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The People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

**ENDORSED
FILED**
Superior Court of California
County of San Francisco
JAN 12 2017
CLERK OF THE COURT
By: ANNA L. TORRES
Deputy Clerk

CGC-17-556305

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
)
)
Plaintiff,)
)
v.)
)
LILY ROBOTICS, INC., a Delaware)
Corporation, and DOES 1 through 100,)
inclusive,)
Defendants.)

Case No.
**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL
PENALTIES, RESTITUTION,
AND OTHER EQUITABLE
RELIEF**
Business and Professions Code
§17200 *et seq.* & § 17500 *et seq.*

1 The District Attorney for the City and County of San Francisco, authorized to protect
2 the general public within the State of California from false and misleading representations and
3 unlawful business practices, brings this suit in the name of the People of the State of
4 California. The People hereby allege the following on information and belief:

5 PARTIES AND VENUE

6 1. The authority of the District Attorney for the City and County of San Francisco to
7 bring this action is derived from the statutory law of the State of California, specifically
8 Business and Professions Code sections 17200 *et seq.* and 17500 *et seq.*

9 2. Defendant LILY ROBOTICS, INC., is a Delaware corporation with its headquarters
10 and principal place of business located in the City and County of San Francisco at 374 Harriet
11 Street, San Francisco, CA 94103.

12 3. The true names and capacities, whether individual, corporate, associate, or otherwise,
13 of the defendants sued herein under the fictitious names of DOES 1 through 100, inclusive,
14 are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Each
15 fictitiously named defendant is responsible in some manner for the violations of law herein
16 alleged. Plaintiff will amend its complaint to show the true names and capacities of such
17 defendants, as well as the manner in which each fictitious defendant is responsible for the
18 violations of law herein alleged, when these facts are ascertained.

19 4. At all relevant times, defendant LILY ROBOTICS, INC., has committed the acts,
20 caused others to commit the acts, ratified the commission of the acts, or permitted others to
21 commit the acts alleged in this complaint and has made, caused, ratified, or permitted others
22 to make the false or misleading statements alleged in this complaint. Whenever reference is
23 made in this complaint to any act of defendant, such allegation shall mean that LILY

1 ROBOTICS, INC., acted individually and jointly with the other unknown defendants. The
2 terms “Lily Robotics” and “defendant,” wherever used in this complaint, shall mean LILY
3 ROBOTICS, INC.

4 5. Whenever in this complaint reference is made to any act of any corporate defendant,
5 such allegation shall be deemed to mean that such corporate defendant did the acts alleged in
6 the complaint through its officers, directors, agent, employees, and/or representatives while
7 they were acting within the actual or ostensible scope of their authority.

8 6. Defendant at all times mentioned herein has transacted business within the City and
9 County of San Francisco and throughout the State of California. The violations of law herein
10 described have been committed within and from the City and County of San Francisco, and
11 elsewhere within the State of California.

12 7. The actions of the defendant, as hereinafter set forth, are in violation of the laws and
13 public polices of the State of California and are inimical to the rights and interests of the
14 general public as consumers, competitors and citizens. Unless the People are granted the
15 remedies sought herein, including injunctive relief by order of this Court, defendant will
16 continue to engage in the unlawful acts and practices set forth below and will continue to
17 cause injury and harm to the general public.

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1 INTRODUCTION

2 8. Lily Robotics, Inc., is a company that sells a single product: a purportedly
3 autonomous, flying camera drone, known as a “Lily” or “Lily Camera,” that can film a user
4 doing a variety of activities. According to the defendant’s advertising, the user simply throws
5 the Lily into the air to begin filming and directs the Lily with a remote tracking device.
6 According to the promotional materials, the tracker has several pre-determined flight paths
7 from which the user chooses; the Lily, for instance, will “follow,” “lead,” or “loop” around the
8 user. In addition, the Lily Camera purportedly is waterproof and can land safely in the user’s
9 hand.

10 9. Lily Robotics was co-founded by Antoine Balaesque and Henry Bradlow. At all
11 relevant times, Balaesque was the Chief Executive Officer and a frequent company
12 spokesperson, and Bradlow worked as the Chief Technology Officer. Balaesque gave
13 numerous interviews and presentations about Lily over the course of 2015 and 2016. Both
14 Balaesque and Bradlow presently remain in these positions at Lily Robotics.

15 10. On May 12, 2015, Lily Robotics launched its preorder campaign with the release of a
16 professionally-produced promotional video (“Promotional Video”) that purported to
17 demonstrate the Lily Camera’s most noteworthy features. A minute and thirty-four seconds in
18 duration, the video takes the viewer through the multitude of ways one might use a Lily. From
19 outdoor sports to family gatherings, the Promotional Video shows a Lily in flight, and
20 effortlessly integrates footage that, according to the Promotional Video, was taken by a Lily
21 Camera.

22 11. In the month it was released, the Lily Promotional Video was the ninth most watched
23 advertisement on YouTube in May 2015, with 5.3 million views that month alone. The

1 Promotional Video was published on the Internet to the general public on Lily Robotics's
2 website, on YouTube, and via other media outlets' websites that reported on the Lily Camera.

3 12. Notwithstanding the implicit and explicit representations that a Lily Camera was used
4 to film those portions of the Promotional Video that are seen from the point of view ("POV")
5 of a Lily Camera, Lily Robotics did not disclose that those images in the Promotional Video
6 were in fact filmed by a much more expensive, professional camera drone (the DJI Inspire)
7 that was not made by Lily Robotics that cost between two and four times as much as the
8 defendant was asking for a Lily Camera. The DJI Inspire was the opposite of the
9 "autonomous" camera that Lily Robotics was touting. In order to achieve the POV video seen
10 in the Promotional Video, the DJI Inspire required two people to operate and film those shots.
11 Lily Robotics intentionally misled consumers into believing that the footage from the point of
12 view of the camera drone was actually from a Lily Camera, and failed to make any disclaimers
13 regarding the true source of the video footage.

