

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA,
JASPER DIVISION**

CHARLES CLYDE TATUM, JR.,
individually and on behalf of others
similarly situated,

Plaintiff,

V.

) Case No. _____

WILBUR PRODUCTS, INC., doing
business as MOTIV BOWLING,

Defendant.

NOTICE OF REMOVAL

Pursuant to the Class Action Fairness Act ("CAFA"), *see* 28 U.S.C. §§ 1332(d), 1446 & 1453, Defendant Wilbur Products, Inc., doing business as Motiv Bowling ("Wilbur Products") hereby removes this action, captioned *Charles Clyde Tatum, Jr. v. Wilbur Products, Inc., doing business as Motiv Bowling*, Case No. 64-CV-2016-900097.00, from the Circuit Court of Walker County, Alabama, to the United States District Court for the Northern District of Alabama, Jasper Division. As grounds for removal, Wilbur Products states as follows:

I. Parties and Factual Allegations

1. On or about March 16, 2016, Plaintiff Charles Clyde Tatum, Jr. ("Tatum") filed a putative class action complaint ("Complaint") in the Circuit Court of Walker County, Alabama. Tatum is the sole named plaintiff, and Wilbur

Products is the sole defendant. A true and correct copy of the Complaint is attached hereto as Exhibit 1.

2. Tatum alleges that Wilbur Products misrepresented material facts in connection with whether certain bowling balls met specifications set by the United States Bowling Congress ("USBC"). Tatum further asserts that Wilbur Products breached its contract with Tatum and others by selling bowling balls that did not meet USBC specifications. Tatum asserts two theories of recovery: a fraud-and-deceptive-business-practices claim and a breach-of-contract-and-warranty claim.

3. In addition to his individual claims, Tatum seeks to represent a class of individuals with allegedly similar claims. In particular, Tatum seeks certification of a class consisting of "each and every purchaser of a 'Jackal' or 'Jackal Carnage' bowling ball from September 1, 2014 until March 16, 2016." (Ex. 1 at 8.)

4. In his General Prayer for Relief Common to All Counts, Tatum requests, among other things: (1) injunctive relief; (2) compensatory damages; (3) punitive damages; (4) and all costs and reasonable attorneys' fees and expenses. (Ex. 1, General Prayer for Relief Common to All Counts ¶¶ (a), (b), (c).)

II. The Court Has Jurisdiction Under the Class Action Fairness Act.

5. This Court has subject-matter jurisdiction over this action under the Class Action Fairness Act ("CAFA"). *See* 28 U.S.C. § 1332(d).

6. CAFA authorizes removal of putative class actions if: (1) the amount-in-controversy exceeds \$5,000,000 in the aggregate; (2) there exists minimal diversity of citizenship, meaning that the citizenship of at least one member of the proposed class is diverse from any defendant; and (3) the proposed class size contains at least 100 members. *See* 28 U.S.C. §§ 1332(d)(2)(A), d(5)(B), d(6). Congress passed CAFA to expand federal jurisdiction over class actions. *See* Pub. L. No. 109-2 § 2(b)(2), 119 Stat. 4 § 2(b)(2) (stating that CAFA seeks to "restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction"); S. Rep. No. 109-14 at 43, *as reprinted in* 2005 U.S.C.C.A.N. 3, 41 (stating that CAFA "is intended to expand substantially federal court jurisdiction over class actions"). To effectuate its purposes, Congress directed that CAFA "should be read broadly, with a strong preference that interstate class actions be heard in federal court if properly removed by any defendant." S. Rep. No. 109-14 at 43, *as reprinted in* 2005 U.S.C.C.A.N. at 41.

7. Recently, the U.S. Supreme Court confirmed that a removing defendant bears no evidentiary burden at the time of removal. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). Rather, "a defendant's notice of removal need include only a plausible allegation" that CAFA's requirements have been met. *Id.*

8. Wilbur Products vigorously disputes the validity of Tatum's claims and denies that this case is appropriate for class treatment. Nevertheless, for the purposes of determining whether federal jurisdiction exists, it is clear this dispute falls within the scope of CAFA.

A. Minimal Diversity Exists.

9. For purposes of establishing federal jurisdiction, CAFA requires only minimal diversity—that at least one member of the plaintiff class is of diverse citizenship from at least one defendant. 28 U.S.C. § 1332(d)(2)(A).

10. Upon information and belief, Tatum is a citizen of Alabama. (*See also* Ex. 1 ¶ 1.)

11. Wilbur Products is a Michigan corporation with a principal place of business in Michigan. A corporation is deemed a citizen of any state in which it has been incorporated and of the state where it has its principal place of business. *See* 28 U.S.C. § 1332(c)(1); *see also Hertz Corp. v. Friend*, 559 U.S. 77 (2010). As a result, Wilbur Products is a citizen of Michigan for purposes of diversity jurisdiction.

