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14 **UNITED STATES DISTRICT COURT**

16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 KAREN DE FILIPPO and ALAN
 18 DE FILIPPO,

Case No. '20CV0452 BEN MDD

19 Plaintiffs,

COMPLAINT

20 vs.

DEMAND FOR JURY TRIAL

21 VITA-MIX CORPORATION, a
 22 Delaware Corporation; VITA-MIX
 23 MANAGEMENT CORPORATION, a
 Delaware Corporation; VITA-MIX
 24 MANUFACTURING CORPORATION,
 a Delaware Corporation; and COSTCO
 25 WHOLESALE CORPORATION, a
 26 Washington Corporation,

Judge:
 Courtroom:

Complaint Filed: 03/02/2020
 Trial Date: Not Yet Set

27 Defendants.

1 Plaintiffs, Karen and Alan De Filippo, by and through counsel, and for the
2 Complaint against Defendants Vita-Mix Corporation, Vita-Mix Management
3 Corporation, Vita-Mix Manufacturing Corporation (collectively, “Vita-Mix”) and Costco
4 Wholesale Corporation (“Costco”), allege as follows.

5 **Introduction**

6 1. On July 5, 2018, Karen De Filippo was injured when her Vita-Mix Venturist
7 V1200 Blender (the “Vita-Mix Blender”) malfunctioned, directly and proximately
8 causing severe injury to the middle finger of her dominant hand. The malfunction of the
9 Vita-Mix Blender related to a known and dangerous defect, which both Vita-Mix and
10 Costco knew about but deliberately withheld from the public.

11 2. Mrs. De Filippo had been a highly trained and certified critical-care nurse
12 before her injury. As a result of the known and dangerous defect that caused the Vita-Mix
13 Blender to malfunction, Mrs. De Filippo endured an excruciatingly painful injury,
14 multiple subsequent surgeries attempting unsuccessfully to repair the injury and cure the
15 pain, and loss of her ability to continue her professional vocation.

16 3. To this day, Mrs. De Filippo suffers a permanent loss of functionality
17 exacerbated by persistent pain, mediated only by prescription oral and topical painkillers.
18 The Vita-Mix Blender malfunction caused serious and permanent injury to Mrs. De
19 Filippo’s hand.

20 4. At the date of Mrs. De Filippo’s injury, Vita-Mix and Costco both knew that
21 the dangerous defect existed, but instead of warning the public (including the De Filippos)
22 promptly, and in a reasonable and prudent time, Defendants took months to develop a
23 strategy, draft and print booklets, and prepare for the recall. Defendants put corporate spin
24 and profits over the safety of Mrs. De Filippo.

25 **Parties**

26 5. Plaintiffs Karen and Alan De Filippo lived and resided at 2862 Sierra Gold
27 Ct., Riverbank, California at all times relevant to this lawsuit. They currently reside in
28 Arizona.

1 12. On July 5, 2018, Mrs. De Filippo added ingredients to her blending cup,
2 inserted the entire product into the Vita-Mix blending base, and began to blend. She
3 noticed the cup started to wobble, and so she reached out to steady the cup. As her hand
4 was coming into contact with the blending base, the blending cup popped off, exposing
5 the still-spinning blades. Because the cup popped off, Mrs. De Filippo’s left middle finger
6 slipped into the exposed spinning blades.

7 13. Vita-Mix advertises the blade speeds of some of its blenders as up to 240
8 miles per hour, perfect for “pulverizing.” Vita-Mix advertises that its blades are blunt, not
9 sharp, because the Vita-Mix Blender “pulverizes,” and does not cut or chop the materials
10 that get in the way of the blades.

11 14. The middle finger on Mrs. De Filippo’s left hand—her dominant hand—was
12 pulverized.

13 15. Because Mrs. De Filippo is a critical-care nurse by profession, she
14 immediately wrapped her hand in a towel to reduce the blood loss, and called for her
15 husband, who drove her to the local emergency room. The local emergency room gave
16 her a digital nerve block to alleviate some of the pain, and then, after three hours, arranged
17 to have Mrs. De Filippo transported to another hospital via ambulance for more advanced
18 care. An X-ray taken at the emergency room shows a total fracturing of the bone at the
19 tip of Mrs. De Filippo’s left middle finger, with multiple bone fragments appearing in a
20 jumbled collection where one single bone used to be.