14 13. By the end of 2015, the Promotional Video had more than 30 million views, garnering
15 Lily Robotics more than \$34 million in "preorder" sales—more than 60,000 units from more
16 than 200 countries. Lily Robotics's website (<https://www.lily.camera>) prominently displays
17 the Promotional Video on its home page. Slightly below the video was a button that
18 consumers could click to preorder a Lily Camera until the preorder period ended on October
19 7, 2016. The consumer provided credit card information to pay hundreds of dollars upfront for
20 a Lily Camera, to be delivered at a future date specified at the time of the preorder sale. Funds
21 transferred immediately at the time of purchase for the full preorder price, including shipping
22 costs and sales tax, even though the product purportedly would not be shipped until later.

23

1 14. After unveiling the Lily Camera through the Promotional Video, Lily Robotics
2 obtained \$14 million of Series A funding in 2015. According to a witness, defendant also
3 applied for and received a \$4 million loan in 2016, because the equity funding it previously
4 received was likely to run out before the product could be shipped.

5 15. Despite taking all of these prepaid orders, Lily Robotics has continued to delay
6 shipment of the Lilys. When defendant began accepting preorders in May 2015, it told
7 customers that the Lily Camera would ship in February 2016 or May 2016, depending on
8 when the preorder was made. Then, in December 2015, Lily Robotics delayed all shipments to
9 “Summer 2016.” It delayed shipments again in August 2016; according to its notice, U.S.
10 customers would get their Lily Cameras in “December 2016 to January 2017,” while its non-
11 U.S. customers would get them sometime “later in 2017.” As of the writing of this Complaint,
12 not a single unit has been shipped.

13 16. Through this civil enforcement action, the People seek to return to customers the \$34
14 million they paid to Lily Robotics as a result of Lily Robotics’s fraudulent advertising. The
15 People also will ask the Court to impose substantial civil penalties and permanent injunctive
16 relief to deter this kind of conduct in the future. Lily Robotics’s conduct amounts to: (1) false
17 advertising based on the false and misleading Promotional Video that it used in order to
18 induce consumers to purchase its camera drone; (2) violations of the Consumer Legal
19 Remedies Act; (3) theft by false pretenses by using the false and misleading Promotional
20 Video and other false representations to obtain money from preorder customers; and (4)
21 violations of the Federal Trade Commission regulations governing shipping representations
22 and delays.

23

1 ALLEGATIONS

2 **False and Misleading Representations About the Lily Camera Drone**

3 *Lily Robotics's False and Misleading Promotional Video*

4 17. Lily Robotics announced it would be taking preorders for the Lily Camera with a
5 media blitz on or about May 12, 2015. Simultaneously, it released a professionally produced
6 Promotional Video, "Introducing the Lily Camera," in which viewers were able to "Meet
7 Lily."¹



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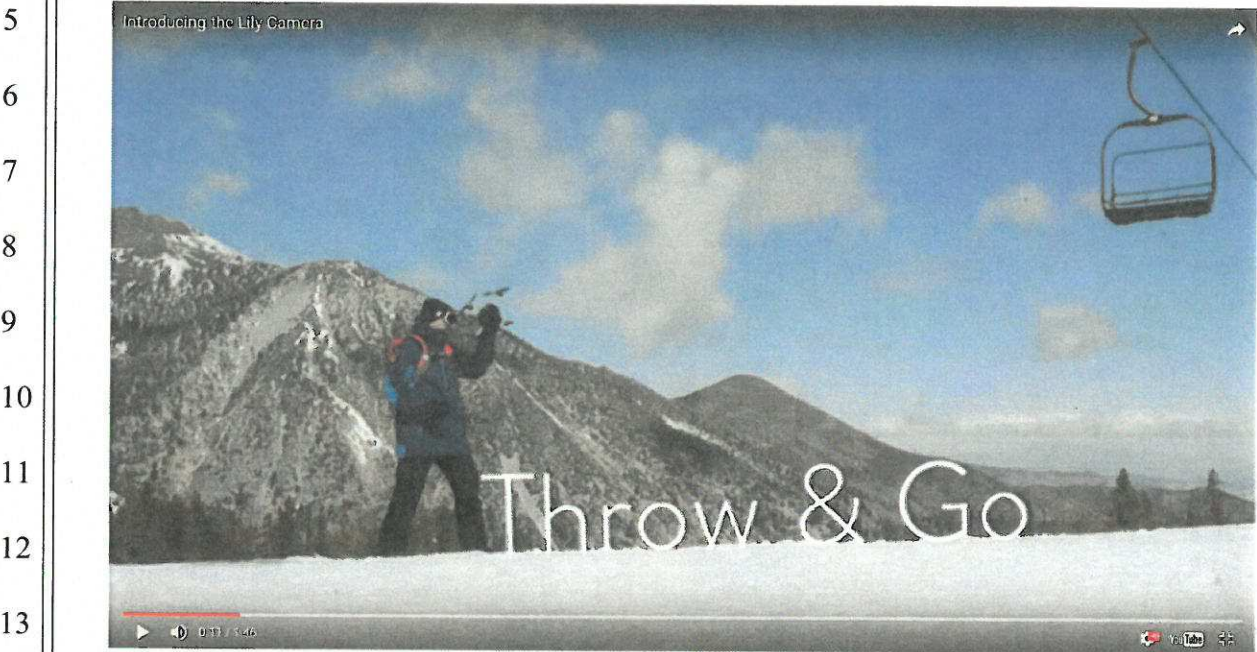
18 18. Lily Robotics engaged CMI Productions, LLC ("CMI") to produce the Promotional
19 Video. According to the contract for CMI's services, the purpose of the Promotional Video
20 was to "create excitement and drive sales" of the Lily Camera.

21 19. The Promotional Video introduced prospective consumers to the Lily Camera and its
22 purported functionality through snowboarding, kayaking, and family sequences. Consumers

23

¹ The video can be found on the homepage for defendant at <https://www.lily.camera/> (last

1 watching the video were introduced to Lily’s purported “Throw & Go” capability, as a
2 snowboarder throws the Lily into the air, and its rotary blades begin turning as it recovers into
3 flight. A second sequence shows the snowboarder throwing the Lily over a bridge, after which
4 the Lily dips and recovers out of the canyon.



23 accessed January 5, 2017).

1 20. The Promotional Video demonstrates Lily’s purported preset flight paths from the
2 point-of-view (“POV”) of the Lily Camera. In one sequence, a snowboarder goes down a
3 groomed ski run with ramps to jump. White text appears on the screen, highlighting Lily’s
4 purported capabilities. As the snowboarder approaches a ramp, the Promotional Video shows
5 the jump from the rear, with the text “Lily Shot | Follow” as the video continues.



