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Barbara Sucsy
District Clerk
Lubbock County, Texas

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CAUSE NO. _____

LIZA GARCIA	§	
Plaintiff	§	
	§	**IN THE _____ DISTRICT COURT**
v.	§	
	§	
ORION VISIONGROUP, INC. d/b/a MARIETTA VISION d/b/a MARIETTA OPTOMETRY; CLEARLAB US, INC. f/k/a SOFTLENS TECHNOLOGY, INC.; PRECISION OPTICAL PRODUCTS, LLC; CLEARLAB SG PTE, LTD.; MI GWANG CONTACT LENS CO., LTD.; INNOVA VISION, INC.; LUIS RAMIREZ d/b/a ONE STOP CONTACT LENSES; LEE SIMS d/b/a NATIONAL FLEA MARKET OF LUBBOCK; and WESTLAND CORPORATION	§	**OF LUBBOCK COUNTY, TEXAS**
Defendants	§	

PLAINTIFF'S ORIGINAL PETITION

Plaintiff LIZA GARCIA files this Original Petition complaining of Defendants ORION VISION GROUP, INC. d/b/a MARIETTA VISION d/b/a MARIETTA OPTOMETRY; CLEARLAB US, INC. f/k/a SOFTLENS TECHNOLOGY, INC.; PRECISION OPTICAL PRODUCTS, LLC; CLEARLAB SG PTE, LTD.; MI GWANG CONTACT LENS CO., LTD.; INNOVA VISION, INC.; LUIS RAMIREZ d/b/a ONE STOP CONTACT LENSES; LEE SIMS d/b/a NATIONAL FLEA MARKET OF LUBBOCK and WESTLAND CORPORATION as follows:

I.
DISCOVERY CONTROL PLAN LEVEL

1. Discovery should be conducted as Level 3 pursuant to Texas Rule of Civil Procedure 190.4. Plaintiff hereby moves that the Court order that discovery be conducted in accordance with a discovery control plan tailored to the circumstances of this suit.

II.
CLAIM FOR RELIEF

2. Plaintiff seeks monetary relief of over $1,000,000.00, which is within the jurisdictional limits of the Court.

III.
PARTIES AND SERVICE

3. Plaintiff Liza Garcia ("Garcia") is an individual residing in Lubbock, Lubbock County, Texas. The last three digits of her Social Security Number are 907. The last three digits of her Texas Driver's License are 875.

4. Defendant Orion Vision Group, Inc. d/b/a Marietta Vision d/b/a Marietta Optometry ("Orion Vision") is a foreign corporation duly formed and existing under the laws of the State of Georgia. Orion Vision, at all times material to this action, was and is engaged in business in Texas, as more particularly described below. Orion Vision does not maintain a place of regular business in Texas and has no designated agent on whom service of citation may be made in this action. The causes of action asserted arose from or are connected with purposeful acts committed by the defendant in Texas because Orion Vision manufactured and sold contact lenses, including the lenses in question, intended for purchase and use by consumers across the United States of America, including consumers, such as the Plaintiff, residing in the State of Texas. Orion Vision directly sells contact lenses to Texas consumers through its website, mariettaoptometry.com; directly markets contact lenses to Texas ophthalmologists, optometrists, and licensed opticians for resale to Texas consumers; and has a distributor relationship for its contact lens products with Texas retailers in many various Texas cities. Orion Vision specifically targets the Texas contact lens market. Accordingly, Orion Vision may be cited by serving the

Secretary of State of Texas provided that the citation and petition are forwarded to defendant's home office at 397 North Sessions Street, Marietta, GA, 30060, by registered or certified mail, return receipt requested.

5. Defendant Clearlab US, Inc. f/k/a Softlens Technology, Inc. ("Clearlab US") is a foreign corporation duly formed and existing under the laws of the State of Georgia. Clearlab US, at all times material to this action, was and is engaged in business in Texas, as more particularly described below. Clearlab US does not maintain a place of regular business in Texas and has no designated agent on whom service of citation may be made in this action. The causes of action asserted arose from or are connected with purposeful acts committed by the defendant in Texas because Clearlab US manufactured and sold contact lenses, including the lenses in question, intended for purchase and use by consumers across the United States of America, including consumers, such as the Plaintiff, residing in the State of Texas. Clearlab US directly markets contact lenses to Texas ophthalmologists, optometrists, and licensed opticians for resale to Texas consumers and has a distributor relationship for its contact lens products with Texas retailers in many various Texas cities. Clearlab US specifically targets the Texas contact lens market. Accordingly, Clearlab US may be cited by serving the Secretary of State of Texas provided that the citation and petition are forwarded to defendant's home office at 4200 Jenkins Court, Suwanee, Georgia 30024, by registered or certified mail, return receipt requested.

6. Defendant Precision Optical Products, LLC ("Precision Optical") is a foreign corporation duly formed and existing under the laws of the State of Georgia. Precision Optical, at all times material to this action, was and is engaged in business in Texas, as more particularly described below. Precision Optical does not maintain a place of regular business in Texas and has no designated agent on whom service of citation may be made in this action. The causes of

action asserted arose from or are connected with purposeful acts committed by the defendant in Texas because Precision Optical sold contact lenses, including the lenses in question, intended for purchase and use by consumers across the United States of America, including consumers, such as the Plaintiff, residing in the State of Texas. Precision Optical directly sells contact lenses to Texas consumers through its website wickedeyez.com; directly markets contact lenses to Texas ophthalmologists, optometrists, licensed opticians, convenience stores, flea markets, novelty stores, Halloween stores, and other retail points of sale for resale to Texas consumers; and has a distributor relationship for its contact lens products with Texas retailers in many various Texas cities. Precision Optical specifically targets the Texas contact lens market. Accordingly, Precision Optical may be cited by serving the Secretary of State of Texas provided that the citation and petition are forwarded to defendant's home office at 1395 South Marietta Parkway, Building 200, Suite 206, Marietta, Georgia 30067, by registered or certified mail, return receipt requested.