21 16. At the second hospital, Dr. Marc Trzeciak treated Mrs. De Filippo’s injury,
22 described medically as “Fractured Distal phalanx of the long finger and injury to nailbed.”
23 Dr. Trzeciak removed the entirety of Mrs. De Filippo’s nail, drove a thick wire through
24 the bone fragments to try to pin them together, and then attempted to repair the nailbed.

25 17. Five months later, Mrs. De Filippo was still in constant pain. The pain caused
26 her nausea, regularly awakened her in the middle of the night, and left her almost unable
27 to do her general activities of daily living.
28

1 18. On December 17, 2018, Dr. Trzeciak amputated the top portion of her finger
2 through a rongeur technique. A publicly available video showing how rongeur
3 works can be found at: <https://www.youtube.com/watch?v=zBmsrGzPk40>.

4 19. Mrs. De Filippo remains in pain even after she has been prescribed
5 painkillers and has engaged in several rounds of physical therapy.

6 20. Mrs. De Filippo has been prescribed potent pain killers with both known and
7 unknown negative long-term side effects.

8 21. Mrs. De Filippo has suffered substantial emotional injury and pain and
9 suffering. Mrs. De Filippo believes she will never be able to practice as a critical care
10 nurse again. She cannot type, give a shot, help bathe or change a patient, apply chest
11 compressions, chart, pull chest tubes, pack or unpack wound dressings, or even fully help
12 turn a patient. She has paid the fee to put her critical care nursing certificate into inactive
13 status. The knowledge that she will likely never be able to practice medicine as a nurse
14 again causes her significant emotional distress. In addition, Mrs. De Filippo is very
15 distressed about the physical disfiguration and appearance of her left hand as a result of
16 the injury.

17 22. Mrs. De Filippo underwent a third surgery near Phoenix, Arizona on
18 November 16, 2019 to try to alleviate some of the pain associated with the misshapen and
19 malforming nail on the permanently damaged finger. She is in significant pain to this day.

20 ***Vita-Mix Acknowledges Liability for Mrs. De Filippo's Injuries***

21 23. One month after Mrs. De Filippo was injured by the Vita-Mix Blender, Vita-
22 Mix sent Mrs. De Filippo (and presumably thousands of other purchasers across the
23 country who knowingly had been left at risk for months) a recall notice for the Vita-Mix
24 Blender dated August 9, 2018. It was obviously too late for Mrs. De Filippo.

25 24. Vita-Mix obtained the De Filippo's contact information from its longtime
26 partner, Costco.

27 25. The notice Mrs. De Filippo received from Vita-Mix commands consumers
28 like the De Filippas that if their blender container was manufactured in March 2018 or

1 earlier, to “***STOP USING IT IMMEDIATELY.***” (Capitalized, bolded, and italicized in
2 the original).

3 26. For the De Filippis, this notice came too late, as their injuries were directly
4 and proximately caused by the “safety issue” recognized in the recall notice: “the
5 container may separate from the blade base, exposing the blades and posing a laceration
6 hazard.”

7 27. Referenced in the recall notice is a website that consumers can visit, which
8 states that as of August 9, 2018, Vita-Mix had “received 11 reports of lacerations when
9 consumers’ hands came in contact with exposed blades.”

10 28. Further research into the dates and times presented in this material and in the
11 recall material, show that Defendants knew of this dangerous defect for months, and
12 instead of immediately notifying the public, worked together to develop a list of those
13 who might be injured to ensure the recall program would not negatively affect their public
14 image.

15 29. The timeline below shows that Mrs. De Filippo was injured in the exact
16 manner that Defendants knew she would be, as they deliberately withheld important
17 information from the public and its consumers.

