



markets and advertises its Products as having higher Root Mean Square (“RMS”) or “root sine wave” power ratings than they actually have.

3. As described more fully herein, Rockville advertises its Products as having certain RMS power ratings, when, in reality, the Products’ true RMS ratings are approximately half of what Rockville advertises. When consumers attempt to use the Products at the advertised RMS power capacity, the Products fail or blow (causing smoke, stench, and damage).

4. Plaintiff brings this action on behalf of himself and all other similarly-situated consumers to stop Rockville’s false and misleading advertising relating to the sale of the Products and to obtain redress for those who have purchased the Products in the United States. Plaintiff alleges violations of the New York General Business Law (“GBL”) Section 349; breach of express warranty under New York law; and breach of the implied warranty of merchantability under New York law. In the alternative, Plaintiff brings this action on behalf of himself and a statewide Indiana Sub-Class, and alleges violations of the Indiana Deceptive Consumer Sales Act (“IDCSA”), Indiana Code §§ 24-5-0.5-0.1, *et seq.*; breach of express warranty under Indiana law; and breach of the implied warranty of merchantability under Indiana law.

### **PARTIES**

5. Plaintiff is, and at all times relevant hereto has been, a resident of Fort Wayne and New Haven, Indiana, and, thus, is a citizen of Indiana since 2012.

6. E-Distributors, Inc. is a New York corporation, with its principal executive office at 600 Bayview Avenue, Suite 200, Inwood, New York 11096. Upon information and belief, E-Distributors, Inc. is doing business as Rockville Audio, also known as Rockville Pro Sound &

Lighting. According to its website,<sup>2</sup> Rockville's principal place of business is 600 Bayview Avenue, Inwood, NY 11096. Upon information and belief, E-Distributors, Inc. is also doing business as Audiosavings Inc., which is a website that sells audio equipment from various brands. According to the website,<sup>3</sup> Audiosavings Inc. is also located at the same address, 600 Bayview Avenue, Inwood, New York 11096. Thus, Defendant is a citizen of New York. Rockville markets and sells its Products, throughout the United States, including in this judicial district.

### **JURISDICTION AND VENUE**

7. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332(d)(2)(A) because the claims relating to the matter in controversy exceed \$5 million, exclusive of interest and costs, the proposed class has at least 100 members, and this is a class action in which certain of the class members and Defendant are citizens of different states.

8. This Court has personal jurisdiction over Defendant because Defendant owns, operates, and/or controls business operations in this judicial district, its principal place of business is located within this judicial district, and it does business throughout this judicial district.

9. Venue is proper in this judicial district under 28 U.S.C. § 1391 because a substantial part of the acts and omissions giving rise to Plaintiff's claims occurred in or emanated from this judicial district.

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<sup>2</sup> Rockville Pro Sound & Lighting, accessible at <https://www.rockvilleaudio.com/> (last visited Aug. 24, 2020).

<sup>3</sup> AudioSavings, Contact Us, accessible at <https://www.audiosavings.com/contacts> (last visited Aug. 31, 2020).

10. At all pertinent times, Defendant was engaged in the marketing, advertisement, and sale of the Products, which are the subject of this lawsuit, in this judicial district and throughout the United States.

### **SUBSTANTIVE ALLEGATIONS**

11. This is an action brought against Defendant on behalf of Plaintiff and all persons who purchased the Products from Defendant.

12. Rockville promotes itself as a “Pro Sound & Lighting” company that manufactures and sells audio and lighting equipment in various categories, including pro audio equipment, car audio and video equipment, home and portable audio equipment, karaoke equipment, and marine and powersports equipment.<sup>4</sup> Rockville describes its products as the “Best Quality For Your Money,” and explains on its website that Rockville is “very proud to bring you what we consider to be the absolute best value,” describing the company as “the culmination of years of development involving a team of dreamers, engineers, and designers . . . manufactur[ing] high-end gear for professional audio, car stereo, marine audio, and home theater” that “spare[s] no expense in manufacturing the highest quality products.”<sup>5</sup>

13. Despite these descriptions of its self-described high-quality products, Rockville manufactures, sells, and advertises the Products with false RMS power ratings, deceiving consumers into believing the Products are capable of handling more power and producing higher volumes than they are realistically capable of producing. When consumers input power at the levels the Products are advertised as capable of handling – the Products fail, blow, or both,

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<sup>4</sup> See <https://www.rockvilleaudio.com/> (last visited Aug. 28, 2020).

<sup>5</sup> See <https://www.rockvilleaudio.com/contactus/> (last visited Aug. 28, 2020).

because they are unable to handle the power that the false RMS power rating misleadingly states they can handle.

14. The maximum power handling of amplifiers, speakers, and subwoofers is typically measured by a rating known as the RMS rating. The RMS power rating of an amplifier, speaker, or subwoofer is the measure of continuous power that an amplifier can output, or a speaker/subwoofer can handle. The RMS power wattage is derived from the Root Mean Square, which is a statistical measurement of the magnitude of a varying quantity, and is applied to voltage or current.

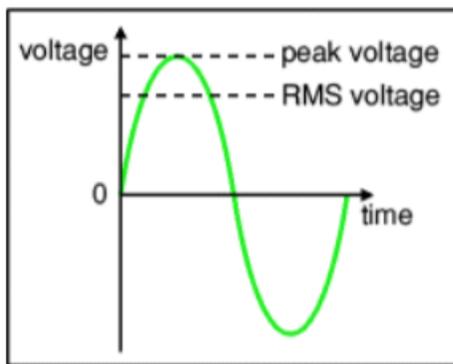
15. The industry standard for determining the true power of an amplifier, speaker, or subwoofer, however, is the RMS power rating. Products with higher RMS ratings are capable of producing louder sounds, continuously, and are more expensive than Products with lower RMS ratings.

16. One of the principal applications of RMS values is with alternating currents and voltages, including sound waves.

17. The value of a voltage or current is continually changing from zero up to the positive peak, through zero to the negative peak and back to zero again:<sup>6</sup>

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<sup>6</sup> See *The Study of Root Mean Square (RMS) Value: Mechanical, Electrical, Electronics Engineering*, The Royal Academy of Engineering, accessible at <https://www.raeng.org.uk/publications/other/8-rms> (last visited Aug. 28, 2020).



