

1 Reuben D. Nathan, Esq. (SBN 208436)
2 Email: rnathan@nathanlawpractice.com
3 **NATHAN & ASSOCIATES, APC**
4 2901 West Coast Highway, Suite 200
5 Newport Beach, California 92663
6 Telephone: (949) 270-2798
7 Facsimile: (949) 209-0303

8 Matthew Righetti, Esq. (SBN 121012)
9 matt@righettilaw.com
10 John Glugoski, Esq. (SBN 191551)
11 jglugoski@righettilaw.com
12 **RIGHETTI GLUGOSKI, PC**
13 220 Halleck Street, Suite 220
14 San Francisco, California 94129
15 Telephone: (415) 983-0900
16 Facsimile: (415) 397-9005

17 (Additional Counsel on Next Page)

18 **UNITED STATES DISTRICT COURT**
19 **SOUTHERN DISTRICT OF CALIFORNIA**

20 JOE KINDER, as an individual on behalf of
21 himself and all others similarly situated and
22 the general public,

23 Plaintiff,

24 v.

25 DJI TECHNOLOGY, INC.; SZ DJI
26 TECHNOLOGY CO., LTD.

27 Defendants.

28 Case No. **'21CV1791 JM MSB**
CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Pratik H. Shah, Esq. (SBN: 288411)

Email: pshah@dstlawfirm.com

2 **SHAH D'EGIDIO, APC**

3 7801 Mission Center Court, Suite240

San Diego, CA 92108

4 Telephone: (619) 550-3011

5 Facsimile: (877) 888-6304

6 John Christian Bohren (SBN: 295292)

7 Email: yanni@bohrenlaw.com

8 **BOHREN LAW, APC**

P.O. Box 12174

9 San Diego, California 92112-3174

10 Telephone: (619) 433-2803

11 Facsimile: (800) 867-6779

12 Attorneys for Plaintiff, JOE KINDER and the Proposed Class

1 Plaintiff, JOE KINDER (“Plaintiff” or “KINDER”) brings this action on behalf of
2 himself, and all others similarly situated against DJI TECHNOLOGY, INC.; SZ DJI
3 TECHNOLOGY CO., LTD (hereinafter collectively referred to as “Defendants” or
4 “DJI.”) Plaintiff makes the following allegations based upon information and belief,
5 except as to the allegations specifically pertaining to themselves, which are based on
6 personal knowledge.

7 8 **INTRODUCTION**

9 1. The drone market is a new industry and an emerging market. Drones were
10 made available to the general public in 2016. The drone industry is becoming a
11 compelling one, with global sales reaching \$22.5 billion in 2020 and expected to grow
12 substantially by 2025 to a whopping 42.8 billion.¹ "Unmanned aircraft systems"
13 (colloquially and hereinafter referred to as "drones") are becoming increasingly
14 ubiquitous for recreational use.”²

15 2. Drones have a variety of uses including defense, emergency response,
16 disaster relief, conversation, disease control, healthcare, agriculture, weather forecasting,
17 maritime, waste management, energy, search & rescue, surveillance, security, science &
18 research, surveying & GIS, operating unmanned cargo systems, investigation, and/or
19 photography³.

20 3. Drones were originally developed for the military and aerospace industries,
21 but they have found their way into the mainstream because of the enhanced levels of
22 safety and efficiency. Unmanned aerial vehicle (UAV) – also know as drones --operate
23 without a pilot on board and with different levels of autonomy depending on the
24 manufacturer/make/model. A drone’s autonomous level can range from remotely piloted

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27 ¹ Drone Industry Insights. The Drone Market Report 2020-2025. Available online <https://drone-market-report-2020-2025>

² Reddit (July 30, 2018), reddit.com/r/drones [<https://perma.cc/M93S-C48U>] (online community devoted to recreational drone activities, including drone cinematography, first-person-view drone racing, and drone building).

28 ³ <https://www.businessinsider.com/drone-technology-uses-applications>; <https://www.dummies.com/consumer-electronics/drones/popular-uses-for-drones/>

1 by a human to complete autonomy relying on a system of sensors and LIDAR
2 detectors to calculate its movement.⁴

3 4. “Drone technology has been used by defense organizations and tech-savvy
4 consumers for quite some time. However, the benefits of this technology extend well
5 beyond just these sectors. With the rising accessibility of drones, many of the most
6 dangerous and high-paying jobs within the commercial sector are ripe for displacement
7 by drone technology. The use cases for safe, cost-effective solutions range from data
8 collection to delivery. And as autonomy and collision-avoidance technologies improve,
9 so too will drones’ ability to perform increasingly complex tasks.”⁵

10 5. Piloting drones occurs in one of two ways, which is either achieved through
11 Line of Sight (LOS) by observing the drone with your eyes or through an onboard
12 camera.

