UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BEVERLY K. STOREY
and BRENDA L. CARL,
Individually and on Behalf
Of Themselves and All Others
Similarly Situated,

Plaintiffs,

v.

ATTENDS HEALTHCARE
PRODUCTS, INC.,

Defendant.

Case No. 2:15-CV-13577

Hon. George C. Steeh

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION COMPLAINT
AND JURY DEMAND

Plaintiffs, on behalf of themselves and all others similarly situated, through their attorneys, The Miller Law Firm, P.C., state as follows for their First Amended Class Action Complaint and Jury Demand against Defendant, Attends Healthcare Products, Inc.:

NATURE OF THIS ACTION

1. This proposed class action is brought by Plaintiffs on behalf of themselves and all others similarly situated who purchased super absorbent, extended wear adult incontinence protection products ("Extended Wear Products")

from Defendant.

2. Defendant engaged in unfair and/or deceptive acts and practices related to the advertising and sale of its Extended Wear Products, including but not limited to, distributing, marketing, advertising, and selling products which increased the risk of adverse health consequences to consumers when used as directed.

3. In the alternative, Defendant has been unjustly enriched as a result of the sale of its Extended Wear Products to consumers based on false and/or misleading claims about their safety.

PARTIES

4. Plaintiff, Beverly K. Storey, is a resident of Van Buren County, Michigan. Plaintiff has purchased Defendant's Extended Wear Products in Michigan.

5. Plaintiff, Brenda L. Carl, is a resident of Kalamazoo County, Michigan and has spent significant periods of time in Arizona. Plaintiff has purchased Defendant's Extended Wear Products in both Michigan and Arizona.

6. Defendant, Attends Healthcare Products, Inc., is a Delaware corporation with its principal place of business in Raleigh, North Carolina. Defendant advertises, markets, distributes, and sells Extended Wear Products under the Attends brand name. Defendant is a wholly owned subsidiary of Domtar

Corporation.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over this controversy pursuant to 28 U.S.C. §1332(d)(2), because the matter in controversy exceeds the sum or value of $5,000,000.00, exclusive of interest and costs, and because this is a Class Action in which any member of the class of Plaintiffs is a citizen of a state different from Defendant.

8. Venue is proper in this District pursuant to 28 U.S.C. §1391(b), (c), and (d) because Defendant transacts business and/or resides and/or has agents within this District, Defendant is subject to the personal jurisdiction of this Court and the State of Michigan with respect to this action, and because Defendant's parent corporation has a registered agent in this District. Venue is proper in this Division pursuant to Local Rule 83.10.

GENERAL ALLEGATIONS

9. This class action is brought by Plaintiffs, also referred to as Class Representatives, individually and on behalf of all purchasers of Extended Wear Products advertised, marketed, distributed, and/or sold by Defendants under the Attends brand name.

10. Defendant advertised and marketed its Extended Wear Products during the period from 2005 through December 2014 as appropriate for

"continuous, heavy leaking of urine day and night" featuring "Triple-tier moisture locking system (cellulose fibers, microporous acquisition layer, super absorbent polymer) for exponential improvements in absorbency while promoting skin health" and labeled some of its products "Overnight Breathable Briefs" and "Overnight" Underwear.

11. In addition to the foregoing representations in its advertising, marketing, and labeling, Defendant states that its Extended Wear Products are carefully designed to be safe for their intended use:

> Incontinence care is our singular focus.
>
> Attends created the first adult incontinence products more than 30 years ago, and it's all we do today. Our high-quality incontinence products give people with incontinence the freedom to live their lives with confidence.
>
> Recommended by healthcare professionals, Attends adult incontinence products are perfect for light to severe urinary incontinence and fecal incontinence for both ambulatory and sedentary users. We offer a full range of products for incontinence management – including briefs, protective underwear, pads, underpads and wipes – to satisfy all sizing and lifestyle needs for women, men and youth.
>
> ***
>
> Attends Healthcare Products created the **Adult Incontinence product category** more than 30 years ago and we are proud of our heritage. **Our singular focus** on incontinence has enabled us to be the true industry expert. We are committed to leveraging that expertise to deliver product innovations that improve the quality of life for millions of people. We are a company that values quality. Consistent high performing

> products are of critical importance to delivering better health outcomes to those we serve. All Attends® products meet or exceed the industry standard of care.
>
> ***
>
> **Brand Promise**
>
> Attends Healthcare Products is a **PIONEER** in the industry: the company that created the adult incontinence product category. We are proud of our heritage and **committed to innovations** and ideas that improve the quality of life for millions of people.
>
> We are a company that values **QUALITY**. Consistent, high-performing products are clearly of critical importance to you. We utilize premium raw materials, run state-of-the-art production lines, and implement stringent quality control procedures, so all Attends products meet or exceed the industry standard of care.
>
> Attends Healthcare Products is **FOCUSED** solely on adult incontinence care. Our singular focus enables us to be the true industry expert. We are dedicated to the continuous development of products that improve the lives of people everywhere.
>
> You can **TRUST** Attends Healthcare Products to manufacture high-quality products and deliver them on time. You can trust the experience and integrity of the people who make, service, and sell them. And you can trust Attends Healthcare Products to provide comfort and protection time and again, giving you the confidence to live life to the fullest.

