, side and back of the SPRI Packaging and in the Exercise Guide.

17 34. The following photograph shows the front, side and back of the SPRI Packaging that
18 PLAINTIFF reviewed before he purchased the Ignite by SPRI Pro Resistance Cord:





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35. As shown in the above photographs, the front, side and back of the SPRI Packaging that PLAINTIFF reviewed before he purchased the Ignite by SPRI Pro Resistance Cord contained multiple images/demonstrations of the fitness cables being stretched in alignment with or near the user's face. None of the models utilizing the fitness cables were wearing any protective glasses.

36. The Exercise Guide contains demonstrations of how the SPRI Pro Resistance Cord can be used to perform exercises. The models, who are not wearing protective glasses, can be seen pulling the cord such that the fitness cable lines up with their head, face and eyes at various times.



1 37. The images/demonstrations of fitness cables being stretched in alignment with or
2 near the users' faces, whom are not wearing protective glasses, are tantamount to “anti-warnings”
3 (i.e., words and/or images that work against the potential effectiveness of warnings).

4 38. Shortly before PLAINTIFF purchased the SPRI Pro Resistance Cord, he carefully
5 reviewed the words and images that appeared on the exterior of the SPRI Packaging, including
6 inter alia, the images/demonstrations of fitness cables being stretched in alignment with or near the
7 users' faces, none of which were wearing protective glasses. Based upon that review, he determined
8 that the SPRI Pro Resistance Cord would enable him to perform various exercises (including, inter
9 alia, the types of exercises shown on the front, side and back side of the SPRI Packaging) without
10 the need for safety glasses. Based in substantial part upon that determination, he purchased the
11 SPRI Pro Resistance Cord from TARGET’S store in Orange County, California.

12 39. Shortly after PLAINTIFF purchased the SPRI Pro Resistance Cord from TARGET
13 store in Aliso Viejo, and before he utilized the SPRI Pro Resistance Cord, he reviewed the contents
14 of the SPRI Packaging. While doing so, he briefly reviewed, inter alia, the anti-warnings in the
15 Exercise Guide. His brief review of those anti-warnings reinforced his understanding (based upon
16 his careful review of the anti-warnings on the exterior of the SPRI Packaging) that the exercises
17 shown/demonstrated on the exterior of the SPRI Packaging - and exercises similar to those
18 exercises - were safe to perform and did not necessitate the use of safety glasses.

19 40. A consumer's holding handles with a fitness cable attached thereto in the manner
20 shown on the front, side and back of the SPRI Packaging could result in the fitness cable's lining up
21 with the consumer's head, face and eyes.

22 41. It is reasonably foreseeable that a consumer's holding handles with a fitness cable
23 attached thereto in the manner shown on the back of the SPRI Packaging would result in the fitness
24 cable's lining up with the consumer's head, face and eyes.

25 42. When PLAINTIFF purchased the SPRI Pro Resistance Cord, the Exercise Guide
26 contained images/demonstrations of fitness cables being stretched in alignment with or near the
27 users' faces.

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1 43. A consumer's holding handles with a fitness cable attached thereto in the manner
2 shown in the Exercise Guide could result in the fitness cable's lining up with the consumer's head,
3 face and eyes.

4 44. It is reasonably foreseeable that a consumer's holding handles with a fitness cable
5 attached thereto in the manner shown in the Exercise Guide would result in the fitness cable's lining
6 up with the consumer's head, face and eyes.

7 45. When PLAINTIFF purchased the SPRI Pro Resistance Cord, the Door Attachment
8 was attached to the SPRI Pro Resistance Cord. There was no instruction to remove the Door
9 Attachment prior to using the SPRI Pro Resistance Cord.

10 46. A consumer's holding the handles with a fitness cable and Door Attachment attached
11 thereto could result in the fitness cable and Door Attachment lining up with the consumer's head,
12 face and eyes.

13 47. It is reasonably foreseeable that a consumer's holding the handles with a fitness
14 cable and Door Attachment attached thereto would result in the fitness cable and Door Attachment
15 lining up with the consumer's head, face and eyes.

16 48. The images/demonstrations of a fitness cable being stretched in alignment with or
17 near the user's head, face and eyes plainly contradict the warning in numbered paragraph 5 on the
18 back of the Safety Guide, which states: "Avoid looking directly at the Pro Resistance Cord during
19 exercise."

20 49. The images/demonstrations of models utilizing the fitness cable for particular
21 exercises plainly contradict the warning that "Wearing Protective Sports Eyewear (goggles or
22 glasses made with polycarbonate or Trivex lenses) is always recommended when working with
23 resistance cords (tubings) or bands."

24 50. The multiple images/demonstrations of models utilizing the fitness cable being
25 stretched in alignment with or near the user's head, face and eyes without the use of protective gear
26 eviscerate the effectiveness of the warnings, partly because the former are far more conspicuous
27 (and, therefore, far more likely to be noticed, comprehended and followed) than the latter.

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1 51. The multiple images/demonstrations of models without protective glasses utilizing
2 fitness cable being stretched in alignment with or near the user's head, face and eyes affected
3 PLAINTIFF'S beliefs and understandings about how to appropriately use the SPRI Pro Resistance
4 Cord. In essence, PLAINTIFF was being instructed on how to use the SPRI Pro Resistance Cord by
5 the images/demonstrations.

6 52. When PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
7 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment did not contain a
8 warning never to pull the fitness cables so that they line up with the consumer's face.

9 53. Before PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
10 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment could have been
11 designed to contain a warning never to pull the fitness cables so that they line up with the
12 consumer's face. Such a warning would have substantially reduced the chance of injury resulting
13 from an ordinary consumer's use of the SPRI Pro Resistance Cord.

14 54. When PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
15 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment did not contain a
16 warning that pulling the fitness cables so that they line up with the consumer's face is dangerous.

17 55. Before PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
18 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment could have been
19 designed to contain a warning that pulling the fitness cables so that they line up with the
20 consumer's face is dangerous. Such a warning would have substantially reduced the chance of
21 injury resulting from an ordinary consumer's use of the SPRI Pro Resistance Cord.

22 56. When PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
23 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment did not contain a
24 warning that pulling the fitness cables so that they line up with the consumer's face could cause
25 injury or death.

26 57. Before PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
27 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment could have been
28 designed to contain a warning that pulling the fitness cables so that they line up with the

1 consumer's face could cause injury or death. Such a warning would have substantially reduced the
2 chance of injury resulting from an ordinary consumer's use of the SPRI Pro Resistance Cord.

3 58. When PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
4 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment did not contain a
5 warning never to pull the fitness cables so that they line up with sensitive parts of the consumer's
6 body.

7 59. Before PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
8 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment could have been
9 designed to contain a warning never to pull the fitness cables so that they line up with sensitive
10 parts of the consumer's body. Such a warning would have substantially reduced the chance of
11 injury resulting from an ordinary consumer's use of the SPRI Pro Resistance Cord.

12 60. When PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
13 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment did not contain a
14 warning that pulling the fitness cables so that they line up with sensitive parts of the consumer's
15 body is dangerous.