18 a. By March/April 2018, Vita-Mix knew that its products contained a
19 dangerous defect and that its customers were being injured by the Vita-Mix
20 Blenders as a result of the product’s faulty gasket. At this time, Vita-Mix
21 commences two parallel paths of mitigation. First, its starts producing products
22 without the faulty gaskets. Second, upon information and belief, it starts modifying
23 products it has in inventory so that they contain non-faulty gaskets, for future sales.
24 But it does not immediately act to warn pre-existing purchasers of products with
25 the faulty gasket design. That process is slowed to accommodate and accompany a
26 comprehensive replacement roll-out strategically designed to minimize the PR
27 damage.
28

1 b. By June 2018, Vita-Mix has finished proofing and printing the
2 pamphlet it intends to include in the “replacement kits” to be sent to consumers
3 who have the inherently dangerous Vita-Mix Blenders in their homes. But it still
4 has not communicated anything to actual purchasers of the faulty design.

5 c. By July 2018, Vita-Mix has known of the dangerous defect in the
6 Vita-Mix Blenders for at least 4 months, and still has taken no steps which actually
7 or effectively warn or communicate to consumers about the dangerous defect in the
8 Vita-Mix product they had purchased. This is the month that Mrs. De Filippo is
9 injured by the dangerous defect. Mrs. De Filippo’s injury occurs on July 5, 2018.

10 d. In August 2018, almost half a year after Vita-Mix began producing
11 non-defective products, and modifying the defective products, and even longer
12 after it learned that its products were defective and caused severe injuries, Vita-
13 Mix finally tells consumers with the defective products to “***STOP USING IT***
14 ***IMMEDIATELY.***”

15 30. Throughout this time period, Vita-Mix worked with its partners, such as
16 Costco, to develop lists of affected consumers based on their purchases of the Vita-Mix
17 Blenders and those customers’ contact information. Despite its affirmative duty, Costco
18 failed to warn its customers of the inherently dangerous defect found in the Vita-Mix
19 Blenders. Defendants’ conduct in so delaying and failing to sooner initiate corrective
20 action concealed the true facts, was despicable, and was carried on with willful and
21 conscious disregard of the rights and safety of others, thereby justifying an award of
22 punitive damages against Defendants

23 **COUNT I – FAILURE TO WARN AND/OR RETROFIT/RECALL**

24 ***Strict Product Liability - Failure to Warn (Against all Defendants)***

25 33. Plaintiffs restate and incorporate all previous allegations in this Complaint
26 as though fully pled herein.

27 34. Vita-Mix designed and manufactured the Vita-Mix Blender. The Vita-Mix
28 Blender was then sold to Plaintiffs through Costco, including Costcos in California.

1 35. The Vita-Mix Blender presented a substantial danger of severe laceration to
2 Mrs. De Filippo. Specifically, the container on a running blender was at risk of separating
3 from the blade's base, thus exposing the blades. Vita-Mix knew or, based on the
4 application of available scientific knowledge, should have known of this risk before the
5 time the Vita-Mix Blender was manufactured and/or sold to Plaintiffs, and Costco knew
6 or, based on the application of available scientific knowledge, should have known of this
7 risk before the sale of the Vita-Mix Blender to Plaintiffs. Both Defendants had actual
8 knowledge of the product defect and risk of laceration, at the very latest, in March of
9 2018.

10 36. This risk presented a substantial danger to Mrs. De Filippo and other
11 consumers, including those in California, when the product was used or misused in an
12 intended or reasonably foreseeable way. In other words, there was substantial danger and
13 it was reasonably foreseeable that the user of a Vita-Mix Blender would suffer a severe
14 laceration or other injury while using the Vita-Mix Blender when Defendants knew that
15 the blending cup was likely to detach spontaneously, leaving the blades in the base still
16 spinning.

17 37. Ordinary customers, including those in California, would not have
18 recognized this potential risk. Indeed, Mrs. De Filippo did not recognize this risk. First,
19 ordinary blender users do not expect a blender to be designed or manufactured in such a
20 way that the container separates from the blender base during ordinary and intended use.
21 Second, ordinary blender users do not expect the blades on the blender base would
22 continue spinning at full speed after the container separates from the blender base. And
23 third, ordinary consumers such as Plaintiffs are not able to recognize a design or
24 manufacturing defect in an internal component of an electronic device, such as the Vita-
25 Mix Blender's gasket.