(www.attends.com; www.attends.com/about_us/index.html, Copyright © Attends Healthcare Products, Inc. dated 9/10/15 (emphasis in original)).

12. Although Defendant represented that the Extended Wear Products

were safe for their intended and advertised use over long periods of time, from several hours to overnight, the products were not safe for such use. Instead, Defendant's Extended Wear Products increased the risk of adverse health consequences to consumers when used as directed.

13. Plaintiffs and Class Members purchased Defendant's Extended Wear Products during the period from 2005 through December 2014 believing that they were safe for their intended and advertised use over long periods of time, from several hours to overnight. Plaintiffs would not have purchased Defendant's Extended Wear Products had Defendant disclosed that its products increased the risk of adverse health consequences to consumers when used as directed.

14. As the distributors and/or sellers of the Extended Wear Products, Defendant knew or should have known that the products increased the risk of adverse health consequences to consumers when used as directed.

15. Defendant negligently distributed, marketed, and/or sold the Extended Wear Products.

16. Defendant failed to take steps to ensure that its marketing representations, advertisements, and/or product labels were accurate and complete.

17. Plaintiffs purchased and used Defendant's Attends brand Extended Wear Products until as recently as December 2014.

18. As a result of Plaintiffs' purchase of Defendant's Extended Wear

Products and their use as directed by Defendant, Plaintiffs have been damaged.

19. Plaintiffs purchased Defendant's Attends brand Extended Wear Products based upon the representations contained on the label of these Products, in particular that they could be used for an extended period of time.

20. Defendant's conduct, including its violation of state consumer protection laws, is part of a concerted, deliberate arrangement and contrivance aimed at concealing the risk to consumers (including Plaintiffs and Class Members) from using Extended Wear Products. Defendant intended to forestall legal claims against it and to prevent potential consumers from abstaining from purchasing its Extended Wear Products. Defendant acted in bad faith to violate the rights of consumers (including Plaintiffs and Class Members) and put their health and safety at risk.

21. As a result of Defendant's concealment of the risk of using its Extended Wear Products and/or its failure to inform Plaintiffs and Class Members of such risks, any and all applicable statutes of limitations otherwise applicable to the allegations herein have been tolled. Furthermore, Defendant is estopped from relying on any statutes of limitation in light of its concealment of the risk to consumers (including Plaintiffs and Class Members) of using its Extended Wear Products.

CLASS ACTION ALLEGATIONS

22. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of themselves and all other persons similarly situated.

23. The "Nationwide Class" is defined as:

> All consumers who have purchased Attends brand Extended Wear Products advertised, marketed, sold, and/or distributed by Defendant in the United States within the last ten years.

24. The "Michigan Class" is defined as:

> All consumers residing in the State of Michigan who have purchased Attends brand Extended Wear Products advertised, marketed, sold, and/or distributed by Defendant in Michigan within the last ten years.

25. The "Arizona Class" is defined as:

> All consumers who have purchased Attends brand Extended Wear Products advertised, marketed, sold, and/or distributed by Defendant in Arizona within the last ten years.

26. The Michigan Class and the Arizona Class can also serve as a Subclass (collectively) or as Subclasses (individually).

27. Excluded from all Classes and Subclasses are the parties' legal representatives, officers, directors, employees, assigns, and successors, the United States government and any agency or instrumentality thereof, the Judge to whom

this case is assigned, and any member of the Judge's immediate family, as well as claims for personal injury, wrongful death, and/or emotional distress.

28. The exact number of members of the Class and Subclasses are not known, but it is estimated to be at least thousands in the United States and in each Subclass. Thus, the Class is so numerous that joinder of all individual members is impractical.

29. The claims raised by Plaintiffs are typical of the claims of the Class Members, and all claims are based on the same legal and remedial theories and are based on Defendant's unfair and/or deceptive acts and/or practices related to the manufacture, distribution, advertising, marketing, and/or sale of Extended Wear Products.

