# EXHIBIT A

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF OHIO**
**EASTERN DIVISION**

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| SHMUEL COHEN, YEHUDA FISCHER, ELIEZER ROSENBERGER and MAYER TANNENBAUM *on behalf of themselves and all others similarly situated*,<br><br>Plaintiffs,<br><br>v.<br><br>ALLEGIANCE ADMINISTRATORS, LLC d/b/a PERFORMANCE FIRST and AUTOGUARD ADVANTAGE CORPORATION,<br><br>Defendants. | **SECOND AMENDED CLASS ACTION COMPLAINT**<br><br>Case 2:20-cv-03411-JLG-KAJ |

Plaintiffs Shmuel Cohen, Yehuda Fischer, Eliezer Rosenberger and Mayer Tannenbaum ("Plaintiffs"), by their undersigned attorneys, bring this class action complaint against Defendants Allegiance Administrators, LLC d/b/a Performance First and Autoguard Advantage Corporation, alleging as follows:

## I. NATURE OF THE ACTION

1. This is a class action against Allegiance Administrators, LLC d/b/a Performance First ("Performance First") and Autoguard Advantage Corporation ("Autoguard" and, together with Performance First, "Defendants") for violations of the New York General Business Law ("NYGBL") §§ 349 & 350, and breach of contract. Plaintiffs and the members of the Class they seek to represent are all consumers who entered into contracts with Defendants, but who failed to receive the benefits of those contracts because of the intentional and deceptive conduct of Defendants.

2. Plaintiffs are some of the many consumers who choose to lease, rather than buy, a vehicle. Like essentially all others who enter into such transactions, Plaintiffs entered into a

leasing agreement through which they became responsible at the end of the applicable term for any excess "wear and tear" on the leased vehicle.

3. It is sometimes the case that a consumer's liability for excess wear and tear represents a significant charge at the end of a lease. Aware that car shoppers can be wary of committing to such an open-ended obligation, many dealerships now offer "protection" against large "wear and tear" assessments by giving consumers the apparent opportunity to shift the risk of loss through contractual arrangements with Defendants.

4. The agreement marketed by Defendants, known as an "Excess Wear & Tear Protection Waiver" (the "Waiver Agreement"), requires a vehicle lessee to pay a flat sum, typically $500, upon the commencement of the lease period.

5. In return, subject only to the "terms and conditions set forth" in the Waiver Agreement, Defendants promise to "reimburse [the consumer] for charges defined as Excess Wear and Tear" in the consumer's lease.

6. In reality, the promises made by Defendants in the Waiver Agreement are largely illusory. Instead of honoring its obligations to reimburse lessees for charges due to "Excess Wear and Tear," subject only to "terms and conditions" listed in the Waiver Agreement, Defendants have a policy of denying reimbursement for reasons completely extraneous to the Waiver Agreement, *e.g*. on grounds that it will not cover any scratch that is longer than 12 inches in length.

7. When challenged over its failure to live up to its word, Defendants have advised lessees that if they "want to spend a couple thousand dollars [in legal fees] to try to get [a lesser amount] in damage done to the vehicle covered, that's their prerogative."

8. Plaintiffs, on behalf of themselves and a Class of similarly situated individuals, seek recovery of damages for Defendants' unfair and deceptive conduct under the NYGBL and

for breach of contract.

9. Plaintiffs also request entry of an Order awarding injunctive and declaratory relief requiring cessation of the unfair and deceptive practices described in this Complaint.

## II. JURISDICTION AND VENUE

10. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(d) because it is brought as a class action, on behalf of a Class of over 100 Class Members, whose claims aggregate in excess of $5 million, and which includes members whose state citizenship is diverse from that of Defendants.

11. This Court has personal jurisdiction over Defendants because Defendants are headquartered in the state of Ohio, transact business within the state of Ohio, and by virtue of the fact that Defendants' executive offices are located in the state, Defendants continually and systematically conducts business throughout the state. *See* Ohio Rev. Code § 2307.382.

12. Venue is proper because Defendants reside within this District and it was in this District that a substantial part of the events or omissions giving rise to Plaintiffs claims occurred. *See* 28 U.S.C. § 1391(a)(1)-(2).

