

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MARYLAND**

WILLIAM DUMONE, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

BLUE GENTIAN, LLC, a Florida Corporation,  
NATIONAL EXPRESS, INC., a Connecticut  
Corporation, EMSON USA, INC., a New York  
Corporation, DAP PRODUCTS, INC., a  
Delaware Corporation, and DOES 1 through  
100, inclusive,

Defendants.

) Civil Action No.

) CLASS ACTION COMPLAINT

) JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT**

Plaintiff William Dumone, individually and on behalf of all other similarly situated purchasers of a X-Hose Pro, hereby brings this class action against DAP Products, Inc., Emson USA, Inc., and National Express, Inc., (collectively “Defendants”) and Does 1 through 10, inclusive, to challenge Defendants’ violations of Maryland and California state law and their unlawful and fraudulent business practices and alleges as follows:

**NATURE OF THE CASE**

1. This is a class action brought on behalf of a class of persons who purchased the X-Hose Pro, a consumer product designed, manufactured, marketed and distributed by Defendants.
2. The X-Hose Pro is available for purchase at major chain retail stores, including Rite Aid Corporation, Lowe’s Companies, Inc., Bed Bath & Beyond, Inc., as well as by telephone and online directly from Defendants’ website at [www.xhosepro.com](http://www.xhosepro.com).
3. The X-Hose Pro is available in four sizes: 25 feet, 50 feet, 75 feet or 100 feet.

4. Defendants promise “DAP XHose Pro is actually made from a tough, multi layered expandable inner hose and a folded outer covering made from durable super-strong webbing. Because of its patented design, my XHose Pro will never kink.” In reality, however, the X-Hose Pro often develops pinhole leaks, breaks, rips, cracks, leaks, explodes after minimal use and/or otherwise does not work as promised.

5. Defendants also advertise the X-Hose Pro as having a “money back guarantee.” In reality, however, purchasers only have 90 days to return the X-Hose Pro, and Defendants only refund “the purchase price less shipping and handling.” Thus, Defendants do not refund a consumer’s “money back” of the cost of the X-Hose Pro, and provide no refund whatsoever for returns after 90 days—despite many advertisements claiming that the product provides a “lifetime guarantee”.

6. Accordingly, Plaintiff Dumone seeks to represent a Class of all X-Hose Pro purchasers.

7. This action seeks to remedy Defendants’ deceptive, fraudulent and unlawful business conduct through injunctive relief.

#### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this class action pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, because the matter in controversy exceeds \$5 million, exclusive of interest and costs, and is a class action in which some members of the Class are citizens of states different than Defendants. See 28 U.S.C. § 1332(d)(2)(A).

9. This Court has personal jurisdiction over Defendant DAP because its corporate headquarters and principal place of business are located in this District. This Court also has personal jurisdiction over Defendants National Express and RPM because they are authorized to do business and are conducting business throughout the United States, including within this judicial district; Defendants have specifically marketed and sold the X-Hose in the United States, including this District; and they have sufficient minimum contacts with the various

states of the United States and/or sufficiently avail themselves of the markets of the various states of the United States through their promotion, sales, and marketing within the United States, including this District, to render the exercise of jurisdiction by this Court permissible.

10. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the acts giving rise to Plaintiffs' claims occurred in this District, or pursuant to 28 U.S.C. § 1391 (b)(3), as Defendant DAP's headquarters and principal place of business is within this District.

### **PARTIES**

11. Plaintiff is an individual residing in Los Angeles County, California.

12. In 2014, Plaintiff purchased the X-Hose Pro from a Rite Aid retail store in the Greater Los Angeles area. Prior to doing so, Plaintiff viewed and reasonably believed and relied upon advertising on Defendants' television infomercials and website, which were prepared and approved by Defendants and their agents and designed to encourage persons to purchase the X-Hose Pro. Plaintiff paid approximately \$39.99 for the X-Hose Pro.

13. Blue Gentian, LLC, ("Blue Gentian") is a Florida limited liability company having its principal place of business at 223 Skylark Point, Jupiter, Florida. Blue Gentian's principal, Michael Berardi, claims to have invented the X-Hose. Defendant Blue Gentian, directly and through its agents, has substantial contacts with and receives benefits and income from and through the State of Maryland. Upon information and belief, Defendant Blue Gentian is a company that created and/or authorized the false, misleading and deceptive advertisements for its X-Hose Pro product.

14. Defendant National Express, Inc., ("Nat'l. Express") is a corporation organized under the laws of the State of Connecticut. Defendant Nat'l. Express specializes in the design, manufacture, marketing and distribution of consumer products and markets its products, including the X-Hose Pro, through television, Internet, print advertising and retail chains. Upon information and belief, Natl. Express maintains its principal business office at 2 Morgan

Ave, Norwalk, CT 06851, but is registered to do business in California. Defendant Nat'l. Express, directly and through its agents, has substantial contacts with and receives benefits and income from and through the State of Maryland. Upon information and belief, Defendant Nat'l. Express is a company that created and/or authorized the false, misleading and deceptive advertisements for its X-Hose Pro product.

15. Defendant Emson USA, Inc., ("Emson") is a corporation organized under the laws of the State of New York. Defendant Emson specializes in the design, manufacture, marketing and distribution of consumer products and markets its products, including the X-Hose Pro, through television, Internet, print advertising and retail chains. Upon information and belief, Defendant Emson maintains its principal business office at 230 5th Ave, # 800, New York, NY 10001, but is registered to do business in California. Emson, directly and through its agents, has substantial contacts with and receives benefits and income from and through the State of Maryland. Upon information and belief, Emson is a company that created and/or authorized the false, misleading and deceptive advertisements for its X-Hose Pro product.

