

2. One of the popular and more premium brand of bats that Defendant regularly advertises and sells is its “DeMarini” brand of baseball bats.

3. A large number of Defendant’s customers play in various local and national leagues that adhere to USSSA standards for baseball bat manufacturing.

4. Accordingly, a number of Defendant’s DeMarini baseball bats are specifically labeled and advertised as being “USSSA” compliant.

5. However, a recent “audit” of several models of DeMarini “youth baseball bats” has revealed that the baseball bats purchased by Plaintiff and the other members of the proposed Class, are not actually USSSA compliant, and cannot be used for play in any league that adheres to USSSA regulations.

6. Accordingly Plaintiff brings this action on behalf of himself and other similarly situated consumers in Illinois and elsewhere nationwide, to obtain redress for those who purchased Defendant’s DeMarini baseball bats that failed to comply with USSSA regulations.

PARTIES

7. Plaintiff is a natural person and a citizen of Illinois.

8. Defendant Wilson Sporting Goods, Co. is a Delaware corporation with its principal place of business located in Chicago, Illinois. Wilson manufactures, advertises, and sells sporting goods equipment, including the DeMarini baseball bats at issue in this suit, online and through retail stores located in Illinois, and elsewhere throughout the country.

JURISDICTION AND VENUE

9. This Court has diversity jurisdiction under 28 U.S.C. § 1332(d), because (i) at least one member of the putative class is a citizen of a state different from any Defendant, (ii) the amount

in controversy exceeds \$5,000,000, exclusive of interests and costs, and (iii) none of the exceptions under that subsection apply to the instant action.

10. This Court has personal jurisdiction over Defendant because Defendant transacts business in Illinois, Defendant's headquarters are located in Illinois, and a substantial part of the events giving rise to Plaintiff's claims occurred in Illinois, as Defendant advertised and sold its baseball bats to Plaintiff in Illinois. Defendant has also advertised, distributed, and sold its baseball bats in Illinois such that it has sufficient minimum contacts with Illinois and/or has sufficiently availed itself of Illinois markets to make it permissible for this Court to exercise jurisdiction over Defendant.

11. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District, as Defendant advertised its baseball bats to Plaintiff in this District, and Plaintiff purchased one of Defendant's baseball bats in this District.

COMMON FACTUAL ALLEGATIONS

12. Defendant is one of the largest manufacturers of sporting goods equipment in the country.

13. One of the most common and popular sports products sold by Defendant are baseball bats. Defendant manufactures a number of different types of baseball bats under various brand names, including a line of premium bats sold under its "DeMarini" brand name.

14. A large number of Defendant's customers who buy its DeMarini baseball bats are parents of school age children in middle school and high school who play for various local and national leagues and/or tournaments that adhere to USSSA regulations.

15. Amongst other things, the USSSA sets specific requirements for the manufacturing of baseball bats, which must be met in order for any particular baseball bat to be used in a game played under its regulations.

16. Accordingly, a number of Defendant's DeMarini baseball bats are labeled and advertised as being "USSSA" compliant, and specifically feature a silver sticker prominently displayed on the surface of the bat certifying that it is "USSSA" compliant.

17. However, unbeknownst to consumers who had purchased them, certain models of DeMarini baseball bats sold by Defendant failed to comply with USSSA's requirements and cannot not be used to play in games governed by USSSA's regulations.

18. In fact, Defendant itself has recently stated that several models of DeMarini baseball bats "have been officially withdrawn from USSSA baseball play" as a result of "its youth baseball bat BPF audit for USSSA".

19. The affected baseball bats that were sold by Defendant were some of the most expensive and premium baseball bats that Defendant manufactures, with some models retailing for over Three Hundred and Fifty 00/100 Dollars (\$350.00). Amongst baseball players, "DeMarini" baseball bats are widely known as an upscale baseball bat that sells for a premium price.

20. While Defendant has offered various options to replace the affected baseball bats, it has refused to offer any monetary compensation to individuals who have purchased the mislabeled bats.

