

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

<p>GEORGE ALEA and CURTIS HAMBURG, Individually and On Behalf of All Others Similarly Situated</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>WILSON SPORTING GOODS Co.,</p> <p style="text-align: center;">Defendant.</p>	<p>JURY TRIAL DEMANDED</p> <p>Case No. 1:17-cv-00498</p> <p>SECOND AMENDED CLASS ACTION COMPLAINT</p>
---	---

SECOND AMENDED CLASS ACTION COMPLAINT

COME NOW, Plaintiffs, George Alea and Curtis Hamburg (“Alea” or “Hamburg” and collectively “Plaintiffs”), individually and on behalf of all others similarly situated, and bring this action against Defendant Wilson Sporting Goods Co. (“Wilson” or “Defendant”) to obtain damages, restitution, and/or injunctive relief for the Plaintiffs and proposed classes as defined herein from Defendant. Plaintiffs make the following allegations upon information and belief, except as to their own actions, the investigation of counsel, and the facts that are a matter of public record.

INTRODUCTION

1. This action is brought to remedy violations of applicable law in connection with Defendant’s design, manufacture, promotion and sale of Louisville Slugger Prime BBCOR baseball bats (the “Bats”).

2. The Bats are expensive by any measure, costing approximately \$400 each, and are purported to be of extremely high quality. In reality, however, the Bats suffer from a major

inherent design defect, which causes the handle of the Bats to rotate independent of the barrel after a brief period of use, even when the Bats are used in the ordinary course (the “Defect”), substantially decreasing the effectiveness of the Bats for hitting, the sole and only purpose for which they are sold. To make matters worse, Defendant has systematically denied warranty coverage.

3. Defendant has actual knowledge of the Defect and/or problems in the Bats. Defendant has known of the Defect for an extended period of time due to direct customer complaints and numerous Internet complaints. Rather than honor its warranty and replace the Bats with non-defective bats of equivalent value, Defendant took the unorthodox approach of creating a post-hoc marketing regime focusing on (and, indeed, promoting) the Defect, as if it were deliberate, as opposed to a Defect. Defendant used this disingenuous change in its marketing jargon as a basis to deny warranty coverage to Plaintiffs and the Class. This Court should not countenance Defendant’s conduct; Defendant should be held accountable for its actions and required to provide Plaintiffs and members of the Class non-defective bats or a refund of the purchase price.

4. Defendant’s marketing and sales materials were designed to mislead and deceive consumers and therefore violate Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.*; California Business & Professional Code § 17200 *et seq.*; Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 *et seq.*; Michigan Consumer Protection Act, Mich. Comp. Law § 445.901 *et seq.*; New Jersey Consumer Protection Act, N.J. Stat. Ann. § 56:8-1 *et seq.*; and New York Deceptive Practices Act, N.Y. Gen. Bus. Law § 349 *et seq.*; Massachusetts Consumer Protection Act, Mass. Gen. Laws Ann. Ch. 93A, § 1, *et seq.*; Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68-325F.70;

Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*; Washington Unfair Business Practices Consumer Protection Act, Wash. Rev. Code § 19.86.010, *et seq.*

5. Additionally, Defendant's failure to provide the Bats as warranted and failure to honor its warranty violates the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*

6. As a result of their purchase of the Bats, Plaintiffs and the Class were damaged, in an amount to be determined at trial, because they paid valuable consideration for a product that was not as advertised or warranted, and was, as a result, worth substantially less.

JURISDICTION AND VENUE

7. The Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1332(d), because there are at least 100 Class members in the proposed Class, the combined claims of proposed Class members exceed \$5,000,000, exclusive of interest and costs, and at least one Class member is a citizen of a state other than Defendant Wilson's state of citizenship.

8. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to the claims asserted occurred in or were directed from this District, as Defendant is headquartered in Chicago. Venue is proper pursuant to 28 U.S.C. § 1391(c) because Defendant conducts substantial business in this District, has sufficient minimum contacts with this District, and otherwise purposefully avails itself of the markets in this District, through the promotion, sale, and marketing of their products in and from this District.