12. Because Tatum is a citizen of Alabama and Wilbur Products is not a citizen of Alabama, the CAFA requirement of minimal diversity is satisfied. *See* 28 U.S.C. § 1332(d)(2)(A).

B. Putative Class Numerosity Is Satisfied.

13. Based upon Wilbur Products' review of its internal records, Wilbur Products has sold the "Jackal" and "Jackal Carnage" models of bowling balls described in the Complaint to thousands of individuals throughout the nation and the world during the specified timeframe.

14. Accordingly, based upon Tatum's allegations, the putative class size satisfies 28 U.S.C. § 1332(d)(5)(B).

C. The Amount in Controversy Exceeds \$5,000,000.

15. As already noted, Wilbur Products vigorously disputes the validity of Tatum's claims and denies that this case is appropriate for class treatment. For purposes of determining whether federal jurisdiction exists under CAFA, however, the aggregate amount in controversy exceeds \$5,000,000 based upon the allegations in the Complaint.

16. Congress intended that federal jurisdiction properly be exercised under CAFA "if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory relief)." S. Rep. No. 109-14 at 42, *as reprinted in* 2005 U.S.C.C.A.N. at 41.

17. Tatum's proposed class definition encompasses a class of "each and every purchaser of a 'Jackal' or 'Jackal Carnage' bowling ball from September 1, 2014 until March 16, 2016." (Ex. 1 at 8.) Tatum further alleges that "[t]he only way to make the purchasers of the 'Jackal' and 'Jackal Carnage' bowling balls whole from their damages is a full refund of the purchase price plus the incidental and necessary expenses detailed above." (*Id.* ¶ 15.) Tatum avers that the bowling ball he purchased cost \$159.90 and that he spent an additional \$85.00 in having holes drilled in the ball to meet his hands. (*Id.* ¶¶ 9, 11.) As shown on the Motiv Bowling website, the retail cost of the balls is \$254.99. Moreover, Wilbur Products sold more than 19,250 of the specified bowling balls during the time period included in the Complaint. As alleged by Tatum, each of those balls required holes to be drilled, and upon information and belief the drilling cost varies from \$40 to \$150. Therefore, based on the allegations in the Complaint and information available to Wilbur Products, the requested compensatory damages range from \$3,848,075 (using a drilling cost of \$40 and a price of \$159.90 for the ball price) to \$7,796,057.50 (using a drilling cost of \$150 and a price of \$254.99). Upon information and belief, the average cost to drill holes is \$60 and the average cost for the "Jackal" and "Jackal Carnage" balls is \$210, resulting in a potential amount of \$5,197,500 in compensatory damages.

18. Additionally, Tatum requests punitive damages on behalf of the class. The Eleventh Circuit includes punitive damages in calculating the amount in controversy. *See, e.g., McDaniel v. Fifth Third Bank*, 568 F. App'x 729, 731–32 (11th Cir. 2014). In Alabama, those punitive damages would be limited to three times the compensatory damages amount. *See* Ala. Code § 6-11-21. Accordingly, Tatum could recover between \$11,544,225 and \$23,388,172.50 in punitive damages, or \$15,592,500 if using the average ball cost and hole-drilling cost. Therefore, the punitive damages sought by Tatum are factored into the amount in controversy and establish an aggregate amount in controversy well in excess of the \$5,000,000 threshold. *See, e.g., McDaniel*, 568 F. App'x at 732 (aggregating punitive-damages awards under Florida law).

19. Furthermore, Plaintiff appears to attempt to make a claim pursuant to the Alabama Deceptive Trade Practices Act (the "ADTPA"). (*See* Ex. 1 at 6–7 (setting for a claim of relief for "deceptive business practices").) Under the ADTPA, a Plaintiff can recover up to three times his or her actual damages. *See* Ala. Code § 8-19-10(a)(2). Thus, the treble damages under the ADPTA further demonstrate that this case exceeds the \$5,000,000 jurisdictional threshold.