15

16 21. In another sequence, the snowboarder is shown throwing the Lily over a bridge. The
17 Lily Camera begins to fly, and the next frame shows the same snowboarder now waving from
18 a bridge as the POV video pans up with the text “Lily Shot | Fly Up.” The video then
19 transitions to a scenic shot of the mountains and a lake with the snowboarder walking along
20 the bridge with the caption “Lily Shot | Side.”

21

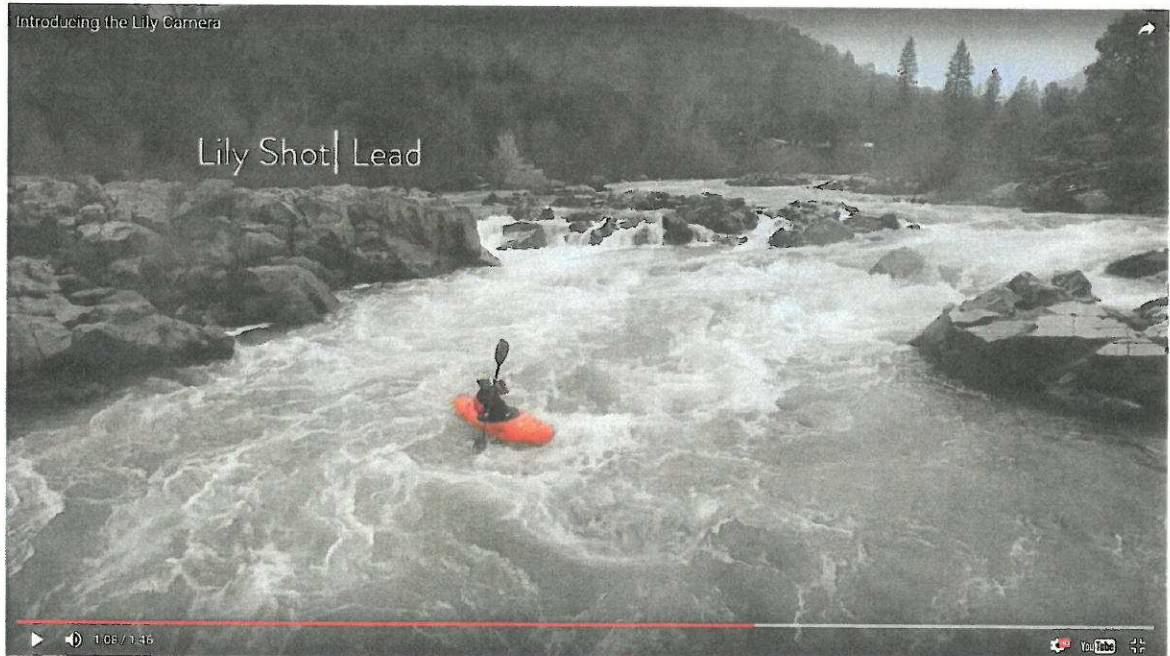
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22. The Promotional Video shows the Lily in water-sport situations with a kayaker displaying the purported POV “Lily Shot | Lead” and “Lily Shot | Follow” angles as the kayaker negotiates whitewater rapids.



1 23. The next scene of the video focuses on a multi-generational family out for a hike on a
2 grassy knoll. The matriarch takes the Lily Camera out of the bag and is shown successfully



12 throwing it in the air to demonstrate the ease of the “Throw & Go” functionality and the POV
13 “Lily Shot | Loop” feature.



1 24. The Promotional Video intersperses text in the frame that states what appear to be key
2 features of the Lily Camera, such as “Full HD SloMo 1080p60/720p60,” “Easy Landing,” and
3 “20min Flight Time.” It touts Lily’s “Tracking Device,” which records sound, tells the Lily
4 which “Lily Shot” the user wants to employ, and takes pictures. The video also shows text that
5 indicates that the Lily is “Waterproof,” “Ultra Portable,” and takes “12 MP” stills.





12 25. The Promotional Video repeatedly conveys to the viewer that video taken from the
13 perspective of the Lily was actually shot with a Lily. The POV video was labeled as such—
14 “Lily Shot | Lead,” “Lily Shot | Follow,” “Lily Shot | Fly Up,” “Lily Shot | Side,” “Lily Shot |
15 Loop.” Nearly all of these “Lily Shots” are immediately preceded by a user deploying a Lily
16 into action, telling the viewer that the next frame’s action was captured by a Lily. At no time
17 during the video is there any disclaimer stating or implying that these “Lily Shots” were not
18 really taken with a Lily Camera or that the shots are aspirational dramatizations of what Lily
19 Robotics hopes the Lily Camera will be able to do.

20 *Lily Robotics Intended to Mislead Potential Customers with the Promotional Video*

21 26. In fact, none of the video in the Promotional Video was shot by a Lily Camera. Most
22 notably, the POV footage used in the Promotional Video was filmed using a professional
23

1 camera drone called the DJI Inspire.² The DJI Inspire is a 4K-resolution, professional camera
2 drone that retails for over \$2000, which is two to four times more than Lily's offering price
3 between \$499 and \$899 presale. The DJI Inspire is not autonomous. To capture the POV
4 images shot by the DJI Inspire, two individuals were needed to operate the DJI Inspire. One
5 person piloted the drone with a traditional "joystick" controller while a second person
6 controlled the camera.

7 27. On information and belief, at the time of the filming of the Promotional Video, Lily
8 Robotics did not have a single Lily Camera prototype that had all of the features advertised in
9 the Promotional Video. Instead, its co-founders Balaesque and Bradlow, who were present
10 during the filming, brought several prototypes to use during the filming. Some, which looked
11 good on the outside but were not fully functional, were used only for "beauty shots." Others
12 had some functionality but did not look like the product being advertised. Some actually were
13 able to film video, but even those were merely Lily Camera prototypes with GoPro-branded
14 cameras mounted to them.