16. Defendant DAP Products, Inc., ("DAP") is a corporation organized under the laws of the State of Delaware. Defendant DAP specializes in the design, manufacture, marketing and distribution of consumer products and markets its products, including the X-Hose Pro, through television, Internet, print advertising and retail chains. Upon information and belief, DAP maintains its principal business office at 2400 Boston Street, Suite 200, Baltimore, MD 21224, but is registered to do business in California. Defendant DAP, directly and through its agents, has substantial contacts with and receives benefits and income from and through the State of Maryland. Upon information and belief, Defendant DAP is a company that created and/or authorized the false, misleading and deceptive advertisements for its X-Hose Pro product.

17. The true names and capacities, whether individual, corporate, associate or otherwise of certain manufacturers, distributors and/or their alter egos sued herein as DOES 1

through 100 inclusive are presently unknown to Plaintiff who therefore sues these Defendants by fictitious names. Plaintiff will seek leave of this Court to amend the Complaint to show their true names and capacities when the same have been ascertained. Plaintiff is informed and believes and based thereon alleges that DOES 1 through 100 were authorized to do, and did, business in Los Angeles County. Plaintiff is further informed and believes and based thereon alleges that DOES 1 through 100 were and/or are, in some manner or way, responsible for and liable to Plaintiff for the events, happenings, and losses hereinafter set forth below.

18. Plaintiff is informed and believes, and based thereon alleges that at all times relevant herein Defendants and each of the DOE Defendants were the agents, servants, employees, subsidiaries, affiliates, partners, assignees, successors-in-interest, alter egos or other representatives of each of the remaining Defendants and acted in such capacity in doing the things herein complained of and alleged.

19. In committing the wrongful acts alleged herein, Defendants and DOE Defendants planned and participated in and furthered a common scheme by means of false, misleading, and deceptive representations to induce members of the public to purchase the X-Hose Pro. Defendants participated in making such representations in that each disseminated or caused to be disseminated said misrepresentations.

20. Defendants and DOE Defendants, upon becoming involved with the advertising and marketing of Defendants, knew or should have known that the claims about the product were false, deceptive and misleading. Defendants and DOE Defendants affirmatively misrepresented the quality of the X-Hose Pro and the actual money back guarantee, in order to convince the public to purchase their product, resulting in profits of millions of dollars to Defendants and DOE Defendants, all to the damage and detriment of the consuming public. Thus, in addition to the wrongful conduct herein alleged as giving rise to primary liability, Defendants and DOE Defendants further aided and abetted and knowingly assisted each other in breach of their respective duties and obligations as herein alleged.

**FACTUAL ALLEGATIONS**

**A. DEFENDANTS' CLAIMS ABOUT X-HOSE PRO DO NOT HOLD WATER**

21. The X-Hose Pro is available for purchase at major chain retail stores (such as Rite Aid, Bed Bath & Beyond and Lowe's), online through such third party vendors as Amazon.com, as well as by telephone and online directly from Defendant's website at www.xhosepro.com. A true and correct copy of the packaging for X-Hose is attached hereto as Exhibit 1.

22. The X-Hose Pro is available in four sizes: 25 feet, 50 feet, 75 feet or 100 feet.

23. Defendants primarily market the product through "direct-response" television commercial spots and their website www.xhosepro.com.

24. Defendants utilize several performance, superiority, and testimonial claims in their advertising to sell the X-Hose Pro.

25. Indeed, the purported inventor of the X-Hose, "experienced infomercial marketer, [Michael] Berardi knew a hit when he saw one. The appeal of a lightweight, easy-to-handle hose was obvious. 'It solves a big problem,' Berardi said. 'Everyone hates hoses. They kink, they're heavy.'" See Jeff Ostrowski, *Inventor's hose a hit -- for rivals; Jupiter man accuses competitors of violating his patent for the shrinking Xhose*, Palm Beach Post, pg. 1D (September 29, 2013).

26. The X-Hose Pro television commercial makes several claims for the product:

(Michael Berardi): Are you confused by all the expanding hoses on the market? Don't be fooled by imitations.

(Michael Berardi): Hi, I'm Michael Berardi. I'm the inventor of the X-Hose, the original blue expanding hose. In fact, I've been awarded two U.S. patents for my invention. My X-Hose is the only patented expanding hose on the market and it bears the trusted DAP Products name. Now I'm very proud to introduce my new DAP X-Hose Pro. With solid brass fittings, a

wider 3/4 inch diameter and constructed from even stronger materials. Works like my original X-Hose. Just turn the water on and my X-Hose Pro automatically expands and expands and expands as you effortlessly guide it to where you need to go and when you're finished my X-Hose Pro will automatically follow you back and contract for easy storage. My DAP X-Hose Pro is great for homeowners and professionals.

(Heiko Sommerer, Whiteglove Mobile Detailing): I own a mobile detailing company and this hose saves me a lot of time and energy on my job. It never kinks, it is super lightweight, and hardly takes up any space in my trailer.

(Michael Berardi): This 50 foot 3/4 inch rubber hose weighs over 11 pounds. My 50 foot 3/4 inch X-Hose Pro weighs only about 2 pounds. My DAP XHose Pro is actually made from a tough, multi layered expandable inner hose and a folded outer covering made from durable super-strong webbing. Because of it's patented design, my X-Hose Pro will never kink. Get my new DAP X-Hose Pro for only \$29.95 but call right now and get a second X-Hose Pro free, just pay processing and handling. My DAP X Hose Pro also comes with a lifetime quality guarantee. If it ever fails just return it for a free replacement.

(Michael Berardi): Durable solid brass fittings, super strong materials strong enough to pull and SUV! 3/4 inch diameter for a powerful spray and incredibly light so call now! I promise you'll love it!

See <http://www.ispot.tv/ad/7tAp/xhose-pro-the-only-one>.

27. These claims are also repeated on the X-Hose Pro website, including the claims:

- Automatically expands and contracts
- "Full 3/4" inside hose diameter for a more powerful spray
- Multi-layer material is stronger than ever
- Lightweight hose with solid brass fittings
- 90 day money back guarantee

28. The claims set forth in paragraph 27 above are important to consumers in their purchasing decision.

29. The X-Hose website also contains the following claims:

**Revolutionary 2-in-1 Hose**



Made from a tough multi-layered expandable inner hose and a folded outer covering made from stronger webbing than the original XHOSE

**Strong & Reliable**



Super Lightweight hose weighs under two pounds and is perfect for homeowners and professionals

**Kink-Free Design**



Patented design will never twist, tangle, or kink!

