

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

CARL IGNACUINOS, <i>on behalf of himself</i>	:	
<i>and others similarly situated,</i>	:	Case No.:
	:	
Plaintiff,	:	<u>CLASS ACTION COMPLAINT</u>
	:	
-against-	:	
	:	JURY TRIAL DEMANDED
BOEHRINGER INGELHEIM	:	
PHARMACEUTICALS., INC.	:	
	:	
Defendant.	:	

Plaintiff CARL IGNACUINOS (“Plaintiff IGNACUINOS” or “Plaintiff”), on behalf of himself and all other persons similarly situated, by his undersigned attorneys, pursuant to this Class Action Complaint against BOEHRINGER INGELHEIM PHARMACEUTICALS, INC. (“BIP” or “Defendant”), alleges the following:

NATURE OF THE ACTION

1. This is a consumer protection class action arising from BIP’s unfair and deceptive practices in the marketing, advertising, and promotion of its Combivent Respimat asthma inhaler (“Combivent”).

2. As alleged with specificity herein, through an extensive, widespread, comprehensive, and uniform nationwide marketing campaign, Defendant represents to doctors and lung obstruction sufferers that its Combivent inhalers provide 120 metered doses of relief from lung constriction (except for samples, which purport to provide 60).

3. These representations are false, deceptive, and unfair, however, because Combivent contains far less than the advertised and promised 120 doses, sometimes less than half this amount.

4. Plaintiff IGNACUINOS seeks to end Defendant’s unfair and deceptive trade practices, correct the false and misleading perception it has created in the minds of asthma sufferers, and

obtain redress for their injuries, both financial and other.

5. Defendant violates statutes enacted in each of the fifty states and the District of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices, as well as false advertising. These statutes are:

- 1) Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.*;
- 2) Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et seq.*;
- 3) Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;
- 4) Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- 5) California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- 6) Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
- 7) Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
- 8) Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- 9) District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
- 10) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- 11) Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
- 12) Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statues § 480 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
- 13) Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
- 14) Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
- 15) Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;
- 16) Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
- 17) Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.*;
- 18) Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;

- 19) Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.*;
- 20) Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
- 21) Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- 22) Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- 23) Michigan Consumer Protection Act, § § 445.901, *et seq.*;
- 24) Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
- 25) Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;
- 26) Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- 27) Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.*;
- 28) Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- 29) Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;
- 30) New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.* ;
- 31) New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et seq.*;
- 32) New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 1, *et seq.*;
- 33) New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.*;
- 34) North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;
- 35) North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.*;
- 36) Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*;
- 37) Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- 38) Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- 39) Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.*;

- 40) Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- 41) South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;
- 42) South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;
- 43) Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.*;
- 44) Texas Stat. Ann. §§ 17.41, *et seq.*, Texas Deceptive Trade Practices Act, *et seq.*;
- 45) Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.*;
- 46) Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;
- 47) Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.*;
- 48) Washington Consumer Fraud Act, Wash. Rev, Code § 19.86.010, *et seq.*;
- 49) West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*;
- 50) Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.*;
- 51) Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

JURISDICTION AND VENUE

6. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d). This is a putative class action wherein (i) the proposed class consists of over 100 class members; (ii) at least some of the proposed class members have a different citizenship from Defendant; and (iii) the amount in controversy exceeds \$5,000,000.00, excluding interest and costs.

7. This Court has personal jurisdiction over Defendant because its Products are advertised, marketed, distributed, and sold throughout Connecticut; Defendant engages in the wrongdoing alleged in this Complaint throughout the United States, including in Connecticut; Defendant is authorized to do business in Connecticut. Defendant has sufficient minimum contacts with Connecticut and/or otherwise has intentionally availed itself of the markets in Connecticut, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play

and substantial justice. Defendant's activity in Connecticut is substantial and not isolated. Moreover, Defendant's principal place of business is in Connecticut, granting the court general jurisdiction over the claims of Plaintiff IGNACUINOS and other Class members.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District, the Defendant has caused harm to Class members residing in this District, and the Plaintiff is a resident of this District.