## III. PARTIES

13. Plaintiff Shmuel Cohen is an individual residing in Airmont, New York. On August 16, 2017, Mr. Cohen entered into a Waiver Agreement with Defendant Performance First.

14. Plaintiff Yehuda Fischer is an individual residing in Monsey, New York. On May 26, 2016, Mr. Fischer entered into a Waiver Agreement with Defendant Performance First.

15. Plaintiff Eliezer Rosenberger is an individual residing in Spring Valley, New York. On May 1, 2017, Mr. Rosenberger entered into a Waiver Agreement with Defendant Performance First.

16. Plaintiff Mayer Tannenbaum is an individual residing in Spring Valley, New York. On March 28, 2016, Mr. Tannenbaum entered into a Waiver Agreement with Defendant Performance First.

17. Defendant Allegiance Administrators, LLC d/b/a Performance First is a limited liability company organized under the laws of Ohio, with its principal executive offices located at 5500 Frantz Road, Suite 100, Dublin, Ohio 43017.

18. Defendant Autoguard Advantage Corporation is an Ohio corporation, with its principal executive offices located at 5500 Frantz Road, Suite 100, Dublin, Ohio 43017.

19. Upon information and belief, Defendant Autoguard Advantage Corporation's sole owner and CEO is Haytham ElZayn.

20. This Court has previously determined that "Haytham ElZayn is . . . one of the members of Defendant Allegiance Administrators, LLC". *See ElZayn v. Campbell*, Case No. 2:20-CV-493, 2020 U.S. Dist. LEXIS 42092, at *1 - *3 (S.D. Oh. March 11, 2020).

21. Upon information and belief, Haytham ElZayn, in addition to being Defendant Autoguard Advantage Corporation's sole owner and CEO and a member of Performance First, was also Performance First's CEO at times material herein.

22. Upon information and belief, at all times material herein, Defendants operated as a common enterprise that shares common ownership, management, address, office space, and employees, and commingles funds.

23. Upon information and belief, at all times material herein, Defendants have operated as a common enterprise while engaging in unlawful conduct, including the violations of law described herein.

24. In light of the foregoing, Defendants are jointly and severally liable for the acts or

practices alleged herein.

## IV. FACTUAL ALLEGATIONS RELEVANT TO ALL CLAIMS

25. Defendants make their contracts available to consumers by way of their relationships with "about 2,000 [car] dealers" throughout the country. Jim Henry, *Dimension, National Administrative Form New Service Contract Provider*, Automotive News, Feb. 15, 2012, *available at* https://www.autonews.com/article/20120215/FINANCE_AND_INSURANCE/120219923/dimension-national-administrative-form-new-service-contract-provider (last visited June 29, 2020) (statement by Performance First's executive vice president for sales and marketing).

26. Because a modern-day feature of automobile leases places upon the lessee responsibility for "excessive wear and tear" exhibited by the subject vehicle at the end of the applicable term, and upon information and belief, it is the standard practice at those dealerships to encourage consumers signing vehicle leases to also enter into Excess Wear & Tear Protection Waivers with Defendants.

27. Defendants' Waiver Agreement promises to reimburse a lessee for excess wear and tear charges, or to "waive" a lessee's responsibility for the same, "up to a maximum of five thousand dollars ($5,000)." The Waiver Agreement specifies that Defendants' obligations under the contract are subject only to "terms and conditions set forth" in the Waiver Agreement.

28. The Waiver Agreement contains very few relevant "terms and conditions." As pertinent to Class Members, the Waiver Agreement states that Defendants will not be responsible for damage that would be covered by an automobile policy providing "comprehensive" and "collision" coverage, "***unless*** repair of damage from any single event results in a cost to repair of less than the Maximum Single Event Limit" of $500 or $1,000.

29. Other "terms and conditions" in the Waiver Agreement exclude things like "charges resulting from use of the vehicle for racing or commercial purposes" and "[c]harges due to the presence of or the cost to remove signs, lettering, [or] bumper stickers." The term "eligible" claim, as used in this Complaint and in the Class Definition, refers to a claim that complies with all terms and conditions in the Waiver Agreement.

30. As evidenced in their claims reports, it is Defendants' policy and practice to deny eligible claims for reasons other than a term or condition found in the Waiver Agreement. For example, Defendants regularly deny claims because a scratch is greater than 12 inches in length or because of its internal assessment that particular damage is "clearly" attributable to the car "hit[ting] something."

