

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

GAYL JACKSON  
13415 Rock Point Road  
Newburg, Maryland 20664

and

TAMMY FOSTER  
225 Royal Glen, #404  
Escondido, California 92025,

Individually and on behalf of all others  
similarly situated,

Plaintiffs

v.

VIKING GROUP, INC.  
210 North Industrial Park Drive  
Hastings, Michigan 49058

and

THE VIKING CORPORATION  
210 North Industrial Park Drive  
Hastings, Michigan 49058

and

SUPPLY NETWORK, INC. d/b/a VIKING  
SUPPLYNET,  
3033 Orchard Vista Drive, SE, Suite 308  
Grand Rapids, Michigan 49546

Defendants.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiffs Gayl Jackson and Tammy Foster (together, "Plaintiffs") hereby file this class action on behalf of themselves and all others similarly situated, by and through the undersigned attorneys, against Defendants Viking Group, Inc., The Viking Corporation, and Supply

Network, Inc. d/b/a Viking SupplyNet (collectively, “Defendants” or “Viking”) and allege as follows based upon personal knowledge as to themselves and their own acts and experiences and, as to all other matters, upon information and belief based upon, *inter alia*, investigation conducted by their attorneys.

### **NATURE OF THE ACTION**

1. This is a class action lawsuit brought by Plaintiffs on behalf of a class of individuals who owned or rented residences with Viking VK457 fire sprinklers (“Fire Sprinklers”) installed, an example of which is depicted at Photograph “A,” below. The Fire Sprinklers suffer from a manufacturing and/or design defect that causes them to activate without a fire (the “Defect”).



Photograph “A”

2. Instead of protecting consumers and their homes from the dangers of fire as advertised, the Defect causes significant damage to consumers’ homes and personal property.

3. All consumers with the Fire Sprinklers installed in their property must pay out-of-pocket to replace the Fire Sprinklers with another type of fire sprinkler that does not spontaneously actuate in the absence of external heat, mechanical damage or external force. In addition, for those who have had their Fire Sprinklers discharge without the presence of external

heat, mechanical damage or external force, such as Plaintiffs, they are required to pay out-of-pocket for insurance deductibles and uninsured repairs to their personal property and residences as a result of the Defect and resulting water damage.

4. This class action seeks damages, injunctive relief, declaratory judgments, costs, attorneys' fees, and other relief as a result of the Defect, caused by Defendants' violations of state consumer protection laws, the Magnuson-Moss Warranty Act, common law fraud, negligent misrepresentation, and unjust enrichment.

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because (a) Plaintiffs seek to represent a class of the thousands of individuals who purchased the Fire Sprinklers or had them installed in their home; (b) the amount in controversy exceeds \$5,000,000, excluding interest and costs; (c) the proposed class consists of more than 100 individuals; and (d) none of the exceptions under the subsection applies to this action.

6. This Court has personal jurisdiction over Defendants. Both Defendants conduct substantial business in this District, and at all times relevant hereto have intentionally availed themselves of the laws and markets of this District. A significant portion of the acts and omissions complained of occurred in the District, and many Class members suffered harm in the District.

7. Venue is proper in this District under 28 U.S.C § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this District.

**PARTIES**

**Plaintiff Gayl Jackson**

8. Plaintiff Gayl Jackson is a resident and citizen of the State of Maryland.

9. In 2014, Plaintiff moved to her current residence in Maryland, which she had custom-built.

10. At all times relevant hereto, Plaintiff's residence had Viking VK457 fire sprinklers installed throughout, including in her master bedroom.

11. On May 15, 2018, the Viking VK457 fire sprinkler located in Plaintiff's master bedroom spontaneously activated and discharged water throughout the room – despite the lack of external heat, mechanical damage or external force.

12. The water discharged by the fire sprinkler leaked throughout Plaintiff's master bedroom, including onto and through hardwood floors to the basement.

