

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Mike Buetow, Gary Steven Richardson, Jr.,
Joe Rohrbach, Jeff Brosi, Dennis Deeb and
Chris Lewison, individually on behalf of
themselves and all other Minnesota
residents and entities similarly situated,

Plaintiffs,

v.

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

Defendants.

CIV. NO.: 07-CV-3970 (RHK/JSM)

**AMENDED CLASS ACTION
COMPLAINT**

Jury Trial Demanded

Plaintiffs Mike Buetow, Gary Steven Richardson, Jr., Joe Rohrbach, Jeff Brosi, Dennis Deeb and Chris Lewison, individually and on behalf of themselves and all other Minnesota individuals and entities similarly situated, by and through their attorneys, Merchant & Gould and Heins Mills & Olson, P.L.C., 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 Defendants 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 Minnesota who purchased odor eliminating clothing manufactured, sold or licensed by Defendant A.L.S. Enterprises, Inc.: (1) violations of the Minnesota Consumer Fraud Act; (2) violations of the

Minnesota Uniform Deceptive Trade Practices Act; (3) violations of the Minnesota Unlawful Trade Practices Act.; and (4) 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 Minnesota and are citizens of Minnesota, of which only one Defendant, Gander Mountain Co., is a citizen.

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 Minnesota, 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. Defendant Gander Mountain Co. is also deemed to reside in this district because its principal place of business is in Minnesota. 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 Minnesota consumers since 1992. Plaintiffs purchased Defendants' odor eliminating clothing in Minnesota. 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 Mike Buetow resides at 2755 King Avenue in Shakopee, Minnesota 55379. He purchased multiple pairs of “Scent-Lok” base layers, pants, coats, full face masks, hats, gloves, and packs at a cost of approximately \$1,000. Plaintiff Buetow first purchased “Scent-Lok” products in 2003 from Defendant Cabela’s Inc. as well as Robinson Outdoors, Inc. Plaintiff Buetow was deceived by the fraudulent and misleading representations of Defendant ALS and Defendant Cabela’s 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 Defendant ALS and Defendant Cabela’s Inc.

13. Plaintiff Gary Steven Richardson, Jr., resides at 825 Delaware Avenue in St. Paul, Minnesota 55107. He purchased a “Scent-Lok” fleece pull-over jacket, matching fleece pants, gloves and head gear from Mills Fleet Farm in Maplewood, Minnesota in October of 2006. Mr. Richardson spent over \$500 on this odor eliminating clothing. Plaintiff Richardson was deceived by the fraudulent and misleading representations of Defendant ALS 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.

14. Plaintiff Joe Rohrbach resides at 645 Milwaukee Court in Shakopee, Minnesota 55379. In 2004, he purchased “Scent-Lok” pants, a shirt and a hat at Defendant Gander Mountain Co.’s store in Lakeville, Minnesota at a cost of approximately \$200. Plaintiff Rohrbach was deceived by the fraudulent and misleading representations of Defendant ALS and Defendant Gander Mountain Co. 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 Gander Mountain Co.

15. Plaintiff Jeff Brosi currently resides at N7634 45th, Spring Valley, Wisconsin 54767. In August of 2007, he purchased odor eliminating pants, a shirt, gloves and a hat, as well as an odor eliminating soap, from Defendant Gander Mountain Co.’s store in Woodbury, Minnesota at a cost of approximately \$230. Plaintiff Brosi was deceived by the fraudulent and misleading representations of Defendant ALS and Defendant Gander Mountain Co. that the odor eliminating clothing would make him 100% scent free and that the clothing could be reactivated. He would not have purchased the odor eliminating clothing but for representations made by Defendant ALS and Defendant Gander Mountain Co.

16. Plaintiff Dennis M. Deeb resides at 7079 Angus Ave E., Inver Grove Heights, Minnesota 55077. In or about 2003, he purchased a Scent-Lok jacket and matching pants. Plaintiff Deeb was deceived by the fraudulent and misleading representations of Defendant ALS 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.

17. Plaintiff Christopher Lewison resides at 412 Ash St., Rose Creek, Minnesota 55970. Over the last six years, he has purchased at least three sets of odor eliminating clothing, including a “Cabela’s Mt50 Scent-Lok” jacket and pants, a “Scent-Lok” leafy suit, and a “Scent-Lok Silent Wear” suit. He purchased the odor eliminating clothing from Defendant Cabela’s Inc. Plaintiff Lewison was deceived by the fraudulent and misleading representations of Defendant ALS and Defendant Cabela’s 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 representations made by Defendant ALS and Defendant Cabela’s Inc.

B. Defendants

18. 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 and through catalogs distributed throughout the United States, including Minnesota.

19. 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.