26 38. Defendants thus failed to adequately warn Mrs. De Filippo and other
27 consumers, including those in California, of the potential risks. Despite actual knowledge
28

1 of the risk described above, at the latest, in March of 2018, Defendants waited until
2 August of 2018 to inform Mrs. De Filippo of the product's potential to cause lacerations.

3 39. As a result of Defendants' failure to warn Mrs. De Filippo of the risk of
4 laceration, Mrs. De Filippo suffered a severe and permanent injury. The failure to warn
5 was a substantial cause of Mrs. De Filippo's injury, because if Defendants had issued a
6 warning instructing Plaintiffs to stop using the Vita-Mix Blender after first knowing or
7 learning of the defect, Mrs. De Filippo would not have been injured in July of 2018.

8 40. Defendants' failure to warn Mrs. De Filippo of the risk presented by ordinary
9 and foreseeable use of the Vita-Mix Blender constituted gross negligence and/or
10 recklessness. For example, Defendants waited until they knew at least 11 other people
11 had suffered injury from the same exact defect before attempting to warn Mrs. De Filippo
12 of the risk.

13 41. As a direct and proximate result of the failure to warn, Mrs. De Filippo
14 suffered, and will continue to suffer, personal injuries, including but not limited to,
15 medical bills, medical care, loss of mobility, loss of use and feeling in her hand and
16 fingers, loss of earnings, loss of earning capacity, severe emotional distress and anxiety,
17 general damages, and other economic and non-economic damages exceeding \$75,000 in
18 an amount to be proven at trial.

19 ***Negligence – Failure to Warn (Against all Defendants)***

20 42. Plaintiffs restate and incorporate all other allegations in this Complaint as
21 though fully pled herein.

22 43. Despite Defendants' knowledge of the defect and the fact that several
23 individuals had suffered lacerations as a result of the design defect, Defendants failed to
24 warn Plaintiffs of the defect until August of 2018.

25 44. At all times relevant to this action, Defendants had a duty to use reasonable
26 care to give warning of the dangerous condition of the Vita-Mix Blender or of facts which
27 make it likely to be dangerous to those who are expected to use the Vita-Mix Blender or
28 be endangered by its probable use.

1 45. A reasonably prudent manufacturer or distributor would have warned
2 Plaintiffs of the defect because the defect presented a substantial risk of harm and
3 involved an issue with the Vita-Mix Blender's gasket that was not obvious or generally
4 recognized as dangerous by ordinary and reasonable consumers, including those in
5 California, such as Plaintiffs. Indeed, Mrs. De Filippo did not recognize this risk.

6 46. Despite knowledge of the defect, Defendants did not instruct Plaintiffs not
7 to use the Vita-Mix Blender or warn of the substantial danger presented by the Vita-Mix
8 Blender until August of 2018—after Mrs. De Filippo suffered severe injury through
9 ordinary and reasonably foreseeable use of the Vita-Mix Blender. Defendants' failure to
10 do so was negligent and fell below the standard of care required of a reasonable and
11 prudent product manufacturer.

12 47. Defendants' negligent failure to warn Mrs. De Filippo of the risk presented
13 by ordinary and foreseeable use of the Vita-Mix Blender constituted gross negligence
14 and/or recklessness. For example, Defendants waited until they knew at least 11 other
15 people had suffered injury from the same exact defect before attempting to warn Mrs. De
16 Filippo of the risk.

17 48. Defendants' negligent failure to warn Plaintiffs was the proximate cause of
18 Mrs. De Filippo's injuries. Had either of the Defendants recalled the Vita-Mix Blender or
19 warned Plaintiffs that the still spinning blades of the Vita-Mix Blender might become
20 exposed through the ordinary, intended, and reasonably foreseeable use of the Vita-Mix
21 Blender, Mrs. De Filippo would not have continued to use the Vita-Mix Blender.

