

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA**

CASE NO. \_\_\_\_\_

DEBORA DE SOUZA CORREA TALUTTO and  
KARYN ALY, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

EVENFLO CO., INC.,

Defendant.

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**CLASS ACTION**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiffs Debora de Souza Correa Talutto and Karyn Aly file this class action complaint on behalf of themselves and all others similarly situated against Defendant Evenflo Company, Inc. (“Evenflo”), and allege as follows:

**I. INTRODUCTION**

1. Evenflo has sold its Big Kid child booster seat (the “Big Kid”) to American consumers for almost twenty years. Evenflo advertises the Big Kid as safe, reliable, and “side-impact tested,” and touts its high quality-assurance standards for every Evenflo product. Evenflo’s website assures consumers that the company takes every precaution when it comes to safety:

**OUR PROMISE ON SAFETY**

To us, it just doesn't get much more important than delivering products that help keep your little ones safe. We're parents just like you are so we build products that we would trust and use for our own children. That’s why we rigorously test all of our products again and again. Every bounce, twist, turn and latch is tested to make sure our products are safe, durable and comfortable.

Evenflo tests all of our car seats to energy levels approximately twice that of the federal crash test standard. Additionally, our engineers developed the Evenflo Side

Impact test protocol, which simulates the energy in severe 5-star government side impact tests conducted for automobiles.

2. According to a recent investigation conducted by ProPublica,<sup>1</sup> Evenflo conducted side-impact testing on the Big Kid dozens of times between 2008 and 2012, using crash test dummies modeled to the weight and height of an average three-, six-, and ten-year old child. In every instance, Evenflo's tests demonstrated that the Big Kid is *not* safe for children in the event of a side-impact or "T-bone" collision. In fact, when the Big Kid was subjected to the force of such a collision, the dummies were thrown far out of their shoulder belts. The dummies' heads and torsos moved violently in the direction of the force at high velocity, and their torsos struck the seats' armrests at high velocity and flexed over the armrests. Screenshots from videos of these side-impact crash test illustrate these results:



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<sup>1</sup> See Porat, Daniella and Callahan, Patricia, *Evenflo, Maker of the "Big Kid" Booster Seat, Put Profits over Child Safety*, PROPUBLICA, Feb. 6, 2020, available at <https://www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-put-profits-over-child-safety> ("ProPublica Article") (last visited Mar. 2, 2020).

3. Evenflo's top booster seat engineer has admitted under oath that if real children were subjected to such an impact and moved in a similar way, they could suffer severe head, neck, and spinal injuries or die.

4. Quality assurance technicians who observed the tests for Evenflo were asked only to report whether the seats exhibited "dummy retention"—they were asked, that is, only whether the dummy was entirely ejected from the seat. If it was not, regardless of how the dummy reacted to the force exerted upon impact, the technician would check "yes," to confirm that the seat had retained the dummy, and his or her report would be sent to Evenflo engineers for approval. One technician testified in a deposition that in his thirteen years at the company, he had never observed a side-impact test that the company had deemed a failure.

5. Remarkably, when confronted in a deposition with the company's misleading representations that the Big Kid was "side impact tested," an Evenflo engineer responded as follows: "We side-impact test our seats, . . . but I don't think we say that we offer any type of side-impact protection."<sup>2</sup> Of course, anyone purchasing a Big Kid would take comfort from the representation that the Big Kid was "side-impact tested"; no reasonable person would assume that Evenflo was promoting the fact that the seats were tested for side-impact collisions, but failed to protect the seat's occupant in every instance.

6. Evenflo's misleading promotion of the Big Kid as safe and reliable has had real-life consequences. The Big Kid has failed to protect numerous children involved in side-impact collisions, leading to traumatic brain injuries, "internal decapitation," paralysis, and in some cases,

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

death. Evenflo is aware of these cases, but continues to promote the Big Kid as “safe” and “side-impact tested.”

7. Evenflo is also aware that there are safer alternatives to the Big Kid. Evenflo manufactures and sells a booster seat called the “SecureKid.” The SecureKid has internal harnesses that secure the occupant to the seat, which can be used for children up to four-feet-two inches tall and weighing up to 65 pounds. In side-impact crash testing conducted by Evenflo, unlike the Big Kid, the SecureKid secured the child test dummies entirely within the confines of the seat. The SecureKid, that is, actually passed Evenflo’s internal side-impact crash test.

8. The Evenflo Big Kid is not fit for its intended purpose. Parents and their caregivers purchase child car seats to protect their children in the event of an accident—safety is their primary, if not only, concern. No parent would purchase a Big Kid knowing that their children remained at risk of grievous physical harm even though they were strapped into their booster seats. The Big Kid booster seat is effectively worthless.

9. Plaintiffs seek to represent a class of consumers who purchased the Big Kid booster but were deprived of the benefit of their bargain as a result of Evenflo’s deceptive practices. There are no material differences among the Big Kid booster seats sold to Plaintiffs and those sold to the putative class members.

## II. PARTIES, JURISDICTION, AND VENUE

### Plaintiffs

#### *Debora De Souza Correa Talutto*

10. Plaintiff Debora de Souza Correa Talutto is a Florida citizen residing in Lake Mary, Florida 32746. She is a natural person over the age of twenty-one, and otherwise *sui juris*.

11. Ms. Talutto owns two Evenflo Big Kid AMP High Back Booster Seats, which she purchased for her son and daughter through Amazon on April 30, 2018. When Ms. Talutto purchased her Big Kids, her son weighed less than 40 pounds, and her daughter weighed between 40 and 50 pounds.

12. Promotional statements on Amazon, the Evenflo website, the boxes containing the Big Kids, Evenflo's product manuals, and the booster seats themselves, represented that the Big Kids Ms. Talutto purchased were suitable for children weighing 30 to 110 pounds and were "side-impact" tested. Ms. Talutto relied on these representations in choosing the Evenflo Big Kid.

13. Ms. Talutto stopped using the Big Kids in February 2020, when she learned of the risks posed by Evenflo's Big Kid.

14. Ms. Talutto purchased the Big Kids, and paid a premium price, because she trusted Evenflo to provide a high-quality and safe booster seat. Before purchasing the Big Kids, Ms. Talutto was aware of, reviewed, or heard Evenflo's warranties and advertisements publicizing the Big Kid's safety, reliability, and weight representations. These materials and advertisements did not disclose either the results of Evenflo's side-impact testing or that the Big Kid was not, in fact, fit for everyday use. The value of Ms. Talutto's Big Kids has been diminished as a result of Evenflo's deceptive conduct, and the risks posed by the Big Kid. Had Ms. Talutto known of these risks, she would not have purchased the Evenflo Big Kids.

***Karyn Aly***

15. Plaintiff Karyn Aly is a Florida citizen residing in Orlando, Florida 32746. She is a natural person over the age of twenty-one, and otherwise *sui juris*.

