



3. Summer Infant, is engaged in the design, manufacture, distribution and sale of various products for ultimate use by the general public, including video baby monitors used by parents to see and hear their babies while moving around their residence.

4. Defendant Toys “R” Us (d/b/a Babies “R” Us) (hereinafter “TRU”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Passaic County, New Jersey.

5. This Court has subject matter jurisdiction over this class action pursuant to 735 ILCS 5/2-801.

6. This Court also has personal jurisdiction over Defendants pursuant to 735 ILCS 5/2-209 because they are authorized to do business and in fact, do business in this state, and Defendants have sufficient minimum contacts with this state and otherwise intentionally avail themselves to consumers in this state through the promotion, marketing, and sale of its products in this state, such that the exercise of jurisdiction by this Court is permissible under traditional notices of fair play and substantial justice.

7. Venue is proper in this Court because all Defendants are nonresidents of the State of Illinois and, thus, venue is proper in any county in the State of Illinois pursuant to 735 ILCS 2/101.

**Background Facts Common to All Parties**

8. Defendant TRU, is engaged in the sale of merchandise related to children and babies for ultimate use by the general public, including video baby monitors used by parents to

see and hear their babies who are in one room, often the baby's room, while they are elsewhere in their residence.

9. Parents and caregivers of infants have come to rely on the ability to monitor the safety and well-being of infants in their care through monitor devices. Since baby monitors have been on the market, first in a form that allowed parents to monitor only the sounds coming from the room, and more recently, allowing the visual display of the room with the base unit, monitors have been as much a staple for a nursery as diapers.

10. In general, both audio and visual monitors work in the same manner. A base unit is placed in the room where the baby is, typically the nursery, and the unit is switched to "on." The audio and/or the video is then received on the receiving unit, which is portable and often carried to the room in the house where the parents or caregivers will be.

11. Because the base unit must be turned on for the receiving unit to be able to receive the audio and/or video of the baby, for convenience, parents and caregivers often leave the base unit switched constantly on and turn the receiving unit off and on as needed.

12. Video monitors have become sufficiently popular that they are often included on "baby registries" created to facilitate gift giving for baby showers and newborn gifts. TRU allows its customers to create baby registries for products sold by the company.

13. The video monitor in question is called "Summer Day and Night Video Monitor" and retails at TRU for approximately \$99.99 ("Video Monitor").

14. Defendant Summer Infant sold, distributed and shipped to Defendant TRU a group of video baby monitors, including the Video Monitor that was purchased by Plaintiff and members of the Class.

15. Plaintiff and Plaintiffs Class members have purchased or will purchase Video Monitors from Defendant TRU that were designed, manufactured, distributed and introduced into commerce by Defendant Summer Infant.

16. The Video Monitor's box states it allows "you to monitor [your] baby from anywhere in the **home**" and "see and hear [your] baby **for peace of mind.**" (emphasis added).

**Background Facts Specific to Named Plaintiff's Claims**

17. In or around June 2008, Plaintiff purchased the Video Monitor from Defendant TRU at its store located at 481 E. Roosevelt Road, Lombard, Illinois. The Video Monitor was designed, manufactured, constructed, assembled, inspected, and sold by Defendant Summer Infant.

18. Prior to his purchase of the video monitor, Plaintiff reviewed Defendant TRU's website to learn about the video monitor. He also reviewed competing products' websites. Plaintiff decided to purchase the Video Monitor based on the reviews and product descriptions on Defendant TRU's website.

19. As soon as he purchased the Video Monitor, Plaintiff followed the directions for installing the Video Monitor and began to use it to monitor his newborn son's room. Because of the frequency of use, Plaintiff and his wife left the base unit in their son's room permanently switched to the "on" position. They monitored their son both with audio and visual via the

receiving unit. At all times that he was using the Video Monitor, Plaintiff believed that he and his family were safe and in the privacy of their own home.

20. Both Plaintiff and his wife would enter the baby's nursery at all hours of the day and night to care for their child. At all times, they believed they were in the privacy of their own home and, accordingly, were not concerned with their state of dress or their conversation. Plaintiff's wife breast-fed their infant son and would often feed him while in the baby's room.

21. Prior to using the product, Plaintiff reviewed the instructions inside the product's box. He did not notice any warnings in the instructions stating that the product would allow others outside of his home to view or hear the activities inside his home. Plaintiff recalls that the instructions stated that the product was "secure."

22. Plaintiff lives in a town-home complex but does not share any common walls with other homes. There is at least thirty (30) feet of separation between Plaintiff's home and his nearest neighbor's home.