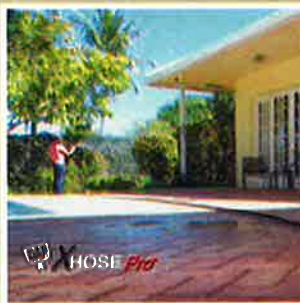
**The Original Expanding Hose Is Better Than Ever!**



- Strong and ultra lightweight
- Absolutely will not twist, tangle, or kink!
- Automatically EXPANDS when water is turned on
- CONTRACTS back in seconds when water is turned off



The original expandable garden hose, XHOSE by DAP®, is everything your typical garden hose isn't – it's lightweight, compact, and expandable, with a powerful spray and a kink-free design. Now the DAP® XHOSE Pro is better than ever, with solid brass fittings, a wider diameter and more powerful spray, and crafted from even stronger materials. Plus, it expands and contracts up to twice its length for easy maneuverability and convenient storage. The DAP® XHOSE Pro is like no hose in the world, making it easier than ever to work in the yard, wash your car, and more – you can even take it on the go, in your truck, boat, or RV.



30. The claims set forth in paragraph 27 are also repeated on the product retail packaging.

31. Defendants' claims of superiority to other expandable hoses, claims that the product is "strong & reliable" and that the product "is even better than ever, with solid brass fittings, a wider diameter and more powerful spray, and crafted from even stronger materials" are all false and deceptive.

32. Defendants know that the claims set forth above in paragraphs 25-31 are important to reasonable consumers in deciding whether to purchase X-Hose.

33. In reality, the X-Hose Pro fails to live up to the many bold claims and representations Defendants make to induce the unsuspecting consumer to purchase the defective product—indeed, according to many consumers the product is "junk," "garbage," and a "scam."

34. The egregious record of consumer experience with the X-Hose Pro tells the story. On one of the biggest third-party vendor sites selling the product, Amazon.com, the X-Hose Pro customer rating based off a large sample size reveals an embarrassing story. For instance, on Amazon.com the X-Hose Pro receives a one star rating (the lowest possible) out of a possible five stars for one-hundred and four (104) of its one-hundred and forty-four (144) reviews, a staggering 72% of all customer reviews. In fact, the product reviews are so poor that Amazon has actually stated: "While this item is available from other marketplace sellers on this page, it is not currently offered by Amazon.com because customers have told us there may be something wrong with our inventory of the item, the way we are shipping it, or the way it's described here. (Thanks for the tip!) We're working to fix the problem as quickly as possible."<sup>1</sup>

35. Besides the hard numbers, looking to the actual descriptions of customer reviews digs the hole even deeper for this shoddy product. One review representative of the common on-star experience states the following:

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<sup>1</sup> <http://www.amazon.com/9104-Original-Expanding-Fittings-50-Feet/dp/B00FGPZOOG>

“These are total garbage. In only one season three of them failed, all within one month of purchase. The light weight and expandability are great features but the hose has no durability whatsoever. Everyone I know who's bought these has had the same experience, leaks, holes, and burst seams in a short time after purchase. These hoses are a scam -- don't waste your money.”

36. Another consumer writes:

“These hoses are pure junk and a complete rip off. I have four of them, rather had 4. Three have simply burst while in use and amazingly within 10 to fifteen minutes on the initial pressurization from the spigot. I have normal home water pressure. The hoses are just cheap material and burst within minutes of being used. A good idea but this is NOT the product.”

37. Reviews on bedbathandbeyond.com tell the same story:

“I bought this hose on April 15th with high expectations. The hose only lasted 15 days and I followed all of the directions. I was initially very excited about it as it was everything they advertised, UNTIL IT BURST!!!! I was out watering plants and cleaning bird baths today, heard a noise, turned around and saw that the casing had split and the hose was ballooning out and then just popped. This hose is not worth it. Don't waste your money!!!!” See <http://www.bedbathandbeyond.com/store/product/dap-reg-50-foot-xhose-pro/1042331445>.

38. Another consumer writes:

“I created an account just so I could leave a review to let folks know not to buy it...and I NEVER leave reviews, just so upset. Bought this hose which I

thought was expensive, because I thought it would at least work well (and i had a gift card)..... By the 3rd use its already spraying/leaking water out the connector from the hose to the metal end where you attach a sprayer. I bought a 19\$ cheap hose for the back that works better. Don't waste your money or you deserve what you get , you've been warned." *See id.*

39. Had Plaintiff seen or known about these negative reviews, or that the product does not and cannot work as advertised, he would not have paid money and purchased a product that, ultimately, failed for him as well.

40. Like the other complaining consumers, Plaintiff also had negative experiences with his X-Hose Pro because it did not work as advertised.

**B. DEFENDANT'S "GUARANTEE" PROGRAM IS A FARCE**

41. Defendants also advertise the Hose as having a "lifetime guarantee" and a "90 day money back guarantee." In reality, however, if purchasers return the X-Hose Pro, Defendants only refunds "the purchase price less shipping and handling," plus consumers must bear the cost of returning the defective hose. Thus, Defendants do not refund "100%" of the cost of the X-Hose, and provides no refund whatsoever for returns after 90 days.

42. When consumers, including members of the Class, purchase the X-Hose Pro and later request their "money back" from Defendants, they have a difficult time contacting Customer Service, if ever. Thus, when the X-Hose breaks, the consumer faces an unsatisfactory choice. He can right the wrong if he returns the products promptly. However, the cost of doing so is high: he will lose the excessive shipping and handling charges he has already paid, and incur a return shipping charge at a high single order rate.