16 61. Before PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
17 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment could have been
18 designed to contain a warning that pulling the fitness cables so that they line up with sensitive parts
19 of the consumer's body is dangerous. Such a warning would have substantially reduced the chance
20 of injury resulting from an ordinary consumer's use of the SPRI Pro Resistance Cord.

21 62. When PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
22 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment did not contain a
23 warning that pulling the fitness cables so that they line up with sensitive parts of the consumer's
24 body could cause injury or death.

25 63. Before PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
26 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment could have been
27 designed to contain a warning that pulling the fitness cables so that they line up with sensitive parts
28 of the consumer's body could cause injury or death. Such a warning would have substantially

1 reduced the chance of injury resulting from an ordinary consumer's use of the SPRI Pro Resistance
2 Cord.

3 64. When PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
4 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment did not contain a
5 warning that pulling the fitness cable towards the face may cause serious injury - including
6 permanent vision loss.

7 65. Before PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
8 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment could have been
9 designed to contain a warning that pulling the fitness cable towards the face may cause serious
10 injury - including permanent vision loss. Such a warning would have substantially reduced the
11 chance of injury resulting from an ordinary consumer's use of the SPRI Pro Resistance Cord.

12 66. When PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
13 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment did not contain a
14 warning that the fitness cable contains elastic properties and will snap back if stretched and
15 released.

16 67. Before PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
17 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment could have been
18 designed to contain a warning that the fitness cable contains elastic properties and will snap back if
19 stretched and released. Such a warning would have substantially reduced the chance of injury
20 resulting from an ordinary consumer's use of the SPRI Pro Resistance Cord.

21 68. When PLAINTIFF purchased the SPRI Pro Resistance Cord and the exterior of the
22 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment did not contain a
23 warning that eye protection (e.g., safety goggles) is necessary when performing some of the
24 instructed exercises.

25 69. Before PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
26 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment could have been
27 designed to contain a warning that eye protection (e.g., safety goggles) is necessary when
28 performing some of the instructed exercises. Such a warning would have substantially reduced the

1 chance of injury resulting from an ordinary consumer's use of the SPRI Pro Resistance Cord.

2 70. When PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
3 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment did not contain a
4 warning that failure to remove the Door Attachment from the SPRI Pro Resistance Cord could
5 result in serious bodily injury. In fact, the Door Attachment came attached to the cord at the time of
6 purchase.

7 71. Before PLAINTIFF purchased the SPRI Pro Resistance Cord, the exterior of the
8 SPRI Packaging, the Exercise Guide, the Safety Guide and the Door Attachment could have been
9 designed to contain a warning that failure to remove the Door Attachment from the SPRI Pro
10 Resistance Cord could result in serious bodily injury (i.e., the attachment recoiling into the
11 consumer's face). Such a warning would have substantially reduced the chance of injury resulting
12 from an ordinary consumer's use of the SPRI Pro Resistance Cord.

13 ***Defective Design of SPRI Pro Resistance Cord Door Attachment***

14 72. The type of Door Attachment that PLAINTIFF was using when the subject incident
15 occurred is depicted in the photograph shown in paragraph 20 above. The end of the Door
16 Attachment contains a hard, round ball.

17 73. On information and belief, the portion of the attachment intended to function as an
18 anchor enabled the consumer to use the SPRI Pro Resistance Cord as a pulley system.

19 74. PLAINTIFF alleges upon information and belief that, as of PLAINTIFF'S purchase
20 of the SPRI Pro Resistance Cord, the Door Attachment was defective in design because the Door
21 Attachment came attached to the fitness cords in such a way that during the intended and
22 foreseeable uses of the fitness cables it suddenly and without warning would strike the user.

23 75. PLAINTIFF alleges upon information and belief that, as of PLAINTIFF'S purchase
24 of the SPRI Pro Resistance Cord, the Door Attachment was defective in design because the Door
25 Attachment was designed and positioned in a way that during the intended and foreseeable uses of
26 the fitness cables it suddenly and without warning would strike the user.

27 76. PLAINTIFF alleges upon information and belief that, as of PLAINTIFF'S purchase
28 of the SPRI Pro Resistance Cord, the Door Attachment was defective in design because the Door

1 Attachment, which contained a hard, round ball, was otherwise capable of striking the user during
2 the intended and foreseeable uses of the fitness cables like a BB in a sling-shot.

3 77. PLAINTIFF alleges upon information and belief that, when the subject incident
4 occurred, the Door Attachment failed to perform as safely as an ordinary consumer would expect
5 when used in an intended or reasonably foreseeable manner.

6 78. PLAINTIFF alleges upon information and belief that an ordinary consumer would
7 not have expected the Door Attachment to fail in the manner it failed when the subject incident
8 occurred.

9 79. PLAINTIFF alleges upon information and belief that, as of PLAINTIFF'S purchase
10 of the SPRI Pro Resistance Cord, based upon the everyday experience of an ordinary consumer, the
11 design of the Door Attachment violated minimum safety assumptions.

12 80. PLAINTIFF alleges upon information and belief that, as of PLAINTIFF'S purchase
13 of the SPRI Pro Resistance Cord, the safety-related risks and dangers inherent in the design of the
14 Door Attachment outweighed the benefits of that design.

15 81. PLAINTIFF alleges upon information and belief that, as of PLAINTIFF'S purchase
16 of the SPRI Pro Resistance Cord, due to the defective design of the Door Attachment, serious
17 personal injury, including death, could result from an ordinary consumer's use of the SPRI Pro
18 Resistance Cord as a pulley system to perform certain exercises.

19 82. PLAINTIFF alleges upon information and belief that, as of PLAINTIFF'S purchase
20 of the SPRI Pro Resistance Cord, due to the defective design of the Door Attachment, it was
21 reasonably foreseeable to Defendants that serious personal injuries likely would result from an
22 ordinary consumer's use of the SPRI Pro Resistance Cord as a pulley system to perform certain
23 exercises.

24 83. PLAINTIFF alleges upon information and belief that, as of PLAINTIFF'S purchase
25 of the SPRI Pro Resistance Cord, Defendants knew or should have known that if an ordinary
26 consumer were using the SPRI Pro Resistance Cord and its Door Attachment in the manner
27 PLAINTIFF was using them when the subject incident, then the Door Attachment and/or fitness
28 cable would travel at high velocity in the direction of the user and likely would strike the user.

1 84. PLAINTIFF alleges upon information and belief that, as of the design as of the
2 design of the SPRI Pro Resistance Cord’s Door Attachment, alternative designs of the Door
3 Attachment that would have significantly reduced the risk of serious personal injury from an
4 ordinary consumer's use of the SPRI Pro Resistance Cord were mechanically feasible.

5 85. PLAINTIFF alleges upon information and belief that, as of the design of the SPRI
6 Pro Resistance Cord Door Attachment, the financial costs of alternative designs of the attachment
7 (which alternative designs would have significantly reduced the risk of serious personal injury from
8 an ordinary consumer's use of the SPRI Pro Resistance Cord) were neither substantial nor
9 prohibitively costly.