30. There are common questions of law and fact that relate to and affect the rights of each Class Member, and these questions predominate over any questions affecting only individual Class Members. The common issues include, but are not limited to, the following:

A. Whether Defendant knew or should have known that its Extended Wear Products were not safe for their intended and/or advertised use;

B. Whether Defendant knew or should have known that its Extended Wear Products increased the risk of adverse health consequences when used as directed;

C. Whether Defendant should have disclosed that its Extended Wear Products increased the risk of adverse health consequences when used as directed;

D. Whether Defendant deceptively marketed and/or advertised its Extended Wear Products;

E. Whether Defendant's conduct violated state consumer protection statutes and state fraud and deceptive practice acts;

F. Whether Defendant breached implied or expressed warranties covering the Extended Wear Products;

G. Whether Defendant was unjustly enriched at the expense of Plaintiffs and the proposed Class Members; and

H. Whether Class Members are entitled to damages and/or equitable relief.

31. The named Plaintiffs are representative of all individuals in the Class, and they will, as the representative parties, fairly and adequately protect the interests of the entire Class in the prosecution of this action and in the administration of all matters relating to the claims raised in this lawsuit.

32. The named Plaintiffs are similarly situated with all Class Members who purchased Extended Wear Products, and they have suffered damages similar to those sustained by the members of the Class they seek to represent. Plaintiffs were wronged, they seek to obtain redress of the wrongs, and they seek to prevent Defendant from perpetrating similar wrongs on others.

33. Plaintiffs have retained the services of attorneys who are experienced and capable in prosecuting class action lawsuits. Neither Plaintiffs nor their counsel have any interests which might prevent them from vigorously pursuing this

action.

34. There is no conflict between the interests of Plaintiffs and other Class Members with respect to this action or with respect to the claims for relief. All members of the proposed Class share a common interest in the determination of all factual and legal issues pertinent to Defendant's liability.

35. Maintaining this action as a class action is superior to all other available methods of adjudication because it will promote the convenient administration of justice and will achieve a fair and efficient adjudication of the controversy in this matter, which will affect the interests of thousands of potential class members.

36. The prosecution of separate actions by or against individual Class Members would create a risk of inconsistent or varying adjudications that would confront Defendant with incompatible standards of conduct.

37. The dollar amount of the individual claims is insufficient to support separate actions, thus a multitude of potential claimants have small potential damages that require aggregation in order to be pursued.

38. Final equitable and declaratory relief is appropriate because Defendant should be required, in addition to paying damages, to be enjoined from its continuing violations of the law, and to provide consumers a full refund of their purchase price of the Extended Wear Products.

39. This lawsuit is manageable as a class action because the proofs are essentially the same for all Class Members on all of the principal issues.

40. Defendant's conduct was the same as to all Class Members.

41. Given the common issues that predominate throughout this lawsuit, as well as the expenses associated with litigation, it is far more cost effective for Defendant and the Class Members to proceed with this lawsuit as a class action.

42. The individual Class Members do not have a significant interest in controlling the prosecution of separate actions involving the subject matter of this litigation, especially because the individual claims of the putative Class Members are too small individually to warrant litigating their claims on an individual basis.

COUNT I
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

43. Plaintiffs incorporate by reference each and every preceding allegation as if specifically set forth herein.

44. The Uniform Commercial Code Section 2-314 provides that, unless excluded or modified, a warranty that goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

45. Defendant marketed, promoted, manufactured, and/or sold the Extended Wear Products and placed them in the stream of commerce during the period from 2005 through December 2014. Defendant knew or had reason to know of the ordinary use for which the Extended Wear Products were purchased, and

impliedly warranted to consumers that they were of merchantable quality.

