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10 Attorneys for Plaintiffs and Putative Classes

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SOUTHERN DIVISION**

14 Hiroyuki Oda, a California resident;
15 Corey Roth, a California resident;
Anthony Zambino, a Pennsylvania
16 resident; Kelsey Hines, a New Jersey
resident; Gary Vickery, a Tennessee
17 resident; Ryan Rainone, a Connecticut
resident; John Bilodeau, a
Massachusetts resident; and Melissa
18 Triplett, a Florida resident, individually,
and on behalf of themselves and all
19 others similarly situated,

20 Plaintiffs,

21 vs.

22 Wilson Sporting Goods Co.; Vari-Wall
Sports, Inc.; Jackson Tube Service, Inc.;
23 and DOES 1 through 10, inclusive,

24 Defendants.
25
26
27
28

) Case No. 8:15-cv-02131-JLS-JCG

) **CLASS ACTION**

) **SECOND AMENDED
COMPLAINT FOR DAMAGES
AND EQUITABLE RELIEF**

) **DEMAND FOR JURY TRIAL**

1 with its corporate headquarters in Columbiana, Ohio. Jackson is incorporated in Ohio
 2 with its corporate headquarters in Piqua, Ohio. Therefore, diversity of citizenship exists.

3 4. While the exact damages owed to Plaintiffs and Class Members are unknown
 4 at this time, Plaintiffs reasonably believe their claims exceed five million dollars
 5 (\$5,000,000) in the aggregate.

6 5. This Court has personal jurisdiction over Defendants because they have
 7 purposefully availed themselves of the privilege of conducting business in the State of
 8 California by marketing, distributing and selling the Softball Bats in this state.

9 6. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391, because many
 10 of the acts and transactions giving rise to this action occurred in this District and because
 11 Defendants:

- 12 a. have intentionally availed themselves of the laws and markets within this
- 13 District through the promotion, marketing, distribution and sale of the
- 14 Softball Bats in this District;
- 15 b. does substantial business in this District;
- 16 c. is subject to personal jurisdiction in this District;

17 and because two of the Plaintiffs:

- 18 a. were exposed to Defendants' misleading practices and representations in
- 19 this District; and
- 20 b. purchased the Softball Bats in this District.

21 **NATURE OF THE ACTION**

22 7. Defendants have a uniform and long-standing pattern of employing unfair
 23 and deceptive practices with respect to the sale of the Softball Bats through
 24 misrepresentations and omissions concerning the characteristics, uses, benefits, and
 25 overall quality and fitness of the Softball Bats. During the relevant time period, Wilson
 26 designed and assembled the Softball Bats from component parts manufactured by
 27 component part manufacturers such as Vari-Wall and Jackson. Jackson manufactured the
 28 steel tubing pursuant to Vari-Wall's specifications and purchase orders. Vari-Wall

1 purchased the steel tubing from Jackson who then forms and sells the barrels to Wilson.
 2 During the relevant time period, the chemical composition of multiple batches of tubing
 3 that was made into barrels for the Softball Bats that originated from Jackson and Vari-
 4 Wall were outside specifications, making them too brittle. In addition, the steel tubing
 5 was manufactured with a seam. Moreover, the wall thickness of the steel tubing was
 6 thinner than prior generations. As a result of the out-of-specification (“OOS”) chemical
 7 composition, seam, and thinner wall (the “Defects”), the Softball Bats were more brittle
 8 and more prone to crack and break during normal use as confirmed by hundreds of
 9 consumer complaints and the return rate of the Softball Bats. Indeed, the return rates for
 10 the prior and new generations of the Softball Bats were much lower. The return rates for
 11 the Softball Bats spiked in relation to the prior and new generations. As a result of these
 12 high return rates, Defendants stopped manufacturing and selling the Softball Bats, skipped
 13 a generation to determine what was causing the Softball Bats to fail, but have not initiated
 14 any efforts to recall the Softball Bats from retailers or the public, who continue to sell the
 15 Softball Bats and place them in the stream of commerce. As the designer, manufacturer,
 16 assembler, distributor and seller of the Softball Bats, Defendants knew, or at the very least,
 17 should have known of the Defects, and should have disclosed and warned unsuspecting
 18 consumers, such as Plaintiffs and the Class Members, of the Defects. Despite knowledge
 19 of the Defects, Defendants continued to sell the Softball Bats through major retail chains
 20 throughout California and the United States, such as Sports Authority, Dick’s Sporting
 21 Goods and Sports Chalet.

22 8. Despite having knowledge of the Defects, hundreds of consumer complaints,
 23 and alarming return rates, Defendants continued to market and promote itself as
 24 “DeMarini – **Maker of the World’s Finest Bats.**” In addition, Defendants on its website
 25 represented to the consuming public that not only did they have an “insane dedication to
 26 performance,” they had “**an insane dedication to quality.**” Defendants go on further to
 27 say that their “technology and **durability is unmatched ...**”¹ Defendants’ marketing

28 ¹ <http://www.demarini.com/en-us/forms/customer-service>.

slogans convey the message that the Softball Bats are of high standard, quality or grade. However, as set forth *supra* and throughout this complaint, these representations are deceptive, false and misleading because the Softball Bats – as a result of the Defects – were neither the finest in the world, nor made of quality materials, nor durable as they were failing shortly after normal use. Plaintiffs and Class Members, relying on these deceptive, false and misleading representations, purchased the Softball Bats.

9. Defendants also claim that they had “an **exceptional warranty** to secure [the consumers] investment.² Defendants’ Warranty covers the following three items – there are no other warranties: (1) a severely dented bat for one year from the date of purchase; (2) the end-plug and knob may be repaired or replaced if found defective for one year from the date of purchase; and (3) cracked from normal use for one year from the date of purchase. Defendants, however, refused to honor their “exceptional warranty.”³

10. As a result of Defendants’ deceptive, false and misleading claims in their marketing and advertising, consumers – including Plaintiffs and Class Members – purchased the Softball Bats without disclosing and warning that the Softball Bats have the known Defects that could and did cause the Softball Bats to fail as demonstrated by the hundreds of consumer complaints and return rates which were all known and reported to Defendants. Had Defendants disclosed these material facts, Plaintiffs would not have purchased the Softball Bats. Defendants were also able to charge more than what the Softball Bats would have been worth had Defendants disclosed the truth about the Defects and the Softball Bats propensity to crack, bend and flatten with minimal, or even a single use.

11. Plaintiffs bring this class action against Defendants, on behalf of themselves and Class Members, in order to: (a) halt the dissemination of Defendants’ deceptive

² *Id.*

³ *Id.* “If DeMarini agrees that your bat is defective it will be either repaired or replaced.” However, Defendants refused to repair, replace, provide store credit or refund the full retail price of the Softball Bats. Instead, in direct contravention of their warranty, Defendants offer consumers non-comparable bats that are not designed or allowed to be used (i.e. are illegal) in Plaintiffs’ softball leagues.

advertising message; (b) correct the false and misleading perception Defendants have created in the minds of consumers through their representations and omissions; and (c) secure redress for Plaintiffs and Class Members who have purchased one or more of the Softball Bats. Plaintiffs, on behalf of themselves and Class Members, allege violations of: (1) the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (the “CLRA”); (2) the California Business & Professions Code §§ 17200, *et seq.* (the “UCL”); (3) Song-Beverly Warranty Act, California Civil Code §§ 1792, *et seq.* (the “Song-Beverly Act”); (4) breach of implied warranty; (5) strict products liability—defective design or manufacture; (6) strict products liability—failure to warn; (7) violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301(1), *et seq.* (the “MMWA”); (8) the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.* (the “UTPCPL”); (9) the New Jersey Consumer Fraud Act, N.J.S.A. §§ 56:8-1, *et seq.* (the “NJSA”); (10) the Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101, *et seq.* (the “TCPA”); (11) the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Ann. §§ 42-110A, *et seq.* (the “CUTPA”); (12) the Massachusetts Consumer Protection Act, Mass. Gen. Laws Ch. 93A (the “MCPA”); and (13) the Florida Unfair and Deceptive Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.* (the “FDUTPA”) (collectively, the “Consumer Protection Statutes”).

PARTIES

Plaintiffs

12. Plaintiff Oda is an individual who resides in Santa Ana, California and is a citizen of California. Plaintiff Oda purchased one of the Softball Bats on May 23, 2015 from an online authorized dealer, hq4sports.com. Plaintiff Oda received his bat in the mail on May 29, 2015. Plaintiff Oda used his bat for its intended use, to play softball, and during its first use it failed. Plaintiff Oda took his brand new bat to his league game the very same day he received it in the mail. On May 29, 2015, Plaintiff Oda took his first swing with his brand bat. Plaintiff Oda struck a regulation softball used in his regulated city league and immediately heard the bat cracking. Plaintiff Oda ran to first base, and

1 called time-out to view his brand new bat. Plaintiff Oda noticed that his bat had cracked
2 down the entire barrel (approximately 12 inches) from the very first use. Plaintiff Oda
3 was outraged and extremely upset that his new bat, which cost \$189.95, would sustain a
4 foot-long crack on the very first contact with a regulation softball. Plaintiff Oda called
5 Wilson to discuss what had happened to his bat. Wilson's customer service representative
6 informed Plaintiff Oda that they would neither refund his money, replace the bat with
7 another similar bat, nor give him store credit. Wilson also never offered to repair his
8 broken bat. Plaintiff Oda has been damaged in at least the amount he paid for the bat.

9 13. Plaintiff Roth is an individual who resides in Rancho Santa Margarita,
10 California and is a citizen of California. Plaintiff Roth purchased one of the Softball Bats
11 on January 22, 2015 from an online authorized dealer, Amazon.com. Plaintiff Roth
12 received his bat in the mail on January 26, 2015. Plaintiff Roth used the bat for its intended
13 use, to play softball in his Irvine City league for approximately one to two weeks. After
14 approximately three games using his brand new bat, he noticed extreme flattening,
15 cracking and bending at the barrel of the bat. Plaintiff Roth called Wilson to discuss what
16 had happened to his bat. Wilson's customer service representative informed Plaintiff Roth
17 that they would neither refund his money, replace the bat with another similar bar, nor
18 give him store credit. Wilson also never offered to repair his broken bat. Plaintiff Roth
19 has been damaged at least in the amount he purchased the bat, which on information and
20 belief, was for the amount of \$229.95.

21 14. Plaintiff Zambino is an individual who resides in Upper Chichester,
22 Pennsylvania and is a citizen of Pennsylvania. Plaintiff Zambino purchased two of the
23 Softball Bats on or about April 22, 2014 from an online authorized dealer, JustBats.com.
24 Plaintiff Zambino used the bats for their intended use, and used them to play softball in
25 his softball league. After using his brand new bats for approximately 30 days each, he
26 noticed multiple dents, flattening, and cracks at the end of the barrels of both bats; causing,
27 on information and belief, damage to and/or weakening the integrity or stability of another
28 component part of the bat: the end cap which is a plastic mold which is inserted at the end

1 of the bat. Plaintiff Zambino called Wilson to discuss what had happened to his bats.
2 Wilson's customer service representative informed Plaintiff Zambino that they would
3 replace only one of the damaged bats. Wilson replaced the damaged bat with another
4 dented bat. Wilson refused to refund his money or give him store credit, but instead told
5 him to buy a heavier bat. Wilson also never offered to repair his broken bats. Plaintiff
6 Zambino submitted one of the two damaged bats with the original receipt to Wilson for
7 replacement. Plaintiff Zambino has been damaged at least in the amount he paid for the
8 bats, which on information and belief, cost \$189.99 each.

9 15. Plaintiff Hines is an individual who resides in Burlington, New Jersey and is
10 a citizen of New Jersey. Plaintiff Hines purchased one of the Softball Bats on March 1,
11 2015 from an online authorized dealer, Headquarters4Sport.com. Plaintiff Hines used the
12 bat for its intended use, to play softball in her regulated league. After using her brand new
13 DeMarini Softball Bat for the first time for batting practice, she noticed the barrel of the
14 bat had already dented and cracked, and she had to stop using it. Plaintiff Hines called
15 Wilson to discuss what happened to the bat. Wilson's customer service representative
16 informed Plaintiff Hines that they would not refund her money, replace the bat with
17 another similar bat, and would not give her store credit. Wilson also never offered to
18 repair her broken bat. Plaintiff Hines has been damaged at least in the amount she paid
19 for the bat, which on information and belief, was \$189.95.

20 16. Plaintiff Vickery is an individual who resides in Oak Ridge, Tennessee and
21 is a citizen of Tennessee. Plaintiff Vickery purchased two of the Softball Bats. Plaintiff
22 Vickery used the bats for their intended use, to play softball in his league. Both of the
23 Softball Bats broke during normal and intended use. The first bat broke when half of the
24 barrel sheared off, sending the top half flying across the infield towards the shortstop,
25 eventually landing on the grass; causing, on information and belief, damage to and/or
26 weakening of the integrity or stability of the end cap. The second bat broke when it
27 developed an eight-inch-long crack down the barrel of the bat. Other players who have
28 used the Softball Bats have experienced the same problem: breaking, cracking and denting

1 of the barrels; end caps popping out; and the bat breaking at the handle. Plaintiff Vickery
2 has been damaged for the amount he paid for the Softball Bats.

3 17. Plaintiff Rainone is an individual who resides in Waterford, Connecticut and
4 is a citizen of Connecticut. Plaintiff Rainone purchased one of the Softball Bats on April
5 30, 2015 from an online authorized dealer, HQ4Sports.com. Plaintiff Rainone used the
6 bat for its intended use, to play softball in his league. After using his brand new bat in one
7 game, he noticed in the third inning, cracking on the barrel of the bat. He discontinued
8 the use of bat after noticing the damage. Plaintiff Rainone called Wilson to discuss what
9 had happened to his bat. Wilson's customer service representative informed Plaintiff
10 Rainone that they would not refund his money, replace the bat with another similar bat,
11 and would not give him store credit. Plaintiff Rainone has been damaged in the amount
12 he purchased the bat, which on information and belief, was \$189.95.

13 18. Plaintiff Bilodeau is an individual who resides in Salisbury, Massachusetts
14 and is a citizen of Massachusetts. Plaintiff Bilodeau purchased four of the Softball Bats.
15 Plaintiff Bilodeau used his bats for their intended use, to play softball, and they all cracked,
16 bent, or otherwise broke in a short period of time. Plaintiff Bilodeau called Wilson to
17 discuss what had happened to his bat. Wilson's customer service representative informed
18 Plaintiff Bilodeau that they would neither refund his money, replace the bat with another
19 similar bat, nor give him store credit. Wilson also never offered to repair his broken bat.
20 Instead, Wilson gave Plaintiff Bilodeau a bat that he could not use in his league. Plaintiff
21 Bilodeau has therefore been damaged in at least the amount he paid for the four Softball
22 Bats.