PARTIES

Plaintiff

9. Plaintiff IGNACUINOS is a citizen of the State of Florida and a resident of Broward County. A long-time sufferer of Chronic Obstructive Pulmonary Disease ("COPD"), Plaintiff IGNACUINOS has been using Combivent since at least 2016 to relieve his symptoms. Plaintiff IGNACUINOS turned to Combivent in reliance on its representation that each inhaler/cartridge contain 120 doses, which is reproduced on each Combivent cartridge, on Defendant's website and in its advertising, on Combivent prescriptions, and on prescription receipts.

10. Plaintiff IGNACUINOS pays a co-pay of \$75 for Combivent for each of the first nine months of the year and then \$140 for each of the remaining three months. However, none of the Combivent inhalers he purchased actually delivered the advertised 120 doses. Most delivered half or less than half that amount and few delivered significantly more than half.

11. Plaintiff IGNACUINOS was financially injured when he was deprived of the benefit of the bargain. He paid the sums he paid on the reasonable understanding that he would receive what Defendant promised, full cartridges with 120 doses, but consistently received significantly less than this amount. Plaintiff IGNACUINOS was additionally injured when he was required to restrict his activities because his Combivent had run out prematurely. Since he would no longer

have a means of relieving his breathing obstructions at this point, he often was required to stay indoors in order to minimize the chances of a COPD attack, against which he would be helpless. This was a source of considerable mental anguish.

Defendant

12. Defendant BOEHRINGER INGELHEIM PHARMECEUTICALS, INC. is the American subsidiary of Boehringer Ingelheim GmbH, a German pharmaceuticals company and one of the largest such companies in the world. Defendant's principal place of business is 900 Ridgebury Road, Ridgefield, CT 06877-0368. It is organized under the laws of Delaware and has an address for service of process at CT Corporation System, 111 Eighth Avenue, New York, NY 10011.

FACTUAL ALLEGATIONS

Background on Combivent Respimat

13. Combivent is a bronchodilator designed to provide relief to individuals suffering from chronic obstructive pulmonary disease ("COPD"), a disease that causes the periodic constriction of the lung's passageways, thus making it difficult or impossible to breathe.

14. By delivering a combination of ipratropium bromide and albuterol, Combivent relaxes the muscles in the lungs, which allows their air passageways to open up and take in air.

15. While the proper dosage can vary according to individual circumstances, Defendant recommends that users take four "puffs" per day, which consists in a "slow-moving mist" that once inhaled makes its way to users' lungs and provides relief within 15 minutes.

16. Below is an image of a Combivent inhaler, with the drug-containing cartridge inserted within and jutting out at the bottom:

After preparing your inhaler,
just remember **T.O.P.** for daily use.

Turn the clear base

Open the cap and close your lips around the mouthpiece

Press the dose-release button and inhale the mist



The image shows a Combivent inhaler, which consists of a clear plastic base and a white plastic holder. An orange cap is shown next to the holder, which is open, revealing the mouthpiece. The inhaler is shown at an angle, highlighting its design.

https://www.combivent.com/your-respimat-inhaler/video?gclid=EAlaIQobChMI4JnizfqX3QIVjo3ICCh1RiwYjEAMYASAAEgKz_fD_BwE

17. The Combivent inhaler is a “metered dose inhaler” (MDI). As the Cleveland Clinic explains, “Inhaled respiratory medications are often taken by using a device called a metered dose inhaler, or MDI. The MDI is a pressurized canister of medicine in a plastic holder with a mouthpiece. When sprayed, it gives a reliable, consistent dose of medication.”¹

18. Thus, the number of puffs obtainable through an MDI is supposed to be a constant. It is not supposed to vary according to how long a user presses the inhaler button. In the case of Combivent, each spray is supposed to last 1.5 seconds and deliver 20 mcg of ipratropium bromide and 100 mcg of albuterol in 11.4 mcL of a sterile aqueous solution.² While the amount of medicine that actually reaches the lungs may vary from one user to the next, the contents of a spray and of