46. At all times, the following states and the District of Columbia have codified and adopted the provisions of the Uniform Commercial Code governing the implied warranty of merchantability: Ala. Code § 7-2-314; Alaska Stat. § 45.02.314; Ariz. Rev. Stat. Ann. § 47-2314; Ark. Code Ann. § 4-2-314; Cal. Com. Code § 2314; Colo. Rev. St § 4-2-314; Conn. Gen. Stat. Ann. § 42a-2-314; 6 Del. C. § 2-314; D.C. Code § 28:2-314; Fla. Stat. Ann. § 672.314; Ga. Code Ann. § 11-2-314; Haw. Rev. Stat. § 490:2-314; Idaho Code Ann. § 28-2-314; 810 Ill. Comp. Stat. Ann. § 5/2-314; Ind. Code Ann. § 26-1-2-314; Iowa Code Ann. § 554.2314; Kan. Stat. Ann. § 84-2-314; Ky. Rev. Stat. Ann. § 355.2-314; La. Civ. Code Ann. Art. § 2520; 11 Me. Rev. Stat. Ann. § 2-314; Md. Code Ann. § 2-314; Mass. Gen. Laws Ch. 106 § 2-314; Mich. Comp. Laws Ann. § 440.2314; Minn. Stat. Ann. § 336.2-314; Miss. Code Ann. § 75-2-314; Mo. Rev. Stat. § 400.2-.14; Mont. Code Ann. § 30-2-314; Nev. Rev. Stat. U.C.C § 104.2314; N.H. Rev. Ann. § 382-A:2-314; N.J. Stat. Ann. § 12A:2-314; N.M. Stat. Ann. § 55-2-314; N.Y. U.C.C. Law § 2-314; N.C. Gen. Stat. Ann. § 25-2-314; N.D. Stat § 41-02-314; Ohio Rev. Code Ann. § 1302.27; Okla. Stat. tit. 12A § 2-314; Or. Rev. Stat. § 72.3140; 13 Pa. Stat. Ann. § 2314; R.I. Gen. Laws § 6A-2-314; S.C. Code Ann. § 36-2-314; S.D. Stat. § 57A-2-314; Tenn. Code Ann. § 47-2-314; Tex. Bus. & Com. Code Ann. § 2-314; Utah Code Ann. § 70A-2-314; Va. Code § 8.2-314; Vt. Stat. ann. 9A § 2-314; W.

Va. Code § 46-2-314; Wash. Rev. Code § 62A 2-314; Wis. Stat. Ann. § 402.314; and Wyo. Stat. § 34.1-2-314.

47. As producers, marketers, and/or sellers of Extended Wear Products, Defendant is a "merchant" within the meaning of the various states' commercial codes governing the implied warranty of merchantability.

48. The Extended Wear Products sold by Defendant are "goods" within the meaning of the various states' commercial codes governing the implied warranty of merchantability.

49. Defendant distributed, marketed, and/or sold the Extended Wear Products during the period from 2005 through December 2014 and represented to Plaintiffs and the Class Members that they sold high quality and safe incontinence protection products that complied with all applicable state and federal laws and regulations.

50. Defendant has derived substantial revenue from the sale of Extended Wear Products to consumers, and continues to do so.

51. As a merchant of the Extended Wear Products, Defendant knew that purchasers relied upon them to manufacture, and/or sell Extended Wear Products that were safe, and would not endanger the health of consumers.

52. Defendant specifically represented in its marketing and advertising, including in product names, that the Extended Wear Products were safe for

extended wear.

53. At the time Defendant sold, and/or distributed the Extended Wear Products, it knew the purpose for which the products were intended and impliedly warranted that the products were of merchantable quality and safe and fit for their ordinary purpose and/or use as Extended Wear Products.

54. Defendant breached its implied warranty of merchantability because the Extended Wear Products were not safe and fit for their ordinary purpose and/or use, which involved being worn for extended periods.

55. Defendant breached its implied warranty of merchantability because the Extended Wear Products it marketed, promoted, manufactured, and/or sold were not merchantable.

56. Defendant's Extended Wear Products increased the risk of adverse health consequences compared to other non-extended wear products in the market.

57. As to the Michigan Class, Defendant violated M.C.L. §440.2314 by, among other things, failing to "conform to the promises or affirmations of fact made on the container or label. . . ." M.C.L. §440.2314(2)(f).

58. As to the Arizona Class, Defendant violated A.R.S. § 47-2314 by, among other things, failing to "conform to the promises or affirmation of fact made on the container or label. . . ." A.R.S. § 47-2314(B)(6).

59. Plaintiffs and Class Members have been damaged by, among other

things, being deceived into purchasing more expensive Extended Wear Products based on Defendant's false and misleading representations and/or material omissions indicating that such Products were safe to wear for an extended period of time.

60. As a direct and proximate result of Defendant's breach of its implied warranty of merchantability, Plaintiffs and Class Members are entitled to all damages available under applicable law, including but not limited to the purchase price of the Extended Wear Products.

61. Plaintiffs and Class Members are entitled to recover actual, consequential, punitive and/or exemplary damages, equitable and declaratory relief, costs, and reasonable attorneys' fees.

