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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MATTHEW HEMBERGER, on behalf of himself	:	
and all others similarly situated,	:	Civil Action No.
	:	
Plaintiff,	:	<u>CLASS ACTION</u>
	:	
vs.	:	
	:	
PERFORMANCE SPORTS GROUP, LTD., and	:	
CASCADE LACROSSE,	:	
	:	<u>JURY TRIAL DEMANDED</u>
	:	
Defendants.	:	
_____	:	
	:	

PLAINTIFF’S CLASS ACTION COMPLAINT

Plaintiff Matthew Hemberger (“Plaintiff”) brings this action individually and on behalf of all other persons similarly situated, by and through his attorneys, against Defendants Performance Sports Group, Ltd. (“PSG”) and Cascade Lacrosse (“Cascade”) (collectively “Defendants”), and alleges the following based upon personal knowledge as to his own acts, and information and belief as to all other matters based upon, *inter alia*, the investigation of counsel and public statements issued by PSG and Cascade.

INTRODUCTION

1. This is a class action lawsuit brought by Plaintiff on behalf of himself and a class of persons who purchased Cascade Model R lacrosse helmets developed, manufactured, and marketed by Defendants. Defendants hold themselves out to the public as leading developers and manufacturers of high performance sports equipment and apparel, including lacrosse helmets.

2. All levels of organized lacrosse, including US Lacrosse (“USL”), The National Federation of State High School Associations (“NFHS”), and the National Collegiate Athletic Association (“NCAA”), require that all helmets used in play must meet the minimum applicable guidelines and safety standards set forth by the National Operating Committee on Standards for Athletic Equipment (“NOCSAE”). The NOCSAE standards for lacrosse helmets set a minimum threshold for safety, with a focus on helmet stability and impact attenuation.

3. Responsibility for testing to ensure compliance with the applicable NOCSAE guidelines rests with the equipment manufacturers. If a company affixes the NOCSAE seal to its helmets, it accepts the responsibility that all of those helmets meet the applicable NOCSAE standards.

4. Cascade enjoys a sizeable majority of the market share for lacrosse helmets. The Cascade Model R lacrosse helmet, launched in June 2013 and marketed as “the most advanced impact management system Cascade has ever created,” was marketed and sold as being compliant with the applicable NOCSAE standards for lacrosse helmets. A “MEETS NOCSAE STANDARD” logo was emblazoned on the exterior of all Cascade Model R helmets.

5. On November 24, 2014, NOCSAE announced that the Cascade Model R lacrosse helmet had been invalidly certified by its manufacturer as compliant with NOCSAE standards. According to the press release, NOCSAE conducted its own independent investigation and

evaluation of the Cascade Model R helmet, which included its own review of Cascade's internal certification testing and quality control data as well as NOCSAE's own contracted laboratory testing, and determined that the Cascade Model R helmet does not meet NOCSAE standard ND041 applicable to lacrosse helmets, contrary to Defendants' representations. As a result, NOCSAE voided Cascade's NOCSAE certification for the Cascade Model R helmet and advised the USL, NCAA, NFHS, and other governing organizations of its findings and determinations.

6. Subsequent to NOCSAE's decertification of the Cascade Model R helmet, the USL, NCAA and numerous other lacrosse governing bodies have advised its members that Cascade Model R helmets will not be permitted to be worn during lacrosse activities under their purview.

7. As a result of Defendants' fraudulent representations concerning the Cascade Model R helmet and its compliance with NOCSAE regulations, Plaintiff and the class spent hundreds of dollars on each Cascade R helmet that they believed to have high levels of impact protection, and at a minimum, be permitted for use in sanctioned lacrosse activities, but which have now been found not to meet minimum NOCSAE safety standards and are no longer allowed to be used in most lacrosse activities due to their NOCSAE decertification.

8. Cascade has not offered to refund the Cascade Model R helmets or replace the Cascade Model R helmets with helmets that meet NOCSAE standards.

9. Defendants' affirmative misrepresentations concerning the Cascade Model R helmets' performance and NOCSAE certification misled Plaintiff and the Class concerning the true nature of the Cascade Model R helmets.

10. As a result of Defendants' affirmative misrepresentations concerning the Cascade Model R helmets and their unfair, deceptive and fraudulent business practices, Plaintiff and the

Class have suffered injury in fact and damages. Plaintiff and the Class members did not receive the caliber of helmets they paid for; were exposed to increased safety risks by using the Cascade R helmets without knowledge of their inability to meet even minimum NOCSAE safety standards, and have been deprived of the future use of the Cascade R helmets due to Defendants' affirmative misrepresentations about the helmets' quality and NOCSAE compliance.