10 86. PLAINTIFF alleges upon information and belief that, as of the design of the SPRI
11 Pro Resistance Cord Door Attachment, there was no adverse consequence to the SPRI Pro
12 Resistance Cord or its Door Attachment that would have resulted from alternative designs of the
13 attachment (which alternative designs would have significantly reduced the risk of serious personal
14 injury from an ordinary consumer's use of the SPRI Pro Resistance Cord).

15 87. PLAINTIFF alleges upon information and belief that, as of the design of the SPRI
16 Pro Resistance Cord’s Door Attachment, there was no adverse consequence to an ordinary
17 consumer that would have resulted from alternative designs of the Door Attachment (which
18 alternative designs would have significantly reduced the risk of serious personal injury from an
19 ordinary consumer's use of the SPRI Pro Resistance Cord).

20 88. PLAINTIFF alleges upon information and belief that, as of the design of the SPRI
21 Pro Resistance Cord’s Door Attachment, the disadvantages, if any, of alternative designs of the
22 Door Attachment which would have significantly reduced the risk of serious personal injury from
23 an ordinary consumer's use of the SPRI Pro Resistance Cord did not outweigh the advantages of
24 such alternative designs.

25 89. PLAINTIFF alleges upon information and belief that, at all times relevant to this
26 action, Defendants knew or should have known that: (a) the design of the SPRI Pro Resistance
27 Cord Door Attachment was defective as alleged herein; (b) the SPRI Pro Resistance Cord’s Door
28 Attachment could not safely be used in the manners intended and reasonably foreseeable because

1 of the design defects alleged herein; and (c) the SPRI Pro Resistance Cord's Door Attachment
2 would be sold to and used by the general public without inspection for defects.

3 *Punitive Damages*

4 90. The U.S. Consumer Product Safety Commission ("CPSC") has issued recalls of
5 other resistance bands that posed safety hazards similar to the safety hazards posed by the SPRI Pro
6 Resistance and its Door Attachment. Some of those recalls are described below.

7 91. On February 22, 2011, the CPSC announced a recall of the product known as the
8 Everlast Resistance Stretch Tubing, Everlast Pilates Stretch Tubing, Sportline Resistance Stretch
9 Tubing and Pineapple Pilates Stretch Tubing, used for exercise and stretching. See
10 [http://www.cpsc.gov/en/Recalls/2011/Resistance-Stretch-Tubing-Recalled-by-EB-Brands-Due-to-](http://www.cpsc.gov/en/Recalls/2011/Resistance-Stretch-Tubing-Recalled-by-EB-Brands-Due-to-Injury-Hazard/)
11 [Injury-Hazard/](http://www.cpsc.gov/en/Recalls/2011/Resistance-Stretch-Tubing-Recalled-by-EB-Brands-Due-to-Injury-Hazard/) As to the hazard associated with that product, the CPSC noted: "The handle on the
12 tubing, also called bands, can break or detach while in use, causing the tubing or handle to strike
13 the user and posing an injury hazard." As to prior incidents / injuries associated with that product,
14 the CPSC noted: "One report of an incident involving a bone injury." As to the remedy associated
15 with that product, the CPSC noted: "Consumers should immediately stop using the recalled product
16 and contact EB Brands for a free replacement product or a full refund."

17 92. On March 1, 2011, the CPSC announced a recall of a product known as Fitness Gear
18 and Fitness After 40 branded resistance tubes and adjustable resistance tube kits. See
19 [http://www.cpsc.gov/en/Recalls/2011/Dicks-Sporting-Goods-Recalls-Fitness-Resistance-Tubes-](http://www.cpsc.gov/en/Recalls/2011/Dicks-Sporting-Goods-Recalls-Fitness-Resistance-Tubes-Due-to-Contusion-and-Laceration-Hazards/)
20 [Due-to-Contusion-and-Laceration-Hazards/](http://www.cpsc.gov/en/Recalls/2011/Dicks-Sporting-Goods-Recalls-Fitness-Resistance-Tubes-Due-to-Contusion-and-Laceration-Hazards/). As to the hazard associated with that product, the
21 CPSC noted: "The plastic clip that attaches the resistance tube to the handle can break during use
22 causing the tubing, handle or fragments of the plastic clip to strike the user. This poses a contusion
23 and laceration hazard." As to prior incidents / injuries associated with that product, the CPSC
24 noted: "Dick's Sporting Goods has received four reports of contusions, abrasions and lacerations."
25 As to the remedy associated with that product, the CPSC noted: "Consumers should stop using the
26 resistance tubes immediately and return the product to Dick's Sporting Goods for a store credit for
27 the amount equal to the purchase price."

28 ///

1 93. On September 8, 2011, the CPSC announced a recall of a product known as Embark
2 Resistance Cords and Cord Kits. See <http://www.cpsc.gov/en/Recalls/2011/Target-Recalls-to->
3 [Repair-Embark-Resistance-Cords-Due-to-Injury-Hazard/](http://www.cpsc.gov/en/Recalls/2011/Target-Recalls-to-). As to the hazard associated with that
4 product, the CPSC noted: “A black plastic ball attached to the resistance cord's door anchor can
5 unexpectedly release and strike the user, posing an injury hazard to consumers.” As to prior
6 incidents / injuries associated with that product, the CPSC noted: “Target has received three reports
7 of incidents in which consumers were struck in the eye by the door anchor ball. Two incidents
8 resulted in permanent vision loss, and the severity of the injury in the third incident is unknown.”
9 As to the remedy associated with that product, the CPSC noted: “Consumers should immediately
10 stop using the resistance cords and remove the door anchor strap before resuming use or contact the
11 company to receive instructions to repair the cords to eliminate the hazard.”

12 94. On January 22, 2013, the CPSC announced a recall of a product known as Perfect
13 Resistance Bands (Perfect Bands Heavy 25 lb. capacity, Perfect Bands Heavy 30 lb. capacity and
14 Perfect Bands Heavy 40 lb. capacity). See <http://www.cpsc.gov/en/Recalls/2013/Implus-Footcare->
15 [Recalls-Perfect-Fitness-Resistance-Bands-Due-To-Injury-Hazard-Sold-Exclusively-at-WalMart/](http://www.cpsc.gov/en/Recalls/2013/Implus-Footcare-).
16 As to the hazard associated with that product, the CPSC noted: “The bands can detach from the
17 mesh cloth loops posing an injury hazard to the user and those in the vicinity.” As to prior incidents
18 / injuries associated with that product, the CPSC noted: “Twelve incidents were reported, 11 to the
19 firm and one to CPSC, including injuries to the back, hand and eye. None of the injuries was
20 serious and one required medical attention.” As to the remedy associated with that product, the
21 CPSC noted: “Consumers should immediately stop using the product and contact Implus Footcare
22 for a refund or replacement product.”

