

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

FILED: APRIL 14, 2008

Scott Dorris and Ron Levin, individually on  
behalf of themselves and all other Illinois  
residents and entities similarly situated,

Plaintiffs,

v.

A.L.S. Enterprises, Inc., Cabela's Inc., Gander  
Mountain Co., Bass Pro, Inc., and Browning,

Defendants.

08 CV 2118 JH  
CIV. NO.: JUDGE NORDBERG  
MAGISTRATE JUDGE BROWN  
**CLASS ACTION COMPLAINT**

**Jury Trial Demanded**

Plaintiffs Scott Dorris and Ron Levin, individually and on behalf of themselves and all other Illinois individuals and entities similarly situated, by and through their undersigned attorneys, as a complaint against Defendants A.L.S. Enterprises, Inc., Cabela's Inc., Gander Mountain Co., Bass Pro, Inc., and Browning (collectively "Defendants"), allege the following:

**INTRODUCTION**

1. Defendants manufacture, market and sell "odor eliminating clothing" for hunters. Defendants' odor eliminating clothing is sold to hunters based on its purported ability to eliminate human odors to prevent hunters from being detected by deer and other game animals. Eliminating human odors is important to hunters because game animals have an acute sense of smell. Defendant ALS Enterprises, Inc. ("ALS") began selling odor eliminating clothing to consumers under the brand name "Scent-Lok" in 1992. Defendant ALS also licenses the "Scent-Lok" brand to the Defendants Cabela's Inc., Gander Mountain Co., Bass Pro, Inc., and Browning, which in turn manufacture and sell their own "Scent-Lok" odor eliminating clothing to consumers. As part of the licensing agreements, Defendants Cabela's Inc., Gander Mountain Co., Bass Pro, Inc., and Browning agree to use the same fabric suppliers that Defendant ALS

uses for the purported odor eliminating fabrics making that aspect of each Defendant's odor eliminating clothing identical.

2. Since 1992, Defendant ALS has uniformly misrepresented to consumers that its odor eliminating clothing would not only eliminate 100% of human odors, but could also be reactivated or regenerated in a household dryer after the clothing has become saturated with odors. In the years following 1992, as Defendants Cabela's Inc., Gander Mountain Co., Bass Pro, Inc., and Browning each acquired licenses from Defendant ALS to sell odor eliminating clothing, they too began making the same two uniform misrepresentations at issue in this case: 1) that the odor eliminating clothing each Defendant sells eliminates human odors; and 2) that the odor eliminating clothing each Defendant sells can be reactivated or regenerated in a household dryer. In addition, Defendants Cabela's Inc., Gander Mountain Co., Bass Pro, Inc., and Browning also agreed as part of the licensing agreement to use Defendant ALS's trademarks, logos and other promotional materials, which include the misrepresentations that the odor eliminating clothing: 1) eliminates human odors; and 2) can be reactivated or regenerated.

3. Each Defendant has misrepresented to consumers that the odor eliminating clothing it sells eliminates human odors and can be reactivated or regenerated in a household clothes dryer. Each Defendant's representations regarding the ability of their so-called innovative odor eliminating clothing are false. Each Defendant's odor eliminating clothing has very little, if any, odor eliminating capabilities and cannot be reactivated or regenerated in a household dryer.

4. By making false, fraudulent and misleading statements to consumers, each Defendant has deceived thousands of consumers into purchasing odor eliminating clothing. Hunters buy Defendants' odor eliminating clothing only for its purported ability to eliminate all

human odors and to be regenerated for repeated use. Consumers have been duped into spending significant amounts of money on a product that does not work as represented, and as a result, Plaintiffs have been harmed by Defendants' fraudulent misrepresentations.

5. Defendants conspired to uniformly deceive consumers. Defendants' fraud could not have been as pervasive or remained undetected for as long as it did in the absence of Defendants' conspiracy to misrepresent the efficacy and attributes of their odor eliminating clothing. Each Defendant manufactured and sold the exact same odor eliminating clothing as a licensee of Defendant ALS. The misrepresentations of each Defendant are dependent on the uniform misrepresentations of the other Defendants – if one Defendant had exposed the lie of its competitor's clothing, it would have revealed its own lies. Defendants agreed to uniformly misrepresent to consumers that their odor eliminating clothing eliminates human odors and can be reactivated or regenerated in a household dryer. Defendants also conspired to suppress and conceal the truth about the odor eliminating clothing sold by the other Defendants – the same clothing they were also selling. Defendants failed to disclose material facts to consumers about their own and their competitor's odor eliminating clothing. As a result of Defendants' agreement to suppress the truth and maintain a uniform lie, the conspiracy is able to achieve the deception that any one Defendant could not have achieved individually. As conspirators, each Defendant is jointly and severally liable for the conduct of the other Defendant conspirators.

6. Plaintiffs and other consumers would not have purchased Defendants' odor eliminating clothing had they known that the clothing fails to effectively eliminate all human odors and that it cannot be regenerated or reactivated. But for each Defendant's failure to disclose all material facts about its odor eliminating clothing, Plaintiffs and other hunters would not have bought odor eliminating clothing from any Defendant. Plaintiffs and other hunters

bought the clothing based solely on its purported ability to eliminate all human odors and be regenerated or reactivated. Plaintiffs and other purchasers of Defendants' odor eliminating clothing were deceived and did not get the benefit of their bargains. Plaintiffs and other purchasers were injured by Defendants' fraudulent and deceptive scheme.

7. Plaintiffs assert four causes of action on behalf of themselves and all similarly situated individuals and entities in the State of Illinois who purchased odor eliminating clothing manufactured, sold or licensed by Defendant A.L.S. Enterprises, Inc.: (1) violations of the Illinois Consumer Fraud and Deceptive Business Practices Act ("IFCA"); (2) violations of the Illinois Uniform Deceptive Trade Practices Act; and (3) civil conspiracy.

#### **JURISDICTION**

8. Plaintiffs and members of the proposed Class number at least in the thousands. Plaintiffs and members of the proposed Class purchased Defendants' odor eliminating clothing in Illinois and are citizens of Illinois. None of the Defendants are citizens of Illinois.

9. The aggregate claims of individual class members exceed \$5,000,000, exclusive of interest and costs. Accordingly, jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

#### **VENUE**

10. Each Defendant, through its business of selling and marketing odor eliminating clothing in Illinois, and in this District, has established sufficient contacts in this District such that each Defendant is subject to personal jurisdiction here. Defendants are, therefore, deemed to reside in this District. Additionally, Defendant A.L.S. Enterprises, Inc. had employees officed in Illinois and in this District, and Defendants Bass Pro, Inc. and Gander Mountain Co. have stores

located in Illinois and in this District. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) and (c).

11. Each Defendant has sold hundreds of thousands of dollars worth of odor eliminating clothing to Illinois consumers since 1992. Plaintiffs purchased Defendants' odor eliminating clothing in Illinois. Thus, a substantial part of the events giving rise to these claims and a substantial part of the property that is the subject of this action are situated in this district. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

### **PARTIES**

#### **A. Plaintiffs**

12. Plaintiff Scott Dorris resides at 110 King Oak Street in Godfrey, Illinois 62305. He has purchased over \$600 worth of odor eliminating clothing manufactured, licensed and sold by Defendant ALS at Defendant Cabela's Inc.'s store. Plaintiff Dorris was deceived by the fraudulent and misleading representations of Defendant ALS and Cabela's that the odor eliminating clothing would eliminate odor and that the clothing could be reactivated. He would not have purchased the odor eliminating clothing but for the representations made by Defendant ALS and Defendant Cabela's Inc.