20. Finally, Plaintiff's request for attorney's fees is included in calculating the amount in controversy. "The general rule is that attorneys' fees do not count towards the amount in controversy unless they are allowed for by statute or by

contract." *Federated Mut. Ins. Co. v. McKinnon Motors, LLC*, 329 F.3d 805, 808 n.4 (11th Cir. 2003). An exact computation of the fee is not necessary; rather the court can find jurisdiction if "any reasonable amount awarded plaintiff would be sufficient, when combined with the balance of the amount in controversy, to satisfy" the jurisdictional threshold. *See Hall v. Travelers Ins. Co.*, 691 F. Supp. 1406, 1410 (N.D. Ga. 1988). Here, Plaintiff appears to try to assert a claim under the Alabama Deceptive Trade Practices Act, which allows for a reasonable attorney's fee under certain circumstances. *See Ala. Code* § 8-19-10(a)(3). Accordingly, "[t]he inclusion of attorney's fees in the calculation of the amount in controversy in a class action like this case . . . further supports the conclusion that the amount in controversy in this case is well in excess of \$5,000,000." *Lee-Bolton v. Koppers, Inc.*, 848 F. Supp. 2d 1342, 1356 (N.D. Fla. 2011).

21. Thus, the collective value of the relief sought by Tatum satisfies the amount in controversy requirement of 28 U.S.C. § 1332(d)(6).

III. Removal to This Court Is Timely and Proper

22. Wilbur Products was served with a Summons and a copy of the Complaint on March 30, 2016.

23. This Notice of Removal is filed within thirty days of service upon and receipt by Wilbur Products of the Summons and Complaint and is therefore timely

under 28 U.S.C. §§ 1446(b) and 1453. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354–56 (1999).

24. The United States District Court for the Northern District of Alabama is the federal judicial district embracing the Circuit Court of Walker County, Alabama, where this suit was originally filed. Venue for removal purposes is therefore proper in this Court under 28 U.S.C. § 1441(a).

25. A copy of this Notice of Removal will be filed in the Circuit Court of Walker County, Alabama, and served upon Tatum's counsel, and all other counsel of record, as required by 28 U.S.C. § 1446(d).

26. Wilbur Products has attached a copy of all process, pleadings, and orders served upon it in the state court action. Attached as Exhibit "A" is a copy of the Case Action Summary; Exhibit "B" is a copy of the Complaint; Exhibit "C" is a copy of the Summons; Exhibit "D" is a copy of the Return of Service; and Exhibit "E" is a copy of the Transmittal Notice.

27. Accordingly, the requirements of 28 U.S.C. §§ 1332(d), 1446, and 1453 are satisfied.

28. Thus Wilbur Products asks that this Court take jurisdiction of this action to its conclusion and to final judgment to the exclusion of any further proceedings in the state court in accordance with federal law. Wilbur Products further requests that the removal of this action be entered on the docket of this

Court and that the Court grant it other and further relief to which it may be legally and equitably entitled.

Respectfully submitted,

/s/ Jennifer M. Busby

Jennifer M. Busby

Michael R. Dodson

Attorneys for Defendant

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by Notice of Electronic Filing, or, if the party served does not participate in Notice of Electronic Filing, by U.S. First Class Mail, hand delivery, fax or email on this the 21st day of April, 2016:

Seth Diamond
Post Office Box 349
Jasper, Alabama 35502

s/Jennifer M. Busby
OF COUNSEL



County: **64** Case Number: **CV-2016-900097.00** Court Action:
 Style: **CHARLES CLYDE TATUM JR V. WILBUR PRODUCTS INC. DBA MOTIV BOWLING**

PREPARED FOR: CHRISTY MEDLIN

Real Time

Case**Case Information**

County: **64-WALKER** Case Number: **CV-2016-900097.00** Judge: **HME:HOYT ELLIOTT**
 Style: **CHARLES CLYDE TATUM JR V. WILBUR PRODUCTS INC. DBA MOTIV BOWLING**
 Filed: **03/16/2016** Case Status: **ACTIVE** Case Type: **BAD FAITH/FRAUD/MISR**
 Trial Type: **JURY** Track: Appellate Case: **0**
 No of Plaintiffs: **1** No of Defendants: **1**

Damages

Damage Amt: **0.00** Punitive Damages: **0.00** General Damages: **0.00**
 No Damages: Compensatory Damages: **0.00**
 Pay To: Payment Frequency: Cost Paid By:

Court Action

Court Action Code: Court Action Desc: Court Action Date:
 Num of Trial days: **0** Num of Liens: **0** Judgment For:
 Disposition Date of Appeal: Disposition Judge: : Disposition Type:
 Revised Judgement Date: Minstral: Appeal Date:
 Date Trial Began but No Verdict (TBNV1):
 Date Trial Began but No Verdict (TBNV2):

Comments

Comment 1:
 Comment 2:

Appeal Information

Appeal Date: Appeal Case Number: Appeal Court:
 Appeal Status: Origin Of Appeal:
 Appeal To: Appeal To Desc: LowerCourt Appeal Date:
 Disposition Date Of Appeal: Disposition Type Of Appeal:

Administrative Information

Transfer to Admin Doc Date: Transfer Reason: Transfer Desc:
 Number of Subpoenas: Last Update: **03/16/2016** Updated By: **AJA**

Parties**Party 1 - Plaintiff INDIVIDUAL - TATUM CHARLES CLYDE JR****Party Information**

Party: **C001-Plaintiff** Name: **TATUM CHARLES CLYDE JR** Type: **I-INDIVIDUAL**
 Index: **D WILBUR PRODU** Alt Name: Hardship: **No** JID: **HME**
 Address 1: **PO BOX 349** Phone: **(205) 000-0000**

EXHIBIT "A"

Address 2: PO BOX 349
City: JASPER State: AL Zip: 35502-6000 Country: US
SSN: XXX-XX-X999 DOB: Sex: M Race:

Court Action

Court Action: Court Action Date:
Amount of Judgement: \$0.00 Court Action For: Exemptions:
Cost Against Party: \$0.00 Other Cost: \$0.00 Date Satisfied:
Comment: Arrest Date:
Warrant Action Date: Warrant Action Status: Status Description:

Service Information

Issued: Issued Type: Reissue: Reissue Type:
Return: Return Type: Return: Return Type:
Served: Service Type Service On: Served By:
Answer: Answer Type: Notice of No Service: Notice of No Answer:

Attorneys

Number	Attorney Code	Type of Counsel	Name	Email	Phone
Attorney 1	DIA009		DIAMOND SETH LAWRENCE	SEDIAMONDLAW@GMAIL.COM	(256) 778-1529

Party 2 - Defendant BUSINESS - WILBUR PRODUCTS INC. DBA MOTIV BOWLING

Party Information

Party: D001-Defendant Name: WILBUR PRODUCTS INC. DBA MOTIV BOWLING Type: B-BUSINESS
Index: C TATUM CHARLE Alt Name: Hardship: No JID: HME
Address 1: 18570 TRIMBLE COURT Phone: (205) 000-0000
Address 2:
City: SPRING LAKE State: MI Zip: 49456-0000 Country: US
SSN: XXX-XX-X999 DOB: Sex: Race:

Court Action

Court Action: Court Action Date:
Amount of Judgement: \$0.00 Court Action For: Exemptions:
Cost Against Party: \$0.00 Other Cost: \$0.00 Date Satisfied:
Comment: Arrest Date:
Warrant Action Date: Warrant Action Status: Status Description:

Service Information

Issued: 03/16/2016 Issued Type: C-CERTIFIED MAIL Reissue: Reissue Type:
Return: Return Type: Return: Return Type:
Served: 03/30/2016 Service Type: C-CERTIFIED MAIL Service On: Served By:
Answer: Answer Type: Notice of No Service: Notice of No Answer:

Attorneys

Case 6:16-cv-00643-LSC Document 1-1 Filed 04/21/16 Page 3 of 3

Number	Attorney Code	Type of Counsel	Name	Email	Phone
Attorney 1	000000		PRO SE		

Financial**Fee Sheet**

Fee Status	Admin Fee	Fee Code	Payor	Payee	Amount Due	Amount Paid	Balance	Amount Hold	Garnish Party
ACTIVE	N	AOCC	C001	000	\$12.33	\$12.33	\$0.00	\$0.00	0
ACTIVE	N	CONV	C001	000	\$0.00	\$19.73	\$0.00	\$0.00	0
ACTIVE	N	CV05	C001	000	\$336.00	\$336.00	\$0.00	\$0.00	0
ACTIVE	N	JDMD	C001	000	\$100.00	\$100.00	\$0.00	\$0.00	0
ACTIVE	N	VADM	C001	000	\$45.00	\$45.00	\$0.00	\$0.00	0
Total:					\$493.33	\$513.06	-\$19.73	\$0.00	

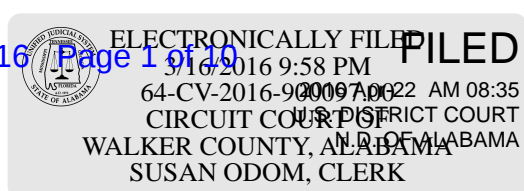
Financial History

Transaction Date	Description	Disbursement Account	Transaction Batch	Receipt Number	Amount	From Party	To Party	Money Type	Admin Fee	Reason	Attorney	Operator
03/17/2016	CREDIT	CONV	2016026	928250	\$19.73	C001	000		N			CEM
03/17/2016	RECEIPT	AOCC	2016026	928240	\$12.33	C001	000		N			CEM
03/17/2016	RECEIPT	CV05	2016026	928260	\$336.00	C001	000		N			CEM
03/17/2016	RECEIPT	JDMD	2016026	928270	\$100.00	C001	000		N			CEM
03/17/2016	RECEIPT	VADM	2016026	928280	\$45.00	C001	000		N			CEM