13. Plaintiff has suffered an ascertainable loss as a result of Defendants' failure to disclose the defective nature of the Fire Sprinklers. Plaintiff paid more than she otherwise would have paid for the Fire Sprinklers. Plaintiff also had to clean up and bear the expense of destroyed personal property and home damage due to the Defect and she was exposed to a potentially dangerous situation.

**Plaintiff Tammy Foster**

14. Plaintiff Tammy Foster is a resident and citizen of the State of California.

15. In 2014, Plaintiff moved to her current residence in California, which she purchased while it was being newly constructed.

16. At all times relevant hereto, Plaintiff's residence had Viking VK457 fire sprinklers installed throughout, including in her third-floor bedroom.

17. On June 20, 2018, the Viking VK457 fire sprinkler located in Plaintiff's third-floor bedroom spontaneously activated and discharged water throughout the room – despite the lack of external heat, mechanical damage or external force.

18. When the incident occurred, the local fire department made forcible entry into Plaintiff Foster's home to turn off the water.

19. The water discharged by the fire sprinkler leaked throughout Plaintiff's residence, including onto and through hardwood floors on the second and first floors located below the third-floor bedroom in which the leak occurred.

20. At the time that Plaintiff Foster's Viking VK457 fire sprinkler discharged, she was driving to Canada for a vacation. When she learned of the incident, she interrupted her vacation to return to her home.

21. Plaintiff has suffered an ascertainable loss as a result of Defendants' failure to disclose the defective nature of the Fire Sprinklers. Plaintiff paid more than she otherwise would have paid for the property. Plaintiff also had to clean up and bear the expense of destroyed personal property and home damage due to the Defect

#### **Defendants**

22. Defendant Viking Group, Inc. is a Michigan for-profit corporation, incorporated in approximately 2001, that operates as a holding company and is located at 3033 Orchard Vista Drive, Grand Rapids, Michigan 49546.

23. Defendant Viking Group, Inc. publicizes itself as “lead[ing] the industry in quality and innovation because fire protection is all” that it does, and its singular focus is “to

support and enhance the efforts of independent fire sprinkler contractors.”<sup>1</sup>

24. Defendant Viking Group, Inc. further claims that, “[w]ith 50 company-owned locations worldwide, and a global network of independent distribution partners, Viking’s products and services are available when and where you need them.”<sup>2</sup>

25. Defendant The Viking Corporation is a Michigan for-profit corporation, incorporated in approximately 1969, that is a large manufacturer of fire-suppression systems and is located at 210 N. Industrial Park Drive, Hastings, Michigan 49058.

26. Defendant The Viking Corporation touts that its products provide “the peace of mind that comes with worry-free fire protection.”<sup>3</sup>

27. Defendant Supply Network, Inc. d/b/a Viking SupplyNet is a Michigan for-profit corporation, incorporated in approximately 1988, that “distributes the largest selection of sprinkler system components to customers in over 70 countries,”<sup>4</sup> and is located at 210 N. Industrial Park Drive, Hastings, Michigan 49058.

#### **TOLLING OF STATUTES OF LIMITATIONS**

28. Any applicable statutes of limitations have been tolled by Defendants’ knowing and active concealment and denial of the facts alleged herein. Plaintiffs and the members of the Class could not reasonably have been expected to discover the true, latent nature of the Defect prior to their purchases of homes containing the Fire Sprinklers and/or having the Fire Sprinklers installed.

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<sup>1</sup> <http://www.vikingcorp.com/about> (last visited July 27, 2018).

<sup>2</sup> *Id.*

<sup>3</sup> <http://www.vikinggroupinc.com/node/4821> (last visited June 18, 2018).

<sup>4</sup> <http://www.vikinggroupinc.com/about-viking/viking-group-inc/viking-supplynet> (last visited July 27, 2018).