7. Defendant Clearlab SG PTE, Ltd. ("Clearlab SG") is an alien corporation duly formed and existing under the laws of the Republic of Singapore. Clearlab SG, at all times material to this action, was and is engaged in business in Texas, as more particularly described below both directly and by and through its subsidiary Clearlab US. Clearlab SG does not maintain a place of regular business in Texas and has no designated agent on whom service of citation may be made in this action. The causes of action asserted arose from or are connected with purposeful acts committed by the defendant in Texas because Clearlab SG manufactured and exported contact lenses, including the lenses in question, intended for purchase and use by consumers across the United States of America, including consumers, such as the Plaintiff, residing in the State of Texas. Clearlab SG directly, and through its wholly-owned subsidiary

Clearlab US, markets contact lenses to Texas ophthalmologists, optometrists, and licensed opticians for resale to Texas consumers, and has engaged distributors of contact lens products in Texas. Clearlab SG specifically targets the Texas contact lens market. Singapore is not a party to the Hague Convention on Service Abroad or any other relevant treaties and thus may be cited by serving through international registered mail sent by the clerk of the court to Clearlab SG's principal office located at 139 Joo Seng Rd, Singapore 368362.

8. Defendant Mi Gwang Contact Lens Co., Ltd. ("Mi Gwang") is an alien corporation duly formed and existing under the laws of the Republic of South Korea. Mi Gwang, at all times material to this action, was and is engaged in business in Texas, as more particularly described below both directly and by and through its parent and sister corporations, Clearlab SG and Clearlab US, respectively. Mi Gwang does not maintain a place of regular business in Texas and has no designated agent on whom service of citation may be made in this action. The causes of action asserted arose from or are connected with purposeful acts committed by the defendant in Texas because Mi Gwang manufactured and exported contact lenses, including the lenses in question, intended for purchase and use by consumers across the United States of America, including consumers, such as the Plaintiff, residing in the State of Texas. Mi Gwang directly, and through Clearlab SG and Clearlab US, markets contact lenses to Texas ophthalmologists, optometrists, and licensed opticians for resale to Texas consumers, and has engaged distributors of contact lens products in Texas. Mi Gwang specifically targets the Texas contact lens market. South Korea is not a party to the Hague Convention on Service Abroad or any other relevant treaties and thus may be cited by serving English and translated Korean copies of the citation and petition through international registered mail sent by the clerk of the court to Mi Gwang's

principal office located at #116-2, Hyeopsek-ri, Namcheon-myeon, Gyeongsan-si, Gyeongsanbuk-do, Republic of South Korea.

9. Defendant Innova Vision, Inc., ("Innova Vision") is an alien corporation duly formed and existing under the laws of the Republic of China ("Taiwan"). Innova Vision, at all times material to this action, was and is engaged in business in Texas, as more particularly described below both directly and by and through its affiliated corporation, Orion Vision. Innova Vision does not maintain a place of regular business in Texas and has no designated agent on whom service of citation may be made in this action. The causes of action asserted arose from or are connected with purposeful acts committed by the defendant in Texas because Innova Vision manufactured and exported contact lenses, including the lenses in question, intended for purchase and use by consumers across the United States of America, including consumers, such as the Plaintiff, residing in the State of Texas. Innova Vision directly, and through Orion Vision, markets contact lenses to Texas ophthalmologists, optometrists, and licensed opticians for resale to Texas consumers, and has engaged distributors of contact lens products in Texas. Innova Vision specifically targets the Texas contact lens market. Taiwan is not a party to the Hague Convention on Service Abroad or any other relevant treaties and thus may be cited by serving English and translated Mandarin Chinese copies of the citation and petition through international registered mail sent by the clerk of the court to Innova Vision's principal office located at No. 231-1,Wen-Te Road, Chiung-Lin Village, Hsin-Chu County, Taiwan R.O.C.

10. Defendant Luis Ramirez d/b/a One Stop Contact Lenses ("Ramirez") is an individual residing in Lubbock County, Texas and can be served with process at his place of residence, 5902 8th Street, Lubbock, Texas 79416, or wherever he may be found.

11. Defendant Lee Sims d/b/a National Flea Market of Lubbock ("Sims") is an individual residing in Lubbock County, Texas and can be served with process at his place of residence, 2511 County Road 7670, Lubbock, Texas 79423, or wherever he may be found.

12. Defendant Westland Corporation ("Westland") is a foreign corporation duly formed and existing under the laws of the State of New Mexico. Westland, at all times material to this action, was and is engaged in business in Texas, as more particularly described below. Westland does not maintain a place of regular business in Texas and has no designated agent on whom service of citation may be made in this action. The causes of action asserted arose from or are connected with purposeful acts committed by the defendant in Texas because Westland owns, leases, operates, and maintains the premises on which National Flea Market of Lubbock operates. Westland invites hundreds of Texas residents onto its premises every weekend and profits from the retail sales made to such invitees. Westland specifically targets the Texas retail sales market. Accordingly, Westland may be cited by serving the Secretary of State of Texas provided that the citation and petition are forwarded to defendant's home office at 2400 Candelaria Road NE, Albuquerque, New Mexico 87107, by registered or certified mail, return receipt requested.

IV.
JURISDICTION AND VENUE

13. Plaintiff sues for an amount in excess of the jurisdictional minimum of this Court. Venue is proper in Lubbock County because all or a substantial part of the events or omissions giving rise to the claim occurred in this county. TEX. CIV. PRAC. & REMS. CODE §15.002. Plaintiff purchased the product, used the product, was injured by the product, and was treated for her injuries caused by the product in Lubbock County. The subject matter in controversy is above the minimum jurisdictional limit of this Court.

V.
STATEMENT OF FACTS

14. On February 9, 2016, Garcia, a young woman who lives in Lubbock, Texas, purchased Bella brand cosmetic, non-corrective contact lenses from Ramirez at his One Stop Contact Lenses booth, at Sim's National Flea Market of Lubbock.

15. Three days after beginning use of the Bella contact lenses, Garcia's eyes began to get irritated to the point where they were burning and became swollen. Garcia was then rushed to Covenant Hospital's emergency room where she received urgent treatment to wash her eyes and an eye drop prescription.

16. Garcia left the emergency room but her eyesight continued to deteriorate. Garcia then went to University Medical Center's emergency room where she was diagnosed with a bacterial infection of her eyes caused by the Bella contact lenses. She was prescribed eye drops to be taken every 30 minutes, 24 hours a day, for seven days straight, and she had to go back to the hospital everyday thereafter for checkups. However, the bacterial infection had already permanently damaged both of Garcia's eyes. Garcia now has ulcers and scar tissue in both of her eyes robbing her of her vision. She is now legally blind.

17. Garcia can no longer work. She had to leave her employment and move back in with her parents. Additionally, Garcia has been treating with several physicians and will undergo a number of procedures to save as much of her vision as possible. She will suffer from some form of permanent vision loss.