22 49. As a direct and proximate result of the Defendants' negligent failure to warn,
23 Mrs. De Filippo suffered, and will continue to suffer, personal injuries, including but not
24 limited to, medical bills, medical care, loss of mobility, loss of use and feeling in her hand
25 and fingers, loss of earnings, loss of earning capacity, severe emotional distress and
26 anxiety, general damages, and other economic and non-economic damages exceeding
27 \$75,000 in an amount to be proven at trial.

1 ***Negligence - Failure to Recall/Retrofit (In the alternative, against all Defendants)***

2 50. Plaintiffs restate and incorporate all other allegations in this Complaint as
3 though fully pled herein.

4 51. Defendants became aware of this defect after the Vita-Mix Blender was sold
5 in late 2017.

6 52. Defendants failed to recall or retrofit the Vita-Mix Blender within a
7 reasonable amount of time upon learning of the defect, on or around March 2018 for Vita-
8 Mix, or upon information and belief, soon thereafter for Costco.

9 53. Research into the dates and times presented by Vita-Mix online and in the
10 recall material show that Vita-Mix knew of the dangerous defect for months, and instead
11 of immediately notifying the public, worked with its partners, such as Costco, to slowly
12 develop a list of those who might be injured to ensure the recall program would not
13 negatively affect Vita-Mix's public perception more than it needed to.

14 54. A reasonable manufacturer, distributor, or seller under the same or similar
15 circumstances would have recalled or retrofitted the product immediately upon learning
16 of the defect.

17 55. At all times relevant to this action, Defendants had a duty to use reasonable
18 care to recall and retrofit the Vita-Mix Blender.

19 56. Despite knowledge of the defect and the fact that several individuals had
20 suffered lacerations as a result of the design defect and/or failure to warn, Defendants did
21 not recall the Vita-Mix Blender or warn of the substantial danger presented by the Vita-
22 Mix Blender until August of 2018—after Mrs. De Filippo suffered severe injury through
23 ordinary and reasonably foreseeable use of the Vita-Mix Blender. Defendants' failure to
24 do so was negligent and fell below the standard of care required of a reasonable and
25 prudent product manufacturer.

26 57. Vita-Mix and Costco's failure to recall and/or retrofit the Vita-Mix Blender
27 was a substantial factor in causing the severe injury to Mrs. De Filippo.

28

1 Vita-Mix Blender would be used by consumers, including those in California, without
2 inspecting for defects.

3 63. The Vita-Mix Blender as designed, manufactured, assembled, marketed,
4 advertised, and/or sold by Vita-Mix and Costco in California was in a defective and
5 unreasonably dangerous condition and unfit for any use.

6 64. The Vita-Mix Blender failed to perform as safely as an ordinary and
7 reasonable consumer, including such a consumer in California, would expect when using
8 the Vita-Mix Blender in the ordinary, intended and/or reasonably foreseeable manner.
9 Specifically, ordinary and reasonable consumers would not expect the Vita-Mix Blender
10 to be designed in such a way that there was a substantial risk of the container separating
11 from the Vita-Mix Blender base and exposing the Vita-Mix Blender's spinning blades
12 during ordinary and reasonably foreseeable use. Such a design fails to meet the minimum
13 safety expectations of a reasonable consumer.

14 65. Any benefits of the gasket's design that caused the risk of the container
15 separating from the Vita-Mix blender's base and exposing spinning blades during the
16 ordinary and/or foreseeable use of the Vita-Mix Blender was outweighed by the risk of
17 severe laceration to the user. An alternative design of the Vita-Mix Blender and its
18 components was reasonable and feasible, as evidenced by the design change eliminating
19 the subject defect in Blenders manufactured after March of 2018. Such feasible design
20 and manufacturing methods include but are not limited to replacing the current gaskets as
21 provided in Vita-Mix's recall program, designing or manufacturing the blending cup and
22 bowl systems to function like Vita-Mix's newer "personal cup adapter," which contains
23 a 5.5 inch tall shield around the base of the blade to protect consumers' hands, or
24 designing and manufacturing a container to enclose both the blending cup and blade
25 assembly while the blade is spinning.