For most of the time, the wave is below the peak voltage, so peak voltage is not typically a helpful measure of its real effect. This is why the root mean square voltage, or RMS, is used. Similar to voltage, currents (such as sine waves) are calculated formulaically.<sup>7</sup>

18. The RMS value is the effective value of a varying voltage or current, and it is the equivalent steady, constant value which gives the same effect.<sup>8</sup>

19. In addition to an RMS power rating, amplifiers, speakers, and subwoofers are sometimes advertised with a “peak power” wattage. Peak power is a phrase that refers to the maximum amount of power the speaker can handle at one point in time without damage.<sup>9</sup> This rating can often be reached with a powerful bass line or a very loud note played using the correct amplifier. Although peak power does not reflect a product’s continuous power handling capability, manufacturers often advertise peak power because most consumers are unaware of its meaning, and peak power is used to make a product seem more powerful than it actually is, sometimes even four, five or six times more powerful than the RMS power rating.<sup>10</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

20. In addition to an RMS power rating and a peak power wattage, sometimes an amplifier, speaker, or subwoofer is also given a “program power” rating. The program power rating is the maximum wattage that the speaker can handle in bursts, as opposed to continuously.<sup>11</sup> A speaker’s program power rating, sometimes known as the “music” power rating, has come to mean a doubling of its continuous wattage rating.<sup>12</sup> This “program power” rating came about because manufacturers generally recommend a power amp that can deliver about twice the continuous power rating of a passive speaker.<sup>13</sup> However, the term “program power” is derived from tests that are no longer typically used in the music industry, and, thus, holds no real meaning for describing a speaker’s specifications.<sup>14</sup>

21. Instead of truthfully marketing its Products with accurate RMS power ratings, which are the industry standard for determining the true power of a product, Rockville deceptively and falsely advertises its Products with vastly overstated and inflated RMS power ratings, often advertising the speakers as having an RMS rating of twice the true RMS rating of the Product (for example, advertising a speaker as having an RMS rating of 600W (wattage), when the true RMS rating is 300W).

22. As an illustration, Rockville advertises certain of its speakers as having an RMS power rating of 600W. A 600W RMS speaker should be able to handle a continuous tone at that

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<sup>11</sup> See Andrew Bishop, *RMS Power v Program Power v Peak Power*, Bishop Sound Blog (Feb. 6, 2020), accessible at <https://bishopsound.com/blogs/news/rms-power-v-program-power-v-peak-power#:~:text=The%20RMS%20power%20rating%20is,applied%20to%20voltage%20or%20current.> (last visited Aug. 28, 2020).

<sup>12</sup> See Maya, *Understanding Peak, Continuous, RMS, and Program Power Ratings for Speakers*, zZounds Blog (Jul. 19, 2017), accessible at <https://blog.zzounds.com/2017/07/19/peak-vs-continuous-power-ratings-speakers/> (last visited Sept. 9, 2020).

<sup>13</sup> *Id.*

<sup>14</sup> See Bishop, *supra* note 11.

power level. However, the speakers that Rockville falsely advertises at a rating of 600W RMS can only handle a song that may *peak* at 600W. As set forth above, the value of a voltage or current is continually changing from zero up to the positive peak, through zero to the negative peak and back to zero again. When the Rockville speakers with the false RMS power ratings play a song continuously at a 600W RMS power level, they are unable to handle the continuous power surge at that level, and the speakers blow.

23. One practical difference between a speaker with a 600W RMS power rating and a speaker that merely peaks at 600W is that the speaker that peaks at 600W is significantly less loud than the speaker with the 600W RMS power rating.

24. Amplifiers, speakers, and subwoofers with higher RMS power ratings are also more expensive than amplifiers, speakers, and subwoofers with lower RMS ratings, because amplifiers, speakers, and subwoofers with higher RMS ratings are capable of producing louder sounds, continuously.

25. Rockville is aware that the RMS ratings it advertises on its Products are false. Upon information and belief, the “RMS” ratings Rockville advertises on its Products are not truly RMS ratings at all. The “RMS” rating that Rockville displays on its products is not a measure of the level of constant power—which means that it is not actually an RMS rating, as “RMS rating” is defined, calculated, and understood.

26. Rockville has superior and exclusive knowledge that its advertised “RMS” ratings are false, and knew, or should have known, that the true RMS rating was not known or reasonably discoverable by Plaintiff and consumers before they purchased the Products.

27. Rockville’s conduct has deceived (and continues to deceive) and/or was and is likely to deceive reasonable consumers. Consumers have been deceived into believing that the

Products were (and are) capable of operating continuously at a power level consistent with the advertised RMS power rating when, in fact, the Products can only peak at the advertised wattage. When the Products are operated continuously at that power level, which they should be able to do if the RMS power rating used by Rockville was a true rating, the Products fail, blow, or both.

28. Consumers would not know the true nature of the Products merely by reading their labels or their online descriptions because “RMS” has a defined, mathematically-calculated, industry-understood, and specific meaning. Discovery of the true nature of the RMS power ratings of the Products requires specialized knowledge and extensive testing, which could only be conducted after a consumer has already purchased the Products. Before purchase, therefore, consumers have relied and continue to rely upon Rockville’s representations about the RMS power ratings of the Products. These representations are the only source of information reasonable consumers can use to make decisions concerning whether to buy and use the Products.

29. Despite paying a higher price for Products with higher RMS power ratings, consumers who purchased the Products received Products with significantly lower RMS ratings than advertised, which are, consequently, less powerful and less loud.

30. Rockville’s representations of its RMS power ratings are false, misleading, and likely to deceive members of the public. By stating that its RMS power ratings are higher than they truly are in advertising, on its website, and on its labeling, Rockville has misrepresented the quality and nature of its Products.

31. As a result of its false and misleading advertising, website, and labels, Rockville has been able to sell the Products to thousands of consumers throughout the United States and realize sizeable profits.

32. By deceiving consumers about the nature and quality of the Products as detailed herein, Rockville has been able to command a higher price for its Products. Reasonable consumers, including Plaintiff, have paid more for the Products than they would have if the Products had been accurately labeled, and/or paid more for the Product than they would have been willing to pay for competing products that were not mislabeled.

33. Rockville provides an express warranty with each of its Products. Upon information and belief, Rockville warrants most (if not all) of the Products for one year of workmanship.

34. When purchasers attempt to power the Products at the falsely advertised “RMS” ratings, the Products fail, blow, or both. Despite its knowledge of the false RMS ratings, Rockville refuses to replace or repair its Products under its warranty after they fail or blow. This failure manifests both within and outside the warranty periods, depending on when a purchaser uses a Product to its advertised RMS power capacity. Because knowledge and information about the true RMS power rating and power capacity was within the exclusive and superior possession of Rockville, Rockville concealed and continues to conceal this information in order to sell even more falsely advertised and labeled Products and to wrongfully transfer costs of repair or replacement to Plaintiff and other purchasers.

35. However, when consumers report failure of the Products resulting from use at the advertised RMS power rating and seek repair or replacement from Rockville, the company refuses to perform under its warranty, claiming purchaser “misuse” of the Products. However, operating the Products at the advertised RMS power rating is precisely in line with the manner in which the Products are marketed.

36. As a result of the false advertising, Plaintiff and other purchasers cannot rely upon the Products functioning at their advertised RMS power rating capacity without failing, blowing, or both.

37. Accordingly, Defendant's advertised statements about its "RMS" ratings are false and deceptive and constitute a breach of express and implied warranties.

38. No reasonable consumer expects to purchase an amplifier, speaker, or subwoofer with an RMS rating that is actually half of the RMS rating that is advertised on the Product and with an RMS rating that actually represents the peak power of the Product instead of the continuous power capacity of the Product. The misrepresentation is material to Plaintiff and other purchasers because when they purchased the Products, they reasonably expected that they would be able to operate them with a continuous power level matching the advertised RMS power rating. Had Rockville disclosed the true RMS ratings of the Products, Plaintiff and other purchasers of the Products would not have purchased the Products or would have paid substantially less for them.