18. Garcia has endured substantial pain and suffering, mental anguish, and disfigurement as a direct result of wearing the Bella brand cosmetic, non-corrective contact lenses. Moreover, she is unable to work and is not capable of living on her own. Garcia is in the

process of applying for social security disability and Medicare/Medicaid. It is unclear at this point whether Garcia will ever regain her ability to work or to live on her own.

19. Garcia had used cosmetic, non-corrective contact lenses in the past (bought from the same flea market booth), but had no knowledge: a) that such lenses were being sold in violation of state and federal law; b) that the lenses were regulated medical devices with serious health risks instead of the novelty cosmetics that they appeared to be; c) that the integrity of the foil packaging needs to be checked before use; d) that contact lenses are dangerous to wear without regular examinations and a fitting by an eye care professional; e) that extensive hygiene procedures beyond normal washing were required for safe use of the lenses; f) that the contact lenses should not be worn overnight; and g) that any eye discomfort requires immediate medical attention.

20. The Defendant manufacturers and distributors of the Bella contact lenses did not communicate this information to Garcia despite having duties to do so, in violation of FDA regulations. No written insert was included in the packaging, printed warnings were located only on the inside of the box where they could not be read without disassembling the box, and several of these warnings were glued over when the box was assembled at the time of manufacturing. Further, the FDA-required product identification label was affixed over the abbreviated caution label that was printed on the outside of the box. Further, the FDA previously warned the Defendant manufacturers and distributors that their labels were inadequate and that the cosmetic contact lenses did not qualify for the labeling exemptions for certain prescriptive devices under either 21 C.F.R. §809 or §810.

21. Additionally, the packaging and sterilization of the contact lenses was defective. The manufacturing facilities were not sanitary and lacked proper quality audits; trained

personnel; design controls; production and process controls; inspection, measuring, and testing equipment; process validation procedures; product acceptance and rejection procedures; corrective and preventive action procedures; packaging, labeling, handling, and storage facilities and procedures; distribution and delivery procedures; and complaint reporting procedures. Further, the foil backing was poorly attached to the plastic container allowing leakage and contamination of the product. The result of these numerous manufacturing procedure, personnel, and facility flaws was the contamination of the Bella contact lenses with Pseudomonas aeruginosa, bacteria that are the leading cause of contact lens-related infections. The manufacturing process did not follow the FDA-approved design of the product, the manufacturing procedures represented to the FDA upon premarket notification, or the FDA's quality control regulations.

22. The manufacturers and distributors of the Bella contact lenses are repeat offenders of FDA regulations who intentionally sell their products in violation of state and federal regulations to businesses such as street vendors, beauty supply stores, flea markets, novelty stores, Halloween stores, convenience stores, and Internet-based sites that do not validate prescriptions. These Defendants are well aware that their products are sold in novelty and cosmetic environments where consumers naturally assume they are fashion accessories instead of FDA-regulated medical devices with serious health risks associated with their use.

23. The manufacturers and distributors of the Bella contact lenses have long had knowledge of these serious health risks, which include permanent blindness. However, these Defendants jointly, intentionally, and knowingly suppress this information for the purpose of maintaining the novelty and cosmetic appearance of the products. This is done to increase illegal sales through distribution of the cosmetic lenses to inappropriate retail establishments, such as

flea markets. These Defendants jointly, intentionally and knowingly violate numerous state and federal regulations and put the safety of consumers at risk for the sole motive of increasing their profits.

24. FDA records establish that these Defendants were resistant to the 2005 imposition of regulations upon their cosmetic lens business, resulting in the 2006 recall of 334,187 lenses that had been distributed and sold to inappropriate retail establishments. A FDA warning letter sent to the current CEO of Precision Optical (the nationwide distributor of the lenses) when he was President of Clearlab US (the importer, remanufacturer, relabeler, repackager, and initial distributor of the lenses) shows sales of colored cosmetic lenses under several related brand names specifically to flea markets.

25. The manufacturers and distributors of Bella contact lenses have made many millions of dollars profit through illegal cosmetic contact sales between 2005 and the present while intentionally putting consumers' eyesight at risk.

26. These manufacturer and distributor Defendants are all interrelated. In 1998, John Patterson began manufacturing, distributing, and selling contact lenses through his business, Marietta Vision, Inc. located in Marietta, Georgia. John Patterson, joined by his brother Joseph Patterson, then began importing, repackaging, relabeling, tinting, distributing, and selling foreign-made contact lenses on a nationwide basis through a second entity, Softlens Technology, Inc. located in nearby Suwanee, Georgia. By 2006, Hae Won Kim a/k/a Harry Kim, was President of Softlens Technology and handling the importation of the lenses that were being partially manufactured in Asia and imported to Georgia for remanufacturing, repackaging, relabeling, and distribution. By this time, Softlens Technology had divulged to the FDA that it

was selling Bella brand color contacts manufactured in South Korea by Mi Gwang Contact Lens Co. Ltd under a relabeling of Mi Gwang's Comfort 38 (polymacon) tinted daily wear lenses.

27. Mi Gwang is a subsidiary of Clearlab SG, a Singapore-based manufacturer of contact lenses, which exported the contact lenses to Softlens Technology (now known as Clearlab US) from at least 2005 to the present. By 2010, Clearlab SG bought Softlens Technology from Harry Kim and the Patterson brothers and changed the name of Softlens Technology to Clearlab US. Operations of Clearlab US continued in Softlens Technology's facility.

28. After this sale, the Patterson brothers started their third business, Orion Vision. They registered the new entity as a repackager/relabeler and submitted a second premarket notification to the FDA (or assumed a prior submission by Marietta Vision) that also includes Bella contact lenses manufactured through a slightly different process. According to Orion Vision's submission to the FDA, this iteration of Bella brand lenses is manufactured by Innova Vision in Taiwan as Calaview Colors and then repackaged and relabeled as Bella brand contact lenses by Orion Vision.

29. Meanwhile, in 2007, Harry Kim started his own business, Precision Optical, shortly after he was warned by the FDA for making illegal sales of cosmetic contact lenses through Softlens Technology. Again located in Marietta, Georgia, this business was formed as a front for continuation of illegal distribution of contact lenses manufactured in Asia, including the Bella contact lenses at issue in this case. Precision Optical remains associated with the other defendants as it is simply a distributor with no manufacturing, relabeling, or repackaging capabilities yet continues to sell both Orion Vision's and Clearlab US's products, including Bella contact lenses. Precision Optical directly markets to consumers nationwide through

wickedeyez.com and to improper retail establishments nationwide through traditional and Internet marketing. To this day, Precision Optical markets Bella cosmetic contact lenses as non-prescription lenses on its wickedeyez.com website.