THE PARTIES

9. Plaintiff George Alea is a resident of Miami, Florida. On or about February 17, 2016, after reviewing marketing materials online, such as those referenced in paragraph 15, Mr. Alea purchased the 2016 Louisville Slugger Prime 916 BBP9163 BBCOR baseball bat. Mr. Alea paid a total price of \$424.98 for the Bat. The Bat was purchased for Mr. Alea's minor son,

Rod, to use during high school and recreational baseball games. None of the marketing materials reviewed by Plaintiff mentioned any rotation of the handle independent of the barrel of the Bat and Plaintiff would not have purchased the Bat had such a condition been disclosed. Nevertheless, shortly after purchasing the Bat, Plaintiff's son noticed movement between the barrel of the Bat and the handle when he hit with it. Plaintiff used the Bat and independently observed the same movement between the handle and the barrel. This is not a normal condition, nor how the Bat was advertised—at least not initially or when Plaintiff purchased his Bat. There is no benefit or increased performance as a result of this movement. Rather, the independent rotation of the handle and the barrel decreased the power and detracted from the performance of the Bat. In fact, Plaintiff's son did not use the bat after the defect was present, noting the bat felt "dead." By summer, Plaintiff reached out directly to Louisville Slugger—the brand controlled by Defendant—who claimed the Defect was normal and that Plaintiff could not receive a replacement bat pursuant to the warranty. A subsequent demand letter served on Wilson by Plaintiff's counsel at the headquarters address in which Wilson and Louisville Slugger are co-located was ignored.

10. Plaintiff, Dr. Curtis Hamburg is a resident of Palmetto Bay, Florida. On September 11, 2015, Plaintiff purchased a 2016 Louisville Slugger Prime 916 BBP9163 BBCOR baseball bat through Amazon from Bases Loaded, an authorized Louisville Slugger retailer, for his son Matthew ("Matt") to use with his high school team, travel team and for baseball showcases. Matt immediately began using the Bat. None of the marketing materials reviewed by Plaintiff or his son mentioned any rotation of the handle independent of the barrel of the Bat and Plaintiff would not have purchased the Bat had such a condition been disclosed. Nevertheless, Plaintiff's son used the Bat for approximately 4-5 months, but stopped using the

Bat when there was movement between the barrel of the Bat and the handle when he hit. This is not a normal condition, nor was movement of any kind disclosed by Defendant—at least not initially or when Plaintiff purchased his Bat. There is no benefit or increased performance as a result of this movement. Rather, the independent rotation of the handle and the barrel decreased the power and detracted from the performance of the Bat. The more Matt used the Bat, the more it seemed to turn and “wobble.” Eventually, on or about March 9, 2016, Matt emailed Defendant at sluggercustomerservice@slugger.com and then contacted Defendant using 1-800-282-2287. He was told that the movement he described (the Defect) was how the Bat was supposed to perform. Matt asked if he could return the Bat and was told that he could try, but it was likely to be a waste of time because—despite the presence of the Defect—Defendant claimed the Bat was performing as intended. At this point it became clear to Plaintiff and his son that return of the Bat would be futile.

11. Defendant Wilson Sporting Goods Co. is a Delaware corporation with its headquarters located at One Prudential Plaza, 130 East Randolph Street, Suite 600, Chicago, Illinois 60601. Wilson is an American subsidiary of the Finnish company, Amer Sports Corporation. Wilson boasts annual sales of approximately one billion dollars. In March 2015, Wilson purchased Louisville Slugger from Hillerich & Bradsby, Co. for approximately \$70 million. Although, Hillerich & Bradsby retained certain rights in the Louisville Slugger, those rights pertain to bats made of wood and the Louisville Slugger museum, neither of which are relevant to the instant litigation. Louisville Slugger has existed for approximately 120 years and in that time has sold over 100,000,000 baseball bats. Although historically Louisville Slugger has focused on wooden bats, in more recent times Louisville Slugger has focused considerable time and resources on bats made of other materials including metals and composite.

FACTUAL ALLEGATIONS

12. Throughout the Class Period, Defendant has manufactured, marketed and sold the Bats. The Bats are distributed nationwide by Defendant through numerous retailers, including “big box” retailers such as Dick’s Sporting Goods, online retailers such as www.justbats.com and Amazon.com. During the Class Period Defendant produced promotional materials that accompanied the Bats. An example of the promotional information drafted and disseminated by Defendant from June 2015 through April 2016, appears below:

Description for 2016 Louisville Slugger Prime 916 BBCOR Baseball Bat

Maximum SPEED - Extreme POWER - Ultimate BALANCE : The Louisville Slugger Prime 916 BBCOR Baseball Bat: BBP9163 is here! With the introduction of their 2016 bat line, players around the nation are finding out why more Top 25 teams in NCAA baseball step into the box with a Louisville Slugger in their hands. Slugger made waves in the market with a never-before-seen 3-Piece bat construction, but the TRU3 Explosive Power Transfer Technology in the Prime 916 amplifies those performance characteristics even further by drastically eliminating sting while allowing for maximum trampoline effect and a true feel on contact. Combine that with the newly created FCS (Fused Carbon Structure) Composite and Flex Band Technology, the Prime 916 showcases the lightest swing weight and largest sweet spot in the 2016 Slugger lineup. This BBCOR certified model features the Flex Band Technology in its barrel. By inserting a 1" composite disc right below the sweet spot, the team in Louisville is able to meet BBCOR standards while keeping the barrel walls as thin as possible. Thinner barrel walls results in a lighter feel, larger sweet spot, and maximum trampoline effect on contact. Doesn't sound too bad, right? Louisville Slugger is more than confident that they've created the best bat in baseball and they're backing it up with the 30-Day Performance Promise. If you're not more confident in your swing in 30 days, send it back! Rounded out by a slick new graphic design and premium Lizard Skins grip tape, the Prime 916 combines comfort and style and is sure to help each hitter "Own The Plate"! The Louisville Slugger Prime 916 is backed by a Full Twelve (12) Month Manufacturer's Warranty. Free Shipping!

<https://web.archive.org/web/20150612013242/http://www.justbats.com/product/2016-louisville-slugger-prime-916-bbcor-baseball-bat--bbp9163/22654/> (last checked January 23, 2018).

13. Nowhere does the above-referenced promotional material discuss or even mention that the handle and barrel twist independent of one another (the “Defect”)—a highly uncommon and undesirable occurrence for any baseball bat. This is particularly so because the defect does not manifest immediately and does not always rotate the same amount.

14. The release of the Bat coincided with an onslaught of complaints concerning the Defect in the Bats. Indeed, the Internet is replete with complaints about the Bats. Below are excerpts from just some of the complaints on just one website (www.justbats.com), which appear without grammatical or typographical alteration:

“Bat Broke Easily”

by Manny Machado (player)

- **Cons:** I have broken this bat 3 times. It is not worth the money you are going to pay for it.

Trust Me

“Not Worth the Money”

by Shannon Williams (parent)

- **Cons:** Just purchased this bat on Monday evening and the bat broke today (Friday) just after 4 practices. After spending \$400 on a bat, you would think it would last longer than 4 days. We are returning it for a Mako.

“Do NOT Buy This Bat, It Will Break”

by Dave Selig (parent)

- **Cons:** Bat was purchased in mid March 2016. It is now end of March 2016 and bat is broken. Bat broke in handle, where it now rattles when you swing it. We now get to find out how quickly Louisville Slugger will honor their warranty and replace the bat. I'll also mention that a teammate of my son's purchased this same bat, and his broke as well.

“916”

by johnny baseball (coach)

- **Cons:** the hand and barrel seperarte...this is our third one..not fun sending bats back every couple months.

“Louisville Slugger 916 BBCOR”

by Chris H (parent)

- **Cons:** Two piece connection came loose after two days of BP and tee work. Price is ridiculous for such a poorly made bat.

“Durability Issues”

by Disappointed player (player)

- **Cons:** First the grip came undone. I am a lefty and the grip is designed for a righty. Then about two weeks later the handle came loose.

“Great but useless”

by Rollie Sheriff (coach)

- **Cons:** Bat broke after 3 games. Paid for shipping to return to manufacturer for replacement. It broke during BP. 3 more bats later(and yes, 3 more shipping charges) LS just gave me my original purchase money back. I ended up paying 65 dollars to rent a broken bat. Great while it lasts then worthless!!!

“Not well built”

by parent (parent)

- **Cons:** Less then 30 days the grip is falling apart, and already signs of the barrel starting to turn. This could be a great bat, but they have some design flaws they need to work out. Does not appear the bat will make it through the spring season.

“Caution ”

by Robbie Baseball (parent)

- **Cons:** Knob is starting to come loose.

“DUD ”

by Greg (parent)

- **Cons:** We compared our bat to others on the team and it clear ours was not made correctly. Need to ship back to company and that is a pain

“Design Flaw”

by West Tex Dawg (parent)

- **Cons:** As mentioned in other reviews, the adhesive holding the handle thru piece has come loose from the barrel after only 45 days of use. Pretty disappointed considering the 915 prime we bought last year is still in good shape. We are submitting a warranty claim but would purchase a Rawlings Velo if I had to purchase a new bat again

“good bat, bad service”

by 16 (player)

- **Cons:** handle came loose and had to send it in to louisville. horrible customer service. supposed to take 7-10 days once they get the bat to see if i even get a new one. and to add on, they are on back order so i wont get a new bat until the middle of my season.