39. Reasonable consumers, like Plaintiff, expect that the Products they purchase will be able to operate continuously at the same power level as the RMS power rating. They also expect that the Products would be fit for the ordinary purpose of being able to operate at the same continuous power level indicated by the advertised RMS power rating. Plaintiff and other purchasers of the Products further reasonably expected that Rockville would not sell Products with false RMS ratings.

40. Despite knowing that its advertised RMS ratings are false, upon information and belief, Defendant has and continues to market and advertise its Products as having substantially inflated RMS power ratings.

41. Upon information and belief, Rockville has not revised its advertising or informed potential purchasers that its advertised “RMS” power ratings are not true RMS power ratings, as that term is commonly and universally understood mathematically and in the industry.

**Plaintiff’s Experience**

42. Plaintiff has purchased several of Rockville’s subwoofers directly through Rockville on its Audiosavings Inc. eBay page. The advertised RMS power ratings for all the Products Plaintiff purchased were listed in the description on the eBay listing, on the boxes of the Products themselves, and in the pamphlets that accompanied that Products.

43. In or about April 2018, Plaintiff purchased two new Rockville W10K9D4 10-inch 6400-Watt Car Subwoofers with enclosure for \$254.95 directly through Rockville on the Audiosavings Inc. eBay page. Approximately two weeks later, Plaintiff purchased two additional W10K9D4 Car Subwoofers with enclosure. Once all four W10K9D4 Car Subwoofers arrived, Plaintiff installed them in his vehicle.

44. Plaintiff took several weeks to gradually “break in” the subwoofers, slowly pushing more power into them over time. However, Plaintiff was never able to operate the W10K9D4 speakers at their advertised RMS power rating. When he did try to operate them at their advertised RMS power rating, the subwoofers began to fail. Plaintiff had to operate the subwoofers significantly lower than the advertised RMS power rating in order for them to operate, but even at significantly lower power, the subwoofers eventually failed completely.

45. Specifically, Plaintiff could not operate the W10K9D4 Car Subwoofers at more than approximately 350W RMS power per subwoofer, despite the advertised RMS rating being significantly higher.

46. Once the W10K9D4 Car Subwoofers failed completely, Plaintiff called Rockville's customer service team to discuss warranty coverage. Even though the subwoofers failed within one year of purchase, Rockville refused to replace the speakers under its warranty, claiming customer "misuse." Rockville offered to replace two of the four speakers, supposedly as a courtesy to Plaintiff.

47. At no time did Plaintiff ever misuse the subwoofers. In fact, Plaintiff consistently operated the subwoofers at lower power levels than the advertised RMS power rating, well within the permitted and expected use of the Products.

48. After his W10K9D4 Car Subwoofers failed, Plaintiff proceeded with his next project, building out the speaker system in his vehicle. On or about March 19, 2019, Plaintiff purchased two new Rockville W12K9D4 12-inch 8000-Watt Car Subwoofers for \$224.95 directly through Rockville on the Audiosavings eBay page. On or about March 23, 2019, Plaintiff purchased six new Rockville W12K9D4 12-inch 8000-Watt Car Subwoofers for \$674.85, for a total of eight W12K9D4 Car Subwoofers. Plaintiff also included three W65K9D4 6.5" Rockville Car Subwoofers in a separate build out.

49. Defendant advertised its W12K9D4 Car Subwoofers as having "Version 2" voice coils, a new and better coil design.

50. Again, Plaintiff took several weeks to gradually "break in" the subwoofers, slowly pushing more power into them over time. However, Plaintiff was never able to operate the W12K9D4 speakers at their advertised RMS power rating. When he did try to operate them at their advertised RMS power rating, the subwoofers began to fail. Plaintiff had to operate the subwoofers significantly lower than the advertised RMS power rating in order for them to operate, but even at a significantly lower power level, the subwoofers began to fail.

51. Specifically, the dust caps of the W12K9D4 Car Subwoofers would soften due to overheat, and the coils began omitting a horrid smell. The W12K9D4 speakers also started to seize up and smoke while Plaintiff was driving his vehicle.

52. The W12K9D4 Car Subwoofers would begin to smell even when Plaintiff operated the subwoofers at less than 300W RMS power. The advertised RMS power rating of the W12K9D4 Car Subwoofers was 1000W.

53. Plaintiff again called Rockville to complain about the failure of the W12K9D4 Car Subwoofers, but Rockville would not replace the Products under its warranty, despite the fact that the Products had failed within one year of purchase.

54. At no time did Plaintiff ever misuse the subwoofers. In fact, Plaintiff consistently operated the subwoofers at lower power levels than the advertised RMS power rating, well within the permitted and expected use of the Products.

55. Plaintiff was able to test the actual RMS ratings of the Products he purchased in real time, using a voltmeter and ammeter to test the output of the subwoofers after they were installed in the vehicle. Plaintiff found that the Products' RMS output was significantly less than the advertised RMS power rating of the Products, usually approximately half of the advertised RMS power rating.

56. Products with higher RMS power ratings produce and sustain more powerful sounds and can be sold for higher prices than lower RMS rated speakers. Therefore, it is unsurprising that Rockville would advertise its Products as having higher RMS power ratings than they actually do have, because it can sell higher RMS-rated Products for higher prices than lower RMS-rated Products.

57. Plaintiff paid more money for higher RMS-rated Products than he would have paid for lower RMS-rated Products. The falsely advertised RMS power rating was material to Plaintiff (and other purchasers) because when he purchased the Products, he reasonably expected them to be operable at their advertised RMS power rating. Had Plaintiff known that the Products could not be operated at the RMS power rating at which they were advertised, he either would not have purchased the Products, or would have paid less for them.

58. Plaintiff has been directly and proximately harmed by Rockville's false advertisement of its Products' RMS power ratings and its failure to fulfill its warranty obligations. Plaintiff has paid out of pocket for Products that did not have their advertised characteristics, and has suffered monetary harm as a result of the Products' failure to operate as advertised.

### **Class Members' Experiences**

59. Plaintiff's experience is similar to the experiences of other purchasers of Rockville's Products. The internet contains numerous complaints from consumers who, like Plaintiff, purchased Products from Rockville, believing that they had certain RMS ratings and could handle a certain level of power based on that RMS rating, but were disappointed to find that the RMS ratings, as advertised, were substantially inflated from the RMS power the Products could actually handle, and that the Products failed or blew as a result. The following is a sample of comments from consumers of Rockville's Products:

**“RVP” Line of Products:**<sup>15</sup>

**Consumer: Dawn Taylor**

**Date: January 7, 2020**

The speakers blew days after installed. So for the price I paid it was a waste of my money.

**Consumer: Eric Acaldo**

**Date: October 4, 2017**

They are absolutely horrible, zero bass at all do not buy these, they can't handle any power at all and if you really want bass get something better[.]

**Consumer: Karesse Pinelo**

**Date: October 7, 2015**

[W]hat ever watts posed on this sub is not correct[,][,] afraid to push them magnet is thinny.