30. Harry Kim, John Patterson, and Joseph Patterson were all officers in Softlens Technology, Inc. when their business came under scrutiny by the FDA in 2006 for illegal contact lens sales that the FDA was cracking down on due to eye injuries, including blindness, being caused across the nation by over-the-counter sales of cosmetic contact lenses. All of the manufacturing and distributing Defendants are associated with Softlens and its former officers. Repackager, relabeler, and distributor Softlens Technology changed its name to Clearlab US and is owned by Clearlab SG, which also owns Bella manufacturer Mi Gwang. The Patterson brothers formed Orion Vision, folded Marietta Vision into it, and continued as a Bella manufacturer, repackager, relabeler, and distributor through Bella manufacturer Innova. Harry Kim formed Bella distributor Precision Optical, which was the distributor to the flea market for the Bella contact lenses at issue in this case.

31. The Bella contact lenses at issue in this case that were bought at a flea market in Lubbock were "manufactured for" Precision Optical and distributed, as follows:

a. Mi Gwang and Innova defectively and negligently manufactured the lenses and exported the lenses to Clearlab SG and Orion Vision, respectively;

b. Clearlab SG exported lenses to Clearlab US;

c. Orion Vision and Clearlab US defectively and negligently remanufactured, relabeled, and repackaged the lenses and distributed the lenses to Precision Optical (current FDA registrations show Bella contact lenses manufactured for both the Orion Vision and Clearlab US entities);

d. Precision Optical illegally, defectively and negligently marketed and distributed Bella lenses nationwide to consumer and retail outlets, including to Ramirez d/b/a/ One Stop Contact Lenses; and

e. Ramirez illegally sold the lenses to Garcia out of his One Stop Contact Lenses booth located in the National Flea Market of Lubbock owned and operated by Sims on Westland's leased premises.

32. The Defendants' appalling behavior of risking consumer's eyesight for increased sales of a dangerous product is not isolated to this case. While Liza Garcia had the misfortune to pay a heavier price than most consumers who are exposed to this greedy, reckless, and malicious behavior, hundreds of thousands, if not millions, of consumers across the nation have been unwittingly exposed to the same risk caused by the illegal over-the-counter sale of prescription-only, FDA-regulated cosmetic contact lenses by these Defendants. The U.S. Food and Drug Administration, U.S. Centers for Disease Control and Prevention, and the American Academy of Ophthalmology (among others) have all gone to great lengths to protect consumers from this danger. However, manufacturers, distributors, and sellers of cosmetic contact lenses, including Defendants in this case, continue to flout these efforts as well as state and federal laws to peddle their dangerous and defective products to street vendors, nail salons, beauty supply stores, flea markets, shopping mall kiosks, novelty stores, Halloween stores, convenience stores, and Internet sites that do not require a prescription.

VI.
CAUSES OF ACTION

A. Premises Liability of Flea Market Defendants

33. Plaintiff Garcia was a business invitee of Defendants Ramirez, Sims, and Westland because she entered such Defendants' premises in response to such Defendants' invitation and for the parties' mutual benefit. Such Defendants offered merchandise for sale to the general public. Garcia entered the premises for the mutual benefit of the parties because she intended to purchase and did purchase products offered for sale on the premises.

34. At all times relevant to this suit, Defendants Ramirez, Sims, and Westland

possessed the premises because they, jointly and individually, had the ability and right to exercise control over the flea market and contact lens booth in which the defective and dangerous Bella contact lenses were and are being openly, obviously, and illegally sold. Such Defendants are the owners, operators, managers, maintainers, servicers, and/or controllers of the property and premises. At the time of Plaintiff's purchase of the Bella contact lenses, such lenses, the booth in question, the flea market, and the property in general were not under Garcia's possession, management, and control and were under possession, management, and control of Defendants Ramirez, Sims, and Westland.

35. Defendants Ramirez, Sims, and Westland had a duty to use ordinary care to ensure that the premises did not present a danger to Garcia. This duty includes the duty to inspect, the duty to warn, and the duty to cure. In particular, it was such Defendants' joint and several duty to exercise reasonable care to stop the open, obvious, and illegal sale of prescription-only, FDA-regulated medical devices from a flea market booth. Further, it was such Defendants' joint and several duty to exercise reasonable care to inspect the premises for purposes of stopping the open, obvious, and illegal sale of prescription-only, FDA-regulated medical devices from a flea market booth. Further, it was such Defendants' joint and several duty to exercise reasonable care to prevent the dangerous condition of open, obvious, and illegal sales of prescription-only, FDA-regulated medical devices from a flea market booth on such Defendants' premises, or to exercise ordinary care to correct or warn Plaintiffs of such a condition after such Defendants knew, or by exercise of ordinary care should have known, of the existence of such condition.

36. The open, obvious, and illegal sale of prescription-only, FDA-regulated medical devices from a flea market booth on Defendants Ramirez, Sims, and Westland's premises posed

an unreasonable risk of harm to Garcia. Her purchase of prescription-only, FDA-regulated medical devices sold illegally at a flea market proximately caused her injuries and damages complained of in this action.

37. Defendants Ramirez, Sims, and Westland knew or by exercise of ordinary care should have known of such dangerous condition. The dangerous condition of the premises had continued for several years prior to the events giving rise to this action and continues to the day of filing of this action. In the ordinary and reasonable care, inspection, and maintenance of the premises, such Defendants, including their agents, servants, and employees, should have noticed and removed, modified, or reported to law enforcement authorities the dangerous condition on their premises that caused Garcia's injuries and damages complained of in this action.

38. Defendants Ramirez, Sims, and Westland, including their agents, servants, and employees, breached their duties to Garcia by the negligent failures described in this section. Such breaches of duties, whether taken singularly, or in combination, were a direct, proximate, and producing cause of Garcia's injuries and damages complained of in this action.

B. Additional Negligence of Retailer

39. Ramirez, including his agents, servants, and employees, negligently sold Bella contact lenses to Garcia. Such contact lenses are prescription-only, FDA-regulated medical devices and may not be sold to consumers except through direction and care of licensed opticians, optometrists, and ophthalmologists. Neither Ramirez nor any of his agents, servants, and employees are so licensed. Further, Ramirez negligently sold a defective and dangerous product to Ramirez.