Case Action Summary

Date:	Time	Code	Comments	Operator
3/16/2016	9:58 PM	ECOMP	COMPLAINT E-FILED.	DIA009
3/16/2016	9:59 PM	FILE	FILED THIS DATE: 03/16/2016 (AV01)	AJA
3/16/2016	9:59 PM	EORD	E-ORDER FLAG SET TO "Y" (AV01)	AJA
3/16/2016	9:59 PM	ASSJ	ASSIGNED TO JUDGE: HOYT M ELLIOTT (AV01)	AJA
3/16/2016	9:59 PM	SCAN	CASE SCANNED STATUS SET TO: N (AV01)	AJA
3/16/2016	9:59 PM	STAT	CASE ASSIGNED STATUS OF: ACTIVE (AV01)	AJA
3/16/2016	9:59 PM	TDMJ	JURY TRIAL REQUESTED (AV01)	AJA
3/16/2016	9:59 PM	ORIG	ORIGIN: INITIAL FILING (AV01)	AJA
3/16/2016	9:59 PM	C001	C001 PARTY ADDED: TATUM CHARLES CLYDE JR (AV02)	AJA
3/16/2016	9:59 PM	C001	LISTED AS ATTORNEY FOR C001: DIAMOND SETH LAWRENC	AJA
3/16/2016	9:59 PM	C001	INDIGENT FLAG SET TO: N (AV02)	AJA
3/16/2016	9:59 PM	C001	C001 E-ORDER FLAG SET TO "N" (AV02)	AJA
3/16/2016	9:59 PM	D001	LISTED AS ATTORNEY FOR D001: PRO SE (AV02)	AJA
3/16/2016	9:59 PM	D001	CERTIFIED MAI ISSUED: 03/16/2016 TO D001 (AV02)	AJA
3/16/2016	9:59 PM	D001	D001 PARTY ADDED: WILBUR PRODUCTS INC. DBA MOTIV B	AJA
3/16/2016	9:59 PM	D001	INDIGENT FLAG SET TO: N (AV02)	AJA
3/16/2016	9:59 PM	D001	D001 E-ORDER FLAG SET TO "N" (AV02)	AJA
4/6/2016	2:36 PM	D001	SERVICE OF CERTIFIED MAI ON 03/30/2016 FOR D001	DEC
4/6/2016	2:36 PM	ESERC	SERVICE RETURN	DEC

**END OF THE REPORT**



IN THE CIRCUIT COURT OF WALKER COUNTY, ALABAMA

CHARLES CLYDE TATUM, JR.,)
 individually and on behalf of other)
 similarly situated persons,)

Plaintiff,)

v.)

CIVIL CASE NUMBER:

64-CV-2016-_____

WILBUR PRODUCTS, INC.,)
 doing business as MOTIV BOWLING,)

and)

Fictitious Defendants A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, and T, being those persons, firms, or corporations, whose fraud, scheme to defraud, and/or other wrongful conduct caused or contributed to Plaintiff's injuries and damages and whose true names and identities are unknown to Plaintiff at this time, but will be substituted by amendment when ascertained,)

Defendants.)

COMPLAINT

NATURE OF CLAIM

Plaintiff, Charles Clyde Tatum, Jr., ("Plaintiff" or "Tatum") for himself and on behalf of others similarly situated, asserts claims for fraud, deceptive business practices, and for compensatory and punitive damages, reasonable expenses of litigation, and attorneys' fees, on the grounds set forth below:

PARTIES

EXHIBIT "B"

1. Tatum is an adult resident citizen of Walker County, Alabama. Tatum brings this action individually and on behalf of a class of similarly situated persons who have been or who may be affected by the deceptive business practices, fraud, and other wrongful conduct complained of herein, which class is more fully described below.

2. Defendant Wilbur Products, Inc. is a corporation organized under the laws of the State of Michigan, and doing business in Alabama at all times pertinent to the Complaint, and doing business under the trade and/or assumed name of “Motiv Bowling” at all times pertinent to the Complaint. Defendant is referred to hereinafter as “Motiv.”