13 6. Through the onboard system, the video image from an onboard camera in
14 the drone is transmitted by radio to a personal video display onto goggles, mobile phone
15 or tablet screen. By all accounts, this has become the preferred method for consumers to
16 fly drones.⁶

17 7. In general, there are only a few features driving consumer’s decisions to
18 purchase drones, which include: 1) distance/video transmission, 2) flight time (battery
19 life), 3) weight, 4) camera, and 5) recording/editing features.⁷

20 8. DJI manufactures, distributes, advertises, and sells a variety of drone
21 products within the DJI product line and is recognized globally as a leader in this space.⁸

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24 ⁴ <https://builtin.com/drones>

⁵ <https://www.cbinsights.com/research/drone-impact-society-uav/>

⁶ <https://dronedj.com/2021/02/18/long-range-fpv-grows-in-popularity/>;
²⁵ <https://www.bhphotovideo.com/explora/video/features/what-is-an-fpv-drone>; <https://www.dronezon.com/learn-about-drones-quadcopters/what-is-fpv-flying-drone-equipment/>;
²⁶ <https://www.prnewswire.com/news-releases/global-racing-drone-market-to-reach-valuation-of-us786-mn-by-2027-increasing-popularity-of-commercial-racing-events-to-drive-growth-finds-tmr-301007400.html>

²⁷ ⁷ <https://www.mydronelab.com/blog/what-is-a-drone.html>

²⁸ ⁸ <https://www.globalbrandsmagazine.com/top-10-drone-companies-in-the-world-2020/>;
<https://www.marketwatch.com/story/how-dji-has-crushed-the-consumer-drone-industry-and-the-rivals-that-could-still-take-flight-2017-02-17>

1 9. Consistent with Defendant DJI’s self-promotion as the industry leader in
2 the drone industry, its own website states in prominent lettering: “Headquartered in
3 Shenzhen, widely considered China’s Silicon Valley, DJI benefits from direct access to
4 the suppliers, raw materials, and young, creative talent pool necessary for sustained
5 success. Drawing on these resources, we have grown from a single small office in 2006
6 to a global workforce. Our offices can now be found in the United States, Germany, the
7 Netherlands, Japan, South Korea, Beijing, Shanghai, and Hong Kong. As a privately
8 owned and operated company, DJI focuses on our own vision, supporting creative,
9 commercial, and nonprofit applications of our technology. Today, DJI products are
10 redefining industries. Professionals in filmmaking, agriculture, conservation, search and
11 rescue, energy infrastructure, and more trust DJI to bring new perspectives to their work
12 and help them accomplish feats safer, faster, and with greater efficiency than ever
13 before.”⁹

14 10. DJI touts that its products are “[e]stablished to produce DJI’s innovative
15 products safely and responsibly, our wholly owned subsidiary Shenzhen Dajiang
16 Baiwang Technology Co., Ltd. is a high-tech manufacturing facility specializing in
17 unmanned aerial vehicles. In 2016, Dajiang Baiwang passed the ISO 9001:2015 Quality
18 Management System Certification and in 2017 passed the SGS ISO 14001:2015
19 Environmental Management System Certification.”

20 11. All drones sold by DJI are contained within packaging that is uniform in
21 nature - usually square or rectangle in shape, generally white in color, with black typed
22 writing which set forth the specific set of representations relating to the specific features
23 of the product.

24 12. DJI representations and warranties relating to the Products’ features are
25 prominently displayed on the DJI website or and/on the back of the packaging in a
26 format that is separate and apart from any other information relating to the Products.
27

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⁹ <https://www.dji.com/company>

1 DJI makes clear to its consumers who have generally never purchased a drone that the
2 features set forth on the DJI website or on the packaging are material terms to
3 consumers. With virtually no information on the front of the packaging, DJI's forces its
4 consumer's eyes to examine the back packaging of the DJI Products or scramble through
5 a plethora of information located on DJI's website for details relating to the feature of
6 the Products in question.

7 13. On the packaging of Products and/or on DJI's own website¹⁰, DJI makes
8 specific representations and warranties to consumers relating to the Products:

- 9 • weight
- 10 • flight time (battery life)
- 11 • distance/video transmission
- 12 • camera and/or
- 13 • recording/editing.

14 14. The DJI products that are the subject of this lawsuit include but are not
15 limited to:

- 16 • Mavic
 - 17 • Mavic Pro
 - 18 • Phantom
 - 19 • Mavic Air
 - 20 • DJI Zoom
 - 21 • DJI Mini
 - 22 • Mavic Mini
- 23 (collectively, the "Products")

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¹⁰ Some DJI Products may have additional features.

1 15. An example of the front side of the packaging of the DJI Mavic Air 2 is set
2 forth below:



1 16. On information and belief, some of DJI's Products have representations and
2 warranties related to the Products' specifications either on the back of the packaging of
3 the Products, whereas other DJI Products require the consumer to review the
4 specifications on the DJI website or some of the DJI Products provide for specifications
5 on both the DJI Website and the back of the packaging.

6 17. On DJI's website, DJI represents that the Mavic Air 2 has the following
7 features which is used to promote the Products to consumer and drive sales:

- 8 • 48MP Photo /4K/60 fps
- 9 • 34-min Max. Flight Time
- 10 • 10 km 1080p Video Transmission
- 11 • Focus Track
- 12 • 8K Hyperlapse
- 13 • HDR Photo Video Panorama

14 18. Each of the stated representations and warranties is material in nature that
15 consumers such as Plaintiff and Class Members relied on them when purchasing DJI
16 Products. Consumers also place emphasis on the flight time and distance/video
17 transmission specifications. DJI touts each of the specifications for each of the Products
18 either on the DJI website and/or on the packaging in order to induce consumers to
19 purchase the Products after looking at, reviewing, and relying on the specific features at
20 issue when purchasing DJI Products.

21 19. DJI flight time and distance/video transmission representations vary
22 depending upon the DJI Product at issue.