23 95. On July 15, 2014, the CPSC announced a recall of a product known as Bollinger
24 Fitness Classic and SoftTouch resistance bands with door attachment, model numbers 5771, 5772,
25 5773, 5774 and 5775. See <http://www.cpsc.gov/en/Recalls/2014/Bollinger-Fitness-Recalls->
26 [Resistance-Bands/](http://www.cpsc.gov/en/Recalls/2014/Bollinger-Fitness-Recalls-). As to the hazard associated with that product, the CPSC noted: “A black plastic
27 ball attached to the resistance band's door anchor can unexpectedly release and strike the user,
28 posing an injury hazard to consumers.” As to prior incidents / injuries associated with that product,

1 the CPSC noted: “There has been one report of the door anchor ball releasing resulting in an injury
2 to the user.” As to the remedy associated with that product, the CPSC noted: “Consumers should
3 immediately stop using the door attachment and contact Bollinger Fitness on instruction on how to
4 receive a free replacement door attachment, including free shipping.”

5 96. On October 4, 2019, the CPSC announced a recall of a product known as SPRI Ultra
6 Heavy Resistance Bands, model number 02-71669. See [https://www.cpsc.gov/Recalls/2019/fit-for-
7 life-recalls-spri-ultra-heavy-resistance-bands-due-to-injury-hazard](https://www.cpsc.gov/Recalls/2019/fit-for-life-recalls-spri-ultra-heavy-resistance-bands-due-to-injury-hazard). As to the hazard associated with
8 that product, the CPSC noted: “The rubber resistance bands can separate from the handle and strike
9 consumers, posing an injury hazard.”

10 97. Defendants knew or should have known that the CPSC's recalls of the
11 aforementioned products were good cause for them: (a) to re-evaluate the safety hazards posed by
12 the subject product's attachment; (b) to re-evaluate the warnings and instructions concerning the
13 subject product's attachment; and (c) to redesign the warning system to ensure they provided
14 adequate warnings of the hazards/risks of pulling the fitness cable in alignment with the user's
15 head, face and eyes.

16 98. SPRI was fully aware of (a) the hazards of a resistance band's snapping back,
17 striking the users' eyes and causing blindness and (b) the importance of the
18 designer/manufacturer/retailer's providing adequate warnings of safety precautions concerning
19 users' eyes such as the use of safety glasses or goggles, no later than August 2009, almost 11 years
20 before PLAINTIFF purchased the subject product.

21 99. Defendants' marketing materials (more specifically, the back of the SPRI
22 Packaging, the Exercise Guide, the Safety Guide and the Attachment Hang Tag) repeatedly show
23 users disregarding the warnings contained in the SPRI Packaging.

24 100. Nothing prevented Defendants from eliminating the images/demonstrations of users'
25 pulling the fitness cable in alignment with or near their faces while staring at the fitness cable
26 without protective glasses from the back of the SPRI Packaging, the Exercise Guide, the Safety
27 Guide and the Attachment Hang Tag. Defendants' failures to remove all of those
28 images/demonstrations years before PLAINTIFF purchased the subject product reflected a

1 conscious disregard for consumers' safety.

2 101. Nothing prevented Defendants from including conspicuous, prominent warnings on
3 the SPRI Packaging, the Exercise Guide, the Safety Guide and the Attachment Hang Tag that: (1)
4 the consumer should never pull the fitness cable so that it lines up with his face or other sensitive
5 parts of his body; (2) pulling the fitness cable towards the face is dangerous; (3) pulling the fitness
6 cable towards the face may cause serious injury - including permanent vision loss; (4) the fitness
7 cable contains elastic properties and will snap back if stretched and released; (5) eye protection
8 (e.g., safety goggles) is necessary when performing some of the instructed exercises; (6) the
9 attachment should be removed prior to performing certain exercises; (7) the user should never
10 looked directly at the fitness cable and/or attachment; and (8) there is a serious hazard or risk of
11 attachment recoiling into the consumer's face. There is no justification for Defendants' failures to
12 include such warnings on the SPRI Packaging, the Exercise Guide, the Safety Guide and the
13 Attachment Hang Tag before PLAINTIFF purchased the subject product. Defendants elected not to
14 include such warnings in order to maximize their profits (by maintaining or increasing the sales of
15 the subject product) at the expense of ordinary consumers' safety.

16 102. Before SPRI distributed the SPRI Pro Resistance Cord to TARGET for subsequent
17 sale to ordinary consumers and users such as PLAINTIFF, SPRI knew that fewer SPRI Pro
18 Resistance units would be sold (and, therefore, their profits would be decreased) if: (a) there were
19 warnings on the exterior of the SPRI Packaging, on the Exercise Guide, in the Safety Guide and/or
20 on the Attachment Hang Tag that users should never pull fitness cables so that the stretched cables
21 line up with their faces or other sensitive parts of their bodies; user should never look in the
22 direction of the cables and/or attachment while in use; it is necessary for users to wear protective
23 eyewear when utilizing the fitness cables and (b) such warnings were conspicuous to ordinary
24 consumers and users such as PLAINTIFF. Such knowledge by SPRI motivated them not to add
25 such warnings to the exterior of the SPRI Packaging, the Exercise Guide, the Safety Guide and/or
26 the Attachment Hang Tag. Accordingly, SPRI deliberately chose their profits over ordinary
27 consumers' safety.

28 ///

1 103. Before TARGET offered the SPRI Pro Resistance for sale to ordinary consumers
2 and users such as PLAINTIFF, TARGET knew that fewer SPRI Pro Resistance Cord units would
3 be sold (and, therefore, its profits would be decreased) if: (a) there were warnings on the exterior
4 of the SPRI Packaging, on the Exercise Guide, in the Safety Guide and/or on the Attachment Hang
5 Tag that users should never pull fitness cables so that the stretched cables line up with their faces or
6 other sensitive parts of their bodies; user should never look in the direction of the cables and/or
7 attachment while in use; it is necessary for users to wear protective eyewear when utilizing the
8 fitness cables and (b) such warnings were conspicuous to ordinary consumers and users such as
9 PLAINTIFF. Such knowledge by TARGET motivated them not to add such warnings to the
10 exterior of the SPRI Packaging, the Exercise Guide, the Safety Guide and/or the Attachment Hang
11 Tag. Accordingly, TARGET deliberately chose their profits over ordinary consumers' safety.

12 104. Before SPRI distributed the SPRI Pro Resistance Cord to TARGET for subsequent
13 sale to ordinary consumers and users such as PLAINTIFF, SPRI knew that fewer SPRI Pro
14 Resistance Cord units would be sold (and, therefore, their profits would be decreased) if the
15 warnings in the Safety Guide that users should avoid looking directly at the Pro Resistance Cord
16 during exercise were more conspicuous to ordinary consumers and users such as PLAINTIFF. Such
17 knowledge by SPRI motivated them not to ensure that such warnings in the Exercise Guide and
18 Safety Guide were more conspicuous to ordinary consumers and users such as PLAINTIFF.
19 Accordingly, SPRI deliberately chose their profits over ordinary consumers' safety.