15 28. At the time of the filming of the Promotional Video, Lily Robotics knew that it did not
16 have a product that could do what was going to be advertised in the Promotional Video. Prior
17 to the filming, Balaesque was exceedingly concerned about anyone being able to deconstruct
18 the Promotional Video and determine it was a GoPro and not a Lily Camera that filmed POV
19 sequences. In an email chain from February 2015 with CMI Director Brad Kremer, Balaesque
20 wrote, "For VFL [View From Lily] shots, we will be using a Go[P]ro mounted on a Lily
21 prototype. However, we do not feel comfortable telling people that we shot VFL scenes with a

22
23 ² Ground footage was filmed using a professional Red Epic camera. Footage of a Lily Camera
drone in flight was also filmed by a DJI Inspire drone.

1 Go[P]ro (because the whole thesis of our product is that you do not need a Go[P]ro). Can you
2 modify a Go[P]ro image in post-processing so that people cannot tell that it was taken from a
3 Go[P]ro?...”³

4 29. Even after Kremer assured Balaresque that no one would be able to tell that the edited
5 VFL shots were taken from a GoPro, Balaresque was still not satisfied. He asked, “Are you
6 sure that the Go[P]ro lens does not create a unique deformation/pattern on the image? I am
7 worried that a lens geek could study our images up close and detect the unique Go[P]ro lens
8 footprint. But I am just speculating here: I don’t know much about lenses but I think we
9 should be extremely careful if we decide to lie publicly.”

10 30. Balaresque and others from Lily Robotics were intimately involved in editing the
11 Promotional Video. As stated above, in the final version of the Promotional Video, none of
12 the POV footage was taken with a Lily. The defendant knew this to be so at the time the
13 Promotional Video was published.

14 *Lily Robotics’s Marketing Belied How the POV Footage Was Actually Taken*

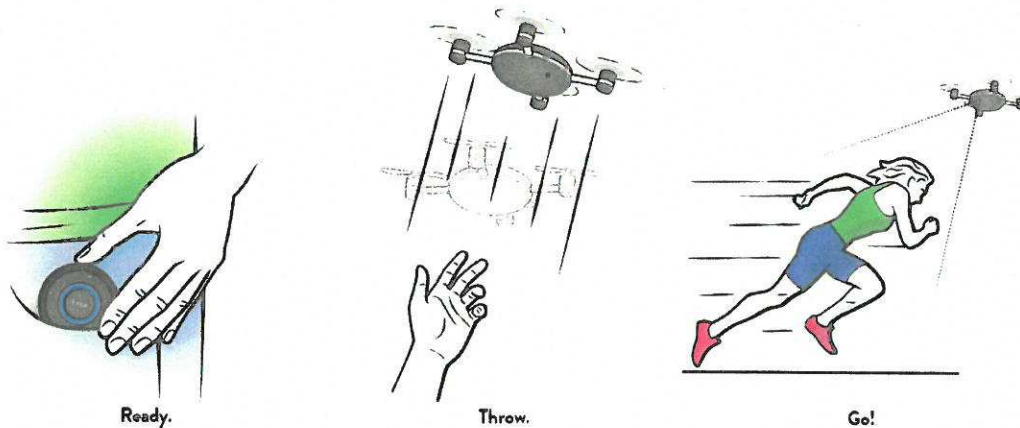
15 31. Even though the POV footage in the Promotional Video was filmed by an expensive,
16 professional drone being operated by two persons—one piloting the drone and one operating
17 the camera—Lily Robotics marketed the Lily as a simple product for those who were not
18 experienced with drones. In a company press release issued at the time of the pre-order
19 launch, the company stated, “The camera, completely engineered for tough aerial and water
20 environments, is built for outdoor action sports enthusiasts and for anyone who just wants a
21
22

23 ³ Witnesses used the terms “POV” and “VFL” to refer to the same shot—one from the
perspective of the Lily Camera drone.

1 simple, fun way to record and share their everyday activities.”⁴ The simplicity of the Lily is
2 targeted to everyday people, as seen by the marketing on the Lily website. It states, “Easy as 1,
3 2, 3. No setup required. Just throw Lily in the air to start a new video. It’s that simple.”

Easy as 1, 2, 3.

No setup required. Just throw Lily in the air to start a new video.
It's that simple.



32. Co-Founder/CEO Antoine Balaesque reinforced this idea by telling people that he
came up with the idea for a Lily Camera after seeing how his mother would take photographs
on their family vacations and would never be in the pictures. For instance, he told this story
during a presentation at UC Berkeley: “My whole family came here from France. We had this
great trip, and I remember very well browsing through pictures on the family camera and I
couldn’t see my mother in any of the images. She cared so much about all these memories,
and as a result, because she was taking the pictures, she was missing from all these memories.
So this is really how the first idea for a flying camera came about.”⁵

⁴ <http://www.enhancedonlinenews.com/news/eon/20150512006281/en> (last accessed January 5, 2017.)

⁵ <https://www.youtube.com/watch?v=nDgewzOj9N8> (last accessed January 5, 2017).

1 33. In fact, as early as December 2014, Balaesque sent an email containing production
2 ideas and scenes to include in the Promotional Video. One idea that appeared under the
3 heading “Awesome Scenes” was a scene where a “grandma picks up or throws Lily in the air
4 at some point in the video (shows that anyone can use Lily).”

5 34. Lily Robotics apparently reached the audience it intended to reach. In a January 2016
6 interview with Fortune magazine, a reporter spoke to Lily Robotics’s spokesperson Kelly
7 Coyne, and reported that “Coyne says that most of the company’s preorders come from people
8 who have never owned any sort of flying device before, and that the company’s employees are
9 ‘heads-down so that, when someone gets a Lily, they can experience what’s in that
10 [Promotional] video.’”⁶

11 *The Promotional Video Led to Millions of Dollars in Preorders*

12 35. In 2015 alone, Lily Robotics presold over 60,000 Lily Cameras for a total of about
13 \$34,000,000, driven in large part by the Promotional Video. According to media reports, the
14 Promotional Video was viewed 5.3 million times on YouTube during May 2015, and
15 Balaesque stated at the previously-mentioned appearance at UC Berkeley that the
16 Promotional Video had been viewed more than 30,000,000 times. In addition, Lily Robotics,
17 the Lily Camera, and the Promotional Video were featured in positive articles and videos
18 published by major media outlets, such as CNN, CNBC, Business Insider, Forbes, Wired, and
19 countless others.