43. Alternatively, the consumer can simply bear the loss and endure a sense of violation. By setting up the shipping and handling charges and "guarantee program" the way they have, Defendants effectively- and deliberately - chill most consumers from taking action

to return the misrepresented products.

44. Defendants' "money back guarantee" is nothing but an empty promise that has duped numerous paying customers and left them with no satisfaction and no money back as promised.

### **CLASS ACTION ALLEGATIONS**

45. Plaintiff brings this action on behalf of himself and on behalf of all other persons similarly situated. The Class which Plaintiff seeks to represent is: All individuals who purchased the X-Hose Pro since November 19, 2010. Alternatively, Plaintiff seeks to represent a California class of purchasers: All individuals in California who purchased the X-Hose Pro since November 19, 2010. The class and alternative California class will be referred to collectively as the "Class."

46. Excluded from the Class are Defendants' officers, directors, and employees, and any individual who received remuneration from Defendants in connection with that individual's use or endorsement of the X-Hose Pro. Plaintiff reserves the right to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified.

47. Ascertainability: Defendants sell the X-Hose Pro in retail chains and also via internet and telephone. Thus, many purchasers can easily be identified by Defendants' own business records, billing systems, telephone records and other means readily available to Defendants, and thus by Plaintiff, through minimally intrusive discovery. Further, because each and every sale is based on the same uniform misrepresentations on these websites and radio and television commercials, as well as the X-Hose Pro packaging, the Class is objectively defined in such a way that individual identification is possible from Defendants' records, to the extent this becomes necessary. The Class is identifiable and readily ascertainable. The names and addresses of many of the class members are available through business or public records, particularly those class members who purchased X-Hose Pro

directly from Defendants by phone or online. In fact, since Defendants' products can be purchased directly from Defendants, either over the phone or online, Defendants have a record of engagement with many Class members, which includes contact information. Indeed, Defendants collect and retains this information so it can then sell it to third party marketers. Notice can be provided to such purchasers via e-mail and First Class Mail using techniques and a form of notice similar to those customarily used in class actions, and notice can also be accomplished by internet publication, radio, newspapers, and magazines.

48. Numerosity: Plaintiff does not know the exact number of members of the putative class. Upon information and belief, Plaintiff believes tens of thousands, if not hundreds of thousands, of persons purchased the X-Hose Pro, either directly from Defendants, and that members of the Class are numerous and geographically dispersed. While the exact number and identities of the Class members are unknown to Plaintiff at this time, due to the volume of internet and internet advertising, Plaintiff is informed and believes that the total number of Class members will be in the thousands, and that members of the Class are numerous. The exact number of class members can be ascertained through appropriate investigation and discovery. The Class is sufficiently numerous because tens of thousands or hundreds of thousands of persons have purchased the product during the Class Period. Joinder of these individuals is impracticable due to the relatively small monetary recovery for each class member in comparison to the costs associated with separate litigation. The disposition of their claims in a Class Action will benefit the parties and the Court.

49. Well-Defined Community of Interest: There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact common to the Class predominate over questions which may affect individual Class members. Common questions of law and fact include, but are not limited to, the following:

- a. Whether Defendants falsely and deceptively represented, marketed and/or advertised the uses and benefits of its product;

- b. Whether Defendants' advertising of its product is illegal, false, misleading and/or deceptive;
- c. Whether Defendants knew or should have known that the representations were false, misleading and/or deceptive;
- d. Whether Defendants' conduct is an unlawful, unfair and/or fraudulent business act or practice within the meaning of Business and Professions Code section 17200, *et seq.*;
- e. Whether Defendants' advertising is untrue or misleading within the meaning of Business and Professions Code section 17500, *et seq.*;
- f. Whether Defendants' misrepresentations and omissions regarding its product are likely to deceive reasonable purchasers;
- g. The remedies to which the wrongful conduct of Defendants entitles the Class members;
- h. Whether Defendants collect and sell consumer information;
- i. Whether the Class is entitled to injunctive relief prohibiting the challenged wrongful practices and enjoining such practices in the future;
- j. Whether the Class is entitled to restitution;
- k. Whether Plaintiff and the Class are entitled to attorneys' fees and expenses, and in what amount.

50. Typicality: Plaintiff's claims are typical of the claims of the Class, in that Plaintiff and the putative Class members purchased the X-Hose Pro during the Class period and were exposed to Defendants' unfair, deceptive and misleading representations. Plaintiff and the Class have been subject to Defendants' unfair, illegal, fraudulent and deceptive business practices as described herein.

51. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff is a typical purchaser of Defendants' product and has no conflicts of interest with any member of the proposed Class. Plaintiff has retained

counsel that is competent and experienced in class actions and other complex litigation. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class, and Plaintiff's Counsel has the financial resources to do so.

52. Superiority: Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendants' false representations, and will continue to suffer harm as a result of Defendants' unlawful and wrongful conduct. A class action is superior to other available methods as a means of fairly and efficiently adjudicating this controversy. The expense and burden of individual litigation would make it impracticable or impossible for Class members to prosecute their claims individually.

53. The trial and litigation of the Class claims are manageable. Individual litigation of the legal and factual issues raised by Defendants' conduct would increase delay and expense to all parties and the court system. The class action device presents far fewer management difficulties and provides the benefits of a single, uniform adjudication, economies of scale, and comprehensive supervision by a single court.

54. Defendants have acted on grounds generally applicable to the entire Class, thereby making final injunctive relief appropriate with respect to the Class as a whole. The prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants.

55. Absent a class action, Defendants will likely retain the benefits of its wrongdoing without any recourse or compensation to those who have been damaged from Defendants' actions. Because of the small size of the individual Class members' claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein. Absent a representative action, the Class members will continue to suffer losses and Defendants will be allowed to continue these violations of law and retain Defendants ill-gotten gains.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT ("CLRA"),**  
**CALIFORNIA CIVIL CODE §§ 1750, et seq.**

**(By Plaintiff and the proposed CLRA Sub-Class against Defendants and all DOE Defendants)**

56. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs, and incorporates the same as if set forth herein at length.