13. Plaintiff Ron Levin resides at 10606 W. Circle Drive in Beach Park, Illinois 60099. Plaintiff Levin has made multiple purchases of Defendants' odor eliminating clothing since 1999 at an expense of over \$1,100. He made purchases in 1999, 2001, 2006 and 2007. Plaintiff Levin purchased odor eliminating clothing manufactured, licensed and sold by Defendant ALS from stores owned and operated by Defendants Cabela's Inc. and Bass Pro, Inc. Plaintiff Levin was deceived by the fraudulent and misleading representations of Defendants ALS, Cabela's Inc. and Bass Pro, Inc. that the odor eliminating clothing would eliminate odor

and that the clothing could be reactivated. He would not have purchased the odor eliminating clothing but for the representations made by Defendants ALS, Cabela's Inc. and Bass Pro, Inc.

**B. Defendants**

14. Defendant ALS is a corporation with its headquarters located at 1731 Wierengo Drive, Muskegon, Michigan. Defendant ALS is the largest designer and licensor of odor eliminating clothing in the United States. Defendant ALS designed, manufactured, sold and licensed the sale of odor eliminating clothing purchased by Plaintiffs and other Class members. Defendant ALS advertised, marketed and sold its "Scent-Lok" brand odor eliminating clothing directly to consumers through an online store at [www.scentlok.com](http://www.scentlok.com) and through catalogs distributed throughout the United States, including in Illinois.

15. Defendant ALS also licensed its "Scent-Lok" brand odor eliminating clothing to at least twenty-two licensees, including Defendants Bass Pro, Inc., Browning, Cabela's Inc., and Gander Mountain Co., which sell odor eliminating clothing under the brand names "Scent-Lok", "Scent-Lok Technologies," "ScenTek," and "ScentBlocker," as well as other brand names. Odor eliminating clothing is also sold by retailers, such as Mills Fleet Farm, Dick's Sporting Goods and L.L. Bean. Defendant ALS advertises and promotes the "Scent-Lok" brand nationally for its own benefit and to the benefit of its licensees, including Defendants Bass Pro, Inc., Browning, Cabela's Inc., and Gander Mountain Co. The licensees are all aware of, and adopt, the representations made in the national promotions and advertising that Defendant ALS's licensed odor eliminating clothing: 1) eliminates human odors; and 2) can be reactivated or regenerated in a household clothes dryer. Defendant ALS and the other Defendant licensees use the "Scent-Lok" brand logo on all promotions, advertising catalogs, clothing tags and labels, as well as other literature disseminated with the clothing.

16. Defendant Bass Pro, Inc. (“Bass Pro”) is a corporation with its headquarters located at 2500 E. Kearney, Springfield, Missouri. Defendant Bass Pro is, or was, also affiliated with several other related entities, including Bass Pro Outdoor World, L.L.C., BPS Catalog, L.P., Bass Pro Outdoors Online, L.L.C., and Bass Pro Shops, Inc. Defendant Bass Pro is a licensee of Defendant ALS, and licenses the “Scent-Lok” brand from Defendant ALS. Defendant Bass Pro also manufactures and sells odor eliminating clothing, including “Scent-Lok” and “ScentBlocker.” Defendant Bass Pro operates over forty retail outlets nationwide, including at least two stores in Illinois, and also generates sales through its seasonal catalogs, television and radio programs, and its website, [www.basspro.com](http://www.basspro.com). Since it began selling odor eliminating clothing licensed through Defendant ALS, Defendant Bass Pro has misrepresented to consumers in its marketing and advertising, including on every product tag and label, that its odor eliminating clothing will: 1) eliminate all human odor and; 2) can be reactivated or regenerated in a household dryer. Defendant Bass Pro’s odor eliminating clothing is advertised, marketed and sold throughout the United States, including in Illinois.

17. Defendant Browning (“Browning”) is a subsidiary of Herstal Group with a corporate address of 1 Browning Place, Morgan, Utah. Defendant Browning manufactures and sells odor eliminating clothing. Both Defendant Browning, and Browning Arms Co., an entity affiliated with Defendant Browning, license the “Scent-Lok” brand from Defendant ALS. Browning Arms imports odor eliminating clothing to its U.S. affiliate Defendant Browning. Defendant Browning sells “Scent-Lok” brand odor eliminating clothing as “Browning with Scent-Lok.” Defendant Browning also sells odor eliminating clothing under the trademark “Supprescent.” Defendant Browning’s odor eliminating clothing is advertised, marketed and sold through catalogs, on-line dealers and retailers, including Defendant Gander Mountain Co.

Since it began selling odor eliminating clothing licensed through Defendant ALS, Defendant Browning has misrepresented to consumers in its marketing and advertising, including on every product tag and label, that its odor eliminating clothing will: 1) eliminate all human odor and; 2) can be reactivated or regenerated in a household dryer. Defendant Browning's odor eliminating clothing is advertised, marketed and sold throughout the United States, including in Illinois.

18. Defendant Cabela's Inc. ("Cabela's") is a corporation with its headquarters located at One Cabela Drive, Sidney, Nebraska. Defendant Cabela's manufactures and sells odor eliminating clothing. Defendant Cabela's licenses the "Scent-Lok" brand from Defendant ALS. Defendant Cabela's sells "Scent-Lok" odor eliminating clothing as "Cabela's with Scent-Lok." Defendant Cabela's also sells "ScentBlocker" brand odor eliminating clothing. Defendant Cabela's operates through its 135 million-plus catalogs it mails each year and also operates an online store, [www.cabelas.com](http://www.cabelas.com), and over twenty retail stores. Since it began selling odor eliminating clothing licensed through Defendant ALS, Defendant Cabela's has misrepresented to consumers in its marketing and advertising, including on every product tag and label, that its odor eliminating clothing will: 1) eliminate all human odor and; 2) can be reactivated or regenerated in a household dryer. Defendant Cabela's odor eliminating clothing is advertised, marketed and sold throughout the United States, including in Illinois.

19. Defendant Gander Mountain Co. ("Gander Mountain") is a corporation with its headquarters located at 180 East 5<sup>th</sup> Street, Suite 1300, St. Paul, Minnesota. Defendant Gander Mountain sells odor eliminating clothing under brand names that include "Scent-Lok" and "ScentBlocker." Defendant Gander Mountain licenses the "Scent-Lok" brand from Defendant ALS, and sells "Scent-Lok" branded odor eliminating clothing. Defendant Gander Mountain operates more than 100 sporting goods stores, including at least four stores in Illinois.

Defendant Gander Mountain advertises on its website at [www.gandermountain.com](http://www.gandermountain.com) and during its television series on the Outdoor Channel three days a week. Since it began selling odor eliminating clothing licensed through Defendant ALS, Defendant Gander Mountain has misrepresented to consumers in its marketing and advertising, including on every product tag and label, that its odor eliminating clothing will: 1) eliminate all human odor and; 2) can be reactivated or regenerated in a household dryer. Defendant Gander Mountain's odor eliminating clothing is advertised, marketed and sold throughout the United States, including in Illinois.

### **FACTUAL ALLEGATIONS**

#### **A. Hunters' Demand for Odor Control**

20. Hunters often confront the problem of spooking animals with human scent. Most game animals, particularly deer, have a sense of smell much more acute than that of humans. As Defendant ALS notes on its website, "a whitetail deer can smell human odor a quarter mile away." This makes hunting particularly difficult and has created a demand for odor concealing and controlling products.