3. The Fictitious Defendants A-T are those persons, firms, or corporations, whose fraud, scheme to defraud, and/or other wrongful conduct caused or contributed to Plaintiff's injuries and damages and whose true names and identities are unknown to Plaintiff at this time, but will be substituted by amendment when ascertained

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS IN THE COMPLAINT

4. Plaintiff adopts and realleges the allegations of the preceding paragraphs as fully as if set out herein.

5. The United States Bowling Congress (“USBC”) is the national governing body for ten-pin bowling in the United States. It has approximately 3,000 local associations across the USA serving over 2 million members. Among its duties and responsibilities to these members are:

- Maintain specifications, conduct research testing for, and certify: bowling lanes, lane dressings, pin setting and ball return equipment, bowling pins, bowling balls and other bowling-related products.
- Establish and publish playing rules, and provide counselors to help interpret them.
- Certify leagues and tournaments.

- Protect the financial investment of certified leagues through its league bonding program.
- Manage Team USA as it competes in international tournaments.
- Conduct championship tournaments: USBC Masters, USBC Queens, USBC Open Championships, USBC Women's Championships, USBC Youth Open, USBC Junior Gold Championships, USBC Intercollegiate Team Championships, USBC Intercollegiate Singles Championships, USBC Senior Masters, USBC Senior Queens, Team USA Trials, USBC Senior Championships and Pepsi USBC Youth Championships.
- Provides 'Lifetime Achievement' awards, one award only for achievements (300 games and 800 series for three games, among others) accomplished in USBC-sanctioned leagues or tournaments.
- Maintain historical records of bowler averages for use in USBC-sanctioned leagues and tournaments.
- Certify coaches for both youth and adult bowlers.
- Regulate and promote high school and collegiate bowling.
- Manage SMART (Scholarship Management and Accounting Report for Tenpins), the only youth scholarship fund recognized by the United States Olympic Committee (USOC) and the National Collegiate Athletic Association (NCAA), through a separate corporation.

6. Unapproved bowling balls may not be used in USBC certified competition. For this reason, it is material and of overriding importance to bowlers that their bowling balls comply with and be certified under the current USBC Equipment Specifications and Certifications Manual.

7. Motiv is in the business of manufacturing and selling bowling balls directly to consumers through a variety of marketing ploys, including advertising on their website and a statement on their packaging that their bowling balls meet the current USBC specifications.

Among the models of bowling balls offered by Motiv are the “Jackal” and “Jackal Carnage” balls.¹

8. Motiv represented to the public in general and Tatum in particular that the “Jackal” and “Jackal Carnage” model balls complied with the current USBC Equipment Specifications and Certifications Manual. This representation was intentionally, willfully, wantonly, recklessly, negligently, and/or innocently false.

9. In reliance on Motiv’s misrepresentation, Tatum purchased a “Jackal Carnage” bowling ball from Motiv on or about January 20, 2016, at a cost of \$159.90. The packaging on the bowling ball, and on the “Jackal” models, represented that the bowling ball complied with the current USBC Equipment Specifications and Certifications Manual.

10. The “Jackal” and “Jackal Carnage” bowling balls, like many bowling balls, come *without* any holes for the player’s hand drilled into the ball. Having a bowling ball drilled specifically for a player’s hand and that player’s specific game is a vital piece of becoming a consistent, high-scoring bowler.

11. The average cost for a professional, appropriate, and necessary drilling is \$50.00 to \$100.00. Tatum had his “Jackal Carnage” ball drilled to his individual hand and specific game at a cost of \$85.00.

12. Subsequent to its certification of the “Jackal” and “Jackal Carnage” bowling balls, the USBC determined that the Jackal and Jackal Carnage balls do not comply with current specifications and requirements in the USBC Equipment Specifications and Certifications Manual. USBC testing showed a significant percentage of the Jackal and Jackal Carnage, both produced by Motiv, exceeded the maximum 0.060" differential radius of gyration standard

¹ The “Jackal” and “Jackal Carnage” balls are both designed as “heavy oil” balls; that is, to be used in the same lane conditions. Therefore, their purchasers are similarly situated.

specification during spot checks of bowling balls in the field. Both balls were originally approved based on test balls submitted by Motiv. The Jackal had been approved for competition in September 2014 while the Jackal Carnage was approved for use in late December 2015.

13. On or about March 15, 2016, the USBC revoked its approval of the “Jackal” and “Jackal Carnage” bowling balls and placed Motiv on probationary status for a period of one year.

14. On or about March 15, 2016, Motiv released a press statement stating that it was implementing a procedure for customers who purchased a “Jackal” or “Jackal Carnage” to “become eligible for a replacement ball.” However, Motiv has not stated that it will provide refunds, or that it will reimburse customers for the other damages they have suffered or incurred, including the cost of drilling of a new ball and for inserts. Given Motiv’s breach of trust, the supplying of a “replacement ball” is a grossly inadequate remedy, as players do not want to run the risk of being disqualified from USBC certified tournaments or other sanctions if Motiv again provides an inappropriate ball. Further, in all sports, it is important that controversy over equipment not cast doubts on a player’s individual achievements, and any competitor using a Motiv bowling ball is subject to having aspersions cast on their performance.