16. Ms. Aly owns an Evenflo Big Kid AMP High Back Booster Seat, which she purchased for her daughter on Amazon on August 12, 2018. When Ms. Aly purchased her Big Kid, her daughter weighed approximately 40 pounds.

17. Promotional statements on Amazon, the Evenflo website, the boxes containing the Big Kids, Evenflo's product manuals, and the booster seats themselves, represented that the Big Kids Ms. Aly purchased were suitable for children weighing 30 to 110 pounds and were "side-impact" tested. Ms. Aly relied on these representations in choosing the Evenflo Big Kid

18. Ms. Aly stopped using the Big Kid in February 2020, when she learned the risks posed by Evenflo's Big Kid.

19. Ms. Aly purchased the Big Kid, and paid a premium price, because she trusted Evenflo to provide a high-quality and safe booster seat. Before purchasing the Big Kid, Ms. Aly was aware of, reviewed, or heard Evenflo's warranties and advertisements publicizing the Big Kid's safety and reliability. These materials and advertisements did not disclose either the results of Evenflo's side-impact testing or that the Big Kid was not, in fact, fit for everyday use. The value of Ms. Aly's booster seat has been diminished as a result of Evenflo's deceptive conduct, and the risks posed by the Big Kid. Had Ms. Aly known of these risks, she would not have purchased the Evenflo Big Kid.

**All Plaintiffs and Class Members**

20. None of the advertisements reviewed or representations received by Plaintiffs or Class members included any mention or disclosure of the safety risks associated with Evenflo's Big Kid booster seats. Had Evenflo disclosed these risks, Plaintiffs and Class members would have not purchased the Big Kid booster seat.

21. Plaintiffs and Class members used the Big Kid booster seat in a reasonably foreseeable manner and as the seat was intended to be used. Plaintiffs and the Class members have suffered an ascertainable loss as a result of Defendant's unfair and deceptive conduct, breach of common law and statutory duties, and omissions and misrepresentations related to the Big Kid booster seat and its associated safety hazard, including but not limited to, out-of-pocket losses.

22. Neither Evenflo nor any of its agents, vendors, or other representatives informed Plaintiffs and Class members of the safety risks associated with the Big Kid booster seat prior to Plaintiffs' and Class members' purchases of the seat.

23. There are no material differences between Plaintiffs' facts and those of the putative Class members. Each Plaintiff and putative Class member owns an Evenflo Big Kid booster seat. Each Plaintiff and putative Class member was similarly damaged by Evenflo because they did not receive the benefit of their bargain, as the Big Kid booster seats are worthless. Evenflo possessed superior and exclusive knowledge of serious risks associated with using the Big Kid booster seat and knew or recklessly disregarded the fact that the seats were unsafe but concealed this knowledge from the public, Plaintiffs, and the putative Class members, and instead marketed the Big Kid booster seat as safe, reliable, and side-impact tested.

24. Each Plaintiff and putative Class member was deprived of having a safe and defect-free booster seat and Defendant has been, and is being, unjustly enriched from their unconscionable delay in replacing the booster seats and/or issuing a recall (and thereby saving the cost of a recall) on the Big Kid booster seats.

**Defendant**

*Evenflo*

25. Defendant Evenflo is a corporation doing business in every state and the District of Columbia and is organized under Delaware law with its principal place of business in Canton, Massachusetts.

26. At all relevant times, Evenflo, directly or through its agents, manufactured, distributed, warranted, and sold the Big Kid booster seat throughout the United States and in this District. Further, Evenflo, directly or through its agents, marketed and promoted the sale of the Evenflo Big Kid booster seat throughout the United States and in this District.

27. Evenflo crash tested and approved the defective Big Kid booster seat, and despite negative results, publicized and marketed the Big Kid booster seat as “safety tested” and reliable. Evenflo sold the Big Kid booster seat in all fifty states, including Florida.

**Jurisdiction and Venue**

28. This Court has original jurisdiction over this class action pursuant to the Class Action Fairness Act (“CAFA”) and 28 U.S.C. § 1332(d) because members of the proposed Class are citizens of states other than Evenflo’s home state of Massachusetts, and upon information and belief the total amount in controversy in this action exceeds \$5,000,000 exclusive of interest and costs.

29. This Court has personal jurisdiction over Evenflo pursuant to the Florida long-arm statute because Evenflo, directly or through an agent, conducts substantial business here; committed tortious acts here; caused injury to persons in Florida arising out of representations and omissions made outside of Florida, while, at or around the time of these injuries, products manufactured by Evenflo were used in Florida in the ordinary use of commerce, trade, or use; and



Evenflo, directly or through an agent, derived substantial revenue from their activities within this state.

30. Plaintiffs' claims arise out of Evenflo's contacts with Florida, and Evenflo has purposefully availed itself of conducting significant activities in Florida.

31. Venue is proper in this forum pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred here, and Evenflo is subject to the Court's personal jurisdiction with respect to this action.

32. All conditions precedent to this action have occurred, been performed, or have been waived.

### **III. FACTUAL ALLEGATIONS**

#### **Background**

33. In the early 2000s, recognizing that seat belts did not effectively restrain young children in the event of an accident, many states began requiring that parents use car seats for infants and babies and "boosters" for older children. Infant car seats attach to metal hooks behind the back seat of the vehicle, and secure young children to the seat with a "5-point" harness, which consists of straps and buckles that attach to the car seat in five places: one at each shoulder, one at each of the baby's hips, and one where the harness buckles between the baby's legs. These harnesses secure a child's body so that he or she is less likely to be ejected in the event of a collision, and disperse the crash force over a wider area. Booster seats, by comparison, position children several inches above the car's natural seat, and in many, but not all, cases require parents to use the car's seat belt to secure the seat's occupant.

34. In order to protect children in the event of a crash, an adult seat belt must support the strongest parts of the child's body—the child must be tall enough that the belt crosses and

secures the middle of the child's shoulder and his or her upper thighs. And even where young children are of sufficient height, they must remain still enough independently such that the belt remains in place.

35. Evenflo developed the Big Kid in the early 2000s in an attempt to gain a foothold in the booster seat market, which was then controlled by its competitor, Graco. Evenflo developed the Big Kid with the goal of "regaining control in the market" from Graco. Accordingly, Evenflo priced the Big Kid to sell for about \$10 less than Graco's TurboBooster seat. Both the Big Kid and the TurboBooster rely on the car's seat belt to secure the seat's occupant.

36. Evenflo focused on mothers as the primary purchasers of the Big Kid, and determined that mothers did little research on booster seats. According to Evenflo's business plan for the Big Kid, "[b]ecause all seats have to meet federal safety standards, most moms feel that all seats have relatively the same level of safety. Consequently, price and aesthetics drive the purchase." Evenflo set the initial price for the Big Kid at \$39.99 to \$49.99, anticipating that the Big Kid's annual sales could reach \$11.4 million by its third year on the market. By 2008, the Big Kid had become the "reliable workhorse" of revenue and profit generation in Evenflo's line of "child restraint systems."