11. Accordingly, Plaintiff brings this action to redress damages to himself and the Class due to Defendants' common law fraud, negligent misrepresentation, breach of warranty, unjust enrichment, and violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law.

PARTIES

Plaintiff

12. Plaintiff Matthew Hemberger is a consumer who is a resident of Spring City, Pennsylvania. Plaintiff Hemberger purchased the Cascade Model R helmet for his son's personal use in organized lacrosse activities.

13. Plaintiff Hemberger purchased the Cascade Model R helmet for his son based on Defendants' representations that the Cascade Model R helmet provided superior impact protection and met NOCSAE's certification safety standards, a requirement of all helmets worn in Plaintiff's son's lacrosse activities.

14. Shortly after Cascade's November 24 announcement, Plaintiff was informed that the Cascade Model R helmet he had purchased was no longer permitted to be used in Plaintiff's son's lacrosse activities because the helmet's NOCSAE certification had been voided.

Defendants

15. Defendant Performance Sports Group, Ltd. (“PSG”), together with its subsidiaries, holds itself out as a leading developer, designer, manufacturer, and distributor of performance ice hockey, roller hockey, lacrosse, baseball, and softball sports equipment and related apparel. PSG offers its products under the brand names Bauer, Mission, Maverik, Cascade, Inaria, Combat, and Easton. PSG was formerly known as Bauer Performance Sports Ltd. prior to June 2014, when it changed its name to PSG. PSG was founded in 1927 and is headquartered in Exeter, New Hampshire.

16. Defendant Cascade is a subsidiary of PSG, and holds itself out as the leading designer, developer, manufacturer, and marketer of lacrosse helmets and eyewear in North America, including the Cascade Model R lacrosse helmet. Cascade’s website represents that “all of [Cascade’s] products meet and exceed the standards set by the agency charged with overseeing helmet design and safety standards,” and further represents that the company “strives to be on the leading edge of design and safety.” Cascade designs and manufactures all of its products, including the Cascade Model R lacrosse helmet, at its headquarters in Liverpool, New York.

17. Both PSG and Cascade hold themselves out to be competent and honest testers of the lacrosse helmets that they manufacture and that their certifications of compliance with NOCSAE safety standards are delivered to consumers with integrity and accuracy. Since the NOCSAE product certification procedure is dependent on self-testing by manufacturers such as PSG and Cascade, the lack of competency and honesty in the testing process subjects the consuming public to extraordinary safety hazards.

JURISDICTION AND VENUE

18. Defendants PSG and Cascade are subject to personal jurisdiction in this Court because they have engaged in systematic and continuous contacts with this district by virtue of their business activities and product sales in this district.

19. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 because a substantial part of the events and/or omissions giving rise to the claims occurred, in part, within this district.

20. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and one defendant are citizens of different States.

21. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the parties, and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

FACTUAL ALLEGATIONS

A. Background

22. Lacrosse is among the nation's fastest-growing youth sports, especially among youths whose parents are looking for a sport perceived to be safer alternative to football.

23. According to the National Federation of State High School Associations ("NFHS"), in the 2013-2014 academic year, 188,689 boys and girls played lacrosse at the high school level, nearly double the participants from a decade ago.

24. Lacrosse is also gaining increasing popularity at the college level, with many colleges and universities increasing their investments in lacrosse programs and providing additional scholarship opportunities for lacrosse athletes.

25. With increasing popularity across all levels of the sport, the sale of lacrosse-related goods has become lucrative business for sporting goods manufacturers. According to the Sports and Fitness Industry Association, sales of lacrosse equipment increased from \$59 million in 2008 to \$80 million in 2013.

26. The rules of lacrosse govern the administration and conduct of games, including helmets and other equipment used in the game. Three organizations write rules for lacrosse played in the United States: United States Lacrosse (“USL”), founded in 1998, is the national governing body of lacrosse, and sets forth youth rules for boys and girls, high school rules for girls, non-varsity collegiate rules for women, and post-collegiate rules for men and women; the NFHS sets forth rules for high school boys; and the National Collegiate Athletic Association (“NCAA”) sets forth varsity collegiate rules for men and women. Representatives from USL sit on rules-writing committees of the NFHS and NCAA, and the three organizations often work together on rule development and player safety.

27. Each of these organizations looks to NOCSAE for minimum safety standards for lacrosse helmets used in play. The rules mandate that all helmets used in play must be NOCSAE certified or otherwise meet the applicable NOCSAE standards for lacrosse helmets.