20 36. Beginning on May 12, 2015, the date the Promotional Video was released, Lily
21 Robotics invited potential customers to go to its website, where they could click on a button to

22
23 ⁶ <http://fortune.com/2016/01/07/flying-camera-lily-sales-milestone/> (last accessed January 5, 2017).

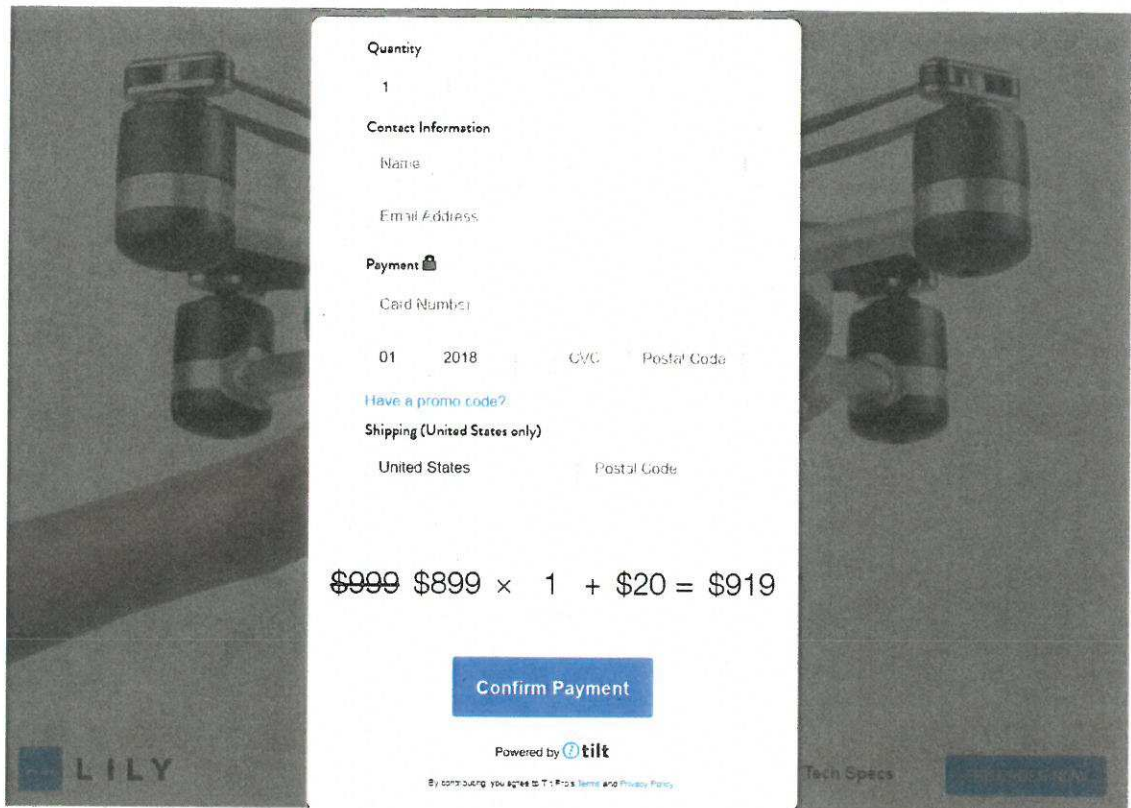
1 “PRE-ORDER NOW” and input their credit card number to pay hundreds of dollars for a Lily
2 Camera to be shipped to them at a later date. Lily Robotics made representations about
3 estimated ship dates to consumers throughout the presale period. It also told consumers that
4 they could request a refund at any time, and had a 30-day return policy once the product
5 actually shipped.



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37. Pre-ordering on the website was a simple task. When a customer clicked a button on the home page to “PRE-ORDER NOW,” a new screen would appear for the customer to input name, email address, credit card number, expiration date, CVC number, shipping country and postal code.⁷

⁷ <https://www.lily.camera/> (last accessed purchase pop-up screen on October 5, 2016)



38. In May 2015, consumers could preorder a Lily Camera for \$499, a substantial discount from the stated retail price of \$999. When preorders started on May 12, 2015, Lily Robotics told consumers that the camera drone would ship in February 2016. Preorders continued, with price increases in \$100 increments. On June 16, 2015, Lily's Facebook page stated that the new preorder price for the camera drone would be \$599 with a ship date in May 2016, though the initial preorders would still be shipped in February 2016.



We have reached the end of the initial pre-order period. We want to thank you all again for the huge amount of support Lily has received. We are currently laser-focused on putting Lily Cameras in your hands by February 2016.

Lily is now available for pre-order at \$599 with a May 2016 shipping date. Visit <https://www.lily.camera> for more information.

1 39. On July 13, 2015, there was another price increase from \$599 to \$699, with a stated
2 May 2016 ship date.

3
4  Lily
July 13, 2015 · 4*

5 TWO DAYS left to pre-order your Lily Flying Camera for \$599 with a May
6 2016 ship date, visit www.lily.camera to learn more!



11 **Lily - The Camera That Follows You**

12 The world's first true flying camera.

13 LILY CAMERA


14 40. On July 20, 2015, through its Facebook page, Lily Robotics continued to confirm a
15 February 2016 ship date for its initial month's preorders and a May 2016 ship date for orders
16 after June 16, 2015.

17
18  Lily
July 20, 2015 · 4*


19 Lily is working hard to prepare for our February ship date! Check out our
20 latest update on our blog! And thanks to all of our customers for filling out
21 our survey!

22 <https://www.lily.camera/blog/>

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 [redacted] if I now do a pre-order when is the planned shipping/delivery date?

Like · Reply · July 21, 2015 at 6:34am

 Lily Hi [redacted] if you pre-order by August 15, you can expect your order to ship in May 2016.

Like · Reply · 1 · July 23, 2015 at 6:57am

41. Another price increase occurred on October 1, 2015, with the price increasing from \$699 to \$799. No shipment date was provided in the Facebook post, though in a later October 15, 2015, Facebook post, Lily Robotics represented that “everything is on track for the dates we have stated.”

 Lily
September 18, 2015 · 46

As September winds down, so does the \$699 pre-sale price. Lily will be available for \$799 starting October 1st!