26 66. As a result of Vita-Mix's knowledge and experience in the design,
27 manufacture, and assembly of Vita-Mix Blenders, and based on its own knowledge of
28 particular incidents that it reported, Vita-Mix was aware or should have been aware that

1 such defect as existed in the Vita-Mix Blender would reasonably and foreseeably be
2 expected to be the direct and proximate cause of injuries and damages to a substantial
3 number of people, including but not limited to Plaintiffs, in particular Mrs. De Filippo.

4 67. Both before the sale of the Vita-Mix Blender to Plaintiffs and before the
5 physical injury to Mrs. De Filippo, Vita-Mix and Costco knew or should have known that
6 the ordinary, intended, and/or reasonably foreseeable use of the Vita-Mix Blender would
7 present a substantial risk of injury to Mrs. De Filippo and other users, including those in
8 California.

9 68. The Vita-Mix Blender's failure to perform safely was the proximate cause
10 and a substantial factor in causing injury to Mrs. De Filippo. But for the faulty design of
11 the gasket that caused the container to separate from the base of the Vita-Mix Blender
12 during ordinary, intended and/or foreseeable use, Mrs. De Filippo would not have been
13 injured by the Vita-Mix Blender's exposed blades.

14 69. Because of the design defects in the Vita-Mix Blender, Mrs. De Filippo
15 suffered severe permanent injuries requiring multiple surgeries, resulting in severe pain
16 and suffering and emotional distress, and has incurred and will continue to incur hospital,
17 medical, medication—and future complications from some medication—expenses, and
18 loss of income.

19 70. Both before the sale of the Vita-Mix Blender to Plaintiffs and before the
20 physical injury to Mrs. De Filippo, Defendants' faulty design of the Vita-Mix Blender
21 and Costco's sale of the defective Vita-Mix Blender constitute gross negligence and/or
22 recklessness. Both Vita-Mix and Costco knew or should have known that the ordinary,
23 intended, and/or reasonably foreseeable use of the Vita-Mix Blender would result present
24 a substantial risk of injury to Mrs. De Filippo and other users.

25 71. As a direct and proximate result of the design defect, Mrs. De Filippo
26 suffered, and will continue to suffer, personal injuries, including but not limited to,
27 medical bills, medical care, loss of mobility, loss of use and feeling in her hand and
28 fingers, loss of earnings, loss of earning capacity, severe emotional distress and anxiety,

1 general damages, and other economic and non-economic damages exceeding \$75,000 in
2 an amount to be proven at trial.

3 ***Negligence – Design Defect (Against all Defendants)***

4 72. Plaintiffs restate and incorporate all other allegations in this Complaint as
5 though fully pled herein.

6 73. Any benefits of the gasket’s design that caused the risk of the container
7 separating from the Vita-Mix Blender’s base and exposing spinning blades during the
8 ordinary and/or foreseeable use of the Vita-Mix Blender was outweighed by the risk of
9 severe laceration to the user.

10 74. At all times relevant to this action, Defendants owed certain duties to
11 consumers, including Plaintiffs, regarding the Vita-Mix Blenders that Vita-Mix put into
12 the stream of commerce to be sold by sellers such as Costco and then used by consumers
13 as household blenders. This includes the duty to exercise reasonable and ordinary care,
14 and comply with existing standards of care, in the design, manufacture, testing, labeling,
15 advertising, marketing, and sale of the Vita-Mix Blenders. This includes a duty to ensure
16 that the Vita-Mix Blenders were free from defects and that consumers would not suffer
17 from unreasonably dangerous accidents caused by the Vita-Mix Blenders’ intended,
18 ordinary, and/or reasonably foreseeable purposes and use.

19 75. At all times relevant to this action, Defendants had a duty to ensure that their
20 products did not pose a significant risk of bodily harm and adverse events to consumers
21 such as Plaintiffs.