B. NOCSAE and NOCSAE Certification Standards

28. NOCSAE is a non-profit organization founded in 1969 whose mission is to reduce athletic injuries and death through standards and certification for athletic equipment. Schools,

universities, and athletics associations look to NOCSAE certification standards for sports equipment, and helmets in particular, to protect players and enhance player safety.

29. While NOCSAE publishes standards, it does not regularly conduct surveillance to assure compliance to the Standards. Instead, it is up to helmet manufacturers to ensure compliance with the NOCSAE standards through testing conducted at their own expense. According to NOCSAE, surveillance to assure compliance to the standards is the sole responsibility of firms/manufacturers that affix the NOCSAE seal of certification to their headgear or equipment. This includes ongoing statistically relevant quality control protocols.

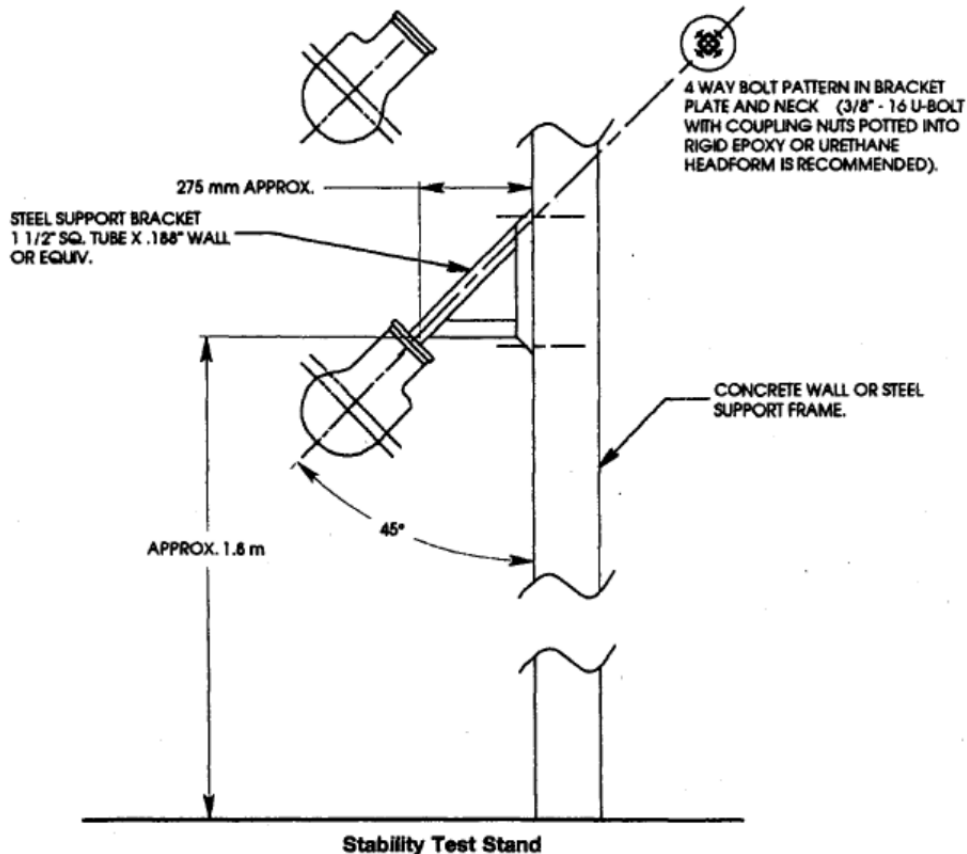
30. Manufacturers that place stickers indicating NOCSAE certification onto helmets and other athletic equipment affirmatively represent to NOCSAE, the associations, and consumers that the equipment meets all requirements of the applicable NOCSAE certification standards, and accordingly, the minimum safety standards set forth by the NCAA, NFHS, USL, and other sports governing bodies that have adopted the NOCSAE certification standards.



31. For the lacrosse helmets at issue, the applicable NOCSAE standard is ND041: Standard Performance Specification for Newly Manufactured Lacrosse Helmets with Faceguard.¹ For each test report, at least one set of four helmets of each model in each critical size must be tested. Two are to be tested at high temperature, and two are to be tested at ambient temperature.

¹ Faceguards themselves must be separately tested to, and comply with, NOCSAE standard ND045 on the same helmet model as presented for testing under ND041.

32. Pursuant to ND041, lacrosse helmets must first pass a Helmet Stability/Retention test. For this test, helmets are placed on a helmet stability stand similar to the one depicted below using only the primary retention system adjusted as described in the manufacturer's instructions. A cable and attached hook connect the guide rod to the far edge of the helmet. With the headform canted downwards at a 45 degree angle and facing the floor, a 9-pound drop mass is set up to pull on the back edge of the helmet when dropped from a height of 2.78 feet (.85m). The helmet must remain on the headform upon the completion of this test.