¹ <https://my.clevelandclinic.org/health/drugs/8694-inhalers>

² <https://www.rxlist.com/combivent-respimat-drug.htm>

the cartridge containing it is not supposed to. Here is Defendant's explanation of how the inhaler works:

When to get a new COMBIVENT RESPIMAT inhaler

- Your inhaler contains 120 puffs (120 doses); or if you have a sample, your inhaler contains 60 puffs (60 doses) instead.



- The dose indicator shows approximately how much medicine is left.
- When the dose indicator enters the red area of the scale you need to get a refill; there is approximately medicine for 7 days left (if you have a sample, there is approximately medicine for 3 days left).
- When the dose indicator reaches the end of the red scale, your COMBIVENT RESPIMAT is empty and automatically locks. At this point, the clear base cannot be turned any further.
- Three months after insertion of cartridge, throw away the COMBIVENT RESPIMAT even if it has not been used, or when the inhaler is locked, or when it expires, whichever comes first.

https://www.accessdata.fda.gov/drugsatfda_docs/label/2016/021747s013lbl.pdf

Thus, users are led to feel assured that they know how much medicine is left in their inhalers. Indeed, Defendant instructs users to “prime” their inhalers four times before first use, reassuring: “Don’t worry, these steps will not affect the number of doses of medicine in your inhaler.”³

Plaintiff’s Allegations

19. Defendant’s product does not actually live up to these advertised promises.

20. Early on after he began using Combivent, Plaintiff IGNACUINOS sensed that he was not receiving the full 120 puffs/cartridge he was promised. In order to verify that his intuitions were correct, Plaintiff IGNACUINOS began to log the total number of uses he derived from each cartridge in the following manner:

³ https://www.combivent.com/pdf/IHI_Player_Transcript_PDF.pdf

22. Plaintiff IGNACUINOS thus recognized that the shortfall was not an isolated defect and rather compromised all of the inhalers he purchased. Below is a list of the outcomes of all the logs taken by Plaintiff. The date refers to the date on which an inhaler cartridge was completely depleted. The number refers to the number of actuations from that cartridge that Plaintiff had recorded by that date.

08.04.16 – 85
09.14.16 – 85
11.01.16 – 75
12.02.16 – 78
01.11.17 – 70
02.10.17 – 72
03.22.17 – 70
05.01.17 – 60
06.03.17 – 60
07.05.17 – 50
08.01.17 – 50
08.17.17 – 50
09.05.17 – 50
10.11.17 – 55
11.08.17 – 45
12.13.17 – 48
01.19.18 – 71
02.14.18 – 50
04.01.18 – 56
05.01.18 – 55
06.01.18 – 50
07.01.18 – 60

23. Plaintiff IGNACUINOS is not the only one to have noticed this problem. One Combivent reviewer on the medical information website *WebMD* remarks on a very similar pattern:

I have had continuing problems with Combivent Respimat. It is supposed to have 120 doses for the month but has typically not lasted a full month. Last year 2017 it averaged less than 25 days. For May and June of 2018 it barely lasts two weeks and I am left without

medication for the remainder of the month. Something is wrong with this product. I have talked to the company, sent them the defective inhalers but the problem persists.⁴

24. Additionally, many reviewers have noted other irregularities which do not speak directly to puff quantity but do suggest a generally defective manufacturing and/or design process:

The way this thing is made is horrible, half the time it doesn't even work, does not give the right amount of medicine when it DOES decide to work and not to mention the price is ridiculous.. Dont waste your money on this crap.⁵

Went thru 14 twist before any product came out. Not as effective as old combivent, had to get Doctor to increase to max dosage and still not as good.⁶