31. Reasons like these, along with other similar justifications Defendants rely upon to deny claims, are not "terms and conditions set forth" in the Waiver Agreement. They are, by contrast, the very definition of "wear and tear," which consumers would expect to be covered by the Waiver Agreement.

32. The Waiver Agreement represents that Defendants' satisfaction of the contract is guaranteed by the Lloyd's Underwriting Syndicate based in London. Upon information and belief, this representation is not true.

33. Indeed, Defendants do not direct disgruntled consumers to Lloyd's of London. Instead, when faced with complaints from those unhappy about the denial of eligible claims, Defendants have advised lessees that if they "want to spend a couple thousand dollars [in legal fees] to try to get [a lesser amount] in damage done to the vehicle covered, that's their prerogative."

34. Information available via Defendants' internet presence and in their claims reports reveals that their denial of claims for something other than a contractual term or condition does

not occur on an *ad hoc* basis, but rather is pursuant to uniform company policy.

35. For example, regarding the Waiver Agreement, and available on Defendants' website, indicates that the contract does not apply to dents over 4 inches in diameter. *See* Waiver Agreement Brochure (Rev. 12-15), *available at* http://www.alltpa.com/Static/Brochure/PerformanceFirstWearTearBrochure.pdf. That uniform policy and practice of Defendants is not a term or condition of the Waiver Agreement itself.

36. According to Bob Cramer, a decision-maker of Defendants, because the non-contractual brochure "limits dents to 4 inches," it is also the company's position "that a 12 inch limit on scratches is more than fair, considering the dent limit." This is another uniform policy with respect to the denial of claims that appears nowhere in the actual Waiver Agreement.

## V. PLAINTIFF'S ALLEGATIONS

### YEHUDA FISCHER

37. Plaintiff Yehuda Fischer entered into a 36-month lease for a 2016 Honda Odyssey on May 26, 2016.

38. The Lease Agreement states that Mr. Fischer "may be charged for excessive wear and damage based on Lessor's standards for normal use".

39. Because of this provision, Mr. Fischer was encouraged when closing the deal to enter into a Waiver Agreement with Defendants.

40. In reliance on the Waiver Agreement's representation that Defendants would bear responsibility for excess wear and tear to the Odyssey, subject only to the terms and conditions in the Waiver Agreement, Mr. Fischer paid $500 to contract with Defendants under the Waiver Agreement.

41. At the end of the lease's term, Mr. Fischer was charged $2,069.78 for excess wear

and tear, and he submitted to Defendants an eligible claim for that amount.

42. Defendants covered only $1,278.50 of Mr. Fischer's claim.

43. Defendants wrongfully denied various aspects of Mr. Fischer's claim because the damage was "Over 12", *i.e.* greater than 12 inches in length. A true copy of Defendants' claims report wrongfully denying Mr. Fischer's claim on such grounds is attached hereto as **Exhibit A**.

44. Nowhere does the Waiver Agreement state that protection is unavailable for damage over 12 inches in length.

**ELIEZER ROSENBERGER**

45. Plaintiff Eliezer Rosenberger entered into a 24-month lease for a 2017 Nissan Sentra on May 01, 2017.

46. The Lease Agreement states that Mr. Rosenberger "may be charged for excessive wear based on our standards normal use".

47. Because of this provision, Mr. Rosenberger was encouraged when closing the deal to enter into a Waiver Agreement with Defendants.

48. In reliance on the Waiver Agreement's representation that Defendants would bear responsibility for excess wear and tear to the Sentra, subject only to the terms and conditions in the Waiver Agreement, Mr. Rosenberger paid $500 to contract with Defendants under the Waiver Agreement.

49. At the end of the lease's term, Mr. Rosenberger was charged $2,183.06 for excess wear and tear, and he submitted to Defendants an eligible claim for that amount.

50. Defendants covered only $711.35 of Mr. Rosenberger's claim.

51. Defendants wrongfully denied various aspects of Mr. Rosenberger's claim because the damage was "GR 12", *i.e.* greater than 12 inches in length. A true copy of Defendants' claims report wrongfully denying Mr. Rosenberger's claim on such grounds is attached hereto as **Exhibit**

**B.**

52. Nowhere does the Waiver Agreement state that protection is unavailable for scratches over 12 inches in length.

**MAYER TANNENBAUM**

53. Plaintiff Mayer Tannenbaum entered into a 36-month lease for a 2016 Honda Odyssey on March 28, 2016.

54. The Lease Agreement states that Mr. Tannenbaum "may be charged for excessive wear and damage based on Lessor's standards for normal use".