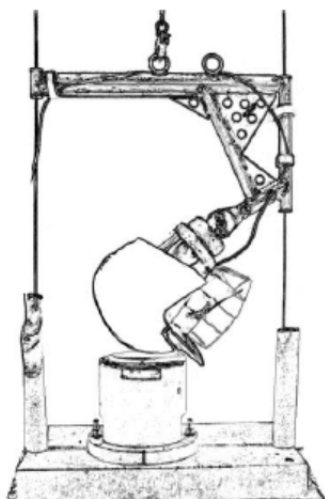


33. The helmets are next subjected to various Impact Attenuation "Helmet Drop" tests. Impact locations at the front, side, right front boss, right rear boss, rear, and top of the

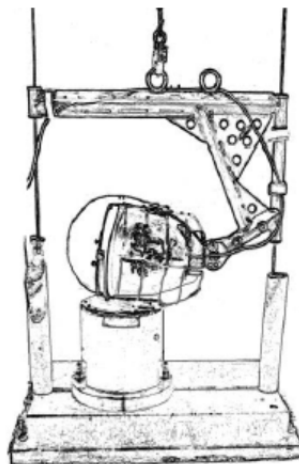
helmet are tested as shown in the figures below. The helmets are impacted at various velocities ranging from 11.34 feet/second to 17.94 feet/second. Impacts are rated using a “Severity Index,”

or “SI,” which is defined by ND001 as $SI = \int_0^T A^{2.5} dt$ where “A” is the instantaneous resultant acceleration expressed as a multiple of g (acceleration of gravity); “dt” are the time increments in seconds; and the integration is carried out over the essential duration (T) of the acceleration pulse.