 [redacted] When can we expect its arrival?

Like · Reply · 1 · October 15, 2015 at 5:43pm

 Lily Hi [redacted] everything is on track for the shipping dates we have stated.

Like · Reply · 5 · October 15, 2015 at 5:46pm

1 42. On November 30, 2015, Lily Robotics's website blog published a post entitled "First
2 units off the production line!" and described the "world-class Chinese manufacturing partner"
3 producing the units, and how Lily's teams have been "refining our designs to ensure they are
4 built at the highest standards of quality" and to "expedite production."⁸

5 43. Through the end of 2015, the Lily Camera drone continued to be much anticipated. In
6 November 2015, it was announced as a winner of "Most Innovative" product, which would be
7 awarded at the January 2016 Consumer Electronics Show. In December 2015, the Lily
8 Camera was also featured on the front page banner of the Wall Street Journal for the article
9 "Gadgets That Will Define Life in 2016."

10
11  Lily
December 30, 2015 · 🌐

12 Lily starts out 2016 with a bang! We agree WSJ, Lily is a product that will
13 define life in 2016!



23 ⁸ <https://www.lily.camera/first-units-off-production-line/> (last accessed January 5, 2017).

1 **Insufficient Delay Notices and False and Misleading Reassurances to Customers**

2 *Delay Announcements And Promises that Preorder Proceeds Will Not Be Used to Pay*
3 *Operational Expenses*

4 44. On December 17, 2015, founders Balaesque and Bradlow posted a letter to Lily
5 Robotics’s webpage entitled “Shipping and Fundraising Update.”⁹ The letter, addressed to the
6 “Lily Community,” explained that “[t]o accommodate flight software optimization, hardware
7 improvements, and additional rounds of testing, we will be delaying pre-order shipments until
8 summer 2016.” The letter further explained technological challenges that necessitated a delay
9 in shipment, but sought to assuage consumer fears of funds being dissipated or that no product
10 would ship by announcing that Lily Robotics was “not using your money to run the company,”
11 that “[e]very pre-order dollar we’ve received has been placed in cold storage,” and that Lily
12 Robotics has secured “15 million dollars in private funding.” Lily Robotics told its customers

13 In the interest of transparency, we’d also like to shed some light on our financials. Some of you
14 have asked about the status of your pre-order funds. As you may know, we are a privately funded
15 company, not a crowd-funded project. This means that we are not using your money to run the
16 company. Every pre-order dollar we’ve received has been placed in cold storage. We have no
17 plans to use a single cent of that money until your Lily Camera goes into final production.

18 So how are we handling 37 salaries, operational costs, and R&D?

19 **Today, we’re pleased to share that we have secured a total of 15 million dollars in private**
20 **funding.** Our investors include Spark Capital, SV Angel, the Stanford-StartX Fund, as well as
21 musician Steve Aoki and football legend Joe Montana ([more details here](#)). We are very fortunate
22 to have the support of this incredible group of people. This backing allows us to progress toward
23 our ship date, expand the team as needed, and remain laser-focused on delivering a state of the
art flying camera to you in Summer 2016.

⁹ <https://www.lily.camera/shipping-fundraising-update/> (last accessed January 5, 2017).

1 that customers could get a full refund “anytime from the moment you purchase your Lily
2 Camera until 30 days after your order arrives, no questions asked.”

3 45. The next price increase was mentioned in a blog post on Lily’s website on February 8,
4 2016.¹⁰ No ship date was mentioned, though the price would rise on February 12, 2016, from
5 \$799 to \$899.

6
7 Most of you already have your Lily Camera pre-order locked and loaded, but we still want to give
8 you a head’s up that **as of next Friday, February 12th, pre-order pricing for Lily Camera will raise**
9 **to \$899 USD**. If you know someone who wants to join the Lily Community, we’d love to have
10 them! Be sure to let them know that they still have a week to order at the \$799 USD price tier.

11 With that, we leave you to catapult head first into the weekend. Make it a good one!

12 -Team Lily

13 46. On August 25, 2016, Lily Robotics again announced a shipment delay through another
14 letter signed by co-founders Balaesque and Bradlow.¹¹ Domestic pre-orders would now ship
15 between “December 2016 and January 2017,” and would be fulfilled in the order they were
16 placed. International pre-orders now had an indeterminate “later in 2017” shipping date due to
17 “regulatory and logistical constraints.” Balaesque and Bradlow continued to promise “your
18 pre-order dollars will continue to remain untouched.” They also included a bar chart with their
19 manufacturing plans, showing delivery of the first domestic unit approximately in the third
20 week of December. Again, Lily Robotics told its customers that “if you’d like a refund, please
21 contact support@lily.camera and we will process your request as soon as we can.”

22 ¹⁰ <https://www.lily.camera/notes-field/> (last accessed January 5, 2017).

23 ¹¹ <https://www.lily.camera/shipping-production-update-august-2016/> (last accessed January 5, 2017).

1 All United States pre-orders will ship between December 2016 and January 2017. Pre-orders
 2 will be fulfilled in the order in which they were placed. Due to regulatory and logistical constraints,
 3 international pre-orders will start shipping later in 2017. We will be sharing a more detailed rollout
 4 plan in the coming weeks. In the meantime, your pre-order dollars will continue to remain
 untouched. Here is our manufacturing plan:

		July	August	September	October	November	December	January
Production Timeline	Comments							
Beta Phase 1	Unsupervised testing with selected user group.	█	█	█				
Production Hardware	Final hardware build before mass production.			█				
Beta Phase 2	Unsupervised testing with expanded user group.			█	█	█		
Pre-Production Run	Assembly line final tests and validation.					█		
Mass Production	Assembly line ready for full scale production.					█	█	█
U.S. Pre-Sales Delivery	All pre-orders delivered in the United-States.						█	█

We Are Here First Unit Delivered

11
 12 47. The preorder price remained at \$899 until Lily closed the preorder rounds on October
 13 7, 2016.