55. Because of this provision, Mr. Tannenbaum was encouraged when closing the deal to enter into a Waiver Agreement with Defendants.

56. In reliance on the Waiver Agreement's representation that Defendants would bear responsibility for excess wear and tear to the Odyssey subject only to the terms and conditions in the Waiver Agreement, Mr. Tannenbaum paid $500 to contract with Defendants under the Waiver Agreement.

57. At the end of the lease's term, Mr. Tannenbaum was charged $2,863.67 for excess wear and tear, and he submitted to Defendants an eligible claim for that amount.

58. Defendants covered only $828.00 of Mr. Tannenbaum's claim.

59. Defendants wrongfully denied various aspects of Mr. Tannenbaum's claim because the damage was "Over 12", *i.e.* greater than 12 inches in length. A true copy of Defendants' claims report wrongfully denying Mr. Tannenbaum's claim on such grounds is attached hereto as **Exhibit C.**

60. Nowhere does the Waiver Agreement state that protection is unavailable for scratches over 12 inches in length.

**SHMUEL COHEN**

61. Plaintiff Shmuel Cohen on August 16, 2017 entered into a 24-month lease for a Nissan Sentra. The Lease Agreement made Mr. Cohen responsible at the end of the lease "for all repairs to th[e] Vehicle that are not the result of normal wear and use."

62. Because of this provision, Mr. Cohen was encouraged when closing the deal to enter into a Waiver Agreement with Defendants. In reliance on the Waiver Agreement's representation that Defendants would bear responsibility for excess wear and tear to the Sentra, subject only to the terms and conditions in the Waiver Agreement, Mr. Cohen paid $500 to contract with Defendants under the Waiver Agreement.

63. At the end of the lease's term, Mr. Cohen was charged $168 for excess wear and tear, and he submitted to Defendants an eligible claim for that amount.

64. Defendants wrongfully denied Mr. Cohen's claim because the excess wear and tear charge was for a scratch "GR 12", *i.e.* greater than 12 inches in length. A true copy of Defendants' claims report wrongfully denying Mr. Cohen's claim on such grounds is attached hereto as **Exhibit D.**

65. Nowhere does the Waiver Agreement state that protection is unavailable for scratches over 12 inches in length.

## VI. CLASS ACTION ALLEGATIONS

66. Pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this action as a class action, on behalf of the following class (the "Nationwide Class"):

> Each person who entered into an Excess Wear & Tear Protection Waiver with Defendants to provide coverage for a leased vehicle and who (a) submitted at least one eligible claim for coverage under the Waiver Agreement and (b) was denied coverage for a stated reason set forth in Defendants' claims report (or other substantively similar document) that is not a grounds for non-coverage under the

terms and conditions set forth in the Waiver Agreement.

67. Pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, Plaintiffs also bring this action on behalf of the following Subclass (the "NYGBL Subclass"): Each person who, in addition to meeting all of the criteria for membership in the Nationwide Class, entered into a Waiver Agreement in connection with leasing an automobile in the State of New York.

68. The Nationwide Class and the NYGBL Subclass are referred to collectively as "the Class". Each member of the NYGBL class is also a member of the Nationwide Class.

69. The Class Period is defined as the limitations time period applicable under the claims to be certified.

70. The following persons are expressly excluded from the Class: (1) Defendant and its parent companies, subsidiaries, affiliates, and controlled persons; (2) officers, directors, agents, servants, or employees of Defendant, and the immediate family members of any such person; (3) all persons who make a timely election to be excluded from the proposed Class; (4) governmental entities; and (5) any Judge to which this case is assigned and the Judge's staff.

71. Plaintiffs reserve the right to revise this class definition and to add subclasses as appropriate based on facts learned as the litigation progresses.

72. This action may be maintained as a class action because there is a well-defined community of interests in the litigation and the proposed Class is easily ascertainable.