“Prime 916 Faults”

by Pete Binelas (parent)

- **Cons:** Grip: Need to spend \$11 on new grip as it tears for a left handed hitting player after 1 round of BP. Barrel and Handle has slight rotation or looseness after a few weeks. When swinging the bat would have a rotation or looseness feel on the handle. Heard from multiple sources and college teams that they have given up on the 916 and only use the 716 or 516. Sent back to LS and had to wait 3 weeks for replacement due to back orders. Assume due to similar issues I had.

“ok??!!”

by Mad Dawg (parent)

- **Cons:** barrel came loose from handle. (a jiggle)got a replacement and the same thing happened.

“Don't buy...”

by Kyla Weeks (parent)

- **Cons:** Did not last two weeks and have to send back for replacement! Not happy at all, after spending \$400.

“Poor Quality”

by Amber Fiechtner (parent)

- **Cons:** Will not last a year poor quality

“”

by DJTire

- **Cons:** Louisville Slugger obviously has a design or manufacturing flaw with this bat. The first time in the cage with the bat my Son noticed that after about 50 hits, the barrel and handle twisted. If you call Louisville Slugger, they will tell you that this is how it is designed. However, if you read other bat review sights, they say nothing about it, and even some have "experts" who say that if the bat twists there is something wrong with it. As you can read from other reviews, the twisting may be a sign of things to come. If your a gambler, purchase this bat, otherwise avoid it. How do you know if or when the 1/8" twist is going to become a full twist or a break?

“not good”

by bob (parent)

- **Cons:** broke 2 in 2 weeks wont get another ! didnt buy them from justbats . com wish i did ! there costumer service rocks!!!

“Breaks too easily not worth the money”

by Christian (player)

- **Cons:** It broke 3 times for me I'm on my fourth bat and I'm just trying to get a refund because the one i have now is broken too

“”

by Mr dingers

- **Cons:** 3 other kids have the bat on my team but only my handle moves I don't know if it is broke or anything still works the same as before.

“Poor design ”

by Craig (parent)

- **Cons:** Purchased for 400 in Jan broke in April sent back for broken cap, chipped on the knob, wrap came off. Two weeks after receiving the replacement the handle came loose and the bat is dead. Probably a new design that went to market too fast. Hope the new model is better.

“Bat is wast of money”

by Louisville 916 flaw in bat (parent)

- **Cons:** breaks every other game...if you want to replace a bat every 2 games this is the bat for you...\$25 to ship everytime it breaks should get partial refund or full refund for putting product out like this...would have more respect to own up to flaw in bat and refund move forward...

“Louisville Prime 916 bbcor 32/29”

by McGee (player)

- **Cons:** My bats barrel became loose or wobbly from the handle which caused me to return it. I would've thought that a 400\$ bat would be more durable...

“player”

by robert evans (player)

- **Cons:** Handle starts moving and barrel starts rattling after 3 weeks no pop left in it .

“WARNING!!!!!! ”

by johnny baseball (player)

- **Cons:** Breaks constantly not worth returning every two weeks. These bats do not last the barrel twists from handle.

“defective ”

by john12145bbh (player)

- **Cons:** After about 3 weeks of using this bat the barrel had a wiggle when I shook it. I sent it bat to louisville and I'm getting another one. Hope it doesn't happen again.

“?????”

by brett jackson (other)

- **Cons:** ends up breaking within a few weeks

“Worst Bat - bad experience for a Varsity Player”

by Marys65 (parent)

- **Cons:** We bought this bat Feb/2016 returned to Just Bats because handle came loose on March/2016 , April 1st my son had the same problem with the bat, Now we have to go thru 2016 Louisville Slugger to get our money back. Horrible...

15. In addition to promotional and advertising materials, Defendant offers a one-year, express written warranty covering the Bats,¹ which expressly warrants that the bats are free from “manufacturer’s defects.”²

16. In the face of mounting complaints and angry customers, each of whom paid approximately \$400 each for the Bats, Defendant appears to have hatched a scheme to deny warranty claims and act as if the Defect was instead a noteworthy feature of the Bats.