14 The FTC "Mail Order" Rule

15 48. The Federal Trade Commission promulgated a series of regulations governing mail,
 16 Internet, and telephone orders of merchandise called the "Mail Order Rule," which applies to
 17 the preorders that Lily Robotics solicited. (See 16 C.F.R §§ 435.1-435.3.) The Mail Order
 18 Rule protects consumers by establishing clear guidelines for each step of the mail order
 19 process. For example, when accepting mail orders, a business must provide consumers a
 20 shipping date that is based on a reasonable belief that goods can be shipped in that time frame.
 21 (16 C.F.R. § 435.2(a).) The Mail Order Rule also delineates what a business must do if goods
 22 cannot be shipped by the date or dates promised. (16 C.F.R. § 435.2(b).) Further, it places an
 23 affirmative duty on a seller of goods to obtain a buyer's express consent when shipping of the

1 product will be delayed beyond 30 days. (16 C.F.R. § 435.2(b)(1) & (b)(2).) A seller must
2 automatically cancel a customer's order and refund the customer's money if the seller is
3 unable to secure the customer's express consent for the delay. (16 C.F.R. § 435.2(b)(1)(iii),
4 (b)(2)(ii), (c)(5).)

5 *Lily Robotics Did Not Have A Reasonable Basis For Any of Its Stated Shipping Dates*

6 49. The FTC provides guidelines to help businesses adhere to the Mail Order Rule.
7 Businesses should be ready to demonstrate the reasonableness of its stated shipping date with
8 factors such as the anticipated demand, the supply needed for shipment, the fulfillment
9 system's ability to fulfill orders, and adequate recordkeeping to ensure items can be shipped.
10 (<https://www.ftc.gov/tips-advice/business-center/guidance/business-guide-ftcs-mail-internet->
11 [or-telephone-order](https://www.ftc.gov/tips-advice/business-center/guidance/business-guide-ftcs-mail-internet-) (last accessed January 10, 2017).) When making a representation about a
12 shipping date, the seller's reasonable basis must be based on information that under the
13 circumstances would satisfy a reasonable and prudent businessperson, acting in good faith,
14 that the representation is true. (*Id.*) Lily Robotics knew or should have known shortly after
15 launching its pre-sale campaign that it could not make and ship enough Lily Cameras to fulfill
16 the orders by the dates it said it would, yet it continued to tell its customers it could for
17 months and months afterward.

18 50. Lily Robotics's initial solicitation for preorder sales in May 2015 promised a February
19 2016 ship date. Preorders placed after June 16, 2015, were promised a May 2016 ship date.
20 Lily Robotics, at the time it made these representations did not have a reasonable, good faith
21 belief to do so. Lily Robotics had a target preorder sales goal of \$2.5 million, based on its
22 revenue sharing agreement with CMI, which was entered into in December of 2014. Just two
23 months prior to the launch, defendant apparently did not have a fully functional prototype Lily

1 Camera to use during the filming of the Promotional Video. In the first two weeks of sales,
2 preorder sales for the Lily Camera totaled more than \$13 million, five times more than what
3 the goal target was for the entire preorder process for the Lily Camera. Moreover, Lily
4 Robotics had no mechanism for overseas shipment, customs, or dealing with regulations, and
5 yet accepted international orders, according to a witness. Within six weeks of preorder sales –
6 the end of June 2015 – preorder sales reached more than \$25 million, a ten-fold factor greater
7 than defendant’s preorder sales goal.

8 51. Despite the staggering number of preorders, defendant persisted in its unreasonable
9 representations that it would deliver product by February 2016 and May 2016. It lauded the
10 roll out of initial units from the factory in China on November 30, 2015, less than three weeks
11 before it announced its shipping delay to Summer 2016.

12 52. According to Lily Robotics’s blog, it appears that even by December 2015 there was
13 not a fully functional Lily Camera. The product update blog indicated on December 11, 2015,
14 that the “DVT units can now do takeoff and land in hand!” This was a feature purportedly
15 demonstrated in the Promotional Video, which was not achieved for another six months after
16 the Promotional Video’s release. Just a few days later on December 17, 2015, Lily Robotics
17 announced a shipping delay to Summer 2016.

18 53. Even as Lily Robotics delayed its shipment date to Summer 2016, defendant did not
19 have a reasonable basis to believe that it would actually be able to ship its product during that
20 time frame. The reason stated was not due to unforeseeable delays, but to “accommodate
21 flight software optimization, hardware improvements, and additional rounds of testing.”
22 Again, the product update blog indicated that Lily Robotics was still doing routine product
23 testing and improvements well beyond a “Summer” target date, and did not indicate anything

1 in terms of actual production. According to a witness, Lily Robotics picked the “Summer
2 2016” date because it “sounded good.”

3 54. To make matters worse, none of these shipping dates were reasonable when
4 considering international customers. According to a witness, Lily Robotics did not have in
5 place international shipment or support mechanisms in order to promise a ship date in
6 February 2016, May 2016, Summer 2016, or “later in 2017.” Even as Lily Robotics
7 announced yet another delay in their August 24, 2016, message to consumers, the company
8 indicated that “[d]ue to regulatory and logistical constraints, international pre-orders will start
9 shipping later in 2017.” There is no indication that there was a previous plan for international
10 regulations, customs, or shipments for more international customers in more than 200
11 countries. Now, with an indefinite ship date, Lily Robotics still has does not have any
12 reasonable basis to indicate they will be able to ship internationally.

13 55. Lily Robotics’s method of recordkeeping was also inadequate to support the
14 announced shipping dates. Defendant’s ordering system consisted of a single popup screen
15 that asked for limited information: name, email address, credit card information, country, and
16 zip code. It did not request a shipping address, phone number, or any alternate method of
17 communication with the customer. According to a witness, this was a deliberate decision on
18 the part of Lily Robotics to prevent “friction,” or loss of potential purchases by having
19 multiple screens of input.

20 56. According to a witness, approximately 50 percent of all emails sent to customers were
21 ever opened. By that measure, approximately 50 percent were never opened, and Lily
22 Robotics would not be able to guarantee contact the customer or have any other method of
23 contact than the email given at time of purchase. Given the fact that Lily Robotics did not

1 obtain a shipping address or other means of contact for customers, it stands to reason that Lily
2 Robotics would not be able to reach a significant number of customers in order to get a
3 shipping address.