23 19. Plaintiff Triplett is an individual who resides in Brooksville, Florida and is a
24 citizen of Florida. Plaintiff Triplett purchased one of the Softball Bats on February 23,
25 2014 from Sports Authority in Springhill, Florida. Plaintiff Triplett used her bat for its
26 intended use, to play softball, and the bat cracked after playing only two games. Plaintiff
27 Triplett called Wilson to discuss what had happened to her bat. Wilson's customer service
28 representative informed Plaintiff Triplett that they would neither refund her money,

1 replace the bat with another similar bat, nor give her store credit. Indeed, Wilson wanted
2 to give her a bat she neither wanted nor could use in her league. Plaintiff Triplett has
3 therefore been damaged in at least the amount she paid for the bat which was \$199.

4 20. During the relevant time period, Plaintiffs, while in the states of California,
5 Pennsylvania, New Jersey, Tennessee, Connecticut, Massachusetts, and Florida were
6 exposed to and saw Defendants' material and deceptive marketing claims. As a result of
7 Defendants' misleading marketing and material omissions, Plaintiffs believed that the
8 Softball Bats were of good design, made of quality materials, safe and would not crack,
9 bend, and flatten during normal use. Had Defendants disclosed the Softball Bats
10 contained the Defects by which the Softball Bats had the propensity to and did break,
11 crack and flatten with minimal, or even on the first use, which is, or should have been
12 known to Defendants, and as established by hundreds of consumer complaints and
13 alarming return rates, Plaintiffs would not have purchased the Softball Bats. Thus, as a
14 result of Defendants' material deceptive claims and omissions, Plaintiffs suffered injury
15 in fact and lost money.

16 **Defendants**

17 21. Wilson is incorporated and headquartered in Illinois and is engaged in the
18 business of designing, assembling, manufacturing and selling the Softball Bats to
19 consumers either directly through its website or through major retail chains nationwide.

20 22. Vari-Wall is incorporated and headquartered in Ohio. Vari-Wall is the
21 component part manufacturer who formed the barrels of the Softball Bats pursuant to a
22 Form Barrel Drawing provided by Wilson.

23 23. Jackson is also incorporated and headquartered in Ohio. Jackson is the
24 manufacturer who, based on purchase orders from Vari-Wall, manufactured the steel
25 tubing which eventually formed the barrels of the Softball Bats.

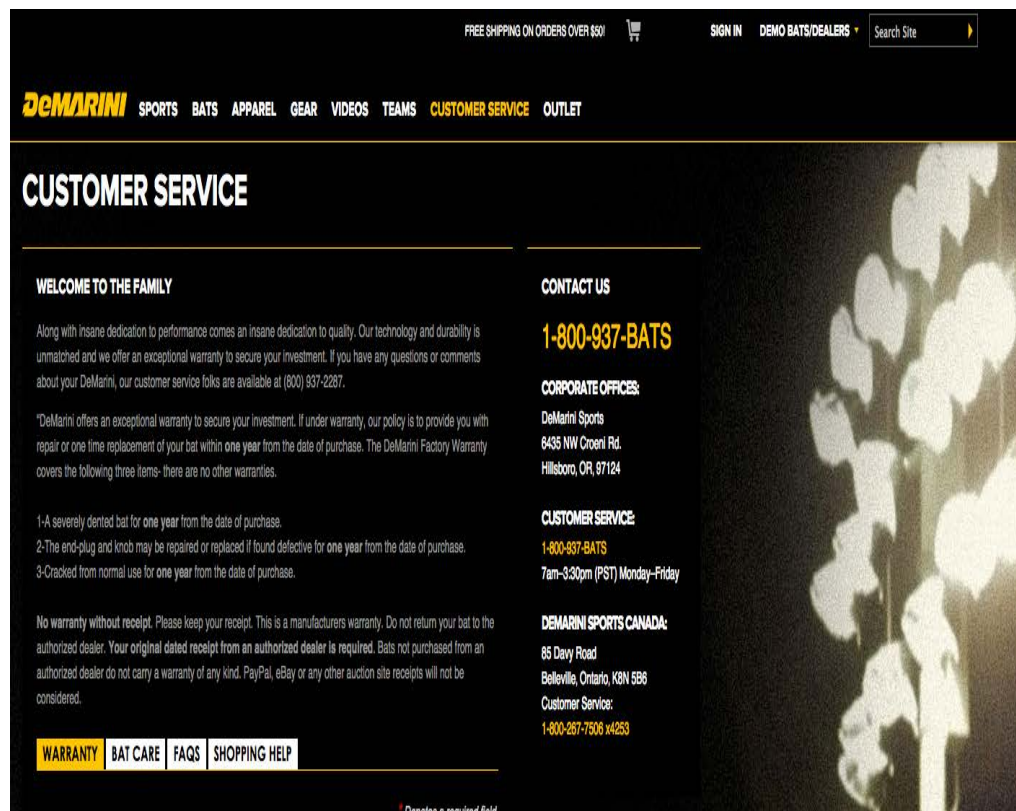
26 24. Plaintiffs allege, on information and belief, that at all times herein,
27 Defendants' agents, employees, representatives, executives, directors, partners, and/or
28 subsidiaries were acting within the course and scope of such agency, employment, and

representation, on behalf of Defendant. Each of DOE defendant is the agent, servant, partner, joint-venturer, co-venturer, principal, director, officer, manager, employee or shareholder of one or more of its co-defendants who aided, abetted, controlled, and directed or conspired with and acted in furtherance of said conspiracy with one or more of its co-defendants. Plaintiffs sue each of these DOE Defendants by these fictitious names because Plaintiffs do not know these defendants' true names and capacities at this time.

FACTUAL ALLEGATIONS

I. THE DEFECTIVE SOFTBALL BATS

25. Wilson developed, designed, assembled and sold the Softball Bats nationwide through direct website sales and through nationwide retailers. Wilson's one-year limited warranty for the Softball Bats provides "repair or one time replacement of [the Softball Bats] within one year from the date of purchase":



1 26. Wilson warrants the Softball Bats against defects in material or workmanship
2 for one year from the date of purchase. In hundreds of cases, however, and as established
3 by Plaintiffs' experiences, the Softball Bats failed within a few or even a single use – well
4 within the claimed one-year warranty.

5 27. Any limitations on remedies contained in Defendants' express warranties fail
6 of their essential purpose and are unenforceable with respect to the manufacturing and
7 design defects alleged herein.

8 28. The Defects in the Softball Bats manifest themselves in a handful of ways:
9 (1) the barrel of the bat bending upon striking a regulation softball minimal times (or even
10 a single time); (2) the barrel of the bat flattening upon striking a regulation softball
11 minimal times (or even a single time); (3) the barrel of the bat cracking upon striking a
12 regulation softball minimal times (or even a single time); and (4) the Defects in the barrel
13 of the Softball Bats have caused damage to other distinct portions of the product, the "end
14 cap" which is a distinct component part of the bat.

15 29. Plaintiffs, while using the Softball Bats for their intended purpose
16 experienced substantially similar incidents (i.e., cracking/bending/flattening and/or
17 damage to the end cap) after minimal use (or even a single time), which stem from the
18 Defects.

19 30. The Defects in the Softball Bats typically occur within the first few uses or
20 even the very first use. The Defects' presence is material because the Defects cause the
21 Softball Bats to bend/crack/flatten, thereby depriving consumers of the use and utility of
22 their product. The Defects are also material because neither Plaintiffs nor any reasonable
23 consumer would have purchased the Softball Bats had they been aware of their propensity
24 to break, flatten and crack during normal and minimal use. The retail cost of the Softball
25 Bats range from approximately \$189.95 to \$229.95. Defendants' unfair and unlawful
26 business practices have caused Plaintiffs and other consumers to spend millions of dollars
27 on the purchase and/or pay a premium price for a defective and potentially dangerous
28 softball bat, which they would not otherwise have spent had they known that the Softball

1 Bats contained the Defects and were not fit for normal use. Defendants have made an
 2 illegal profit which should be disgorged and returned to Plaintiffs and Class Members.

3 **II. CONSUMER COMPLAINTS AND THE ALARMING RETURN RATE**
 4 **ESTABLISH DEFENDANTS' KNOWLEDGE OF THE DEFECTS**
 5 **CONTAINED IN THE SOFTBALL BATS**

6 31. Although thousands of consumers, including Plaintiffs, reported to
 7 Defendants that their bats were failing, Defendants failed to adequately notify consumers
 8 or retailers which sell their products, of the Defects contained in the Softball Bats, and in
 9 fact, misled and deceived consumers through affirmative misrepresentations that the
 10 Softball Bats were **“the World’s Finest Bats,”** high **“quality,”** and **unmatched**
 11 **durability.**

12 32. At all times relevant herein, Defendants knew or should have known that the
 13 Softball Bats contained the Defects and were not known or reasonably discoverable by
 14 Plaintiffs and consumers before they purchased the Softball Bats. Defendants had
 15 exclusive, non-public knowledge of the Defects contained in the Softball Bats and their
 16 propensity to crack, flatten, and/or bend with minimal use (or even a single use). As the
 17 designer, manufacturer, assembler, marketer and seller of the Softball Bats, Defendants
 18 alone possessed specialized knowledge about the design and manufacturing process and
 19 were in a superior position to know and learn of the Defects. As established by Plaintiffs’
 20 experiences and the many consumers of the defective Softball Bats who have gone
 21 through the trouble to complain not only directly to DeMarini, but by visiting online
 22 forums to complain about the bats cracking, flattening and deforming during normal and
 23 minimal use, Defendants had actual or constructive notice of the Defects.

24 33. Plaintiffs are also informed and believe that Defendants knew or should have
 25 known about the Defects through sources not available to consumers including, but not
 26 limited to, product specifications, design drawings, return-rate data, testing data,
 27 manufacturer inspection, oversight of the manufacturing process, early consumer
 28 complaints about the Defects to Defendants and related retailers, testing or investigation

1 conducted in response to those early complaints, return and exchange data from customer
2 service, among other internal sources of aggregate information about the problem. Thus,
3 Plaintiffs are informed and believe that when Defendants released the Softball Bats, or
4 shortly thereafter, for sale to the consuming public, Defendants became aware or had
5 reason to know of the Defects. However, this information was not available and was
6 hidden to Plaintiffs and to the public.

7 34. Defendants were under a duty to disclose to Plaintiffs and consumers the
8 Defects contained in the Softball Bats because Defendants had exclusive knowledge of
9 the Defects and were in a superior position to know the truth about the quality and nature
10 of the Softball Bats. Through their exclusive design and manufacturing of the Softball
11 Bats, their own internal investigation and compilation of testing and consumer complaint
12 data, none of which was released to the public or otherwise available to the public,
13 Defendants had exclusive control of the information regarding the Defects and actively
14 concealed the existence of the Defects from unwary consumers. Despite having
15 knowledge of consumer complaints, Defendants failed to make any attempt to notify
16 consumers or affect an immediate recall, thereby actively concealing the Defects from
17 Plaintiffs and consumers for numerous years. Even to this day, Defendants continue to
18 actively conceal the serious nature of the Defects and have failed to adequately notify
19 consumers who are still in possession and using the Softball Bats.

20 35. Defendants intentionally failed to disclose to consumers the existence of the
21 Defects or the potential dangers they could cause. Only Defendants had exclusive
22 knowledge of the results of their own internal investigation/testing, design, manufacturing
23 process, and consumer complaints directed to Defendants. Defendants were in a superior
24 position to know the Softball Bats could immediately bend, flatten, or crack with normal
25 use rendering the bats unusable and dangerous long before their expected life span, yet
26 none of this information was directly accessible to or was hidden from Plaintiffs and Class
27 Members. Defendants actively concealed from Plaintiffs and consumers the defective
28 nature of the Softball Bats to prevent an avalanche of consumers from not purchasing their

products in the first place, or be placed in a position wherein it would have to replace or refund the purchase price of thousands of Softball Bats.

36. From at least 2013, consumers nationwide have posted complaints of the same problems with the Softball Bats on consumer websites including, but not limited to, Amazon.com. Consumers consistently reported the Softball Bats bending, denting, and/or cracking during normal use, and sometimes even at first use. The complaints also reflect early and continued manifestation of the Defects and Defendants' refusal to recall the product or even to publicly warn consumers of the Defects, as some of these samples show:

Date	Comments/Source
5/19/13	<p>“Cracked in my first game- I read on Demarini's website that ideal weather conditions for softball bats is above 60 degrees. I didn't use the bat until it was above 70 just to be sure. The bat still cracked on my second at bat. I sent the bat to Demarini about a month ago and still haven't received a new one. It might be bad luck, it might be a bad bat. You decide.” Source: http://www.amazon.com/gp/customer-reviews/R3VEV9OIEJ6CEJ/ref=cm_cr_pr_rvw_ttl?ie=UTF8&ASIN=B009ABSYLW</p>
	<p>“Pros: It has great pop right out of the wrapper. Cons: Unfortunately, I had to send it back because just after using it in 3 1/2 games it BROKE!! It cracked about 5" from the top. I hope I can get in exchange the same bat ASAP. I don't know what happened.” Source: http://www.justbats.com/reviews/demarini-steel-slow-pitch-softball-bat--dxwhi/16906/</p>
	<p>“Pros: Zero. Cons: Purchased bat, after 3 batters used the bat of the first game, bat split. Sent it back for another. Received bat, got 5 batters into it, again</p>

1		split.” Source: http://www.justbats.com/reviews/demarini-steel-slow-
2		pitch-softball-bat--dxwhi/16906/
3	7/8/13	“Hits awesome but dents easy- Had to send it back after 2 games due to
4		excessive denting. Bat has a lot of pop, just doesn't seem to last. I play in
5		warm weather so that's not the reason. Noticed a lot of other softball teams
6		dealing with the same issue on the same bat. Just bought the 2013 model
7		(black). Seems to be holding up a little better. I sent mine back and still
8		waiting for a new one. They received it on June 27, 2013, so we'll see.”
9		Source: http://www.amazon.com/gp/customer-
10		reviews/R3RJM2CGFDOCD/ref=cm_cr_pr_rvw_ttl?ie=UTF8&ASIN
11		=B009ABSYLW
12	10/14/13	“It Cracked in two weeks- I did receive the bat in a short time, service was
13		very good. I and some of my team mates used the bat. The softballs we
14		use are rated at 40, the softest ball that is used. The temperature was never
15		that low, DeMarini states that the temperature should be above 60F
16		because the balls get hard? Less than 1000 balls had been hit with the bat
17		and it cracked. DeMarini sent me a RMA and I have sent it back. We Will
18		see.” Source: http://www.amazon.com/gp/customer-
19		reviews/R2VPGS6VO37VX2/ref=cm_cr_pr_rvw_ttl?ie=UTF8&ASIN
20		=B009ABSYLW
21	6/1/14	“ Pros: None
22		Cons: Cracked in three spots after a game and a half, have heard nothing
23		but bad things about these bats and demarini could care less.” Source:
24		https://www.cheapbats.com/shop/2014-demarini-white-steel-slowpitch-
25		softball-bat-wtdxwhi14-p-6169.html

37. On information and belief, and based upon the facts likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, through testing, research, and complaints, among other things, Defendants knew or should

1 have known that the Softball Bats were defective because of their propensity to
 2 bend/flatten/crack during normal and intended use. Defendants concealed and omitted
 3 information regarding the Defects in their advertising, marketing, warranty documents
 4 accompanying the Softball Bats and other communications in a manner that has deceived
 5 and is likely to continue to deceive consumers and the public. Defendants were aware of
 6 the Defects, but concealed that information from Plaintiffs and Class Members.