20. 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 and also generates sales through its seasonal catalogs, television and radio programs, and its website, 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 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 Minnesota.

21. 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, licenses 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 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 Minnesota.

22. 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, and over twenty retail stores, including three in Minnesota. Since it began selling odor eliminating clothing licensed through Defendant ALS, Defendant Cabela's has misrepresented to consumers in its marketing and advertising, including 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 Minnesota.

23. Defendant Gander Mountain Co. ("Gander Mountain") is a corporation with its headquarters located at 180 East 5th 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 thirteen in Minnesota. Defendant Gander Mountain advertises on its website at 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 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 Minnesota.

FACTUAL ALLEGATIONS

A. Hunters' Demand for Odor Control

24. 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.

25. 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 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

26. Activated carbon is a solid that has 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.

27. 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

28. 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 adhered to layers of fabric with a bonding material.

29. 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.

30. 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.

31. 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.

32. 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

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.”

38. 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.

39. 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, 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.”

40. 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, 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.”

41. 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.

42. 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 Minnesota: 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.”

43. 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 Minnesota: 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.”

44. 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 Minnesota: 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.”

45. 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 Minnesota: 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

46. 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.

47. 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.

48. 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.

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

49. 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.

50. 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.

51. 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.

52. 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.

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

54. 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.

55. 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.

56. 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, 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.

57. 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.

58. 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).

59. 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."

60. 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."

61. 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."

62. 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.

63. 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

64. 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.

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

66. 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.

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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

75. 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, 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.

76. 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.

77. 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.

78. 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.

79. 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.

CLASS ACTION ALLEGATIONS

80. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all other Minnesota 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.

81. 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 Minnesota 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.

82. 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.

83. 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.

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

85. 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 Minnesota 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.

86. 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.

87. 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.

88. 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 Minnesota's Consumer Fraud Act, Minn. Stat. § 325F.69, subdivision 1 (2005);
- h. Whether Defendants' conduct in manufacturing, licensing, advertising, marketing and selling their odor eliminating clothing violated Minnesota's Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43-48;
- i. Whether Defendants' conduct in manufacturing, licensing, advertising, marketing and selling their odor eliminating clothing violated Minnesota's Unlawful Trade Practices Act, Minn. Stat. § 325D.13;

j. Whether Defendants conspired to misrepresent the qualities and characteristics of their odor eliminating clothing;

k. Whether Defendants conspired to suppress, fail to disclose or omit material facts regarding the qualities and characteristics of their odor eliminating clothing;

l. Whether injunctive relief is appropriate;

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

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

89. 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.

90. 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 MINNESOTA CONSUMER FRAUD ACT

(On Behalf of Plaintiffs and All Class Members)

91. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

92. Minn. Stat. § 325F.69, subdivision 1 (2005) provides:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided herein.

93. Defendants sold merchandise in the form of odor eliminating clothing to Plaintiffs and Class members.

94. Defendants' business practices, in manufacturing, licensing, advertising, marketing and selling their odor eliminating clothing, of misrepresenting that their odor eliminating clothing as having the ability to eliminate all human odors, and of misrepresenting that their odor eliminating clothing can be reactivated or regenerated in household dryers, constitute the use of fraud, false pretense, false promises, misrepresentations, misleading statements and deceptive practices and, thus, constitute multiple, separate violations of Minn. Stat. § 325F.69.

95. Defendants' business practices, in manufacturing, licensing, advertising, marketing and selling their odor eliminating clothing while concealing, failing to disclose, suppressing or omitting material information, constitute the use of fraud, false pretense, false promises, misrepresentations, misleading statements and deceptive practices and, thus, constitutes multiple, separate violations of Minn. Stat. § 325F.69.

96. Defendants continue to affirmatively misrepresent and conceal from the consuming public the truth about their odor eliminating clothing, namely that the clothing does not eliminate all human odors, and that it cannot be regenerated or reactivated. These omissions and misrepresentations constitute the use of fraud, false pretense, false promises, misrepresentations, misleading statements and deceptive practices and, thus, constitutes multiple, separate violations of Minn. Stat. § 325F.69.

97. Defendants knew or should have known that their odor eliminating clothing fails to eliminate all human odors, and cannot be reactivated or regenerated in household dryers. Defendants suppress and fail to disclose these material facts. The fact that Defendants' odor eliminating clothing fails to eliminate all human odors is a material fact, the omission of which has the tendency or capacity or is likely to mislead or deceive Plaintiffs and Class Members, and is a fact which could not reasonably be known by Plaintiffs and Class Members. The fact that Defendants' odor eliminating clothing cannot be reactivated or regenerated in household dryers is a material fact, the omission of which has the tendency or capacity or is likely to mislead or deceive Plaintiffs and Class Members, and is a fact which could not reasonably be known by Plaintiffs and Class Members. These omissions constitute the use of fraud, false pretense, false

promises, misrepresentations, misleading statements and deceptive practices and, thus, constitute multiple, separate violations of Minn. Stat. § 325F.69.