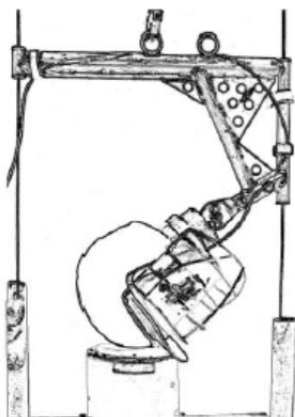
IMPACT LOCATIONS – HELMET DROPS



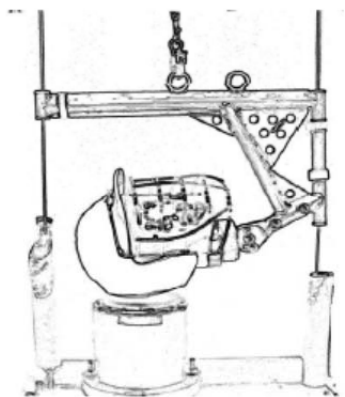
Front



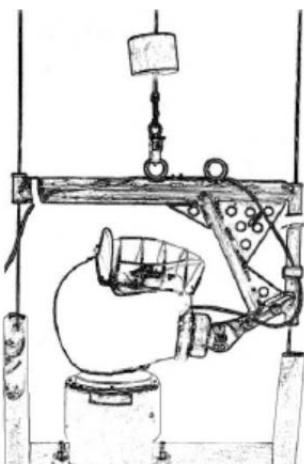
Side



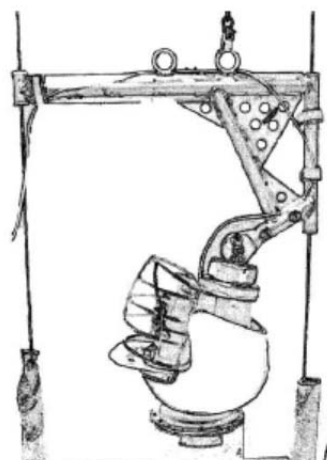
Right Front Boss



Right Rear Boss



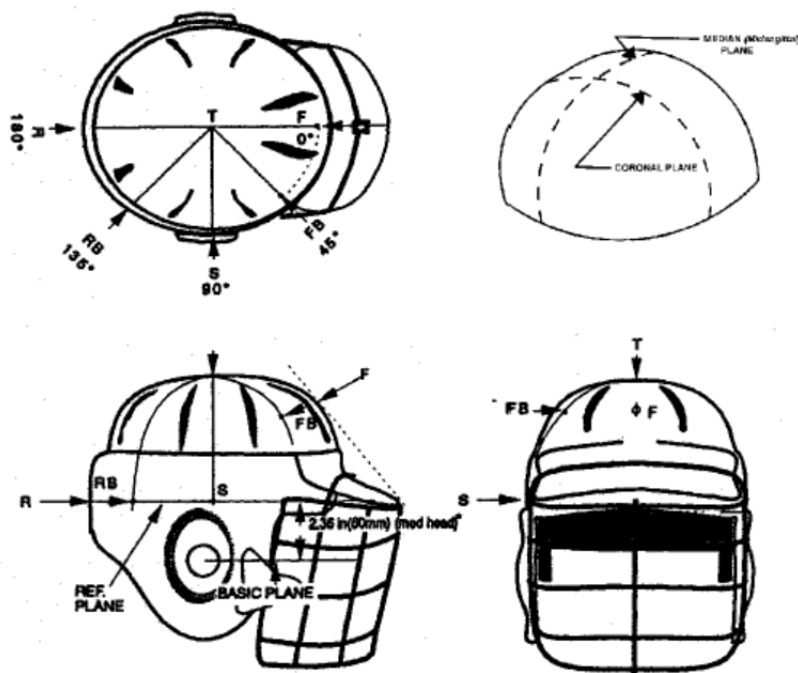
Rear



Top

Figure 3

IMPACT LOCATIONS



34. In order to pass the test, the peak Severity Index of any impact shall not exceed 1200 SI. For the 11.34 feet/second impacts, the Severity Index must not exceed 300 SI. A passing helmet model is able to withstand all impacts at an acceptable SI as outlined above, and must meet all other requirements when tested in accordance with the performance specification. Results from ND041 are reported solely on a pass/fail basis.

35. According to the NOCSAE standards, manufacturers desiring to use the NOCSAE logo to certify a helmet must, prior to the first time the helmet is offered, submit documentation in the form of a test report from an independent A2LA accredited ISO 17025 certified laboratory showing compliance with the applicable testing criteria (in this case, ND041). In addition, NOCSAE requires that at least annually, manufacturers provide proof of ongoing compliance. Manufacturers must also have an executed, valid license agreement with NOCSAE to use any of the NOCSAE logos at any time.

C. Cascade and the Model R Helmet

36. Cascade, the manufacturer of the Model R helmet and numerous other lacrosse helmets, controls a sizeable segment of the market for lacrosse helmets. Cascade itself reports that it controls more than 80 percent of the U.S. market share in lacrosse helmets, with another source reporting that Cascade's market share may be as high as 90 percent.

37. The Cascade Model R helmet was released in approximately June 2013 and retails for upwards of \$250. According to Cascade's marketing materials,

The R helmet marks the most advanced impact management system Cascade has ever created. The dual SevenTech and Poron XRD liner system addresses both high and low energy impacts. A HardTail SPRfit system, combined with custom jaw pad options, gets you dialed into a 360-degree fit with micro-adjustment on the fly. The exclusive SuperMono R shell, R-series chin and mask stretch your periphery while creating a more rigid system for frontal impact management. An aggressive design that is distinctively Cascade, the R conveys speed, power and performance.

38. Cascade further described its SevenTechnology liner system of the Model R helmet as "a ground-breaking impact attenuation system to more effectively manage energy transfer from direct high energy impacts." The Poron XRD foam technology used in the Model R helmet was described as "new to the Cascade line of helmets" with "the ability to dissipate linear force from low energy impacts." Cascade further represented that the SuperMono R shell of the Model R helmet "creates a more rigid system to better manage frontal impacts." In sum, the Cascade Model R helmets were advertised and represented to be high-end, high performance helmets with superior impact protection.

39. The Cascade Model R helmets were also advertised and sold with the NOCSAE certified logo, representing compliance with minimum safety standards as required by all organized lacrosse leagues in the United States.

40. The Cascade Model R helmets have been used by tens of thousands of players ranging from grade school age to those on top NCAA teams.

41. In reality, the Cascade Model R helmets fail to provide even minimal impact performance, as they do not meet the minimum NOCSAE safety requirements for lacrosse helmets.

D. NOCSAE Decertification and Subsequent Fallout

42. Subsequent to the Model R's release to the market, NOCSAE was informed that when re-tested at different NOCSAE certified laboratories, the Model R helmets being sold to consumers in the marketplace failed to meet the performance standards specified by ND041.

43. NOCSAE subsequently opened an independent investigation of the Cascade Model R helmet, whereby it reviewed Cascade's internal certification testing and quality control data. NOCSAE also purchased Model R helmets independently through various retail sources and sent them to its own contracted laboratory for testing.

44. On November 24, 2014, NOCSAE announced that as a result of its investigation the Model R does not comply with NOCSAE standard ND041 and that the NOCSAE certification claimed by the manufacturer for the Model R helmet was invalid. NOCSAE subsequently informed USL, NFHS, and NCAA of its findings.