7 38. Over the past several years, consumers have also reported the problem
 8 directly to Defendants' corporate offices that failed and refused to recall the product or
 9 honor their warranty. Defendants have never proactively informed or warned consumers
 10 about the Defects' existence. Defendants never revealed the existence of the Defects in
 11 their marketing materials, website or retailers where consumers can purchase the product.
 12 Reasonable consumers, like Plaintiffs, especially in light of Defendants' representations
 13 about the quality of their products and their manufacturing process, reasonably expected
 14 that the Softball Bats would function in the manner they were intended to be used and
 15 were free from defects. Plaintiffs and the Class Members further reasonably expected
 16 that Defendants would not sell the Softball Bats with known defects, and would have
 17 disclosed such defects to their consumers in an adequate manner when they learned of
 18 them. Despite Defendants' exclusive knowledge of the Defects at all times relevant
 19 herein, Defendants have concealed and suppressed these facts from the public and
 20 consumers who purchase and use the product.

21 **III. DEFENDANTS' ADVERTISEMENTS AND MARKETING FOR THE** 22 **SOFTBALL BATS ARE MATERIALLY DECEPTIVE, FALSE AND** 23 **MISLEADING**

24 39. Defendants have carried out a consistent and widespread campaign of
 25 deceptively promoting the quality, grade and characteristics of the Softball Bats. For
 26 years, Defendants publicly touted, in their marketing and on their website, about how they
 27 are the "**Maker of the World's Finest Bats.**" Defendants' website goes on to states that
 28 "[a]long with insane dedication to performance comes an **insane dedication to quality.**

1 Our technology and **durability is unmatched** and we offer an **exceptional warranty to**
 2 **secure your investment.**”⁴ Defendants’ core marketing statements that they are the
 3 “**Maker of the World’s Finest Bats,**” insanely dedicated to quality, and that the
 4 durability of their products is unmatched are false and misleading given the actual
 5 occurrences and complaints discussed *supra*, and the Defects contained in the Softball
 6 Bats, which cause the barrel of the Softball Bats to bend, flatten, and/or crack with
 7 minimal, or even a single use.

8 40. While Defendants have been fully aware of the Defects contained in the
 9 Softball Bats and loss of use suffered by their consumers, Defendants actively concealed
 10 the existence and nature of the Defects from Plaintiffs and the proposed class at the time
 11 of purchase, and thereafter. Specifically, Defendants failed to disclose or actively
 12 concealed at and after the time of purchase:

- 13 a. any and all known material defects or material nonconformity with the
 14 specifications of the Softball Bats, including the risk of cracking, bending,
 15 flattening and breaking with minimal and intended use;
- 16 b. that the Softball Bats were not in good working order, were defective, and
 17 were not fit for their intended purposes; and
- 18 c. that the Softball Bats were defective, despite the fact that Defendants
 19 learned of such defects through consumer complaints, internal
 20 investigation, testing, and related research data, as well as other internal
 21 sources.

22 41. Plaintiffs and the Class Members were, at all relevant times, ignorant of the
 23 existence of the Defects and, knowing this, Defendants continued to broadly market and
 24 sell the Softball Bats online and through nationwide retailers. Through such acts of
 25 fraudulent concealment, Defendants have successfully concealed from the public facts
 26 necessary to support the claims alleged herein. Plaintiffs, the general public and others
 27 similarly situated, were and are prevented from knowing and having knowledge of such

28 ⁴ <http://www.demarini.com/en-us/forms/customer-service>.

1 unlawful, unfair, and/or deceptive conduct or of facts that might have led to the discovery
2 thereof.

3 42. Defendants omitted and concealed the Defects and dangers from consumers,
4 including Plaintiffs. Thus, consumers using the Softball Bats would have no reasonable
5 expectation that the Softball Bats would bend/flatten/crack after minimal use while using
6 the product for its intended use.

7 43. Defendants, through years of consumer complaints and first-hand
8 knowledge, were aware of the Defects contained in the Softball Bats. Despite Defendants'
9 knowledge of the Softball Bats propensity to bend/flatten/crack, Defendants have
10 perpetrated a fraud-by-omission on Plaintiffs and consumers who purchased the Softball
11 Bats. Defendants, at all times herein, had exclusive knowledge of the material facts (the
12 Defects) which were not known to Plaintiffs or other similarly situated consumers.
13 Defendants had a duty to disclose the Defects to Plaintiff and consumers, yet failed to do
14 so.

15 44. Plaintiffs are informed and believe that Defendants had acknowledged
16 internally that the cause of the bending/flattening/cracking of the barrel originated from
17 Defects contained in the Softball Bats.

18 45. Defendants' wrongful acts caused Plaintiffs and the Class Members to
19 purchase the Softball Bats they otherwise would not have purchased, paid more for those
20 Softball Bats than they would have paid, have a product that has diminished in value,
21 and/or have lost use of a product.

22 46. Defendants continue to conceal the Defects, even post-sale, from consumers,
23 users, and the public, through their failure to notify customers that the Softball Bats: (a)
24 are inherently defective; and (b) are not of merchantable quality or fit for their ordinary
25 purpose.

26 **CLASS DEFINITION AND ALLEGATIONS**

27 47. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and (b)(2)
28 and/or (b)(3) of the Federal Rules of Civil Procedure ("Rule") for the purpose of asserting

1 the claims alleged in this complaint on a common basis. Plaintiffs bring this action on
2 behalf of themselves and all members of the following classes (the “Classes”) comprised
3 of:

- 4 a. All persons, exclusive of Defendants and their employees,
5 who purchased in the United States, one or more of the
6 Softball Bats within the four years of the filing of this
7 complaint to the present (the “Class Period”) (the
8 “Nationwide Class”).
- 9 b. All persons, exclusive of Defendants and their employees,
10 who purchased in or from California, one or more of the
11 Softball Bats within the Class Period (the “California
12 Class”).
- 13 c. All persons, exclusive of Defendants and their employees,
14 who purchased in or from Pennsylvania, one or more of the
15 Softball Bats within the Class Period (the “Pennsylvania
16 Class”).
- 17 d. All persons, exclusive of Defendants and their employees,
18 who purchased in or from New Jersey, one or more of the
19 Softball Bats within the Class Period (the “New Jersey
20 Class”).
- 21 e. All persons, exclusive of Defendants and their employees,
22 who purchased in or from Tennessee, one or more of the
23 Softball Bats within the Class Period (the “Tennessee
24 Class”).
- 25 f. All persons, exclusive of Defendants and their employees,
26 who purchased in or from Connecticut, one or more of the
27 DeMarini Softball Bats within the Class Period (the
28 “Connecticut Class”).

g. All persons, exclusive of Defendants and their employees, who purchased in or from Massachusetts, one or more of the Softball Bats within the Class Period (the “Massachusetts Class”).

h. All persons, exclusive of Defendants and their employees, who purchased in or from Florida, one or more of the Softball Bats within the Class Period (the “Florida Class”)

48. *Numerosity. Rule 23(a)(1).* The members of the Classes are so numerous that their individual joinder is impracticable. Plaintiffs are informed and believe that the proposed Classes contain at least thousands of purchasers of the Softball Bats who have been damaged by Defendants’ conduct as alleged herein. The number of Class Members is unknown to Plaintiffs but will be easily discerned from the records maintained by Defendant and retailers.

49. *Existence of Common Questions of Law and Fact. Rule 23(a)(2).* This action involves common questions of law and fact, which include, but are not limited to, the following:

- a. Whether the statements made by Defendants as part of their advertising for the Softball Bats discussed herein are true, or are reasonably likely to deceive, given the omissions of material fact described above;
- b. Whether Defendants’ conduct described herein constitutes a deceptive act or practice in violation of the Consumer Protection Statutes;
- c. Whether Defendants’ conduct described herein constitutes an unlawful, unfair, and/or fraudulent business practice in violation of the Consumer Protection Statutes;
- d. Whether Defendants’ conduct described herein constitutes unfair, deceptive, untrue or misleading advertising in violation of the Consumer Protection Statutes;
- e. Whether Defendants’ conduct constitutes a breach of express warranty;

- f. Whether Defendants' conduct constitutes a breach of the implied warranty of merchantability;
- g. Whether the Softball Bats are defective in manufacturing and/or design;
- h. Whether Defendants failed to warn consumers of the Defects contained in the Softball Bats;
- i. Whether Plaintiffs and the other members of Classes are entitled to damages; and
- j. Whether Plaintiffs and the Classes are entitled to injunctive relief, restitution or other equitable relief and/or other relief as may be proper.

50. **Typicality. Rule 23(a)(3).** All members of the Classes have been subject to and affected by the same conduct of and omissions by Defendants. The claims alleged herein are based on the same violations by Defendants that harmed Plaintiffs and members of the Classes. By purchasing the Softball Bats during the relevant time period, all members of the Classes were subject to the same wrongful conduct. Plaintiffs' claims are typical of the Classes' claims and do not conflict with the interests of any other members of the Classes. Defendants' unlawful, unfair, deceptive, and/or fraudulent actions and breaches of warranty concern the same business practices described herein irrespective of where they occurred or were experienced.

51. **Adequacy. Rule 23(a)(4).** Plaintiffs will fairly and adequately protect the interests of the members of the Classes. Plaintiffs have retained counsel experienced in complex consumer class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the Classes.

52. **Injunctive and Declaratory Relief. Rule 23(b)(2).** Defendants' actions regarding the deceptions and omissions regarding the Softball Bats are uniform as to members of the Classes. Defendants have acted or refused to act on grounds that apply generally to the Classes, so that final injunctive relief as requested herein is appropriate respecting the Classes as a whole.

1 53. ***Predominance and Superiority of Class Action. Rule 23(b)(3).*** Questions
 2 of law or fact common to the Classes predominate over any questions affecting only
 3 individual members and a class action is superior to other methods for the fast and efficient
 4 adjudication of this controversy, for at least the following reasons:

- 5 a. Absent a class action, members of the Classes as a practical matter will be
 6 unable to obtain redress, Defendants' violations of their legal obligations
 7 will continue without remedy, additional consumers will be harmed, and
 8 Defendants will continue to retain their ill-gotten gains;
- 9 b. It would be a substantial hardship for most individual members of the
 10 Classes if they were forced to prosecute individual actions;
- 11 c. When the liability of Defendants has been adjudicated, the Court will be
 12 able to determine the claims of all members of the Classes;
- 13 d. A class action will permit an orderly and expeditious administration of
 14 each class member's claims and foster economies of time, effort, and
 15 expense;
- 16 e. A class action regarding the issues in this case does not create any
 17 problems of manageability; and
- 18 f. Defendants have acted on grounds generally applicable to the members
 19 of the Classes, making class-wide monetary relief appropriate.

20 54. Plaintiffs do not contemplate complications with class notice if the Classes
 21 are certified under Rule 23(b)(2), which does not require notice, and notice to the putative
 22 Classes may be accomplished through publication, signs or placards at the point-of-sale,
 23 or other forms of distribution, if necessary, if the Classes are certified under Rule 23(b)(3)
 24 or if the Court otherwise determines class notice is required Plaintiffs will, if notice is so
 25 required, confer with Defendants and seek to present the Court with a stipulation and
 26 proposed order on the details of a class notice program.

CLAIMS FOR RELIEF

COUNT I

**Injunctive Relief and Damages for Violations
of the Consumers Legal Remedies Act
(Cal. Civil Code §§ 1750, *et seq.*)
(By Plaintiffs Oda and Roth Asserted on Behalf of Themselves and the California
Class Against Defendants)**

55. Plaintiffs repeat and reallege the allegations contained in the paragraphs above, as if fully set forth herein.

56. This cause of action is brought pursuant to the CLRA which provides that enumerated listed “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful,” CLRA § 1770, and that “[a]ny consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against such person to recover or obtain,” various forms of relief, including injunction and damages. *See* Cal. Civ. Code § 1780. This cause of action seeks injunctive relief and damages on behalf of the California Class.

57. On December 23, 2015, prior to the filing of the initial complaint, Plaintiffs Oda and Roth (the “California Plaintiffs”) sent Wilson a CLRA letter providing the notice required by California Civil Code § 1782(a). The California Plaintiffs sent the letter via certified mail, return receipt requested, to Wilson and its agent for service of process advising that it is in violation of the CLRA and must correct, replace or otherwise rectify the goods and/or services alleged to be in violation of section 1770. Wilson was further advised that in the event the relief requested has not been provided within 30 days, California Plaintiffs will amend their Complaint to include a request for monetary damages pursuant to the CLRA. A true and correct copy of Plaintiffs’ letter is attached hereto as **Exhibit A**. Wilson did not rectify the complaints raised in the CLRA letter. Therefore, California Plaintiffs seek both injunctive relief and monetary damages against Wilson pursuant to the CLRA, California Civil Code §§ 1781 and 1782.

58. On November 18, 2016, prior to the filing of the First Amended Complaint (“FAC”), California Plaintiffs sent CLRA letters to Vari-Wall and Jackson providing the notice required by California Civil Code § 1782(a). California Plaintiffs sent the letters via certified mail, return receipt requested, to Vari-Wall and Jackson, and their agent for service of process advising them that they are in violation of the CLRA and must correct, replace or otherwise rectify the goods and/or services alleged to be in violation of section 1770. Vari-Wall and Jackson were further advised that in the event the relief requested has not been provided within 30 days, California Plaintiffs will request not only injunctive relief, but monetary damages against them pursuant to the CLRA. A true and correct copy of Plaintiffs’ CLRA letter sent to Vari-Wall and Jackson is attached hereto as **Exhibit B**. Neither Vari-Wall nor Jackson rectify the complaints raised in the CLRA letter. Therefore, California Plaintiffs seek both injunctive relief and monetary damages against Vari-Wall and Jackson pursuant to the CLRA, California Civil Code §§ 1781 and 1782.