23 20. DJI represents the distance/video transmission of the Products to be upward
24 of approximately 2 miles. DJI promotes its drones' ability to fly distances of several
25 miles, which is used to promote the Products to consumers, which consumers rely on to
26 make their purchase decisions and in fact purchase on the basis of DJI representations.
27 DJI touts the distance/video transmission representations knowing that they are material
28 to consumers. Consumers rely on DJI's distance/video transmission representations and

1 warranties to purchase the Products. Consumers purchase DJI Products with the
2 intention to fly the DJI Products for the distance/video transmission as represented and
3 warranted on DJI’s packaging of the Products.

4 21. On June 21, 2016, the final rule 14 CFR Part 107 was adopted by the
5 Department of Transportation (DOT) and Federal Aviation Administration (FAA) that
6 issued a press release to Finalize Rules for Small Unmanned Aircraft Systems. The
7 press release was granted immediate release and was captured in the FAA News
8 “Summary of Small Unmanned Aircraft Rule (Part 107).”

9 22. On June 28, 2016, the FAA amended its regulations to allow for the
10 operation of small unmanned aircraft systems (UAS) in the National Airspace System, to
11 address changes to the operation of UAS and the certification of remote pilots.

12 23. On October 6, 2020, the FAA issued an immediate press release entitled
13 “Fact Sheet - Small Unmanned Aircraft Systems (UAS) Regulations (Part 107).” Under
14 operational requirements, the third bullet point states: “Keep your drone within sight. If
15 you use First Person View or similar technology, you must have a visual observer
16 always keep your drone within unaided sight (for example, no binoculars).”

17 24. 14 CFR 107.31¹¹, Visual Line of Sight Aircraft Operation, states as follows:
18

19 **§107.31 Visual line of sight aircraft operation.**

20 (a) With vision that is unaided by any device other than corrective lenses, the remote pilot in command,
the visual observer (if one is used), and the person manipulating the flight control of the small unmanned
aircraft system must be able to see the unmanned aircraft throughout the entire flight in order to:

- 21 (1) Know the unmanned aircraft's location;
- 22 (2) Determine the unmanned aircraft's attitude, altitude, and direction of flight;
- 23 (3) Observe the airspace for other air traffic or hazards; and
- (4) Determine that the unmanned aircraft does not endanger the life or property of another.

24 (b) Throughout the entire flight of the small unmanned aircraft, the ability described in paragraph (a) of
this section must be exercised by either:

- 25 (1) The remote pilot in command and the person manipulating the flight controls of the small unmanned
aircraft system; or
- 26 (2) A visual observer.

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28 ¹¹ https://www.ecfr.gov/cgi-bin/text-idx?node=pt14.2.107&rgn=div5#sc14.2.107_131 (Government Publishing Office)

1 25. DJI’s representations and warranties relating to flight time and
2 distance/video transmission are false and misleading and thus induce consumers to
3 purchase the Products with the belief that consumers can operate DJI Products to the
4 same specifications set forth in its representations and warranties. Consumers reading,
5 reviewing, and purchasing the Products based on the specifications are not informed that
6 the Products cannot meet the corresponding flight time and distance/video set forth on
7 DJI’s website or on the back of the packing of the Products because (1) consumers
8 cannot legally operate (federal law mandates pilots fly within the VLOS) the DJI
9 Products in a manner consistent with DJI’s representations and warranties (2) the actual
10 flight time and distance/video transmission requires conditions that are unobtainable to
11 consumers. In fact, any disclaimers are intentionally positioned by DJI on either the DJI
12 website or on the back of the DJI packaging in completely different positions than the
13 DJI’s representations and warranties related to the specifications for the DJI Products.
14 DJI clearly attempts to conceal the disclaimer or limitation from the consumer by its
15 positioning of the disclaimers and limitations.

16 26. For a consumer to operate a DJI drone based on DJI’s representations and
17 warranties would cause the consumer to violate federal law. It is only until after the
18 consumer purchases the DJI drone that s/he is made aware for the first-time that the
19 drone must be flown within the VLOS and/or the specifications set forth on the
20 packaging or DJI’s website are unobtainable. DJI does not inform consumers at the time
21 of purchase that operating the drone in manner consistent with DJI’s representations and
22 warranties, would be engaging in conduct that is not legally permissible and that will
23 result in a violation of federal law or that the consumer would not be able to pilot the
24 drone to the specifications set forth on the packaging or DJI’s website.