98. In connection with the manufacturing, licensing, advertising, marketing and sale of their odor eliminating clothing, Defendants made the material omissions and misrepresentations 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 Minnesota.

99. Defendants' omissions and misrepresentations set forth in this Complaint are material in that they relate to information that would naturally affect the purchasing decisions or conduct of purchasers, including Plaintiffs and Class members, regarding whether or not to purchase Defendants' odor eliminating clothing.

100. Had Plaintiffs and the Class known that Defendants' odor eliminating clothing fails to eliminate all human odors, and cannot be reactivated or regenerated in household dryers, they would not have purchased the clothing.

101. Defendants fraudulently, negligently, recklessly and/or intentionally concealed and/or failed to disclose the true characteristics of their odor eliminating clothing for the purpose of inducing Plaintiffs and the Class to rely thereon, and Plaintiffs and the Class justifiably relied to their detriment upon the truth and completeness of Defendants' representations about their odor eliminating clothing. Plaintiffs and the Class relied on Defendants to disclose all material facts and not omitting any material

information regarding their odor eliminating clothing. That Plaintiffs and the Class members were deceived is evidenced by the fact that Plaintiffs and Class members purchased Defendants' odor eliminating clothing. Had they known the truth, Plaintiffs and the Class would not have bought Defendants' odor eliminating clothing. Defendants' fraudulent and deceptive practices of manufacturing, licensing, advertising, marketing and selling their odor eliminating clothing repeatedly occurred in Defendants' trade or business and were capable of deceiving a substantial portion of the purchasing public.

102. As a direct and proximate cause of Defendants' false and deceptive misrepresentations and omissions, Plaintiffs have suffered actual injuries in that they would not have spent their money on a product that fails to eliminate all human odors and cannot be regenerated or reactivated. To be sure, Plaintiffs have suffered injury insofar as they would not have paid the premium prices charged by Defendants for their odor eliminating clothing.

103. Separate from, and in addition to, their actual damages, Plaintiffs' and Class members' expectations were frustrated as a result of Defendants' omissions and misrepresentations, and Plaintiffs and Class members did not receive what they expected to receive, which injury constitutes a loss. Plaintiffs and Class members are thus entitled to recover the difference between the actual value of the odor eliminating clothing they purchased and odor eliminating clothing they would have possessed had Defendants' representations about the clothing been true – that is odor eliminating clothing that actually does eliminate all human odor and that can be used for years by reactivating or regenerating the clothing in a household dryer.

104. As a result of Defendants' unlawful conduct, Plaintiffs and Class members were injured and suffered damages. Plaintiffs and Class members are entitled to recover their actual damages, and costs and disbursements, including costs of investigation and reasonable attorneys' fees, as well as injunctive relief and other equitable relief, including restitution, as determined by the Court, pursuant to Minnesota law, including Minn. Stat. §§ 8.31, subd. 1 and 3a. and 325F.69.

SECOND CLAIM FOR RELIEF

**VIOLATIONS OF THE MINNESOTA UNIFORM
DECEPTIVE TRADE PRACTICES ACT**

(On Behalf of Plaintiffs and All Class Members)

105. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

106. Minn. Stat. § 325D.44, subdivision 1 (2005) provides, in part, as follows:

Subdivision 1. A person engages in a deceptive trade practice when, in the course of 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...;

...

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

107. Defendants' business practices, in manufacturing, licensing, advertising, marketing and selling their odor eliminating clothing, and in misrepresenting material facts, including that their odor eliminating clothing eliminates all human odors and can be

reactivated or regenerated in household dryers, constitute multiple, separate violations of Minn. Stat. § 325D.44, subd. 1 (5), (7) and (13), including:

a. Falsely representing that their odor eliminating clothing has the characteristics, uses, benefits or quantities of being able to eliminate all human odors when, in fact, their clothing cannot eliminate all human odors;

b. Falsely representing that their odor eliminating clothing has the characteristics, uses, benefits or quantities of being able to be regenerated or reactivated in household dryers to a pristine or like-new condition when, in fact, the clothing cannot be reactivated or regenerated;

c. Creating the likelihood of confusion or misunderstanding among consumers about the nature and quality of their odor eliminating clothing, including that the clothing can eliminate all human odors, last for years, and be reactivated or regenerated in household dryers, when, in fact, it cannot.