59. Plaintiffs were deceived by Defendants’ unlawful practices as described more fully above, which included carrying out an advertising campaign, directed at Plaintiffs and the California Class, conveying the message that the Softball Bats are the “**World’s Finest**,” “**unmatched**” performance, durability and quality, and variations of those statements, which are deceptive, false and misleading given the complaints, and the Defects contained in the Softball Bats which are known or should have been known to Defendants.

60. Defendants’ actions, misrepresentations and conduct have violated, and continue to violate the CLRA, because they extend to transactions that are intended to result, or which have resulted, in the sale of goods to consumers.

61. Defendants’ marketed, sold and distributed the Softball Bats in California and throughout the United States during the Class Period.

62. Plaintiffs and members of the California Class are “consumers” as that term is defined by the CLRA in Cal. Civ. Code § 1761(d).

63. Defendants’ Softball Bats were and are “good[s]” within the meaning of Cal.

1 Civ. Code §§ 1761(a) & (b).

2 64. Defendants violated the CLRA by engaging in at least the following practices
3 proscribed by California Civil Code § 1770(a) in transactions with Plaintiffs and the
4 members of the California Class which were intended to result in, and did result in, the
5 sale of the Softball Bats:

6 (2) Misrepresenting the source, sponsorship, approval, or certification of
7 goods ...

8 ***

9 (5) Representing that [the Softball Bats] have ... approval, characteristics ...
10 . uses [or] benefits ... which [they do] not have ...

11 ***

12 (7) Representing that [the Softball Bats are] of a particular standard, quality
13 or grade ... if [they are] of another.

14 ***

15 (9) Advertising goods ... with intent not to sell them as advertised.

16 ***

17 (14) Representing that a transaction confers or involves rights [or] remedies
18 ... which it does not have ...

19

20 65. As such, Defendants' conduct constitutes unfair methods of competition and
21 unfair or fraudulent acts or practices because they do not sell, and because they intend not
22 to sell, the Softball Bats as advertised and instead misrepresent the particulars by, in their
23 marketing, representing the Softball Bats as described above when they knew, or should
24 have known, that the representations and advertisements were deceptive, false and
misleading in light of the omissions of material facts as described above.

25 66. The omitted information would have been material to a reasonable customer
26 in his or her decision as to whether to purchase the Softball Bats and/or purchase the
27 Softball Bats at the price at which they were offered.

28 ///

67. Defendants had a duty to disclose this information to Plaintiffs and the members of the California Class for several reasons. First, Defendant repeatedly made representations that their products are the “**World’s Finest**,” have “**unmatched**” performance, durability and quality, or closely analogous representations, as detailed above. Disclosure of the omitted information, including information in the complaints and the Defects referred to *supra*, was necessary to avoid the false impression of the quality, characteristics and benefits attached to Defendants’ primary marketing slogans. Second, Defendants were in a position to know, both from their own product knowledge, creation decisions and studies of the Defects in the Softball Bats, while consumers were not reasonably in a position to be aware of Defendants’ internal product information or such studies. Third, Defendants actively omitted to disclose, or actively concealed, these material facts to Plaintiffs and the members of the California Class.

68. Defendants sold to Plaintiffs and the other members of the California Class Softball Bats that did not match the quality portrayed by their marketing.

69. As a result, Plaintiffs and members of the California Class have suffered irreparable harm. Plaintiffs’ and the California Class members’ injuries were proximately caused by Defendants’ conduct as alleged herein. Plaintiffs, individually and on behalf of the members of the California Class, seek entry of an order enjoining Defendants from continuing to employ the unlawful methods, acts and practices alleged herein pursuant to California Civil Code § 1780(a)(2), awarding monetary and exemplary damages against Defendants pursuant to California Civil Code §§ 1780(a)(1) and (a)(4), and ordering the payment of costs and attorneys’ fees, and such other relief as deemed appropriate and proper by the Court under California Civil Code § 1780(a)(2). If Defendants are not restrained from engaging in these practices in the future, Plaintiffs and the members of the California Class will continue to suffer harm.

70. Pursuant to section 1780(d) of the CLRA, attached hereto as **Exhibits C and D** are the affidavits showing that this action has been commenced in the proper forum.

COUNT II

Injunctive and Equitable Relief for Violations of California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*) (By California Plaintiffs Asserted on Behalf of Themselves and the California Class Against Defendants)

71. Plaintiffs repeat and reallege the allegations contained in the paragraphs above, as if fully set forth herein.

72. The UCL prohibits any “unlawful,” “unfair,” or fraudulent business act or practice and any false or misleading advertising.

73. In the course of conducting business, Defendants committed unlawful business practices by, *inter alia*, making the representations (which also constitute advertising within the meaning of § 17200) and omissions of material facts, as set forth more fully herein, and violating Cal. Civil Code §§ 1750, *et seq.*, and the common law.

74. California Plaintiffs, individually and on behalf of other members of the California Class, reserve the right to allege other violations of law which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

75. Defendants’ actions constitute “unfair” business acts or practices because, as alleged above, *inter alia*, Defendants engaged in deceptive and false advertising, and misrepresent and omit material facts regarding the Softball Bats, and thereby offend an established public policy, and engage in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers. This conduct constitutes violations of the unfair prong of the UCL.

76. The UCL also prohibits any “fraudulent business act or practice.”

77. Defendants’ actions, claims, nondisclosures, and misleading statements, as alleged in this complaint, also constitute “fraudulent” business practices in violation of the UCL because, among other things, they are false, misleading, and/or likely to deceive reasonable consumers within the meaning of the UCL.

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

79. As a result of Defendants' pervasive false marketing, including deceptive and misleading acts and omissions as detailed in this complaint, Plaintiffs and other members of the California Class have in fact been harmed as described above. If Defendants had disclosed the information discussed above about the Softball Bats and otherwise been truthful about their quality and characteristics, Plaintiffs would not have purchased Defendants' products. Defendants were also able to charge more than what the Softball Bats would have been worth had they disclosed the truth about them.

80. As a result of Defendants' unlawful, unfair, and fraudulent practices, Plaintiffs and the other California Class members have suffered injury in fact and lost money.

81. As a result of their deception, Defendants have been able to reap unjust revenue and profit in violation of the UCL.

82. Unless restrained and enjoined, Defendants will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate for Plaintiffs and the members of the California Class.

83. As a result of Defendants' conduct in violation of the UCL, Plaintiffs and members of the California Class have been injured as alleged herein in amounts to be proven at trial because they purchased the Softball Bats without full disclosure of the material facts discussed above.

84. As a result, Plaintiffs, individually and on behalf of the California Class, and the general public, seek restitution and disgorgement of all money obtained from Plaintiffs and the members of the California Class collected by Defendants as a result of unlawful, unfair, and/or fraudulent conduct, and seek injunctive relief and restitution, and all other relief this Court deems appropriate, consistent with Business & Professions Code § 17203.

COUNT III

Damages and Civil Penalties for Violations of the Song—Beverly Warranty Act
(Cal. Civ. Code §§ 1792, *et seq.*)
(By California Plaintiffs Asserted on Behalf of Themselves and the California Class
Against Defendants)

1 85. Plaintiffs repeat and reallege the allegations contained in the paragraphs
2 above, as if fully set forth herein.

3 86. Under the Song-Beverly Act, every sale of consumer goods in California is
4 accompanied by both a manufacturer's and retail seller's implied warranty that the goods
5 are merchantable.

6 87. California Plaintiffs and members of the California Class each purchased one
7 or more of the Softball Bats from retailers located in California and/or through Defendants
8 directly via their websites. The Softball Bats are "consumer goods" within the meaning
9 of California Civil Code §1791(a).

10 88. Defendants are in the business of manufacturing and selling the Softball Bats
11 to retail buyers, and is therefore a "manufacturer" and "seller" within the meaning of
12 California Civil Code § 1791.

13 89. Defendants impliedly warranted to the California Plaintiffs and members of
14 the California Class that the Softball Bats were of merchantable quality, would pass
15 without objection in the trade or industry, were fit for the ordinary purposes for which the
16 Softball Bats are used, and would measure up to the promises or facts represented in their
17 advertising and marketing.

18 90. California Plaintiffs and members of the California Class discovered the
19 Defects in the Softball Bats within one year of the purchase of the Softball Bats and/or the
20 Defects were present during the implied warranty period. However, the warranty was not
21 fulfilled and California Plaintiffs and the members of the California Class were not made
22 whole by Defendants.

23 91. As described in detail above and below, Defendants have breached the
24 implied warranties because the Softball Bats sold to the California Plaintiffs and members
25 of the California Class were not of the same quality as those generally acceptable in the
26 trade, were not fit for the ordinary purposes for which such goods are used, and did not
27 measure up to the promises or facts represented in their advertising and marketing because
28 the Softball Bats have defects, which cause the bats to bend, flatten, and/or crack after

1 minimal and normal use.

2 92. As a direct and proximate result of Defendants' breach of the Song-Beverly
3 Act, the California Plaintiffs and members of the California Class sustained damages and
4 other losses in an amount to be determined at trial. Defendants' conduct has caused
5 California Plaintiffs and members of the California Class as described above to incur
6 compensatory damages, consequential damages, statutory damages, costs, attorneys' fees
7 and interest. California Plaintiffs seek the civil penalties described in Civil Code §
8 1794(c), including a penalty up to two times the amount of Plaintiffs' actual damages.

9 **COUNT IV**

10 **Damages for Breach of Implied Warranty** 11 **(By Plaintiffs Asserted on Behalf of Themselves and the Nationwide Class Against** 12 **Defendants)**

13 93. Plaintiffs repeat and reallege the allegations contained in the paragraphs
14 above, as if fully set forth herein.

15 94. Plaintiffs bring this claim individually and on behalf of the Nationwide Class.

16 95. Plaintiffs purchased the Softball Bats from Defendants' authorized retailers
17 in the United States.

18 96. Pursuant to agreements for resale of the Softball Bats between Defendants
19 and nationwide retailers including, but not limited to, Sports Authority, Dick's Sporting
20 Goods and Sports Chalet, Plaintiffs and the Nationwide Class are third-party beneficiaries
21 of such contracts.

22 97. At the time of sale, and currently, Defendants are in the business of
23 manufacturing, distributing and selling the Softball Bats.

24 98. Defendants impliedly warranted that the Softball Bats were of good and
25 merchantable quality – fit for their ordinary intended use.

26 99. Defendants knowingly and/or recklessly sold a defective product without
27 conspicuously informing consumers about the Defects contained in the Softball Bats
28 manufactured, distributed and/or sold by Defendants to retailers throughout the United
States. Defendants' possessed actual, superior knowledge of the Softball Bats' propensity

1 to immediately bend, flatten, and/or crack based on consumer complaints filed through
2 Defendants' customer service representatives and internal investigations.

3 100. Defendants' waiver and/or limits on implied warranties are unconscionable
4 and unenforceable since Plaintiffs and the Nationwide Class had no meaningful choice in
5 determining those time limitations, the warranties are written by Defendants without input
6 from consumers, a gross disparity in bargaining power exists between Defendants and
7 members of the Nationwide Class, and Plaintiffs and Nationwide Class members had no
8 way of knowing the unilateral limitations placed on the implied warranty by Defendants
9 until they had already purchased, opened and used the product, Defendants knew or
10 should have known that the Softball Bats were defective at the time of sale and have a
11 propensity to fail before the one year warranty period lapses, and Plaintiffs and
12 Nationwide Class members were unfairly surprised by the concealment of the Defects
13 which cause the Softball Bats to bend, flatten, and/or crack with minimal, or even a single
14 normal use.

15 101. Plaintiffs' and the Nationwide Class members' Softball Bats became unfit
16 for their ordinary purpose of safely playing softball within the implied warranty period.
17 However, Defendants refused to honor the warranty put forth to the public.

18 102. The Defects contained in the Softball Bats existed when the Softball Bats left
19 Defendants' and their authorized resellers' possession and render the Softball Bats unfit
20 for their intended use and purpose.

21 103. As a direct and proximate result of Defendants' breach of their implied
22 warranty, Plaintiffs and members of the Nationwide Class have sustained damages and
23 other losses in an amount to be determined at trial. Plaintiffs and the members of the
24 Nationwide Class are entitled to recover legal and equitable relief against Defendants,
25 including damages, civil penalties, attorneys' fees, litigation costs and other relief
26 provided by law and that the Court deems proper.

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COUNT V

**Damages for Strict Products Liability – Defective Design and/or Manufacture
(By Plaintiffs Asserted on Behalf of Themselves and the Nationwide Class Against Defendants)**

104. Plaintiffs repeat and reallege the allegations contained in the paragraphs above, as if fully set forth herein.

105. Plaintiffs bring this claim individually and on behalf of the Nationwide Class.

106. Defendants designed, created, manufactured and distributed the Softball Bats at issue.

107. Plaintiffs purchased the Softball Bats which were manufactured, distributed and/or sold by Defendants.

108. At the time the Softball Bats left the manufacturer and control of Defendants and were sold, the Softball Bats already contained the Defects which caused the Softball Bats to immediately and prematurely bend, flatten, and/or crack during normal and intended use. The Defects as alleged *supra* directly caused additional damage to other property including, but not limited to, distinct component parts of the Softball Bats such as the end cap and handle.

109. The Softball Bats failed to perform as safely as an ordinary consumer would have expected them to perform, as portions of the steel bat would sheer off during failure and fly through the air toward players, coaches, umpires and spectators.

110. The negligible additional cost incurred to eliminate the Defects is far outweighed by the likelihood that the Defects would manifest itself, the feasibility of an alternative design, and the cost on an alternative design. Indeed, and as uncovered during discovery, alternative designs were known and utilized by Defendants which could have prevented the Defects.

111. As a result of the Defects contained in the Softball Bats, and failure of the Softball Bats to conform to Defendants’ representations, Plaintiffs and the Nationwide Class have suffered damages, the amounts of which will be determined at trial. Defendants are strictly liable for the harm caused by the Defects. Plaintiffs and the

1 Nationwide Class are also entitled to costs of litigation, attorneys' fees and any other or
2 further relief the Court deems proper.