4 *Lily Robotics Failed To Obtain Express Consent From Customers For Shipping Delays*
5 *And Failed To Cancel Orders and Give Automatic Refunds*

6 57. Once Lily Robotics knew it was unable to make the February 2016/May 2016
7 Shipping Dates, it was required by the Mail Order Rule to provide a delay offer giving an
8 option to each initial preorder customer to (a) consent to the delay until Summer 2016; or (b)
9 cancel the order and receive a refund (“Delay Offer”). Lily Robotics was also required to
10 inform the preorder customers that without the customer’s express consent to the delay, the
11 order would automatically be cancelled because the delay was beyond 30 days of the initial
12 shipping date.¹²

13 58. Lily Robotics failed to provide a proper Delay Offer to its customers regarding the
14 February 2016/May 2016 shipping dates. It did not receive express consent from its customers
15 to keep the orders open until a Summer 2016 shipping date, and yet it still kept the orders
16 open. Since it failed to do so, and did not actually ship within 30 days of the initial shipping
17 dates, Lily Robotics was required to cancel all orders and make refunds to all consumers. It
18 did not do so.

19 59. Lily Robotics was required to make a similar Delay Offer to all consumers who
20 ordered a Lily Camera when it made an additional delay notice to December 2016/January
21 2017 and “later in 2017.” Again, Lily Robotics did not provide the Delay Offer to its

22 _____
23 ¹² If Lily Robotics was able to actually ship within 30 days of the originally stated shipping
dates of February 2016 and May 2016, the Mail Order Rule did not require cancellation of the
order. Shipment did not occur, so this exception does not apply.

1 customers, did not ship any product within 30 days of the revised Summer 2016 shipping date,
2 did not obtain express consent from its customers for the delay to December 2016/January
3 2017/“later in 2017” delay, and did not cancel the orders and refund the purchase price to
4 consumers as the Mail Order Rule required.

5 60. Lily Robotics’s failure to comply with the Mail Order Rule was willful, intentional,
6 and corrupt corporate behavior. Not only was Lily Robotics aware of the Mail Order Rule, but
7 defendant affirmatively decided to disregard it and the consumer rights that the Mail Order
8 Rule was designed to protect. Part of the reason Lily Robotics decided to disregard the Mail
9 Order Rule was because it knew it might only be able to reach approximately half of its
10 customers by email, according to a witness. Absent express consent for the delay from those
11 unreachable customers, Lily Robotics was then required to cancel and refund those orders.
12 Not only would the mass cancellation have an effect on the profitability of the company, but it
13 would have rippling effects regarding Lily Robotics’s current valuation, its ability to secure
14 additional funding, and its general reputation in the marketplace. Lily Robotics intentionally
15 flouted the Mail Order Rule for its own corporate financial gain and to the financial detriment
16 of consumers.

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1 FIRST CAUSE OF ACTION
2 Business & Professions Code, § 17500, *et seq.*
3 (Untrue or Misleading Statements)

4 61. Plaintiff, the People of the State of California, restates and incorporates paragraphs 1
5 through 47 as though fully set forth herein.

6 62. Beginning at an exact date unknown to Plaintiff, but in any event within three years of
7 the filing of this complaint, and continuing to the present, defendant, with the intent to
8 perform services, or to induce members of the public to enter into obligations relation thereto,
9 made or disseminated or cause to be made or disseminated before the public in the State of
10 California statements concerning such services, or other matters of fact connected with the
11 performance thereof, which were untrue or misleading, and which defendant knew or
12 reasonably should have known were untrue or misleading and likely to deceive members of
13 the public, in violation of Business and Professions Code section 17500 *et seq.* Such
14 statements include but are not limited to all of the representations set forth and discussed in
15 paragraphs 17 through 47, inclusive.

16 SECOND CAUSE OF ACTION
17 Business & Professions Code, § 17200, *et seq.*
18 (Unfair Competition and Unlawful Business Practices)

19 63. Plaintiff, the People of the State of California, restates and incorporates paragraphs 1
20 through 60 as though fully set forth herein.

21 64. Beginning at an exact date unknown to Plaintiff, but in any event within four years of
22 the filing of this complaint, and continuing to the present, defendant engaged in and continues
23 to engage in acts of unfair competition and in unfair, deceptive or unlawful business practices
within the meaning of Business and Professions Code section 17200, *et seq.*, by engaging in
the unlawful business practices set forth in this complaint.

1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff prays for judgment as follows:

3 1. That pursuant to Business and Professions Code sections 17203 and 17535, and the
4 Court's inherent equitable powers, defendant; its successors and the assigns of all or
5 substantially all the assets of its business; its directors, officers, employees, agents,
6 independent contractors, partners, associates and representatives of each of them; and all
7 persons, corporations and other entities acting in concert or in participation with defendant, be
8 permanently restrained and enjoined from:

9 a. Making, disseminating, or causing to be made or disseminated, any misleading,
10 false or deceptive statements in violation of section 17500 of the Business and Professions
11 Code, including, but not limited to, the false or misleading statements alleged in the First
12 Cause of Action of this complaint; and

13 b. Engaging in any acts of unfair competition, in violation of section 17200 of the
14 Business and Professions Code, including but not limited to the unlawful business acts and
15 practices alleged in the Second Cause of Action of this complaint.

16 2. That pursuant to Business and Professions Code section 17536, defendant be ordered
17 to pay a civil penalty of Two Thousand Five Hundred Dollars (\$2,500.00) for each violation
18 of Business and Profession Code section 17500, according to proof.

19 3. That pursuant to Business and Professions Code section 17206, defendant be ordered
20 to pay a civil penalty of Two Thousand Five Hundred Dollars (\$2,500.00) for each violation
21 of Business and Profession Code section 17200, according to proof.

22 4. That pursuant to Business and Professions Code sections 17535 and 17203, and
23 pursuant to the Court's inherent equitable power, defendant be ordered to restore to every

1 person in interest all money and property which was acquired by defendant through its
2 unlawful conduct, according to proof.

3 5. That Plaintiff be awarded its costs of suit.

4 6. That Plaintiff be given such other and further relief as the nature of this case may
5 require and this Court deems proper to fully and successfully dissipate the effect of the
6 unlawful business practices and false or misleading representations contained herein.

7 Dated: 1/11/17

GEORGE GASCÓN
District Attorney

8
9 BY: 
10 EVAN H. ACKIRON
11 Managing Assistant District Attorney