21. Plaintiff's minor son plays baseball games adhering to USSSA regulations which require that all bats used in the games are USSSA compliant.

22. Plaintiff purchased a DeMarini bat during the applicable limitations period which prominently featured a sticker representing that the bat complied with USSSA regulations when in fact it did not so comply.

23. The Defendant's representations that the affected DeMarini bats are USSSA compliant were false and misleading.

24. As a result, Plaintiff and the other members of the Class have been damaged by their purchases of Defendant's DeMarini baseball bats because they fail to comply with USSSA regulations.

25. Defendant has received significant profits from its false marketing and sale of the DeMarini baseball bats purchased by Plaintiff and the other members of the Class.

CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3) on behalf of himself and a nationwide class (the "Class"), with one subclass (the "Subclass" or "Illinois Subclass") defined as follows:

- (i) The Class: All persons in the United States and its Territories who, within the applicable statute of limitations, purchased any defective models of Defendant's DeMarini baseball bats;
- (ii) The Illinois Subclass: All persons who, within three years prior to the commencement of this action, purchased any defective models of Defendant's DeMarini baseball bats in the state of Illinois.

27. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class and Subclass. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to

vigorously prosecuting this action on behalf of the other members of the Class and Subclass, and have the financial resources to do so. Neither Plaintiff nor his counsel have any interest adverse to those of the other members of the Class and Subclass.

28. Absent a class action, most members of the Class and Subclass would find the cost of litigating their claims to be prohibitive and would have no effective remedy. Unless the Class and Subclass is certified, Defendant will retain the monies it received from the members of the Class and Subclass as a result of its unfair and deceptive conduct.

29. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

30. Defendant has acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class and Subclass, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and Subclass.

31. Plaintiff's claims are typical of the claims of the other members of the Class and Subclass as Plaintiff and the other members of the Class and Subclass have all suffered harm and damages as a result of Defendant's unlawful and wrongful practice of falsely representing and advertising its DeMarini baseball bats as being USSSA compliant when in fact they were not.

32. There are many questions of law and fact common to the claims of Plaintiff and the other members of the Class and Subclass, and those questions predominate over any questions that may affect individual members of the Class and Subclass. Common questions for the Class and Subclass include, but are not limited to, the following:

- (a) Whether Defendant advertised, represented, and/or warranted that its DeMarini baseball bats complied with USSSA regulations;

- (b) Whether Defendant's DeMarini baseball bats were in compliance with USSSA regulations;
- (c) Whether Defendant's advertising of its DeMarini baseball bats was false or misleading;
- (d) Whether Defendant's conduct violates public policy;
- (e) Whether Defendant's conduct violated the Illinois Consumer Fraud Act and other such similar statutes;
- (f) Whether as a result of Defendant's misrepresentations of material facts that its DeMarini baseball bats met USSSA regulations Plaintiff and the other members of the Class and Subclass have suffered ascertainable monetary losses; and
- (g) Whether Plaintiff and the other members of the Class and Subclass are entitled to monetary, restitutionary or other remedies, and, if so, the nature of such remedies.

COUNT I
For Violations of Consumer Protection Laws
(on behalf of the Class and the Illinois Subclass)

33. Plaintiff hereby incorporates the above allegations by reference as though fully set forth herein.

34. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 502/1 *et seq.* ("ICFA"), as well as other materially identical consumer fraud statutes enacted by states throughout the country, prohibits deceptive acts and practices in the sale of products such as Defendant's non-compliant baseball bat.

35. Plaintiff and the other members of the Class and Subclass are "consumers" or "persons," as defined under the ICFA and other states' consumer protection laws.

36. Defendant's conduct as alleged herein occurred in the course of trade or commerce.

37. Defendant's actions in affirmatively representing and advertising that its DeMarini baseball bats were USSSA compliant when in fact they were not offends public policy, has caused

and continues to cause substantial injury to consumers, and constitutes an unfair and deceptive trade practice.