3 **COUNT VI**

4 **Damages for Strict Products Liability – Failure to Warn** 5 **(By Plaintiffs Asserted on Behalf of Themselves and the Nationwide Class Against** 6 **Defendants)**

7 112. Plaintiffs repeat and reallege the allegations contained in the paragraphs
8 above, as if fully set forth herein.

9 113. Plaintiffs bring this claim individually and on behalf of the Nationwide Class.

10 114. Plaintiffs, and others similarly situated, purchased the Softball Bats which
11 were manufactured, distributed or sold by Defendants.

12 115. The potential for the Softball Bats to bend, flatten, and/or crack while playing
13 softball undoubtedly presents a substantial danger to consumers. Further, the Defects
14 directly caused additional damage to other property including, but not limited to, distinct
15 component parts of the Softball Bats such as the end cap and the handle.

16 116. Plaintiffs and other ordinary consumers would not have recognized or known
17 of the Defects or the potential risks.

18 117. Defendants knew, or in the exercise of reasonable care should have known,
19 that the Softball Bats were likely to bend, flatten, and/or crack as stated herein, subjecting
20 consumers to risk of serious harm to their person and/or property. Further, this harm
21 actually occurred to Plaintiffs and Class Members as the Defects caused damage to other
22 property, including the distinct component parts of the product such as the end cap and
23 handle.

24 118. At the time Defendants manufactured, distributed and/or sold the Softball
25 Bats, they owed a non-delegable duty to Plaintiffs and Nationwide Class members to
26 exercise ordinary and reasonable care to properly design and/or manufacture the Softball
27 Bats, and they owed a continuing duty to warn about the Defects and to correct the Defects
28 and/or recall its defective Softball Bats.

1 119. Defendants had a pre-sale duty to warn potential purchasers that the Softball
 2 Bats carried with them the risk or propensity to immediately bend, flatten, and/or crack
 3 that could occur when an ordinary consumer was using the Softball Bats in an intended or
 4 reasonably-foreseeable manner.

5 120. Defendants nonetheless failed to provide a warning regarding the Defects and
 6 potential dangers of the Softball Bats.

7 121. Defendants, as the designer, manufacturer, distributor and seller, should
 8 have, in the exercise of reasonable care, have provided such a warning. The Defects in
 9 the Softball Bats are serious in light of the fact that the Defects manifested during the
 10 normal use and essential purpose of the Softball Bats. A softball bat that bends, cracks or
 11 breaks upon the first few uses is well below a reasonable consumer's expectations.

12 122. Defendants failed to provide to Plaintiffs and consumers adequate warnings
 13 of the Defects and dangers inherent in the Softball Bats. Such warnings should have been
 14 placed at the point of sale and/or their website where Defendants sell the Softball Bats
 15 directly to consumers, or should have otherwise been placed in a way calculated to give
 16 reasonable and fair warning to consumers. Had such warnings been provided, Plaintiffs
 17 and consumers would have not purchased the product, or at the very least, could have
 18 avoided the risk caused by the Defects.

19 123. As a direct and proximate result of Defendants' failure to warn of the Defects
 20 contained in the Softball Bats, Plaintiffs and the Nationwide Class members suffered
 21 property damage and economic loss, in an amount to be determined at trial. Plaintiffs and
 22 the Nationwide Class are also entitled to costs of litigation, attorneys' fees, and any other
 23 or further relief the Court deems proper.

24 **COUNT VII**

25 **Damages for Violations of the Magnuson-Moss Warranty Act** 26 **(15 U.S.C. § 2301, et seq.)** 27 **(By Plaintiffs Asserted on Behalf of Themselves and the Nationwide Class Against** 28 **Defendants)**

124. Plaintiffs repeat and reallege the allegations contained in the paragraphs

1 above, as if fully set forth herein.

2 125. Plaintiffs bring this claim individually and on behalf of the Nationwide Class.

3 126. The Softball Bats are “consumer products” within the meaning of the
4 MMWA. *See* 15 U.S.C. § 2301(1).

5 127. Plaintiffs and Nationwide Class members are “consumers” within the
6 meaning of the MMWA. *Id.* § 2301(3).

7 128. Defendants are a “supplier” and/or “warrantor” within the meaning of the
8 MMWA. *Id.* §§ 2301(4)-(5).

9 129. Defendants provided Plaintiffs and Nationwide Class members with
10 “implied warranties” within the meaning of the MMWA. *Id.* § 2301(7).

11 130. Pursuant to agreements for resale of the Softball Bats between Defendants
12 and nationwide retailers including, but not limited to, Sports Authority, Dick’s Sporting
13 Goods and Sports Chalet, Plaintiffs and Nationwide Class members are third-party
14 beneficiaries of such contracts.

15 131. Defendants warranted to Plaintiffs and Nationwide Class members the
16 Softball Bats were free from defects, were of merchantable quality and fit for the ordinary
17 purpose for which the Softball Bats are used.

18 132. Defendants have breached their warranties. Defendant breached their
19 warranties because the Softball Bats suffer from the Defects that cause them to bend,
20 flatten, and/or crack during normal and intended use.

21 133. The amount in controversy of Plaintiffs and Nationwide Class members’
22 individual claims meets or exceeds the sum or value of \$25. In addition, the amount in
23 controversy meets or exceeds the sum of \$50,000 (exclusive of interest and costs)
24 computed on the basis of all claims to be determined by this suit.

25 134. In their capacity as a warrantor, and by the conduct described herein, any
26 attempt by Defendants to limit the implied warranty of merchantability in a manner that
27 would exclude coverage for the Defects in the Softball Bats is unconscionable and any
28 such effort to disclaim or otherwise limit liability for the defective Softball Bats is null and

1 void.

2 135. By Defendants' conduct described herein, including Defendants' knowledge
3 of the Defects in the Softball Bats and their inaction in the face of that knowledge,
4 Defendants have failed to comply with their obligations under their implied warranties.

5 136. Defendants have been afforded a reasonable opportunity to cure their breach
6 of warranty. Plaintiffs, on behalf of themselves and the Nationwide Class, provided
7 written notice of the Defects to Defendants and demanded an appropriate remedy prior to
8 filing this complaint. In addition, Defendants have received reasonable notice of the
9 breach through negative consumer complaints and comments on various websites, and
10 directly to Defendants. Defendants failed to remedy the situation on a class-wide basis.

11 137. As a direct and proximate result of Defendants' conduct, Plaintiffs and the
12 Nationwide Class members have suffered injury and damages in an amount to be
13 determined at trial. Plaintiffs and the Nationwide Class members are also entitled to
14 recover damages, consequential damages, special damages, equitable relief, attorneys'
15 fees and litigation costs pursuant to 15 U.S.C. §2310.

16 **COUNT VIII**

17 **Damages for Violations of the Pennsylvania Unfair Trade Practices and** 18 **Consumer Protection Law**

(73 P.S. §§ 201-1, *et seq.*)

19 **(By Plaintiff Zambino Asserted on Behalf of Himself and the Pennsylvania Class**
20 **Against Defendants)**

21 138. Plaintiffs incorporate by reference all paragraphs as though fully set forth
22 herein.

23 139. Plaintiff Zambino brings this count on behalf of himself and the
24 Pennsylvania Class members.

25 140. Plaintiff Zambino and Pennsylvania Class members purchased the
26 Softball Bats primarily for personal, family or household purposes within the
27 meaning of 73 P.S. § 201-9.2.

28 141. All of the acts complained of herein were perpetrated by Defendants in

1 the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

2 142. The Pennsylvania Unfair Trade Practices and Consumer Protection Law
 3 (“Pennsylvania CPL”) prohibits unfair or deceptive acts or practices, including: (i)
 4 “Representing that goods or services have ... characteristics, ... [b]enefits or qualities
 5 that they do not have;” (ii) “Representing that goods or services are of a particular
 6 standard, quality or grade ... if they are of another;” (iii) “Advertising goods or
 7 services with intent not to sell them as advertised;” and (iv) “Engaging in any other
 8 fraudulent or deceptive conduct which creates a likelihood of confusion or
 9 misunderstanding.” 73 P.S. § 201-2(4). In the course of Defendants’ business, they
 10 willfully failed to disclose and actively concealed that the Softball Bats: (1) failed to
 11 conform to the product specifications; (2) contained more chemical elements in the
 12 barrel than what the product specifications called for which increased the brittleness
 13 of the Softball Bats; (3) had an unintended or intended seam in the barrels creating a
 14 distinct weak point which could and did lead to immediate and unintended failure;
 15 (4) had precision-thin barrels that would not and often did not last through the
 16 intended life-span of the product as stated in the standard warranty period; (5) had
 17 been returned to Defendants at an alarmingly high rate with an identical type of
 18 failure (cracked barrel); and (6) were no longer being produced because of the
 19 apparent defects. Accordingly, Defendants engaged in deceptive business practices
 20 prohibited by the Pennsylvania CPL, including: representing that the Softball Bats
 21 have characteristics, uses, benefits, and qualities which they do not have; representing
 22 that the Softball Bats are of a particular standard, quality, and grade when they are
 23 not; advertising the Softball Bats with the intent not to sell them as advertised; and
 24 engaging in fraudulent or deceptive conduct that creates a likelihood of confusion or
 25 of misunderstanding.

26 143. In purchasing the DeMarini Softball Bats, Plaintiff Zambino and
 27 Pennsylvania Class members were deceived by Defendants’ failure to disclose that
 28 the Softball Bats failed to conform to design specifications, contained higher levels

1 of chemical elements which made the bats more brittle, had an unintended or intended
2 seam in the barrel which created a distinct weak point which could and did lead to
3 immediate and unintended failure, the bat barrels were made too thin which caused
4 them to fail with only minimum use, and that the barrels were defectively
5 manufactured or deigned.

6 144. Plaintiff Zambino and Pennsylvania Class members reasonably relied
7 upon Defendants' false misrepresentations. They had no way of knowing that
8 Defendants' representations were false and gravely misleading. As alleged herein,
9 Defendants engaged in extremely sophisticated methods of deception. Plaintiff
10 Zambino and Pennsylvania Class members did not, and could not, unravel
11 Defendants' deception on their own.

12 145. Defendants' actions as set forth above occurred in the conduct of trade or
13 commerce.

14 146. Defendants' unfair or deceptive acts or practices were likely to and did
15 in fact deceive reasonable consumers.

16 147. Defendants intentionally and knowingly misrepresented material facts
17 regarding the Softball Bats with an intent to mislead Plaintiff Zambino and
18 Pennsylvania Class members.

19 148. Defendants knew or should have known that their conduct violated the
20 Pennsylvania CPL.

21 149. Defendants owed Plaintiff Zambino and Pennsylvania Class members a
22 duty to disclose the truth about its defective product because Defendants:

23 a. Possessed exclusive knowledge that thousands of their Softball Bats
24 were returned by consumers for the same defect, namely a cracked
25 barrel, that the product was not fit for its intended purpose, the product
26 was not produced per specifications, and would likely fail after
27 minimal normal use;

28 b. Intentionally concealed the foregoing from Plaintiff Zambino and

1 Pennsylvania Class members in the hope that customers would
 2 continue to buy the defective product; and/or

3 c. Made incomplete representations that the Softball Bats were fit for
 4 their intended purpose, made with the highest quality materials, would
 5 last their intended life span of at least one (1) year and mislead
 6 Plaintiff Zambino and Pennsylvania Class members into believing
 7 that the express limited warranty would be honored, when in fact,
 8 Defendant had no intention to honor the warranty, while purposefully
 9 withholding material facts from Plaintiff Zambino and Pennsylvania
 10 Class members that contradicted these representations.

11 150. Defendants had a duty to disclose that the Softball Bats: (1) failed to
 12 conform to the design specifications; (2) contained more chemical elements in the
 13 barrel than what the design called for which increased the brittleness of the barrels;
 14 (3) had an unintended or intended seam in the barrels creating a distinct weak point
 15 which could and did lead to immediate and unintended failure; (4) had precision-thin
 16 barrels that would not and often did not last through the intended life-span of the
 17 product as stated in the standard warranty period; (5) had been returned to Defendants
 18 at an alarmingly high rate with an identical type of failure (cracked barrel); and (6)
 19 were no longer being produced because of the apparent defects, because Plaintiff
 20 Zambino and Pennsylvania Class members relied on Defendants' material
 21 representations that the Softball Bats they were purchasing were made from the
 22 highest quality materials, would not fail after minimal intended use, were fit for their
 23 intended use, produced according to the design specifications and were overall free
 24 from defects.

25 151. Defendants' conduct proximately caused injuries to Plaintiff Zambino
 26 and Pennsylvania Class members.

27 152. Plaintiff Zambino and Pennsylvania Class members were injured and
 28 suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result

1 of Defendants' conduct in that Plaintiff Zambino and Pennsylvania Class members
 2 overpaid for their Softball Bats and did not receive the benefit of their bargain, and
 3 their Softball Bats have suffered a diminution in value. These injuries are the direct
 4 and natural consequence of Defendants' misrepresentations and omissions.

5 153. Defendants' violations present a continuing risk to Plaintiff Zambino as
 6 well as to the general public. Defendants' unlawful acts and practices complained of
 7 herein affect the public interest.

8 154. Defendants are liable to Plaintiff Zambino and Pennsylvania Class
 9 members for treble their actual damages or \$600, whichever is greater, and attorneys'
 10 fees and costs. *See* 73 P.S. § 201-9.2(a). Plaintiff Zambino and the Pennsylvania
 11 Class are also entitled to an award of punitive damages given that Defendants'
 12 conduct was malicious, wanton, willful, oppressive, or exhibited a reckless
 13 indifference to the rights of others.

14 **COUNT IX**

15 **Damages for Violations of the New Jersey Consumer Fraud Act**

16 **(N.J.S.A. §§ 56:8-1, *et seq.*)**

17 **(By Plaintiff Hines Asserted on Behalf of Herself and the New Jersey Class
 18 Against Defendants)**

19 155. Plaintiffs incorporate by reference all preceding allegations as though
 20 fully set forth herein.

21 156. Plaintiff Hines brings this count on behalf of herself and the New Jersey
 22 Class members.

23 157. The New Jersey Consumer Fraud Act, N.J.S.A. §§ 56:8-1, *et seq.* ("NJ
 24 CFA"), prohibits unfair or deceptive acts or practices in the conduct of any trade or
 25 commerce.