23. Approximately six months after his purchase of the Video Monitor, Plaintiff ran into his next-door neighbor, who had recently had twin babies. His neighbor informed Plaintiff that the video and audio from Plaintiff's baby monitor was being received on the neighbor's own video monitor, which was the same brand as Plaintiff's. The neighbor informed Plaintiff that when his unit was on a particular channel, his baby's room was completely visible to the neighbor, and that he could hear all conversations that occurred within the room.

24. Incredulous that this could be the case, Plaintiff went home and switched the channel on his receiving unit, and was shocked that he was to be able to view and hear the nursery of his neighbor's twins.

25. Plaintiff and his wife were very concerned about this revelation and realized that the Video Monitor's audio transmitter is highly sensitive and that conversations from rooms outside of the room where the monitor was located could be picked up by receivers. For example, Plaintiff could hear conversations from a room two doors away from his child's room when he listened to the receiver in his garage.

26. As soon as he learned that the Video Monitor was allowing his neighbors and perhaps others to view his home, Plaintiff contacted Summer Infant's customer service department and told a Summer Infant Customer Service Representative that his neighbor's receiver could pick up the audio-visual feed from Plaintiff's video monitor. The customer service representative put Plaintiff on hold, presumably to speak to a supervisor, and then told Plaintiff that he should have known that there is no security when using the Video Monitor. He suggested that Plaintiff purchase the more expensive model, which he said was "more secure."

27. The customer service representative also stated that there was "nothing they could do" because (a) the product was not "malfunctioning," (b) the product was out-of-warranty, and (c) Plaintiff no longer had his receipt for the purchase. Plaintiff requested a refund so that he could at least apply the amount he already spent to the purchase of Summer Infant's more expensive product; Plaintiff's refund request was refused. The customer service representative took Plaintiff's name and said that someone would follow up with him -- no one ever did.

## **CLASS CERTIFICATION**

28. This action is brought as a class action under 735 ILCS 5/2-801 on behalf of all persons throughout the United States who purchased the baby monitors that were designed, manufactured, marketed, and distributed by Defendant Summer Infant and that were marketed and sold to consumers by Defendant TRU, from the first offering for sale of the concerned product to the present (“Class”).

29. The number of members in the Class is so numerous as to make it impractical to bring all Class members before the Court. The identity and exact number of Class members is unknown but can likely be determined from information within the possession of Defendants. It is estimated to be in the hundreds of thousands.

30. Plaintiff’s claims are typical of those of other Class members, all of whom have suffered harm due to Defendants’ course of conduct.

31. There are numerous and substantial questions of law and fact common to all members of the Class which control this litigation and predominate over any individual issues pursuant to 735 ILCS 5/2-801(2). These common issues include, but are not limited to:

- a. Defendants intentionally and deceptively chose not to place warnings on the Video Monitors’ packages warning consumers about the fact that the video and audio signals transmitted by the baby monitors in question could be viewed by others outside of the home, thereby intentionally depriving consumers, including Plaintiff and members of the Class, the opportunity to make an informed decision to purchase or not purchase the Video Monitors;

- b. Defendants designed, manufactured, distributed, marketed and/or sold the Video Monitors knowing that the video and audio signals transmitted could be viewed by others outside of the home, rendering the consumers and their families unsafe, and were not fit for the ordinary purpose for which such goods were intended to be used because Plaintiff and Plaintiffs Class members cannot securely monitor their children without the audio-visual transmission being available to others outside the home with a similar device;
- c. Defendants designed, manufactured, distributed, marketed and/or sold the concerned baby monitors knowing that the products could not safely be used for their ordinary and intended purpose, which was to monitor infants without exposing those infants and the homes of Plaintiff and members of the Class to the prying eyes and perhaps ill intentions of neighbors and strangers; and
- d. Defendants designed, manufactured, and/or distributed the concerned baby monitors such that the video and audio signals transmitted by the baby monitors were available to anyone with a similar device nearby even though there were reasonable and cost-effective means to limit the audio-visual transmission in accord with the intended purpose.

32. A class action is the appropriate method for the fair and efficient adjudication of this controversy for the following reasons:

- a. Without a class action, the Class will continue to suffer damage, families and children will be placed in danger, Defendants' violations of the law or

laws will continue without remedy, and Defendants will continue to enjoy the fruits and proceeds of its unlawful conduct;

- b. Given (i) the substantive complexity of this litigation; (ii) the size of the individual Plaintiff Class members' claims; and (iii) the limited resources of the Plaintiff Class members, few, if any, Plaintiff Class members could afford to seek legal redress individually for the wrongs Defendants have committed against them;
- c. This action will foster an orderly and expeditious administration of Plaintiff Class members' claims, economies of time, effort and expense, and uniformity of decision; and
- d. Inferences and presumptions of materiality and reliance are available to obtain class-wide determinations of those elements within Plaintiff Class members' claims, and are accepted methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendants' common liability, the Court can efficiently determine the claims of the individual Plaintiff Class members; and this action presents no difficulty that would impede the Court's management of it as a class action, and a class action is the best (if not the only) available means by which members of Plaintiff Class can seek legal redress for the harm caused by Defendants.