29. Defendants were and remain under a continuing duty to disclose to Plaintiffs and the members of the Class the true character, quality and nature of the Fire Sprinklers, including that the Defect exists and results from a manufacturing and/or design defect involving the mechanism that turns on the sprinklers.

30. As a result of Defendants' active concealment, any and all statutes of limitations otherwise applicable to the allegations herein have been tolled.

### **FACTUAL ALLEGATIONS**

31. Defendants are undeniably aware of the Defect in the Fire Sprinklers because of widespread news coverage and complaints from consumers.

32. On or about March 3, 2018, the *Sacramento Bee* reported that a Viking VK457 sprinkler in a second-floor bedroom of a California consumer's home malfunctioned and flooded the home with three-to-four inches of water causing over \$100,000 of damage and requiring the homeowners to vacate the home for nearly six months.

33. The March 8, 2018 *Sacramento Bee* article further reported two other California homes had experienced similar damage due to malfunctioning interior sprinklers since 2016. It also quoted Viking's Vice President of Marketing, Jeff Norton, as stating that Viking was aware of the Defect alleged herein and was working with home builders to address it.

34. On or about September 28, 2017, the Sun City Shadow Hills Community Association, located in Indio, California, notified homeowners that "some VK457 fire sprinklers have activated without fire being present, causing water damage to homes and furnishings."

35. Defendants are experienced in the design and manufacture of fire suppression products, and conduct “rigorous” tests in order to “continuously improve[] and refine[]” their products.<sup>5</sup>

36. As a result, Defendants knew or should have known that the Fire Sprinklers were defective and unfit for their use as fire sprinklers.

37. Each of the Fire Sprinklers is defectively designed, manufactured, marketed and/or sold because they spontaneously actuate in the absence of external heat, mechanical damage or external force, causing severe water damage to consumers’ home and personal property.

38. The Defect includes, *inter alia*, solder creep and the assembly of component parts that compromise the Fire Sprinklers.

39. Plaintiffs and Class members have suffered damages as a result of Defendants’ deceptive practices, including damage to their personal property and residences and the cost of purchasing replacement fire sprinklers.

40. Moreover, in every sale of the Fire Sprinklers, Defendants warrant that they are fit for the ordinary purpose for which such goods are used and are free from defects.<sup>6</sup>

41. These assertions are, however, false and misleading. Every Fire Sprinkler included in the Class was manufactured with an inherent defect that renders it likely to activate without the presence of a fire.

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<sup>5</sup> <http://www.vikinggroupinc.com/node/4821> (last visited June 18, 2018).

<sup>6</sup> [http://www.vikinggroupinc.com/sites/default/files/documents/VikingCorp\\_Terms%26Conditions.pdf](http://www.vikinggroupinc.com/sites/default/files/documents/VikingCorp_Terms%26Conditions.pdf) (last visited July 27, 2018).



**CLASS ACTION ALLEGATIONS**

42. Plaintiffs bring this action on their own behalf, and on behalf of the following Class pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3). Specifically, the Class consists of the following:

**National Class:** All persons in the United States who purchased VK457 fire sprinklers or purchased homes with Viking VK457 fire sprinklers installed in them.

Or, in the alternative,

**Maryland Class:**

All persons in Maryland who purchased VK457 fire sprinklers or purchased homes with Viking VK457 fire sprinklers installed in them.

**California Class:**

All persons in California who purchased VK457 fire sprinklers or purchased homes with Viking VK457 fire sprinklers installed in them for primarily personal, family or household purposes, as defined by California Civil Code § 1791(a) (the "California Class").

43. Together, the National Class, the Maryland Class, and the California Class shall be collectively referred to herein as the "Class." The Maryland Class and the California Class shall be collectively referred to as the "State Sub-Classes." Excluded from the Class are Defendants and their employees, officers and directors; and the Judge(s) assigned to this case.