45. Steve Jones, a spokesman for Cascade, has said that the company disagrees with the findings that led to the decertification.

46. Subsequent to NOCSAE's decision to declare the NOCSAE certification of the Model R helmets void, USL warned coaches, parents, and players not to use the Cascade Model R helmets or allow them to be worn in games, and alerted tournament officials to remove any player wearing a Cascade Model R helmet.

47. Plaintiff and Class members paid Defendants for impact-resistant Cascade Model R helmets that were NOCSAE certified as required for organized lacrosse play.

48. The Model R helmets failed to meet the representations and warranties advertised to Plaintiff and Class members.

49. Plaintiff and Class members are increasingly harmed as more time lapses because they are unable to use the Cascade Model R helmets in sanctioned lacrosse play.

CLASS ALLEGATIONS

50. Plaintiff brings this action on behalf of himself, and on behalf of the following Class pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3):

All persons in the United States who purchased Cascade Model R lacrosse helmets.

In the alternative, Plaintiff seeks to represent the following state-specific class:

All persons in Pennsylvania who purchased Cascade Model R lacrosse helmets.

51. Numerosity: While the exact number and identities of individual members of the Class are unknown at this time, such information being in the sole possession of Defendants and obtainable by Plaintiff only through the discovery process, Plaintiff believes and on that basis alleges that there are tens of thousands of members of the Class who purchased Cascade Model R lacrosse helmets.

52. Ascertainability. Class members can be easily identified from Defendants' sales records and warranty databases, as well as the sales records and warranty databases of Cascade's network of authorized retailers and distributors. Cascade has also been encouraging Model R consumers to register on their website.

53. Existence and Predominance of Common Questions of Fact and Law: Common questions of law and fact exist as to all members of the Class. These questions predominate over

the questions affecting individual Class members. These common legal and factual questions include, but are not limited to: whether Defendants' fraudulently represented the results of the NOCSAE testing for the Cascade Model R helmet; whether Defendants issued and placed false certifications on the Cascade Model R helmets sold to the Class; whether the Cascade Model R helmets sold to the public are materially different from the helmets used in the NOCSAE testing for the Cascade Model R helmet; whether Defendants' failure to ensure compliance with the NOCSAE minimum standards despite representations to the contrary is a breach of warranty; whether the Cascade Model R Helmets were falsely advertised to the public as NOCSAE certified when in fact they were not in compliance with NOCSAE standards; whether Defendants' conduct constitutes unlawful business acts and practices; whether, as a result of Defendants' omissions and/or misrepresentations of material facts related to the Cascade Model R Helmets, Plaintiff and members of the Class have suffered an ascertainable loss of monies and/or value; and, whether Plaintiff and Class members are entitled to monetary damages and/or other remedies, including but not limited to helmet rescission/replacement and consequential damages resulting from prohibition of the use of the Cascade Model R helmet in lacrosse activities, and, if so, the nature of any such relief.

54. Typicality: All of Plaintiff's claims are typical of the claims of the Class since Plaintiff and each member of the Class paid for an impact-resistant NOCSAE certified Cascade Model R Helmet and did not receive a helmet that met NOCSAE minimum standards; and did not receive a refund or replacement helmet when the Cascade Model R helmet was decertified. Furthermore, Plaintiff and all members of the Class sustained monetary and economic injuries including, but not limited to, ascertainable losses arising out of Defendants' failure to deliver an impact-resistant NOCSAE certified Model R lacrosse helmet as advertised and warranted.

Plaintiff is advancing the same claims and legal theories on behalf of himself and all members of the Class.

55. Adequacy: Plaintiff is an adequate representative because his interests do not conflict with the interests of the Class he seeks to represent, he has retained competent counsel who is highly experienced in complex class action litigation, and he intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff and his counsel.

56. Superiority: A class action is superior to all other available means of fair and efficient adjudication of the claims of the Plaintiff and members of the Class. The injury suffered by each individual Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. It would be virtually impossible for Class members individually to redress effectively the wrongs committed by Defendants. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, an economy of scale, and comprehensive supervision by a single court. Upon information and belief, members of the Class can be readily identified and notified based on, *inter alia*, Defendants' sales records and warranty databases as well as the sales records and warranty databases of Defendants' network of authorized Cascade retailers and distributors.

57. Defendants have acted, and refused to act, on grounds generally applicable to the Class, thereby making appropriate final equitable relief with respect to the Class as a whole.