57. Plaintiff brings this claim under Civil Code sections 1750, et seq., the Consumer Legal Remedies Act ("CLRA"), on behalf of himself and a CLRA Sub-Class consisting of all California residents who purchased the X-Hose Pro since November 19, 2011.

58. As alleged above, Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and have lost money or property as a result of Defendants' actions as set forth herein.

59. Prior to the filing of this action, Plaintiff purchased the X-Hose Pro for his own personal use. In so doing, Plaintiff relied upon the false representations above in paragraphs 28-31. These statements are likely to deceive reasonable consumers. These statements are also important to reasonable consumers in their purchasing decision.

60. Plaintiff used the X-Hose Pro product, but it did not work as advertised.

61. Additionally, there was no money back guarantee as Defendant promised.

62. Section 1770(a)(5) of the CLRA prohibits representing goods "have sponsorship, approval, characteristics...uses, benefit...which they do not have[.]" Defendants violated this provision by representing that the X-Hose Pro would shrink back to its original size and that it was of a strong and sturdy character, when in reality the X-Hose Pro does not shrink down to its original size, fit in its container, frequently breaks, tears, pops holes in and/or explodes. Defendants further violated this provision by advertising that the product was covered by a "100% money back guarantee."

63. Section 1770(a)(7) of the CLRA prohibits representing goods "are of a particular standard, quality, or grade...if they are of another." Defendants violated this provision by

representing that the product would shrink back to its original size and that it was of a strong and sturdy character, when in reality the X-Hose Pro does not shrink down to its original size, fit in its container, frequently breaks, tears, pops holes in and/or explodes. Defendants further violated this provision by advertising that the product was covered by a “money back guarantee.”

64. Section 1770(a)(9) of the CLRA prohibits advertising products “with the intent not to sell them as advertised.” Defendants violated this provision through selling a product that is worthless and does not work as advertised, as well as refusing to honor its “money back guarantee” as promised when customers attempted to return the product after it failed but were refused by Defendants.

65. Section 1770(a)(14) of the CLRA prohibits “[r]epresenting that the subject of a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law. Defendants violated this provision by advertising that the product was covered by a “100% money back guarantee.” Defendants further violated this provision by concealing its policy and practice of collecting and selling the personal identifiable information of members of the Online Purchaser Class.

66. Section 1770(a)(17) of the CLRA prohibits “[r]epresenting that a consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.” Defendants violated this provision by promising consumers would receive their “money back” when in reality, they could only receive the economic benefit if they requested the benefit within ninety days of the transaction and forfeited the amount equal to the cost of shipping and handling, plus the costs to return the product to Defendants.

67. Defendants’ actions as described herein were done with conscious disregard of Plaintiff’s rights, and Defendants were wanton and malicious in its concealment of the same.

68. Defendants’ wrongful business practices constituted, and constitute, a continuing course of conduct in violation of the CLRA since Defendants are still representing that the X-

Hose Pro has characteristics and abilities which the product does not have, and has thus injured Plaintiff and the Class.

69. On July 31, 2014, Plaintiff sent Defendants notice advising Defendants it violated, and continues to violate, Section 1770 of the CLRA ("the Notice") concurrently with the filing of this Complaint. The Notice complies in all respects with section 1782 of the CLRA. Plaintiff sent the Notice by Certified U.S. Mail, return-receipt requested to Defendants at Defendants' principal places of business. Plaintiff's Notice advised Defendants they must correct, repair, replace or otherwise rectify the product alleged to be in violation of Section 1770, including that Defendants cease falsely and misleadingly advertising its X-Hose Pro product and that Defendants provide restitution and other remedies to its customers who paid money to Defendants said product. However, Plaintiff advised Defendants that if they fail to respond to Plaintiff's demand within thirty (30) days of receipt of the Notice, pursuant to Sections 1782(a) and (d) of the CLRA, Plaintiff will file a complaint to seek restitution, damages, actual damages and punitive damages.

70. Defendants ignored Plaintiff's CLRA Notice.

**SECOND CAUSE OF ACTION**  
**FALSE AND MISLEADING ADVERTISING IN VIOLATION OF**  
**CALIFORNIA BUSINESS & PROFESSIONS CODE § 17500, et seq.**

**(By Plaintiff and the proposed Class against Defendants and all DOE Defendants)**

71. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs, and incorporates the same as if set forth herein at length.

72. Plaintiff is a "person" under Business and Professions Code § 17506.

73. This cause of action is brought pursuant to Business and Professions Code § 17500, et seq., on behalf of a Class consisting of all persons who purchased a X-Hose Pro since November 19, 2010. Excluded from the Class are Defendants' officers, directors, and employees, and any individual who received remuneration from Defendants in connection with that individual's use or endorsement of its product.

74. Defendants are aware that the claims it makes about its product in its marketing and advertising are false, misleading, without basis and unreasonable.

75. In its marketing and advertising, Defendants engaged in the deceptive conduct alleged hereinabove, which included deceptive and untrue representations regarding the X-Hose Pro. Defendants made these representations to induce the public to purchase the product.

76. In its marketing and advertising, Defendants make knowingly false and misleading statements regarding the uses and benefits of the product.

77. Defendants also represented that consumers would receive a “money back guarantee” that it did not in reality honor, and actually results in guaranteed S&H profits to Defendants.

78. As alleged in the preceding paragraphs, Defendants’ misrepresentations and omissions of the material facts detailed above in its marketing and advertising constitute an unfair and fraudulent business practice within the meaning of California Business & Professions Code § 17200.

79. There were reasonably available alternatives to further Defendants’ legitimate business interests, other than the conduct described herein.

80. All of the conduct alleged herein occurred and continues to occur in Defendants’ business. Defendants’ wrongful conduct is part of a pattern or generalized course of conduct that Defendants continue to repeat hundreds of times daily.