COUNT II
BREACH OF IMPLIED WARRANTY OF FITNESS
FOR A PARTICULAR PURPOSE

62. Plaintiffs incorporate by reference each and every preceding allegation as if it is specifically set forth herein.

63. The Uniform Commercial Code Section 2-314 provides that, unless excluded or modified, a warranty that goods shall be fit for a particular purpose is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

64. At all times, the following states and the District of Columbia have

codified and adopted the provisions of the Uniform Commercial Code governing the implied warranty of fitness for a particular purpose: Ala. Code § 7-2-314, *et seq*., Alaska St. § 45.02.314, *et seq*., Ariz. Re. Stat. Ann § 47-2314, *et seq*., Ark. Code Ann. § 4-2-314, *et seq*., Cal. Comm. Code § 2314, *et seq*., Co. Rev. St. § 4-2-314, *et seq*., Conn. Gen. Stat. Ann, § 42a-2-314, *et seq*., 6 Del. C. § 2-314, *et seq*., D.C. Code § 28:2-314, *et seq*., Fla. Stat. Ann. § 672.314, *et seq*., Ga. Code. Ann. § 11-2-314, *et seq*., Haw. Rev. Stat. § 490:2-314, *et seq*., Id. Code § 28-2-314, *et seq*., Ill. Comp. Stat. Ann. Ch. 810, 5/2-314, *et seq.*, Ind. Code Ann. § 26-1-2-314, *et seq.*, Iowa Code Ann. § 554.2314, *et seq*., Kansas Stat. Ann. § 84-2-314, *et seq*., Ken. Rev. Stat. Ann. § 355.2-314, *et seq*., La. Civ. Code Ann. Art. 2520, *et seq*., 11 Maine Rev. Stat. Ann. § 2-314, *et seq*., Md. Code Ann., Com. Law § 2-314, *et seq*., Mass Gen. Laws Ann. Ch. 106 § 2-314, *et seq*., Mich. Comp. Laws Ann. § 440.2314, *et seq*., Minn. Stat. Ann. § 336.2-314, *et seq*., Miss. Code Ann. § 75-2-314, *et seq*., Missouri Rev. Stat. § 400.2-314, *et seq*., Mont. Code Ann. § 30-2-314, *et seq*., Nev. Rev. Stat. U.C.C § 104.2314, *et seq*., N.H. Rev. Stat. Ann. § 382-A:2-314, *et seq*., N.J. Stat. Ann. § 12A:2-314, *et seq*., N.M. Stat. Ann. § 55-2-314. *et seq*., N.Y. U.C.C. Law 2-314, *et seq*., N.C. Gen. Stat. Ann. § 25-2-314, *et seq*., N.D. Stat. § 41-02-314, *et seq*., Ohio Re. Code Ann. § 1302.27, *et seq*., 12A Okla. Stat. § 2-314, *et seq*., Or. Rev. Stat. § 72.3140, *et seq*., 13 Pa. Stat. Ann. § 2314, *et seq*., R.I. Gen. Laws § 6A-2-314, *et seq*., S.C. § 36-2-314, *et seq*., S.D. Stat. 57A-

2-314, *et seq*., Tenn. Code Ann. § 47-2-314, *et seq*., Tex. Bus. & Com. Code Ann. § 2.314, *et seq*., Ut. Code Ann. § 70A-2-314, *et seq*., Va. Code Ann. § 8.2-314, *et seq*., Vt. Stat. Ann. § 9A-2-314, *et seq*., Wa. Rev. Code § 62A.2-314, *et seq*., W. Va. Code § 46-2-314, *et seq*., Wis. Stat. Ann. § 402.314, *et seq*., Wyo. Stat. § 34.1-2-314, *et seq*.

65. Defendant marketed, promoted, manufactured, and/or sold the Extended Wear Products and placed them in the stream of commerce during the period from 2005 through December 2014. Defendant knew or had reason to know of the particular purpose for which the Extended Wear Products were purchased, and impliedly warranted to consumers that they were fit for use as extended-wear products.

66. As merchants of the Extended Wear Products, Defendant knew that purchasers relied upon it to manufacture, and/or sell Extended Wear Products that were safe for their intended and/or advertised use, safe when used as directed, and would not endanger the health of consumers.

67. Defendant represented in its marketing and advertising, including in product names, that the Extended Wear Products were safe for extended wear during the period from 2005 through December 2014.

68. At the time Defendant sold, and/or distributed the Extended Wear Products, it knew the purpose for which the products were intended and impliedly

warranted that the products were of merchantable quality and safe and fit for their ordinary purpose and/or use as Extended Wear Products.

69. Contrary to Defendant's implied warranty, the Extended Wear Products were unsafe for extended wear and exposing consumers to an increased risk of dangerous urinary tract infections when used as directed.

70. Defendant breached its implied warranty of fitness for a particular purpose because the Extended Wear Products were not safe and fit for their particular purpose and/or use, which involved being worn for extended periods and exposing consumers to an increased risk of dangerous urinary tract infections.