VIOLATIONS ALLEGED
COUNT I
BREACH OF EXPRESS WARRANTY

58. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

59. The Cascade Model R helmets are goods within the meaning of the Uniform Commercial Code.

60. Defendants expressly warranted that the Cascade Model R helmets met NOCSAE's certification standards, and expressly demonstrated that certification through the visible placement of the NOCSAE certified logo on the outside of all Cascade Model R helmets as well as reference to the NOCSAE certification in advertising and marketing materials.

61. As demonstrated through independent testing, the Cascade Model R lacrosse helmets were shown to fail NOCSAE's minimum certification standards for lacrosse helmets, and the Model R's NOCSAE certification was ultimately voided by NOCSAE. This was a material breach of contract that caused damages to Plaintiff and Class members.

62. The Cascade Model R helmets purchased by Plaintiff and the Class did not perform as advertised, warranted, or promised by Defendants, constituting a breach of the express warranty between Defendants and Plaintiff and the Class. As a result, Plaintiff and the Class members have suffered damages from Defendants' breach of warranty in the form of loss of investment and exposure to increased levels of risk when the helmets were used in lacrosse play without knowledge of their actual, substandard condition.

COUNT II
COMMON LAW FRAUD

63. Plaintiff and the Class members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

64. Defendants made material misrepresentations and/or omissions concerning the impact performance, safety, and NOCSAE certification of the Cascade Model R lacrosse helmets.

65. Defendants willfully failed to state material facts, and/or willfully concealed, suppressed, or omitted such material facts with respect to their testing protocols and results and their certification that the Cascade Model R helmets met minimum NOCSAE safety standards.

66. Defendants willfully used exaggeration, falsehood, innuendo, and/or ambiguity as to material facts in its written representations.

67. As a result, Plaintiff and the Class members were fraudulently induced to purchase the Cascade Model R lacrosse helmets.

68. These misrepresentations and/or omissions were made by Defendants with knowledge of their falsity, and with the intent that Plaintiff and the Class members would rely on them.

69. Plaintiff and the Class members reasonably relied on these omissions, and suffered damages as a result.

COUNT III
NEGLIGENT MISREPRESENTATION

70. Plaintiff and the Class members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

71. Defendants supplied false information in order to induce Class members into sales transactions.

72. Defendants continued to supply false information in order to prevent Class members from discovering the shortcomings of the Model R lacrosse helmet, and actively concealed the true nature of the Model R lacrosse helmet from the marketplace.

73. Defendants continued to supply false information to protect the Defendants' reputation in the marketplace in order to obtain more sales.

74. Plaintiff and Class members reasonably relied on Defendants' false representations when purchasing Model R lacrosse helmets.

75. Defendants knew their statements were false when making them and that Class members' would reasonably rely on them when choosing to purchase a lacrosse helmet to be used in sanctioned lacrosse play.

76. As a result of Defendants' actions, Plaintiff and the Class members have suffered economic damages including, but not limited to, loss of investment, exposure to increased safety risk, and loss in opportunity to play sanctioned lacrosse activities due to the Cascade Model R lacrosse helmet's true condition and invalid NOCSAE certification.

COUNT IV
UNJUST ENRICHMENT

77. Plaintiff and the Class members incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein. This claim is plead in the alternative to the contract based claim.

78. Plaintiff and the Class members conferred a benefit on Defendants by paying hundreds of dollars for each Cascade Model R lacrosse helmet.

79. Defendants had knowledge that this benefit was conferred upon them.

80. However, Defendants have breached their warranties and representations by failing to deliver Cascade Model R helmets that are impact resistant and NOCSAE certified, as represented by Defendants prior to sale. Furthermore, Defendants have failed to deliver refunds or replacement products that perform as represented and advertised to Plaintiff and the Class.

81. Defendants have been unjustly enriched at the expense of Plaintiff and the Class members, and their retention of this benefit under the circumstances would be inequitable. Defendants should be required to make restitution.

COUNT V
VIOLATION OF PENNSYLVANIA'S UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

82. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

83. The general purpose of Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* ("UTPCPL"), is to protect the public from fraud and unfair or deceptive business practices. The UTPCPL provides a private right of action for any person who "suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful" by the UTPCPL. 73 P.S. § 201-9.2(a).

84. In the course of Defendants' business, they knowingly failed to disclose and actively concealed material facts and made false and misleading statements.

85. Plaintiff and members of the class relied upon Defendants' false and misleading representations and omissions.

86. As a direct and proximate result of Defendants' unfair or deceptive acts or practices, Plaintiff and the Class members have suffered and will continue to suffer actual damages.