17. Nearly a year after the Bats were released, without any concomitant change to the manufacturing or construction of the Bats, Defendant changed the advertising language and invented an explanation out of whole cloth. By May 3, 2016, the above-referenced advertising language was replaced with the following:

Description for 2016 Louisville Slugger Prime 916 BBCOR Baseball Bat

Maximum SPEED - Extreme POWER - Ultimate BALANCE : The Louisville Slugger Prime 916 BBCOR Baseball Bat: BBP9163 is here! With the introduction of their 2016 bat line, players around the nation are finding out why more Top 25 teams in NCAA baseball step into the box with a Louisville Slugger in their hands. Slugger made waves in the market with a never-before-seen 3-Piece bat construction, but the TRU3 Dynamic Socket Connection allows for slight

¹ <http://www.slugger.com/en-us/customer-service#> (last visited April 4, 2017).

² <http://www.slugger.com/en-us/warranty> (last visited April 4, 2017).

movement between the barrel and handle to further maximize barrel trampoline effect and eliminate negative vibration. Combine that with the newly created FCS (Fused Carbon Structure) Composite and Flex Band Technology, the Prime 916 showcases the lightest swing weight and largest sweet spot in the 2016 Slugger lineup. This BBCOR certified model features the Flex Band Technology in its barrel. By inserting a 1" composite disc right below the sweet spot, the team in Louisville is able to meet BBCOR standards while keeping the barrel walls as thin as possible. Thinner barrel walls results in a lighter feel, larger sweet spot, and maximum trampoline effect on contact. Doesn't sound too bad, right? Louisville Slugger is more than confident that they've created the best bat in baseball and they're backing it up with the 30-Day Performance Promise. If you're not more confident in your swing in 30 days, send it back! Rounded out by a slick new graphic design and premium Lizard Skins grip tape, the Prime 916 combines comfort and style and is sure to help each hitter "Own The Plate"! The Louisville Slugger Prime 916 is backed by a Full Twelve (12) Month Manufacturer's Warranty. Free Shipping!

<https://web.archive.org/web/20160503074415/http://www.justbats.com:80/product/2016-louisville-slugger-prime-916-bbcor-baseball-bat--bbp9163/22654/> (last checked January 23, 2018).

18. A redline of the original advertising language created and disseminated by Defendant against the revised language lays bare the deceit perpetrated against unwitting consumers:

Description for 2016 Louisville Slugger Prime 916 BBCOR Baseball Bat

Maximum SPEED - Extreme POWER - Ultimate BALANCE : The Louisville Slugger Prime 916 BBCOR Baseball Bat: BBP9163 is here! With the introduction of their 2016 bat line, players around the nation are finding out why more Top 25 teams in NCAA baseball step into the box with a Louisville Slugger in their hands. Slugger made waves in the market with a never-before-seen 3-Piece bat construction, but the TRU3 [Dynamic Socket Connection allows for slight](#)

movement between the barrel and handle to further maximize barrel trampoline effect and eliminate negative vibration. Combine that with the newly created FCS (Fused Carbon Structure) Composite and Flex Band Technology, the Prime 916 showcases the lightest swing weight and largest sweet spot in the 2016 Slugger lineup. This BBCOR certified model features the Flex Band Technology in its barrel. By inserting a 1" composite disc right below the sweet spot, the team in Louisville is able to meet BBCOR standards while keeping the barrel walls as thin as possible. Thinner barrel walls results in a lighter feel, larger sweet spot, and maximum trampoline effect on contact. Doesn't sound too bad, right? Louisville Slugger is more than confident that they've created the best bat in baseball and they're backing it up with the 30-Day Performance Promise. If you're not more confident in your swing in 30 days, send it back! Rounded out by a slick new graphic design and premium Lizard Skins grip tape, the Prime 916 combines comfort and style and is sure to help each hitter "Own The Plate"! The Louisville Slugger Prime 916 is backed by a Full Twelve (12) Month Manufacturer's Warranty. Free Shipping!

19. Having made no changes to the design or manufacturing process to create the Bats, Defendant utilized the revised advertising language as a basis to deny and dissuade valid warranty claims, like those of Plaintiffs.

CLASS ALLEGATIONS

20. Plaintiffs bring this action on his own behalf and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs seek certification of the following Class:

All persons residing in the states of Florida, California, Illinois, Michigan, New Jersey, New York, Massachusetts, Minnesota, Missouri and Washington, who purchased a Bat from April 1, 2015 through the present (the "State Class").

Additionally, with respect to the Magnuson-Moss Warranty Act claim, Plaintiffs propose the following class:

All persons residing in the United States who have purchased a Bat from April 1, 2015, through the present (the “National Class”).

Collectively, the State Class and National Class shall be referred to herein as the “Class” unless otherwise noted.