21. The human body, including bacteria on skin surface, produces over 200 unique compounds (including volatile organic compounds) that generate odor. The hunting industry has attempted to address this problem in a variety of ways, including the use of odor-covering agents (such as deer urine scents), odor-absorbing materials (such as activated carbon) and odor-destroying compounds (such as anti-microbial materials that kill skin bacteria). Each Defendant sells odor eliminating clothing that purports to contain activated carbon, which each Defendant claims eliminates all human odors, and can be reactivated or regenerated.

**B. Activated Carbon**

22. Activated carbon is a solid that has a large internal surface area and pore volume. These characteristics provide activated carbon with adsorptive properties. In some uses, activated carbon has a unique ability to adsorb volatile gas molecules, such as molecules associated with human odor. Activated carbon, once exposed to the environment, quickly becomes saturated to a point where it is no longer capable of adsorbing odor molecules. When this is the case, the activated carbon must be replaced or reactivated.

23. In some instances, where a sufficient amount and proper size of activated carbon is incorporated correctly into a suit, activated carbon has been used in the manufacture of garments to prevent contamination of the body by external chemicals. The United States Armed Forces use such suits for soldiers for chemical protection. These garments generally have very high concentrations of activated carbon and are discarded after they become saturated. Generally such chemical warfare suits can be used for *at most* 45 days of exposure to the environment before the carbon therein can no longer adsorb because it is saturated. If the suits are not sealed, the suits can become saturated 45 days after being manufactured. Moreover, such suits lose efficacy after only a few washings.

**C. Defendant ALS Introduces Activated Carbon Clothing**

24. In the early 1990s, Greg Sesselman founded Defendant ALS to market “odor eliminating clothing” to hunters containing activated carbon. The intent of the company was to sell odor eliminating clothing that incorporated activated carbon to theoretically eliminate human odor molecules to prevent game such as deer from detecting such human odors. Defendant ALS’s odor eliminating clothing purports to contain activated carbon that is adhered to layers of fabric with a bonding material.

25. Defendant ALS sells “odor eliminating clothing” under the “Scent-Lok” brand and licenses numerous third parties to use the “Scent-Lok” brand. For example, Defendant Cabela’s sells Defendant ALS’s own “Scent-Lok” odor eliminating clothing, but also sells Defendant Cabela’s private label merchandise bearing a “Scent-Lok” tag. Defendant ALS also licenses its “technology” to other companies, such as Robinson Outdoors, Inc., to manufacture odor eliminating clothing under other brand names, such as “ScentBlocker,” which in turn is sold by Defendants such as Defendants Gander Mountain and Cabela’s.

26. Odor eliminating clothing is distinguishable from regular clothing and ordinary camouflage hunting apparel. The odor eliminating clothing sold by each Defendant is significantly more expensive than hunting apparel that does not contain activated carbon. Hunters pay a significant premium for the odor eliminating clothing sold by each Defendant based on its purported ability to eliminate human odors and its purported ability to be regenerated for repeated use. Defendant ALS acknowledges that “[c]ustomers are making a big financial investment in ‘Scent-Lok.’” Each Defendant intends for consumers to rely on the claimed ability of these products to eliminate all human odor and to be regenerated in a household dryer for repeated use.

27. By misrepresenting the ability of its clothing to eliminate odor and be regenerated in a household clothes dryer, Defendant ALS created an entirely new and unique product market. Defendants Cabela’s, Gander Mountain, Bass Pro and Browning have licensed Defendant ALS’s odor eliminating “technology,” use Defendant ALS’s trademarks and logos, benefit from Defendant ALS’s national advertising campaign, and repeat Defendant ALS’s misrepresentations to consumers. Defendants have been widely successful in the marketplace because of their claims that their odor eliminating clothing eliminates all human odors and can be regenerated or

reactivated. Tens of thousands of hunters have been deceived into buying millions of dollars of odor eliminating clothing from Defendants as a result of their misrepresentations.

28. According to Defendant Cabela's, Defendant ALS's odor eliminating clothing technology "has resulted in the creation of an entirely new subset of the hunting apparel market." Defendant Cabela's has further noted that "[f]ollowing the commercial introduction of these garments by ALS in 1992, this product market has grown to well over \$100 million in annual sales of odor absorbing hunting garments." Defendants' sales demonstrate the success of Defendants' fraudulent scheme.

**D. Defendant ALS Grants Licenses To Defendants Cabela's, Gander Mountain, Bass Pro and Browning**

29. In the years after 1992, Defendant ALS granted licenses to Defendants Cabela's, Gander Mountain, Bass Pro and Browning to sell odor eliminating clothing. The exact date on which each Defendant acquired the license from Defendant ALS and began selling odor eliminating clothing is unknown to Plaintiffs. What is known is that sometime between 1992 and present, each Defendant, Cabela's, Gander Mountain, Bass Pro and Browning, acquired a license from Defendant ALS to sell odor eliminating clothing and has been selling odor eliminating clothing to consumers since that time.

30. Pursuant to the licensing agreements between Defendant ALS and Defendants Cabela's, Gander Mountain, Bass Pro and Browning, Defendants Cabela's, Gander Mountain, Bass Pro and Browning are required to use the same fabric suppliers that Defendant ALS uses for the odor eliminating fabric. As such, the odor eliminating clothing sold by each Defendant is identical in its purported odor eliminating ability.

31. In addition, pursuant to the licensing agreements, Defendants Cabela's, Gander Mountain, Bass Pro and Browning are required to use certain trademarks, logos and promotional materials provided by Defendant ALS.

**E. Defendants Misrepresent That Their "Odor Eliminating Clothing" Eliminates All Human Odors and Can Be Regenerated or Reactivated for Repeated Use.**

32. Defendants ALS, Cabela's, Gander Mountain, Bass Pro and Browning have each made the following specific misrepresentations with respect to every article of their purported "odor eliminating clothing" sold: 1) that their clothing eliminates all human odors; and 2) that their clothing can be reactivated or regenerated in a household clothes dryer. These misrepresentations were made by each Defendant in conjunction with the sale of every article of odor eliminating clothing sold to consumers. Each and every Defendant has individually and collectively made the foregoing misrepresentations in advertising, in marketing and promotional materials, on their websites, in catalogs, on clothing tags, in packaging materials, in magazines and at point of purchase displays.

33. For example, the hang tag that is affixed to, and sold with, every article of "Scent-Lok" odor eliminating clothing sold by Defendants ALS, Cabela's, Gander Mountain, Bass Pro and Browning misrepresents to consumers the following: our odor eliminating clothing contains "Scent-Lok Odor-Eliminating Technology," "The core of the technology is a soft, flexible scent-absorbing system," and "Odor absorbed by Scent-Lok during a hunt remain trapped in the carbon particles until you release them. We call this process reactivation. Simply put, it means throwing your garments into a normal household dryer."

34. While the misrepresentations made by Defendants ALS, Cabela's, Gander Mountain, Bass Pro and Browning to consumers varied slightly over time, the essential misrepresentation remained constant: 1) that the odor eliminating clothing sold by Defendants

ALS, Cabela's, Gander Mountain, Bass Pro and Browning will eliminate human odors; and 2) that the odor eliminating clothing can be reactivated or regenerated in a household clothes dryer.