**Consumer: Kindle Customer**

**Date: April 27, 2018**

[S]peakers can not handle bass so don[']t buy[.]

**Consumer: Cubee**

**Date: January 5, 2015**

Can't take much wattage at all.

**Consumer: Justin J. Cochran**

**Date: June 8, 2018**

Not a 1000 peak speaker. This version of the speaker sucks. 500 peak. Hear voice coil c racking with about 380 watts.

**Consumer: Zackery Young**

**Date: June 13, 2017**

Wouldn[']t even take 500 clean watts, and the coil unwound and it started to get that “scratchy” sound to it down low. When it was actually pushed a little harder to about 7-

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<sup>15</sup> All reviews quoted herein regarding Rockville’s “RVP” line of Products accessible at the following: [https://www.amazon.com/Rockville-RVP15W8-2000-Subwoofers-Woofers/product-reviews/B00IK6VYH4/ref=cm\\_cr\\_arp\\_d\\_viewopt\\_srt?ie=UTF8&reviewerType=all\\_reviews&sortBy=recent&pageNumber=1](https://www.amazon.com/Rockville-RVP15W8-2000-Subwoofers-Woofers/product-reviews/B00IK6VYH4/ref=cm_cr_arp_d_viewopt_srt?ie=UTF8&reviewerType=all_reviews&sortBy=recent&pageNumber=1); <https://www.amazon.com/Rockville-RVP15W8-Subwoofer-Woofer-Magnet/product-reviews/B00HWLR8EQ>; [https://www.amazon.com/Rockville-RVP15W4-Subwoofer-Woofer-Magnet/product-reviews/B00MP5CPJW/ref=cm\\_cr\\_arp\\_d\\_viewopt\\_srt?ie=UTF8&reviewerType=all\\_reviews&sortBy=recent&pageNumber=1](https://www.amazon.com/Rockville-RVP15W4-Subwoofer-Woofer-Magnet/product-reviews/B00MP5CPJW/ref=cm_cr_arp_d_viewopt_srt?ie=UTF8&reviewerType=all_reviews&sortBy=recent&pageNumber=1) (last visited Sept. 9, 2020).

800 watts, the cone would flex crooked in the motor assembly. This should have been a QC failed speaker/subwoofer for improper coil alignment. Don't waste your money, get something of a solid name brand. I just tried this on a whim, it was a gift, and failed. Hard. Not pleased at all.

**Consumer: Amazon Customer**

**Date: August 18, 2017**

Just installed these in the box[,] I've had another cheap set of speakers in for over 11 years and in less than 5 mins they are completely fried..!! Do not buy these, I normally don't give reviews unless something is really good or really bad and the[s]e are really bad so please beware..!! I would give zero stars but it won't allow me to[,] so I have to give it a one star.

**Consumer: Joe716**

**Date: March 6, 2018**

Bought a set of woofers to replace the woofers from my ALTO TS115A's. Broke the woofer in for about 16 hours on a lower to medium level. Went to a Gig and both speakers blew out. I was not clipping nor was my gain turned up, and I didn[']t have a red light on my speaker showing the load was too much. I've been running sound for over 10 years and haven't had a pair of speakers blow out on [me] like this before[.]

**Consumer: Tall Paul**

**Date: December 3, 2018**

Terrible sound. Speaker lasted one day before it started distorting like crazy. The amp was only 200 watts. I learned a lesson to steer away from these cheap junk speakers. I bought a speaker from a reputable manufacturer with no problems[.]

**Consumer: Corey J**

**Date: July 26, 2017**

I purchased two of these and applied it to a very simple set up. 2 channel crown 1000 watt amp. I bought these 2 Rockville woofers to replace two JBL's in original cabinets. Now from the specs of this woofer it seemed to match up perfectly with the specs of the JBL original woofer. Long story short... I connected and mounted them in the cabs. First[,] I played it a low-volume with everything flat on the EQ. Sounded decent then I turned it up a little by little... By the time I turned it up to a decent volume which wasn't too loud the speakers had already began to distort with the lower bass frequencies. Basically sounds like the voice coil and the driver cannot handle even a mediocre value load! When the bass hits [t]he sound [d]istorts horribly!! The speaker looks good and seems to be well constructed but even taking it out of the box and holding it in my hand seems to be really light in weight... So basically there's no way that the magnet is 51 ounces as it states in the item description. I mean I don't really expect the greatest speaker ever for the price of \$46 each but it definitely doesn't match up to the specs or the reviews.

**“RVW” Line of Products:**<sup>16</sup>

**Consumer: Roger D.**  
**Date: January 8, 2020**

Bought this for replacement for my sonic pa sub received it package looked great[,] sub looked good[,] but when I hooked it up omg the sound was absolutely junk[.] [A lot] of mechanical noise at very low volume[.] I don't think I have been this disappointed in a product[,] wanted to return but couldn't[,] now I'm stuck with a 26 pound [piece] of junk and now I'm out the money I spent on it[.] I feel like I was robbed[.] [B]uyers beware[,] buy at your own risk[.] [I] do not recommend this product[.]

**Consumer: Ross M.**  
**Date: May 20, 2019**

The watt ratings is wrong on this, not sure how they got these numbers but way off, maybe good speakers for a 300 watt amp but nothing more[.]

**Consumer: Amazon Customer**  
**Date: June 14, 2020**

Item is not Rockville quality and did not last 2 min on 200rms for 2 subs.

**Consumer: Johnny**  
**Date: March 30, 2019**

Not as good quality bass as I was hoping for. There is a lot of rattle from the voice coil and it doesn't produce much bass at all.

**Consumer: Amazon Customer**  
**Date: September 7, 2018**

[T]he bass doesn't really get deep for an 15". This is more like a midwoofer rather than a subwoofer. I got a 12" pioneer subwoofer that has a deeper bass than this rockville 15". It seems to produce too much punchy bass for my liking. Most subwoofers don't go much higher than 100hz but these really produce those high bass notes well which I don't need in my setup. . . . The small magnet and weak motor force doesn't produce much deep bass. These subs are not good for anywhere below 40hz and it will sound distorted and weak when played that low.

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<sup>16</sup> All reviews quoted herein regarding Rockville's "RVP" line of Products accessible at the following: [https://www.amazon.com/Rockville-RVW1800P4-Subwoofer-Woofer-Magnet/product-reviews/B00SKJJOLO/ref=cm\\_cr\\_arp\\_d\\_viewopt\\_srt?reviewerType=all\\_reviews&sortBy=recent&pageNumber=1](https://www.amazon.com/Rockville-RVW1800P4-Subwoofer-Woofer-Magnet/product-reviews/B00SKJJOLO/ref=cm_cr_arp_d_viewopt_srt?reviewerType=all_reviews&sortBy=recent&pageNumber=1) (last visited Sept. 9, 2020).

**Consumer: Jaime R**  
**Date: June 22, 2019**

Running them at 1000w rms per speaker and they lasted 2 days. They did sound very good while they were alive but it seems to me that they lack a heat sink or a good way to disipate [sic] the heat. They are both welded solid and sound more like tweeters now.