87. Plaintiff, individually and on behalf of the other Class members, seeks treble damages and an award of attorneys' fees pursuant to 73 P.S. § 201-9.2(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and members of the Class, respectfully requests that this Court:

A. determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying the Class as defined above;

B. appoint Plaintiff as the Class representative and their counsel as Class counsel;

C. award all actual, general, special, incidental, statutory, punitive, and consequential damages to which Plaintiff and the Class members are entitled;

D. award pre-judgment and post-judgment interest on such monetary relief;

E. grant appropriate injunctive and/or declaratory relief, including, without limitation, an order enjoining Defendants from continuing to sell the Cascade Model R lacrosse helmet, appointing an independent party to provide a complete review of the impact resistance and NOCSAE certification status of all models of Cascade lacrosse helmets, and at a minimum, requiring Defendants to provide a full refund to purchasers of Cascade Model R lacrosse helmets, or in the alternative, a replacement helmet that meets all of the advertised representations for the Cascade Model R lacrosse helmet, including NOCSAE certification;

F. award reasonable attorneys' fees and costs; and

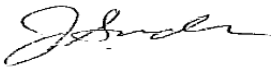
G. grant such further relief that this Court deems appropriate.

JURY DEMAND

Plaintiff, on behalf of himself and the putative Class, demand a trial by jury on all issues so triable.

Dated: December 9, 2014

Respectfully submitted,

By: 

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***Proposed Lead Attorneys for Plaintiff and
the Class***

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.)

<p>I. (a) PLAINTIFFS</p> <p>Matthew Hemberger</p> <p>(b) County of Residence of First Listed Plaintiff <u>Chester Cty., PA</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Joseph G. Sauder, Esquire Chimicles & Tikellis LLP 361 W. Lancaster Avenue, Haverford, PA 19041 (610) 642-8500 jgs@chimicles.com</p>	<p>DEFENDANTS</p> <p>Performance Sports Group, Ltd. and Cascade Lacrosse</p> <p>County of Residence of First Listed Defendant <u>Rockingham Cty., NH</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" 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
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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 checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <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	<p>PERSONAL INJURY</p> <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 <p>PERSONAL PROPERTY</p> <input 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	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<p>REAL PROPERTY</p> <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	<p>CIVIL RIGHTS</p> <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	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <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 <p>Other:</p> <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	<p>LABOR</p> <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	<p>SOCIAL SECURITY</p> <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))
				<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
				<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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

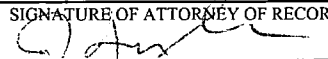
VI. CAUSE OF ACTION

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

Brief description of cause:
Consumer fraud class action regarding lacrosse helmets

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 _____ DOCKET NUMBER _____

DATE: 12/09/2014 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 16 Wright Avenue, Spring City, PA 19475

Address of Defendant: 100 Domain Drive, Exeter, NH 03833

Place of Accident, Incident or Transaction: Spring City, PA (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes [] No [X]

Does this case involve multidistrict litigation possibilities? Yes [] No [X]

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [] No [X]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [] No [X]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [] No [X]
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes [] No [X]

CIVIL: (Place [X] in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. [] Indemnity Contract, Marine Contract, and All Other Contracts
2. [] FELA
3. [] Jones Act-Personal Injury
4. [] Antitrust
5. [] Patent
6. [] Labor-Management Relations
7. [] Civil Rights
8. [] Habeas Corpus
9. [] Securities Act(s) Cases
10. [] Social Security Review Cases
11. [] All other Federal Question Cases (Please specify)

B. Diversity Jurisdiction Cases:

- 1. [] Insurance Contract and Other Contracts
2. [] Airplane Personal Injury
3. [] Assault, Defamation
4. [] Marine Personal Injury
5. [] Motor Vehicle Personal Injury
6. [] Other Personal Injury (Please specify)
7. [X] Products Liability
8. [] Products Liability — Asbestos
9. [] All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Joseph G. Sauder, counsel of record do hereby certify:
[] Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
[] Relief other than monetary damages is sought.

DATE: 12-9-2014 [Signature] Attorney-at-Law

82467 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 12-9-2014 [Signature] Attorney-at-Law

82467 Attorney I.D.#


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**
CASE MANAGEMENT TRACK DESIGNATION FORM

MATTHEW HEMBERGER,	:	CIVIL ACTION
	:	
v.	:	
	:	
PERFORMANCE SPORTS GROUP, LTD. and CASCADE LACROSSE	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (x)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

<u>12-9-2014</u>		<u>Plaintiff</u>
Date	Attorney-at-law	Attorney for
<u>610-642-8500</u>	<u>610-649-3633</u>	<u>JGS@chimicles.com</u>
Telephone	FAX Number	E-Mail Address