Not easy to use when out of breath. And half the time NO SPRAY comes out & yes i am doing it right. Half the mist when it does work goes all over the face not in the lungs. If they wanted to pick on a product for clean air they should have picked on hairsprays or engine cleaners etc that really do polute the air. The old combivent NEVER poluted the AIR.... believe me it was expensive and like gold to a copd sufferer & went STRAIGHT down the throat into the lungs. NO ONE EVER sprayed it into the air! Someones bright idea of ho to kill people with COPD & smoking related illness off. Thats all it is. So now I have to add ANOTHER RESCUE inhaler (ventolin) to my daily meds. I am sure this was something Obama endorsed. I am looking into sueing⁷

Several times when I have turned the cartridge, the medicine will be released before I push the button. I estimate at least 30% of the time, I had to prime the cartridge at least twice before I could use. very wasteful.⁸

I just opened my first one, primed it. On several occasions when I turn the base it dispenses a dose. Hopefully the replacement unit I ggot will do better.⁹

⁴ <https://www.webmd.com/drugs/drugreview-161259-Combivent+Respimat>

⁵ <https://www.webmd.com/drugs/drugreview-161259-Combivent+Respimat>

⁶ <https://www.webmd.com/drugs/drugreview-161259-Combivent+Respimat+inhalation.aspx?drugid=161259&drugname=Combivent+Respimat+inhalation&pageIndex=5&sortby=3&conditionFilter=-500>

⁷ <https://www.webmd.com/drugs/drugreview-161259-Combivent+Respimat+inhalation.aspx?drugid=161259&drugname=Combivent+Respimat+inhalation&pageIndex=6&sortby=3&conditionFilter=-500>I hate the new packaging.

⁸ <https://www.webmd.com/drugs/drugreview-161259-Combivent+Respimat+inhalation.aspx?drugid=161259&drugname=Combivent+Respimat+inhalation&pageIndex=12&sortby=3&conditionFilter=-500>

⁹ <https://www.webmd.com/drugs/drugreview-161259-Combivent+Respimat+inhalation.aspx?drugid=161259&drugname=Combivent+Respimat+inhalation&pageIndex=14&sortby=3&conditionFilter=-500>

Combivent Respimat (albuterol / ipratropium): "Not real impressed don't know if anyone else has had this issue but when it gets to the red mark stops dispensing medicine, and of course can't get it replaced. Also has been a few times when it didn't seem like any thing was coming out so had to double the dose so than you have most of that months wasted. Not happy at all have to wait for refill because of course you can only get one a month at a time so than you have to go without your medicine real fun fighting to breath. Company really needs to go back to the designers and come up with a better dispenser."¹⁰

Defendant's Misrepresentations Would Deceive a Reasonable Consumer

25. A reasonable consumer would be deceived by Defendant's misrepresentation that Combivent contains 120 doses.

26. The reasonable consumer (including Plaintiff and the Class) relies on companies such as Defendant to honestly represent their products and assumes that they have taken measures to ensure that their representations are accurate.

Defendant's Misrepresentations Were Material to a Reasonable Consumer and Were Relied Upon by Plaintiff and the Class

27. Defendant's misrepresentation that a cartridge of Combivent delivers 120 dosage puffs is material to a reasonable consumer because this indicates how much COPD relief they can expect to receive, which in turn affects their everyday behaviors (*e.g.*, whether to go out or undertake strenuous activities) and hence peace of mind.

28. For this reason, Plaintiff and the Class reasonably relied on Defendant's misrepresentations in purchasing the Products. They did not know, and had no reason to know, that Defendant's claims were false.

29. Defendant intended that Plaintiff and the Class rely on its misrepresentations, which are placed prominently on the Combivent label and repeated online.

¹⁰ <https://www.drugs.com/comments/albuterol-ipratropium/for-chronic-obstructive-pulmonary-disease-maintenance.html>

Defendant Knew that Its Representations Were Deceptive and Misleading

30. Defendant knew and continues to know that its representations are false and misleading.

31. As the manufacturer of Combivent, Defendant possesses specialized knowledge regarding its contents and functionality and so could discover that it does not deliver 120 dosage puffs.