37. Although Evenflo was correct that children's car seats are required to meet certain federal safety standards, there is an important loophole in those standards. Nearly twenty years ago, Congress enacted a law requiring the National Highway Traffic Safety Administration ("NHTSA") to implement rules to improve the safety of car seats and to minimize the risk of head injury from a side-impact collision. However, regulators never enacted standards for side-impact crash tests for boosters or other car seats. To date, federal regulations only require car seats and

boosters to pass a crash test that simulates a head-on collision. Car seat manufacturers, as a result, have been left to design their own side-impact tests.<sup>3</sup>

38. Despite the Big Kid's early success, the TurboBooster was still outselling the Big Kid in 2008. Evenflo believed that this was due to the Big Kid's "on-shelf" perception relative to that of the TurboBooster, which appeared from its design to offer more side support. Evenflo had also conducted focus groups and determined that consumers were concerned with side-impact protection and believed that conspicuous "side wings"—curved extensions that protrude from the backrest of the seat—would better protect and restrain children in the event of a side-impact collision. It also learned that most caregivers believed that higher armrests made backless boosters "seem more secure and safe."

39. In 2008, both to make its seat look more like Graco's and to satisfy consumers' perceptions, Evenflo's marketing department, backed by the CEO, instructed the company's engineers to redesign the Big Kid's "side wings" to be more conspicuous. In an internal document, Evenflo described the benefit of this design change as "increased *perceived* side protection."

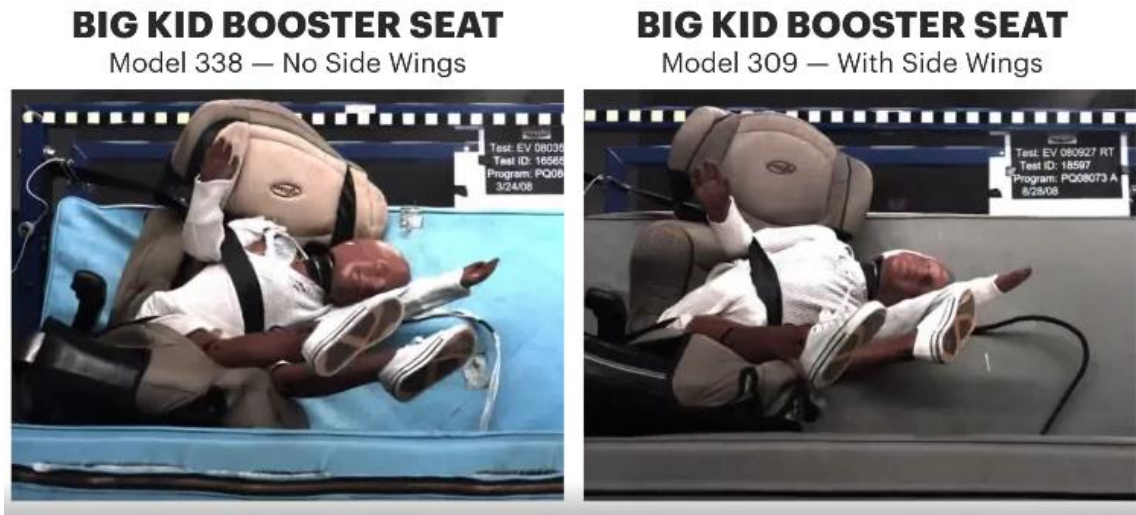
40. In accordance with these instructions, Evenflo's engineers moved the Big Kid's side wings closer to the head of the Big Kid's backrest, making them more conspicuous. They also made the new wing look and feel more solid. Evenflo knew, however, that the newly designed side wings did nothing to protect children in the event of a side-impact collision.

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<sup>3</sup> This is so despite the fact that side-impact collisions account for more than 25% of the deaths of children under 15 in vehicle collisions. Though head-on collisions are more prevalent, side-impact collisions tend to result in more serious harm, including spinal cord injuries, traumatic brain injuries, and "internal decapitation," or ligamentous separation of the spinal column from the skull base.

41. Evenflo’s engineers also redesigned the Big Kid’s armrests to make them higher, and to send consumers the message that their children would be “more secure and safe.”

42. Shortly after the redesign, in early 2008, Evenflo confirmed with its own internal testing that the new side wings did nothing to increase side-impact protection. Between 2008 and 2012, Evenflo conducted dozens of side-impact tests on the Big Kid using three-, six-, and ten-year old child crash test dummies. Every one of these tests demonstrated unequivocally that the Big Kid booster is *not* safe for children in the event of a side-impact collision. These tests showed that when three-, six-, and ten-year old child-sized crash test dummies were subjected to the forces of a side-impact or “T-bone” collision, the dummies were thrown far out of their shoulder belts. The dummies’ heads and torsos moved violently in the direction of the force at high velocity, and their torsos struck the seats’ armrests at high velocity and flexed over the heightened armrests. Screenshots from videos of these side-impact crash test illustrate these results:



43. After each test, a technician completed a form that asked whether the test showed “dummy retention,” and instructed the technician to answer by checking either “yes” or “no.” A “yes” meant only that the crash test dummy had not been ejected from the seat; it did not reflect

whether the dummy remained “safe” and secure within the confines of the seat. An Evenflo senior test technician testified in a 2019 deposition that all of the following images reflect “dummy retention,” and passed Evenflo’s internal testing:





44. The same technician also testified that in thirteen years at Evenflo, he had never performed a side-impact test on a booster seat that Evenflo had deemed a failure. In addition, Evenflo's top booster seat engineer has admitted under oath that if real children were subjected to such an impact and moved in a similar way, they could suffer severe head, neck, or spinal injuries or death.

45. In August 2010, after two years of testing the Big Kid booster seat, Evenflo told some of its customers—*but not those using or considering purchasing the Big Kid*—that they should not consider using a booster seat unless “the child is approaching the weight and height limit of the child restraint they are currently using.” At the same time, Evenflo advertised the Big Kid booster seat as safe for children over thirty pounds.

46. In March 2011, the American Academy of Pediatrics (the “AAP”) updated its recommendations on car seat safety. The new recommendations advised parents to keep their children in forward-facing car seats with harnesses for as long as possible before moving them to booster seats, up to the highest weight or height allowed by the manufacturer of the seat. “It is important to note that every transition is associated with some decrease in protection; therefore, parents should be encouraged to delay these transitions for as long as possible.” When the report was released, the maximum weight supported by many harnessed seats had reached 65 to 80 pounds. And since the early 2000s, the AAP had also advised that children who weigh 40 pounds or less were best protected in a seat with its own internal harness.

47. Evenflo was aware of these recommendations, but took no action to change its labeling, marketing materials, or product manuals. Until recently, in fact, Evenflo continued to advertise the Big Kid booster seat in the United States as suitable for children who weigh at least 30 pounds or three years old. In Canada, however, where, by regulation, booster seats can only be sold for children 40 pounds and up, Evenflo warned parents that a child weighing less than 40 pounds risked “SERIOUS INJURY OR DEATH” using the same model Big Kid.