108. Defendants' business practices, in manufacturing, licensing, advertising, marketing and selling their odor eliminating clothing while misrepresenting material facts, including that their odor eliminating clothing eliminates all human odors and can be reactivated or regenerated in household dryers, and failing to disclose, concealing, suppressing, and omitting material information concerning the inability of their odor eliminating clothing to eliminate all human odors and be reactivated or regenerated in household dryers, constitute multiple, separate violations of Minn. Stat. § 325D.44, subd. 1 (5), (7) and (13).

109. Defendants engaged in the above conduct in the course of their business.

110. As a result of Defendants' unlawful conduct, Plaintiffs and Class members were injured and suffered damages, and are entitled to recover their actual damages, costs and disbursements, including costs of investigation and reasonable attorneys' fees, as well as injunctive relief and other equitable relief, including restitution, as determined by the Court, pursuant to Minnesota law, including Minn. Stat. §§ 8.31, subd. 1 and 3a. and 325D.45.

THIRD CLAIM FOR RELIEF

VIOLATIONS OF THE MINNESOTA UNLAWFUL TRADE PRACTICES ACT

(On Behalf of Plaintiffs and All Class Members)

111. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

112. Minn. Stat. § 325D.13 provides, in part, as follows:

No person shall, in connection with the sale of merchandise, knowingly misrepresent, directly or indirectly, the true quality, ingredients or origin of such merchandise.

113. Defendants knowingly misrepresented and concealed the true quality of their odor eliminating clothing in connection with the sale of that merchandise.

114. Defendants knowingly misrepresent that their odor eliminating clothing eliminates all human odors, lasts for years, and can be regenerated or reactivated in household dryers.

115. Defendants knowingly concealed from and failed to disclose to Plaintiffs and Class members, in connection with the sale of their odor eliminating clothing,

material information, including that their odor eliminating clothing fails to eliminate all human odors, and cannot be regenerated or reactivated in household dryers.

116. Defendants' omissions and misrepresentations had the tendency or capacity to deceive or mislead (and in fact did deceive and mislead) Plaintiffs, Class members and a substantial segment of consumers.

117. Defendants' omissions and misrepresentations were material because they related to facts that would naturally affect the conduct of purchasers and that a reasonable person, including Plaintiffs and Class members, would have considered important in deciding whether to purchase Defendants' odor eliminating clothing.

118. Defendants caused their odor eliminating clothing to enter into interstate commerce.

119. As a result of Defendants' unlawful conduct, Plaintiffs and Class members were injured and suffered damages, and are entitled to recover their actual damages, costs and disbursements, including costs of investigation and reasonable attorneys' fees, as well as injunctive relief and other equitable relief, including restitution, as determined by the Court, pursuant to Minnesota law, including Minn. Stat. §§ 8.31, subd. 1 and 3a. and 325D.15.

FOURTH CLAIM FOR RELIEF

CIVIL CONSPIRACY

(On Behalf of Plaintiffs and all Class Members)

120. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

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

122. Defendants knowingly misrepresent that their 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 their 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 their odor eliminating clothing.

123. Defendants agreed to uniformly tell consumers that their 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 their odor eliminating clothing that would expose other Defendants' misrepresentations.

124. In furtherance of the conspiracy, Defendants actively concealed and suppressed truthful information concerning their odor eliminating clothing, while continuing to misrepresent that the clothing eliminates all human odors and 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 their unlawful conduct

from Plaintiffs, 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 their 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.

125. 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 their odor eliminating clothing eliminates all human odors and can be reactivated or regenerated in household dryers;
- b. Concealing and suppressing truthful information about their odor eliminating clothing that would expose other Defendants' misrepresentations, relating to the ability of their odor eliminating clothing to eliminate all human odors and be reactivated or regenerated in household dryers;
- c. Violating Minn. Stat. § 325F.69;
- d. Violating Minn. Stat. § 325D.44; and
- e. Violating Minn. Stat. § 325D.13.

126. 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.

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

128. Defendants' unlawful conduct set forth in this Complaint was done as part of a conspiracy to deceive and mislead Plaintiffs, the Class and members of the consuming public in violation of Minnesota consumer laws, including Minn. Stat. § 325F.69, Minn. Stat. § 325D.44 and Minn. Stat. § 325D.13.

129. As a direct and proximate result of Defendants' conspiracy, and Defendants' tortious, unlawful conduct in furtherance of the conspiracy, Plaintiffs 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 Plaintiffs and members of the Class would have paid in the absence of Defendants' conspiracy.

130. Plaintiffs 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 Plaintiffs, 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 Minnesota law, including Minn. Stat. § 325F.69, Minn. Stat. § 325D.44 and Minn. Stat. § 325D.13;
- 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; and

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

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY.

Dated this 29th day of January, 2008.

HEINS MILLS & OLSON, P.L.C.

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