Plaintiff and the Class Were Injured by Defendant's Deceptive Conduct

32. Plaintiff and the Class were injured by Defendant when Defendant failed to deliver to them the benefit of their bargain.

33. Plaintiff and the Class paid the sums they paid on the reasonable belief that these were for 120 puffs of medicine, which Defendant failed to deliver.

34. Plaintiff and the Class were also injured physically and emotionally, since they were subjected to asthma attacks they could not control and had to live with the anxious knowledge of this risk, restricting their activities accordingly.

CLASS ACTION ALLEGATIONS

35. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff IGNACUINOS seeks to represent the following class:

All persons or entities who purchased Combivent in the United States for personal use and not resale within the applicable limitations period, and/or such subclasses as the Court may deem appropriate (“the Nationwide Class”).

In the alternative, Plaintiff IGNACUINOS seeks to represent

All persons or entities who purchased Combivent in Florida for personal use and not resale within the applicable limitations period

and/or such subclasses as the Court deems appropriate (“the Florida Class”)

36. Plaintiff reserves the right to revise the Class definition based on facts discovered in the course of litigating this matter.

37. Excluded from this Class are Defendant’s current and former officers, directors, and employees, and the judicial officer to whom this case is assigned.

Numerosity

38. While the exact number and identities of purchasers of Combivent are unknown to Plaintiff at this time, Plaintiff is informed and believes that the Class contains thousands of purchasers and is so numerous that individual joinder of all Class members is impracticable.

Existence and Predominance of Common Questions of Law and Fact

39. Questions of law and fact arise from Defendant’s conduct as described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members and include:

- a. Whether Defendant’s representations that a cartridge of Combivent delivers 120 dosage puffs are false, misleading, and likely to deceive a reasonable consumer;
- b. Whether Defendant’s marketing and advertising of the Products is fraudulent and unlawful;
- c. Whether Plaintiff and Class members sustained monetary loss and the proper measure of that loss;
- d. Whether Plaintiff and Class Members suffered other injuries, including physical pain and mental anguish, and the proper measure of those injuries;
- e. Whether equity calls for disgorgement of unjustly obtained or retained funds, restitution to, or other remedies for the benefit of the Class;

- f. Whether Plaintiff and other Class members are entitled to other appropriate remedies, including equitable and injunctive relief; and
- g. Whether Defendant's conduct rises to the level of reprehensibility under applicable law such that the imposition of punitive damages is necessary and appropriate to fulfill the societal interest in punishment and deterrence, and the amount of such damages.

Typicality

40. Plaintiff's claims are typical of those of the Class members because, *inter alia*, Plaintiff and the other Class members were all injured by same uniform conduct, as detailed herein.

Adequacy of Representation

41. Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained competent counsel experienced in prosecuting nationwide class actions. Plaintiff understands the nature of his claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class.

Superiority

42. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendant. It would not be economically feasible for an individual class member to prosecute a separate action on an individual basis, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and

conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

43. The prerequisites to maintaining a class action for equitable relief pursuant to Rule 23(b)(2) are also met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final equitable relief with respect to the Class as a whole.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT (CONN. GEN. STAT. ANN. §§ 42-110g, et seq.) (Brought on behalf of the Nationwide Class)

44. Plaintiff IGNACUINOS realleges and incorporates herein by reference all allegations contained above as if fully set forth herein and further alleges as follows:

45. Plaintiff IGNACUINOS brings this claim individually and on behalf of the other members of the Nationwide Class for violations of the Connecticut Unfair Trade Practices Act (“CUTPA”).