48. In February 2012, Eric Dahle, Evenflo’s head engineer for the booster seats, urged his colleagues to increase the minimum weight for the Big Kid to 40 pounds and the minimum age to four years old. In a PowerPoint presentation, Dahle wrote that there is an “increased risk of

injury” for children between ages three and four riding in booster seats rather than seats with harnesses because these children were immature and often did not sit in their seats properly. “Keeping the seat at 30 lbs encourages parents to transition [children] earlier because they can, and the booster is a less expensive option.” He recommended that Evenflo should discourage early transitions, and advised that a harness seat “is a better option. We should encourage that behavior by modifying the weight rating to 40 lbs.”

49. In a meeting days later, a senior marketing director at Evenflo, McKay Featherstone, rejected Dahle’s recommendations. In what Dahle described in his deposition as a “corporate decision,” the company raised the minimum age to four, but left the weight recommendation at 30 pounds.

50. At the same time Evenflo was conducting the side-impact tests described above, it was also conducting side-impact tests with three- and six-year old crash test dummies in booster seats equipped with five-point harness restraints. Evenflo manufactures a harnessed booster seat for children weighing up to 65 pounds: the Evenflo SecureKid. Evenflo’s side-impact testing on the SecureKid showed that upon impact, the head and torso of a child dummy remained entirely within the confines of the harnessed seat. Screenshots from the moment of impact in a Big Kid (left) and a SecureKid (right) appear below:



### **EVENFLO SECUREKID**

Harnessed Seat



### **EVENFLO BIG KID**

Belt-Positioning Booster Seat



51. As recently as this year, Evenflo was still shipping Big Kid booster seats advertising a 30-pound weight minimum to distributors and individual customers who ordered the Big Kid.

#### **Evenflo Markets the Big Kid as a “Safety-Tested” Child Restraint System and Conceals Known Safety Risks Despite a Duty to Disclose**

52. Evenflo emphasizes safety in its advertising and promotion of the Evenflo Big Kid. Evenflo ships the Big Kid in boxes that display the slogans “Safety Is Our #1 Priority” and “Safety. So Simple!™”. The boxes holding the Big Kid claim that the seat has been “Rollover Tested” and “Safety Tested,” and both the box and the seat itself are labelled “SIDE-IMPACT TESTED.”

53. Evenflo advertises the Big Kid as side-impact tested on its website. Under “safety” on the web page advertising the Big Kid, Evenflo represents as follows, in pertinent part:

#### **SAFETY TESTING**

At Evenflo, we continue to go above and beyond government standards to provide car seats that are tested at 2X the Federal Crash Test Standard.

- Side Impact Tested: Meets or exceeds all applicable federal safety standards and Evenflo’s side impact standards.

54. Evenflo's website further assures consumers that the company takes every precaution when it comes to safety:

#### Our Promise On Safety

To us, it just doesn't get much more important than delivering products that help keep your little ones safe. We're parents just like you are so we build products that we would trust and use for our own children. That's why we rigorously test all of our products again and again. Every bounce, twist, turn and latch is tested to make sure our products are safe, durable and comfortable.

Evenflo tests all of our car seats to energy levels approximately twice that of the federal crash test standard. Additionally, our engineers developed the Evenflo Side Impact test protocol, which simulates the energy in severe 5-star government side impact tests conducted for automobiles.

55. A video on the same web page opens and closes with the statement: "Evenflo is dedicated to enriching the lives of children – their safety, their care, and their future." In the same video, an Evenflo quality assurance manager represents that "quality assistance is . . . the backbone of the company." Evenflo also touts their side-impact testing as a "rigorous test [that] simulates the government side-impact tests conducted for automobiles."<sup>4</sup>

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<sup>4</sup>Though the federal government does not impose standards for side-impact testing, it does have its own side-impact tests. One simulates a side-impact collision by having a 3,015-pound barrier moving at 38.5 miles per hour smash into a vehicle. Another involves a car pulled sideways a 20 miles per hour into a stationary pole. Evenflo's side-impact test are far less exacting—they are conducted on a bench resembling a vehicle's seat that moves at 20 miles per hour, and then suddenly decelerates. There is no barrier impact, nor is there a pole.

56. Elsewhere on its website, Evenflo represents:

EVERYTHING IN YOUR FAMILY’S LIFE IS AN OPPORTUNITY TO  
EXPLORE.

Evenflo helps you support that opportunity for exploration with products that care for your baby and keep them safe throughout their childhood years.

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A. Safety

Safety isn’t just a word to us, it’s in our DNA. For nearly 100 years Evenflo has been a leader in baby and juvenile products. We rigorously test all of our products, repeatedly. Every bounce, twist, turn and latch is tested to make sure our products are safe, durable, convenient and comfortable.

Our approach to safety testing has been to not just meet the requirement, but to go above and beyond. An example of this is the fact that Evenflo tests all car seats to energy levels approximately twice that of the federal crash test standard.

Additionally, our engineers developed the Evenflo Side Impact test protocol, which simulates the energy in severe 5-star government side impact tests conducted for automobiles. Now we are leading the industry by incorporating a dynamic rollover test.

57. Evenflo induces consumers to purchase the Big Kid with these assurances of child safety, knowing that they misrepresent the nature and outcomes of its side-impact testing. Additionally, for more than twelve years, Evenflo has actively and knowingly concealed what it knows about the Big Kid booster from consumers, and continues to deny the risks of using the Big Kid to this day.

58. Evenflo has known the safety risks associated with the Big Kid since it began side-impact crash testing in 2008. As demonstrated above, those tests demonstrated, without question, that the Evenflo Big kid does nothing to protect children as old as ten from even a moderate side-impact collision. See ¶¶ 2, 41–43, 49, *supra*.

59. The company has also reached confidential settlements with consumers whose children were severely injured or killed in side-impact collisions using the Evenflo Big Kid.<sup>5</sup> Additional personal injury lawsuits are now pending.<sup>6</sup>

60. Evenflo executives also ignored warnings from their own senior engineer, and recommendations by the AAP regarding the safety of the Big Kid booster for children below certain height and weight minimums. To this day, Evenflo continues to sell Big Kid boosters advertising a 30-pound weight minimum.

61. Despite these clear indicators of a serious safety issue, Evenflo continues to promote the Big Kid as a safe, “side-impact tested” alternative to harnessed seats for children over forty pounds. One Evenflo engineer even attempted to defend the company as follows: “We side-impact test our seats . . . but I don’t think we say that we offer any type of side-impact protection.” Evenflo knew that by labeling the Big Kid as “side-impact tested,” it was advertising to consumers that the seats would provide some protection in the event of a side-impact collision.