20 105. Before TARGET offered the SPRI Pro Resistance Cord for sale to ordinary
21 consumers and users such as PLAINTIFF, TARGET knew that fewer SPRI Pro Resistance Cord
22 units would be sold (and, therefore, its profits would be decreased) if the warnings in Safety Guide
23 that users should avoid looking directly at the Pro Resistance Cord during exercise were more
24 conspicuous to ordinary consumers and users such as PLAINTIFF. Such knowledge by TARGET
25 motivated it not to request and/or require SPRI to ensure that such warnings in the Exercise Guide
26 or Safety Guide be more conspicuous to ordinary consumers and users such as PLAINTIFF
27 Accordingly, TARGET deliberately chose its profits over ordinary consumers' safety.

28 ///

1 106. Before SPRI distributed the SPRI Pro Resistance to TARGET for subsequent sale to
2 ordinary consumers and users such as PLAINTIFF, SPRI knew that fewer SPRI Pro Resistance
3 Cord units would be sold (and, therefore, their profits would be decreased) if: (a) there were
4 warnings on the exterior of the SPRI Pro Resistance Cord, on the Exercise Guide, in the Safety
5 Guide and/or on the Attachment Hang Tag that users' pulling fitness cables so that the stretched
6 cable lines up with their faces or other sensitive parts of their bodies is dangerous; and (b) such
7 warnings were conspicuous to ordinary consumers and users such as PLAINTIFF. Such knowledge
8 by SPRI motivated them not to add such warnings to the exterior of the SPRI Pro Resistance Cord,
9 the Exercise Guide, the Safety Guide and/or the Attachment Hang Tag. Accordingly, SPRI
10 deliberately chose their profits over ordinary consumers' safety.

11 107. Before TARGET offered the SPRI Pro Resistance Cord for sale to ordinary
12 consumers and users such as PLAINTIFF, TARGET knew that fewer SPRI Pro Resistance Cord
13 units would be sold (and, therefore, its profits would be decreased) if: (a) there were warnings on
14 the exterior of the SPRI Packaging, on the Exercise Guide, in the Safety Guide and/or on the
15 Attachment Hang Tag that users' pulling fitness cables so that the stretched cable lines up with their
16 faces or other sensitive parts of their bodies is dangerous; and (b) such warnings were conspicuous
17 to ordinary consumers and users such as PLAINTIFF. Such knowledge by TARGET motivated it
18 not to request and/or require SPRI to add such warnings to the exterior of the SPRI Pro Resistance
19 Cord, the Exercise Guide, the Safety Guide and/or the Attachment Hang Tag. Accordingly,
20 TARGET deliberately chose its profits over ordinary consumers' safety.

21 108. Before SPRI distributed the SPRI Pro Resistance Cord to SPRI for subsequent sale
22 to ordinary consumers and users such as PLAINTIFF, SPRI knew that fewer SPRI Pro Resistance
23 Cord units would be sold (and, therefore, their profits would be decreased) if the warning in the
24 Exercise Guide that it is recommended that users wear protective glasses was more conspicuous to
25 ordinary consumers and users such as PLAINTIFF. Such knowledge by SPRI motivated them not
26 to ensure that such warnings in the Exercise Guide were more conspicuous to ordinary consumers
27 and users such as PLAINTIFF. Accordingly, SPRI deliberately chose their profits over ordinary
28 consumers' safety.

1 109. Before TARGET offered the SPRI Pro Resistance Cord for sale to ordinary
2 consumers and users such as PLAINTIFF, SPRI knew that fewer SPRI Pro Resistance Cord units
3 would be sold (and, therefore, its profits would be decreased) if the warning in the Exercise Guide
4 that it is recommended that users wear protective glasses was were more conspicuous to ordinary
5 consumers and users such as PLAINTIFF. Such knowledge by TARGET motivated it not to
6 request and/or require SPRI to ensure that such warnings in the Exercise Guide be more
7 conspicuous to ordinary consumers and users such as PLAINTIFF. Accordingly, TARGET
8 deliberately chose its profits over ordinary consumers' safety.

9 110. At all times relevant to this action, Defendants knew or should have known that: (a)
10 Defendants failed to warn and/or failed to provide adequate warnings to ordinary consumers and
11 users of the SPRI Pro Resistance Cord such as PLAINTIFF of the risks and dangers of using the
12 SPRI Pro Resistance Cord and, more specifically, pulling the fitness cables such that they line up
13 with the user's face and other sensitive parts of the user's body; not removing the attachment prior
14 to using the fitness bands; and not wearing protective glasses during use of the fitness bands (b)
15 Defendants failed to warn and/or failed to provide adequate warnings to ordinary consumers and
16 users of the SPRI Pro Resistance Cord such as PLAINTIFF of the risks and dangers of not
17 removing the attachment before use; (c) the design of the SPRI Pro Resistance Cord's attachment
18 was defective as alleged herein; (d) the SPRI Pro Resistance Cord and its attachment could not
19 safely be used in the manners intended and reasonably foreseeable because of the failures to warn
20 alleged herein, the inadequate warnings alleged herein, and the design defects alleged herein; (e)
21 the SPRI Pro Resistance Cord and its attachment would be sold to and used by the general public
22 without adequate consideration of the risks and dangerous of using the SPRI Pro Resistance Cord
23 as a pulley system and without inspection for defects; and (f) Defendants' placement of the SPRI
24 Pro Resistance Cord and its attachment on the market was in willful and conscious disregard of
25 the safety of the general public.

26 111. At all times relevant to this action, Defendants were guilty of malice, oppression and
27 fraud based upon their conduct as alleged herein.

28 ///

1 112. Defendants' conduct as alleged herein was malicious because it was despicable
2 conduct carried on with a willful and conscious disregard for the safety of others. Defendants'
3 conduct as alleged herein was despicable in that it was so base or contemptible that it would be
4 looked down upon and despised by ordinary decent people. Defendants' conduct as alleged herein
5 was carried on with a willful and conscious disregard for the safety of others in that they were:
6 aware of the probable dangerous consequences of their conduct and willfully and deliberately failed
7 to avoid those consequences.

8 113. Defendants' conduct as alleged herein was oppressive because it subjected a person
9 to cruel and unjust hardship in conscious disregard of that person's rights.

10 114. Defendants' conduct as alleged herein was fraudulent because, among other reasons:
11 (a) by placing the SPRI Pro Resistance Cord attachment on the market, Defendants expressly
12 and/or impliedly represented to the general public that it was safe to be used in the manners
13 intended and reasonably foreseeable; (b) Defendants intended the general public to rely on such
14 representations; and (c) PLAINTIFF, in purchasing and using the SPRI Pro Resistance Cord and its
15 attachment as alleged herein, did rely on Defendants' representations as alleged herein, all to his
16 damage as alleged herein.

17 115. As a result of Defendants' malicious, oppressive and fraudulent conduct as alleged
18 herein, he is entitled to recover punitive damages for the purposes of punishing, deterring and
19 making an example of each Defendant.

20 **FIRST CAUSE OF ACTION**

21 **(STRICT PRODUCTS LIABILITY [FAILURE TO WARN])**

22 **(Against SPRI and DOES 1-10)**

23 116. PLAINTIFF re-alleges and incorporates by reference all paragraphs of this
24 Complaint as though fully set forth herein.

25 117. Prior to PLAINTIFF'S purchase of the SPRI Pro Resistance Cord from TARGET,
26 SPRI designed, manufactured and distributed the SPRI Pro Resistance Cord and its door
27 attachment for use by the general public and ordinary consumers such as PLAINTIFF.