40. Ramirez owed a general duty to exercise the ordinary care of a reasonable merchant selling products to a consumer. His actions and omissions described in this Petition

violate such general duty. Further, Ramirez's actions and omissions were specifically negligent as follows:

a. Ramirez sold to Garcia without a prescription the Bella contact lenses that caused Garcia's injuries;

b. Ramirez failed to verify Garcia's prescription prior to sale of the Bella contact lenses that caused Garcia's injuries;

c. Ramirez failed to register and obtain licensure required to sell the Bella contact lenses that caused Garcia's injuries;

d. Ramirez failed to obtain the training and education required to sell the Bella contact lenses that caused Garcia's injuries;

e. Ramirez failed to employ agents, servants, employees, and/or consultants with the education, training, and licensure to sell the Bella contact lenses that caused Garcia's injuries;

f. Ramirez received in commerce and then sold to Garcia the adulterated Bella contact lenses that caused Garcia's injuries;

g. Ramirez received in commerce and then sold to Garcia the misbranded Bella contact lenses that caused Garcia's injuries;

h. Ramirez received in commerce and then sold to Garcia the defectively manufactured Bella contact lenses that caused Garcia's injuries;

i. Ramirez received in commerce and then sold to Garcia the defectively labeled Bella contact lenses that caused Garcia's injuries;

j. Ramirez received in commerce and then sold to Garcia the illegally distributed Bella contact lenses that caused Garcia's injuries;

k. Ramirez failed to warn Garcia that the Bella contact lenses could only be safely worn under an eye-care practitioner's instruction and care;

l. Ramirez failed to warn Garcia that Bella contact lenses are not cosmetics or over-the-counter merchandise and that all contact lenses require a prescription;

m. Ramirez failed to warn Garcia that Bella contact lenses are not one-size-fits-all and that a fitting by an eye-care practitioner is required before use;

n. Ramirez failed to warn Garcia that Bella contact lenses should never be

bought from flea markets;

o. Ramirez failed to warn Garcia that use of Bella contact lenses under any conditions presents users with the health risks of scratches on the cornea, corneal infection, corneal ulceration, conjunctivitis, permanently decreased vision acuity, and blindness;

p. Ramirez failed to warn Garcia that Bella contact lenses were sold without a practitioner's fitting guide or patient information booklet or insert; and

q. Ramirez failed to warn Garcia that Bella contact lenses were sold with altered, hidden, mutilated, and obliterated instruction and warning labels.

41. Ramirez, including his agents, servants, and employees, breached his duties to Garcia by the negligent failures described in this section. Such breaches of duties, whether taken singularly, or in combination, were a direct, proximate, and producing cause of Garcia's injuries and damages complained of in this action.

C. Negligence of Manufacturing and Distributing Defendants

42. Defendants Orion Vision, Clearlab US, Precision Optical, Clearlab SG, Mi Kwang, and Innova were negligent with respect to faulty product manufacturing; improper alteration or modification of the product; illegal marketing and distribution of the product; and inadequate warnings and instructions that accompanied the product as described in this Petition. These Defendants failed to act as reasonable and prudent manufacturers and distributors under the same or similar circumstances. These acts and omissions, taken by themselves or in combination, were a proximate cause of Plaintiffs' injuries and damages.

43. Further, Defendants Orion Vision, Clearlab US, Precision Optical, Clearlab SG, Mi Kwang, and Innova's actions and omissions were specifically negligent as follows:

a. Defendants distributed the Bella contact lenses that caused Garcia's injuries to a flea market;

b. Defendants distributed the Bella contact lenses in a reckless fashion without verifying that a proper retail establishment was receiving the Bella

contact lenses that caused Garcia's injuries;

c. Defendants failed to register and obtain licensure required to distribute the Bella contact lenses that caused Garcia's injuries;

d. Defendants failed to employ agents, servants, employees, and/or consultants with the education, training, and licensure to safely manufacture, relabel, repackage, market, and/or distribute the Bella contact lenses that caused Garcia's injuries;

f. Defendants put into commerce or received in commerce and then distributed the adulterated Bella contact lenses that caused Garcia's injuries;

g. Defendants put into commerce or received in commerce and then distributed the misbranded Bella contact lenses that caused Garcia's injuries;

h. Defendants put into commerce or received in commerce and then distributed the defectively manufactured Bella contact lenses that caused Garcia's injuries;

i. Defendants put into commerce or received in commerce and then distributed the defectively labeled Bella contact lenses that caused Garcia's injuries;

j. Defendants illegally distributed Bella contact lenses that caused Garcia's injuries;

k. Defendants failed to warn Garcia that the Bella contact lenses could only be safely worn under an eye-care practitioner's instruction and care;

l. Defendants failed to warn Garcia that Bella contact lenses are not cosmetics or over-the-counter merchandise and that all contact lenses require a prescription;

m. Defendants failed to warn Garcia that Bella contact lenses are not one-size-fits-all and that a fitting by an eye-care practitioner is required before use;

n. Defendants failed to warn Garcia that Bella contact lenses should never be bought from flea markets;

o. Defendants failed to warn Garcia that use of Bella contact lenses under any conditions presents users with the health risks of scratches on the cornea, corneal infection, corneal ulceration, conjunctivitis, permanent

decreased vision acuity, and blindness;

p. Defendants distributed the Bella contact lenses without a practitioner's fitting guide or patient information booklet or insert;

q. Defendants altered, hid, mutilated, and obliterated instruction and warning labels on the Bella contact lenses;

r. Defendants prepared, packed or held the Bella contact lenses under insanitary conditions whereby they were rendered injurious to health (21 U.S.C. §351(a)(1));

s. Defendants manufactured, distributed, and put into commerce the Bella contact lenses that were not in conformity with mandated Federal Food, Drug, and Cosmetic Act ("FDCA") performance standards leading to bacterial contamination (21 U.S.C. §351(e));

t. Defendants manufactured, packaged, and stored the Bella contact lenses using methods, facilities, or controls not in conformity with applicable FDCA requirements leading to bacterial contamination (21 U.S.C. §351(h));

u. Defendants manufactured, labeled, packaged, marketed and distributed the Bella contact lenses with required labeling not prominently placed, and in fact hidden from, ordinary individuals under customary conditions of purchase and use as to render it unlikely to be read and understood (21 U.S.C. §352(c));

v. Defendants manufactured, labeled, packaged, marketed and distributed the Bella contact lenses with inadequate directions for use (21 U.S.C. §352(f)(1));

w. Defendants manufactured, labeled, packaged, marketed and distributed the Bella contact lenses without warnings necessary for the protection of users (21 U.S.C. §352(f)(2));