15. The only way to make the purchasers of the “Jackal” and “Jackal Carnage” bowling balls whole from their damages is a full refund of the purchase price plus the incidental and necessary expenses detailed above, as well as punitive damages to punish and deter Motiv from this wrongful conduct in the future and profiteering from deceptive and unsavory business practices.

CLAIM FOR RELIEF: FRAUD AND DECEPTIVE BUSINESS PRACTICES

16. Plaintiff adopts and realleges the allegations of the preceding paragraphs as fully as if set out herein.

17. In an effort to induce Tatum and similarly situated customers to purchase its “Jackal” and “Jackal Carnage” model balls, Motiv continuously and intentionally, willfully, wantonly, recklessly, negligently, and/or innocently misrepresented material facts to and suppressed information from Tatum and similarly situated customers. These misrepresentations and suppressions were material to Tatum and similarly situated customers, and Tatum and similarly situated customers reasonably relied on these misrepresentations and suppressions to their detriment in purchasing “Jackal” and “Jackal Carnage” model bowling balls.

18. As a direct and proximate result of Motiv’s unlawful and fraudulent conduct, Tatum and similarly situated customers have been and continue to be damaged.

CLAIM FOR RELIEF: BREACH OF CONTRACT AND WARRANTY

19. Plaintiff adopts and realleges the allegations of paragraphs “1” through “15” as fully as if set out herein.

20. Plaintiff entered into a contract with Motiv to purchase, and in fact paid for, either Jackal or Jackal Carnage bowling balls produced by Motiv, based on Motiv’s express warranty or representations that said bowling balls complied with USBC standards.

21. Motiv breached said contract and warranty by producing and selling to the Plaintiffs bowling balls that do not meet USBC standards, as set out hereinabove.

COLLECTIVE ACTION STATUS

19. Tatum is a proper person to bring this action, as he was a customer of Motiva at the time the cause of action arose, as set forth herein.

20. Tatum brings this action on his behalf and on behalf of all other persons similarly situated pursuant to Rule 23 of the Rules of Civil Procedure.

Description of Plaintiff's Class: The class which plaintiff seeks to represent in this action includes each and every purchaser of a "Jackal" or "Jackal Carnage" bowling ball from September 1, 2014 until March 16, 2016.

Numerosity as to Plaintiff's Class: This class is so numerous that joinder of all members of the class is impractical.

Existence and Predominance of Common Questions of Law and Fact: There are questions of law and fact common to the class; the claims and defenses of the plaintiff are typical of the claims and defenses of the class, and the plaintiff will adequately represent and protect the interest of the class. Said questions include, but are not limited to the following:

a. Whether Motiv misrepresented material facts to and suppressed information from Tatum and similarly situated customers regarding said bowling balls meeting USBC specifications, and whether the plaintiffs reasonably relied on these misrepresentations and suppressions to their detriment in purchasing "Jackal" and "Jackal Carnage" model bowling balls.

b. Whether Motiv breached warranties and contracts by producing and selling to the plaintiffs Jackal and Jackal Carnage bowling balls that did not comply with USBC standards.

Typicality of Plaintiff's claims and defenses: The claims asserted by Tatum, and the possible defenses asserted by Motiv, are typical of the claims asserted by members of the Plaintiff's class.

Risk of Inconsistent or Varying Adjudications of Plaintiff's class: The prosecution of separate actions by individual members of the Plaintiff's class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the Plaintiff's class which would establish incompatible standards of conduct for the party opposing the class, or (B)

adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

Common Questions of Law and Fact Predominate in Plaintiff's class: The questions of law or fact common to the members of the Plaintiff's class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Superiority: The class action proceeding will provide a practical basis for the determination of all interests of the parties, prevent inconsistent adjudications, maximize judicial economy, and is superior to all other available methods of fair and efficient adjudication of the controversy.

Adequate Representation: The named Plaintiff will fairly and adequately protect the interests of the members of the class. Furthermore, the named Plaintiff has no interest in conflict with or antagonistic to those interests of other class members. Plaintiff has retained class counsel which will competently and adequately represent the interests of the class members.

21. Defendant has acted or refused to act and will continue to act or refuse to act on grounds generally applicable to the class, thereby making appropriate injunctive or declaratory relief with respect to the class as a whole. Separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class which would establish incompatible standards of conduct for Defendant.