44. Plaintiffs reserve the right to amend or modify the above class definition after discovery.

45. **Numerosity.** Upon information and belief, the Class consists of thousands of individuals, making joinder impracticable. The exact size of the Class and the identities of the individual members are ascertainable through records maintained by Defendants.

46. **Existence and Predominance of Common Questions of Fact and Law:** Common questions of fact and law exist as to all members of the Class. These questions predominate over

the questions affecting individual Class members. These common factual and legal questions include, but are not limited to:

- a. whether Defendants misrepresented the quality and characteristics of the Fire Sprinklers;
- b. whether the Fire Sprinklers are defective;
- c. whether Defendants failed to disclose the Defect to consumers;
- d. whether Defendants' conduct violated the Maryland and California consumer protection statutes;
- e. whether Defendants breached express warranties under the Magnuson-Moss Warranty Act;
- f. whether Defendants' conduct resulted in unlawful common law fraud;
- g. whether Defendants' conduct resulted in unlawful negligent misrepresentation;
- h. whether Defendants were unjustly enriched at the expense of Plaintiffs and the Class;
- i. whether Defendants are jointly and severally liable for the violations alleged herein;
- j. whether Plaintiffs and Class members are entitled to monetary damages and/or other remedies and, if so, the nature of any such relief; and

47. Typicality. All of Plaintiffs' claims are typical of the claims of the Class since Defendants advertised and marketed each Fire Sprinkler with the same type of false and/or misleading statements. Plaintiffs and all members of the Class sustained monetary and economic injuries including, but not limited to, ascertainable losses arising out of Defendants' wrongful

conduct. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all absent Class members.

48. Adequacy of Representation. Plaintiffs are adequate class representatives. Their interests do not conflict with the interests of the other Class members they seek to represent. They have retained counsel competent and experienced in complex class action litigation, and they intend to prosecute this action vigorously. Plaintiffs and their counsel will fairly and adequately pursue and protect the interests of the class.

49. Superiority. A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiffs and members of the Class. The injury suffered by each individual Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. It would be virtually impossible for members of the Class individually to effectively redress the wrongs done to them. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Members of the Class can be readily identified and notified based on, *inter alia*, Defendants' records and databases.

50. Defendants have acted, and refused to act, on grounds generally applicable to the Class, thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole.

**CLAIMS FOR RELIEF**

**COUNT I**

**VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT,  
Md. Code, Comm. Law, §§ 13-101 *et seq.*  
(On Behalf of the Maryland Class)**

51. Plaintiffs restate and incorporate herein by reference the preceding paragraphs as if fully set forth herein.

52. Plaintiff Jackson (“Plaintiff” for purposes of this count) brings this claim on behalf of herself and on behalf of the Maryland Class.

53. The Maryland Consumer Protection Act (“Maryland CPA”), Md. Code, Comm. Law, § 13-303, prohibits persons from engaging in any unfair or deceptive trade practices in, *inter alia*, the sale of any consumer goods.

54. The Maryland CPA defines “[u]nfair or deceptive trade practices” as, *inter alia*, any: (1) False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers; (2) Representation that: (i) Consumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have; . . . (3) Failure to state a material fact if the failure deceives or tends to deceive; . . . (5) Advertisement or offer of consumer goods, consumer realty, or consumer services: (i) Without intent to sell, lease, or rent them as advertised or offered; or . . . ; [and] (9) Deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection with: (i) The promotion or sale of any consumer goods. . . .” Md. Code, Comm. Law, § 13-301 (2017).

55. The Maryland CPA defines “Consumer goods” as goods which are “primarily for personal, household, family, or agricultural purposes.” Md. Code, Comm. Law, § 13-101(d).

56. Plaintiff Jackson and the Class are “persons” within the meaning of the Maryland CPA, Md. Code, Comm. Law, § 13-101(h).