38. Upon information and belief, and given the fact that Defendant was responsible for designing and manufacturing the DeMarini baseball bats that it sold to Plaintiff and the other members of the putative Class, Defendant knew or should have known at all relevant times that its DeMarini baseball bats did not meet USSSA regulations. Nonetheless, Defendant advertised and sold a large number of the non-compliant baseball bats using false representations that they did meet USSSA regulations.

39. Defendant intended for consumers to rely on its representations that its DeMarini baseball bats met USSSA regulations when choosing to purchase the bats. Defendant's DeMarini baseball bats were specifically marketed and sold to individuals who required that the DeMarini baseball bats they purchased complied with USSSA regulations and Defendant's customers relied on such representations in making their decision to purchase the bats.

40. As a direct and proximate cause of Defendant's deceptive and unfair trade practices, Plaintiff and the other members of the Class and Subclass suffered actual damages, including monetary losses for the purchase price of the DeMarini baseball bats which were not USSSA compliant as advertised and represented by Defendant.

41. Defendant's conduct is in violation of the ICFA and other state's consumer protection laws, and pursuant to 815 ILCS 505/10a and other such state's consumer protection laws, Plaintiff and the other members of the Class and Subclass are entitled to damages in an amount to be proven at trial, reasonable attorney's fees, injunctive relief prohibiting Defendant's unfair and deceptive advertising going forward, and any other penalties or awards that may be appropriate under applicable law.

COUNT II
Breach of Express Warranty
(on behalf of the Class and the Illinois Subclass)

42. Plaintiff hereby incorporates the above allegations by reference as though fully set forth herein.

43. Through its product labeling and advertising, Defendant expressly warranted to Plaintiff and the other members of the Class that its DeMarini baseball bat met USSSA regulations and such representations were part of the basis of the bargain.

44. Defendant breached the express warranties it represented about its DeMarini baseball bats and their qualities because, as set forth above, the baseball bats were not actually USSSA compliant as warranted by Defendant.

45. As a direct and proximate result of Defendant's breach of its express warranties, Plaintiff and the members of the Class have been damaged in an amount to be determined at trial.

COUNT III
Breach of Implied Warranty
(on behalf of the Class and the Illinois Subclass)

46. Plaintiff hereby incorporates the above allegations by reference as though fully set forth herein.

47. The implied warranty of merchantability is codified in Section 2-314 of the Uniform Commercial Code ("UCC") and requires that goods have to be fit for the ordinary purposes for which goods of that type are used; have adequate labeling; and conform to any promises or affirmations made on any product label.

48. Most states' laws provide for enforcement of the implied warranty of merchantability through their adoption of the UCC, including in Illinois pursuant to 810 ILCS 5/2-314, as well as other states where Defendant sells the non-compliant DeMarini baseball bats.

49. Defendant, as the marketer, distributor, and seller of the DeMarini baseball bats purchased by Plaintiff and the other members of the class, is a merchant.

50. Plaintiff and the other Class members purchased Defendant's DeMarini baseball bats in a consumer transaction.

51. The affected DeMarini baseball bats sold by Defendant were not fit for the ordinary purposes for which goods of that type are used because they could not be used for play in baseball games subject to USSSA regulations contrary to the "USSSA" certification specifically placed on the bats.

52. The non-compliant DeMarini baseball bats sold by Defendant did not conform to the promises and affirmations made by Defendant on their labeling because they were labeled as being compliant with USSSA regulations when in fact they were not.

53. Plaintiff and the other Class members did not receive the baseball bats that were warranted to them, because the baseball bats they purchased did not meet USSSA regulations as promised by the Defendant.

54. As a result of Defendant's breach of warranty, Plaintiff and the other Class members suffered damages by purchasing baseball bats which failed to comply with USSSA regulations and could not be used for their ordinary intended purpose.

COUNT IV
Unjust Enrichment
(in the alternative to the Second Cause of Action and
on behalf of the Class and the Illinois Subclass)

55. Plaintiff hereby incorporates the allegations set forth in Paragraphs 1–32 above.

56. Plaintiff and the other members of the Class conferred a benefit on Defendant by purchasing the non-compliant DeMarini baseball bats.