22. Questions of law and fact common to the members of the class predominate over any question affecting only an individual member or members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

CONCLUSION

23. Plaintiff herein make no claim or state no cause of action for any claim arising under any federal statute, rule, regulation, or constitutional provision. The claim(s) asserted herein arise under and are stated under Alabama law, and Plaintiff specifically waives any and all claims which might be deemed to arise under federal law. Plaintiff specifically avers that the aggregate damages of the class do not meet or exceed the sum of Five Million Dollars (\$5,000,000.00), and specifically state that the provisions of the Class Action Fairness Act of 2005 ("CAFA") are not applicable to the claims asserted herein.

GENERAL PRAYER FOR RELIEF COMMON TO ALL COUNTS:

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays the court to:

- (a) Issue a preliminary and permanent injunction enjoining the defendant, its agents, successors, employees, attorneys and those acting in concert with it and at its direction from engaging in the unlawful practices set forth in this complaint and from continuing further practices shown to be in violation of the applicable laws.
- (b) Grant such other and further relief as may be just and proper, including compensatory and punitive damages to Plaintiff and the members of the class he represents.
- (c) Award plaintiff the costs of this action and reasonable attorney's fees and expenses.

Respectfully submitted,

//s/ Seth Diamond

Seth Diamond, Esquire
Post Office Box 349
Jasper, Alabama 35502
(256) 778-1529

PLAINTIFF DEMANDS A TRIAL BY STRUCK JURY

PLEASE SERVE THE FOLLOWING BY CERTIFIED MAIL:

Wilbur Products, Inc.
Dba Motiv Bowling
18570 Trimble Court
Spring Lake, MI 49456
United States of America

State of Alabama Unified Judicial System Form C-34 Rev 6/88	SUMMONS - CIVIL -	Case Number: 64-CV-2016-900097.00	2016 Apr-22 AM 08:35 U.S. DISTRICT COURT N.D. OF ALABAMA
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IN THE CIRCUIT COURT OF WALKER COUNTY
CHARLES CLYDE TATUM JR V. WILBUR PRODUCTS INC. DBA MOTIV BOWLING

WILBUR PRODUCTS INC. DBA MOTIV BOWLING, 18570 TRIMBLE COURT, SPRING LAKE, MI 49456

NOTICE TO _____

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY SETH LAWRENCE DIAMOND

WHOSE ADDRESS IS PO Box 349, Jasper, AL 35502

THE ANSWER MUST BE MAILED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSONNEL AUTHORIZED by the Alabama Rules of the Civil Procedure:

☐ You are hereby commanded to serve this summons and a copy of the complaint in this action upon the defendant

☒ Service by certified mail of this summons is initiated upon the written request of CHARLES CLYDE TATUM JR
 pursuant to the Alabama Rules of the Civil Procedure

Date 3/16/2016 9:59:01 PM /s/ SUSAN ODOM

Clerk/Register

1803 3RD AVE

SUITE 205

JASPER, AL 35501

☒ Certified Mail is hereby requested /s/ SETH LAWRENCE DIAMOND
 Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____

☐ I certify that I personally delivered a copy of the Summons and Complaint to _____

_____ in _____ County, Alabama on _____ (Date)

 Date Server's Signature Address of Server

 Type of Server Server's Printed Name

 Phone Number of Server

EXHIBIT "C"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CV16-900097

Wilbur Products Inc. dba
Motiv Bowling
18570 Trimble Court
Spring Lake, MI 49456



9590 9401 0006 5205 8376 76

2. Article Number (Transfer from service label)

7013 3020 0002 2524 0609

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Gosborne*☐ Agent☒ Addressee

B. Received by (Printed Name)

Gosborne

C. Date of Delivery

3/30/16

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail

Mail Restricted Delivery

(X)

Domestic Return Receipt

EXHIBIT "D"



AlaFile E-Notice

64-CV-2016-900097.00

Judge: HOYT ELLIOTT

To: DIAMOND SETH LAWRENCE
sediamondlaw@gmail.com

NOTICE OF SERVICE

IN THE CIRCUIT COURT OF WALKER COUNTY, ALABAMA

CHARLES CLYDE TATUM JR V. WILBUR PRODUCTS INC. DBA MOTIV BOWLING
64-CV-2016-900097.00

The following matter was served on 3/30/2016

D001 WILBUR PRODUCTS INC. DBA MOTIV BOWLING

Corresponding To
CERTIFIED MAIL

SUSAN ODOM
CIRCUIT COURT CLERK
WALKER COUNTY, ALABAMA
1803 3RD AVE
SUITE 205
JASPER, AL 35501
205-384-7268

EXHIBIT "E"