57. As discussed in detail herein, by designing, manufacturing, marketing and selling Fire Sprinklers containing the Defect, Defendants’ conduct constitutes unfair, unconscionable, and deceptive acts because Defendants failed to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

58. As shown through their purchase of Defendants’ Fire Sprinklers and/or homes containing the Fire Sprinklers, Plaintiff and the Class Members reasonably relied on Defendants’ misrepresentations and omissions of material facts.

59. Had Plaintiff and the Class Members known of the potential of the Fire Sprinklers to spontaneously actuate in the absence of external heat, mechanical damage or external force due to the Defect, they would not have purchased the Fire Sprinklers or homes containing the Fire Sprinklers, or would have paid substantially less for them.

60. Because of Defendants’ violation of the Maryland CPA, Defendants caused actual damage to Plaintiff and the Class Members, and, if not stopped, will continue to harm them.

**COUNT II**  
**VIOLATIONS OF THE CALIFORNIA CONSUMER**  
**LEGAL REMEDIES ACT (“CLRA”),**  
**California Civil Code § 1761(c)**  
**(On Behalf of the California Class)**

61. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.
62. Plaintiff Foster (“Plaintiff” for purposes of this count) brings this claim on behalf of herself and on behalf of the California class.
63. Defendants are persons as that term is defined in California Civil Code § 1761(c).
64. Plaintiff Foster and the Class are “consumers” as that term is defined in California Civil Code § 1761(d).
65. Defendants engaged in unfair and deceptive acts in violation of the CLRA by the practices described above, and by knowingly and intentionally concealing from Plaintiffs and Class members that the Fire Sprinklers are defective. These acts and practices violate, at a minimum, the following sections of the CLRA:

(a)(2) Misrepresenting the source, sponsorship, approval or certification of goods or services;

(a)(5) Representing that goods or services have sponsorships, characteristics, uses, benefits or quantities which they do not have, or that a person has a sponsorship, approval, status, affiliation or connection which he or she does not have;

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

(a)(9) Advertising goods and services with the intent not to sell them as advertised.

66. Defendants' unfair or deceptive acts or practices occurred repeatedly in Defendants' trade or business and were capable of deceiving a substantial portion of the purchasing public.

67. Defendants knew that the Fire Sprinklers were defective and prone to failing for their essential purpose as fire sprinklers.

68. Defendants were under a duty to Plaintiff and the Class members to disclose the defective nature of the Fire Sprinklers because:

- a. Defendants were in a superior position to know the true state of facts about the defect;
- b. Plaintiff and the Class members could not reasonably have been expected to learn or discover that the Fire Sprinklers were defective;
- c. Defendants knew that Plaintiffs and the Class members could not reasonably have been expected to learn or discover that the Fire Sprinklers were defective; and
- d. Defendants actively concealed and failed to disclose the defect to Plaintiff and the Class.

69. In failing to disclose the defect, Defendants knowingly and intentionally concealed material facts and breached its duty not to do so.

70. The facts concealed or not disclosed by Defendants to Plaintiff and the Class members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase Defendants' Fire Sprinklers, or purchase homes with Defendants' Fire Sprinklers installed in them, or pay a lesser price. Had Plaintiff and the Class known about the defect, they would not have purchased Defendants' Fire Sprinklers, or purchase homes with Defendants' Fire Sprinklers installed in them, or would have paid less for them.

71. Plaintiff has provided Defendants with notice of its violations of the CLRA pursuant to California Civil Code § 1782(a) and seeks only injunctive relief at this time. After the notice period expires, Plaintiff will amend this complaint to also seek monetary damages.

72. Plaintiff and the other Class members' injuries were proximately caused by Defendants' fraudulent and deceptive business practices.

73. Therefore, Plaintiff and the other Class members are entitled to equitable relief under the CLRA.

**COUNT III**  
**VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200**  
**California Bus. & Prof. Code § 17200**  
**(On Behalf of the California Class)**

74. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

75. Plaintiff Foster ("Plaintiff" for purposes of this count) brings this claim on behalf of herself and on behalf of the California class.