26 158. In the course of Defendant's business, they willfully failed to disclose that
 27 the Softball Bats: (1) failed to conform to the design specifications; (2) contained
 28 more chemical elements in the barrel than what the design called for which increased
 the brittleness of the barrels; (3) had an unintended or intended seam in the barrels

1 creating a distinct weak point which could and did lead to immediate and unintended
 2 failure; (4) had precision-thin barrels that would not and often did not last through
 3 the intended life-span of the product as stated in the standard warranty period; (5) had
 4 been returned to Defendant at an alarmingly high rate with an identical type of failure
 5 (cracked barrel); and (6) were no longer being produced because of the apparent
 6 defects. Accordingly, Defendants engaged in unfair and deceptive trade practices,
 7 including representing that the Softball Bats have characteristics, uses, benefits, and
 8 qualities which they do not have; representing that the Softball Bats are of a particular
 9 standard and quality when they are not; advertising the Softball Bats with the intent
 10 not to sell them as advertised; and otherwise engaging in conduct likely to deceive.
 11 Further, Defendants' acts and practices described herein offend established public
 12 policy because the risk of physical harm they present to consumers, players, and
 13 spectators outweighs any benefit associated with their use, and because Defendants
 14 fraudulently concealed the defective nature of the Softball Bats from consumers.

15 159. Defendants' actions as set forth above occurred in the conduct of trade or
 16 commerce.

17 160. Defendants' unfair or deceptive acts or practices were likely to and did
 18 in fact deceive reasonable consumers.

19 161. Defendants intentionally and knowingly misrepresented material facts
 20 regarding the Softball Bats with an intent to mislead Plaintiff Hines and New Jersey
 21 Class members.

22 162. Defendants knew or should have known that their conduct violated the
 23 New Jersey CFA.

24 163. Defendants owed Plaintiff Hines and New Jersey Class members a duty
 25 to disclose the truth about their defective product because Defendants:

- 26 a. Possessed exclusive knowledge that thousands of their Softball Bats
- 27 were returned by consumers for the same defect, namely a cracked
- 28 barrel, that the product was not fit for its intended purpose, the product

1 was not produced per the patent specifications, and would likely to
 2 fail after minimal normal use;

3 b. Intentionally concealed the foregoing from Plaintiff Hines and New
 4 Jersey Class members; and/or

5 c. Made incomplete representations that the Softball Bats were fit for
 6 their intended purpose, made with the highest quality materials, would
 7 last their intended life span of at least one (1) year and mislead
 8 Plaintiff Hines and New Jersey Class members into believing that the
 9 express limited warranty would be honored, when in fact, Defendants
 10 had no intention to honor the warranty, while purposefully
 11 withholding material facts from Plaintiff Hines and New Jersey Class
 12 members that contradicted these representations.

13 164. Defendants had a duty to disclose that the Softball Bats: (1) failed to
 14 conform to the design specifications; (2) contained more chemical elements in the
 15 barrel than what the design called for which increased the brittleness of the barrels;
 16 (3) had an unintended or intended seam in the barrels creating a distinct weak point
 17 which could and did lead to immediate and unintended failure; (4) had precision-thin
 18 barrels that would not and often did not last through the intended life-span of the
 19 product as stated in the standard warranty period; (5) had been returned to Defendant
 20 at an alarmingly high rate with an identical type of failure (cracked barrel); and (6)
 21 were no longer being produced because of the apparent defects, because Plaintiff
 22 Hines and New Jersey Class members relied on Defendants' material representations
 23 that the Softball Bats they were purchasing were made from the highest quality
 24 materials, would not fail after minimal intended use, were fit for their intended use,
 25 produced according to the design specifications and were overall free from defects.

26 165. Defendants' conduct proximately caused injuries to Plaintiff Hines and
 27 New Jersey Class members.

28 166. Plaintiff Hines and New Jersey Class members were injured and suffered

ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Defendants' conduct in that Plaintiff Hines and New Jersey Class members overpaid for their Softball Bats and did not receive the benefit of their bargain, and their Softball Bats have suffered a diminution in value. These injuries are the direct and natural consequence of Defendants' misrepresentations and omissions.

167. Defendants' violations present a continuing risk to Plaintiff Hines as well as to the general public. Defendants' unlawful acts and practices complained of herein affect the public interest.

168. Pursuant to N.J.S.A. § 56:8-20, Plaintiff Hines will serve the New Jersey Attorney General with a copy of this complaint within 10 days of filing.

COUNT X

Damages for Violations of the Tennessee Consumer Protection Act (Tenn. Code Ann. §§ 47-18-101, *et seq.*)

(By Plaintiff Vickery Asserted on Behalf of Himself and the Tennessee Class Against Defendants)

169. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

170. Plaintiff Vickery bring this count on behalf himself and the Tennessee Class members.

171. Plaintiff Vickery and the Tennessee Class are "natural persons" and "consumers" within the meaning of Tenn. Code Ann. § 47-18-103(2).

172. Defendants are a "person" within the meaning of Tenn. Code Ann. § 47-18-103(2).

173. Defendants' conduct complained of herein affected "trade," "commerce" or "consumer transactions" within the meaning of Tenn. Code Ann. § 47-18-103(19).

174. The Tennessee Consumer Protection Act ("Tennessee CPA") prohibits "[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce," including but not limited to: "Representing that goods or services have ... characteristics, [or] ... benefits ... that they do not have...;" "Representing that

1 goods or services are of a particular standard, quality or grade ... if they are of
 2 another;” “Advertising goods or services with intent not to sell them as advertised;”
 3 and “Engaging in any other act or practice which is deceptive to the consumer or any
 4 other person.” Tenn. Code Ann. § 47-18-104. In the course of Defendants’ business,
 5 they willfully failed to disclose that the Softball Bats: (1) failed to conform to the
 6 design specifications; (2) contained more chemical elements in the barrel than the
 7 what the design specifications called for which increased the brittleness of the barrels
 8 of the Softball Bats; (3) had an unintended or intended seam in the barrels creating a
 9 distinct weak point which could and did lead to immediate and unintended failure;
 10 (4) had precision-thin barrels that would not and often did not last through the
 11 intended life-span of the product as stated in the standard warranty period; (5) had
 12 been returned to Defendants at an alarmingly high rate with an identical type of
 13 failure (cracked barrel); and (6) were no longer being produced because of the
 14 apparent defects. Accordingly, Defendants violated the Tennessee CPA by engaging
 15 in unfair or deceptive acts, including representing that the Softball Bats have
 16 characteristics or benefits that they did not have; representing that the Softball Bats
 17 are of a particular standard, quality, or grade when they are of another; advertising
 18 the Softball Bats with intent not to sell them as advertised; and engaging in acts or
 19 practices that are deceptive to consumers.

20 175. In purchasing the Softball Bats, Plaintiff Vickery and the other Tennessee
 21 Class members were deceived by Defendants’ failure to disclose the Softball Bats
 22 failed to conform to the design specifications, contained higher levels of chemical
 23 elements which made the Softball Bats more brittle, had an unintended or intended
 24 seam in the barrel which created a distinct weak point which could and did lead to
 25 immediate and unintended failure, the bat barrels were made too thin which caused
 26 them to fail with only minimum use, and that the barrels were defectively
 27 manufactured or deigned.

28 176. Plaintiff Vickery and the other Tennessee Class members reasonably

1 relied upon Defendants' false misrepresentations. They had no way of knowing that
 2 Defendants' representations were false and gravely misleading. As alleged herein,
 3 Defendants' engaged in extremely sophisticated methods of deception. Plaintiff
 4 Vickery and the other Tennessee Class members did not, and could not, unravel
 5 Defendants' deception on their own.

6 177. Defendants' actions as set forth above occurred in the conduct of trade or
 7 commerce.

8 178. Defendants' unfair or deceptive acts or practices were likely to and did
 9 in fact deceive reasonable consumers.

10 179. Defendants intentionally and knowingly misrepresented material facts
 11 regarding the Softball Bats with an intent to mislead Plaintiff Vickery and the other
 12 Tennessee Class members.

13 180. Defendants knew or should have known that their conduct violated the
 14 Tennessee CPA.

15 181. Defendants owed Plaintiff Vickery and the other Tennessee Class
 16 members a duty to disclose the truth about the Defects because Defendants:

- 17 a. Possessed exclusive knowledge that thousands of their Softball Bats
 18 were returned by consumers for the same defect, namely a cracked
 19 barrel, that the product was not fit for its intended purpose, the product
 20 was not produced per the design specifications, and would likely to
 21 fail after minimal normal use;
- 22 b. Intentionally concealed the foregoing from Plaintiff Vickery and the
 23 other Tennessee Class members in the hope that customers would
 24 continue to buy the defective product; and/or
- 25 c. Made incomplete representations that the Softball Bats were fit for
 26 their intended purpose, made with the highest quality materials, would
 27 last their intended life span of at least one (1) year and mislead
 28 Plaintiff Vickery and the other Tennessee Class members into

1 believing that the express limited warranty would be honored, when
2 in fact, Defendants had no intention to honor the warranty, while
3 purposefully withholding material facts from Plaintiff Vickery and the
4 other Tennessee Class members that contradicted these
5 representations.

6 182. Defendants had a duty to disclose that the Softball Bats: (1) failed to
7 conform to the design specifications; (2) contained more chemical elements in the
8 barrel than the what the design specifications called for which increased the
9 brittleness of the barrels of the Softball Bats; (3) had an unintended or intended seam
10 in the barrels creating a distinct weak point which could and did lead to immediate
11 and unintended failure; (4) had precision-thin barrels that would not and often did not
12 last through the intended life-span of the product as stated in the standard warranty
13 period; (5) had been returned to Defendants at an alarmingly high rate with an
14 identical type of failure (cracked barrel); and (6) were no longer being produced
15 because of the apparent defects, because Plaintiff Vickery and the Tennessee Class
16 members relied on Defendants' material representations that the Softball Bats they
17 were purchasing were made from the highest quality materials, would not fail after
18 minimal intended use, were fit for their intended use, produced according to the
19 design specifications and were overall free from defects.

20 183. Defendants' conduct proximately caused injuries to Plaintiff Vickery and
21 the other Tennessee Class members.

22 184. Plaintiff Vickery and the other Tennessee Class members were injured
23 and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate
24 result of Defendants' conduct in that Plaintiff Vickery and the other Tennessee Class
25 members overpaid for their Softball Bats and did not receive the benefit of their
26 bargain, and their Softball Bats have suffered a diminution in value. These injuries
27 are the direct and natural consequence of Defendants' misrepresentations and
28 omissions.

1 185. Defendants' violations present a continuing risk to Plaintiff Vickery as
 2 well as to the general public. Defendants' unlawful acts and practices complained of
 3 herein affect the public interest.

4 186. Pursuant to Tenn. Code § 47-18-109(a), Plaintiff Vickery and the
 5 Tennessee Class seek monetary relief against Defendants measured as actual
 6 damages in an amount to be determined at trial, treble damages as a result of
 7 Defendants' willful or knowing violations, and any other just and proper relief
 8 available under the Tennessee CPA.

9 **COUNT XI**

10 **Damages for Violations of the Connecticut Unfair Trade Practices Act** 11 **(Conn. Gen. Stat. Ann. §§ 42-110A, *et seq.*)** 12 **(By Plaintiff Rainone Asserted on Behalf of Himself and the Connecticut Class** 13 **Against Defendants)**

14 187. Plaintiffs incorporate by reference all paragraphs as though fully set forth
 15 herein.

16 188. Plaintiff Rainone brings this count on behalf of himself and the
 17 Connecticut Class members.

18 189. Plaintiff Rainone and Defendants are each "persons" as defined by Conn.
 19 Gen. Stat. Ann. § 42-110a(3).

20 190. The Connecticut Unfair Trade Practices Act ("Connecticut UTPA")
 21 provides that "[n]o person shall engage in unfair methods of competition and unfair
 22 or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen.
 23 Stat. Ann. § 42-110b(a). The Connecticut UTPA further provides a private right of
 24 action under Conn. Gen. Stat. Ann. § 42-110g(a). In the course of Defendants'
 25 business, they willfully failed to disclose and actively concealed that the Softball
 26 Bats: (1) failed to conform to the design specifications; (2) contained more chemical
 27 elements in the barrel than the what the design specifications called for which
 28 increased the brittleness of the barrels of the Softball Bats; (3) had an unintended or
 intended seam in the barrels creating a distinct weak point which could and did lead

1 to immediate and unintended failure; (4) had precision-thin barrels that would not and
2 often did not last through the intended life-span of the product as stated in the standard
3 warranty period; (5) had been returned to Defendants at an alarmingly high rate with
4 an identical type of failure (cracked barrel); and (6) were no longer being produced
5 because of the apparent defects. Accordingly, Defendants engaged in unfair and
6 deceptive trade practices by representing that the Softball Bats have characteristics,
7 uses, benefits, and qualities which they do not have; representing that the Softball
8 Bats are of a particular standard, quality, and grade when they are not; advertising the
9 Softball Bats with the intent not to sell them as advertised; and engaging in fraudulent
10 or deceptive conduct that creates a likelihood of confusion or of misunderstanding.

11 191. Defendants have also engaged in deceptive conduct because (1) they
12 made representations, omissions, or engaged in other conduct likely to mislead
13 consumers; (2) consumers interpret the message reasonably under the circumstances;
14 and (3) the misleading representation, omission, or practice is material—that is, likely
15 to affect consumer decisions or conduct.

16 192. In purchasing the Softball Bats, Plaintiff Rainone and the other
17 Connecticut Class members were deceived by Defendants' failure to disclose that the
18 Softball Bats failed to conform to the design specifications, contained higher levels
19 of chemical elements which made the Softball Bats more brittle, had an unintended
20 or intended seam in the barrel which created a distinct weak point which could and
21 did lead to immediate and unintended failure, the bat barrels were made too thin
22 which caused them to fail with only minimum use, and that the barrels were
23 defectively manufactured or deigned.

24 193. Plaintiff Rainone and Connecticut Class members reasonably relied upon
25 Defendants' false misrepresentations. They had no way of knowing that Defendants'
26 representations were false and gravely misleading. As alleged herein, Defendants'
27 engaged in extremely sophisticated methods of deception. Plaintiff Rainone and
28 Connecticut Class members did not, and could not, unravel Defendants' deception on

1 their own.

2 194. Defendants' actions as set forth above occurred in the conduct of trade or
3 commerce.

4 195. Defendants' unfair or deceptive acts or practices were likely to and did
5 in fact deceive reasonable consumers.

6 196. Defendants intentionally and knowingly misrepresented material facts
7 regarding the Softball Bats with an intent to mislead Plaintiff Rainone and
8 Connecticut Class members.

9 197. Defendants knew or should have known that their conduct violated the
10 Connecticut UTPA.