x. Defendants manufactured, labeled, packaged, marketed and distributed the Bella contact lenses that became bacterially contaminated prior to Garcia's use of the product due to practices that deviated from FDCA-mandated good manufacturing practices promulgated under 21 CFR, Part 820 with respect to:

    i. Quality audits—§820.22;
    ii. Personnel—§820.25;
    iii. Design controls—§820.30;
    iv. Production and process controls—§820.70;
    v. Inspection, measuring, and test equipment—§820.72;

vi. Process validation—§820.75;
vii. Acceptance activities—§§820.80 & 820.86;
viii. Nonconforming product—§820.90;
ix. Corrective and preventive action—§820.100;
x. Device packaging—§820.130;
xi. Handling—§820.140;
xii. Storage—§820.150;
xiii. Distribution—§820.160;
xiv. Installation—§820.170; and/or
xv. Complaint files—§820.170;

y. Defendants manufactured, labeled, packaged, marketed and distributed the Bella contact lenses with packaging, labeling and warnings that deviated from FDCA requirements promulgated under 21 CFR, Part 801 with respect to:

i. Adequate directions for use—§801.5;
ii. Statements of intended use—§801.5(a);
iii. Duration of use—§801.5(d);
iv. Preparation for use—§801.5(g);
v. Prominence of required label statements—§801.15(a);
vi. Display on visible panels—§801.15(a)(1);
vii. Display on multiple panels—§801.15(a)(2);
viii. Sufficiency of label space—§801.15(a)(3-5); and
ix. Size of type of wording—§801.15(a)(6);

z. Defendants failed to adequately label the Bella contact lenses as daily wear lenses instead of extended wear lenses as required by the products' premarket notification determination;

aa. Defendants failed to adequately label the Bella contact lenses for frequent replacement wear under direction of an eye-care professional as required by the products' premarket notification determination;

bb. Defendants failed to adequately label the Bella contact lenses for cleaning and disinfection instructions to be provided by direction of an eye-care professional as required by the products' premarket notification determination;

cc. Defendants failed to adequately label the Bella contact lenses for scheduled/planned replacement under direction of an eye-care professional as required by the products' premarket notification determination; and

dd. Defendants failed to adequately label the Bella contact lenses for chemical disinfection only as required by the products' premarket notification determination.

44. Defendants Orion Vision, Clearlab US, Precision Optical, Clearlab SG, Mi Kwang, and Innova, including their agents, servants, and employees, breached their duties to Garcia by the negligent failures described in this section. Such breaches of duties, whether taken singularly, or in combination, were a direct, proximate, and producing cause of Garcia's injuries and damages complained of in this action.

D. Negligence Per Se of Retailer, Distributors, and Manufacturers

45. Ramirez sold to Garcia without a prescription the Bella contact lenses that caused Garcia's injuries in violation of Texas Occupations Code §353.101.

46. Ramirez, Clearlab US, Orion Vision, and Precision Optical received in commerce and then delivered the adulterated and misbranded Bella contact lenses that caused Garcia's injuries in violation of Texas Health & Safety Code §§431.021(c), 431.111(a)(2)(A), 431.111(a)(2)(B), 431.111(h), 431.112(c), 431.112(e)(1), 431.112(i), 431.112(q), and provisions of the Federal Drug and Cosmetic Act ("FDCA") adopted thereunder, including enforcing regulations.

47. Orion Vision, Clearlab US, Clearlab SG, Mi Gwang, Innova, and Precision Optical introduced or delivered for introduction into commerce adulterated and misbranded the Bella contact lenses that caused Garcia's injuries in violation of Texas Health & Safety Code §§431.021(a), 431.111(a)(2)(A), 431.111(a)(2)(B), 431.111(h), 431.112(c), 431.112(e)(1), 431.112(i), 431.112(q), and provisions of the FDCA adopted thereunder, including enforcing regulations.

48. Orion Vision, Clearlab US, Clearlab SG, Mi Gwang, Innova, and Precision Optical adulterated and misbranded the Bella contact lenses that caused Garcia's injuries in violation of Texas Health & Safety Code §§431.021(b), 431.111(a)(2)(A), 431.111(a)(2)(B),

431.111(h), 431.112(c), 431.112(e)(1), 431.112(i), 431.112(q), and provisions of the FDCA adopted thereunder, including enforcing regulations.

49. Orion Vision, Clearlab US, Clearlab SG, Mi Gwang, Innova, and Precision Optical distributed in commerce the Bella contact lenses that caused Garcia's injuries contained in a package that does not conform to the provisions of Chapter 431 of the Texas Health & Safety Code and provisions of the FDCA adopted thereunder in violation of Texas Health & Safety Code §431.021(d) and provisions of the FDCA adopted thereunder, including enforcing regulations.

50. Clearlab US, Orion Vision, and Precision Optical altered, mutilated, and obliterated multiple parts of the labeling of the Bella contact lenses that caused Garcia's injuries while such contact lenses were held for sale after shipment in commerce, resulting in such article being adulterated or misbranded in violation of Texas Health & Safety Code §431.021(k) and provisions of the FDCA adopted thereunder, including enforcing regulations.

51. Clearlab US, Orion Vision, and Precision Optical engaged in the distribution in this state of the Bella contact lenses that caused Garcia's injuries without obtaining a required license issued by the department in violation of Texas Health & Safety Code §§ 431.021(x) and 431.2031;

52. Clearlab US, Orion Vision, and Precision Optical failed to comply with a requirement to submit an application, statement, report, or other instrument with respect to licensure required by the Texas Department of Health & Safety in violation of Texas Health & Safety Code §431.021(bb);

53. Orion Vision, Clearlab US, Clearlab SG, Mi Gwang, Innova, and Precision Optical introduced or delivered for introduction into commerce the prescription Bell contact

lenses that caused Garcia's injuries at a flea market in violation of Texas Health & Safety Code §431.021(ii).

54. Because of the violations described in this section, Defendants Ramirez, Orion Vision, Clearlab US, Precision Optical, Clearlab SG, Mi Kwang, and Innova, including their agents, servants, and employees, committed negligence per se. Such commissions of negligence per se, whether taken singularly, or in combination, were a direct, proximate, and producing cause of Garcia's injuries and damages complained of in this action. Further, Garcia's injuries are of the type sought to be prevented by the statutes and regulations violated by such Defendants.

E. Strict Liability of Retailer, Distributors, and Manufacturers

55. At all times relevant to this lawsuit, Defendants Mi Gwang, Clearlab SG, Innova, Clearlab US, Orion Vision, Precision Optical and Ramirez were engaged in the business of manufacturing, storing, shipping, altering, packaging, labeling, marketing, distributing, and selling cosmetic contact lenses, including Bella contact lenses, for sale to and use by members of the general public. These Defendants placed the Bella contact lenses into the stream of commerce as described in the stated facts above.