### **CLAIMS FOR RELIEF**

#### **Count I – Unfair and Deceptive Trade Practices (against all Defendants)**

33. Plaintiff incorporates by reference all allegations contained in Paragraphs 1 through 32 in this Complaint, as though fully set forth herein.

34. Defendants have violated the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/1, *et seq* and those other state consumers protection statutes that are in all material respects similar to it.

35. Section 2 of the ICFA, 815 ILCS 505/2, provides in pertinent part:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use of employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section, consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission. (footnotes omitted)

36. Section 10a of the ICFA , 815 ILCS 505/10A, provides in pertinent part:

(a) Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper . . .

\* \* \*

(b) Except as provided in subsections (f), (g), and (h) of this Section, in any action brought by a person under this Section, the Court may grant injunctive relief where appropriate and may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party.

37. Plaintiffs and other Plaintiffs Class members are "consumers" or "persons," as defined under the ICFA, 815 ILCS 505/1 *et seq.* and other states' similar Consumer Protection Laws.

38. Defendants' conduct, as alleged herein, occurred in the course of trade and commerce.

39. At all relevant times, Defendants were engaged in the design, manufacturing, assembling, distributing, conveying and/or selling of the Video Monitors in the ordinary course of business. Defendants designed, manufactured, assembled, conveyed and/or sold the units to consumers, knowing that they would be used in consumers' homes to transmit live images and sound of people, including babies, within the home.

40. Defendants were aware or should have been aware that the transmission from the device could be viewed by not only the intended viewer(s) but by anyone with a similar device within a certain radius that exceeds most homes.

41. Defendants knew or should have known that such broadcast placed the consumers and/or their families in potential danger and/or on display without their knowledge.

42. Defendants omitted this material fact in both their advertising and the instructions and warnings on and within the device's box.

43. Defendants omitted this material fact with the intent that Plaintiff and Plaintiffs Class members would rely on this misinformation and purchase the devices.

44. Had the Defendants not engaged in the deceptive conduct described above, Plaintiff and the members of the Class would not have purchased the Video Monitors and would not have been subject to the watchful eye of others within the privacy of their homes.

45. Defendants' material omissions to Plaintiff and the Class members constituted unfair and deceptive acts or practices in violation of the Consumer Fraud and Deceptive Business Practices Act of the State of Illinois, the State of residence of the Plaintiff. Plaintiff would not

have purchased the Video Monitor if he saw anything on the products' outer packaging that noted that purchase of the product would allow strangers to view and hear his family.

46. Plaintiff and the Class members were injured by the cumulative and indivisible nature of Defendants' conduct. The purpose of that conduct, directed at consumers, was to create demand for and to sell the Video Monitors. Each aspect of Defendants' conduct combined to artificially create sales of the Video Monitors. The Video Monitors were overpriced because they did not meet consumers' demand to have a product that would allow only them to securely monitor their children in the confines of their home. Plaintiff and the Class members would not have purchased the Video Monitors at any price and certainly not at the price charged if they knew that the Video Monitors would broadcast their private conversations and conduct outside of the secure confines of their homes.

47. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the Class members incurred and will likely continue to incur emotional distress as a result of being watched within their homes by third parties, or simply knowing that they may have been watched by others.

**Count II – Breach of Implied Warranty Pursuant to  
the Magnuson-Moss Warranty Act (against all Defendants)**

48. Plaintiff realleges Paragraphs 1 through 47 as if fully set forth herein.

49. The Magnuson Moss Warranty Act allows for a civil action by consumers for failure to comply with implied warranties arising under state law. *See* 15 U.S.C. § 2310 (d)(1).

50. The Magnuson Moss Warranty Act confers jurisdiction in this Court for the enforcement of state law breach of implied warranty claims. *See* 15 U.S.C. §§2301(7) and 2310(d)(1)(A).

51. Plaintiff, through his counsel, notified Defendants of their breach of implied warranties under state law and the Magnuson Moss Act, 15 U.S.C. §2310(e), and demanded relief for the breach. (See notice and demand letters attached as Exhibit A). Defendants responded and refused to rectify their breach. (See letter attached as Exhibit B).

52. Defendants, in the manufacture, production, marketing and sale of the concerned baby monitors impliedly warranted to Plaintiff and other members of the Class that the concerned baby monitors were fit for their ordinary purpose, which was the monitoring of infants exclusively by their parents or caregivers in a secure manner, and not by others outside the home with similar devices.