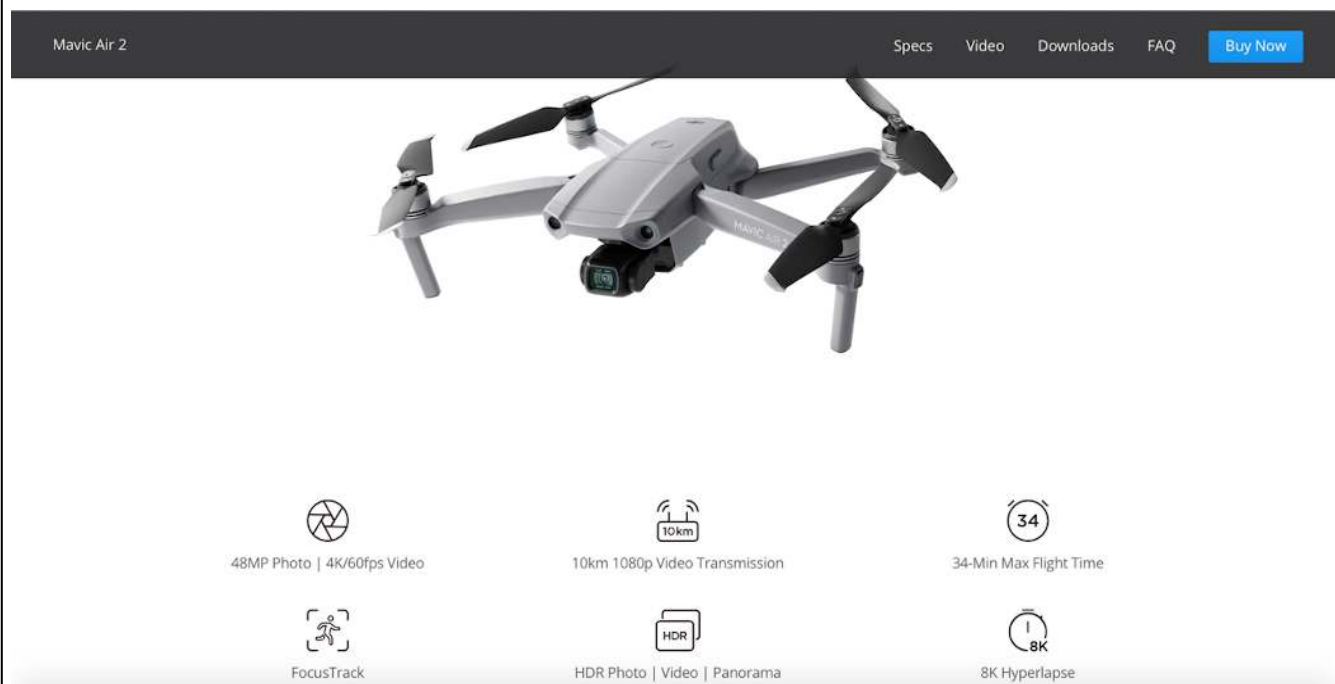
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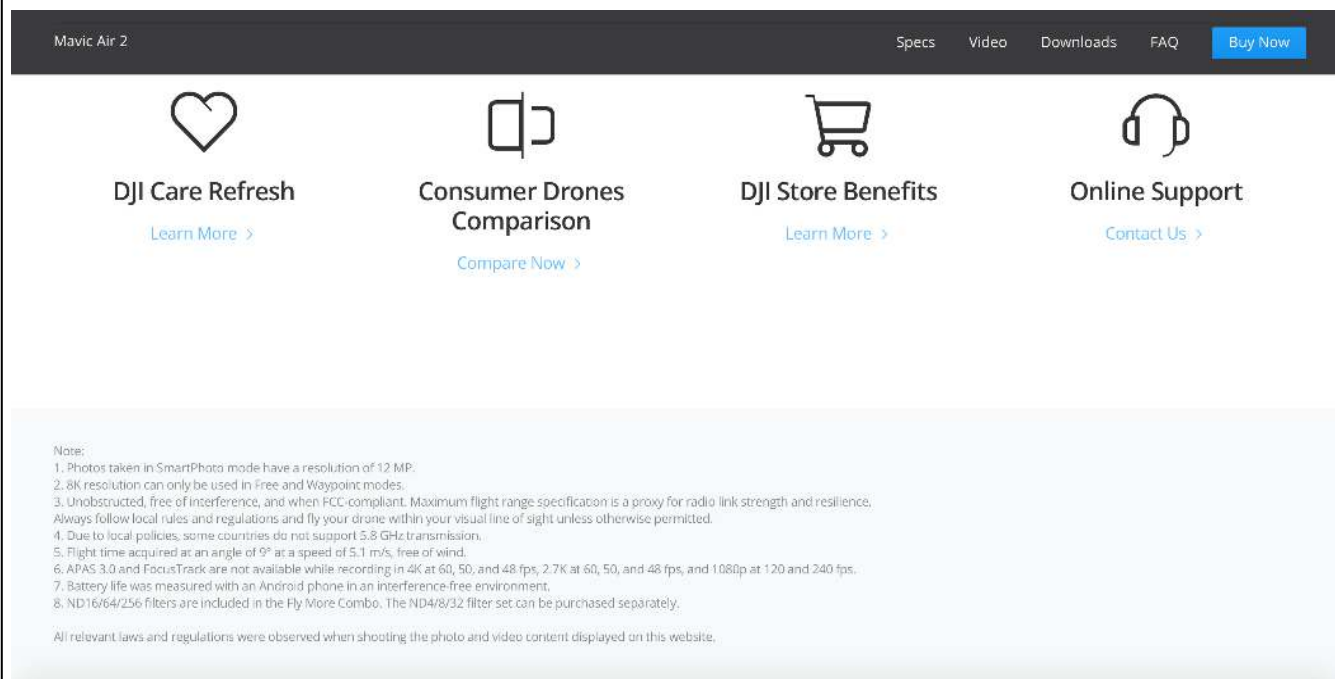
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1 27. For example, the specifications for the Mavic Air 2 are set forth on the
2 second (2) page of DJI's website for the Mavic Air 2, as set forth below:



14 28. For example, DJI's disclaimers and limitations for the Mavic Air 2,
15 including relating to operating the drone within the visual line of sight, piloting in
16 unobstructed and free of interference conditions are set forth in tiny font unreadable font
17 located on the twenty-third (23) page of DJI's website for the Mavic Air 2, as set forth
18 below:



1 Fairness Act (“CAFA”), explicitly provides for original jurisdiction of the federal courts
2 in any class action in which at least 100 members are in the proposed Plaintiff class, any
3 member of the Plaintiff class is a citizen of a State different from any defendant, and the
4 matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interest and costs.
5 Plaintiff alleges that the total claims of individual members of the proposed Class (as
6 defined herein) are well in excess of \$5,000,000.00 in the aggregate, exclusive of
7 interest and costs.