28 ///

1 118. The SPRI Pro Resistance Cord and its Door Attachment had substantial risks and
2 dangers that were known or knowable by SPRI by the use of general mechanical, engineering
3 and/or scientific knowledge which was available before, during and after the design, manufacture
4 and distribution of the SPRI Pro Resistance Cord and its attachment. Those substantial risks and
5 dangers included those associated with, inter alia: (a) pulling the fitness cables so that they line up
6 with the consumer's face; (b) pulling the fitness cables so that they line up with sensitive parts of
7 the consumer's body; (c) keeping the attachment attached while utilizing the fitness cables; and (d)
8 the attachment recoiling toward the user and striking the user during the normal course of use of
9 the product.

10 119. SPRI knew or should have known of the substantial risks and dangers associated
11 with, and the defective design of, the SPRI Pro Resistance Cord and its Door Attachment as alleged
12 herein.

13 120. The use of the SPRI Pro Resistance Cord and its Door Attachment in the manners
14 that were reasonably foreseeable by SPRI involved substantial dangers that would not be readily
15 recognized by the ordinary consumer and user of the subject product. Such dangers were known or
16 knowable by SPRI in light of the generally recognized and prevailing best mechanical, engineering
17 and/or scientific knowledge available at the time of the design, manufacture and distribution of the
18 SPRI Pro Resistance Cord and its attachment.

19 121. The SPRI Pro Resistance Cord and its attachment had design defects as alleged;
20 herein that were unreasonably and substantially dangerous to ordinary consumers and users of the
21 subject product, such as PLAINTIFF. Such ordinary consumers and users, including PLAINTIFF,
22 would not and could not have recognized or discovered the potential risks and dangers of the SPRI
23 Pro Resistance Cord and its Door Attachment as set forth herein.

24 122. The SPRI Pro Resistance Cord and its Door Attachment were expected to and did,
25 reach PLAINTIFF without substantial change in their condition as designed, manufactured and
26 distributed by SPRI.

27 123. When the subject incident occurred, PLAINTIFF was using the SPRI Pro Resistance
28 Cord in the manners that were intended and/or reasonably foreseeable by SPRI.

1 124. SPRI had duties to provide adequate warnings to ordinary consumers and users of
2 the SPRI Pro Resistance Cord and its Door Attachment, such as PLAINTIFF, of the substantial
3 risks and dangers of the SPRI Pro Resistance Cord and its attachment (including the risk and
4 danger of the door attachment recoiling and striking the user), which risks and dangers were known
5 or knowable by SPRI.

6 125. SPRI failed to adequately warn the ordinary consumers and users of the SPRI Pro
7 Resistance Cord, such as PLAINTIFF, of the substantial risks and dangers of SPRI Pro Resistance
8 Cord attachment (including the risk and danger of the door attachment recoiling and striking the
9 user), which risks and dangers were known or knowable by SPRI.

10 126. SPRI'S failure to adequately warn of the substantial risks and dangers of the SPRI
11 Pro Resistance Cord and its attachment was a substantial factor in causing PLAINTIFF'S serious
12 personal injuries and other damages as alleged herein.

13 127. As a direct and proximate result of SPRI'S failure to adequately warn of the
14 substantial risks and dangers of the SPRI Pro Resistance Cord and its attachment, PLAINTIFF
15 suffered and continues to suffer the serious personal injuries and other damages as alleged herein.

16 128. SPRI'S failure to adequately instruct PLAINTIFF on how to use the SPRI Pro
17 Resistance Cord was a substantial factor in causing PLAINTIFF'S serious personal injuries and
18 other damages as alleged herein.

19 129. As a direct and proximate result of SPRI'S failure to adequately instruct
20 PLAINTIFF on how to use the SPRI Pro Resistance Cord door attachment, PLAINTIFF suffered
21 and continues to suffer the serious personal injuries and other damages as alleged herein.

22 130. WHEREFORE, PLAINTIFF demands judgment against Defendants SPRI and Does
23 1 through 10 as hereinafter set forth.

24 **SECOND CAUSE OF ACTION**

25 **(STRICT PRODUCT LIABILITY [DESIGN DEFECT])**

26 **(Against SPRI and DOES 1-10)**

27 131. PLAINTIFF re-alleges and incorporates by reference all paragraphs of this
28 Complaint as though fully set forth herein.

1 132. The design of the SPRI Pro Resistance Cord and its attachment was defective as
2 alleged herein when it left the control of SPRI.

3 133. SPRI knew the SPRI Pro Resistance Cord and its Door Attachment would be
4 purchased by ordinary consumers and users such as PLAINTIFF and used by them without
5 inspection for defects.

6 134. When the subject incident occurred, PLAINTIFF was using the SPRI Pro Resistance
7 Cord and its attachment in the manners intended by SPRI and reasonably foreseeable by SPRI as
8 involving substantial risks and dangers not readily apparent.

9 135. The defective design of the SPRI Pro Resistance Cord and its attachment as alleged
10 herein was a substantial factor in causing the subject incident and PLAINTIFF'S serious personal
11 injuries and other damages as alleged herein.

12 136. As a direct and proximate result of the dangerous and defective design of the SPRI
13 Pro Resistance Cord and its attachment as alleged herein, PLAINTIFF suffered and continues to
14 suffer the serious personal injuries and other damages as alleged herein.

15 137. PLAINTIFF'S serious personal injuries and other damages as alleged herein
16 resulted from uses of the SPRI Pro Resistance Cord and its attachment that were intended and/or
17 reasonably foreseeable by SPRI.

18 138. WHEREFORE, PLAINTIFF demands judgment against Defendants SPRI and
19 DOES 1 through 10 as hereinafter set forth.

20 **THIRD CAUSE OF ACTION**

21 **(Negligence)**

22 **(Against SPRI and DOES 1-10)**

23 139. PLAINTIFF re-alleges and incorporates by reference all paragraphs of this
24 Complaint as though fully set forth herein.

25 140. SPRI knew or had reason to know the SPRI Pro Resistance Cord and its Door
26 Attachment were dangerous or were likely to be dangerous for the uses for which they were
27 supplied.

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1 141. SPRI had a duty to use reasonable care to give warning of the dangerous condition
2 of the SPRI Pro Resistance Cord and its Door Attachment, or of facts which make such products
3 likely to be dangerous, to those whom it should expect to use the subject products or be endangered
4 by their probable use where, as here, SPRI had reason to believe that such persons would not
5 realize their dangerous condition. SPRI failed to fulfill that duty.

6 142. SPRI had a duty to exercise reasonable care in the design, manufacture, testing and
7 inspection of the SPRI Pro Resistance Cord and its Door Attachment so that the subject products
8 may be safely used in the manners and for the purposes that were intended and/or reasonably
9 foreseeable. SPRI failed to fulfill that duty.

10 143. SPRI had a duty to exercise reasonable care in determining whether or not to
11 voluntarily recall the SPRI Pro Resistance Cord and its Door Attachment prior to PLAINTIFF'S
12 purchase of the subject product from TARGET. SPRI failed to fulfill that duty.