57. It is inequitable and unjust for Defendant to retain the revenues obtained from purchases of its defective DeMarini baseball bats by Plaintiff and other Class members because Defendant misrepresented the qualities of the baseball bats and the baseball bats could not be used in the very games that they were specifically sold and manufactured for play in.

58. Accordingly, because Defendant will be unjustly enriched if it is allowed to retain such funds, Defendant must pay restitution to Plaintiff and the other Class members in the amount which Defendant was unjustly enriched by each of their purchases of its defective DeMarini baseball bats.

WHEREFORE, Plaintiff, on behalf of himself, the Class and the Subclass, prays for the following relief:

1. An order certifying the Class and Subclass as defined above;
2. An award of actual or compensatory damages, or, in the alternative, disgorgement of all funds unjustly retained by Defendant as a result of its unfair and deceptive sales practices;
3. An award of reasonable attorneys' fees and costs; and
4. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: April 24, 2017

THEODORE SHEELEY, individually and on
behalf of a class of similarly situated individuals

/s/ Scott Morgan
One of Plaintiff's Attorneys

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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
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
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
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
625 Drug Related Seizure of Property 21 USC 881
690 Other
622 Appeal 28 USC 158
423 Withdrawal 28 USC 157
820 Copyrights
830 Patent
840 Trademark
710 Fair Labor Standards Act
720 Labor/Management Relations
740 Railway Labor Act
751 Family and Medical Leave Act
790 Other Labor Litigation
791 Employee Retirement Income Security Act
462 Naturalization Application
463 Habeas Corpus - Alien Detainee (Prisoner Petition)
465 Other Immigration Actions

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excludes Veterans)
153 Recovery of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
REAL PROPERTY
210 Land Condemnation
220 Foreclosure
230 Rent Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property
TORTS
PERSONAL INJURY
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers' Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
362 Personal Injury - Medical Malpractice
PERSONAL INJURY
365 Personal Injury - Product Liability
367 Health Care/Pharmaceutical Personal Injury Product Liability
368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability
PRISONER PETITIONS
510 Motions to Vacate Sentence
Habeas Corpus:
530 General
535 Death Penalty
540 Mandamus & Other
550 Civil Rights
555 Prison Condition
560 Civil Detainee - Conditions of Confinement
FORFEITURE/PENALTY
625 Drug Related Seizure of Property 21 USC 881
690 Other
LABOR
710 Fair Labor Standards Act
720 Labor/Management Relations
740 Railway Labor Act
751 Family and Medical Leave Act
790 Other Labor Litigation
791 Employee Retirement Income Security Act
IMMIGRATION
462 Naturalization Application
463 Habeas Corpus - Alien Detainee (Prisoner Petition)
465 Other Immigration Actions
BANKRUPTCY
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
PROPERTY RIGHTS
820 Copyrights
830 Patent
840 Trademark
SOCIAL SECURITY
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
FEDERAL TAX SUITS
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS—Third Party 26 USC 7609
OTHER STATUTES
375 False Claims Act
376 Qui Tam (31 USC 3729 (a))
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
850 Securities/Commodities/Exchange
890 Other Statutory Actions
891 Agricultural Acts
893 Environmental Matters
895 Freedom of Information Act
896 Arbitration
899 Administrative Procedure Act/Review or Appeal of Agency Decision
950 Constitutionality of State Statutes

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 Litigation-Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

VII. Previous Bankruptcy Matters (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)

VIII. 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

IX. RELATED CASE(S) IF ANY (See instructions):
JUDGE
DOCKET NUMBER

X. This case (check one box)
Is not a refiling of a previously dismissed action
is a refiling of case number previously dismissed by Judge
DATE SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Previous Bankruptcy Matters For nature of suit 422 and 423 enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this court. Use a separate attachment if necessary.

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

IX. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

X. Refiling Information. Place an "X" in one of the two boxes indicating if the case is or is not a refiling of a previously dismissed action. If it is a refiling of a previously dismissed action, insert the case number and judge.

Date and Attorney Signature. Date and sign the civil cover sheet.