8 34. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial acts
9 in furtherance of the alleged improper conduct emanated or occurred within this District.

10 **PARTIES**

11 35. Plaintiff JOE KINDER (“Kinder”) is a citizen of California and was a
12 resident of San Diego, including when he purchased the Products within the last three
13 years. On May 1, 2020, Plaintiff Kinder purchased a DJI Mavic Air 2 from DJI’s
14 website for \$799.00. Prior to purchasing the DJI Products, Plaintiff saw and read the
15 language for the specifications of the DJI Mavic Air 2 on the DJI website and relied on
16 the representations and warranties and descriptions, statements, details, and features set
17 forth on DJI’s website.

18 36. Defendant DJI TECHNOLOGY, INC. is a California corporation that has
19 its principal place of business located at Burbank, California.

20 37. Defendant SZ DJI TECHNOLOGY CO., LTD is a foreign corporation that
21 has its principal place of business located at Shenzhen, China.

22 38. The true names and capacities, whether individual, corporate, associate or
23 otherwise of each of the Defendant designated herein as a DOE are unknown to Plaintiff
24 at this time, who therefore, sue said Defendant by fictitious names, and will ask leave of
25 this Court for permission to amend this Complaint to show their names and capacities
26 when the same have been ascertained. Plaintiff is informed and believes and thereon
27 alleges that each of the Defendants designated as a DOE is legally responsible in some
28

1 manner for the events and happenings herein referred to, and caused injuries and
2 damages thereby to Plaintiff as alleged herein.

3 39. Defendants produce, market, and distribute the Products throughout retail
4 stores across the United States and its principal place of business is in California.
5 Defendants knew that the representations and warranties relating to the Products is false
6 and misleading to a reasonable consumer, because DJI's representations do not conform
7 or is inconsistent with the Products' representations and warranties.

8
9 **FACTS COMMON TO ALL CAUSES OF ACTION**

10 40. Even sophisticated consumers should be able to trust the representations
11 and warranties on the Products. Manufacturers are required to tell the truth, not conceal,
12 and inform consumers of the true nature of the Products and their abilities for consumers
13 to make an informed decision.

14 41. DJI's Products contain specific flight time and distance/video transmission
15 representations and warranties relating to the use of the drone on the packaging of the
16 Products that are not permissible for any consumer. DJI makes specific representations
17 regarding distance/video transmission without informing the Class Member that
18 traveling at such distance violates federal law thereby misleading the public. Each of
19 DJI's Products do not conform to the flight time and distance/video transmission
20 representations and warranties as stated on the packaging and thus the representations
21 and warranties are false and misleading. A reasonable consumer understands
22 Defendants' claims to mean that the Products will perform flight time and distance/video
23 transmission consistent with the representations and warranties on the DJI's packaging
24 and have no reason to believe at the time of purchase that said flight time and
25 distance/video transmission representation and warranties are false and misleading.
26 Defendants know its representations and warranties found on the packaging are false and
27 misleading as evidenced by the need to advise after the purchase that the Products may
28

1 not be operated consistent with the flight time and distance/video transmission
2 representations and warranties.

3 42. Defendants' representations that the Products have a certain flight time and
4 distance/video transmission is false, which induced consumers, including Plaintiff and
5 Class Members, to pay a premium to purchase the Products. Plaintiff and Class
6 Members relied on Defendants' false and misleading misrepresentations in purchasing
7 the Products at a premium price above comparable alternatives. If not for Defendants'
8 misrepresentations, Plaintiff and Class Members would not have been willing to
9 purchase the Products at a premium price. Accordingly, they have suffered an injury as
10 a result of Defendants' misrepresentations.

11 43. Based on the language that appears on the DJI website, Plaintiff reasonably
12 believed that the Products conform to the flight time and distance/video transmission
13 representations and warranties.

14 44. A reasonable consumer would understand the flight time and distance/video
15 transmission representations and warranties to mean that the products can be piloted for
16 the specific time and distance as stated on DJI's website and/or on the back of the
17 packaging of DJI's products. These representations and warranties are false and
18 misleading to a reasonable consumer because (1) federal law mandates consumers
19 (pilots) operate drones within the VLOS, and (2) the Products do not conform to the
20 stated flight time and/or distance/video transmission representations and warranties as
21 referenced on the DJI website or packaging of the Products. Defendants knew that
22 consumers such as Plaintiff and Class Members would and did pay for the Products that
23 would conform to DJI's stated representations and warranties than the products which
24 would not conform to DJI's representations and warranties.

25 45. Plaintiff did not discover that the representations and warranties were false
26 and misleading until after purchasing the Products. Despite reasonable diligence,
27 Plaintiff would not have discovered and lacked the means to discover the deceptive
28 nature of Defendants' violations of law based on DJI's advertising practices.

CLASS ALLEGATIONS

46. Plaintiff Kinder seeks to represent:

(A) All persons in the United States who purchased the Products on or after October 20, 2017 to the present date (the “National Class”). Excluded from the Class are Defendants, its affiliates, employees, officers and directors, persons or entities that purchased the Products for resale, and the Judge(s) assigned to this case.