35. By way of example, specifically with respect to the ability of the odor eliminating clothing sold by Defendants ALS, Cabela's, Gander Mountain, Bass Pro and Browning to eliminate odor, Defendant ALS has made, on behalf of itself and for the benefit of its licensees, the following false, fraudulent and misleading claims in nationwide advertising, marketing and promotional materials, on its websites, in catalogs, on clothing tags, in packaging materials, in magazines and at point of purchase displays regarding its odor eliminating clothing:

- Our odor eliminating clothing contains "Scent-Lok Odor-Eliminating Technology"
- "The core of the technology is a soft, flexible scent-absorbing system."
- "A thin layer of activated carbon lining is built into each garment to suck in odor-producing gasses that are given off by the body."
- Our odor eliminating clothing "lets the newly filtered, scent-free air pass through and out of the garment so your body can breathe."
- Our odor eliminating clothing "absorbs all human odors."
- Our odor eliminating clothing "works on 100% of your scent 100% of the time."
- "Once [air passes] through the suit, the air no longer contains human odor."
- Our odor eliminating clothing makes hunters "undetectable to a deer's nose."
- If you wear our odor eliminating clothing you will "go out in the field completely scent-free."
- "Scent-Lok" is "odor-eliminating technology."
- As compared to other scent control products, the "Scent-Lok" "activated carbon test reduced the present scent to virtually nothing."

36. By way of example, specifically with respect to the ability of each Defendant's clothing to be "regenerated" or "reactivated" for multiple uses, Defendant ALS has made, on behalf of itself and for the benefit of its licensees, the following false, fraudulent and misleading

claims in nationwide advertising, in marketing and promotional materials, on its websites, catalogs, on clothing tags, in packaging materials, in magazines and at point of purchase displays regarding its odor eliminating clothing:

- “Odor absorbed by Scent-Lok during a hunt remain trapped in the carbon particles until you release them. We call this process reactivation. Simply put, it means throwing your garments into a normal household dryer.”
- Our odor eliminating clothing “will last for years” and “continues to work effectively year after year.”
- “Scent-Lok maintains its absorptive effectiveness over time.”
- The carbon in their odor eliminating clothing can be “reactivated” or “regenerated” in a household dryer.
- “Regeneration is only obtained by using a clothes dryer. Regeneration is achieved by placing the suit in a dryer for twenty to thirty minutes on a medium to high setting.”
- The carbon in their odor eliminating clothing can be “desorbed” in a household dryer.
- Carbon in their odor eliminating clothing that is “reactivated” or “regenerated” in a dryer will “adsorb like new” and that regenerated material “performs equally as well as the new pristine material.”
- “Even after 20 washings, Scent-Lok provides you with superior scent control.”

37. Defendant ALS created the misrepresentations quoted above in the preceding two paragraphs, but Defendants Cabela’s, Gander Mountain, Bass Pro and Browning have repeated, passed on and communicated those misrepresentations, and other misrepresentations, to consumers. For example, Defendant ALS creates point of purchase displays and creates the materials that are sold with its odor eliminating clothing, including the “Scent-Lok” logo that reads “Odor Eliminating Technology.” It is Defendants Cabela’s, Gander Mountain, Bass Pro and Browning which make the misrepresentations to consumers in their stores, in their catalogs and on their websites.

38. By way of example, Defendant Cabela's makes the following false, fraudulent and misleading claims regarding the odor eliminating clothing it sells to consumers nationwide, including in Illinois: our odor eliminating clothing contains "Scent-Lok Odor-Eliminating Technology," "The core of the technology is a soft, flexible scent-absorbing system," "Odor absorbed by Scent-Lok during a hunt remain trapped in the carbon particles until you release them. We call this process reactivation. Simply put, it means throwing your garments into a normal household dryer," Cabela's odor eliminating clothing will "completely eliminate game-spooking human odors," and "Scent-Lok-lined Stocking Caps completely eliminate odor."

39. By way of example, Defendant Gander Mountain makes the following false, fraudulent and misleading claims regarding the odor eliminating clothing it sells to consumers nationwide, including in Illinois: our odor eliminating clothing contains "Scent-Lok Odor-Eliminating Technology," "The core of the technology is a soft, flexible scent-absorbing system," and "Odor absorbed by Scent-Lok during a hunt remain trapped in the carbon particles until you release them. We call this process reactivation. Simply put, it means throwing your garments into a normal household dryer."

40. By way of example, Defendant Bass Pro makes the following false, fraudulent and misleading claims regarding the odor eliminating clothing it sells to consumers nationwide, including in Illinois: our odor eliminating clothing contains "Scent-Lok Odor-Eliminating Technology," "The core of the technology is a soft, flexible scent-absorbing system," "Odor absorbed by Scent-Lok during a hunt remain trapped in the carbon particles until you release them. We call this process reactivation. Simply put, it means throwing your garments into a normal household dryer," "Scent-Lok Savanna – The ultimate in lightweight, super-comfortable

scent elimination,” and “Scent-Lok Base Slayers Bottoms for Men. Base Slayers not only kills odor-causing bacteria, it also absorbs all other human odors.”

41. By way of example, Defendant Browning makes the following false, fraudulent and misleading claims regarding the odor eliminating clothing it sells consumers nationwide, including in Illinois: our odor eliminating clothing contains “Scent-Lok Odor-Eliminating Technology,” “The core of the technology is a soft, flexible scent-absorbing system,” “Odor absorbed by Scent-Lok during a hunt remain trapped in the carbon particles until you release them. We call this process reactivation. Simply put, it means throwing your garments into a normal household dryer,” “Browning Hydro-Fleece Supprescent: Advanced Scent Elimination ... Clothing with Supprescent effectively controls human scent by absorbing human odor,” and “With that in mind, how would it be if the wind could always be in a hunter’s favor? With Windstopper Supprescent fabric, it can be. These two fabrics innovations work together to eliminate human scent and keep you comfortable,” as well as “Browning’s new line of Windstopper/Scent-Lok outerwear for 2005 gives avid bowhunters the best of both worlds in blocking wind and eliminating odor.”

**F. Defendants’ “Odor Eliminating Clothing” Do Not “Eliminate” All Human Odors**

42. Each Defendant knew or should have known that the odor eliminating clothing it sold cannot, as a matter of science, eliminate all human odors (there are at least 200 compounds), adsorb 100% of odors from a given body, or render a human body scent-invisible or scent-free to deer or other game animals.

43. Each Defendant knew or should have known that the quantity of activated carbon, the particle size of the carbon, and the means by which the carbon is bonded onto the fabric in its odor eliminating clothing is insufficient to eliminate all human odors.

44. Further, each Defendant knew or should have known that, even despite the insufficiency of their product in its “pristine” state, the activated carbon in its odor eliminating clothing is saturated from exposure to the environment prior to the time of purchase at retail. The odor eliminating clothing sold by each Defendant is manufactured, transported and sold in an open air environment. As such, by the time a consumer purchases clothing from any one of the Defendants, the clothing has been exposed to the environment, including odors and gas molecules, human and otherwise. Defendant ALS acknowledges on its website the need to maintain the odor eliminating clothing in a sealed bag between uses to prevent odor adsorption, but each Defendant fails to do the same through manufacturing, distribution and sale. Thus, to the extent the odor eliminating clothing sold by each Defendant theoretically can adsorb some human odors, any odor adsorbing capacity was de minimis by the time Plaintiffs and Class members purchased the odor eliminating clothing at retail.

45. Each Defendant willfully made the material misrepresentations and omissions, and otherwise failed to disclose to consumers that the odor eliminating clothing sold by each Defendant cannot eliminate all human odors 100% of the time and cannot be reactivated or regenerated in a household dryer. Each Defendant made these material misrepresentations and omissions with fraud, actual malice or with such gross negligence as to indicate a wanton disregard of the rights of consumers.