13 144. SPRI was negligent in various respects including, inter alia: (a) failing to use
14 reasonable care to give warning of the dangerous condition of the SPRI Pro Resistance Cord and its
15 Door Attachment, or of facts which make the subject products likely to be dangerous, to those
16 whom it should expect to use the subject products or be endangered by their probable use; (b)
17 failing to exercise reasonable care with regard to the instructions on how to use the attachment so
18 that the subject products may be safely used in the manners and for the purposes that were intended
19 and/or reasonably foreseeable; (c) failing to exercise reasonable care in the design of the SPRI Pro
20 Resistance Cord and its attachment so that the subject products may be safely used in the manners
21 and for the purposes that were intended and/or reasonably foreseeable; (d) failing to exercise
22 reasonable care in the testing of the SPRI Pro Resistance Cord and its Door Attachment so that the
23 subject products may be safely used in the manners and for the purposes that were intended and/or
24 reasonably foreseeable; (e) failing to exercise reasonable care in the inspection of the SPRI Pro
25 Resistance Cord and its Door Attachment so that the subject products may be safely used in the
26 manners and for the purposes that were intended and/or reasonably foreseeable; (f) failing to
27 exercise reasonable care in determining whether or not to voluntarily recall the SPRI Pro
28 Resistance Cord and its Door Attachment prior to PLAINTIFF'S purchase of the subject product

1 from TARGET; and (g) otherwise failing to fulfill the standard of care required of an entity that
2 designed, manufactured and distributed the SPRI Pro Resistance Cord and its Door Attachment.

3 145. SPRI'S negligence in one or more of the foregoing respects was a substantial factor
4 in causing the serious personal injuries and other damages that PLAINTIFF suffered and continues
5 to suffer as alleged herein.

6 146. As a direct and proximate result of SPRI'S negligence in or more of the foregoing
7 respects, PLAINTIFF suffered and continues to suffer the serious personal injuries and other
8 damages as alleged herein.

9 147. WHEREFORE, PLAINTIFF demands judgment against Defendant SPRI and Does
10 1 through 10 as hereinafter set forth.

11 **FOURTH CAUSE OF ACTION**

12 **(STRICT PRODUCTS LIABILITY [FAILURE TO WARN])**

13 **(Against TARGET and DOES 11-20)**

14 148. PLAINTIFF re-alleges and incorporates by reference all paragraphs of this
15 Complaint as though fully set forth herein.

16 149. Plaintiff purchased the SPRI Pro Resistance Cord and its Door Attachment from
17 TARGET in April of 2020.

18 150. The SPRI Pro Resistance Cord and its Door Attachment had substantial risks and
19 dangers that were known or knowable by TARGET by the use of general mechanical, engineering
20 and/or scientific knowledge which was available before, during and after its design, manufacture
21 and distribution of the SPRI Pro Resistance Cord and its Door Attachment. Those substantial risks
22 and dangers included those associated with, inter alia: (a) pulling the fitness cables so that they line
23 up with the consumer's face; (b) pulling the fitness cables so that they line up with sensitive parts of
24 the consumer's body; (c) keeping the attachment attached while utilizing the fitness cables; and (d)
25 the attachment recoiling toward the user and striking the user during the normal course of use of
26 the product.

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1 151. TARGET knew or should have known of the defective design of, and the substantial
2 risks and dangers associated with, the SPRI Pro Resistance Cord and its Door Attachment as
3 alleged herein.

4 152. The uses of the SPRI Pro Resistance Cord and its Door Attachment in the manners
5 that were intended and/or reasonably foreseeable by TARGET involved substantial dangers that
6 would not be readily recognized by the ordinary user of the subject product. Such dangers were
7 known or knowable in light of the generally recognized and prevailing best mechanical,
8 engineering and/or scientific knowledge available at the time of the design, manufacture and
9 distribution of the subject product.

10 153. The SPRI Pro Resistance Cord and its Door Attachment had design defects as
11 alleged herein that were unreasonably and substantially dangerous to ordinary consumers and users
12 of the subject product, such as PLAINTIFF. Such ordinary consumers and users, including
13 PLAINTIFF, would not and could not have recognized or discovered the potential risks and
14 dangers of the SPRI Pro Resistance Cord and its attachment as set forth herein.

15 154. The SPRI Pro Resistance Cord and its Door Attachment were expected to and did
16 reach PLAINTIFF without substantial change in their condition as designed, manufactured and
17 distributed by SPRI and subsequently sold by TARGET.

18 155. PLAINTIFF used the SPRI Pro Resistance Cord and its Door Attachment in the
19 manners that were intended and/or reasonably foreseeable by TARGET.

20 156. TARGET had duties to provide adequate warnings to ordinary users and consumers
21 of the fitness cables, such as PLAINTIFF, of the substantial risks and dangers of the SPRI Pro
22 Resistance Cord and its Door Attachment (including the risk and danger of the door attachment's
23 recoiling and striking the user), which risks and dangers were known or knowable by TARGET.

24 157. TARGET failed to adequately warn the ordinary consumers and users of the SPRI
25 Pro Resistance Cord and its Door Attachment, such as PLAINTIFF, of the substantial risks and
26 dangers of the SPRI Pro Resistance Cord and its Door Attachment (including the risk and danger of
27 the door attachment's recoiling and striking the user), which risks and dangers were known or
28 knowable by TARGET.

1 158. TARGET'S failure to warn of the substantial risks and dangers of the SPRI Pro
2 Resistance Cord and its Door Attachment was a substantial factor in causing PLAINTIFF'S serious
3 personal injuries and other damages as alleged herein.

4 159. As a direct and proximate result of TARGET'S failure to warn of the substantial
5 risks and dangers of the SPRI Pro Resistance Cord and its Door Attachment, PLAINTIFF suffered
6 and continues to suffer the serious personal injuries and other damages as alleged herein.

7 160. WHEREFORE, PLAINTIFF demands judgment against Defendants TARGET and
8 Does 11 through 20 as hereinafter set forth.

9 **FIFTH CAUSE OF ACTION**

10 **(STRICT PRODUCTS LIABILITY [DEFECTIVE DESIGN])**

11 **(Against TARGET and DOES 11-20)**

12 161. PLAINTIFF re-alleges and incorporates by reference all paragraphs of this
13 Complaint as though fully set forth herein.

14 162. The design of the SPRI Pro Resistance Cord and its Door Attachment was defective
15 as alleged herein when it left the control of TARGET.

16 163. TARGET knew or should have known the SPRI Pro Resistance Cord and its Door
17 Attachment would be purchased by ordinary consumers and users such as PLAINTIFF and used by
18 them without inspection for defects.

19 164. When the subject incident occurred, PLAINTIFF was using the SPRI Pro Resistance
20 Cord and its Door Attachment in the manners intended and/or reasonably foreseeable by TARGET
21 as involving a substantial danger not readily apparent.

22 165. The defective design of the SPRI Pro Resistance Cord and its Door Attachment as
23 alleged herein was a substantial factor in causing the subject incident and PLAINTIFF'S serious
24 personal injuries and other damages as alleged herein.