62. Had Evenflo disclosed the results of its internal testing, no consumer would have purchased the Big Kid booster seat. Instead, Evenflo concealed the results of those tests, and undertook to represent to consumers that the Big Kid had been “side-impact tested” and was “safe.”

**Evenflo’s Duty to Disclose**

63. Evenflo has actively concealed the safety risks associated with the Big Kid despite a clear duty to disclose. Evenflo had a duty to disclose the defect in the Big Kid booster because it is a safety-related defect which gives rise to an unreasonable risk.

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<sup>5</sup> See, e.g., ProPublica Article, n.1, *supra*.

<sup>6</sup> See, e.g., *Tucker v. Evenflo Co., Inc.*, No. 6:20-cv-00002 (M.D. Fla.).

64. Additionally, as a car and booster seat manufacturer, Evenflo has a duty to report all safety-related defects to NHTSA.<sup>7</sup>

65. Evenflo also had a duty to disclose the safety risks associated with the Big Kid because Evenflo possessed exclusive and superior knowledge of material facts regarding the side-impact testing of the Big Kid which were not reasonably discoverable to Plaintiffs or the Class.

66. Evenflo also had a duty to disclose the safety risks associated with the Big Kid because it took steps to actively conceal these risks defect from consumers, not only by continuing to represent to consumers that the Big Kid was safe and side-impact tested, knowing that the seats had proved dangerous in side-impact testing, but also because Evenflo knew as a result of its own testing that a 5-point harness better protected children up to 65 pounds.<sup>8</sup> These omitted and concealed facts were material because they directly impact the safety of the Big Kid, and render the product worthless, as no consumer would purchase a booster seat that failed to restrain his or her child.

67. Finally, Evenflo had a duty to disclose the defect because it undertook to represent to consumers that that the Big Kid was reliable and safe; label the seat as rollover and side-impact tested; and proclaim that Evenflo maintained the highest safety and quality-assurance standards.

**Plaintiffs and the Class Have Been Damaged**

68. As a result of Evenflo's conduct in manufacturing, promoting, and selling the Big Kid booster, and further in failing to disclose and actively and fraudulently concealing the safety

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<sup>7</sup> Motor Vehicles and Safety Defects: What Every Owner Should Know, available at <https://www-odi.nhtsa.dot.gov/recalls/recallprocess.cfm> (last visited on 2/8/2020).

<sup>8</sup> Almost all harnessed booster seats can accommodate children up to 65 pounds, and some accommodate children up to 85 pounds.

risks involved, Plaintiffs and proposed Class members were harmed and suffered actual damages. Given the considerable safety risks, the Evenflo Big Kid is a worthless product, which no consumer would purchase had Evenflo disclosed the associated risks.

69. Plaintiffs and the proposed Class members were deprived of the benefits of their bargains. The Evenflo Big Kid booster seats they purchased were of a lesser standard, grade, and quality than Evenflo represented, and Plaintiffs and the proposed Class members did not receive booster seats that met ordinary and reasonable consumer standards for safety and reliability. Plaintiffs and Class members paid more for their booster seats than they would have had Evenflo disclosed the known dangers associated with the seats, which have no value.

70. Evenflo has unjustly benefitted from putting a defective product on the market, and Plaintiffs and Class members were deprived of safe, defect-free car seats to protect their children.

71. Plaintiffs bring this action on behalf of themselves and the putative Class members to recover damages for their lost benefit of the bargain, equal to the price paid for their Evenflo Big Kids; and to obtain an injunction requiring Evenflo stop selling the Big Kid booster seat.

**Evenflo Breaches Express and Implied Warranties**

72. Evenflo sells Big Kid booster seats with express and implied warranties that assure buyers the seats are fit for a particular purpose and free from defects. The Big Kid violates the warranties.

73. Evenflo provides an express written warranty to each consumer who purchases a Big Kid. The warranty “warrants to the original end user . . . against defects in material or workmanship.” Evenflo, however, continues to deny and conceal that the Big Kid is defective.

74. Under the Uniform Commercial Code, a warranty that goods are merchantable is implied in all contracts for sale, so long as the seller is a merchant with respect to goods of that

kind. U.C.C. § 2-314 (1). To be “merchantable,” goods must be fit for the ordinary purposes for which they are used and must conform to the promise or affirmations of fact made on labels.

75. The Big Kid is unfit and unsafe for ordinary use at the moment of sale. Further, the Big Kid fails to conform to the promises of safety and side-impact-testing as described in Evenflo owners’ manuals, on its website, and on the Big Kid’s boxes and labels.

76. The Big Kid is an inferior alternative to harnessed booster seats like the SecureKid. While the Big Kid fails to secure its occupant in the event of a side-impact collision, Evenflo’s side-impact crash tests clearly demonstrate that harnessed seats like the SecureKid keep their occupants within the confines of the seat.

77. Because the Big Kid is not fit for the intended and ordinary purposes of a child restraint system, Evenflo has breached the its warranties of merchantability.

#### **IV. TOLLING OF THE STATUTE OF LIMITATIONS**

##### **Discovery Rule Tolling**

78. Within the time period of any applicable statutes of limitation, Plaintiffs and Class members could not have discovered, through the exercise of reasonable due diligence, the serious safety issues associated with the Big Kid booster seat.

79. Evenflo misrepresented the safety of the Big Kid and took steps to actively conceal the safety risks involved despite actual knowledge of and clear duties to disclose those risks. To this day, Evenflo continues to deny that there is any safety risk posed by the Big Kid booster, or any issue with Evenflo’s representations regarding side-impact testing, safety, and reliability.

80. For these reasons, all applicable statutes of limitations have been tolled by operation of the delayed discovery rule.

**Fraudulent Concealment Tolling**

81. All applicable statutes of limitation have also been tolled by Evenflo's knowing and active fraudulent concealment and denial of the safety risks associated with the Big Kid throughout the time period relevant to this action.

82. Evenflo is under a continuing duty to disclose the true character, quality, and nature of the Big Kid to the Plaintiffs and the Class members. Evenflo has never disclosed information about these safety risks or its side-impact testing, and instead, as discussed above, knowingly, affirmatively, or actively concealed the nature and very existence of these risks.

83. Plaintiffs and Class Members reasonably relied upon Evenflo's knowing, affirmative, or active concealment when they decided to purchase Bid Kid booster seats.

84. Because Evenflo actively concealed, and continues to actively conceal, the risks associated with the Big Kid, it is estopped from relying on any statutes of limitations defense.

**Estoppel**

85. Evenflo was, and is, under a continuous duty to disclose to Plaintiffs and Class members the true character, quality, and nature of risks posed by the Big Kid booster seat. Instead, it actively concealed these risks and knowingly made misrepresentations about the quality, reliability, safety characteristics, and performance of the Big Kid.

86. Plaintiffs and Class members reasonably relied upon Evenflo's knowing and affirmative misrepresentations and active concealment of material facts. Therefore, Evenflo is estopped from relying on any defense based on statutes of limitations in this action.