**G. Defendants’ “Odor Eliminating” Clothing Is Not “Regenerated” or “Reactivated” in a Household Dryer**

46. Activated carbon eventually becomes saturated, reaching a point where it can no longer adsorb gas molecules. When activated carbon, like the small amount of activated carbon that each Defendant purports to use in its odor eliminating clothing, becomes saturated, the activated carbon must be replaced or reactivated. Reactivation of carbon involves application of

very high heat to cause volatilization and release of adsorbed gas molecules (a process called pyrolysis). Volatile gases of the type released by the human body cannot be desorbed from carbon at the low temperatures generated by a household dryer. Temperatures in a household dryer typically never exceed 150° F. To cause desorption of any amount of gas molecules, carbon must be heated well *above* 200° F, and to achieve any significant level of desorption, heat in excess of 800° F is required.

47. Even at temperatures of 1600° F, reactivation may theoretically allow previously saturated activated carbon to adsorb a limited number of additional gas molecules. As a matter of science, however, no carbon materials can be reactivated to original adsorptive capacity, or to pristine condition as Defendants claim. Reactivation may restore at most 70% of adsorptive capacity, but only at heat in excess of several hundred degrees Fahrenheit.

48. Temperatures in a household dryer, which should never exceed temperatures of around 150° F, are well below the temperature needed to desorb any of the odor-causing gas molecules released by the human body, much less to reactivate the carbon to the 70% adsorptive capacity described above or to the pristine condition that Defendants claim their odor eliminating clothing can achieve in a household dryer. Attempting to reactivate clothing with carbon with any efficacy would require extremely high heat that would incinerate the fabric itself.

49. Each Defendant knew or should have known that gas molecules of the type released by the human body cannot be desorbed from carbon at the low temperatures produced by a household dryer.

50. Each Defendant knew or should have known that activated carbon cannot be “reactivated” or “regenerated” at the low temperatures produced by a household dryer.

51. Each Defendant knew or should have known that even carbon processed at temperatures of several hundred degrees Fahrenheit cannot be regenerated or reactivated to original or pristine condition.

52. As a direct result of, and in reliance on, the misrepresentations made by each Defendant, Plaintiffs and the Class purchased odor eliminating clothing from each Defendant. Had Plaintiffs and members of the Class known the truth about the odor eliminating clothing sold by each Defendant – that the clothing fails to eliminate all human odors and cannot be regenerated or reactivated – Plaintiffs and members of the Class would not have purchased odor eliminating clothing from any Defendant. To be sure, Plaintiffs and members of the Class would not have paid the premium prices charged by each Defendant had they known that any purported odor absorbing capacity of the odor eliminating clothing sold by each Defendant cannot be reactivated or regenerated in a household dryer, and that the odor eliminating clothing sold by each Defendant is, at best, a single use garment with very limited effect.

53. Each Defendant intended for Plaintiffs and members of the Class to rely on their statements and other representations made in sales brochures, in owners' manuals, instructions, on product tags, in magazines, in catalogs, on websites, in point of purchase displays and in other materials. These statements were affirmations of fact and were not couched as "belief" or "opinion." Nor were these affirmations of fact "generalized statements of quality not capable of proof or disproof." These affirmations of fact became a part of the basis for the bargain and were material to the transaction for Plaintiffs and all members of the Class.

#### **H. Defendants' Pattern of Lies: the Emergence of Anti-microbial Treatment.**

54. Eager to replicate the success of their previous deception of consumers, in or about 2005, in addition to continuing to lie to consumers about their odor eliminating clothing,

Defendants misrepresented to consumers that their odor eliminating clothing was treated with anti-microbial agents that would destroy odor-producing bacteria.

55. By way of example, specifically, Defendant ALS made the following false, fraudulent and misleading claims regarding the odor eliminating clothing sold by it as well as the odor eliminating clothing sold by Defendants Cabela's, Gander Mountain, Bass Pro and

Browning:

- “By adding an anti-microbial treatment to Scent-Lok’s highly effective carbon scent-eliminating system – the system proven to eliminate all human odor – Savanna EXT is constructed of a fabric that not only adsorbs all human odor, but combats the bacteria that can produce it – simultaneously.”
- A “Scent-Lok” press release from the fall of 2005 announced the arrival of new products that contain anti-microbial to fight bacteria.
- “Scent-Lok” outerwear has carried a tag for a moisture wicking agent called ClimaFlex. This tag indicates that “Scent-Lok” fabric is “anti-microbial treated.”
- “Scent-Lok’s” 2006 product catalog asserts that at least some “Scent-Lok” products are treated with anti-microbial agents.
- “Scent-Lok” has made claims in advertisements that at least the following products are anti-microbial treated: Savanna EXT, BaseSlayers, and all products incorporating ClimaFlex (including the Savanna Series, the Dakota Series, and the Supreme 3-in-1 Series).

56. By way of example, Defendant Cabela’s has made the same misrepresentations regarding antimicrobial agents: “An antimicrobial backing prevents odor-causing bacteria from forming, while a layer of ClimaFlex absorbs any additional odors within its activated charcoal matrix.”

57. By way of example, Defendant Bass Pro has made the same misrepresentations regarding antimicrobial agents: “Base Slayers not only kills odor-causing bacteria, it also absorbs all other human odors.”

58. By way of example, Defendant Gander Mountain has made the same misrepresentations regarding antimicrobial agents: “TecHunter’s ‘ScentCore’ antimicrobial fibers are imbedded right into the fabric to act like a barrier against odor.”

59. The odor eliminating clothing sold by each Defendant has never contained (a) an anti-microbial compound, (b) an anti-microbial compound that is capable of killing odor-causing bacteria on the human body, and/or (c) an anti-microbial compound in sufficient concentration to destroy odor-causing bacteria.

60. The further misrepresentations by Defendants to consumers that their odor eliminating clothing has anti-microbial benefits which it does not demonstrates Defendants’ willingness to affirmatively and knowingly misrepresent their clothing to the consuming public and evidences the need for change in this industry.

#### **FRAUDULENT CONCEALMENT & TOLLING**

61. Plaintiffs and members of the proposed Class of odor eliminating clothing purchasers had no idea that the odor eliminating clothing sold by each Defendant fails to eliminate all human odor, or that the clothing cannot be regenerated or reactivated in a household clothes dryer. Plaintiffs and members of the Class did not discover and could not have discovered the fraud perpetrated by each Defendant despite reasonable and diligent investigation.

62. Moreover, reasonable and diligent investigation did not and could not reveal a factual basis for a cause of action, because of each Defendant’s failure to disclose and active concealment of its fraud.

63. Any applicable statutes of limitation have thus been tolled by each Defendant’s knowing and active concealment of the truth. Plaintiffs and the Class have been kept ignorant of

vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part.

64. To this day, each Defendant continues to commit a continuing wrong on the consuming public. Each Defendant continues to affirmatively misrepresent and conceal from consumers the truth about their odor eliminating clothing. Each Defendant continues to misrepresent that their odor eliminating clothing absorbs all human odors, and that the clothing can be reactivated or regenerated in a household dryer.

65. Defendant ALS has published in national publications articles responding to criticism of the odor eliminating clothing sold by each Defendant. Defendant ALS defends the purported science behind the odor eliminating clothing sold by each Defendant and provides other Defendants with the same information to respond to doubters and critics. Defendant ALS employed numerous outdoor writers and hunters to promote its odor eliminating clothing and to provide misinformation about its efficacy. Defendant ALS relies heavily on testimonials from hunters purporting to have had success while employing Defendants' odor eliminating clothing and raving about its odor eliminating capabilities.