56. Garcia's injuries and damages were caused by the defective condition of the Bella contact lenses used by her in an intended and foreseeable manner. The product in question was defective and unsafe for its intended purposes at the time it left the control of the manufacturers (Mi Gwang, Clearlab SG, and Innova), at the time it was made further defective and unsafe in different respects by the remanufacturing, alteration, modifications, and marketing of repackager/relabeler/distributors (Clearlab US, Orion Vision, Precision Optical, and Ramirez), and at the time it was sold to Garcia.

57. The defective condition of the product was the producing cause of Garcia's injuries and damages. Such defective condition included the following:

a. It was distributed to and available for sale at a flea market;

b. It was sold to Garcia without a prescription;

c. It was sold to Garcia without verification of an eye-care practitioner instruction and care;

d. It was adulterated;

e. It was misbranded;

f. It failed to warn Garcia that Bella contact lenses are not cosmetics or over-the-counter merchandise and that all contact lenses require a prescription;

g. It failed to warn Garcia that Bella contact lenses are not one-size-fits-all and that a fitting by an eye-care practitioner is required before use;

h. It failed to warn Garcia that Bella contact lenses should never be bought from flea markets;

i. It failed to warn Garcia that use of Bella contact lenses under any conditions presents users with the health risks of scratches on the cornea, corneal infection, corneal ulceration, conjunctivitis, permanent decreased vision acuity, and blindness;

j. It did not include a practitioner's fitting guide or patient information booklet or insert;

k. The instructions and warning labels were altered, hidden, mutilated, and obliterated;

l. It was bacterially contaminated due to being prepared, packed or held under insanitary conditions (21 U.S.C. §351(a)(1));

m. It was manufactured, packaged, and stored using methods, facilities, or controls not in conformity with applicable FDCA requirements leading to bacterial contamination (21 U.S.C. §351(h));

n. It was manufactured, labeled, packaged, marketed and distributed with required labeling not prominently placed, and in fact hidden from, ordinary individuals under customary conditions of purchase and use as to render it unlikely to be read and understood (21 U.S.C. §352(c));

o. It was manufactured, labeled, packaged, marketed and distributed the Bella contact lenses with inadequate directions for use (21 U.S.C. §352(f)(1));

p. It was manufactured, labeled, packaged, marketed and distributed the Bella contact lenses without warnings necessary for the protection of users (21 U.S.C. §352(f)(2));

q. It was manufactured, labeled, packaged, marketed and distributed in a manner to become bacterially contaminated prior to Garcia's use of the product due to practices that deviated from FDCA-mandated good manufacturing practices promulgated under 21 CFR, Part 820 with respect to:

i. Quality audits—§820.22;
ii. Personnel—§820.25;
iii. Design controls—§820.30;
iv. Production and process controls—§820.70;
v. Inspection, measuring, and test equipment—§820.72;
vi. Process validation—§820.75;
vii. Acceptance activities—§§820.80 & 820.86;
viii. Nonconforming product—§820.90;
ix. Corrective and preventive action—§820.100;
x. Device packaging—§820.130;
xi. Handling—§820.140;
xii. Storage—§820.150;
xiii. Distribution—§820.160;
xiv. Installation—§820.170; and/or
xv. Complaint files—§820.170;

r. It was manufactured, labeled, packaged, marketed and distributed with packaging, labeling and warnings that deviated from FDCA requirements promulgated under 21 CFR, Part 801 with respect to:

i. Adequate directions for use—§801.5;
ii. Statements of intended use—§801.5(a);
iii. Duration of use—§801.5(d);
iv. Preparation for use—§801.5(g);
v. Prominence of required label statements—§801.15(a);
vi. Display on visible panels—§801.15(a)(1);
vii. Display on multiple panels—§801.15(a)(2);
viii. Sufficiency of label space—§801.15(a)(3-5); and
ix. Size of type of wording—§801.15(a)(6);

s. It was not adequately labeled as daily wear lenses instead of extended wear lenses as required by the products' premarket notification determination;

t. It was not adequately labeled for frequent replacement wear under direction of an eye-care professional as required by the products' premarket notification determination;

u. It was not adequately labeled for cleaning and disinfection instructions to be provided by direction of an eye-care professional as required by the products' premarket notification determination;

v. It was not adequately labeled for scheduled/planned replacement under direction of an eye-care professional as required by the products' premarket notification determination; and

w. It was not adequately labeled for chemical disinfection only as required by the products' premarket notification determination.

58. Therefore, the product was defective and unreasonably dangerous because it failed to conform to general FDA design and manufacturing requirements for the product, and it failed to conform to the product design and specifications of other contact lenses deemed to be substantially equivalent in a FDA premarket notification determination. Moreover, the product was defective and unreasonably dangerous because the packaging and labeling did not conform to FDA requirements. These manufacturing and marketing defects were the producing cause of the Plaintiff's injuries and damages.

F. Non-Applicability of §82.003

59. FDA records show that Clearlab PTE, Mi Gwang, and Innova are each manufacturers of Bella brand contact lenses. FDA records show that Clearlab US and Orion Vision participate in manufacturing such as adding tinting; submission of design specifications; repackaging and relabeling, including manufacture of all packaging, labeling, and instructive materials; and nationwide distribution of Bella brand contact lenses despite actual knowledge of the defective condition of the product. Furthermore, Precision Optical and Ramirez illegally sold the Bella brand despite actual knowledge of the illegality of the transaction and defective

condition of the product.

60. Garcia's injuries were caused by a combination of defective product manufacturing; defective alteration or modification of the product; illegal and defective marketing and distribution of the product; and defective warnings and instructions. Therefore, Clearlab PTE, Mi Gwang, Innova, Clearlab US, Orion Vision, Precision Optical, and Ramirez are each liable as "sellers" under Chapter 82 of the Texas Practice and Remedies Code and none of these Defendants qualify as "Nonmanufacturing Sellers" as defined by Texas Practice and Remedies Code §82.003.

G. Conspiracy

61. Orion Vision, Clearlab US, Precision Optical, Clearlab SG, Mi Gwang, and Innova conspired to profit by illegally sell the defectively manufactured, defectively marketed, illegally distributed, adulterated, and misbranded Bella contact lenses that injured Garcia by combining in a meeting of the minds through common ownership and overt actions in violation of state and federal law. These combined actions proximately resulted in the injuries and damages sustained by Garcia. Each conspirator is responsible for all acts done by any of the conspirators in furtherance of the conspiracy.