22 76. Vita-Mix was negligent and careless and failed to exercise reasonable and
23 ordinary care in the design of the Vita-Mix Blenders. This includes designing the Vita-
24 Mix Blenders’ gasket in such a way that the Vita-Mix Blenders’ container might
25 unintentionally separate from the Vita-Mix Blender’s base during ordinary, intended
26 and/or reasonably foreseeable use, leaving the Vita-Mix Blender’s blades exposed while
27 continuing to spin at full speed.

1 77. Vita-Mix's defective design of the Vita-Mix Blender and the Vita-Mix
2 Blender's components departed from industry standards because the vast majority of
3 blender manufacturers design their blenders in such a way that the containers do not
4 unintentionally separate from the base of the blender while the blades remain spinning at
5 full speed during ordinary, intended, and/or reasonably foreseeable use.

6 78. Costco was negligent and careless and failed to exercise reasonable and
7 ordinary care in the advertisement, marketing, and sale of the defective Vita-Mix Blenders
8 to consumers such as Plaintiffs.

9 79. The acts of negligence, carelessness, and breach of reasonable and ordinary
10 care of Vita-Mix and Costco, as described herein, were a substantial factor in the injury
11 to Mrs. De Filippo and the resulting damages, as described in this Complaint. But not for
12 Defendants' negligence, Mrs. De Filippo would not have suffered injury.

13 80. As a direct and proximate result of the failure to warn, Mrs. De Filippo
14 suffered, and will continue to suffer, personal injuries, including but not limited to,
15 medical bills, medical care, loss of mobility, loss of use and feeling in her hand and
16 fingers, loss of earnings, loss of earning capacity, severe emotional distress and anxiety,
17 general damages, and other economic and non-economic damages exceeding \$75,000 in
18 an amount to be proven at trial.

19 **COUNT III- BREACH OF IMPLIED WARRANTY**

20 *(Against all Defendants)*

21 81. Plaintiffs restate and incorporate all other allegations in this Complaint as
22 though fully pled herein.

23 82. On or before December 2017, Defendants had an agreement whereby Vita-
24 Mix would provide on-site demonstrations as to the special capabilities of Vita-Mix
25 blenders on Costco's premises. When a Costco member was persuaded to purchase a Vita-
26 Mix blender by a Vita-Mix demonstration on Costco's premises, Costco acted as the go-
27 between to facilitate the transaction, allowing Costco members to purchase the Vita-Mix
28 Blenders from Vita-Mix directly through Costco.

1 83. On or about December 2017, Vita-Mix provided an on-site demonstration to
2 Costco members on the Costco premises, including the De Filippis, holding itself out as
3 having special knowledge or skill regarding the Vita-Mix Blenders. This on-site
4 demonstration of the Vita-Mix Blender was a substantial factor in Plaintiffs' decision to
5 purchase the Vita-Mix Blender. Specifically, the demonstration gave Plaintiffs the false
6 understanding that the Vita-Mix Blender was safe and effective for its intended purpose,
7 i.e., blending food and drink.

8 84. Through Costco, Vita-Mix sold the Vita-Mix Blender to Plaintiffs on or
9 about December 2017. At the time the Vita-Mix Blender was manufactured and sold to
10 Plaintiffs, it contained a defectively designed gasket that posed a substantial risk of
11 laceration through the Vita-Mix Blender's ordinary, intended, and/or reasonably
12 foreseeable use

13 85. At the time Plaintiffs purchased the Vita-Mix Blender, Vita-Mix and Costco
14 were in the business of selling the Vita-Mix Blender and held themselves out as having
15 special knowledge or skill regarding the Vita-Mix Blenders.

16 86. The Vita-Mix Blender purchased by Plaintiffs was not of the same quality of
17 blenders generally accepted in trade. Specifically, generally accepted blenders do not
18 contain defects that cause the container to separate from the base of the bender, thus
19 exposing the still spinning blades during ordinary, intended, and/or reasonably
20 foreseeable use.

21 87. The Vita-Mix Blender was not fit for the ordinary purpose of safely blending
22 foods and/or liquids because it contained a design defect that caused the container of the
23 Vita-Mix Blender to separate from the base of the Vita- Mix Blender, thus exposing the
24 still spinning blades, during ordinary, intended, and/or reasonably foreseeable use.