71. Plaintiffs and Class Members have been damaged by, among other things, being deceived into purchasing more expensive Extended Wear Products based on Defendant's false and misleading representations and/or material omissions indicating that such Products were safe to wear for an extended period of time.

72. As a direct and proximate result of Defendant's breach of implied warranty of fitness for a particular purpose, Plaintiffs and Class Members are entitled to all damages available under applicable law, including but not limited to the purchase price of the Extended Wear Products.

73. Plaintiffs and Class Members are entitled to recover actual, consequential, punitive and/or exemplary damages, equitable and declaratory

relief, costs, and reasonable attorneys' fees.

COUNT III
VIOLATION OF STATE UNFAIR AND DECEPTIVE
TRADE PRACTICES ACTS AND/OR CONSUMER PROTECTION ACTS

74. Plaintiffs incorporate by reference each and every preceding allegation as if it is specifically set forth herein.

75. Defendant had a statutory duty to refrain from unfair or deceptive acts or practices in the advertising, marketing, and/or sale of the Extended Wear Products.

76. Defendant made deceptive and/or misleading representations regarding the Extended Wear Products during the period from 2005 through December 2014 that would have deceived an objectively reasonable person into believing the products were safe for their intended use.

77. The deceptive and/or misleading statements are also detailed in the brand names and trade names of the Extended Wear Products contained on the Products' labels.

78. Had Defendant not engaged in unfair or deceptive acts or practices in the marketing, advertising, and/or sale of the Extended Wear Products, Plaintiffs and Class Members would not have purchased and/or paid for the Products.

79. Defendant's unfair, deceptive, and/or untruthful representations and material omissions to consumers and the public regarding the true nature of the

Extended Wear Products purchased and used by Plaintiffs and Class Members constituted unfair and deceptive acts and practices in violation of the following state consumer protection statutes: Ala. Code § 8-19-1, *et seq*.; Alaska St. § 45.50.471, *et seq*.; Ariz. Re. Stat. Ann § 44-1522, *et seq*.; Ark. Code § 4-88-101, *et seq*.; Cal. Civ. Code § 1770, *et seq*., and Cal Bus. & Prof. Code § 17200, et seq.; Colo. Rev. Stat. § 6-1-105, *et seq*.; Conn. Gen. Stat. § 2-110a, *et seq*.; 6 Del. Code §§ 2511, *et seq*., and 2531, et seq.; D.C. Code § 28-3901, *et seq*.; Fla. Stat. § 501.201, *et seq*.; Ga. Stat. §§ 10-1-372, *et seq*., 10-1-392 and 10-1-420; Haw. Rev. Stat. § 480-1, *et seq*., Idaho Code § 48-601, *et seq*.; 815 ILCS § 505/1, *et seq*., Ind. Code Ann. § 24-5-0.5-1, *et seq*., Iowa Code § 714.16, *et seq*., Kan. Stat. § 50-623, *et seq*., Ky. Rev. Stat. § 367.170, *et seq*., La. Rev. Stat. § 51:1401, *et seq*., 5 Me. Rev. Stat. § 205A, *et seq*., Md. Com. Law Code § 13-101, *et seq*., Mass Gen. L. Ch. 93 A § 2-314, *et seq*., Mich. Comp. Laws Ann. § 445.901, *et seq*., Minn. Stat. §§ 325D.43, *et seq*., 325 F.67, *et seq*.; and 325 F.68, *et seq*.; Miss. Code Ann. § 75-24-1, *et seq*., Vernon's Ann. Missouri Stat. § 407.010, *et seq*., Mont. Code Ann. § 30-14-101, *et seq*., Neb. Rev. Stat. § 59-1601, *et seq*.; Nev. Rev. Stat. Ann. § 59S.0903, *et seq*., N.H. Rev. Stat. § 358-A:1, *et seq*., N.J. Rev. Stat. § 56:8-1, *et seq*., N.M. Stat. § 57-12-1, *et seq*., N.Y. Gen. Bus. Law §§ 349, *et seq*., and 350-e, *et seq*., N.C. Gen. Stat. § 75-1.1, *et seq*., N.D. Cent. Code §§ 51-12-01, *et seq*., and 51-15-01, *et seq*., Ohio Rev. Stat. § 1345.01, *et seq*., Okla. Stat. § 15751, *et seq*.,

Or. Rev. Stat. § 6464.605, *et seq*., 73 Pa. Stat. § 201-1, *et seq*., R.I. Gen. Laws § 6-13.1-1, *et seq*., S.C. Code Laws § 39-5-10, *et seq*., S.D. Codified Laws § 37-24-1, *et seq*., Tenn. Code § 47-18-101, *et seq*., Tex. Bus. & Com. Code. § 17.41, *et seq*., Utah Code § 13-11-1, *et seq*., 9 Vt. § 2451, *et seq*., Va. Code § 59.1-196, *et seq*., Wash. Rev. Code § 19.86.0 10, *et seq*., West Virginia Code § 46A-6-101, *et seq*., Wis. Stat. § 100.20, *et seq*., Wyo. Stat. § 40-12-101, *et seq*.