(B) All persons in the California who purchased the Products on or after October 20, 2017 to the present date (the “California Class”). Excluded from the Class are Defendants, its affiliates, employees, officers and directors, persons or entities that purchased the Products for resale, and the Judge(s) assigned to this case.

(The National Class and California Class, will be collectively referred to as the “Class”)

47. There is a well-defined community of interest in this litigation and the Class is easily ascertainable:

- a. Numerosity: The members of the Class are so numerous that joinder of all members would be unfeasible and impractical. The membership of the Class is unknown to Plaintiff at this time. However, the Class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.
- b. Typicality: Plaintiff is qualified to and will fairly and adequately protect the interests of each Class Member with whom they has a well-defined community of interest, and Plaintiff’ claims (or defenses, if any), are typical of all Class Members as demonstrated herein.
- c. Adequacy: Plaintiff is qualified to and will fairly and adequately protect the interests of each Class Member with whom they have a well-defined community of interest and typicality of claims, as alleged herein. Plaintiff acknowledges that he has an obligation to the Court

1 to make known any relationship, conflict, or differences with any
2 Class Member. Plaintiff’s attorneys and proposed Class counsel are
3 well versed in the rules governing class action discovery, certification,
4 and settlement. Plaintiff has incurred, and, throughout the duration of
5 this action, will continue to incur costs and attorneys’ fees that have
6 been, are, and will be necessarily expended for the prosecution of this
7 action for the substantial benefit of each Class Member.

8 d. Superiority: The nature of this action makes the use of class action
9 adjudication superior to other methods. Class action will achieve
10 economies of time, effort, and expense as compared with separate
11 lawsuits, and will avoid inconsistent outcomes because the same
12 issues can be adjudicated in the same manner and at the same time for
13 the entire class.

14 48. There is a well-defined community of interest in the questions of law and
15 fact involved in this case. Questions of law and fact common to the members of the
16 putative classes that predominate over questions that may affect individual class
17 members (the members of the National and California Class will hereinafter be referred
18 to as “Class Members” or the “Class”) include, but are not limited to the following:

- 19 a. whether DJI misrepresented material facts to the Class
20 concerning the representations and warranties contained on the
21 Products;
22 b. whether DJI concealed or failed to disclose material
23 information from the Class regarding the Products;
24 c. whether Defendants’ conduct is/was unfair and/or deceptive;
25 d. whether Defendants have been unjustly enriched as a result of
26 the unlawful, fraudulent, and unfair conduct alleged in this
27 complaint such that it would be inequitable for Defendants to
28

1 retain the benefits conferred upon them by Plaintiff and the
2 classes;

3 e. whether Defendants breached express warranties to Plaintiff
4 and the classes;

5 f. whether Defendants failed to disclose Products;

6 g. whether the representations and warranties on the Products are
7 false or misleading;

8 h. whether Defendants violated California Legal Remedies Act,
9 California Business and Professions Code, and California False
10 Advertising Law;

11 i. whether the representations and warranties violated any express
12 or implied warranties;

13 j. whether Plaintiff and the Class have sustained damages with
14 respect to the common-law claims asserted, and if so, the proper
15 measure of their damages; and

16 k. whether the Class is entitled to restitution, rescission, damages,
17 and attorneys' fees and costs.

18 49. Plaintiff seeks to certify the National Class and California Class pursuant to
19 FRCP 23(b)(2) and FRCP 23(b)(3).

20 50. Plaintiff's claims are typical of Class Members because Plaintiff, like all
21 members of the classes, purchased Defendants' Products bearing the representations and
22 warranties and Plaintiff sustained damages from Defendants' wrongful conduct.

23 51. Plaintiff will fairly and adequately protect the interests of the classes and
24 have retained counsel that is experienced in litigating complex class actions. Plaintiff
25 has no interests which conflict with those of the classes.

26 52. A class action is superior to other available methods for the fair and
27 efficient adjudication of this controversy.

28

1 53. The prerequisites to maintaining a class action for equitable relief are met
2 as Defendants have acted or refused to act on grounds generally applicable to the Class,
3 thereby making appropriate equitable relief with respect to the Class as a whole.

4 54. The prosecution of separate actions by members of the Class would create a
5 risk of establishing inconsistent rulings and/or incompatible standards of conduct for
6 Defendants. For example, one court might enjoin Defendants from performing the
7 challenged acts, whereas another might not. Additionally, individual actions could be
8 dispositive of the interests of the Class even where certain Class members are not parties
9 to such actions.

10
11 **FIRST CAUSE OF ACTION**
12 **Violation Of California’s Consumers Legal Remedies Act (“CLRA”),**
13 **California Civil Code §§ 1750, *et seq.***
14 **(On Behalf of Plaintiff and All California Class Members against Defendants)**
(Injunctive Relief Only)

15 55. Plaintiff brings this claim individually and on behalf of the members of the
16 proposed California Class against Defendants.

17 56. This cause of action is brought pursuant to the Consumers Legal Remedies
18 Act, California Civil Code §§1750, *et seq.* (the "CLRA").

19 57. Plaintiff and each California Class Member are "consumers" within the
20 meaning of Civil Code §1761(d).