25 88. The Vita-Mix Blender was not adequately packaged or labeled because there
26 was no readily observable warning suitable to warn Plaintiffs that the Vita-Mix Blender
27 contained a dangerous design defect that posed a substantial risk of laceration through
28 ordinary, intended, and/or reasonably foreseeable use.

1 89. Ms. De Filippo suffered severe injury as a result of the defect in the Vita-
2 Mix Blender.

3 90. The failure of the Vita-Mix Blender to have the expected qualities described
4 above was a substantial factor in causing the severe injury to Ms. De Filippo.

5 91. Plaintiffs notified Costco and Vita-Mix, through counsel via certified mail,
6 on November 16, 2018, that they would be bringing a lawsuit against Vita-Mix related to
7 the injuries caused by the dangerous, non-generally accepted qualities of the Vita-Mix
8 Blenders.

9 92. As a direct and proximate result of the failure to warn, Mrs. De Filippo
10 suffered, and will continue to suffer, personal injuries, including but not limited to,
11 medical bills, medical care, loss of mobility, loss of use and feeling in her hand and
12 fingers, loss of earnings, loss of earning capacity, severe emotional distress and anxiety,
13 general damages, and other economic and non-economic damages exceeding \$75,000 in
14 an amount to be proven at trial.

15 **COUNT IV - LOSS OF CONSORTIUM**

16 *(Against all Defendants)*

17 93. Plaintiffs restate and incorporate all other allegations in this Complaint as
18 though fully pled herein.

19 94. Mr. De Filippo has been legally married to Mrs. De Filippo since 2012.

20 95. As described throughout this complaint, Mrs. De Filippo suffered severe
21 injury as a result of Defendants' negligence, gross negligence, and/or reckless design and
22 sale of the Vita-Mix Blender.

23 96. As a result of the injury to Mrs. De Filippo, Mr. De Filippo has suffered the
24 loss of Mrs. De Filippo's consortium. Specifically, Mr. De Filippo has suffered a loss of
25 companionship, comfort, care, assistance, affection, and moral support.

26 97. For example, Mrs. De Filippo leaves their bed and Mr. De Filippo's side
27 almost every night when she is awoken in pain. As another example, Mr. De Filippo is
28

1 now required to almost always drive Mrs. De Filippo because she has difficulty grasping
2 the steering wheel because of her finger pain.

3 98. Because the injury to Mrs. De Filippo is severe and permanent,
4 Mr. De Filippo's loss of consortium is also continuing and permanent.

5 99. The loss of consortium suffered by Mr. De Filippo was proximately caused
6 by Defendants' tortious acts.

7 100. But not for Defendants wrongful acts, Mr. De Filippo would not have
8 suffered a loss of consortium, and Mr. De Filippo seeks damages in an amount to be
9 proven at trial.

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiffs Karen and Alan De Filippo respectfully request that the
12 Court grant the following:

- 13 A. Special damages, including but not limited to past and future medical bills and care,
14 past and future loss of earnings and earning capacity;
- 15 B. General damages, including but not limited to damages for pain, suffering, anguish,
16 discomfort, severe emotional distress, disgust, terror, fright, anger, anxiety, worry,
17 nervousness, shock, anguish and mental suffering, loss of enjoyment of life, loss of
18 the ability to engage in normal and customary activities, loss of comfort, society,
19 care, and companionship;
- 20 C. Punitive and exemplary damages;
- 21 D. Reasonable costs and attorneys' fees;
- 22 E. Damages, costs, and attorneys' fees as provided under Civil Code §1794;
- 23 F. Pre-judgement interest;
- 24 G. For other and further special damages in a sum according to proof at the time of
25 trial;
- 26 H. For other and further general damages in a sum according to proof at the time of
27 trial; and
28

1 I. For all other relief as the Court deems just and proper.
2

3 Dated: March 10, 2020

STRATEGE LAW LLP

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5 By: s/ J. Scott Scheper

6 J. Scott Scheper, Esq.

7 ATTORNEYS FOR KAREN AND
8 ALAN DE FILIPPO
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