46. CUTPA provides that “[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” CONN. GEN. STAT. ANN. § 42-110g(a).

47. CUTPA further provides a private right of action under CONN. GEN. STAT. ANN. § 42-110g(a).

48. CUTPA provides relief for “[a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a method, act or practice prohibited by CONN. GEN. STAT. ANN. § 42-110b.” *Id.* § 42-110g(a).

49. A plaintiff is not required to prove specific or actual damages but need only show that such damages are “capable of being discovered, observed, or established.” *Lentini v. Fidelity Nat.*

Title Ins. Co. of New York, 479 F. Supp. 2d 292, 302 (D. Conn. 2007).

50. A deception will be found when “(1) [a] representation, omission or other practice [is] likely to mislead consumers; (2) [c]onsumers . . . interpret the message reasonably under the circumstances; and (3) [t]he misleading representation, omission or practice must be material—that is, likely to affect consumer decisions or conduct.” *Caldor, Inc. v. Heslin*, 577 A.2d 1009, 1013 (Conn. 1990).

51. “[A] violation of CUTPA may be established by showing *either* an actual deceptive practice. . . or a practice amounting to a violation of public policy.” *Daddona v. Liberty Mobile Home Sales, Inc.*, 550 A.2d 1061, 1066-67 (Conn. 1988) (emphasis added).

52. Connecticut courts evaluate “unfairness” in reliance on the FTC standard as articulated by the Supreme Court of the United States in *Sperry v. Hutchinson Co.*. The inquiry is:

(1) whether the practice, without unnecessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—whether, in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive or unscrupulous; (3) whether it causes substantial injury to consumers (or competitors or other businessmen).

Sperry v. Hutchinson Co., 405 U.S. 233, 244 n.5 (1972). *See, e.g., Journal Pub. Co. v. Hartford Courant Co.*, 804 A.2d 823, 839 (Conn. 2002); *Macomber v. Travelers Prop. & Cas. Corp.*, 804 A.2d 180, 196 (Conn. 2002).

53. A plaintiff need not satisfy all three prongs of *Sperry* to establish unfairness under CUTPA. *Macomber*, 804 A.2d at 196.

54. CUTPA allows the court in its discretion to award punitive damages. See CONN. GEN. STAT. ANN. § 42-110g(a). These damages are more likely to apply “if the evidence reveals a reckless indifference to the rights of others or an intentional and wanton violation of those rights.” *Fabri v. United Tech. Int’l, Inc.*, 387 F.3d 109, 124 (2d Cir. 2004).

55. CUTPA permits courts to award, in their discretion, injunctive or equitable relief. CONN. GEN. STAT. ANN. § 42-110g(d) (West 2007).

56. As a result of its violations of the CUTPA detailed above, Defendant caused actual damage to Plaintiffs and the other members of the Nationwide Class, who were reasonably deceived that Combivent contained 120 puffs.

57. Defendant's business practices are unfair as well as is immoral, unethical, oppressive and unscrupulous. COPD is a serious condition, and Plaintiff and Class members were left vulnerable to COPD attacks that they would have been able to control had they actually been provided the 120 puffs Defendant promised. Plaintiffs and the Class became used to Combivent as a way of treating their medical condition, only to discover that it could not be relied upon owing either to undisclosed variations in the quantity of medicine included in Combivent cartridges or to defects in the inhaler. As a result, their peace of mind and freedom of action were severely constricted, since they had to avoid exposing themselves to conditions in which an asthma attack would be more likely.

58. Plaintiff and the Nationwide Class are therefore entitled to damages and other compensatory relief as provided under CUTPA, including restitution. They are also entitled to a permanent injunction either prohibiting Defendant from marketing and selling Combivent with the misrepresentations described herein or compelling it to actually provide 120 puffs.

59. Plaintiffs also seek court costs and attorneys' fees as a result of Defendant's violation of the CUTPA as provided in CONN. GEN. STAT. ANN. § 42-110g(d).