21 58. DJI’s sales of Products to Plaintiff and the Class Members are deemed
22 "transactions" within the meaning of Civil Code § 1761(e). The Products purchased by
23 Plaintiffs and the Class Members are "goods" within the meaning of Civil Code §
24 1761(a). DJI has engaged in unfair methods of competition and unfair and/or deceptive
25 acts or practices against Plaintiff and the members of the Class, in violation of the CLRA
26 by (a)(2) Misrepresenting the source, sponsorship, approval, or certification of goods or
27 services; (5) Representing that goods or services have sponsorship, approval,
28 characteristics, ingredients, uses, benefits, or quantities that they do not have or that a

1 person has a sponsorship, approval, status, affiliation, or connection that the person does
2 not have; (7) Representing that goods or services are of a particular standard, quality, or
3 grade, or that goods are of a particular style or model, if they are of another.

4 59. As a result of these acts and practices, Plaintiff and the Class Members were
5 damaged in that DJI's unlawful and misleading acts and practices alleged herein played
6 a substantial and material role in Plaintiff and the Class Members' decision to purchase
7 the Products. Absent these acts and practices, Plaintiff and the Class Members would not
8 have purchased the products that they did from DJI.

9 60. Pursuant to California Civil Code § 1780(a)(2), Plaintiff and Class Members
10 request that this Court enjoin DJI from continuing to engage in the unlawful and
11 deceptive methods, acts and practices alleged above. Unless DJI is permanently enjoined
12 from continuing to engage in such violations of the CLRA, future consumers will be
13 damaged by its acts and practices in the same way as have Plaintiff and the members of
14 the proposed Class. Plaintiff also requests that this Court order a backward-reaching
15 injunction in order to remedy the past effects of the unfair conduct alleged herein.

16 61. Pursuant to Section 1782(a) of the CLRA, on October 8, 2021 and October
17 14, 2021, Mr. Kinder served Defendants by United States certified mail, return receipt
18 requested, with notice of Defendants violations of the CLRA.

19 62. Plaintiff seeks injunctive relief, attorneys' fees and costs, and any other
20 relief the Court deems proper and reserves the right to amend the complaint to include
21 the right to seek damages after the exhaustion period under the CLRA has lapsed.

22 **SECOND CAUSE OF ACTION**

23 **Violation Of California's Unfair Competition Law ("UCL"),**
24 **California Business & Professions Code §§ 17200, et seq.**
25 **(On Behalf of Plaintiff and All California Class Members against Defendants)**

26 63. Plaintiff repeats and re-alleges each and every allegation contained in the
27 foregoing paragraphs as if fully set forth herein.

1 71. Plaintiff brings this claim individually and on behalf of the members of the
2 proposed California Class against Defendants.

3 72. California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et*
4 *seq.*, makes it “unlawful for any person to make or disseminate or cause to be made or
5 disseminated before the public in this state, ... in any advertising device ... or in any
6 other manner or means whatever, including over the Internet, any statement, concerning
7 ... personal property or services, professional or otherwise, or performance or disposition
8 thereof, which is untrue or misleading and which is known, or which by the exercise of
9 reasonable care should be known, to be untrue or misleading.”

10 73. Defendants committed acts of false advertising, as defined by §§17500, *et*
11 *seq.*, by misrepresenting the stated flight time and distance/video transmission
12 representations and warranties.

13 74. Defendants knew or should have known through the exercise of reasonable
14 care that their representations about the Products were untrue and misleading.
15 Defendants’ actions in violation of §§ 17500, *et seq.* were false and misleading such that
16 the general public is and was likely to be deceived. Plaintiff and the California Class
17 lost money or property as a result of Defendants’ FAL violations because: (a) they
18 would not have purchased the Products on the same terms if they had known the
19 Products did not conform to DJI’s stated representations and warranties; (b) they paid a
20 substantial price premium compared to other similar products due to Defendants’
21 misrepresentations; and (c) the Products do not have the characteristics, uses, or benefits
22 as promised.

23 **FOURTH CAUSE OF ACTION**

24 **For Breach of Express Warranty**

25 **Violations of Cal. Com. Code § 2313(1)**

26 **(On Behalf of Plaintiff and All California Class Members against Defendants)**

27 75. Plaintiff repeats and re-alleges each and every allegation contained in the
28 foregoing paragraphs as if fully set forth herein.

1 76. DJI as the designer, manufacturer, marketer, distributor, and/or seller,
2 expressly warranted that DJI Products have certain specifications that can be met by
3 consumers.

4 77. DJI's express warranties, and its affirmations of fact and promises made to
5 Plaintiff and the Class regarding the price of the Products, became part of the basis of the
6 bargain between Defendants and Plaintiff and the Class, thereby creating an express
7 warranty that the price of the Products would conform to those affirmations of fact,
8 representations, promises, and descriptions.

9 78. The specifications of the Products do not conform to the express warranty
10 because Defendants charged Plaintiff and similarly situated Class Members for features
11 or specifications that cannot be met or that DJI does not meet.

12 79. As a direct and proximate cause of DJI's breach of express warranty,
13 Plaintiff and Class Members have been injured and harmed because: (a) they would not
14 have purchased the Products on the same terms if they had known the truth; (b) they paid
15 a substantial price premium based on Defendants' express warranties; and (c) the price
16 of the Products do not have the characteristics, uses, or benefits as promised.

17 80. On October 8, 2021 and October 14, 2021, Plaintiff mailed letters to
18 Defendants consistent with Cal. Com. Code § 2607(3)(a) and U.C.C. 2-607(3)(A). The
19 letters were sent on behalf of Plaintiff and all other persons similarly situated.

20 **FIFTH CAUSE OF ACTION**

21 **For Fraud**

22 **(On Behalf of Plaintiff and All National Class Members against Defendants)**

23 81. Plaintiff repeats and re-alleges each and every allegation contained in the
24 foregoing paragraphs as if fully set forth herein.