66. Defendant ALS also instructed its employees to respond to messages posted in internet chat rooms that questioned the representations made by Defendants regarding the ability of their odor eliminating clothing to eliminate all human odors. To certain individuals who have complained about or questioned the ability of the odor eliminating clothing sold by each Defendant, Defendant ALS has consistently responded by citing to scientific testing, by stating that many factors can contribute to an unsuccessful hunt, and by suggesting that the clothing may not have been properly cared for or handled – not by disclosing the truth that the claims regarding the ability of its odor eliminating clothing were false. Defendant ALS's founder

himself, Greg Sesselman, has responded in writing to doubters by citing to scientific studies and testimonials as evidence of the efficacy of Defendant ALS's clothing in eliminating human odors and being regenerated or reactivated. The hang tags affixed to, and sold with, every article of Scent-Lok odor eliminating clothing sold by Defendants ALS, Cabela's, Gander Mountain, Bass Pro and Browning refer consumers to the Scent-Lok website, which fraudulently conceals Defendants' fraud.

67. On its website chat rooms, Defendant Cabela's also removed postings by some users who questioned the odor eliminating clothing sold by Defendants and challenged the ability of the odor eliminating clothing sold by each Defendant to eliminate odor and be regenerated or reactivated in household dryers.

68. Each Defendant fraudulently concealed and failed to disclose the truth about its odor eliminating clothing, as well as the odor eliminating clothing sold by each of the other Defendants. Each Defendant fraudulently concealed its fraud, false pretenses, false promises, misrepresentations, misleading statements, deceptive practices and material omissions, as well as that of the other Defendants, in connection with the sale of odor eliminating clothing. Plaintiffs and the Class had no reasonable opportunity to discover the existence of the facts fraudulently concealed by each Defendant. Plaintiffs and members of the Class had no reasonable means or ability to scientifically verify or disprove the claims made by each Defendant.

69. Each Defendant was and is under a continuous duty not to conceal but to disclose to Plaintiffs and the Class the true character, quality, and nature of the odor eliminating clothing it sells to consumers. Plaintiffs and Class members reasonably relied upon each Defendant's knowing, affirmative, and active concealment.

70. Each Defendant had a duty to disclose to Plaintiffs and members of the Class that the odor eliminating clothing it sells cannot eliminate all human odor, cannot make hunters undetectable by scent to game animals, cannot be reactivated or regenerated in a household dryer, and do not contain any anti-microbial that will destroy odor-causing bacteria on the human body.

71. These facts were peculiarly and exclusively within Defendants' knowledge. Plaintiffs and Class members could not reasonably be expected to discover them. Because of the objective circumstances, Plaintiffs and the members of the Class reasonably expected disclosure of these facts. Each Defendant also had a duty to disclose based on its partial statements, representations, and descriptions. Disclosure of the facts would have affected the conduct of Plaintiffs and class members, who would not have purchased odor eliminating clothing from any of the Defendants, or would have paid significantly less for the clothing, had the concealed material facts been disclosed.

#### **PLAINTIFFS AND CLASS MEMBERS SUFFERED HARM**

72. Each Defendant intended for consumers to rely on its representations about the ability of the odor eliminating clothing it sells to eliminate all human odors and to be reactivated or regenerated in household dryers. Each Defendant made these misrepresentations of material fact throughout the Class Period in sales brochures, owners' manuals, instructions, on tags affixed to the odor eliminating clothing, on websites, in magazines, in catalogs, on television, in point of purchase displays and in other materials. These statements were affirmations of fact and were not couched as "belief" or "opinion." Nor were these affirmations of fact "generalized statements of quality not capable of proof or disproof." These affirmations of fact became a part

of the basis for the bargain and were material to the transaction for Plaintiffs and all members of the Class.

73. As a result of each Defendant's misrepresentations, Plaintiffs and Class members were deceived into purchasing odor eliminating clothing from Defendants. Had Plaintiffs and Class members known the truth about the odor eliminating clothing sold by each Defendant, they would not have purchased the clothing. To be sure, Plaintiffs and members of the Class would not have paid the premium prices that each Defendant charges for the odor eliminating clothing it sells had they known the truth.

74. As a result of each Defendant's fraudulent conduct, Plaintiffs and the proposed Class have been harmed and have suffered actual damages or are reasonably certain to suffer actual harm in that the odor eliminating clothing they purchased will not make them undetectable by scent to game animals, does not eliminate all human odors, cannot be regenerated or reactivated in a household dryer, and contains no anti-microbial compound to kill odor-causing bacteria, resulting in a loss of intended use and the loss money paid by Plaintiffs and Class members for odor eliminating clothing sold by each Defendant, which Plaintiffs and Class members would not have paid had they known the clothing had no special benefits and would not perform as claimed.

75. Plaintiffs brings this action on behalf of themselves and all similarly situated members of the proposed Class for the relief requested as to Plaintiffs and Class members and to promote the public interest in the provision of truthful, non-deceptive information to the public in order to allow consumers to make informed purchasing decisions, and to protect Plaintiffs and the consuming public from Defendants' deceptive, fraudulent and unlawful practices.

76. Each Defendant's material omissions and misrepresentations and other unlawful conduct set forth in this Complaint were effected through each Defendant's course of business in manufacturing, licensing, advertising, marketing, and selling odor eliminating clothing to Plaintiffs and the public at large.

77. Class members were injured by Defendant ALS because the odor eliminating clothing manufactured, sold and licensed by Defendant ALS that Class members purchased can neither eliminate all human odors 100% of the time, nor be reactivated or regenerated in a household dryer.

78. Class members were injured by Defendant Cabela's because the odor eliminating clothing manufactured, sold and licensed by Defendant Cabela's that Class members purchased can neither eliminate all human odors 100% of the time, nor be reactivated or regenerated in a household dryer.

79. Class members were injured by Defendant Gander because the odor eliminating clothing manufactured, sold and licensed by Defendant Gander that Class members purchased can neither eliminate all human odors 100% of the time, nor be reactivated or regenerated in a household dryer.

80. Class members were injured by Defendant Bass Pro because the odor eliminating clothing manufactured, sold and licensed by Defendant Bass Pro that Class members purchased can neither eliminate all human odors 100% of the time, nor be reactivated or regenerated in a household dryer.

81. Class members were injured by Defendant Browning because the odor eliminating clothing manufactured, sold and licensed by Defendant Browning that Class

members purchased can neither eliminate all human odors 100% of the time, nor be reactivated or regenerated in a household dryer.

### **CLASS ACTION ALLEGATIONS**

82. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all other Illinois consumers who either purchased odor eliminating clothing directly from Defendant ALS or purchased odor eliminating clothing licensed by Defendant ALS from any retailer, including the other named Defendants.

83. Plaintiffs bring this lawsuit as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of a Class defined as:

All individuals and entities in the State of Illinois who between January 1, 1992 and the present purchased, not for resale, odor eliminating clothing manufactured, sold or licensed by Defendant A.L.S. Enterprises, Inc.

84. Excluded from the Class are Defendants, any entity in which any Defendant has a controlling interest or which has a controlling interest of any Defendant, and Defendants' legal representatives, assigns, and successors, including all licensees of any Defendant.

85. Also excluded are the judges to whom this case is assigned, any member of the judges' immediate family and any member of the judges' chambers.

86. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Federal Rule of Civil Procedure 23.

87. Although the exact number of Class members is unknown and can be learned only through appropriate discovery, Plaintiffs are informed and reasonably believe that the number is great enough such that joinder is impracticable. Upon information and belief, each Defendant has sold odor eliminating clothing to at least tens of thousands of Illinois consumers and entities

during the Class Period. The Class is composed of a readily identifiable and self-identifying group of individuals and entities who purchased odor eliminating clothing from Defendants.