60. A copy of this Complaint has been 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).

61. Because Defendant's deceptive scheme originated in Connecticut, its principal place of business, CUTPA extends to injuries which may have transpired outside Connecticut. *See H & D Wireless Limited P'ship v. Sunspot*, Civil No. H-86-1026 (D. Conn. Feb. 24, 1987) (13 Conn. L. Trib. No. 17, 22) ("CUTPA does not necessarily require that the violation occur within the state, only that it be tied to a form of trade or commerce intimately associated with Connecticut."); *Metro. Enter. Corp. v. United Techs. Int'l, Corp.*, No. 3:03cv1685 (JBA), 2004 U.S. Dist. LEXIS 12274, at *21-22 (D. Conn. June 28, 2004) ("Examination of the statutory language and interpretive case law reveals no reason why a straightforward application of the phrase 'in this State' would exclude the conduct alleged here: a Connecticut seller, in connection with the sale or the offering for sale of its jet engines, hatching and implementing a plan inside the borders of Connecticut the deceptive or unfair effect of which is felt outside those borders.")

COUNT II

VIOLATIONS OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT ("FDUTPA") Fla. Stat. Ann. § 501.201, et seq. (Brought on behalf of the Florida Class)

62. Plaintiff IGNACUINOS realleges and incorporates herein by reference all allegations contained above as if fully set forth herein and further alleges as follows:

63. Plaintiff IGNACUINOS brings this claim individually and on behalf of the other members of the Florida Class for violations of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA").

64. FDUTPA prohibits "[u]nfair or deceptive acts or practices in the conduct of any trade or commerce" Fla. Stat. § 501.204 (1).

65. "A deceptive act is an act that is likely to mislead consumers. This 'likely to mislead' standard does not require reliance on the part of the consumer." *Grillasca v. Amerada Hess Corp.*, No. 8:05-cv-1736-T-17TGW, 2006 WL 3313719 at *4 (M.D. Fla. Nov. 14, 2006)

66. "While fraud may be actionable under the FDUTPA, proof of misrepresentation or deceit sufficient to constitute fraud is not a necessary element in all causes of action brought under the FDUTPA." *Motmanco v. McDonald's Corp.*, 2005 U.S. Dist. LEXIS 33965, 2005 WL 1027261, *8 (M.D. Fla. 2005)

67. In outlawing unfair acts or practices, the Florida Legislature adopted the FTC's interpretations of § 5(a)(1) of the Federal Trade Commission Act. Fla. Stat. § 501.204 (2).

68. The Legislature specifically stated that a violation of FDUTPA "may be based upon ... [t]he standards of unfairness ... set forth and interpreted by the Federal Trade Commission" Fla. Stat. § 501.203 (3)(b).

69. Under FDUTPA, an act or practice is unfair if it causes consumer injury that is "(1) substantial, (2) not outweighed by any countervailing benefits to consumers or competition, (3) one that consumers themselves could not have reasonably avoided." *Porsche Cars N. Amer. Inc. v. Diamond*, 140 So. 3d 1090, 1096 (Fla. 3d DCA 2014).

70. FDUTPA provides that "[a]nyone aggrieved by a violation of this part may bring an action to obtain a declaratory judgment that an act or practice violates this part and to enjoin a person who has violated, is violating, or is otherwise likely to violate this part." Fla. Stat. § 501.211 (1).

71. The Florida Legislature has provided that a person who has suffered a loss as a result of a violation of FDUTPA may recover actual damages, plus attorney's fees and court costs. Fla. Stat. § 501.211(2).

72. In addition to actual damages caused by a violation, FDUTPA specifically allows for declaratory judgments, actions to enjoin the violator, and permanent or temporary injunctive orders. Fla. Stat. § 501.211.

73. Defendants violated FDUTPA by selling COPD inhalers that misrepresent their actual capacity, giving users a false impression of how long they will last and leaving them exposed to COPD attacks when they do not last as long as advertised and promised.