81. Plaintiff and the Class were misled into purchasing the X-Hose Pro by Defendants’ deceptive conduct and misleading advertising as alleged hereinabove.

82. Plaintiff and the Class were misled and believed that Defendants’ product had uses and benefits which it does not, because the misrepresentations in Defendants’ marketing and advertising and omissions were uniform and material.

83. In addition, Defendants’ use of various forms of advertising media to advertise, call attention to or give publicity to the sale of the product which are not as represented constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, and an

unlawful business practice within the meaning of Business & Professions Code §§ 17531 and 17200. Further, Defendant's advertisements have deceived and are likely to continue deceiving the consuming public, in violation of Business & Professions Code § 17500.

84. Plaintiff and the Class have suffered injury in fact and have lost money as a result of Defendants' false representations. Indeed, Plaintiff paid money for the X-Hose Pro in reliance upon Defendants' false claims in its packaging for X-Hose, commercials, its website, or on third-party vendor websites. Plaintiff would not have purchased the product if he had known that Defendant's representations and advertising as described above were false.

**THIRD CAUSE OF ACTION**  
**FALSE AND MISLEADING ADVERTISING IN VIOLATION OF BUSINESS &**  
**PROFESSIONS CODE § 17200, et seq. (Unfair and Fraudulent Conduct Prongs of the**  
**Act)**

**(By Plaintiff and the proposed Class against Defendants and all DOE Defendants)**

85. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

86. Plaintiff is a "person" under Business and Professions Code § 17201.

87. This cause of action is brought pursuant to Business and Professions Code § 17200, et seq., on behalf of a Class consisting of all persons who purchased a X-Hose Pro since November 4, 2010. Excluded from the Class are Defendants' officers, directors, and employees, and any individual who received remuneration from Defendants in connection with that individual's use of the product.

88. Business and Professions Code § 17200, et seq., prohibits any "unfair, deceptive, untrue or misleading advertising." For the reasons discussed above, Defendant has engaged in and continues to engage in unfair, untrue and misleading advertising in violation of Business and Professions Code § 17200.

89. Defendants engaged in the deceptive conduct alleged hereinabove, which included deceptive and untrue representations regarding Defendant's product and its uses and benefits. Defendant made these representations to induce the public to purchase the product.

90. Defendants' product fails to work as promised as discussed above. The X-Hose Pro consistently explodes or pops leaks early into use, if not on first-use, which renders the product useless. In addition, Defendant Defendants routinely refuses to honor its specious "% money back guarantee."

91. As alleged herein, Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Defendant's actions. Specifically, Plaintiff paid money for the X-Hose Pro product, believing it would work as promised. Prior to purchasing Defendant's X-Hose Pro, Plaintiff relied upon the false representations Defendant made, as described in detail above. Plaintiff would not have purchased the X-Hose Pro had he known Defendant's claims about its product were false.

92. As alleged in the preceding paragraphs, the acts, omissions, misrepresentations, practices and non-disclosures made by Defendant constitute "unfair" practices within the meaning of California Business & Professions Code § 17200.

93. Defendant's business practices, as alleged herein, are unfair because: (1) the injury to Plaintiff and the Class is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3) Plaintiff and the Class could not reasonably have avoided the information because Defendant misled the consuming public by means of the claims it made with respect to the X-Hose Pro, as set forth herein, and there were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described above.

94. Defendant's business practices as alleged herein are fraudulent because they are likely to deceive consumers into believing that Defendant's X-Hose Pro has benefits it does not have.

95. In addition, Defendant's use of various forms of marketing and advertising

media to advertise, call attention to, or give publicity to the sale of goods or merchandise which are not as represented in any manner, constitutes unfair competition, unfair, deceptive, untrue or misleading advertising, and an unlawful business practice within the meaning of Business & Professions Code §§ 17531 and 17200. Further, Defendant's advertisements have deceived and are likely to continue deceiving the consuming public, in violation of Business & Professions Code § 17500.

96. Plaintiff and the Class were misled into purchasing Defendant's product by Defendant's deceptive conduct described herein. Defendant's misrepresentations and omissions are uniform and would be considered material to the average consumer.

97. All of the conduct alleged herein occurred and continues to occur in Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct continues to be repeated daily.

98. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiff and members of the Class seek an order of this Court enjoining Defendant from continuing to engage, use, or employ the conduct described above. Likewise, Plaintiff and members of the Class seek an order that requires Defendant to disclose such misrepresentations about the X-Hose Pro's capabilities and the so-called "money back guarantee."

**FOURTH CAUSE OF ACTION**  
**FALSE AND MISLEADING ADVERTISING IN VIOLATION OF**  
**BUSINESS & PROFESSIONS CODE § 17200, et seq. (Unlawful Conduct Prong of the**  
**Act)**

**(By Plaintiff and the proposed Class against Defendants and all DOE Defendants)**

99. Plaintiff repeats and realleges the allegations set forth above, and incorporates the same as if set forth herein at length.

100. Plaintiff is a "person" under Business and Professions Code § 17201.

101. This cause of action is brought pursuant to Business and Professions Code § 17200, et seq., on behalf of a Class consisting of all persons who purchased a X-Hose Pro

since November 19, 2010. Excluded from the Class are Defendants' officers, directors, and employees, and any individual who received remuneration from Defendant in connection with that individual's use or endorsement of its product.

102. California Business and Professions Code section 17200 prohibits any "unlawful, unfair, or fraudulent business act or practices." Defendants have engaged in unlawful business acts and practices in violation of the UCL.

103. Section 17200's prohibition of "unlawful" business acts or practices proscribes any business acts or practices that violate any law. Virtually any law or regulation — federal, state, statutory or common law — can serve as a predicate for a section 17200 unlawful prong violation. Section 17200 "borrows" violations of other laws and treats them as unlawful acts or practices independently actionable under section 17200.

104. Here, Defendants' conduct violates Civil Code section 1750, et seq. (the Consumer Legal Remedies Act or "CLRA") and Business & Professions Code section 17500 (California's False Advertising Law or "FAL") and thus is unlawful under section 17200.