73. Numerosity: Defendants describe themselves as an "industry leader," and have relationships with roughly 2,000 dealers through which it offers consumers "efficient and profitable vehicle service contracts." *Who We Are*, ALLEGIANCE ADMINISTRATORS, http://www.alltpa.com/aboutus.aspx (last visited June 29, 2020). Based on this sort of publicly

available data, Plaintiffs approximate that the Class (including both the Nationwide Class and the NYGBL Subclass) numbers in the thousands, and that joinder of all Class Members is impracticable.

74. Common Questions Predominate: This action involved common questions of law and fact applicable to each Class Member that predominate over questions that affect only individual Class Members. Questions of law and fact common to each Class Member include:

a. Whether Defendants have a policy and practice to deny eligible claims made under the Waiver Agreement for reasons other than a "term[]" or "condition[] set forth" in the Waiver Agreement;

b. Whether Defendants' conduct and representations as set forth herein violates NYGBL §§ 349 and 350; and

c. Whether Defendants' denial of eligible claims under the Waiver Agreement, for reasons other than "terms and conditions set forth" in the Waiver Agreement, constitutes a breach of contract.

75. Typicality: Plaintiffs entered into a Waiver Agreement with Defendants when they leased a vehicle during the Class Period, and Defendants denied their eligible claims for reasons other than a term or condition set forth in the Waiver Agreement. This same unfair and deceptive conduct, representing a breach of the Waiver Agreement, was experienced by all Class Members. Defendants' unlawful, unfair, and/or fraudulent actions toward all Class Members involve the same business practices described in this Complaint, irrespective of where they occurred or were experienced. Plaintiffs and each Class member sustained similar injuries arising out of Defendants' conduct in violation of law. The injuries of each member of the Class were caused directly by Defendants' wrongful conduct. In addition, the factual underpinning of Defendants' misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of each member of the Class and are

based on the same legal theories.

76. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs have retained competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to litigate this class action adequately and vigorously, and Plaintiffs and their counsel are aware of their fiduciary responsibilities to members of the Class and will diligently discharge those duties by seeking the maximum possible recovery for the Class.

77. Superiority: There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendants and result in the impairment of other Class Member's rights and the disposition of other Class Members' interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

78. The preceding paragraphs establish that this matter satisfies the prerequisites of

Rule 23(a) of the Federal Rules of Civil Procedure, and the case may proceed as a class action under Rule 23(b)(3) because questions of law or fact common to each Class Member predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

79. Declaratory and Injunctive Relief: All of the requirements for Rule 23(b)(2) class certification are satisfied. First, as demonstrated above, Plaintiffs have satisfied the prerequisites of Rule 23(a) including numerosity, commonality, typicality, and adequacy of representation. Rule 23(b)(2) requirements are satisfied in that the Defendants have acted or refused to act on grounds generally applicable to all Class Members, thereby making appropriate final declaratory and injunctive relief with respect to the Rule 23(b)(2) Class as a whole. Such relief will provide a remedy for Defendants' uniform acts and omissions toward the Rule 23(b)(2) Class.

80. Adjudication of this case on a class-wide basis is manageable by this Court. The Waiver Agreements that were entered into by Plaintiffs and each Class Member are the same or so similar as to be legally and factually indistinguishable in all material respects. As a result, it will not be difficult for a jury to determine whether Defendants committed the violations alleged in this Complaint. This Court is an appropriate forum for this dispute.

## VII. CAUSES OF ACTION

### COUNT I
### BREACH OF CONTRACT

81. Plaintiffs repeat and reallege each and every allegation contained above as though set forth here in full.

82. Plaintiffs and Class Members entered into contractual agreements with Defendants via the Waiver Agreement.

83. In the Waiver Agreement, Defendants agreed to accept responsibility for excess

wear and tear amounts charged to the Plaintiffs and Class Members by the lessor, subject only to "terms and conditions set forth" in the Waiver Agreement.

84. However, when Plaintiffs and Class Members sought to enforce their contractual rights after the lessor assessed charges for excess wear and tear, Defendants wrongfully refused to honor its contractual obligations based on reasons other than "terms and conditions set forth" in the Waiver Agreement.

85. As a direct and proximate result of Defendants' breaches of contract, Plaintiffs and the Class suffered damages and are entitled to actual damages and costs.