21. Expressly excluded from the Class are: (a) any Judge or Magistrate presiding over this action and members of their families; (b) Defendant and any entity in which Defendant has a controlling interest, or which has a controlling interest in Defendant, and its legal representatives, assigns and successors; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

22. Plaintiffs and the members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impractical. Defendant’s national marketing and advertising campaigns target consumers across the country and Defendant represents that it has sold many millions of baseball bats. Documents provided by Defendant in discovery indicates that Defendant has sold tens of thousands of bats to Class members. The precise identities of all Class members are unknown to Plaintiffs at this time, but will be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication.

23. This action involves questions of law and fact common to Plaintiffs and all members of the Class, resolution of which will resolve the issues for all Class members. These common issues include the following:

- a) Whether Defendant’s Bats possess the Defect;
- b) Whether the Bats left Defendant’s possession with the Defect.
- c) Whether Defendant’s sales and marketing of the Bats was fraudulent and/or deceptive;

d) Whether Defendant's conduct violated the consumer protection statutes of Illinois, Florida, New York, New Jersey, California, Michigan, Massachusetts, Minnesota, Missouri or Washington; and

e) Whether Plaintiffs and Class members sustained damages resulting from Defendant's conduct and, if so, the proper measure of damages, restitution, equitable, or other relief.

24. Plaintiffs understand and are willing to undertake the responsibilities of acting in a representative capacity on behalf of the proposed Class. Plaintiffs will fairly and adequately protect the interests of the Class and have no interests adverse to, or which directly conflict with, the interests of the other members of the Class.

25. Plaintiffs have engaged the services of counsel who are experienced in complex class litigation, who will adequately prosecute this action, and who will assert and protect the rights of and otherwise represent Plaintiffs and the absent Class members.

26. Plaintiffs' claims are typical of those of the absent Class members because Plaintiffs and the Class members each sustained damages arising from Defendant's wrongful conduct, as alleged more fully herein.

27. This action is brought under Rule 23 because Defendant has acted, or refused to act, on grounds generally applicable to all members of the Class and/or because questions of law or fact common to Class members predominate over any questions affecting only individual members.

28. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Judicial determination of the common legal and factual issues

essential to this case would be far more efficient and economical as a class action than piecemeal individual determinations.

29. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude maintenance as a class action.

COUNT I
**VIOLATION OF CONSUMER PROTECTION STATUTES OF FLORIDA,
CALIFORNIA, ILLINOIS, MICHIGAN, NEW JERSEY, NEW YORK,
MASSACHUSETTS, MINNESOTA, MISSOURI, AND WASHINGTON**
(On Behalf of the State Class)

30. Plaintiffs re-allege and incorporate paragraphs 1 through 29 as if expressly set forth herein.

31. This count is against Defendant for violation of the consumer protection laws of Florida, California, Illinois, Michigan, New Jersey, New York, Massachusetts, Minnesota, Missouri and Washington.

32. Defendant misrepresented that the Bats were of merchantable quality when they, in fact, possessed an inherent Defect. Additionally, Defendant omitted a material piece of information, namely, that the Bats possess the Defect. Finally, when confronted with warranty claims Defendant systematically misled Plaintiffs and the proposed Class. Each of the foregoing constitute unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices as prohibited by:

- a) Florida Deceptive and Unfair Trade Practices Act § 501.201, *et seq.*;
- b) California Business & Professional Code § 17200 *et seq.*;
- c) Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 *et seq.*;
- d) Michigan Consumer Protection Act, Mich. Comp. Law § 445.901 *et seq.*;

- e) New Jersey Consumer Protection Act, N.J. Stat. Ann. § 56:8-1 *et seq.*; and
- f) New York Deceptive Practices Act, N.Y. Gen. Bus. Law § 349 *et seq.*
- g) Massachusetts Consumer Protection Act, Mass. Gen. Laws Ann. Ch. 93A, § 1, *et seq.*;
- h) Michigan Consumer Protection Act, Mich. Stat. § 445.901, *et seq.*;
- i) Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68-325F.70;
- j) Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*; and
- k) Washington Unfair Business Practices Consumer Protection Act, Wash. Rev. Code § 19.86.010, *et seq.*

Defendant violated each of the consumer protection statutes listed above by using deceptive trade practices in conjunction with the promotion, sale and provision of warranty service for the Bats. Plaintiffs purchased the Bat because of Defendant's misrepresentations and omissions concerning the Bat.

33. Because the Bats are defective and do not function as advertised or warranted, Defendant caused Plaintiffs' injuries, which are quantifiable based on the premium charged for Defendant's Bats. Had the true facts about the Bat been disclosed, Plaintiffs would not have purchased them.