80. Defendant made deceptive and/or misleading representations regarding the Extended Wear Products that would have deceived an objectively reasonable person into believing the Products were effective and safe for their intended and/or advertised use.

81. Defendant's deceptive and/or misleading statements include statements made on its product packages, including the brand names and trade names of the Extended Wear Products contained on the Products' labels.

82. Plaintiffs, Class Members, and all other consumers, reasonably relied upon the information contained on the Extended Wear Products label when purchasing these Extended Wear Products.

83. Upon information and belief, the representations made on the labels of the Extended Wear Products have been materially the same during the time period that Defendant has sold these products. Moreover, at a minimum, Defendant has never informed consumers that using these Extended Wear Products as intended

increased the risk of serious health consequences.

84. Defendant's unfair practices offend public policy and are unethical, oppressive, and substantially injurious to consumers.

85. Defendant profited from the sale of their Extended Wear Products to Plaintiffs and Class Members.

86. Defendant concealed and/or omitted material facts from its packaging and/or advertising for the Extended Wear Products during the period from 2005 through December 2014, including but not limited to:

A. Defendant labeled its Extended Wear Products as appropriate for "Extended Wear" and/or as "Overnight Breathable Briefs" and "Overnight" Underwear;

B. Defendant advertised and marketed its Extended Wear Products as appropriate for "continuous, heavy leaking of urine day and night" featuring "Triple-tier moisture locking system (cellulose fibers, microporous acquisition layer, super absorbent polymer) for exponential improvements in absorbency while promoting skin health";

C. Defendant advertised and marketed its Extended Wear Products as carefully designed to be safe for their advertised and/or intended use over long periods of time, from several hours to overnight, even

though the products were not safe for such use;

D. Defendant represented that customers could trust its products and claims because of its long experience and expertise in the adult incontinence care products industry;

E. Defendant advertised and marketed its Extended Wear Products as having qualities that justified their higher cost in comparison to the products of its competitors and/or its own non-Extended Wear Products; and

F. Defendant's Extended Wear Products increased the risk of adverse health consequences to consumers when used as advertised and/or directed.

87. Defendant's concealment and/or omission of material facts, including the ineffective and unsafe nature of its Extended Wear Products constitutes unconscionable commercial practices, deception, false pretenses, the knowing concealment, suppression, or omissions of material facts with the intent that others would rely on such concealment, suppression, or omission in connection with the sale of their Extended Wear Products and placement of their products into the stream of commerce is in violation of the Michigan Consumer Protection Act ("MCPA"), M.C.L. §445.901, *et seq.*, including but not limited to §445.903(1)(n), (s), (y), (z), and (cc); the Arizona Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*;

and the substantially similar laws of all other states in which Defendant does business. Defendant violated the applicable Unfair Trade and Deceptive Practices Acts and/or Consumer Protection Acts of all States where Defendant does business by falsely representing that its Extended Wear Products were safe for their intended and/or advertised use.

88. Defendant should have disclosed on the labels for its Extended Wear Products that extended use of these products increased the risk or likelihood of serious health consequences, including urinary tract infections and/or other irritations of the skin.

89. As a direct and proximate result of Defendant's acts and violations of the applicable Unfair Trade and Deceptive Practices Acts and/or Consumer Protection Acts of all States where Defendant does business, Plaintiffs and Class Members have suffered actual damages.

90. Plaintiffs and Class Members have been damaged by, among other things, being deceived into purchasing more expensive Extended Wear Products based on Defendant's deceptive and/or misleading representations and/or material omissions indicating that such Products were safe to wear for an extended period of time.

91. Plaintiffs and Class Members are entitled to recover actual, consequential, statutory, punitive and/or exemplary damages, equitable and declaratory relief, costs and reasonable attorneys' fees.

Michigan Consumer Protection Act

92. As described in the preceding allegations, Defendant's deceptive acts and unfair practices violate MCPA, including but not limited to §445.903(1)(n), (s), (y), (z), and (cc).