76. The California Unfair Competition Law ("UCL") prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.

77. Defendants have engaged in unfair competition and unfair, unlawful or fraudulent business practices by the conduct, statements, and omissions described above, and by knowingly and intentionally concealing from Plaintiffs and the Class members the Fire Sprinklers are defective. Defendants should have disclosed this information because it was in a superior position to know the true facts related to the defect, and Plaintiffs and Class members could not reasonably be expected to learn or discover the true facts related to the defect.



78. These acts and practices have deceived Plaintiff and are likely to deceive the public. In failing to disclose the defect and suppressing other material facts from Plaintiff and the Class members, Defendants breached its duties to disclose these facts, violated the UCL, and caused injuries to Plaintiffs and the Class members. The omissions and acts of concealment by Defendants pertained to information that was material to Plaintiff and the Class members, as it would have been to all reasonable consumers.

79. The injuries suffered by Plaintiff and the Class members are greatly outweighed by any potential countervailing benefit to consumers or to competition, nor are they injuries that Plaintiff and the Class members should have reasonably avoided.

80. Defendants' acts and practices are unlawful because they violate California Civil Code §§ 1668, 1709, 1710, and 1750 *et seq.*, and California Commercial Code § 2313.

81. Plaintiff seeks to enjoin further unlawful, unfair and/or fraudulent acts or practices by Defendants, to obtain restitutionary disgorgement of all monies and revenues generated as a result of such practices, and all other relief allowed under California Business & Professions Code § 17200.

**COUNT IV**  
**BREACH OF WRITTEN WARRANTY**  
**UNDER THE MAGNUSON-MOSS WARRANTY ACT**  
**(On Behalf of the Nationwide Class, or Alternatively, the State Sub-Classes)**

82. Plaintiffs and the Class incorporate by reference the preceding and subsequent paragraphs as if fully set forth herein.

83. Plaintiffs and the Class members are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

84. Defendants are “suppliers” and “warrantors” within the meaning of 15 U.S.C. §§ 2301(4)-(5).

85. The Fire Sprinklers are “consumer products” within the meaning of 15 U.S.C. § 2301(1).

86. Defendants’ warranties are “written warranties” within the meaning of 15 U.S.C. § 2301(6).

87. Defendants breached the express warranties by refusing and/or failing to honor the express warranties by repairing or replacing, free of charge, the Fire Sprinklers and to repair damage to personal property and homes caused by the Defect.

88. Plaintiffs and the Class members relied on the existence and length of the express warranties in deciding whether to purchase homes containing the Fire Sprinklers and/or to have the Fire Sprinklers installed in their homes.

89. Defendants’ breach of the express warranties has deprived Plaintiff and Class members of the benefit of their bargain.

90. The amount in controversy of Plaintiffs’ individual claims meets or exceeds the sum or value of \$25.00. In addition, the amount in controversy meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit.

91. Defendants have been afforded a reasonable opportunity to cure their breach of the written warranties and/or Plaintiffs and the other Class members were not required to do so because providing Defendants a reasonable opportunity to cure their breach of written warranties would have been futile. Defendants were also on notice of the Defect from the

complaints and service requests they received from Class members, as well as from their own warranty claims and media reports.

92. As a direct and proximate cause of Defendants' breach of the written warranties, Plaintiffs and the other Class members sustained damages and other losses in an amount to be determined at trial. Defendants' conduct damaged Plaintiffs and the other Class members, who are entitled to recover actual damages, consequential damages, specific performance, diminution in value, costs, including statutory attorney fees, and/or other relief as deemed appropriate.

**COUNT V**  
**COMMON LAW FRAUD**

**(On Behalf of the Nationwide Class, or Alternatively, the State Sub-Classes)**

93. Plaintiffs and the Class incorporate by reference the preceding and subsequent paragraphs as if fully set forth herein.