34. On behalf of themselves, and on behalf of all Class members and the public at large, Plaintiffs seek actual damages and injunctive relief preventing Defendant from further unfair trade practices.

35. As a result of the foregoing, Plaintiffs, on behalf of himself and all others

similarly situated, demand judgment against Defendant for any and all actual and statutory damages, together with interest both prejudgment and post judgment, costs and attorney's fees and all such other and further relief as the Court may deem just and proper, and demands trial by jury on all issues triable at law by jury.

36. Further, Plaintiffs, on behalf of themselves and all others similarly situated, request an order from this Court enjoining Defendant from continuing its deceptive marketing and promotion of the Bats.

COUNT II
BREACH OF STATE WARRANTY LAW
(On Behalf of the State Class)

37. Plaintiffs re-allege and incorporate paragraphs 1 through 29 as if expressly set forth herein.

38. Plaintiffs bring this claim individually and on behalf of the State Class.

39. Plaintiffs, and each member of the Class, formed a contract with Defendant at the time Plaintiffs and the other Class members purchased the Bats. The terms of that contract include the promises and affirmations of fact made by Defendant in the Bats' packaging and through marketing and advertising, as described above. This marketing and advertising constitute express warranties from Wilson to Plaintiffs and the proposed Class, and became part of the basis of the bargain, and part of the standardized contract between Plaintiffs and the members of the Class on the one hand, and Defendant on the other hand.

40. Defendant's promises create express warranties that the Bats have the characteristics they are purported to have in the advertising, marketing materials and packaging created by Defendant. Defendant breached those express warranties by failing to deliver a Bat free from Defects and by omitting material information about the Defect.

41. In addition, Defendant offered a uniform written, express warranty to Plaintiffs and each of the other Class members specifically warranting that the Bats were free from manufacturer's defects at the point of sale. *See supra*, ¶ 14. Thus, Defendant created an express, contractual relationship with Plaintiffs and members of the Class at the time of sale, through its standardized written warranty, independent of the marketing materials discussed above.

42. All conditions precedent to Defendant's liability under this contract were performed by Plaintiffs and the Class when they purchased the Bats and used them as directed.

43. Second, Defendant violated the terms of its warranty by failing to replace Plaintiffs' defective Bats with Bats free from Defects, asserting that the twisting of the handle independent of the barrel was deliberate, and its express warranties therefore fail of their essential purpose. Plaintiffs' repeated efforts (independently and through counsel) to get Defendant to honor the terms of its warranty have failed.

44. Plaintiffs relied on Defendant's express warranties regarding the qualities and benefits of the Bats. Unfortunately, as set forth herein, the Bats did not conform to the affirmations and promises made by Defendant and Defendant omitted material information concerning the existence and nature of the Defect.

45. Pursuant to the Court's November 7, 2017 (Docket No. 46), Order, Plaintiffs' are not pursuing this count for violation of implied warranties.

46. As a result of Defendant's breach of warranty, Plaintiffs and the Class were harmed in an amount to be determined.

COUNT III
UNJUST ENRICHMENT
(On Behalf of the State Class)

47. Plaintiffs incorporate the allegations of paragraphs 1 through 29 as though fully set forth herein.

48. As a direct and proximate result of the misconduct set forth above, Defendant has been unjustly enriched.

49. Through deliberate misrepresentations or omissions made in connection with the advertising, marketing, promotion, and sale of the Bats during the Class Period, Defendant reaped benefits, which resulted in its wrongful receipt of profits. Accordingly, Defendant will be unjustly enriched unless ordered to disgorge those profits for the benefit of Plaintiffs and the Class.

COUNT IV
BREACH OF MAGNUSON-MOSS WARRANTY ACT
(On Behalf of the National Class)

50. Plaintiffs incorporate the allegations of paragraphs 1 through 29 as though fully set forth herein.

51. Plaintiffs and members of the Class each purchased Bats.

52. Plaintiffs and the Class are “consumers” as defined under 15 U.S.C. § 2301(3) of the Magnuson-Moss Warranty Act (“MMWA”) because they are buyers of a consumer product, the Bats.

53. Defendant are “suppliers” and “warrantors” as defined by 15 U.S.C. § 2301(4) and (5) because they are engaged in the business of making consumer products directly and indirectly available to customers, and because Defendant gives a written warranty covering the Bats.