88. The disposition of the claims of these Class members in a single class action will provide substantial benefits to all parties and to the Court.

89. The claims of representative Plaintiffs are typical of the claims of the Class. Plaintiffs were told the same lies, bought the same odor eliminating clothing, and suffered the same injury. Each Defendant uniformly told Plaintiffs and the Class that their odor eliminating clothing eliminates all human odors and that the clothing can be regenerated or reactivated in household dryers. Having been deceived by Defendants' representations, Plaintiffs, like all Class members, purchased odor eliminating clothing sold by Defendants. The representative Plaintiffs, like all Class members, have been directly damaged by Defendants' fraudulent and deceptive business practices in that they paid money for odor eliminating clothing that fails to eliminate all human odors and that cannot be regenerated or reactivated. Plaintiffs and members of the Class would not have purchased Defendants' odor eliminating clothing had they known that the clothing does not eliminate all human odors, and cannot be reactivated or regenerated. Furthermore, the factual basis of Defendant's misconduct is common to all Class members and represents a common course of fraudulent, deliberate, and negligent misconduct resulting in actual injury to all members of the Class.

90. There are numerous questions of law and fact common to Plaintiffs and the Class. These questions predominate over any questions of law that may affect individual Class members, and include the following:

- a. Whether Defendants' odor eliminating clothing eliminates all human odors;

- b. Whether Defendants represented that their odor eliminating clothing eliminates all human odors;
- c. Whether Defendants' odor eliminating clothing can be reactivated or regenerated in a household dryer;
- d. Whether Defendants represented that their odor eliminating clothing can be reactivated or regenerated in a household dryer;
- e. Whether Defendants misrepresented or omitted material facts to Plaintiffs and the Class in connection with the sale of their odor eliminating clothing;
- f. Whether Defendants suppressed, concealed from, or failed to disclose to, Plaintiffs and the Class material facts concerning the capabilities and characteristics of their odor eliminating clothing;
- g. Whether Defendants' conduct in manufacturing, licensing, advertising, marketing and selling their odor eliminating clothing violated Illinois's Consumer Fraud Act, 815 Ill. Comp. Stat. 505/2;
- h. Whether Defendants' conduct in manufacturing, licensing, advertising, marketing and selling their odor eliminating clothing violated Illinois's Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/2;
- i. Whether Defendants conspired to misrepresent the qualities and characteristics of their odor eliminating clothing;
- j. Whether Defendants conspired to suppress, fail to disclose or omit material facts regarding the qualities and characteristics of their odor eliminating clothing;
- k. Whether injunctive relief is appropriate;

1. Whether Plaintiffs are entitled to recover costs and expenses incurred in prosecuting this action and reasonable attorneys' fees;

m. Whether Plaintiffs and the Class were injured and suffered damages as a result of Defendants' unlawful and deceptive conduct;

91. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions, and specifically actions involving defective products and false advertising. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class, and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interest adverse to those of the Class.

92. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most members of the Class likely would find the cost of litigating their claims to be prohibitive, and would have no effective remedy at law. Because of the relatively small size of the individual Class member's claims, it is likely that only a few Class members could afford to seek legal redress for Defendants' misconduct. Absent a class action, more consumers will incur actual damages and Defendants' misconduct will continue unabated. Class treatment of common questions of law and fact would be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

**FIRST CLAIM FOR RELIEF**

**VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT (“ICFA”)**

**(On Behalf of Plaintiffs and All Class Members)**

93. Plaintiffs reallege and incorporate all prior paragraphs of this Complaint.

94. Section 2 of the Illinois Consumer Fraud and Deceptive Trade Practices Act (“ICFA”), 815 Ill. Comp. Stat. 505/2, provides, in part, as follows:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act,” approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

95. Defendants’ business practices, in advertising, marketing and selling Defendants’ odor eliminating clothing, of misrepresenting that Defendants’ odor eliminating clothing eliminates all human odors, of misrepresenting that Defendants’ odor eliminating clothing can be reactivated or regenerated in a household clothes dryer, when, in fact, Defendants’ odor eliminating clothing cannot eliminate all human odors and cannot be reactivated or regenerated in a household dryer, are unfair and deceptive acts or practices, including the use of deception, fraud, false promises and misrepresentation and, thus, constitute multiple, separate violations of 815 Ill. Comp. Stat. 505/2 (2005).

96. Defendants’ business practices, in advertising, marketing and selling odor eliminating clothing while misrepresenting that the clothing can eliminate all human odors and can be reactivated or regenerated in a household dryer, of failing to disclose, concealing, suppressing or omitting material information, including the true ability of the clothing to

eliminate odors and be regenerated or reactivated, constitute multiple, separate violations of 815 Ill. Comp. Stat. 505/2 (2005).

97. In advertising, marketing and selling Defendants' odor eliminating clothing, Defendants made the material misrepresentations and omissions set forth in this Complaint on the clothing tags, in materials enclosed with or attached to the clothing, in point of purchase displays, in print advertisements in magazines and other publications, in brochures, in on-line hunting forums, on radio and television advertisements and shows, on websites, and in other promotional materials disseminated by or on behalf of Defendants in Illinois.

98. Defendants engaged in the unfair or deceptive trade practices set forth in this Complaint with the intent that consumers, including Plaintiffs and members of the Illinois Class rely upon Defendants' misrepresentations and omissions.

99. Defendants engaged in the above unfair or deceptive acts or practices in the conduct of trade or commerce.

100. Defendants' misrepresentations or omissions as set forth in this Complaint are material in that they relate to matters on which consumers could be expected to rely in determining whether to purchase Defendants' products.

101. Plaintiffs and members of the Illinois Class were deceived by Defendants' unfair or deceptive acts, including Defendants' misrepresentations and omissions, as set forth in this Complaint.

102. Defendants' conduct in advertising, marketing and selling Defendants' odor eliminating clothing through the use of the above described practices is unfair, in violation of the ICFA, in that it: (1) offends public policies; (2) is immoral, unethical, oppressive or

unscrupulous; and/or (3) causes substantial injury to consumers, including Plaintiffs and members of the Illinois Class.

103. As a proximate result of Defendants' unfair or deceptive acts or practices set forth in this Complaint, Plaintiffs and members of the Illinois Class were injured and are entitled to actual damages, costs, attorneys' fees and injunctive relief as allowed under Illinois law, including Section 10a of the ICFA, 815 Ill. Comp. Stat. 505/10a (2005).

104. By engaging in the unlawful conduct set forth in this Complaint, Defendants intentionally misled consumers, including Plaintiffs and the members of the Illinois Class. Defendants' unfair or deceptive acts and practices set forth in this Complaint were willful, wanton and malicious. Plaintiffs and members of the Illinois Class seek an award of punitive damages.

### **SECOND CLAIM FOR RELIEF**

#### **VIOLATIONS OF THE ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT**

##### **(On Behalf of Plaintiffs and All Class Members)**

105. Plaintiffs reallege and incorporate all prior paragraphs of this Complaint.

106. Section 2 of the Illinois Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/2 (2005), provides, in part, as follows:

(a) A person engages in a deceptive trade practice when, in the course of his or her business, vocation or occupation, the person:

...

(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . . .;

...

(7) represents that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another;

...