**Consumer: Matt Maitland**  
**Date: July 29, 2020**

I bought 2 1800 watt 18”s The boxing is done very well but it just doesn’t quite rival the fact that the subs really aren’t loud whatsoever. I have plenty of amp (5500) watts and these aren’t even louder than my tiny 800 watt 12” sub.

**“K9” and “K6” Lines of Products:**<sup>17</sup>

**Consumer: Jo Haught**  
**Date: July 27, 2019**

These subwoofers are grossly misadvertised as far as [their] power capability. Rockville as a company is trash and I will never purchase anything with [their] name on it again. I made the worst mistake of my life purchasing them in the first place!!!!

**Consumer: Ben**  
**Date: June 15, 2019**

Sounded good for a week then . . . blown . . . don’t know how they can continue to sell these . . . Bad product.

**Consumer: David**  
**Date: February 7, 2020**

I had this sub on a 1000 watt Rockford faosgate amp and it stopped working same day[.]

**Consumer: Cameron**  
**Date: May 7, 2020**

I had two [of] these going to an autoteck 2000 watt amp and they blew after a month! They didn[’]t [even] bump like they should have.

**Consumer: Amazon Customer**  
**Date: May 3, 2019**

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<sup>17</sup> All reviews quoted herein regarding Rockville’s “RVP” line of Products accessible at the following: [https://www.amazon.com/Rockville-W12K9D2-4000w-Subwoofer-Compliant/product-reviews/B07BN9YFZL/ref=cm\\_cr\\_ar\\_p\\_d\\_viewopt\\_srt?pageNumber=1&sortBy=recent](https://www.amazon.com/Rockville-W12K9D2-4000w-Subwoofer-Compliant/product-reviews/B07BN9YFZL/ref=cm_cr_ar_p_d_viewopt_srt?pageNumber=1&sortBy=recent); [https://www.amazon.ca/Rockville-W10K6D4-V2-Subwoofer-Compliant/product-reviews/B07BN65GTG/ref=cm\\_cr\\_dp\\_d\\_show\\_all\\_btm?ie=UTF8&reviewerType=all\\_reviews](https://www.amazon.ca/Rockville-W10K6D4-V2-Subwoofer-Compliant/product-reviews/B07BN65GTG/ref=cm_cr_dp_d_show_all_btm?ie=UTF8&reviewerType=all_reviews) (last visited Sept. 9, 2020).

The sub is trash, I had two k9 15s wired to a Rockville dB16[.] I had the gain set correctly and took it easy on the sub for the two weeks I had it and it still broke, I can't play some decaf music for more [than] 20 seconds without it stinking. I don't know how they rated this sub but it definitely is not 5000 watts, I don't trust the 1250 rms rating either. EXO made a review on these new V2 subs and I wished I seen it before I bought it.

**Consumer: Jaren Hew**

**Date: June 15, 2018**

Voice coils came apart like every other one I've seen[,] only on 800w rms.

**Consumer: Nathan Evarts**

**Date: July 27, 2019**

[T]his sub can't handle anywhere above 800 rms. [I]t starts to stink and burn. [A]lso sounds like there is pebbles bouncing around in it. [H]opefully this saves someone money!!

**Consumer: Amazon Customer**

**Date: August 3, 2019**

[D]o not try to put more [than] 600w to this sub. [I]t will pop, the 4000w rating is out of the range of this sub by far. If you do you will see it go up in SMOKE[.]

**Consumer: Carl H.**

**Date: December 23, 2019**

Definitely not 1000 w[.]

**Consumer: red b.**

**Date: March 27, 2019**

So [I'm] only pushing around 600 rms to this sub and it smells really bad. I think [it's] the bad smelly glue and when played [it's] a really bad stinky smell. It shouldn[']t be smelly at all.

### **CLASS ACTION ALLEGATIONS**

60. Plaintiff brings this lawsuit, pursuant to Federal Rule of Civil Procedure 23(b)(1), 23(b)(2) and (b)(3), on behalf of himself and the following nationwide class ("Nationwide Class"):

All persons who purchased the Products in the fifty United States and the District of Columbia within the applicable statute of limitations period through the present.

61. In the alternative, Plaintiff brings this action as a class action on behalf of a state-wide Indiana Sub-Class (collectively with the Nationwide Class, the “Class”), defined as follows:

All persons who purchased the Products in Indiana within the applicable statute of limitations period through the present.

62. Excluded from the Class are Defendant, as well as Defendant’s affiliates, employees, officers and directors, and the Judge to whom this case is assigned. Plaintiff reserves the right to amend the definition of the Class if discovery and/or further investigation reveal that the Class should be expanded or otherwise modified.

63. **Numerosity/Impracticability of Joinder**: The number of members in the Class is so numerous as to render joinder impracticable. The exact number of Class members is unknown at this time but can be determined through Defendant’s records. Plaintiff believes there are at least thousands of Class members.

64. **Commonality and Predominance**: There is a well-defined community of interest and common questions of law and fact that predominate over any question affecting only individual members of the Class. These common legal and factual questions, which do not vary from members of the Class and which may be determined without reference to the individual circumstances of any members of the Class, include, but are not limited, to the following:

- a. Whether the Products have the RMS power rating at which they are advertised;
- b. Whether Defendant represented on its labels, website, and advertising that the Products have RMS power ratings that they do not actually have;
- c. Whether Defendant’s marketing, advertising, and promotion of the Products was false and misleading;

- d. Whether Defendant concealed facts from Plaintiff and members of the Class about the true RMS power ratings of the Products;
- e. Whether Defendant's conduct was a violation of the GBL § 349;
- f. Whether Defendant's conduct was a breach of express warranty under New York law;
- g. Whether Defendant's conduct was a breach of the implied warranty of merchantability under New York law;
- h. Whether Defendant's conduct was a violation of the IDCSA, Indiana Code §§ 24-5-0.5-0.1, *et seq.*;
- i. Whether Defendant's conduct was a breach of express warranty under Indiana law;
- j. Whether Defendant's conduct was a breach of the implied warranty of merchantability under Indiana law;
- k. Whether Defendant's conduct as alleged herein violates public policy;
- l. Whether Plaintiff and members of the Class and the public are entitled to injunctive relief in the form of corrective advertising from Rockville; and
- m. Whether Plaintiff and the members of the Classes are entitled to damages, restitution, equitable relief and/or other damages and other relief, and, if so, the amount and nature of such relief.

65. **Typicality and Adequacy:** Plaintiff's claims are typical of the claims of the proposed Class, and Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff does not have any interests antagonistic to those of the Class. Plaintiff's counsel are experienced in the prosecution of this type of litigation. The questions of

law and fact common to the members of the Class, some of which are set out above, predominate over any questions affecting only individual members of the Class.

66. **Superiority**: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for members of the Class to prosecute their claims individually. The litigation and trial of the Class-wide claims are manageable.

67. Unless the Nationwide Class, or Indiana Sub-Class in the alternative, is certified, Defendant will improperly retain monies that it received from Plaintiff and members of the Class as a result of its conduct. Unless Defendant is required to change its unfair and deceptive practices, it will continue to commit the violations and the members of the Class, and the general public, will continue to be misled.