25 166. As a direct and proximate result of the dangerous and defective design of the SPRI
26 Pro Resistance Cord and its Door Attachment as alleged herein, PLAINTIFF suffered and
27 continues to suffer serious personal injuries and other damages as alleged herein.

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1 167. PLAINTIFF'S serious personal injuries and other damages as alleged herein
2 resulted from uses of the SPRI Pro Resistance Cord and its Door Attachment that were intended
3 and/or reasonably foreseeable by the Defendants.

4 168. WHEREFORE, PLAINTIFF demands judgment against Defendants TARGET and
5 DOES 11 through 20 as hereinafter set forth.

6 **SIXTH CAUSE OF ACTION**

7 **(NEGLIGENCE)**

8 **(Against TARGET and DOES 11-20)**

9 169. PLAINTIFF re-alleges and incorporates by reference all paragraphs of this
10 Complaint as though fully set forth herein.

11 170. TARGET knew or had reason to know the SPRI Pro Resistance Cord and its
12 attachment were dangerous or were likely to be dangerous for the uses for which they were
13 supplied.

14 171. TARGET had reason to know that the SPRI Pro Resistance Cord and its Door
15 Attachment were likely to be dangerously defective.

16 172. TARGET had a duty to use reasonable care to give warning of the dangerous
17 condition of the SPRI Pro Resistance Cord and its Door Attachment, or of facts which make such
18 product likely to be dangerous, to those whom it should expect to use the subject product or be
19 endangered by its probable use where, as here, TARGET had reason to believe that such persons
20 would not realize its dangerous condition. TARGET failed to fulfill that duty.

21 173. TARGET had a duty to exercise reasonable care to inspect and test the SPRI Pro
22 Resistance Cord and Door Attachment before selling it to PLAINTIFF. TARGET failed to fulfill
23 that duty.

24 174. TARGET was negligent in various respects including, inter alia: (a) failing to use,
25 reasonable care to give warning of the dangerous condition of the SPRI Pro Resistance Cord and its
26 Door Attachment, or of facts which make the subject product likely to be dangerous, to those
27 whom it should expect to use the subject product or be endangered by its probable use; (b) failing
28 to exercise reasonable care to inspect the SPRI Pro Resistance Cord and its Door Attachment

1 before selling the subject product to PLAINTIFF; (c) failing to exercise reasonable care to test the
2 SPRI Pro Resistance Cord and its Door Attachment before selling the subject product to
3 PLAINTIFF; (d) failing to exercise reasonable care in determining whether or not to voluntarily
4 recall the SPRI Pro Resistance Cord and its Door Attachment prior to PLAINTIFF'S purchase of
5 the subject product from TARGET; and (e) otherwise failing to fulfill the standard of care required
6 of an entity that inspected, tested and sold the SPRI Pro Resistance Cord and its Door Attachment.

7 175. TARGET'S negligence in one or more of the foregoing respects was a substantial
8 factor in causing the serious personal injuries and other damages that PLAINTIFF suffered and
9 continues to suffer as alleged herein.

10 176. As a direct and proximate result of TARGET'S negligence in or more of the
11 foregoing respects, PLAINTIFF suffered and continues to suffer the serious personal injuries and
12 other damages as alleged herein.

13 177. WHEREFORE, PLAINTIFF demands judgment against Defendants TARGET and
14 Does 11 through 20 as hereinafter set forth.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF, KEN WIGCHERT, prays for judgment against Defendants as
17 follows:

- 18 1. For payment of all statutory obligations and penalties as required by law;
- 19 2. For penalties, medical expenses, special damages, compensatory, and general
20 damages in an amount to be proven at trial;
- 21 3. For punitive or exemplary damages according to proof at the time of trial;
- 22 4. For costs of suit incurred herein;
- 23 5. For interest provided by law;
- 24 6. For prejudgment interest as permitted by law;
- 25 7. For PLAINTIFF'S attorneys' fees as permitted by law;
- 26 8. For restitution and other equitable relief; and

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1 9. For such other and future relief as the Court deems just and proper.

2 Dated: July 31 , 2020

BORDIN SEMMER, LLP

3
4 By:  _____

5 Joshua Bordin-Wosk, Esq.
6 Benjamin A. Sampson, Esq.
7 Attorneys for Plaintiff,
8 KEN WIGCHERT
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DEMAND FOR JURY TRIAL

PLAINTIFF, KEN WIGCHERT, demands a jury trial.

Dated: July 31, 2020

BORDIN SEMMER, LLP

By:  _____

Joshua Bordin-Wosk, Esq.
Benjamin A. Sampson, Esq.
Attorneys for Plaintiff,
KEN WIGCHERT

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 291791 NAME: Benjamin A. Sampson FIRM NAME: Bordin Semmer LP STREET ADDRESS: 6100 Center Drive Suite 1100 CITY: Los Angeles STATE: CA ZIP CODE: 90045 TELEPHONE NO.: 323.925.7800 FAX NO.: 323.925.7801 E-MAIL ADDRESS: ATTORNEY FOR (name): Plaintiff, Ken Wigchert	<i>FOR COURT USE ONLY</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE JUSTICE CENTER: <input checked="" type="checkbox"/> Central - 700 Civic Center Dr. West, Santa Ana, CA 92701 <input type="checkbox"/> Civil Complex Center - 751 W. Santa Ana Blvd., Santa Ana, CA 92701 <input type="checkbox"/> Harbor- Newport Beach Facility - 4601 Jamboree Rd., Newport Beach, CA 92660-2595 <input type="checkbox"/> North - 1275 N. Berkeley Ave., P. O. Box 5000, Fullerton, CA 92838-0500 <input type="checkbox"/> West - 8141 13 th Street, Westminster, CA 92683-4593	
PLAINTIFF: Ken Wigchert DEFENDANT: SPRI Products, Inc., et al.	CASE NUMBER: 30-2020-01153512-CU-PL CJC
AMENDMENT TO <input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> CROSS-COMPLAINT	Case assigned to: Judge: John C. Gastelum Department: Date complaint filed: August 3, 2020 Hearing/trial date:


FICTITIOUS NAME UNDER SECTION 474, CODE OF CIVIL PROCEDURE (NO ORDER REQUIRED)

I have discovered the true name of Doe 2 Roe _____ to be GAIAM AMERICAS, INC., a Colorado corporation

The complaint/cross-complaint is amended to reflect the true name wherever it appears in the pleading.

Date: 9.17.20

Benjamin A. Sampson
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

INCORRECT NAME UNDER SECTION 473, CODE OF CIVIL PROCEDURE (ORDER REQUIRED)

The complaint/cross-complaint incorrectly named the defendant/cross-defendant as _____.

I have discovered the true name of the party to be _____

I request the complaint/cross-complaint be amended to reflect the true name wherever it appears in the pleading.

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

ORDER

The complaint/cross-complaint is amended to reflect the true name wherever it appears in the pleading.

Date: _____

JUDICIAL OFFICER

For your protection and privacy please press the
CLEAR THIS FORM button after you have
printed the form