105. Defendants engaged in the unlawful and deceptive conduct alleged above, which included deceptive and untrue representations regarding Defendants' product and its uses and benefits. Defendants made these representations to induce the public to purchase the product. As alleged in the preceding paragraphs, the acts, omissions, misrepresentations, practices and non-disclosures made by Defendants constitute illegal and unlawful business practices within the meaning of California Business & Professions Code § 17200 and Civil Code 1770(a).

106. There is no appropriate or legitimate business justification for the actions and conduct which have facilitated Defendants' unlawful business acts.

107. There were reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein.

108. All of the conduct alleged herein occurred and continues to occur in Defendant's business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct repeated thousands of times daily.

109. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiff and the members of the Class seek an order of this Court enjoining Defendants from continuing to engage, use, or employ their practice of advertising the sale of the X-Hose Pro. Likewise, Plaintiff and the members of the Class seek an order that requires Defendants to disclose such misrepresentations.

**FIFTH CAUSE OF ACTION**  
**VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT FOR BREACH OF**  
**IMPLIED WARRANTY OF MERCHANTABILITY,**  
**CAL CIV. CODE §§ 1791.1 & 1792**

**(Plaintiff Dumone, individually and on behalf of the California Class)**

110. Plaintiffs re-allege and incorporate by reference paragraphs 1-55 above as if fully set forth herein.

111. Plaintiff Dumone brings this Count individually and on behalf of the California Class.

112. Plaintiff Dumone and the other California Class members who purchased the X-Hose in California are "buyers" within the meaning of Cal. Civ. Code § 1791(b).

113. The X-Hoses are "consumer goods" within the meaning of Civ. Code § 1791 (a).

114. Defendants are "manufacturer[s]" of the X-Hoses within the meaning of Cal. Civ. Code § 1791(j).

115. Defendants impliedly warranted to Plaintiff Dumone and the other California Class members that the X-Hoses were "merchantable" within the meaning of Cal. Civ. Code §§ 1791.1(a) & 1792. However, the X-Hoses do not have the quality that a buyer would reasonably expect.

116. Cal. Civ. Code § 1791.1(a) states:

“‘Implied warranty of merchantability’ or ‘implied warranty that goods are merchantable’ means that the consumer goods meet each of the following:

- 1) Pass without objection in the trade under the contract description.

- 2) Are fit for the ordinary purposes for which such goods are used.
- 3) Are adequately contained, packaged, and labeled.
- 4) Conform to the promises or affirmations of fact made on the container or label."

117. The XHoses would not pass without objection in the trade under the contract description because they are defective, prone to leaking, seeping, and bursting and are not fit for their ordinary and intended purpose as a garden hose.

118. The XHoses are not fit for their ordinary purposes because they are defective and prone to leaking, seeping, and bursting.

119. The XHoses are not adequately contained, packaged and labeled because the product containers, packaging and labeling represent that the XHoses are tough, durable, and long-lasting when they are in fact defective, prone to leaking, seeping, and bursting and are not fit for their ordinary and intended purpose as a garden hose.

120. The XHoses do not conform to the promises or affirmations of fact made on their container or labels because the product containers and labels represent that the XHoses are tough, durable, and long-lasting when they are in fact defective, prone to leaking, seeping, and bursting and are not fit for their ordinary and intended purpose as a garden hose.

121. Defendants breached the implied warranty of merchantability by manufacturing and selling XHoses that would not pass without objection in the trade under the contract description; are not fit for the ordinary purposes for which such goods are used; are not adequately contained, packaged, and labeled; and do not conform to the promises or affirmations of fact made on their containers or labels. Furthermore, these defects have caused Plaintiff and the other Class members to not receive the benefit of their bargain and have caused the XHoses to depreciate in value.

122. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff Dumone and the other California Class members received goods whose falsely marketed condition substantially impairs their value to Plaintiff Dumone and

the other California Class members. Plaintiff Dumone and the other California Class members have been damaged as a result of the diminished value of the XHoses.

123. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiff Dumone and the other California Class members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of the XHoses or the overpayment or diminution in value of the XHoses.

124. Pursuant to Cal. Civ. Code § 1794, Plaintiff Dumone and the other California Class members are entitled to costs and attorneys' fees.

**SIXTH CAUSE OF ACTION**  
**BREACH OF THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

**(Plaintiff Dumone, individually and on behalf of the Class)**

125. Plaintiffs re-allege and incorporate by reference paragraphs 1-55 above as if fully set forth herein.

126. Plaintiff brings this count on behalf of themselves and the members of the Class against Defendants.

127. At the time of purchase, Defendants had reason to know of Plaintiffs' and the Class members' particular purpose for purchasing the XHose.

128. Plaintiffs and the Class members relied on Defendants to design, manufacture, and properly test a suitable gardening hose product, thereby creating an implied warranty that the goods would be fit for such purpose.

**SEVENTH CAUSE OF ACTION**  
**BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

**(Plaintiff Dumone, individually and on behalf of the Class)**

129. Plaintiffs re-allege and incorporate by reference paragraphs 1-55 above as if fully set forth herein.

130. Plaintiffs bring this count on behalf of themselves and the members of the Class against Defendants.

131. At all times mentioned herein, Defendants manufactured and sold the XHose, and prior to the time it was purchased by Plaintiffs and the putative Class, Defendants impliedly warranted to Plaintiffs that the XHose was of merchantable quality and fit for the use for which it was intended.

132. The XHoses were unfit for their intended use and were not of merchantable quality, as warranted by Defendants, but instead contained a manufacturing or design defect. Specifically, the XHose suffers from a design and/or manufacturing defect because it is prone to leaking, bursting, seeping, and dripping.