68. Defendant has acted and refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief with respect to the Class as a whole.

**COUNT I**  
**Violation of New York General Business Law**  
**N.Y. Gen. Bus. Law § 349**  
**(On Behalf of the Nationwide Class)**

69. Plaintiff incorporates by reference each and every preceding paragraph as though fully set forth herein.

70. Plaintiff brings this claim on behalf of himself and the Nationwide Class.

71. GBL § 349 makes unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce.” Defendant’s conduct, as set forth herein, constitutes deceptive acts or practices under this section.

72. Plaintiff and members of the Nationwide Class are “persons” within the context of GBL § 349(h), who purchased the Products for personal, family, or household use.

73. Defendant is a “person” within the context of GBL § 349(h).

74. Defendant engaged in trade and commerce within the context of GBL § 349.

75. In the course of its business, Defendant intentionally or negligently concealed and suppressed material facts concerning the true RMS power ratings of its Products, and intentionally and deceptively advertised the Products as having false RMS power ratings. Plaintiff and members of the Nationwide Class had no way of discerning that Defendant’s representations regarding the RMS power ratings of the Products were false, or that they omitted the true RMS power rating which affects the use of the Products.

76. Defendant violated GBL § 349 by: (i) representing that the Products have characteristics, uses, benefits, and qualities which they do not have; (ii) representing that the Products are of a particular standard, quality, and grade when they are not; (iii) advertising the Products with the intent not to sell them as advertised; and (iv) failing to disclose information concerning the Products with the intent to induce consumers to purchase the Products.

77. Defendant engaged in deception, fraud, false pretense, false promise, misrepresentation, knowing concealment, suppression and/or omission of material facts concerning the Products which violated GBL § 349, with the intent to deceive Plaintiff and members of the Nationwide Class.

78. Defendant committed unconscionable, deceptive and unfair trade practices, including, but not limited to, deception, fraud, false pretense, false promise, misrepresentation and the knowing concealment, suppression and omissions of materials facts concerning the Products with the intent that Plaintiff and members of the Nationwide Class would rely upon their misstatements and omissions as described herein in connection with the sale and/or advertisement of the Products.

79. Defendant fraudulently, intentionally, negligently and/or recklessly misrepresented to Plaintiff and members of the Nationwide Class the characteristics of the Products with respect to materials, manufacture, safety, durability, design, and reliability.

80. Defendant knew, or should have known, that Plaintiff and members of the Nationwide Class would, in the course of their decision to expend money in purchasing the Products, reasonably rely upon the misrepresentations, misleading characterizations, and material omissions concerning the quality and characteristics of the Products.

81. Information regarding the true RMS power rating is material to consumers in that it describes the capacity of the amplifier, speaker, and/or subwoofer.

82. Defendant violated GBL § 349 by failing to inform purchasers of the Products, prior to purchase or during the warranty period, of the true RMS power rating of the Products and that the Products were accompanied by misstatements about their quality and characteristics.

83. Defendant violated GBL § 349 by failing to inform purchasers of the Products, prior to purchase and/or during the warranty period, that the Products were advertised with false RMS power ratings and may fail, blow, or both when powered to the advertised RMS capacity, requiring repairs or replacement.

84. As a proximate and direct result of Defendant's unfair and deceptive trade practices, Plaintiff and members of the Nationwide Class purchased the Products and suffered an ascertainable loss and financial harm.

85. Defendant's unfair or deceptive acts or practices were likely to and did, in fact, deceive reasonable consumers, including Plaintiff and members of the Nationwide Class, about the quality and characteristics of the Products and their ability to operate at a continuous power consistent with the advertised RMS power rating, as would be expected.

86. Plaintiff and members of the Nationwide Class experienced monetary damages in the form of the higher price they paid for amplifiers, speakers, and subwoofers with higher RMS ratings, which were held out to have the power capacity consistent with the advertised RMS power rating, diminution of Products' resale value, and other substantial damages and inconvenience. Plaintiff and members of the Nationwide Class suffered ascertainable loss and actual damages as a direct and proximate result of Defendant's misrepresentations, omissions, suppression, and concealment of material information. Plaintiff and members of the Nationwide Class would not have purchased the Products or would have paid less for them but for Defendant's actions.

87. The conduct of Defendant offends public policy as established by statutes and common law, is immoral, unethical, oppressive and/or unscrupulous, and caused unavoidable and substantial injury to purchasers of the Products, who were unable to have reasonably avoided the injury due to no fault of their own, without any countervailing benefits to consumers. Defendant's violations of GBL § 349 present a continuing risk to Plaintiff, members of the Nationwide Class, and to the general public. Defendant's deceptive acts and practices affect the public interest.

88. As a result of the foregoing willful, knowing, and wrongful conduct of Defendant, Plaintiff and members of the Nationwide Class have been damaged in an amount to be proven at trial, and seek all just and proper remedies, including, but not limited to, actual damages or \$50, whichever is greater; treble damages up to \$1,000; punitive damages to the extent available under the law; attorney's fees and costs; an order enjoining Defendant's deceptive and unfair conduct; and all other just and appropriate relief available under GBL § 349.

**COUNT II**  
**Breach of Express Warranty Under New York Law**  
**(On Behalf of the Nationwide Class)**

89. Plaintiff incorporates by reference each and every preceding paragraph as though fully set forth herein.

90. Plaintiff brings this claim on behalf of himself and the Nationwide Class.

91. Rockville provided all purchasers of the Products with an express warranty described *infra*, which became a material part of the bargain. Accordingly, Rockville's express warranty is an express warranty under New York law. *See* N.Y. U.C.C. Law §§ 2-313 and 2A-210.

92. Rockville included a warranty card with each of the Products that Plaintiff purchased, expressly warranting the Products for one year for workmanship. Upon information and belief, Rockville includes a warranty card with all of its Products, expressly warranting its products for one year for workmanship.

93. Rockville breached the express warranty by selling Products that did not comport with the advertised specifications, and that, when used in accordance with those specifications, failed, blew or both, requiring repair or replacement within the warranty period, and refusing to honor the express warranty by repairing or replacing, free of charge, the defective components which caused the failure. In addition, even if and when Rockville did perform repairs or offered replacements, it nevertheless breached the express warranty because the repaired and/or replacement Products still did not comport with the RMS power rating as advertised.

94. Plaintiff and members of the Nationwide Class have had sufficient direct dealings with either Rockville or its agents to establish privity of contract between Rockville, on one hand, and Plaintiff and each of the other Class members, on the other hand. Plaintiff and the members of the Nationwide Class were the ultimate consumers of the Products, and the warranty

agreements were designed for and intended to benefit Plaintiff and members of the Nationwide Class.

95. Plaintiff was not required to notify Rockville of the breach because affording Rockville a reasonable opportunity to cure its breach of written warranty would have been futile. Rockville was also on notice of the false RMS ratings through its own testing and expertise in the audio industry, as well as from complaints and service requests it received from Plaintiff and Class members.

96. Rockville was also provided notice of its breach of express warranties by Plaintiff via telephone calls throughout 2018 and 2019. Despite these notices, Rockville has failed to cure the breach of express warranties within an adequate time.