93. Defendants misrepresented and/or concealed material facts as described in more detail in the preceding allegations during the period from 2005 through December 2014.

94. Defendant's deceptive acts would likely mislead a reasonable consumer acting reasonably under the circumstances to purchase Defendant's Extended Wear Products.

95. Defendant's pattern of misrepresentations, as described in the preceding allegations, was intended to deceive Plaintiffs and Class Members into purchasing the ineffective and unsafe Extended Wear Products.

96. Defendant's misrepresentations, concealments and/or failure to inform constitute unfair, unconscionable, or deceptive acts or practices within the meaning of MCPA directly and proximately causing damage to Plaintiffs and Class Members.

Arizona Consumer Fraud Act

97. As described in the preceding allegations, Defendant's deceptive acts and unfair practices violate the Arizona Consumer Fraud Act, including but not limited to A.R.S. §44-1522(A).

98. Defendant used deception, a deceptive act or practice, fraud, false pretense, and/or made a false promise or misrepresentation, and/or concealed, suppressed or omitted a material fact in connection with the sale or advertisement of the Extended Wear Products during the period from 2005 through December 2014.

99. Defendant intended that others, including but not limited to Plaintiff and Class Members, rely upon Defendant's unlawful practice.

100. As a direct and proximate result of Defendant's acts and violations of the Arizona Consumer Fraud Act, including but not limited to A.R.S. §44-1522(A), Plaintiffs and Class Members have suffered actual damages.

COUNT IV
UNJUST ENRICHMENT

72. Plaintiffs incorporate by reference each and every preceding allegation as if specifically set forth herein.

73. Plaintiffs are asserting their unjust enrichment claims under the laws of the state(s) where each Plaintiff or putative class member purchased the Extended Wear Products.

74. Case law has held that unjust enrichment law is virtually the same or not materially different in any of the fifty states and the District of Columbia.

75. Defendant received a substantial benefit in the form of payments from Plaintiffs and Class Members who purchased the Extended Wear Products.

76. Plaintiffs and Class Members reasonably expected that the Extended Wear Products were effective for their intended and/or advertised use and could be worn safely for an extended period of time.

77. Defendant's retention of benefits without providing the effective and safe products reasonably expected by Plaintiffs and Class Members, and while also exposing Plaintiffs and Class Members to increased risk of adverse health consequences, would be unjust.

78. Defendant's conduct was the same as to all members of the putative class.

101. As a direct and proximate result of Defendant's acts, Plaintiffs and Class Members have been damaged by, among other things, being deceived into purchasing more expensive Extended Wear Products based on Defendant's false and misleading representations and/or material omissions indicating that such Products were safe to wear for an extended period of time.

79. Defendant's acts and/or omissions were actuated by malice and/or accompanied by a wanton and willful disregard of the foreseeable harm to

Plaintiffs and Class Members by Defendants' acts and/or omissions.

80. Accordingly, Plaintiffs and Class Members are entitled to, and request, disgorgement and restitution of Defendant's wrongful revenue, profits, and benefits in a manner to be established by this Court and available under applicable law.

81. Plaintiffs and Class Members are entitled to imposition of a constructive trust upon Defendant such that their enrichment, benefit, and ill-gotten gains may be allocated and distributed equitably by the Court and/or for the benefit of Plaintiffs and Class Members.

RELIEF SOUGHT

WHEREFORE, Plaintiff and Class Members respectfully request that the Court:

A. Certify the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Designate and appoint Plaintiffs and their counsel, The Miller Law Firm, P.C., to serve as Class Representatives and Class Counsel, respectively;

C. Permanently enjoin Defendant and its agents or anyone in its control from marketing and/or selling the Extended Wear Products without first informing consumers that such products can increase the risk of adverse health consequences when used as directed;

D. Award damages, including compensatory, statutory, incidental, consequential, actual, and punitive and/or exemplary damages, to Plaintiffs and Class Members in an amount to be determined at trial;

E. Grant restitution to Plaintiffs and Class Members;

F. Award Plaintiffs and Class Members their expenses and costs of the suit, pre-judgment interest, post-judgment interest, and reasonable attorneys' fees; and

G. Grant any and all such other relief as the Court deems appropriate.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Respectfully submitted:

THE MILLER LAW FIRM, P.C.

/s/ *Kevin F. O'Shea*
Kevin F. O'Shea (P40586)
Ann L. Miller (P43578)
950 West University Dr. Ste. 300
Rochester, MI 48307
T: (248) 841-2200
F: (248) 652-2852
kfo@millerlawpc.com
alm@millerlawpc.com
Attorneys for Plaintiffs

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