74. As a result, Plaintiff and the Class suffered financial injury, physical pain, and emotional distress.

75. Defendant's policy of misrepresenting the benefits of a Combivent cartridge/inhaler is unfair because it causes substantial injury to consumers without providing any benefits. Since asthma-sufferers are dependent on Combivent, they had no way of avoiding this injury.

76. Plaintiff and Class members seek all applicable compensatory damages and injunction either restraining Defendant from representing that Combivent offers 120 puffs or compelling it to actually provide 120 puffs.

77. Defendant's actions, as alleged herein, were performed intentionally, willfully, knowingly, and maliciously.

COUNT III

COMMON LAW FRAUD

**(Brought on behalf of the Nationwide Class under Connecticut law or,
alternatively, the Florida Class under Florida law)**

78. Plaintiff realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

79. Defendant intentionally makes materially false and misleading representations regarding Combivent, claiming that it provides 120 dosage puffs of relief.

80. Plaintiff and members of the Class reasonably relied on Defendant's false and misleading representation. They did not know that the Products could not deliver 120 puffs of medicine. Defendants knew and intended that Plaintiff and the Class would rely on its misrepresentation.

81. Plaintiff and Class members have been injured as a result of Defendant's fraudulent conduct.

82. Defendants are liable to Plaintiff and members of the Class for damages sustained as a result of Defendant's fraud.

COUNT IV

BREACH OF EXPRESS WARRANTIES (Brought individually and on behalf of the Nationwide Class under Connecticut express warranty law or, in the alternative, on behalf of the Florida Class under Florida's express warranty law)

83. Plaintiff realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

84. Defendant provided Plaintiff and other Class members with written express warranties that Combivent would deliver 120 dosage puffs of medicine.

85. These claims were affirmations of fact. These affirmations of fact became part of the basis of the bargain and created an express warranty that the good would conform to the stated promise.

86. Plaintiff and Class members attached importance to Defendant's claims.

87. Defendant breached the terms of its express warranty to Plaintiffs and Class members by providing Products that lacked the quantities.

88. As a proximate result of Defendant's breach of warranties, Plaintiff and Class members suffered damages in an amount to be determined by the Court and/or jury, in that they purchased and paid for Products that did not conform to what Defendant promised in its promotion, marketing and advertising. They were deprived of the benefit of their bargain and spent money on products that had less value than was warranted to them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, seeks judgment against Defendant as follows:

- a. An Order that this action be maintained as a class action and appointing Plaintiff as representative of the Nationwide Class or, in the alternative, the Florida Class;
- b. An Order appointing the undersigned attorney as class counsel in this action;
- c. Restitution and disgorgement of all amounts obtained by Defendant as a result of its misconduct, together with interest thereon from the date of payment, to Plaintiff and the proposed Class members;
- d. Declaratory relief as permitted by law or equity, including: enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with Court supervision, victims of its conduct and pay them all money they are required to pay;
- e. Statutory pre-judgment and post-judgment interest on any amounts;
- f. Attorneys' fees and costs; and
- g. Such other relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff, on behalf of herself and the Class, demands a trial by jury on all questions of fact raised by the Complaint.

Dated: May 3, 2019
Stamford, Connecticut

Respectfully submitted,

THE BOYD LAW GROUP, PLLC

By: /s/ Stephen M. Bourtin
Stephen M. Bourtin, Esq. (CT 30443)
68 Southfield Avenue, Suite 100
Two Stamford Landing
Stamford, CT 06902
Tel: 203-921-0322
E-mail: sbourtin@theboydlawgroup.com

By: /s/ C.K. Lee
C.K. Lee

LEE LITIGATION GROUP, PLLC
C.K. Lee, Esq., to be admitted *pro hac vice*
30 East 39th Street, Second Floor
New York, NY 10016
Tel.: 212-465-1188
Fax: 212-465-1181
E-mail: ckleee@leelitigation.com

Attorneys for Plaintiff and the Class