H. Vicarious Liability

62. Each and every Defendant is liable for the damages proximately caused to Garcia by the conduct of their respective employees, agents, and servants who participated in the actions and omissions described in this Petition while acting within the course and scope of their employments with Defendants. Each and every Defendant had the right to and did in fact control activities of their respective employees, agents, and servants during their participation in the actions and omissions described in this Petition.

VII.
DAMAGES

63. Liza Garcia sustained serious personal injuries as a direct and proximate result of the injuries to her eyes, including:

a. Medical care and expenses in the past for the necessary care and treatment of the injuries resulting from the contact lenses, such charges being reasonable and necessary and the usual and customary charges where provided;

b. Medical care and expenses which will in all reasonable probability be incurred in the future;

c. Physical pain and suffering in the past;

d. Physical pain and suffering in the future;

e. Physical impairment and disability in the past;

f. Physical impairment and disability in the future;

g. Loss of wage earning capacity;

h. Mental anguish in the past;

i. Mental anguish in the future;

j. Disfigurement;

k. Loss of body capacities; and

l. Loss of enjoyment of life.

VIII.
GROSS NEGLIGENCE AND EXEMPLARY DAMAGES

64. Orion Vision, Clearlab US, Precision Optical, Clearlab SG, Mi Gwang, and Innova acted with gross negligence. In particular, these Defendants have long had knowledge of the serious health risks, which include permanent blindness, of consumers' use of cosmetic lenses after over-the-counter sales at improper and illegal retailers. These Defendants have even been caught selling cosmetic contact lenses to flea markets by the FDA in the past. Despite this

knowledge and past history, these Defendants jointly, intentionally, and knowingly suppress information that would warn consumers of the risks associated with their illegally distributed products for the purpose of maintaining the novelty and cosmetic appearance of the products. This is done to increase illegal sales through distribution of the cosmetic lenses to inappropriate retail establishments, such as flea markets. These Defendants jointly, intentionally and knowingly violate numerous state and federal regulations and put the safety of consumers at risk for the sole motive of increasing their profits.

65. Such acts and omissions by these Defendants involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and said Defendants had actual, subjective awareness of the risks involved, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others. These acts and omissions were a proximate cause of the damages sustained by Garcia. As a result of these Defendants' gross negligence, Plaintiff is entitled to recovery of exemplary damages from each and every of these Defendants in the highest amount allowed by law.

IX.
STATE COURT BASIS OF ACTION

66. Bella brand contact lenses are FDA Class II medical devices approved through a substantial equivalency determination made in response to two premarket notifications by Defendants to the FDA (notifications K051477 & K062541). In both instances, the FDA specifically found that the product did "not require approval of a premarket approval application (PMA)." According to a finding by the FDA, only "general controls" found in Code of Federal Regulations, Title 21, Parts 800 to 898, and any existing generalized Class II Special Controls apply to the product. Plaintiff specifically disclaims pleading of or reliance upon any state regulations or causes of action that would conflict with or be impossible to comply with because

of Defendants' compliance with applicable FDA regulations, including but not limited to, FDA's general controls and special controls, if any, applicable to Bella contact lenses.

67. The claims made by Plaintiff are based upon Defendants' violations of or lack of existence of their own procedures, processes, and standards required to abide by the applicable FDA regulations and federal statutes as shown above. Therefore, regardless of the classification of the product, premarket scrutiny of the product by the FDA, or existence of FDA regulations specific to the product, there is no federal preemption of the state claims made in this Petition because the claims are "parallel claims." *Bass v. Stryker Corp.*, 669 F.3d 501, 508-512 (5th Cir. 2012) (holding that no federal preemption applied to such causes of action in a medical device product liability case appealed from the Northern District of Texas). Both Texas courts and federal courts recognize that state-law tort "claims based on a manufacturer's failure to follow the FDA's requirements and procedures in manufacturing and marketing a device are not preempted" and may be prosecuted in Texas courts. *Baker v. St. Jude Med., S.C., Inc.*, 178 S.W.3d 127, 138 (Tex. App.—Houston [1st Dist.] 2005, pet. denied); *see Bass*, 669 F.3d at 514 (citing *Worthy v. Collagen Corp.*, 967 S.W.2d 360 (Tex. 1998)).

68. Further, Bella contact lenses are not Class III devices and are not subject to the agency scrutiny and product specific requirements of either a PMA or a supplemental PMA, resulting in a lack of federal preemption regardless of the state claim alleged, as long as such claim does not create a compliance conflict. S*ee Bass*, 669 F.3d at 506-07 (The premarket notification "approval process does not impose federal requirements on a device."). Further, Texas statutes and regulations that form the basis of some of Plaintiff's causes of action do not add requirements to, but instead incorporate, applicable FDA regulations and federal statutes. Further, the Texas common-law causes of action relied upon do not add requirements to

applicable FDA regulations and federal statutes. *See id.* at 506-512.

69. Federal diversity jurisdiction does not exist and no federal question jurisdiction is created by this Petition according to a determination of the United States Supreme Court. *Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804, 815 ("We conclude that a complaint alleging a violation of a federal statute as an element of a state cause of action, when Congress has determined that there should be no private, federal cause of action for the violation, does not state a claim 'arising under the Constitution, laws, or treaties of the United States.'"). Any remanded removal of this action is subject to payment to Plaintiffs of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. 28 U.S.C. 1447.

X.
REQUESTS FOR DISCLOSURE

70. Pursuant to Texas Rule of Civil Procedure 194, Plaintiff requests that each and every Defendant disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2(a) through (l).

XI.
TRIAL BY JURY

71. Contemporaneously with the original filing of this Petition, Plaintiff filed a written jury demand and paid the requisite jury fee. Plaintiff requests that this action be placed upon the Court's jury docket.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that Defendants be cited to appear and answer, and that on final trial, Plaintiff be awarded the following:

a. Judgment against Defendants for damages in an amount within the jurisdictional limits of the Court;

b. Exemplary damages against Defendants Orion Vision, Clearlab US, Precision Optical, Clearlab SG, Mi Gwang, and Innova in a sum determined by the trier of fact;

c. Pre-judgment interest at the maximum rate allowed by law;

d. Post-judgment interest at the maximum rate allowed by law;

e. Costs of suit; and

f. Such other and further relief to which they be entitled, at law or in equity.

Respectfully submitted,

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