53. Defendants breached the implied warranty of merchantability under Illinois and other states' laws by selling the baby monitors that cannot securely be used for their ordinary purpose, because the video and audio transmitted by the baby monitors can be viewed and heard by any member of the public in a radius that exceeds most normal homes with a similar device.

54. Defendants' baby monitors were in fact unmerchantable because they could not be used for their ordinary and intended purpose.

55. Defendants knew or should have known that the concerned baby monitors did not meet the capabilities as represented and marketed.

56. Plaintiffs and members of the Class have been and will be damaged, and have suffered and will suffer direct economic damage, including the cost of the concerned baby monitors.

57. By reason of the foregoing, Defendants are liable to Plaintiff and Plaintiff Class members in an amount to be proven at trial.

**Count III- Unjust Enrichment (against all Defendants)**

58. Plaintiff realleges Paragraphs 1 through 57 as if fully set forth herein, and alleges this Count in the alternative.

59. Defendants received money from Plaintiff and other Plaintiff Class members from the purchase of the Video Monitors which are excessive and unreasonable as a result of Defendants' deceptive conduct. The concerned baby monitors that Defendants designed, manufactured, distributed, marketed, and sold were unsafe and unfit for their intended purpose and therefore, worthless to those who purchased the units. In addition, they placed all Class members and their families at risk of being unwittingly viewed by strangers in a place where they otherwise felt secure.

60. As a result, Plaintiff and other members of the Class have conferred a benefit on Defendants, Defendants are aware of this benefit and have voluntarily accepted and retained the benefit conferred on them.

61. Defendants will be unjustly enriched if they are allowed to retain such funds, and each Class member is entitled to an amount equal to the amount by which each Class member enriched Defendants and for which Defendants have been unjustly enriched.

62. By reason of the foregoing, Defendants are liable to Plaintiff and members of the Class the amount by which each Class member enriched Defendant..

**Count IV – Negligence (as Individual Claim against All Defendants)**

63. Plaintiff realleges Paragraphs 1 through 62as if fully set forth herein.

64. Defendant Summer Infant, by and through its agents and servants, carelessly and negligently:

- a. Manufactured the Video Monitor for sale to consumers; and
- b. Failed to give adequate warnings about the dangers associated with the use of the product.

65. At the time of purchase, Defendant TRU, individually and by and through its agents and servants, carelessly and negligently:

- a. Sold and distributed the Video Monitor; and
- b. Failed to give adequate warning as to the dangers of the Video Monitor.

66. As a direct and proximate result of one or more of the foregoing wrongful acts of the Defendants, and each of them, individually, jointly, jointly and in combination with one another, Plaintiff and his family and their actions within the confined of their home were unwittingly broadcast to others outside their home without their knowledge or consent.

67. As a further direct and proximate result of the negligence and carelessness of Defendants as described above, Plaintiff has been harmed in the following ways:

- a. the privacy of Plaintiff's home was invaded;
- b. Plaintiff's emotional well-being was damaged when he learned that he and his family had been watched within their home without their knowledge or consent and in a place where they had the utmost expectation of privacy; and
- c. Plaintiff's solitude, seclusion and private affairs were interfered with.

68. By reason of the foregoing, Defendants are liable to Plaintiff in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and other Plaintiffs Class members request that the Court enter an order of judgment against Defendants, including the following:

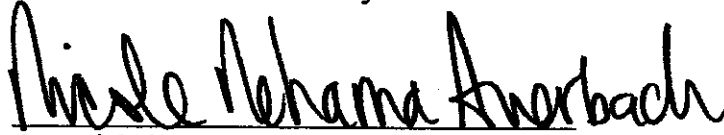
- a. Certification of the action as a Class Action pursuant to 735 ILCS 5/2-801 and appointment of Plaintiff as Class Representative and Plaintiff's counsel of record as Class Counsel;
- b. Awarding damages in the amount of monies paid for the concerned baby monitors or the differential between the price paid and the reduced value due to the Video Monitors' unsafe and unfit condition;
- c. Awarding actual damages, statutory damages, punitive or treble damages, and such other relief as provided by the statutes cited herein;
- d. Awarding pre-judgment and post-judgment interest on such monetary relief;
- e. Granting injunctive relief enjoining Defendants from distributing, selling and/or manufacturing the concerned baby monitors without adequate warnings;
- f. Awarding the costs of bringing this suit, including reasonable attorneys' fees; and
- g. Awarding all other relief to which Plaintiffs and members of Plaintiffs Class may be entitled at law or in equity.

**DEMAND FOR JURY TRIAL**

Plaintiffs requests a jury trial on any and all counts for which trial by jury is permitted by law.

October 30, 2009

Wes Denkov, [other named plaintiffs], individually and on behalf of a class of similarly situated individuals



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