54. The Bats at issue are a “consumer product” as defined by 15 U.S.C. § 2301(1) because they are pieces of tangible personal property which are distributed in commerce and

which are normally used for personal, family, or household purposes. The Bats easily meet the minimum cost requirement under the MMWA because they have a retail price of approximately \$400.00 each.

55. One or more of the warranties given to Plaintiffs by Defendant via the express written warranty, product packaging, the Internet, and official product marketing, constitute a “written warranty” as defined by 15 U.S.C. § 2301(6).

56. Plaintiffs are entitled to bring this action pursuant to 15 U.S.C. § 2310(d)(1).

57. Defendant represents and warrants that if the Bats are defective they will be replaced, but when Plaintiffs and members of the Class attempted to get Defendant to honor its warranty their claims were denied and they were told that the Defect was normal. It is decidedly not normal.

58. Plaintiffs provided Defendant with notice that the Bats at issue do not conform to the standards represented and warranted to consumers. Defendant had a reasonable opportunity to correct the problem, but chose not to take proper corrective action, and, indeed, ignored Plaintiff Alea’s demand letter.

59. Defendant has been unwilling to correct its false statements, omissions and warranty violations and make restitution or to reimburse Plaintiffs and the Class.

60. Pursuant to the Court’s November 7, 2017 (Docket No. 46), Order, Plaintiffs’ are not pursuing this count for violation of implied warranties.

61. Plaintiffs and the Class have suffered damages as a direct and proximate result of Defendant’s breaches of warranty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of himself and all others similarly situated, prays for judgment against Defendant as follows:

A. An order certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiffs and his counsel to represent the Class members;

B. An order declaring that the acts and practices of Defendant violate:

- i. Florida Deceptive and Unfair Trade Practices Act § 501.201, *et seq.*;
- ii. California Business & Professional Code § 17200 *et seq.*;
- iii. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 *et seq.*;
- iv. Michigan Consumer Protection Act, Mich. Comp. Law § 445.901 *et seq.*;
- v. New Jersey Consumer Protection Act, N.J. Stat. Ann. § 56:8-1 *et seq.*; and
- vi. New York Deceptive Practices Act, N.Y. Gen. Bus. Law § 349 *et seq.*
- vii. Massachusetts Consumer Protection Act, Mass. Gen. Laws Ann. Ch. 93A, § 1, *et seq.*;
- viii. Michigan Consumer Protection Act, Mich. Stat. § 445.901, *et seq.*;
- ix. Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68-325F.70;
- x. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*; and
- xi. Washington Unfair Business Practices Consumer Protection Act, Wash. Rev. Code § 19.86.010, *et seq.*

C. For damages pursuant to all applicable laws in an amount to be determined at trial, including interest;

D. For restitution of monies wrongfully obtained and/or disgorgement of ill-gotten revenues and/or profits;

E. A permanent injunction enjoining Defendant from continuing to harm Plaintiffs and the members of the Class and continuing to violate the law referenced herein;

F. An order requiring Defendant to adopt and enforce a policy that requires appropriate removal of misleading claims, which complies with law;

G. Reasonable attorneys' fees and the costs of the suit; and

H. Such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

Dated: February 2, 2018

LITE DEPALMA GREENBERG, LLC

By: /s/ Katrina Carroll
Katrina Carroll
Kyle A. Shamberg
Ismael T. Salam
LITE DEPALMA GREENBERG, LLC
Chicago Office
211 West Wacker Drive
Suite 500
Chicago, IL 60606
Tel: (312) 750-1265
Email: kcarroll@litedepalma.com
kshamberg@litedepalma.com
isalam@litedepalma.com

Michael J. Flannery
N.D. I.L. Bar No. 52714
CUNEO GILBERT & LADUCA, LLP
7733 Forsyth Boulevard
Suite 1675
St. Louis, MO 63105
Tel: (314) 226-1015
Fax: (202) 789-1813
Email: mflannery@cuneolaw.com

Charles J. LaDuca
(To Apply Pro Hac Vice)
William H. Anderson
(Pro Hac Vice)
CUNEO GILBERT & LADUCA, LLP
4725 Wisconsin Avenue, NW
Washington, DC 20016
Tel: (202) 789-3960
Fax: (202) 789-1813
Email: charlesl@cuneolaw.com
wanderson@cuneolaw.com

Jon Herskowitz
(Pro Hac Vice)
BARON & HERKOWITZ
9100 S. Dadeland Blvd.
Suite 1704
Miami, FL 33156
Tel: (305) 670-0101
Fax: (305) 670-2393
Email: jon@bhfloridalaw.com