- (12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

107. Defendants' business practices, in advertising, marketing and selling Defendants' odor eliminating clothing, of misrepresenting that Defendants' odor eliminating clothing can eliminate all human odors and can be regenerated or reactivated in a household clothes dryer, when, in fact, the clothing cannot eliminate all human odors and cannot be reactivated or regenerated in a household clothes dryer, constitute multiple, separate violations of 815 Ill. Comp. Stat. 510/2(a)(5), (7) and (12) (2005), including:

- a. Falsely representing that Defendants' odor eliminating clothing has characteristics, uses, benefits or quantities of eliminating human odors, when, in fact, it cannot;
- b. Falsely representing that Defendants' odor eliminating clothing has characteristics, uses, benefits or quantities of reactivation or regeneration, when, in fact, it cannot;
- c. Falsely representing that Defendants' odor eliminating clothing is of a particular standard, quality or grade in eliminating all human odors, when, in fact, it is not and cannot;
- d. Falsely representing that Defendants' odor eliminating clothing is of a particular standard, quality or grade in reactivation or regeneration, when, in fact, it is not and cannot;
- e. Creating the likelihood of confusion and misunderstanding among consumers that Defendants' odor eliminating clothing has the ability to eliminate human odors and be reactivated or regenerated in a household dryer, when, in fact, it does not.

108. Defendants' business practices, in advertising, marketing and selling Defendants' odor eliminating clothing while misrepresenting that the clothing can eliminate all human odors and be reactivated or regenerated in a household dryer, of failing to disclose and suppressing material information concerning the true abilities of Defendants' clothing constitute multiple, separate violations of 815 Ill. Comp. Stat. 510/2(a)(5), (7) and (12) (2005).

109. As a proximate result of Defendants' deceptive trade practices set forth in this Complaint, Plaintiffs and members of the Illinois Class were injured and are entitled to actual damages, costs, attorneys' fees and injunctive relief, pursuant to Illinois law, including 815 Ill. Comp. Stat. 505/10a and 815 Ill. Comp. Stat. 510/3 (2005).

110. By engaging in the unlawful conduct set forth in this Complaint, Defendants intentionally misled consumers, including Plaintiffs and the members of the Illinois Class. Defendants' deceptive trade practices set forth in this Complaint are willful, wanton and malicious. Plaintiffs and members of the members of the Illinois Class seek an award of punitive damages.

### **THIRD CLAIM FOR RELIEF**

#### **CIVIL CONSPIRACY**

##### **(On Behalf of Plaintiffs and all Class Members)**

111. Plaintiffs incorporate and incorporate all prior paragraphs of this Complaint.

112. Plaintiffs on behalf of themselves and members of the Class bring a civil conspiracy claim under Illinois law.

113. Defendants knowingly misrepresent that Defendants' odor eliminating clothing eliminates all human odors and that the clothing can be reactivated or regenerated in a household dryer. Defendants know that the other Defendants make the same claims. Defendants also

actively conceal, suppress and fail to disclose to the public the true nature of Defendants' odor eliminating clothing, namely that the clothing fails to eliminate all human odors and cannot be reactivated or regenerated. Defendants know that the other Defendants actively conceal, suppress and fail to disclose the truth about Defendants' odor eliminating clothing.

114. Defendants agreed to uniformly tell consumers that Defendants' odor eliminating clothing eliminates all human odors and that the clothing can be regenerated or reactivated in household dryers. Despite knowing of the other Defendants' fraudulent misrepresentations and omissions, Defendants also agreed among and between themselves and conspired to conceal and suppress truthful information about Defendants' odor eliminating clothing that would expose other Defendants' misrepresentations.

115. In furtherance of the conspiracy, Defendants actively concealed and suppressed truthful information concerning Defendants' odor eliminating clothing, while continuing to misrepresent that the clothing eliminates all human odors and that it can be regenerated or reactivated in household dryers. Defendants acted for the common purpose and design of avoiding detection, earning revenue from advertising and selling products that were not as represented to the public, and concealing Defendants' unlawful conduct from Plaintiff, the Class and the consuming public. Through their lies, Defendants created an entirely new line of products and then perpetuated their fraud by agreeing to uniformly misrepresent Defendants' odor eliminating clothing's abilities and agreeing to suppress the truth. Through the collective misrepresentations of Defendants, Defendants orchestrated a fraud that might have been discovered had any one Defendant worked alone in the absence of an agreement. Defendants' collective and uniform fraud made the Defendants' individual lies believable.

116. As set forth in this Complaint, Defendants committed unlawful acts or practices in furtherance of the conspiracy, including:

- a. Misrepresenting to the consuming public that Defendants' odor eliminating clothing eliminates all human odors and can be reactivated or regenerated in household dryers;
- b. Concealing and suppressing truthful information about Defendants' odor eliminating clothing that would expose other Defendants' misrepresentations, relating to the ability of Defendants' odor eliminating clothing to eliminate all human odors and be reactivated or regenerated in household dryers;
- c. Violating 815 Ill. Comp. Stat. 505/2; and
- d. Violating 815 Ill. Comp. Stat. 510/2.

117. Defendants consciously conspired and deliberately pursued a common plan or design to commit tortious acts, as set forth in this Complaint, subjecting Defendants to joint and several liability.

118. Defendants conspired and acted in furtherance of the conspiracy for the common purpose of perpetuating Defendants' fraudulent scheme to lie about the efficacy of Defendants' odor eliminating clothing in order to maximize profits from the advertising and sale of Defendants' clothing. Defendants' scheme is dependent upon each Defendant's concealment and suppression of truthful information concerning the abilities and characteristics of Defendants' odor eliminating clothing.

119. Defendants' unlawful conduct set forth in this Complaint was done as part of a conspiracy to deceive and mislead Plaintiff, the Class and members of the consuming public in

violation of Illinois consumer laws, including 815 Ill. Comp. Stat. 505/2 and 815 Ill. Comp. Stat. 510/2.

120. As a direct and proximate result of Defendants' conspiracy, and Defendants' tortious, unlawful conduct in furtherance of the conspiracy, Plaintiff and members of the Class have been injured and have suffered damages, including buying a product that they did not need and from which they obtained no benefit, paying for products that were not as represented by Defendants, and paying more for such products than Plaintiff and members of the Class would have paid in the absence of Defendants' conspiracy.

121. Plaintiff and members of the Class seek to recover damages in an amount to be determined at trial, caused by Defendants' conspiracy and Defendants' unlawful acts in furtherance of their conspiracy to defraud Plaintiff, the Class and the consuming public.

#### **RELIEF REQUESTED**

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that this Court grant them and all others similarly situated equitable and legal relief against Defendants, as follows:

- a. An order certifying the proposed Class, designating Plaintiffs as named representatives of the Class, and designating the undersigned as Class Counsel;
- b. A declaration that Defendants are financially responsible for notifying all Class members of the fraudulent misrepresentations and omissions concerning Class members' purchase of Defendants' odor eliminating clothing;
- c. A declaration that Defendants' conduct violates Illinois law, including 815 Ill. Comp. Stat. 505/2 and 815 Ill. Comp. Stat. 510/2;
- d. A declaration that Defendants are jointly and severally liable;

e. An order enjoining Defendants from further deceptive advertising, marketing, distribution, and sales practices with respect to their odor eliminating clothing, and to replace Plaintiffs' and Class members' odor eliminating clothing with odor eliminating clothing that will eliminate all human odors for years to come as represented;

f. An award of reasonable attorneys' fees and costs, including the costs of investigation and such other equitable relief as determined by the Court, as allowed by law;

g. An award of pre-judgment and post-judgment interest, as provided by law;

h. An award of damages to be proved at trial;

i. An award of punitive damages; and

j. Such other and further relief as the Court finds just and proper.

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY.

Dated: April 14, 2008

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