11 198. Defendants owed Plaintiff Rainone and Connecticut Class members a
12 duty to disclose the truth about the Defects because Defendants:

- 13 a. Possessed exclusive knowledge that thousands of their Softball Bats
14 were returned by consumers for the same defect, namely a cracked
15 barrel, that the product was not fit for its intended purpose, the product
16 was not produced per the patent specifications, and would likely to
17 fail after minimal normal use;
- 18 b. Intentionally concealed the foregoing from Plaintiff Rainone and
19 Connecticut Class members in the hope that customers would
20 continue to buy the defective product; and/or
- 21 c. Made incomplete representations that the Softball Bats were fit for
22 their intended purpose, made with the highest quality materials, would
23 last their intended life span of at least one (1) year and mislead
24 Plaintiff Rainone and Connecticut Class members into believing that
25 the express limited warranty would be honored, when in fact,
26 Defendants had no intention to honor the warranty, while purposefully
27 withholding material facts from Plaintiff Rainone and Connecticut
28 Class members that contradicted these representations.

1 199. Defendants had a duty to disclose that the Softball Bats: (1) failed to
2 conform to the design specifications; (2) contained more chemical elements in the
3 barrel than the what the design specifications called for which increased the brittleness
4 of the barrels of the Softball Bats; (3) had an unintended or intended seam in the
5 barrels creating a distinct weak point which could and did lead to immediate and
6 unintended failure; (4) had precision-thin barrels that would not and often did not last
7 through the intended life-span of the product as stated in the standard warranty period;
8 (5) had been returned to Defendants at an alarmingly high rate with an identical type
9 of failure (cracked barrel); and (6) were no longer being produced because of the
10 apparent defects, because Plaintiff Rainone and Connecticut Class members relied on
11 Defendants' material representations that the Softball Bats they were purchasing were
12 made from the highest quality materials, would not fail after minimal intended use,
13 were fit for their intended use, produced according to the patent specifications and
14 were overall free from defects.

15 200. Defendants conduct proximately caused injuries to Plaintiff Rainone and
16 Connecticut Class members.

17 201. Plaintiff Rainone and Connecticut Class members were injured and
18 suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result
19 of Defendants' conduct in that Plaintiff Rainone and Connecticut Class members
20 overpaid for their Softball Bats and did not receive the benefit of their bargain, and
21 their Softball Bats have suffered a diminution in value. These injuries are the direct
22 and natural consequence of Defendants' misrepresentations and omissions.

23 202. Defendants' violations present a continuing risk to Plaintiff Rainone as
24 well as to the general public. Defendants' unlawful acts and practices complained of
25 herein affect the public interest.

26 203. Plaintiff Rainone and Connecticut Class members sustained damages as
27 a result of Defendants' unlawful acts, and are therefore entitled to damages and other
28 relief as provided under the Connecticut UTPA.

204. Plaintiff Rainone also seeks court costs and attorneys' fees as a result of Defendants violation of the Connecticut UTPA as provided in Conn. Gen. Stat. Ann. § 42- 110g(d). A copy of this complaint will be mailed to the Attorney General and the Commissioner of Consumer Protection of the State of Connecticut in accordance with Conn. Gen. Stat. Ann. § 42-110g(c).

COUNT XII

**Damages for Violations of the Massachusetts Consumer Protection Act
(Mass. Gen. Laws Ch. 93A)
(By Plaintiff Bilodeau Asserted on Behalf of Himself and the Massachusetts
Class Against Defendants)**

205. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

206. Plaintiff Bilodeau intends to assert a claim under the Massachusetts Consumer Protection Act ("MCPA"), which makes it unlawful to engage in any "[u]nfair methods of competition or deceptive acts or practices in the conduct of any trade or commerce." Mass. Gen. Laws Ch. 93A, § 2(1). Plaintiff Bilodeau will make a demand in satisfaction of Mass. Gen. Laws Ch. 93A, § 9(3), and may amend this complaint to assert claims under the MCPA once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the MCPA.

COUNT XIII

**Damages for Violations of the Florida Unfair and Deceptive Trade Practices
Act
(Fla. Stat. §§ 501.201, *et seq.*)
(By Plaintiff Triplett Asserted on Behalf of Herself and the Florida Class
Against Defendants)**

207. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

208. Plaintiff Triplett brings this count on behalf of herself and the Florida Class members.

1 209. Plaintiff Triplett and the Florida Class members are “consumers” within
2 the meaning of Florida Unfair and Deceptive Trade Practices Act (“Florida
3 UDTPA”), Fla. Stat. § 501.203(7).

4 210. Defendants engaged in “trade or commerce” within the meaning of the
5 Fla. Stat. § 501.203(8).

6 211. Florida’s Deceptive and Unfair Trade Practices Act prohibits “[u]nfair
7 methods of competition, unconscionable acts or practices, and unfair or deceptive
8 acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.204(1).
9 Defendants participated in unfair and deceptive trade practices that violated the
10 Florida UDTPA as described herein. In the course of Defendants’ business, they
11 willfully failed to disclose and actively concealed that the Softball Bats: (1) failed to
12 conform to the design specifications; (2) contained more chemical elements in the
13 barrel than the what the design specifications called for which increased the
14 brittleness of the barrels of the Softball Bats; (3) had an unintended or intended seam
15 in the barrels creating a distinct weak point which could and did lead to immediate
16 and unintended failure; (4) had precision-thin barrels that would not and often did not
17 last through the intended life-span of the product as stated in the standard warranty
18 period; (5) had been returned to Defendants at an alarmingly high rate with an
19 identical type of failure (cracked barrel); and (6) were no longer being produced
20 because of the apparent defects. Accordingly, Defendants engaged in unfair methods
21 of competition, unconscionable acts or practices, and unfair or deceptive acts or
22 practices as defined in Fla. Stat. § 501.204(1). Defendants’ conduct offends
23 established public policy, is immoral, unethical, oppressive, unscrupulous, or
24 substantially injurious to consumers, and is likely to mislead consumers.

25 212. In purchasing the Softball Bats, Plaintiff Triplett and the other Florida
26 Class members were deceived by Defendants’ failure to disclose that the Softball Bats
27 failed to conform to the design specifications, contained higher levels of chemical
28 elements which made the Softball Bats more brittle, had an unintended or intended

1 seam in the barrel which created a distinct weak point which could and did lead to
 2 immediate and unintended failure, the bat barrels were made too thin which caused
 3 them to fail with only minimum use, and that the barrels were defectively
 4 manufactured or deigned.

5 213. Plaintiff Triplett and Florida Class members reasonably relied upon
 6 Defendants' false misrepresentations. They had no way of knowing that Defendants'
 7 representations were false and gravely misleading. As alleged herein, Defendants'
 8 engaged in extremely sophisticated methods of deception. Plaintiff Triplett and
 9 Florida Class members did not, and could not, unravel Defendants' deception on their
 10 own.

11 214. Defendants' actions as set forth above occurred in the conduct of trade or
 12 commerce.

13 215. Defendants' unfair or deceptive acts or practices were likely to and did
 14 in fact deceive reasonable consumers.

15 216. Defendants intentionally and knowingly misrepresented material facts
 16 regarding the Softball Bats with an intent to mislead Plaintiff Triplett and Florida
 17 Class members.

18 217. Defendants knew or should have known that their conduct violated the
 19 Florida UDTPA.

20 218. Defendants owed Plaintiff Triplett and Florida Class members a duty to
 21 disclose the truth about the Defects because Defendants:

- 22 a. Possessed exclusive knowledge that thousands of their Softball Bats
 23 were returned by consumers for the same defect, namely a cracked
 24 barrel, that the product was not fit for its intended purpose, the product
 25 was not produced per the patent specifications, and would likely to
 26 fail after minimal normal use;
- 27 b. Intentionally concealed the foregoing from Plaintiff Triplett and
 28 Florida Class members in the hope that customers would continue to

1 buy the defective product; and/or

2 c. Made incomplete representations that the Softball Bats were fit for
3 their intended purpose, made with the highest quality materials, would
4 last their intended life span of at least one (1) year and mislead
5 Plaintiff Triplett and Florida Class members into believing that the
6 express limited warranty would be honored, when in fact, Defendants
7 had no intention to honor the warranty, while purposefully
8 withholding material facts from Plaintiff Triplett and Florida Class
9 members that contradicted these representations.

10 219. Defendants had a duty to disclose that the Softball Bats: (1) failed to
11 conform to the design specifications; (2) contained more chemical elements in the
12 barrel than the what the design specifications called for which increased the
13 brittleness of the barrels of the Softball Bats; (3) had an unintended or intended seam
14 in the barrels creating a distinct weak point which could and did lead to immediate
15 and unintended failure; (4) had precision-thin barrels that would not and often did not
16 last through the intended life-span of the product as stated in the standard warranty
17 period; (5) had been returned to Defendants at an alarmingly high rate with an
18 identical type of failure (cracked barrel); and (6) were no longer being produced
19 because of the apparent defects, because Plaintiff Triplett and Florida Class members
20 relied on Defendants' material representations that the Softball Bats they were
21 purchasing were made from the highest quality materials, would not fail after minimal
22 intended use, were fit for their intended use, produced according to the patent
23 specifications and were overall free from defects.

24 220. Defendants' conduct proximately caused injuries to Plaintiff Triplett and
25 Florida Class members.

26 221. Plaintiff Triplett and Florida Class members were injured and suffered
27 ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of
28 Defendants' conduct in that Plaintiff Triplett and Florida Class members overpaid for

1 their Softball Bats and did not receive the benefit of their bargain, and their Softball
 2 Bats have suffered a diminution in value. These injuries are the direct and natural
 3 consequence of Defendants' misrepresentations and omissions.

4 222. Defendants' violations present a continuing risk to Plaintiff Triplett as
 5 well as to the general public. Defendants' unlawful acts and practices complained of
 6 herein affect the public interest.

7 223. Accordingly, Defendants are liable to Plaintiff Triplett and Florida Class
 8 members for damages in an amount to be proven at trial.

9 **PRAYER FOR RELIEF**

10 Wherefore, Plaintiffs pray for a judgment:

- 11 a. Certifying the Nationwide Class and State Classes as requested herein,
 12 appointing Plaintiffs as the class representatives for the Nationwide Class and
 13 State Classes and their undersigned counsel as class counsel;
- 14 b. Requiring Defendant to disgorge or return all monies, revenues and profits
 15 obtained by means of any wrongful act or practice to Plaintiffs and the
 16 members of the Nationwide Class and State Classes under each cause of
 17 action where such relief is permitted;
- 18 c. Enjoining Defendants from continuing the unlawful practices as set forth
 19 herein, including marketing or selling Softball Bats without disclosing the
 20 Defects relating thereto, and directing Defendants to engage in corrective
 21 action, or providing other injunctive or equitable relief;
- 22 d. Awarding exemplary or punitive damages pursuant to all applicable statutes;
- 23 e. Awarding damages and civil penalties pursuant to all applicable statutes;
- 24 f. Awarding all equitable remedies available pursuant to all applicable law;
- 25 g. Awarding attorneys' fees and costs;
- 26 h. Awarding pre-judgment and post-judgment interest at the legal rate; and
- 27 i. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

DATED: February 15, 2017

BISNAR|CHASE LLP

By: /s/ Jerusalem F. Beligan
BRIAN D. CHASE
bchase@bisnarchase.com
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jbeligan@bisnarchase.com
1301 Dove Street, Suite 120
Newport Beach, CA 92660
Telephone: 949/752-2999
Facsimile: 949/752-2777

DICKSON KOHAN & BABLOVE LLP

By: /s/ Jesse M. Bablove
JESSE M. BABLOVE
jbablove@dkblawyers.com
1101 Dove Street, Suite 220
Newport Beach, CA 92660
Telephone: 949-629-4485
Facsimile: 949-535-1449

Counsel for Plaintiffs and Putative Classes

EXHIBIT A

December 23, 2015

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DeMarini Sports, Inc.
6435 NW Croeni Rd.
Hillsboro, OR 97124

Wilson Sporting Goods Co.
c/o CT Corporation System
388 State St. Ste 420
Salem, OR 97301

DeMarini Sports Group Limited Partnership
6435 NW Croeni Rd.
Hillsboro, OR 97124

Re: *Oda, et al. v. DeMarini Sports, Inc., et al.*
Notice of Violation of the California Consumers Legal Remedies Act and
Breach of Implied and Express Warranty

Dear Sir or Madam:

We send this letter on behalf of our clients, Hiroyaki Oda and Corey Roth, both current residents of California, as well as on behalf of a proposed class of all persons who purchased in or from California one or more DeMarini White Steel WTDXWHI Slow Pitch Softball Bats (the "DEMARINI Bats") purchased, sold and/or distributed by DeMarini Sports, Inc., DeMarini Sports Group Limited Partnership, and Wilson Sporting Goods Co. (collectively "DEMARINI" or "Defendants") to advise you that Defendants have violated and continue to violate the Consumers Legal Remedies Act ("CLRA"), California Civil Code sections 1750, *et seq.* We hereby ask that DEMARINI remedy such violations within thirty (30) days.

DEMARINI is engaging in unfair competition and unfair or deceptive acts or practices with regard to the manner in which Defendants advertise and market to California consumers the DEMARINI Bats that it distributes and sells through retailers to consumers in California. Specifically, DEMARINI makes, and during the relevant period, has made, representations about the quality and warranty of its products including, but not limited to, that DEMARINI Bats are "the World's Finest Bats," superior quality, with an exceptional warranty and similar variations on those themes. These representations are either patently false or deceptive and misleading in light of numerous complaints by consumers who have purchased DEMARINI Bats without being advised that they have known manufacturing and design defects that could and did cause the DEMARINI Bats to crack, bend, or otherwise fail during normal and intended use. Despite knowledge of these defects, Defendants have refused to honor their express and implied warranties by failing and refusing to refund consumers the purchase price they paid for the

Page 2 of 3

December 15, 2015

Oda, et al. v. DeMarini Sports, Inc., et al.

defective DEMARINI Bats. Defendants are clearly engaged in widespread fraud to dupe California consumers.

These activities violate California Civil Code section 1770(a), in particular by:

- (2) Misrepresenting the source, ... , approval, or certification of goods or services;
- (4) Using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) Representing that [the] goods have ... approval, characteristics, ... uses [or] benefits which they do not have;
- (7) Representing that [the] goods ... are of a particular standard, quality or grade ... if they are of another; and
- (9) Advertising goods ... with intent not to sell them as advertised.

Our clients have filed in conjunction with this notice a complaint for, *inter alia*, injunctive relief under the CLRA, and will amend said complaint to seek monetary relief under the CLRA unless, within thirty (30) days, Defendants correct, repair, or otherwise rectify the violations specified above. If Defendants fail to comply with this request within thirty (30) days, Defendants may be liable for the following monetary amounts under the CLRA:

- Actual damages suffered;
- Punitive damages;
- Costs and attorney's fees related to suit; and
- Penalties of up to \$5,000.00 for each incident where senior citizens have suffered substantial physical, emotional or economic damage resulting from Defendants' conduct.