25 82. As discussed above, Defendants provided Plaintiff and Class members with
26 false or misleading material information in connection with the specifications or features
27 of the Products and/or DJI failed to disclose material facts about the Product.
28

1 83. Defendants misrepresented the nature and content of the Products by
2 making the false Claims and/or failing to disclose material information.

3 84. The Defendants' misrepresentations and omissions were made with
4 knowledge of the falsehood thereof or in conscious disregard of the likelihood of their
5 falsehood or that they should disclose information to allow consumers to make an
6 informed decision.

7 85. The misrepresentations and/or omissions made by Defendants, upon which
8 Plaintiff and Class Members reasonably and justifiably relied, were intended to induce
9 and actually induced Plaintiff and Class Members to purchase the Products.

10 86. The fraudulent actions of Defendants caused damage to Plaintiff and Class
11 Members, who are entitled to damages, punitive damages, and other legal and equitable
12 relief as a result.

13 **SIXTH CAUSE OF ACTION**

14 **Negligent Misrepresentation**

15 **(On Behalf of Plaintiff and All National Class Members against Defendants)**

16 87. Plaintiff hereby incorporates by reference the allegations contained in all
17 preceding paragraphs of this complaint.

18 88. Plaintiff brings this claim individually and on behalf of the Proposed Class
19 against Defendants.

20 89. Defendants misrepresented the specification of the products as stated on
21 DJI's website and/or the back of the packaging of DJI's products. Defendants had a
22 duty to disclose this information.

23 90. At the time Defendants made the false Claims and representations,
24 Defendants knew or should have known that these representations were false or made
25 them without knowledge of their truth or veracity.

26 91. Defendants negligently misrepresented and omitted material facts about the
27 Products that would impact consumers' decisions. Plaintiff and the Proposed Class
28

1 relied upon the negligent statements or omissions and were deceived and induced into
2 purchasing the Product.

3 92. The negligent misrepresentations and/or omissions made by Defendants,
4 upon which Plaintiff and the Proposed Class members reasonably and justifiably relied,
5 were intended to induce and actually induced Plaintiff and the Proposed Class members
6 to purchase the Products.

7 93. Plaintiff and Class members would not have purchased the Products and/or
8 would not have paid a price premium therefore, if the true facts had been known to them
9 regarding the falsity of the Claims.

10 94. The negligent actions of Defendants caused damage to Plaintiff and the
11 Class Members, who are entitled to damages and other legal and equitable relief as a
12 result.

13 **SEVENTH CAUSE OF ACTION**
14 **Unjust Enrichment**

15 **(On Behalf of Plaintiff and All National Class Members against Defendants)**

16 95. Plaintiff repeats and re-alleges each and every allegation contained in the
17 foregoing paragraphs as if fully set forth herein.

18 96. Defendants have been unjustly enriched in retaining the revenues derived
19 from Plaintiff's and Class Members' purchases of the Products. Retention of those
20 monies under these circumstances is unjust and inequitable because of Defendants'
21 misrepresentations about the consumer's ability to use the Products per DJI's
22 representations and warranties, which also does not conform to its advertising, which
23 caused injuries to Plaintiff and Class Members because they would not have purchased
24 the Products on the same terms if the true facts had been known.

25 97. Because Defendants' retention of the non-gratuitous benefits conferred on it
26 by Plaintiff and Class Members is unjust and inequitable, Defendants must pay
27 restitution to Plaintiff and Class Members for their unjust enrichment, as ordered by the
28 Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment on behalf of himself and members of the National Class and California Class as follows:

- A. For an order certifying the National Class and California Class; naming Plaintiff as Class representative; and naming Plaintiff’s attorneys as Class Counsel representing the Class;
- B. For an order finding in favor of Plaintiff and the National and California, Classes, on all counts asserted herein;
- C. For an order awarding statutory, compensatory, treble, and punitive damages in amounts to be determined by the Court and/or jury;
- D. For injunctive relief enjoining the illegal acts detailed herein;
- E. For prejudgment interest on all amounts awarded;
- F. For an order of restitution and all other forms of equitable monetary relief;
- G. For an order awarding Plaintiff his reasonable attorneys’ fees and expenses and costs of suit.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all claims so triable.

Dated: October 20, 2021

Respectfully submitted,
NATHAN & ASSOCIATES, APC

By: /s/ Reuben D. Nathan
Reuben D. Nathan, Esq.
rnathan@nathanlawpractice.com
2901 W. Coast, Suite 200
Newport Beach, California 92663
Telephone: (949)270-2798

Matthew Righetti, Esq. (SBN 121012)
matt@righettilaw.com

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John Glugoski, Esq. (SBN 191551)
jglugoski@righettilaw.com
RIGHETTI GLUGOSKI, PC
220 Halleck Street, Suite 220
San Francisco, California 94129
Telephone: (415) 983-0900
Facsimile: (415) 397-9005

Pratik H. Shah, Esq. (SBN: 288411)
pshah@dstlawfirm.com
SHAH D'EGIDIO, APC
7801 Mission Center Court, Suite240
San Diego, CA 92108
Telephone: (619) 550-3011
Facsimile: (877) 888-6304

John Christian Bohren (SBN: 295292)
yanni@bohrenlaw.com
LAW OFFICE OF JOHN BOHREN
P.O. Box 12174
San Diego, California 92112-3174

Attorneys for Plaintiff, JOE
KINDER and the Proposed
Class