V. **CLASS ALLEGATIONS**

**Class Definitions**

87. Plaintiffs bring this class action on their own behalf, and on behalf of all persons similarly situated, pursuant to Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions. Plaintiffs seek to certify the following proposed nationwide class and state subclasses:

***The Nationwide Consumer Class***

All persons in the United States who have purchased one or more Evenflo Big Kid booster seats since January 1, 2008.

***The Florida Consumer Subclass***

Plaintiffs alleges statewide class action claims on behalf of:

All persons in the State of Florida who have purchased one or more Evenflo Big Kid booster seats since January 1, 2008.

88. Excluded from each class is Evenflo, its employees, officers, directors, legal representatives, heirs, successors, and wholly or partly owned subsidiaries or affiliated companies; Class Counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case. Also excluded are claims for any personal physical injuries associated with the Big Kid from side-impact collisions.

89. Plaintiffs reserve the right to modify, expand, or amend the definitions of the proposed classes following the discovery period and before the Court determines whether class certification is appropriate.

90. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

**Numerosity**

91. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). Evenflo is one of the leading manufacturers and sellers of child booster seats and has sold more than 18 million Big Kid booster seats, including many thousands in the State of Florida. Individual joinder of all Class members is impracticable.

92. The identity of Class members is ascertainable, as the identities of all Class members can be identified with receipts, warranty records, and sales records. Plaintiffs anticipate providing appropriate notice to each certified class in compliance with Fed. R. Civ. P. 23(c)(2)(A) and/or (B), to be approved by the Court after class certification, or pursuant to court order under Fed. R. Civ. P. 23(d).

**Commonality**

93. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(2) because there are questions of law and fact that are common to each of the classes. These common questions predominate over any questions affecting only individual Class members. The predominating common or Class-wide fact questions include, without limitation:

- a. Whether Evenflo's side-impact testing demonstrated the Big Kid booster seat to be safe and reliable;
- b. Whether Defendant knew that the Big Kid booster seat endangered children's safety and lives in the event of a side-impact collision;
- c. Whether there were commercially viable, safer alternatives to the Big Kid booster seat;

- d. Whether Evenflo knowingly failed to disclose the safety risks associated with the Big Kid and warn U.S. consumers about those risks;
- e. Whether the Big Kid booster seat has any value to consumers;
- f. Whether Evenflo's marketing of the Big Kid was likely to deceive or mislead consumers;
- g. Whether Defendant engaged in unfair, deceptive, unlawful and/or fraudulent acts or practices by failing to disclose that the Big Kid endangered children as old as ten in the event of a side-impact collision;
- h. Whether a reasonable consumer would likely be misled by Evenflo's conduct;
- i. Whether Evenflo's conduct as alleged in this action constitutes a breach of applicable warranties;
- j. Whether Plaintiffs and the Class members suffered damages as a result of their purchases of the Big Kid; and
- k. Whether damages, restitution, equitable, injunctive, declaratory, or other relief is warranted.

**Typicality**

94. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(3) because Plaintiffs' claims are typical of the claims of each of the Class members, as all Class members were and are similarly affected and their claims arise from the same wrongful conduct by Evenflo. Each Class member purchased a Big Kid booster seat and as a result has sustained, and will continue to sustain, damages in the same manner as Plaintiffs. The relief Plaintiffs seek in this action is typical of the relief sought for the absent Class members.

**Adequacy of Representation**

95. Plaintiffs will fairly and adequately protect the interests of the Class members. Plaintiffs are committed to the vigorous prosecution of this action and there is no hostility or

conflict between or among Plaintiffs and the unnamed Class members. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

96. To prosecute this case, Plaintiffs have chosen the undersigned law firms, who have substantial experience in the prosecution of large and complex class action litigation and have the financial resources to meet the costs associated with the vigorous prosecution of this type of litigation. Plaintiffs and their counsel will fairly and adequately protect the interest of all Class members.

**Superiority/Predominance**

97. This action satisfies the requirements of Fed. R. Civ. P. 23(b)(3). A class action is superior to other available methods for the fair and efficient adjudication of the rights of the Class members. The joinder of individual Class members is impracticable because of the vast number of Class members who have purchased the Big Kid.

98. Because the monetary damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual Class members to redress the wrongs done to each of them individually, such that most or all Class Members would have no rational economic interest in individually controlling the prosecution of specific actions. The burden imposed on the judicial system by individual litigation, and to Evenflo, by even a small fraction of the Class members, would be enormous.

99. In comparison to piecemeal litigation, class action litigation presents far fewer management difficulties, far better conserves the resources of both the judiciary and the parties, and far more effectively protects the rights of each Class member. The benefits to the legitimate interests of the parties, the court, and the public resulting from class action litigation substantially

outweigh the expenses, burdens, inconsistencies, economic infeasibility, and inefficiencies of individualized litigation. Class adjudication is simply superior to other alternatives under Fed. R. Civ. P. 23(b)(3)(D).

100. Plaintiffs are unaware of any obstacles likely to be encountered in the management of this action that would preclude its maintenance as a class action. Rule 23 provides the Court with the authority and flexibility to maximize the efficiencies and benefits of the class mechanism and reduce management challenges. The Court may, on motion of Plaintiffs or on its own determination, certify nationwide and statewide classes for claims sharing common legal questions; utilize the provisions of Fed. R. Civ. P. 23(c)(4) to certify particular claims, issues, or common questions of law or of fact for class-wide adjudication; certify and adjudicate bellwether class claims; and utilize Fed. R. Civ. P. 23(c)(5) to divide any Class into subclasses.

**Requirements of Fed. R. Civ. P. 23(b)(2)**

101. Evenflo has acted or failed to act in a manner generally applicable to the Class members in the Nationwide Class and the Florida subclass, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to either or all the classes.

**VI. CLAIMS FOR RELIEF**

**COUNT I  
VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT  
("FDUTPA"), Fla. Stat. § 501.201 *et seq.*  
on behalf of Plaintiffs and the Florida Subclass**

102. Plaintiffs incorporate by reference paragraphs 1–101 as though fully set forth herein.

103. The Florida Plaintiffs and Florida subclass members are “consumer[s]” engaged in “trade or commerce” within the meaning of FDUTPA. Fla. Stat. § 501.203 (7), (8).

104. Evenflo engages in “trade or commerce” within the meaning of FDUTPA. *See* Fla. Stat. § 501.203(8).

105. FDUTPA prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” *See* Fla. Stat. § 501.204(1).

106. Evenflo engaged in unfair and deceptive trade practices that violated FDUTPA, including but not limited to the following:

- a. Evenflo represented that its Big Kid booster seats have safety characteristics that they do not have;
- b. Evenflo represented that its Big Kid booster seats are of a particular standard, quality, or grade, when they are not;
- c. Evenflo knew that its Big Kid booster seats performed poorly in side-impact crash tests, and that they were not safe for children, but failed to disclose the existence of this defect to consumers or NHTSA. Evenflo knew that such information was material to consumer transactions and child safety;
- d. Evenflo actively conceals and misrepresents the results of its side- impact testing and the safety issues plaguing its Big Kid booster seats; and
- e. Evenflo intended for the Plaintiffs and class members to rely on their misrepresentations and omissions so that the Plaintiffs and class members would purchase Big Kid booster seats.