97. Plaintiff and members of the Nationwide Class have used their Products in a manner consistent with the Products' intended use, and have performed each and every duty required under the terms of the warranty, except as may have been excused or prevented by the conduct of Defendant or by operation of law in light of Defendant's unconscionable conduct described throughout this Complaint.

98. Upon information and belief, Defendant received numerous complaints, notices of the need for repair or replacement and resulting failures, and requests for warranty repairs and coverage from other members of the Class.

99. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by Defendant to disclaim or otherwise limit its express warranties in a manner that would exclude or limit coverage for the Products for qualities and characteristics present at the time of sale, which Defendant knew about prior to offering the Products for sale, and which

Defendant did not disclose and did not remedy prior to (or after) sale, is unconscionable, and Defendant should be estopped from pursuing such defenses.

100. Further, any such effort by Defendant to disclaim or otherwise limit liability for the false advertisement and/or for the Products' failure is null and void because Defendant has wrongfully, uniformly, and repeatedly refused and failed to properly repair or replace the Products or correct its advertised RMS power ratings.

101. As such, Defendant should be estopped from disclaiming liability for its actions.

102. As a direct and proximate cause of Rockville's breach of express warranties, Plaintiff and the Nationwide Class have suffered, and continue to suffer, damages, including economic damages at the point of sale. Additionally, Plaintiff and the Nationwide Class have incurred or will incur economic damages at the point of repair or replacement in the form of the cost of repair or replacement.

103. The deceptive conduct described herein is ongoing and continues to date. Plaintiff and members of the Nationwide Class, therefore, are entitled to relief described below as appropriate for this cause of action.

104. Plaintiff and the members of the Nationwide Class seek full compensatory damages allowable by law, attorney's fees, costs, punitive damages, restitution, the repair or replacement of all Products, the refund of money paid to purchase the Products, and appropriate equitable relief including injunctive relief, a declaratory judgment, and a court order enjoining Rockville's wrongful acts and practices, as well as any other relief to which Plaintiff and the Nationwide Class members may be entitled.

**COUNT III**

**Breach of Implied Warranty of Merchantability Under New York Law  
(On Behalf of the Nationwide Class)**

105. Plaintiff incorporates by reference each and every preceding paragraph as though fully set forth herein.

106. Plaintiff brings this claim on behalf of himself and the Nationwide Class.

107. Rockville was at all relevant times the manufacturer, distributor, warrantor, and/or seller of the Products.

108. Rockville provided Plaintiff and Nationwide Class members with an implied warranty that the Products are merchantable, pass without objection in the trade, are fit for the ordinary purposes for which they were sold, are adequately labeled, and conform to the promises and affirmations on the label. However, the Products are not merchantable because they are not fit for their ordinary purpose of operating at the continuous power level indicated by the advertised RMS power rating because, *inter alia*, the Products are falsely and deceptively labeled and advertised with inaccurate RMS power ratings that are substantially inflated from the true RMS power ratings of the Products. The Products would not pass without objection in the trade because an RMS power rating is a mathematically-calculated figure, universally understood in the industry as the power capacity at which tones may be continuously played, and the Products cannot continuously play at the RMS power levels indicated on their labels and advertising without failing, blowing, or both.

109. Rockville impliedly warranted that the Products were of merchantable quality and fit for their intended use. This implied warranty included, among other things: (i) a warranty that the Products, which were manufactured, supplied, distributed, and/or sold by Rockville, had the capacity to play music at a continuous power level consistent with the advertised RMS power rating; (ii) a warranty that the Products would be fit for their intended use; (iii) a warranty that

the Products would pass without objection in the trade; (iv) a warranty that the Products are adequately labeled; and (v) a warranty that the Products would conform to the promises and affirmations on their labels and advertising.

110. Contrary to the applicable implied warranties, the Products at the time of sale and thereafter were not fit for their ordinary and intended purpose of playing music at a continuous power level consistent with the advertised RMS power rating, would not pass without objection in the trade, were not adequately labeled, and did not conform to the promises and affirmations on their labels and advertising. Instead, the Products are falsely and deceptively labeled and advertised as having RMS power ratings that are substantially inflated from the Products' true RMS power ratings.

111. Plaintiff and members of the Nationwide Class have had sufficient direct dealings with either Rockville or its agents to establish privity of contract between Rockville, on one hand, and Plaintiff and each of the other Class members, on the other hand. Plaintiff and the members of the Nationwide Class were the ultimate consumers of the Products, and the warranty agreements were designed for and intended to benefit Plaintiff and members of the Nationwide Class.

112. Each of the Products is advertised with a false RMS power rating, and the false RMS power rating was advertised at the time of sale of each of the Products.

113. Because of Rockville's breach of the applicable implied warranties, purchasers of the Products suffered an ascertainable loss of money, property, and/or value of their Products. Additionally, because of the false RMS power ratings, Plaintiff and Nationwide Class members were harmed and suffered actual damages in that they did not receive the benefit of their bargain and have suffered a diminution in value of their Products.

114. Rockville's actions, as complained of herein, breached the implied warranty that the Products were of merchantable quality and fit for such use, in violation of N.Y. U.C.C. Law §§ 2-314 and 2A-212.

115. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability, Plaintiff and members of the Nationwide Class have been damaged in an amount to be proven at trial.

**COUNT IV**  
**Violation of the Indiana Deceptive Consumer Sales Act**  
**Ind. Code §§ 24-5-0.5-0.1, *et seq.***  
**(In the Alternative, On Behalf of the Indiana Sub-Class)**

116. Plaintiff incorporates by reference paragraphs 1-68 as though fully set forth herein.

117. Plaintiff brings this claim in the alternative, on behalf of himself and the Indiana Sub-Class.

118. IDCSA prohibits a supplier from committing unfair, abusive, or deceptive acts, omissions, or practices in connection with a consumer transaction, including both implicit and explicit misrepresentations.

119. Defendant is a "supplier" and the sale of the Products from Defendant to Plaintiff and members of the Indiana Sub-Class is a "consumer transaction" within the meaning of IDCSA §§ 24-5-0.5-2 and 24-5-0.5-3.

120. Defendant violated and continues to violate the IDCSA by engaging in the following deceptive practices proscribed by Indiana Code § 24-5-0.5-3 in connection with consumer transactions intended to result in, and that did result in, the sale of the Products to Plaintiff and members of the Indiana Sub-Class in violation of, *inter alia*, the following provisions:

- a. That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have (Ind. Code § 24-5-0.5-3(b)(1));
- b. That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not (Ind. Code § 24-5-0.5-3(b)(2)); and
- c. That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it (Ind. Code § 24-5-0.5-3(b)(11)).

121. Defendant engaged in unfair, abusive, and deceptive acts, omissions, and practices in connection with a consumer transaction by making misrepresentations to Plaintiff and members of the Indiana Sub-Class by marketing and advertising the Products as having RMS power ratings that they did not have, and by omitting material facts in connection with the sale and advertisement of the Products by failing to inform Plaintiff and the members of the Indiana Sub-Class of the true RMS power ratings of the Products.