As will be set forth in the Class Action Complaint, Defendants' practices also violate the California Business & Professions Code § 17200 *et seq.*, , and constitute breach of express warranty. With respect to the claim for breach of express warranty, this letter constitutes statutory notice pursuant to California Uniform Commercial Code § 2-607(3)(A) of Defendants' breach of express warranty. Defendants breached its warranties with class members by providing them with DEMARINI Bats that were not of the quality that Defendants represented. We hereby demand on behalf of, Mr. Oda, Mr. Roth, and all others similarly situated customers, that Defendants immediately correct and rectify its violations by ceasing the deceptive and misleading marketing and advertising described above of DEMARINI Bats, including that DEMARINI Bats are "the World's Finest Bats," "of superior quality," with an "exceptional warranty" and similar variations on those themes. We further demand that Defendants initiate a corrective marketing and advertising campaign. In addition, Defendants must offer to refund all consumers for their purchases of DEMARINI Bats and provide reimbursement with interest.

Page 3 of 3

December 15, 2015

Oda, et al. v. DeMarini Sports, Inc., et al.

It is our hope that Defendants will choose to correct these unlawful practices promptly. A failure to act within thirty (30) days will be considered a denial of this claim and our clients will act accordingly. If you would like to discuss the matter, please do not hesitate to call us at:

BISNAR | CHASE LLP

BRIAN D. CHASE

bchase@bisnarchase.com

JERUSALEM F. BELIGAN

jbeligan@bisnarchase.com

1301 Dove Street, Suite 120

Newport Beach, CA 92626

Telephone: 949-752-2999

Facsimile: 949-752-2777

BORDIN MARTORELL, LLP

JESSE M. BABLOVE

jbablove@bordinmartorell.com

6080 Center Drive, #600

Los Angeles, CA 90045

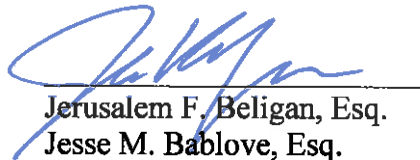
Telephone: 323-457-2110

Facsimile: 323-457-2120

Otherwise, we look forward to Defendants immediately changing its practices and compensating Mr. Oda and Mr. Roth and all other members of the proposed class identified above.

Thank you for your attention to this matter. We look forward to your response.

Respectfully submitted,



Jerusalem F. Beligan, Esq.

Jesse M. Bablove, Esq.

Attorneys for Plaintiffs

EXHIBIT B



November 18, 2016

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Vari-Wall Tube Specialists, Inc.
Attn. Randall L. Alexoff
1000 Westport Cir.
Boardman Twp, Ohio 44511

Vari-Wall Tube Specialists, Inc.
1350 Wardingley Avenue
Columbiana, OH 44408

Jackson Tube Service, Inc.
C/O PS&E Corporate Services, Inc.
2700 Kettering Twr. 40 N. Main St.
Dayton, OH 45423

Jackson Tube Service, Inc.
8210 Industry Park Dr.
Piqua, OH 45356

California Secretary of State
Business Programs Division
1500 11th Street
Sacramento, CA 95814

Re: *Oda, et al. v. DeMarini Sports, Inc., et al.* Case No. 8:15-cv-02131-JLS-JCG
Notice of Violation of the California Consumers Legal Remedies Act and
Breach of Express Warranty

Dear Sir or Madam:

We send this letter on behalf of our clients, Hiroyuki Oda and Corey Roth, both current residents of California (the "Plaintiffs"), as well as on behalf of a proposed class of all persons who purchased in or from California one or more DeMarini White Steel Slow Pitch Softball Bats (the "Defective Bats"), which are comprised of components manufactured by Jackson Tube Service, Inc. ("Jackson Tube") and formed by Vari-Wall Tube Specialists, Inc. ("Vari-Wall"), purchased, sold and/or distributed by defendants DeMarini Sports, Inc., DeMarini Sports Group Limited Partnership and Wilson Sporting Goods Company (collectively, "Wilson") and its retailers to advise you that Jackson Tube and Vari-Wall, along with Wilson, have violated and continue to violate the Consumers Legal Remedies Act ("CLRA"), California Civil Code §§ 1750, *et seq.* We hereby ask that Jackson Tube and Vari-Wall remedy such violations within thirty (30) days.

Jackson Tube and Vari-Wall are engaging in unfair competition and unfair or deceptive acts or practices with regard to the manner in which Jackson Tube and Vari-Wall manufacture and form the Defective Bats which are distributed and sold to retailers and consumers in California. Specifically, Jackson Tube and Vari-Wall, during the relevant time period, manufactured and formed barrels for the Defective Bats that were defectively manufactured and/or not manufactured pursuant to Wilson's specifications. As a direct result, the barrels of the Defective Bats are breaking and cracking within days or weeks after normal, intended use, as referenced in the

Page 2 of 3

November 18, 2016

***Oda, et al. v. DeMarini Sports, Inc., et al.*, Case No. 8:15-cv-02131-JLS-JCG**

hundreds, if not thousands, of complaints received from consumers who purchased the Defective Bats. Wilson has refused and continues to refuse to refund the purchase price they paid for the Defective Bats. Plaintiffs request Jackson Tube and Vari-Wall to rectify this issue by refunding the purchase price paid by Plaintiffs and other consumers for the Defective Bats.

Jackson Tube and Vari-Wall, through the activities referenced above, have violated California Civil Code § 1770(a), in particular by:

- Representing that [the] goods have ... approval, characteristics, ... uses [or] benefits which they do not have;
- Representing that [the] goods ... are of a particular standard, quality or grade ... if they are of another; and
- Advertising goods ... with intent not to sell them as advertised.

Plaintiffs have already filed a complaint against Wilson and are presently requesting the Court to modify the Scheduling Order to permit Plaintiffs leave to file a First Amended Complaint ("FAC") adding Jackson Tube and Vari-Wall as named defendants, which will seek, among other things, injunctive and monetary relief under the CLRA if Jackson Tube and Vari-Wall do not correct, repair, refund or otherwise rectify the violations specified above. If Jackson Tube and Vari-Wall fail to comply with this request within thirty (30) days, Jackson Tube and Vari-Wall may be liable for the following monetary amounts under the CLRA:

- Actual damages suffered;
- Punitive damages;
- Costs and attorney's fees related to suit; and
- Penalties of up to \$5,000.00 for each incident where senior citizens have suffered substantial physical, emotional or economic damage resulting from Defendants' conduct.

As set forth in the FAC, Jackson Tube and Vari-Wall's practices also violate the California Business & Professions Code §§ 17200, *et seq.*, and constitute breach of express warranty. With respect to the claim for breach of express warranty, this letter constitutes statutory notice pursuant to California Uniform Commercial Code § 2-607(3)(A) of Jackson Tube and Vari-Wall's breach of express warranty. Jackson Tube and Vari-Wall breached their warranties with class members by providing them with Defective Bats that were not of the quality that they represented.

We hereby demand on behalf of Plaintiffs, and all others similarly situated that Jackson Tube and Vari-Wall immediately correct and rectify their violations by ceasing production of the Defective Bats and offer to refund consumers for the price they paid, with interest, to purchase the Defective Bats.

Page 3 of 3

November 18, 2016

Oda, et al. v. DeMarini Sports, Inc., et al., Case No. 8:15-cv-02131-JLS-JCG

It is our hope that Jackson Tube and Vari-Wall will choose to correct these unlawful practices promptly. A failure to act within thirty (30) days will be considered a denial of this claim and Plaintiffs will act accordingly. If you would like to discuss the matter, please do not hesitate to call us at:

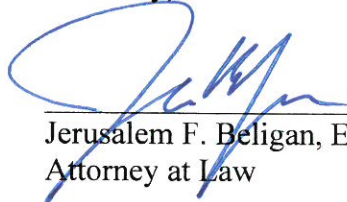
BISNAR | CHASE LLP
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Facsimile: 949-535-1449

Otherwise, we look forward to Jackson Tube and Vari-Wall immediately changing their practices and compensating Plaintiffs and the other members of the proposed class identified above.

Thank you for your attention to this matter. We look forward to your response.

Sincerely,



Jerusalem F. Beligan, Esq.
Attorney at Law

EXHIBIT C

1 **BISNAR | CHASE LLP**
2 **BRIAN D. CHASE (164109)**
3 **bchase@bisnarchase.com**
4 **JERUSALEM F. BELIGAN (211258)**
5 **jbeligan@bisnarchase.com**
6 **1301 Dove Street, Suite 120**
7 **Newport Beach, CA 92626**
8 **Telephone: 949/752-2999**
9 **Facsimile: 949/752-2777**

6 **BORDIN MARTORELL, LLP**
7 **JESSE M. BABLOVE (279886)**
8 **jbablove@bordinmartorell.com**
9 **6080 Center Drive, #600**
10 **Los Angeles, CA 90045**
11 **Telephone: 323-457-2110**
12 **Facsimile: 323-457-2120**

10 Attorneys for Plaintiff

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 Hiroyaki Oda, a California resident;
14 Corey Roth, a California resident,
15 individually, and on behalf of
16 themselves and all others similarly
17 situated,

17 Plaintiffs,

18 vs.

19 DeMarini Sports, Inc.; DeMarini Sports
20 Group Limited Partnership; Wilson
21 Sporting Goods Co.; and DOES 1
22 through 10, inclusive,

21 Defendants.

) Case No.

) Class Action

) **AFFIDAVIT OF PLAINTIFF**
) **HIROYAKI ODA PURSUANT TO**
) **CAL. CIV. CODE § 1780(d)**

23 I, Hiroyaki Oda, hereby declare as follows:

24 1. I am an adult, over 18 years old. I am a named plaintiff and a
25 prospective class member in the above-entitled case. I have personal knowledge
26 of the matters stated herein, and if called to testify about these facts, I could and
27 would do so in a competent and truthful manner.

28 2. I am currently a resident of Orange County, California.

AFFIDAVIT OF PLAINTIFF HIROYAKI ODA PURSUANT TO CAL. CIV.
CODE § 1780(d)

3. My Complaint filed in this matter contains causes of action for violations of California's Consumers Legal Remedies Act, Civil Code §§ 1750 *et seq.* (the "CLRA"), Unfair Competition Law, Business & Professions Code §§ 17200 *et seq.* (the "UCL"), False Advertising Law, Business & Professions Code §§ 17500 *et seq.* (the "FAL"), and Breach of Express Warranty against DeMarini Sports, Inc., DeMarini Sports Group Limited Partnership, Wilson Sporting Goods, Co., companies and individuals doing business throughout California, including in Orange County (collectively "DEMARINI" or "Defendants"). These causes of action arise out of Defendants' marketing, selling and distribution of its DEMARINI Bats through the use of false, deceptive and misleading statements, including, but not limited to, that Defendants' bats are "the World Finest Bats," and similar variations on those themes, without disclosing to consumers that numerous complaints indicated that these representations are either patently false or deceptive and misleading in light of numerous complaints by consumers that have purchased DeMarini Softball Bats without being advised that they have known manufacturing and design defects that could and did expose consumers to safety hazards as demonstrated by the complaints and incidents reported to Defendants. Defendants are clearly engaged in widespread fraud to dupe California consumers.

4. Pursuant to Civil Code § 1780(d), this action is being filed in the correct judicial district because I purchased Defendants' Softball Bat in the County of Orange in California.

I declare under penalty of perjury under the laws of the State of California that the foregoing Declaration is true and correct, and was executed by me in the City of IRVINE, California on December 15, 2015.

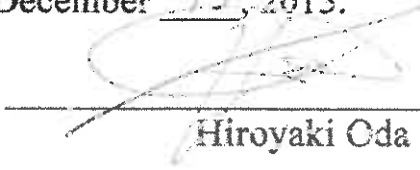

Hiroyaki Oda

EXHIBIT D

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 jbablove@bordinmartorell.com
 6080 Center Drive, #600
 Los Angeles, CA 90045
 Telephone: 323-457-2110
 Facsimile: 323-457-2120

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Hiroyaki Oda, a California resident;
 Corey Roth, a California resident,
 individually, and on behalf of
 themselves and all others similarly
 situated,

Plaintiffs,

vs.

DeMarini Sports, Inc.; DeMarini Sports
 Group Limited Partnership; Wilson
 Sporting Goods Co.; and DOES 1
 through 10, inclusive,

Defendants.

Case No.

Class Action

**AFFIDAVIT OF PLAINTIFF
 COREY ROTH PURSUANT TO
 CAL. CIV. CODE § 1780(d)**

I, Corey Roth, hereby declare as follows:

1. I am an adult, over 18 years old. I am a named plaintiff and a prospective class member in the above-entitled case. I have personal knowledge of the matters stated herein, and if called to testify about these facts, I could and would do so in a competent and truthful manner.


2. I am currently a resident of Orange County, California.

**AFFIDAVIT OF PLAINTIFF COREY ROTH PURSUANT TO CAL. CIV.
 CODE § 1780(d)**

3. My Complaint filed in this matter contains causes of action for violations of California's Consumers Legal Remedies Act, Civil Code §§ 1750 *et seq.* (the "CLRA"), Unfair Competition Law, Business & Professions Code §§ 17200 *et seq.* (the "UCL"), False Advertising Law, Business & Professions Code §§ 17500 *et seq.* (the "FAL"), and Breach of Express Warranty against DeMarini Sports, Inc., DeMarini Sports Group Limited Partnership, Wilson Sporting Goods, Co., companies and individuals doing business throughout California, including in Orange County (collectively "DEMARINI" or "Defendants"). These causes of action arise out of Defendants' marketing, selling and distribution of its DEMARINI Bats through the use of false, deceptive and misleading statements, including, but not limited to, that Defendants' bats are "the World Finest Bats," and similar variations on those themes, without disclosing to consumers that numerous complaints indicated that these representations are either patently false or deceptive and misleading in light of numerous complaints by consumers that have purchased DeMarini Softball Bats without being advised that they have known manufacturing and design defects that could and did expose consumers to safety hazards as demonstrated by the complaints and incidents reported to Defendants. Defendants are clearly engaged in widespread fraud to dupe California consumers.

4. Pursuant to Civil Code § 1780(d), this action is being filed in the correct judicial district because I purchased Defendants' Softball Bat in the County of Orange in California.

I declare under penalty of perjury under the laws of the State of California that the foregoing Declaration is true and correct, and was executed by me in the City of Irving, California on December 15, 2015.


Corey Roth