94. Defendants made material misstatements and omissions of fact to Plaintiffs and Class members regarding the non-defective nature of the Fire Sprinklers. As a result, Plaintiff and the Class were fraudulently induced to purchase homes containing the Fire Sprinklers and/or having the Fire Sprinklers installed in their homes.

95. These misstatements and omissions by Defendants were made with knowledge of their falsity and misleading nature, and with the intent that Plaintiff and members of the Class would rely upon them.

96. As described herein, Defendants fraudulently sold Fire Sprinklers with the Defect that effectively prevented home buyers and Fire Sprinkler purchasers from purchasing homes and/or Fire Sprinklers without a defect.

97. At the time that Defendants made these misrepresentations and concealments, and at the time that Plaintiffs and Class members purchased homes containing the Fire

Sprinklers and/or had the Fire Sprinklers installed, Plaintiffs and the Class were unaware of the false and misleading nature of these misrepresentations, and reasonably believed them to be true.

98. In making these representations, Defendants knew they were false and misleading and intended that the Plaintiffs and Class members would rely upon such misrepresentations and omissions.

99. Plaintiffs and Class members did in fact rely upon Defendants' misrepresentations concerning the non-defective nature of the Fire Sprinklers.

100. As a direct and proximate result of Defendants' deceptive, fraudulent, and unfair practices, Plaintiffs and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

101. Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendants for damages and declaratory relief.

**COUNT VI**  
**NEGLIGENT MISREPRESENTATION**  
**(On Behalf of the Nationwide Class, or Alternatively, the State Sub-Classes)**

102. Plaintiffs and the Class incorporate by reference the preceding and subsequent paragraphs as if fully set forth herein.

103. Under the circumstances alleged, Defendants owed a duty to Plaintiffs and the Class to provide them with non-defective Fire Sprinklers.

104. Defendants represented to Plaintiffs and Class members that by purchasing homes containing the Fire Sprinklers and/or having the Fire Sprinklers installed in their homes, they would be enjoying non-defective fire sprinklers, which is not what they actually received.

105. Defendants' representations, as described herein, were false, negligent and material.

106. Defendants negligently made these misrepresentations with the understanding that Plaintiffs and Class members would rely upon them.

107. Plaintiffs and Class members did in fact reasonably rely upon these misrepresentations and concealments by Defendants.

108. As a direct and proximate result of Defendants' negligent actions, Plaintiffs and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

109. Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Defendants for damages and declaratory relief.

#### **COUNT VII**

#### **UNJUST ENRICHMENT**

**(On Behalf of the Nationwide Class, or Alternatively, the State Sub-Classes)**

110. Plaintiffs and the Class incorporate by reference the preceding and subsequent paragraphs as if fully set forth herein.

111. Plaintiffs and members of the Class conferred a benefit on Defendants by purchasing homes containing the Fire Sprinklers and/or having the Fire Sprinklers installed in their homes.

112. Defendants had knowledge that this benefit was conferred upon them.

113. Defendants have been unjustly enriched at the expense of Plaintiffs and the Class, and their retention of this benefit under the circumstances would be inequitable.

114. Plaintiffs seek an order requiring Defendants to make restitution to them and the other members of the Class.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of the Class defined above, respectfully requests that the Court:

- A. Certify this action as a class action under Rule 23 of the Federal Rules of Civil Procedure, appoint Plaintiffs as Class Representatives, and appoint the undersigned counsel as class counsel;
- B. Award Plaintiffs and Class members compensatory, restitutionary, rescissory, general, consequential, punitive and/or exemplary damages in an amount to be determined at trial;
- C. Award pre-judgment interest as permitted by law;
- D. Enter appropriate equitable relief;
- E. Award reasonable attorneys' fees and costs, as provided for by law; and
- F. Grant such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all issues so triable.

DATED this 31st day of July, 2018.

Respectfully submitted,

/s/ James P. Ulwick

James P. Ulwick (Fed. Bar. No. 00536)

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