**COUNT II**
**NEW YORK STATE OF GENERAL BUSINESS LAW § 349**
**(on behalf of NYGBL Subclass Only)**

86. Plaintiffs repeat and reallege each and every allegation contained above as though set forth here in full.

87. Defendants' deceptive acts and practices outlined in the instant Complaint, including Defendants' omissions, constitute a violation of New York General Business Law § 349 with regard to the NYGBL Subclass, independent of whether they also constitute a violation of any other law.

88. Specifically, Defendants engaged in misleading and deceptive conduct by, *inter alia*:

a. falsely stating to consumers that Defendants would bear responsibility for excess wear and tear charges imposed by a lessor, subject only to the "terms and conditions set forth" in the Waiver Agreement;

b. maintaining a policy and practice of denying eligible claims for reasons not listed in the Waiver Agreement, *i.e.* of imposing additional material exclusions, reservations, limitations, modifications, or conditions; seeking to evade its obligations under the Waiver Agreement;

c. failing to properly disclose to consumers prior to consummation of the Waiver

Agreement their policy and practice of imposing numerous material exclusions, reservations, limitations, modifications, or conditions that it applies in determining whether vehicle damage is covered under the Waiver Agreement; and

d. representing that the Waiver Agreement has the sponsorship or approval of the Lloyd's Underwriting Syndicate when, upon information and belief, that is not true.

89. With regard to the New York Subclass, these acts and practices were committed in the conduct of business, trade, commerce or the furnishing of a service in this state.

90. Each of these actions and omissions was consumer oriented and involves misleading conduct that is recurring and has a broad impact upon the public.

91. Specifically, as detailed in the instant Complaint, each of these actions and omissions was based on standardized, boilerplate documents, as well as written policies and procedures that Defendants applied in determining whether it would fulfill or shirk its Waiver Agreement obligations.

92. Plaintiffs and the New York Subclass have been damaged thereby.

93. As a result of Defendants' violations of § 349, Plaintiffs and each member of the NYGBL Subclass are entitled to declaratory judgment; an injunction against the offending conduct, actual damages, treble damages up to an additional $1,000 per class member, punitive damages, costs and attorneys' fees.

**COUNT III**
**NYGBL § 350 (UNLAWFUL FALSE ADVERTISING)**
**(NYGBL Subclass Only)**

94. Plaintiffs repeat and reallege each and every allegation contained above as though set forth here in full.

95. Under NYGBL § 350, "false advertising" means "advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only

representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity . . . to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual."

96. Each of the deceptive and misleading statements in the Waiver Agreement described in the instant Complaint constitutes false advertising under NYGBL § 350.

97. This false advertising, including both affirmative misrepresentations and omissions, was committed in the conduct of business, trade, commerce or the furnishing of a service in this state.

98. Defendants' false advertising was done knowingly and willfully and committed in bad faith.

99. As a result of these violations of NYGBL §350, Plaintiffs and the NYGBL Subclass suffered actual damages.

100. Accordingly, Plaintiffs and each member of the NYGBL Subclass are entitled to injunctive relief (enjoining the false advertising practices described above), actual damages, three times the actual damages up to $10,000 per class member, costs and reasonable attorneys' fees.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiffs seeks the following relief:

A. An Order certifying this case as a class action under Fed. R. Civ. P. 23, naming Plaintiffs as Class Representatives, and appointing their attorneys as Class Counsel;

B. A Judgment declaring that the unlawful conduct alleged in this Complaint is (a) a violation of New York General Business Law sections 349 and 350; and (b) an unlawful breach of Defendants' contractual obligations; and permanently enjoining

Defendants, its affiliates, successors, transferees, assignees, and other officers, directors, partners, agents, and employees thereof, and all other persons acting or claiming to act on its behalf or in concert with Defendants, from continuing, maintaining, or renewing the unlawful conduct alleged in this Complaint;

C. An award to Plaintiffs and Class Members for the maximum amount of actual, statutory, punitive, exemplary and other damages allowed under law, as well as pre- and post- judgment interest at the highest legal rate; costs of suit, and reasonable attorneys' fees; and

D. Such other and further relief as the case may require and the Court may deem just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, or all issues so triable.

May 11, 2021

Respectfully Submitted,

*/s/ Daniel A. Schlanger*
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