107. Evenflo’s unfair or deceptive acts or practices, including concealing, omitting, or suppressing material facts about the Big Kid, had a tendency or capacity to mislead; tended to create a false impression in consumers; and were likely to, and did in fact, deceive reasonable consumers, including Plaintiffs and the Class members, about the safety and reliability of the Big Kid; the quality of the Evenflo brand; and the true value of the Big Kid.

108. Evenflo intentionally and knowingly misrepresented or omitted material facts regarding the Big Kid and Evenflo's side-impact testing with an intent to mislead Plaintiffs and the Florida subclass.

109. Evenflo knew or should have known that its conduct violated FDUTPA.

110. Plaintiffs and the Florida subclass members were and are injured as a result of Evenflo's conduct because they paid to own Big Kid booster seats that were safe, reliable, and successfully safety and "side-impact" tested, but received booster seats that would not protect their children in the event of a side-impact collision.

111. Evenflo's failure to disclose, and active concealment of, the dangers and risks posed by the Big Kid were material to Plaintiffs and all class members. A booster seat made by a reputable manufacturer of safe car seats is worth more than an otherwise comparable booster seat made by a disreputable manufacturer of unsafe booster and other car seats that conceals defects rather than promptly remedies them.

112. Plaintiffs and all members of the Florida subclass have suffered ascertainable losses as a result of Evenflo's misrepresentations and failure to disclose information about the safety risks posed by the Big Kid. Had Plaintiffs and the Florida subclass members been aware of these risks, they would not have purchased the Big Kid. Plaintiffs and the Florida subclass members did not receive the benefits of their bargains due to Evenflo's misconduct.

113. As a direct and proximate result of Evenflo's violations of FDUTPA, Plaintiffs and all Florida subclass members have suffered injuries-in-fact and actual damages.

114. Plaintiffs and all Florida subclass members are entitled to recover their actual damages under Fla. Stat. § 501.211(2) and attorneys' fees under Fla. Stat. § 501.2105(1).

115. Plaintiffs and all Class members have suffered and will continue to suffer irreparable harm if Evenflo continues to engage in such deceptive, unfair, and unreasonable practices.

116. Plaintiffs, on behalf of all Florida subclass members, request that the Court award them actual damages and issue an order for injunctive and declaratory relief requiring Evenflo to notify Plaintiffs and all Florida subclass members of the defect and warn consumers of the known safety risks associated with the Evenflo Big Kid, and award Plaintiffs' and all Florida subclass members' attorneys' fees; and any other just and proper relief available under FDUTPA.

**COUNT II**  
**FRAUD BY CONCEALMENT**  
**on behalf of Plaintiffs and Nationwide Class**

117. Plaintiffs re-allege and incorporate by reference paragraphs 1–101 as if fully set forth herein and further allege as follows.

118. Plaintiffs bring this claim on behalf of all Class members under the common law of fraudulent concealment, as there are no case-dispositive differences and therefore no true conflicts among the laws of the various states. In the alternative, Plaintiffs bring this claim against Evenflo under Florida law.

119. Evenflo concealed and suppressed material facts concerning the Evenflo Big Kid line of booster seats, namely that they failed to secure crash test dummies the size of three-, six-, and ten-year old children in side-impact testing, and that the same testing, in fact, revealed that children using the seat risked severe injury or death using the seats in the

120. Evenflo had a duty to disclose the serious risks revealed by its side-impact testing because they are unreasonable, safety-related risks which gives rise to a duty to disclose.



121. Evenflo also had a duty to disclose these risks because it possessed exclusive and superior knowledge of material facts regarding the side-impact testing which were not reasonably discoverable to Plaintiffs or the Class members. Evenflo knew that the Big Kid booster seat would not secure children as old as ten in a side-impact collision; it also knew that a similar seat with a five-point harness worked to secure children up to 65 pounds in side-impact testing, and was a safer and more reliable alternative to the Big Kid. Still, Evenflo opted to withhold this information from consumers, even after several children suffered serious injuries or died.

122. Evenflo had a duty to disclose the defect because it took steps to actively conceal the defect from consumers. Evenflo knew that the Big Kid would not secure children as old as ten in the event of a side-impact collision, but still represented to consumers that the Big Kid was a “safe,” “side-impact tested,” “child restraint system,” thus assuring consumers that their children would be secure in the event of a side-impact or “T-bone” collision. Evenflo knew that these representations and omissions were false when made.

123. Finally, Evenflo also had a duty to disclose the defect because it undertook to represent to consumers that that the Big Kid booster seats were side-impact tested, reliable, and safe, and proclaim that Evenflo maintained the highest safety and quality assurance standards.

124. Evenflo actively concealed or suppressed these material facts, in whole or in part, to induce Plaintiffs and Class members to purchase the Big Kid, and to protect its profits and avoid a costly recall, at the expense of the safety of Plaintiffs and the Class members.

125. Plaintiffs and the Class members were unaware of these omitted material facts and relied on Evenflo’s omissions; had they known their Big Kid booster seats included a safety defect, or that safer alternatives existed, they would have paid less, or would not have purchased the Big Kid. Plaintiffs’ and the Class members’ actions were reasonable and justified.

126. Evenflo still denies that the Big Kid is not safe for children in the end of a side-impact collision, and still promotes the Big Kid as safe, reliable, and “side-impact tested.”

127. Because of the concealment or suppression of the facts, Plaintiffs and the Class members sustained damages because they did not receive the benefit of their bargain. The Big Kid booster seat has little, if any, value to parents a direct result of Evenflo’s wrongful conduct.

128. Evenflo’s acts were done oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs’ and the Class members’ rights and well-being to enrich itself. Evenflo’s conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY**  
**on behalf of the Nationwide Class**

129. Plaintiffs re-allege and incorporate by reference paragraphs 1-101 as if fully set forth herein and further allege as follows.

130. Evenflo impliedly warranted that the Evenflo Big Kid, which it designed, manufactured, sold to Plaintiffs and all Class members, was merchantable and fit and safe for ordinary use, and not otherwise injurious to consumers.

131. Because the Big Kid does not secure its occupant in the event of a side-impact collision, and poses a serious risk of bodily injury, the Big Kid is unsafe, unfit for use when sold, threatens injury to its occupants, and is not merchantable or fit for its ordinary use. Evenflo breached the implied warranty of merchantability in the sale of the Big Kid to Plaintiffs and all members of the Class because the Big Kid is neither merchantable nor fit for its ordinary purpose.

132. Plaintiffs and all Class members purchased the Big Kid from authorized sellers of Evenflo products, and were the intended consumers of the Big Kid booster seat, as well as the intended beneficiaries of Evenflo's warranties.

133. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability, Plaintiffs and the Class Members have been damaged in an amount to be proven at trial.

**COUNT IV**  
**BREACH OF EXPRESS WARRANTY**  
**on behalf of the Nationwide Class**

134. Plaintiffs re-allege and incorporate by reference paragraphs 1–101 as if fully set forth herein and further allege as follows.

135. Plaintiffs and Class Members purchased Defendant's Big Kid booster seat either directly from Evenflo or through authorized retailers.

136. Evenflo expressly warranted to all consumers that the Big Kid booster seat was free of defects in material or workmanship and "side impact tested," and that its side-impact testing "meets or exceeds all applicable federal safety standards and Evenflo's side impact standards."

137. Evenflo also expressly warranted to all consumers that the Big Kid was appropriate for children weighing 30 to 110 pounds, and later for children weighing 40 to 110 pounds.

138. Plaintiffs and all Class members purchased the Big Kid from authorized sellers of Evenflo products, and were the intended consumers of the Big Kid booster seat, as well as the intended beneficiaries of Evenflo's warranties.

139. Evenflo breached these warranties because the Big Kid is in all cases unsafe and pose a significant risk of serious bodily harm to children. The lack of safety inherent in the Big Kid renders it unfit for its intended use.

140. The express written warranties covering the Big Kid were a material part of the bargain between Defendant and consumers. At the time it made these express warranties, Defendant knew of the purpose for which the Booster Seat was to be used.

141. The Big Kid booster seats that Plaintiffs and all Class members purchased were uniformly deficient with respect to their ability to protect children in the event of a side-impact collision, which caused each of them damages including loss of the benefit of their bargain.

142. Plaintiffs and all Class members were injured as a direct and proximate result of Defendant's breach of its express warranties because they did not receive the benefit of the bargain, lost the product's intended benefits, and suffered damages at the point-of-sale, as they would not have purchased the Big Kid if they had known the truth about the unreasonable safety risk to children posed by the Big Kid.

**COUNT V**  
**UNJUST ENRICHMENT<sup>9</sup>**  
**on behalf of the Nationwide Class**

143. Plaintiffs re-allege and incorporate by reference paragraphs 1–100 as though fully set forth herein.

144. Plaintiffs bring this claim on behalf of all Class members under the common law of unjust enrichment, as there are no true conflicts (case-dispositive differences) among various states' laws of unjust enrichment. In the alternative, Plaintiffs bring this claim under the laws of the states where Plaintiffs and Class members purchased their Big Kid booster seats.

145. Evenflo has received and retained a benefit from the Plaintiffs and Class members and inequity has resulted.

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<sup>9</sup> Plaintiffs bring their unjust enrichment claims against in the alternative to their contractual claims.

146. Plaintiffs and the Class members directly conferred benefits on Evenflo: the price paid for the Big Kid, which Evenflo advertised as “safe” and “side-impact tested,” knowing that the seat would not secure children up to ten years old in the event of a side-impact collision.

147. Plaintiffs and the Class members paid their purchase prices in reliance on Evenflo’s representations that the Big Kid was safe and fit for ordinary use, and would protect their children in the event of a side-impact collision. Plaintiffs and the Class members would not have purchased the Big Kid, or would have paid less, if not for these representations.

148. Evenflo benefitted through its unjust conduct by selling the Big Kid at a profit and for more than it was worth. Further, Evenflo has benefitted through its unjust conduct in refusing to recall and/or redesign the Big Kid, and thus saving the related costs.

149. It is inequitable for Evenflo to retain these benefits. Evenflo will be unjustly enriched if it is allowed to retain the aforementioned benefits, and each Class member is entitled to recover the amount by which Evenflo was unjustly enriched at his or her expense.

150. Plaintiffs do not have an adequate remedy at law.

151. The amount of Evenflo’s unjust enrichment should be disgorged, in an amount to be proven at trial.

152. Plaintiffs, on behalf of themselves and all similarly situated Class members, seek an award against Evenflo in the amount by which it has been unjustly enriched at Plaintiffs’ and the Class members’ expense, and such other relief as this Court deems just and proper.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of themselves and all other similarly situated Class members, request that the Court enter judgment against Defendant as follows:

(1) Declare this action to be a proper class action maintainable under Rule 23(b)(2) and Rule 23(b)(3) of the Federal Rules of Civil Procedure and designate and appoint Plaintiffs as class and subclass representatives and Plaintiffs' chosen counsel as Class Counsel;

(2) Declare the conduct of Evenflo as alleged herein to be unlawful, deceptive, fraudulent, and unfair and issue an order temporarily and permanently enjoining Evenflo from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this action;

(3) Declare that Evenflo must disgorge, for the benefit of Plaintiffs and the Class members all or part of the ill-gotten gains they received from the sale of the Big Kid, or make full restitution to Plaintiffs and Class members;

(4) Award Plaintiffs and Class members actual, compensatory, and punitive remedies and damages and statutory penalties, including interest, in an amount to be proven at trial under the applicable claims;

(5) Award Plaintiffs and Class members their reasonable attorneys' fees and costs, as allowed by law;

(6) Award Plaintiffs and Class members pre-judgment and post-judgment interest as provided by law; and

(7) Award Plaintiffs and Class members any further and different relief as this case may require or as determined by this Court to be just, equitable, and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a jury trial for any and all issues triable by a jury.

Respectfully submitted: March 10, 2020.

<p><u>/s/Robert J. Neary</u> Gail McQuilkin, Esq. Florida Bar No. 969338 gam@kttlaw.com Benjamin Widlanski, Esq. Florida Bar No. 1010644 bwidlanski@kttlaw.com Rachel Sullivan, Esq. Florida Bar No. 815640 rs@kttlaw.com Robert J. Neary, Esq. Florida Bar No. 81712 rn@kttlaw.com <b>KOZYAK TROPIN &amp; THROCKMORTON LLP</b> 2525 Ponce de Leon Blvd., 9<sup>th</sup> Floor Coral Gables, FL 33134 Telephone: (305) 372-1800 Fax: (305) 372-3508 <i>Counsel for Plaintiffs</i></p>	<p>George Franjola, Esq. Florida Bar No. 333271 gfranjola@ocalalaw.com <b>GILLIGAN, GOODING, BATSEL &amp; ANDERSON, P.A.</b> 1531 SE 36th Ave. Ocala, FL 34471 Tel: (352) 867-7707 Fax: (352) 867-0237 <i>Counsel for Plaintiffs</i></p> <p>Philip S. Kushner, Esq. Ohio Bar No. 0043858(<i>pro hac vice</i> forthcoming) pkushner@kushnerhamed.com <b>KUSHNER &amp; HAMED CO., LPA</b> 1375 E. 9th Street, Suite 1930 Cleveland, Ohio 44114 Phone: 216-696-6700 Fax: 216-696-6772</p>
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