122. Plaintiff and members of the Indiana Sub-Class, in purchasing and using the Products, did reasonably act in response to Defendant's above representations or would have considered the omitted facts set forth herein material to their purchasing decision.

123. The representations regarding the Products were material to Plaintiff and members of the Indiana Sub-Class. Defendant intended that Plaintiff and members of the Indiana Sub-Class rely on these representations and they did, in fact, rely on the representations.

124. Plaintiff and members of the Indiana Sub-Class have suffered substantial injury by the wrongful acts and practices of Defendant that are in violation of IDCSA § 24-5-0.5-3.

125. The deceptive conduct described herein is ongoing and continues to date. Plaintiff and members of the Indiana Sub-Class, therefore, are entitled to the relief described below as appropriate for this cause of action.

**COUNT V**  
**Breach of Express Warranty Under Indiana Law**  
**(In the Alternative, On Behalf of the Indiana Sub-Class)**

126. Plaintiff incorporates by reference paragraphs 1-68 as though fully set forth herein.

127. Plaintiff brings this claim in the alternative, on behalf of himself and the Indiana Sub-Class.

128. As an express warrantor, manufacturer, and merchant, Defendant had certain obligations pursuant to its warranty. Ind. Code § 26-1-2-313.

129. Defendant expressly warranted the Products Plaintiff purchased for one year of workmanship. Upon information and belief, Defendant also expressly warranted all of its Products for one year of workmanship.

130. However, Defendant sells the Products knowing that they do not have the capacity to continuously play music at the advertised RMS power level, and that, when purchasers attempt to continuously play music at the advertised RMS power level, the Products fail, blow, or both, so that Plaintiff and the Indiana Sub-Class members are deprived of a warranted feature of the Products.

131. The false and deceptive labeling and advertisement at issue in this litigation was present at the time of sale to Plaintiff and members of the Indiana Sub-Class.

132. Defendant breached its warranties (and continues to breach its warranties) because it wrongfully, uniformly, and repeatedly refuses to repair the Products or correct its advertising, forcing Plaintiff and members of the Indiana Sub-Class to either (a) use their Products at a capacity that is half the power level indicated by the advertised RMS power rating, or (b) not use their Products at all in order to avoid the Products failing, blowing, or both.

133. Plaintiff and members of the Indiana Sub-Class have used their Products in a manner consistent with the Products' intended use, and have performed each and every duty required under the terms of the warranty, except as may have been excused or prevented by the conduct of Defendant or by operation of law in light of Defendant's unconscionable conduct described throughout this Complaint.

134. Upon information and belief, Defendant received numerous complaints, notices of the need for repair or replacement and resulting failures, and requests for warranty repairs and coverage from other members of the Class.

135. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by Defendant to disclaim or otherwise limit its express warranties in a manner that would exclude or limit coverage for the Products for qualities and characteristics present at the time of sale, which Defendant knew about prior to offering the Products for sale, and which Defendant did not disclose and did not remedy prior to (or after) sale, is unconscionable, and Defendant should be estopped from pursuing such defenses.

136. Further, any such effort by Defendant to disclaim or otherwise limit liability for the false advertisement and/or for the Products' failure is null and void because Defendant has wrongfully, uniformly, and repeatedly refused and failed to properly repair or replace the Products or correct its advertised RMS power ratings.

137. As such, Defendant should be estopped from disclaiming liability for its actions.

138. Accordingly, Plaintiff and members of the Indiana Sub-Class have sustained damages proximately caused by Defendant's breach of the warranty and are entitled to recover damages as set forth herein.

139. The deceptive conduct described herein is ongoing and continues to date. Plaintiff and members of the Indiana Sub-Class, therefore, are entitled to relief described below as appropriate for this cause of action.

#### **COUNT VI**

#### **Breach of Implied Warranty of Merchantability Under Indiana Law (In the Alternative, On Behalf of the Indiana Sub-Class)**

140. Plaintiff incorporates by reference paragraphs 1-68 as though fully set forth herein.

141. Plaintiff brings this claim in the alternative, on behalf of himself and the Indiana Sub-Class.

142. As discussed herein, Defendant has manufactured and sold the Products to Plaintiff and the Indiana Sub-Class.

143. The false and deceptive labeling and advertisement at issue in this litigation was present at the time of sale to Plaintiff and members of the Indiana Sub-Class and, because of the false and deceptive labeling and advertisement, the Products were not reasonably suited for the ordinary uses for which amplifiers, speakers, and subwoofers with such RMS product ratings are sold.

144. Plaintiff and members of the Indiana Sub-Class have used their Products in a manner consistent with the Products' intended use.

145. Defendant received timely notice regarding the problems at issue in this litigation and, notwithstanding such notice, has failed and refused to offer an effective remedy.

146. Upon information and belief, Defendant received numerous complaints, notices of the need for repair or replacement and resulting failures, and requests for warranty repairs and coverage from other members of the Class.

147. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by Defendant to disclaim or otherwise limit its express warranties in a manner that would exclude or limit coverage for the Products for qualities and characteristics present at the time of sale, which Defendant knew about prior to offering the Products for sale, and which Defendant did not disclose and did not remedy prior to (or after) sale, is unconscionable, and Defendant should be estopped from pursuing such defenses.

148. Further, any such effort by Defendant to disclaim or otherwise limit liability for the false advertisement and/or for the Products' failure is null and void because Defendant has wrongfully, uniformly, and repeatedly refused and failed to properly repair or replace the Products or correct its advertised RMS power ratings.

149. As such, Defendant should be estopped from disclaiming liability for its actions.

150. Accordingly, Plaintiff and members of the Indiana Sub-Class have suffered damages caused by Defendant's breach of the implied warranty of merchantability and are entitled to recover damages as set forth herein.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and members of the proposed Class, prays for judgment as follows:

- a. Certification of the Class under Federal Rule of Civil Procedure 23 and appointment of Plaintiff as representative of the Class and his counsel as Class counsel;
- b. Compensatory and other damages for economic and non-economic damages;
- c. Awarding restitution and disgorgement of Defendant's revenues or profits to Plaintiff and the members of the proposed Class;
- d. An Order requiring Defendant to cease and desist from engaging in the alleged wrongful conduct and to engage in a corrective advertising campaign;
- e. Statutory pre-judgment and post-judgment interest on any amounts;
- f. Payment of reasonable attorneys' fees and recoverable litigation expenses as may be allowable under applicable law; and
- g. Such other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: September 16, 2020

Respectfully submitted,

By: /s/ Laurie Rubinow

Laurie Rubinow

James C. Shah

Jaclyn M. Reinhart

**SHEPHERD, FINKELMAN, MILLER  
& SHAH, LLP**

52 Duane Street, 7th Floor

New York City, NY 10007

Telephone: (212) 419-0156

Facsimile: (866) 300-7367

Email: [lubinow@sfmslaw.com](mailto:lubinow@sfmslaw.com)

[jshah@sfmslaw.com](mailto:jshah@sfmslaw.com)

[jreinhart@sfmslaw.com](mailto:jreinhart@sfmslaw.com)

*Attorneys for Plaintiff and the Proposed Class*