133. As a direct and proximate result of the breach of said warranties, Plaintiffs and the members of the Class suffered and will continue to suffer losses as alleged herein.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and on behalf of the members of the Class defined herein, pray for judgment and relief on all Causes of Action as follows:

- A. An order certifying that the action may be maintained as a Class Action;
- B. An order enjoining Defendant from pursuing the policies, acts, and practices complained of herein;
- C. Restitution;
- D. Damages;
- E. Reasonable attorneys' fees;
- F. Costs of this suit; and
- G. Such other and further relief as the Court may deem necessary or appropriate.

DATED: December 31, 2014

Respectfully submitted,

By: /s/ James P. Ulwick  
James P. Ulwick (Bar No. 00536)  
KRAMON & GRAHAM, P.A.  
One South Street, Suite 2600  
Baltimore, Maryland 21202  
Telephone: (410) 752-6030  
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Bryan L. Clobes  
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Facsimile: (215) 864-2810  
Email: [bclobes@caffertyclobes.com](mailto:bclobes@caffertyclobes.com)

*Counsel for Plaintiff William Dumone  
and the proposed Class members*

# Exhibit 1

Professional Quality

Includes:  
• One X Hose Pro  
• Instructions

**3/4"**

**DAP**

**XHOSE<sup>®</sup> PRO<sup>™</sup>**

**The Incredible Xpanding Hose!**

**Solid Brass Fittings!**

**Automatically EXPANDS & CONTRACTS!**

Turn Off To Contract

Goes From...  
**This To This!**  
19 1/2 ft. - 50 ft.

Turn On To Expand

Expands To  
**50 ft. Hose!**

**AS SEEN ON TV**

**Full 3/4" In Diameter For A More Powerful Spray**

**Durable Material Is Stronger Than Ever**

U.S. Patent No.  
8,291,941, 8,291,942, and 8,479,776  
and other patents pending

**Net Contents : 1 hose**

READ ALL WARNINGS ON BACK PANEL AND ENCLOSED INSTRUCTIONS



®

**The Incredible  
Xpanding Hose!**

**XHOSE<sup>®</sup>**  
**PRO<sup>™</sup>**



**Ultra  
Lightweight!**



**Easy To  
Store!**



**No  
Kinking!**

**Expands To  
50 ft.  
Hose!**



®

**The Incredible  
Xpanding Hose!**

**XHOSE<sup>®</sup>**  
**PRO<sup>™</sup>**

**Great For:**

- Patios
- Cars
- Gardens!
- And More!



**Solid Brass  
Fittings!**



**Expands To**

**50 ft.**  
**Hose!**

TM

**New!**

**Heavy Duty**

Expands To  
**50 ft.  
Hose!**



**The Incredible Xpanding Hose!**

**XHOSE<sup>®</sup>**  
**PRO<sup>™</sup>**



**Before**



**After**



**The Secret Is  
The Expandable  
'Hidden' Hose!**

The DAP® XHose® Pro™ is actually made from a tough, multi-layered expandable inner hose and a folded outer covering made from durable super strong webbing.

- **Tested Up To 250 PSI!**
- **Weights Just Under 2 lbs!**
- **Easy To Store!**



You'll find us in all the right places.<sup>®</sup>

**RPM**

©2011 DAP Products Inc., Baltimore, MD 11024  
Made in China by DAP Products Inc.  
DAP, The Patch logo and the Blue Band  
are all registered trademarks of DAP Brands Company.  
RPM and RPM logo are trademarks of Blue Garden, LLC and  
are used by license. Express, Inc. DHOSE and XHose  
are trademarks of Blue Garden, LLC and  
are used by license. Express, Inc.

Not for Use with Drinking Water, Not Potable

**CALIF. PROP. 65 WARNING:**

This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

**LIMITED WARRANTY:** DAP warrants to the original consumer purchaser that the enclosed XHose® Pro™ will be free from defects in material and workmanship under normal household use and conditions for one (1) year from the date of original purchase. In the event of a defect, return the entire hose to the store where it was purchased along with its product tag and original sales receipt for product replacement or sales price refund. All other warranties are excluded. This warranty does not cover abuse, neglect, your modification to the product or commercial use and excludes incidental and consequential damages. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you. This warranty gives you specific legal rights, and you may also have other rights which vary from State to State.

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

WILLIAM DUMONE, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Los Angeles County, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James P. Ulwick  
Kramon & Graham, P.A.  
One South Street, Suite 2600, Baltimore, Maryland 21202

**DEFENDANTS**

DAP PRODUCTS, INC., LLC, NATIONAL EXPRESS, INC., EMSON USA, INC., BLUE GENTIAN and DOES 1 through 100, inclusive,

County of Residence of First Listed Defendant Baltimore City, Maryland  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. Section 1332(d)

Brief description of cause:  
Consumer Class Action for Breach of Warranty, Fraud

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint.

**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE William D Quarles, Jr.

DOCKET NUMBER 1:14-cv-03205

DATE  
12/31/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Maryland

WILLIAM DUMONE, individually and on behalf of all  
others similarly situated,

*Plaintiff(s)*

v.

DAP PRODUCTS, INC., BLUE GENTIAN, LLC,  
NATIONAL EXPRESS, INC., EMSON USA, INC.,  
and DOES 1 through 10, inclusive,

*Defendant(s)*

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* National Express, Inc.  
2 Morgan Avenue  
Norwalk, Connecticut 06851

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: James P. Ulwick  
Kramon & Graham, P.A.  
One South Street, Suite 2600  
Baltimore, Maryland 21202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Maryland

WILLIAM DUMONE, individually and on behalf of all  
others similarly situated,

*Plaintiff(s)*

v.

DAP PRODUCTS, INC., BLUE GENTIAN, LLC,  
NATIONAL EXPRESS, INC., EMSON USA, INC.,  
and DOES 1 through 10, inclusive,

*Defendant(s)*

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* EMSON USA, INC.  
230 5th Ave, # 800,  
New York, NY 10001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

James P. Ulwick  
Kramon & Graham, P.A.  
One South Street, Suite 2600  
Baltimore, Maryland 21202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

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☐ Other *(specify)*: \_\_\_\_\_

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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

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\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: