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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

DANIEL ONN, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

CARRIER GLOBAL CORPORATION and  
WALTER KIDDE PORTABLE EQUIPMENT,  
INC.

Defendants.

Case No.

**CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Daniel Onn (“Plaintiff”) brings this action on behalf of himself and all others  
2 similarly situated against Defendants Carrier Global Corporation (“Carrier Global”) and Walter  
3 Kidde Portable Equipment, Inc., (“Kidde”) (collectively “Defendants”) for the manufacture,  
4 marketing, and sale of plastic handle fire extinguishers and push-button Pindicator fire  
5 extinguishers as identified below. Plaintiff makes the following allegations pursuant to the  
6 investigation of his counsel and based upon information and belief, except as to the allegations  
7 specifically pertaining to himself, which are based on personal knowledge.

### 8 NATURE OF ACTION

9 1. This is a class action against Defendants Carrier Global Corporation and Walter  
10 Kidde Portable Equipment, Inc. for the manufacture and sale of over 40 million plastic handle fire  
11 extinguishers and push-button Pindicator fire extinguishers (collectively, the “Products”), all of  
12 which suffered from the following defect in design: nozzles frequently becoming detached,  
13 becoming clogged, or requiring excessive force to discharge causing a failure to activate during a  
14 fire emergency (hereinafter the “Product Defect” or “Defect”). A fire extinguisher that fails to  
15 function properly during an emergency poses a threat to the life, safety, and property of the user  
16 and those in their immediate surroundings. This Defect rendered the Products unsuitable for their  
17 principal and intended purpose.

18 2. Plaintiff brings his claims against Defendants individually and on behalf of a class  
19 of all others similarly situated purchasers of the Products for (1) violation of California’s  
20 Consumers Legal Remedies Act (“CLRA”), Civil Code §§ 1750, *et. seq.*; (2) violation of  
21 California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200-17210; (3) fraud; (4)  
22 unjust enrichment; (5) breach of implied warranty; and (6) violations of the Magnuson-Moss  
23 Warranty Act.

### 24 PARTIES

25 3. Plaintiff Daniel Onn is, and at all times relevant to this action has been, a resident of  
26 Saratoga, California. In approximately the autumn of 2017, Plaintiff purchased two Kidde model  
27 10BC fire extinguishers with plastic handles for about \$40.00 each from The Home Depot located  
28 in Cupertino, California. Plaintiff purchased the Products because he believed they were fit for use

1 as fire extinguishers. However, one of the Products that Plaintiff purchased was not fit for use as a  
2 fire extinguisher due to a Product Defect causing it to fail to activate when needed. Plaintiff would  
3 not have purchased the Product had he known that the Product was unfit to perform its intended  
4 purpose, rendering the Product useless.

5 4. The Product's failure to activate occurred within a year after Plaintiff purchased the  
6 product. In response to a fire in his kitchen, Plaintiff immediately reached for his fire extinguisher.  
7 He pulled the pin to unlock the extinguisher and squeezed the handles to activate the flame-  
8 retardant spray, as the instructions directed. But nothing happened. The flames from the fire  
9 quickly leaped out toward him. As the flames threatened both personal injury and property  
10 damage, Plaintiff ran to the sink in his kitchen, filled a large bucket of water, and threw it on the  
11 fire. Shortly afterward, Plaintiff threw the fire extinguisher in the trash because he was afraid that  
12 it would malfunction again when needed. Plaintiff disposed of the Product long before he ever  
13 contemplated litigation. Plaintiff kept, and has not had occasion to use, the other fire extinguisher  
14 as shown here:



1           5. Plaintiff reviewed the Product’s packaging prior to purchase. Defendants disclosed  
2 on the packaging that the Product was a fire extinguisher and described features typical of fire  
3 extinguishers but did not disclose the Defect. Plaintiff would not have purchased the Product had  
4 there been a disclosure informing him that the Product was useless and unfit to perform its intended  
5 purpose.

6           6. Defendant Carrier Global Corporation is a Delaware corporation with its principal  
7 place of business located at 13995 Pasteur Boulevard in Palm Beach Gardens, Florida. In 2020,  
8 Carrier Global, parent to over 80 brands across three sectors, including HVAC, refrigeration, and  
9 fire and security, generated \$17.5 billion in net sales, and employed roughly 56,000 employees.

10           7. Defendant Walter Kidde Portable Equipment, Inc. is one of Defendant Carrier  
11 Global’s brands. Kidde is a Delaware corporation with its headquarters located at 1016 Corporate  
12 Park Drive in Mebane, North Carolina. Defendant manufactures, markets, and distributes the  
13 Products throughout the United States. Defendant sells the Products on its website and through  
14 third-party retailers such as Walmart, The Home Depot, and Amazon.

15                                                           **JURISDICTION AND VENUE**

16           8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §  
17 1332(d) because there are more than 100 class members and the aggregate amount in controversy  
18 exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a  
19 citizen of a state different from Defendants.

20           9. This Court has personal jurisdiction over Defendants because Defendants conduct  
21 substantial business within California such that Defendants have significant, continuous, and  
22 pervasive contacts with the State of California.

23           10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants do  
24 substantial business in this District and a substantial part of the events giving rise to Plaintiff’s  
25 claims took place within this District as Plaintiff purchased his Product in this District and resides  
26 in this District.

27     ///

28     ///

**COMMON FACTUAL ALLEGATIONS**

**I. Fire Extinguishers Failing to Discharge**

**A. Despite Its Purported Commitment To Quality, Performance, And Responsibility, Defendants Knowingly Manufactured, Marketed, And Sold Defective Fire Extinguishers**

11. As advertised, Carrier Global’s “fire business encompasses a wide range of residential, commercial and industrial systems, including . . . fire, gas and water mist suppression and fire and gas safety solutions.”<sup>1</sup> Carrier Global’s fire business is led by Kidde which describes itself as “one of the world’s largest manufacturers of fire safety products . . . to protect people and property from fire and related hazards.”<sup>2</sup> In doing so, Kidde is purportedly “committed to ensuring [its] products are safe and dependable, especially those related to life safety such as . . . fire extinguishers.”<sup>3</sup> To that end, Kidde proclaims that values such as quality, performance, and responsibility are among “the pillars of [its] business.”<sup>4</sup>

12. However, Kidde neglects to mention that it has received hundreds of complaints related to the propensity of its fire extinguishers to become clogged and to fail to discharge during fires.<sup>5</sup> This Product Defect has led to at least 16 reports of personal injury, including one fatality, and 91 reports of property damage.<sup>6</sup>

13. With tens of millions of units sold at a price point of \$12 to \$200, Defendants profited enormously from their failure to disclose the Product Defect sooner.

<sup>1</sup> Carrier Global Corporation, “Carrier Fire Solutions: Protecting What Matters Most,” *Fire & Security*, Available at <https://www.carrier.com/fire-security/en/north-america/products-services/product-category-solutions/fire-solutions/> (last visited March 11, 2021).

<sup>2</sup> Walter Kidde Portable Equipment Inc., “About Kidde,” Available at <https://www.kidde.com/home-safety/en/us/about/> (last visited March 11, 2021).

<sup>3</sup> Walter Kidde Portable Equipment, Inc., “Product Safety,” Available at <https://www.kidde.com/home-safety/en/us/about/product-safety/> (last visited March 11, 2021).

<sup>4</sup> Walter Kidde Portable Equipment, Inc., “Kidde Core Values,” Available at <https://www.kidde.com/home-safety/en/us/about/corevalues/> (last visited March 11, 2021).

<sup>5</sup> Mary H.J. Farrell, “Kidde Recalls More Than 40 Million Fire Extinguishers,” *Consumer Reports* (November 2, 2017), Available at <https://www.consumerreports.org/fire-extinguishers/kidde-fire-extinguisher-recall/> (last visited March 11, 2021).

<sup>6</sup> *Id.*

1           14. Defendants made partial representations to Plaintiff and Class Members, while  
2 suppressing the safety defect. Specifically, by displaying the Products and describing their  
3 features, the Products' packaging implied that the Products were suitable for use as fire  
4 extinguishers, without disclosing that they had a critical safety-related defect that could inhibit the  
5 proper functioning of the device and lead to harm to users of the Products.

6           15. The Products at issue are numerous. Although sold under different brand names  
7 these fire extinguishers are substantially similar. They all suffer from the same Defect involving  
8 their tendency to become clogged and to fail during fires. Each fire extinguisher substitutes  
9 important metal components such as the handle or push button for cheaper and less reliable plastic  
10 handles or plastic push buttons. Further, these fire extinguishers were sold for years despite  
11 Defendants' knowledge of the Defect, risking the personal health and safety of the consumer for  
12 corporate profits. And these fire extinguishers, as discussed below, were subject to the same  
13 ineffective, sham recalls that left consumers uninformed and vulnerable.

14                           **B. Defendants' Defective Fire Extinguishers Risked The Lives, Safety, And**  
15                           **Property Of Defendants' Consumers**

16           16. The consequences of this Product Defect can be severe. On March 18, 2017, one  
17 consumer, for example, submitted a report to the United States Consumer Products Safety  
18 Commission ("CPSC") concerning Kidde Model 1-A-10-BC. He stated that "I was working with  
19 beeswax [when] materials caught fire." In response, the consumer wrote that "I tried to put [out]  
20 the fire with the Kidde extinguisher[,] but it didn't work." The consumer continued that "I had to  
21 get close to the fire to put it [out] with my jacket: as a result my jeans caught on fire and I ended up  
22 with a serious third-degree burn on my left leg." Consequently, the consumer reported that he  
23 "underwent skin graft surgery all around my left leg." He stated that he has "been recovering for  
24 almost one year[,]" but that "[i]f the extinguisher had worked I could have put [out] the fire without  
25 getting close to it." Kidde was informed of this incident through the CPSC on April 6, 2017.  
26 Kidde responded to this consumer's complaint stating that "[b]ased upon the information provided,  
27 we cannot determine why the fire extinguisher failed to deploy."  
28

1           17. On November 2, 2017, another consumer submitted a report to the CPSC  
2 concerning Kidde Model FA-110. The consumer stated that his “gas stove caught on fire and my  
3 fire extinguisher did not work.” As a result, he reported that “my stove burned and my house filled  
4 with smoke. The microwave above my stove was also ruined.” He stated that he “had to call the  
5 fire department” and only “[a]fter the incident, I found out that my (recently purchased) fire  
6 extinguisher had been recalled. I had actually purchased it AFTER the recall.” Kidde was  
7 informed of this incident by the CPSC on December 4, 2017. Kidde responded shortly afterwards.

8           18. On November 17, 2017, another consumer submitted a report to the CPSC  
9 concerning Kidde Model FA-110. He stated that “[a]n oven fire flared up during preheating, and  
10 my wife grabbed the Kidde fire extinguisher which is kept several feet away. We believed this to  
11 be a smart purchase, and [a] great location.” The consumer noted that “[t]his was our first use of  
12 the extinguisher, and we have previously reviewed how to use it.” He reports that “I was upstairs,  
13 and heard her call for my help, and when I got halfway down the stairs I could see her depressing  
14 the lever multiple times, with no discharge from the extinguishers.” As a result, he “ran back  
15 upstairs to grab some clothes to smother the flames . . . while attempting to not have the clothes  
16 catch on fire.” He reported that “[i]n the process the flames burned my right hand, but I had to  
17 continue subduing the flames. Meanwhile[,] I was asking her to try different methods or angles  
18 with the extinguisher, but to no avail.” The consumer stated that “[f]inally, 1 puff of dry chemicals  
19 came out but it was not under proper pressure . . . the discharge caused no significant reduction in  
20 the flame, but instead sprayed our counter, cabinets, sink, etc. with a fine layer of dust.” Kidde was  
21 informed of this incident by the CPSC on December 5, 2017. Kidde responded shortly thereafter.

22           19. On December 1, 2017, another consumer submitted a report to the CPSC. The  
23 consumer stated that “[m]y neighbors’ house was on fire. I recognized this and called 911, and ran  
24 over with my Kidde fire extinguisher.” The consumer stated that “[a]t this point the house was  
25 filled with smoke but there was a medium sized fire and I tried to put it out but the fire extinguisher  
26 would not deploy – the father / a strong man also tried but it did not work.” The consumer reported  
27 that “[l]uckily the firemen came about 3 minutes after we tried.” But this did not prevent the  
28 following disastrous outcome: “[t]he fire caused [\$]100,000 of damages (so far).” Kidde was

1 informed of this incident by the CPSC which sent its report to Kidde on December 11, 2017.  
2 Kidde responded shortly afterwards “apologiz[ing] for any inconvenience this has caused.”

3 20. On January 20, 2018, another consumer submitted a report to the CPSC. The  
4 consumer stated that a “[s]mall fire was started from an old ember. First fire extinguisher failed to  
5 discharge, the plastic handle just bent around the pin. Eventually got it to work but fire had grown  
6 significantly in the 15 seconds of fiddling it took to get it to discharge.” The consumer stated that  
7 the “[e]xtinguisher only discharged about 50% of its contents. Daughter ran inside the house for  
8 our other extinguisher. It also failed to discharge and took fiddling because of the plastic handle  
9 while the fire grew.” The consumer stated that “[t]his [second] one did discharge all of its  
10 contents[,] but it was too late at this time, the fire grew and caught an adjacent field on fire  
11 resulting in minor structure damage and about 30 acres burned before the fire department could put  
12 it out.” The consumer concluded that “[c]ould have stopped the fire early if the extinguisher had  
13 functioned properly.” Kidde was informed of this incident by the CPSC on February 9, 2018.  
14 Kidde responded shortly afterwards “sincerely apologiz[ing] for the incident that occurred.”

15 21. On December 7, 2020, another consumer submitted a report to the CPSC concerning  
16 Kidde Model H110G. The consumer stated that he “had what started as a minor grease fire on our  
17 kitchen stove . . . my wife then attempted to use the Kidde ABC fire extinguisher nearby but upon  
18 pulling the pin and squeezing the trigger, nothing happened.” In turn, he “attempted as well, [but]  
19 to no avail. My wife was evacuating our two daughters and dog from the house and I was starting  
20 to dial 911 when I remembered I had another extinguisher [nearby].” So, he “grabbed it, returned  
21 within 30 seconds, and successfully put out the fire that had quickly grown to close to ceiling  
22 height.” The consumer stated that “[u]nfortunately, the time lost allowed the fire to burn far longer  
23 than it would have, had our extinguisher worked properly.” He reported that “[a]s a direct result of  
24 the failure, our stove’s control partially melted and the smoke damage to our ceiling is going to  
25 require the mineral fiber tiles to be replaced.” The consumer continued that he is “left with what I  
26 would estimate to be \$1,200 in property damage.” Significantly, after the event the consumer  
27 “looked into why the extinguisher failed and found that the U.S. Consumer Product Safety  
28 Commission had issued a recall [in 2017] ‘due to a failure to discharge and nozzle detachment.’”



1 Kidde was informed of this incident by the CPSC on December 23, 2020. Kidde responded shortly  
 2 afterwards noting that “[a]ny claim for property damage would be properly handled through the  
 3 homeowner’s insurance carrier.”

4 **C. Defendants’ Defective Fire Extinguishers Include More Than 134**  
 5 **Models Totaling Nearly 40 Million Devices In All**

6 22. The Products at issue include several models that have been recalled. As  
 7 demonstrated above and further below, Defendants’ recall was totally ineffective at remedying the  
 8 problems herein discussed. **Tens of thousands, if not hundreds of thousands of consumers,**  
 9 **have not been informed of Defendants’ recalls and are still at risk.** The models at issue  
 10 include:

11 **Models Manufactured July 23, 2013 – October 15, 2014**

10BC	1-A-10BC	1A 10BCW	2A10BC
5BC	5BCW	FA110G	FA110
FA5B	FC110	FC5	FH/RESSP
FX10	FX10BC	FX10K	FX210
FX210R	FX210W	FX340GW	FX340SC
FX5II	KFH Twin	M110 Twin	M5 Twin
Mariner 10	Mariner 110	Mariner 5	Mariner 5G
XL5MR			

17 **Models Manufactured Between July 2, 2012 – August 15, 2017**

AUTO FX5 II-1	FC5	M10G	FA10G
FS110	M10GM	FA10T	FS110
M110G	FA110G	FS5	M110GM
FA5-1	FX10K	M5G	FA5G
FX5 II	M5GM	FC10	H110G
RESSP	FC110	H5G	

22 **Additional Recent Models**

KK2	100D	210D	210D-1
H110G	Home 110	FX340SC-2	Pro 5 TCM-8
FX110E	FX340G	FA110G	FA10
FX340GW-2			

1           23. For models suffering from the same Product Defect that have yet to be recalled, and  
2 for which there is limited information publicly available, Plaintiff reserve the right to amend his  
3 complaint to reflect these additional models at the time of discovery.

## 4           **II. Defendants' Sham And Ineffective Recalls**

### 5           **A. Despite Knowledge Of The Product Defect, Defendants Dragged Their** 6           **Feet, Incurring Civil Penalties**

7           24. On February 12, 2015, Kidde issued a recall involving 31 models of Kidde fire  
8 extinguishers manufactured between July 23, 2013 through October 15, 2014. This recall involved  
9 a total of nearly 4.6 million units in the United States.<sup>7</sup>

10          25. Kidde's February 12, 2015 recall was woefully inadequate considering the severity  
11 of the problems discussed herein. Consumers who put their faith in Kidde's ability to manufacture  
12 high-quality firefighting products were led to believe that the equipment they purchased could keep  
13 them safe in life-threatening fires. Instead, consumers had to learn the hard way and in times of  
14 crisis that the fire extinguishers they purchased were defective. And, for a period of two-and-a-half  
15 additional years until Kidde issued its November 2, 2017 recall, over 32 million defective fire  
16 extinguishers remained in the marketplace and were purchased and relied upon by at-home  
17 consumers.

18          26. In December 2015, the U.S. Department of Justice ("DOJ") along with the  
19 Consumer Product Safety Commission ("CPSC") filed a complaint against Kidde for failing to  
20 inform the CPSC in a timely manner about problems associated with Kidde's fire extinguishers.<sup>8</sup>  
21  
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23 <sup>7</sup> U.S. Consumer Product Safety Commission, "Kidde Recalls Disposable Plastic Fire  
24 Extinguishers Due to Failure to Discharge," (February 12, 2015), Available at  
25 <https://www.cpsc.gov/recalls/2015/kidde-recalls-disposable-plastic-fire-extinguishers/#> (last visited  
March 11, 2021).

26 <sup>8</sup> Ryan Felton and Rachel Rabkin Peachman, "Kidde Mishandled Problems With Its Fire  
27 Extinguishers for Years as Homes Burned and Injuries Mounted," Consumer Reports (January 12,  
28 2021), Available at <https://www.consumerreports.org/product-safety/kidde-mishandled-problems-with-fire-extinguishers-for-years/#:~:text=Kidde%20eventually%20filed%20a%20new,require%20excessive%20force%20to%20discharge.> (last visited March 11, 2021).

1 The DOJ alleged that before the 2015 recall, Kidde significantly underreported “the scope and  
2 nature of the defect and risk, and the number of products and models affected.”<sup>9</sup>

3 27. In response, Kidde issued another recall in 2017 for nearly 38 million plastic-handle  
4 and push-button Pindicator fire extinguishers in the U.S., implicating 134 models produced as far  
5 back as 1973.<sup>10</sup> Many of these models are set out above. In addition, Kidde was ordered to pay a  
6 \$12 million civil penalty in connection with the allegations that the company failed to timely  
7 inform the CPSC about problems with the fire extinguishers it manufactured.<sup>11</sup>

8 28. The recall allowed Kidde to say it was doing right by consumers, but in fact the  
9 recall protected Kidde’s profits by suppressing returns. As a Consumer Reports’ article notes,  
10 “[d]espite the 2017 announcement, many people seem to not have heard about the recall.”<sup>12</sup>  
11 Further, “[s]everal incident reports reviewed by [Consumer Reports], for example, involve Kidde  
12 fire extinguishers that had already been recalled.”<sup>13</sup>

13 **B. Many Consumers Were Unable To Contact Kidde To Secure Their**  
14 **Replacement Despite Following The Procedures Set Out By Kidde**

15 29. Several customers who were informed of the recall were either unable to establish  
16 contact with Kidde despite repeated attempts or encountered issues with the website or customer  
17 service. One consumer wrote to Consumer Reports in 2018 stating that the “recall site won’t allow  
18 me to enter information such as model number.” The consumer continued that the “[i]nformation  
19 page seems to be dead.”

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22 <sup>9</sup> *Id.*

23 <sup>10</sup> U.S. Consumer Product Safety Commission, “Kidde Recalls Fire Extinguisher with Plastic  
24 Handles Due to Failure to Discharge and Nozzle Detachment: One Death Reported,” Available at  
<https://www.cpsc.gov/Recalls/2017/kidde-recalls-fire-extinguishers-with-plastic-handles-due-to-failure-to-discharge-and#> (last visited March 11, 2021).

25 <sup>11</sup> U.S. Department of Justice, “Fire Extinguisher Manufacturer Ordered to Pay \$12 Million Penalty  
26 for Delay and Misrepresentations in Reporting Product Defects,” *Justice News*, Available at  
<https://www.justice.gov/opa/pr/fire-extinguisher-manufacturer-ordered-pay-12-million-penalty-delay-and-misrepresentations>

27 <sup>12</sup> *See supra* n. 8.

28 <sup>13</sup> *Id.*

1           30. Another consumer reported to Consumer Reports in 2018 that she “entered four  
2 units on the appropriate Kidde Product Safety Recall page . . . but the page does not include any  
3 button or other method to send the page to the company.”

4           31. Another consumer reported to Consumer Reports in 2018 that she “ha[s] been  
5 waiting two months for my replacement.” She reported that “[p]honing is impossible, on hold  
6 forever.” She concluded that she “[w]ould like an honest answer from the company.”

7           32. Another consumer reported to Consumer Reports in 2018 that they “have been  
8 waiting since Nov[ember] 10 for the replacements.” The consumer stated that they “contacted  
9 [Kidde] by email and phone.” The consumer concluded that they “would just like a straight answer  
10 from [Kidde].”

11           33. Another consumer reported to Consumer Reports in 2018 that they are “[n]ot sure  
12 [Kidde is] taking this recall seriously.” The consumer reported that they were “told [the]  
13 replacement extinguisher would be sent out back in Nov[ember] and nothing.” The consumer  
14 called Kidde the day before making their report “and [Kidde] couldn’t even find me in their  
15 system.” The consumer concluded that the “[I]ady said she’d call . . . right back and never did . . .  
16 so taking things seriously? I think not.” Another consumer responded “[t]his is exactly what  
17 happened to me. What do we do now?”

18           34. Another consumer wrote to the Better Business Bureau (hereinafter “BBB”) on June  
19 7, 2018 that they “have 4 fire extinguishers that were part of the recall from the fall of 2017. I  
20 contacted Kidde within the first week after the recall to determine what needed to be done [to]  
21 receive replacements. I still have not received my [replacement].” Following up, the consumer  
22 “contact[ed] [Kidde] through the recall phone number given at least 8 times since the recall and  
23 have repeatedly had to re-confirm all my information, re-confirm all my fire extinguishers, and  
24 then have been told I would be receiving the new ones.” But, the consumer wrote, “[t]hey have  
25 never shown up.” The consumer then provided their case reference number and wrote that “both  
26  
27  
28

1 [extinguishers] confirmed recalled for failure to deploy.” Kidde was informed of this complaint by  
2 the BBB on the same day.<sup>14</sup> Kidde also responded that same day.

3 35. Another consumer reported to the BBB on July 3, 2018 that they “had three fire  
4 extinguishers subject to the current Kidde recall.” The consumer “submitted a claim . . . to get the  
5 three fire extinguishers replaced in the fall of 2017. [But] [t]he replacement fire extinguishers[s]  
6 have not arrived.” The consumer stated that “[e]ach time I called to follow up on the status of the  
7 replacement extinguishers, I was transferred to another person who said they would call back.”  
8 However, the consumer wrote that they “did not receive a call” and “still do not have the  
9 replacement extinguishers.” Kidde was informed of this complaint by the BBB on the same day.  
10 Kidde also responded that same day stating that it “will contact [the] consumer today.”

11 36. Another consumer reported to the BBB on August 17, 2018 that their “first call [to  
12 Kidde] was 11-03-17.” The consumer then “made follow up calls 12-19-17, 02-28-18, and 05-01-  
13 18” and “also spoke to someone at Kidde [on] 5-01-18.” The consumer reported that “[e]ach time I  
14 was told varying time frames for replacement fire extinguishers to arrive. Each time they would  
15 say they were missing some information at the previous call. Each time they would create a new  
16 reference [number].” But the consumer “received neither of the two fire extinguishers [Kidde]  
17 acknowledge were part of the safety recall.” Kidde was informed of this complaint by the BBB  
18 within two business days of the complaint. Kidde responded on August 21, 2018 that it “will look  
19 into this issue.”

20 37. Another consumer reported to the BBB on July 24, 2020 – more than two years after  
21 the recall – that after “[f]inding there is a recall on my Kidde fire extinguisher, I attempted, and  
22 failed to contact Kidde by these means: 1. [u]sing Kidde’s online webmail (there is no email  
23 address listed), I filled out my request.” The consumer stated that “[b]ut when I pressed ‘Send,’ the  
24 site did not respond.” The consumer “tried again. No response. (I have no problem currently  
25 sending webmail to other sites, as [the BBB’s] receipt of this webmail shows!).” The consumer  
26 continued “2. I phone the number on Kidde’s site and pressed the ‘I have a recall’ option. No one

27 <sup>14</sup> Better Business Bureau, “What Complaints Do We Handle?” Online Complaint System,  
28 Available at <https://www.bbb.org/consumer-complaints/file-a-complaint/get-started> (last visited  
March 15, 2021).

1 answered. I called back and tried general customer support with the same non-response.” The  
2 consumer concludes that they are “distressed insufficient notice was given at the time of the recall,  
3 as I have been relying on a defective product as a result.” Kidde was informed of this complaint by  
4 the BBB within two business days of the complaint. Kidde responded on July 27, 2020  
5 “apologiz[ing] for [the consumer’s] inconvenience.”

6 **C. Other Consumers Experienced Significant Delays Securing A**  
7 **Replacement**

8 38. For those consumers who did not cave to Kidde’s test of exhaustion, many were,  
9 nonetheless, met with significant delays in securing their replacement.

10 39. One consumer wrote to Consumer Reports in 2019 that he “put my claim in twice  
11 since the day the recall was announced.” But he stated that “I have heard nothing.” He concluded  
12 that “I suppose my house must burn down before they send a replacement.”

13 40. Another consumer reported to Consumer Reports in 2018 that he “[p]ut [his] recall  
14 request in [in] November 2017. It is now March 25, 2018.” He concluded that “someone should  
15 do a follow-up article exposing this fraud.”

16 41. Another consumer reported to Consumer Reports in 2018 that “[i]t has been 5  
17 months now since I requested a replacement Fire Extinguisher[,] and nothing has happened.” She  
18 concluded “[w]hat do I have to do now?????”

19 42. Another consumer reported to Consumer Reports in 2018 that he is “[s]till waiting  
20 . . . five months since submitting claim and long times on hold only to be disconnected.” He  
21 concluded that he is “[g]lad to see it’s not personal.”

22 43. Another consumer reported to Consumer Reports in 2018 that it is “March 19 . . .  
23 still waiting for the five units we submitted claim for on November 2 . . . no response whatsoever to  
24 repeated emails which included the ID # for claim.”

25 44. Another consumer reported to Consumer Reports in 2018 that he “submitted a claim  
26 and for several months [Kidde] made excuses, but now you can only reach the call center for  
27 rebates. They say you can submit another claim otherwise [they] cannot help you!” The consumer  
28 concluded that “this recall is a joke and nothing will get done!!!!”

1           45. Another consumer reported to Consumer Reports in 2019 that “I put my claim [in]  
2 more than a year ago. When you call, you are on a hold for an hour or long[er]. When someone  
3 answers they simply lie, e.g., server is down, [or they] need to check and get back to you in 24  
4 hours and so on.” The consumer reported that “[n]o one ever calls. Why do they lie? Just tell us  
5 that you are not going to replace it.” The consumer concluded that the “FTC should get after them,  
6 and fine this company for announcing a recall and won’t fulfill.”

7                           **D. Several Of The Fortunate Few Who Received Replacements Were**  
8                           **Supplied With Either An Inferior Product, A Damaged Product, Or**  
9                           **Another Recalled Product**

10           46. Several of the consumers who succeeded in Kidde’s marathon of endurance and  
11 setbacks were rewarded with an inferior product than that which they intended to purchase, or their  
12 recalled product was replaced with an otherwise malfunctioning product, or even worse, their  
13 recalled product was replaced with *another* of Kidde’s recalled products.

14           47. One consumer wrote to Consumer Reports in 2018 that after following through with  
15 Kidde’s recall process, “I was sent a discharged extinguisher with no pin.” He stated that “I will  
16 keep [the recalled product] and send back the empty extinguisher [Kidde] sent me.”

17           48. Another consumer reported to Consumer Reports in 2018 that “I received the  
18 replacement for one of the two fire extinguishers affected by the recall. The one being replaced is a  
19 model FX210R with a 4A40BC rating. The one I received is a Model FX210 with a 2A10BC  
20 rating.” He stated that “[t]o me that means that I only get ¼ of the area for a flaming fire with the  
21 replacement one.” To remedy this situation, the consumer reported that “I have called Kidde twice  
22 and left messages with the answering service who said someone would call me back[,] but I have  
23 not received any return call.” The consumer concluded that Kidde’s “customer service is not very  
24 good.”

25           49. Another consumer reported to Consumer Reports in 2018 that “I received my  
26 replacement Kidde fire extinguisher today. It was immediately apparent that the replacement  
27 extinguisher is significantly smaller than my original.” The consumer stated that “[m]y original  
28 had a tank that was 14.5 inches tall and the replacement tank is only 12 inches tall. Diameter and

1 pressure are the same. So that means the capacity of the replacement is 17% smaller!” He  
2 continued that “[i]n addition, the extinguisher I had was rechargeable, the replacement is not.  
3 Looking at the product catalog, I see they have a Pro 110 version which is much closer to what I  
4 had (Home 110) but instead they replaced my extinguisher with a smaller and cheaper version.”  
5 The consumer concluded that “I called them 2 days ago and was told I would receive a call back  
6 but no call. What is my recourse?”

7 50. Another consumer reported to the CPSC on November 17, 2017 that “I just received  
8 two replacement Kidde fire extinguishers as part of the recall. One of my units arrived covered in  
9 powder, safety pin removed and at empty state according to the pressure monitor.” The consumer  
10 stated that “I am not sure if the chemicals I’ve touched are dangerous and if my other unit is safe.”  
11 Kidde was informed of this consumer’s complaint by the CPSC on December 19, 2017. Kidde  
12 responded that it “reached out to [the consumer] to discuss his concerns.”

13 51. Another consumer reported to the CPSC on December 12, 2017 that “I just wanted  
14 to let you know about this ridiculous Kidde fire extinguisher recall. I got my replacement from  
15 them yesterday after waiting about three weeks (good thing there wasn’t a fire in that long time).”  
16 The consumer continued that “I don’t trust them and was concerned they sent me one with the  
17 same model number[,] so I called them to verify they didn’t send me a recalled one. He checked  
18 the serial number and they did.” The consumer stated that “[t]hey sent me a recalled fire  
19 extinguisher to replace a recalled one. And since they screwed up the guy at the call center . . .  
20 couldn’t even send me a new one. He had to escalate it so an actual Kidde employee will call me  
21 back.” The consumer reported that “[h]e said to call back if I don’t hear from them in a week. So  
22 that will be a month without a working fire extinguisher plus probably another three weeks to get  
23 the replacement sent which may or may not be recalled.” The consumer concluded that Kidde  
24 “need[s] to get fined or something. They can’t send a recalled item to replace a recalled item and  
25 take forever in doing so when it is an item people rely on for safety.” Kidde was informed of this  
26 consumer’s complaint twice: once by the consumer and once by the CPSC on January 17, 2018.  
27 Interestingly, Kidde responded that “[i]f this consumer needs to use the recalled fire extinguisher,  
28 while waiting for the replacement, they should do so.”



1           52. Another consumer reported to the CPSC on December 13, 2017 that “I have three  
2 Kidde Home fire extinguishers that were on the recall list[,] so I called the number which I was  
3 given to get placement ones (it’s only a call center), I was sent two of the three replacements which  
4 were on empty.” The consumer stated that “I have called three times to get the new ones replace[d]  
5 also and to receive my third original replacement but was told I had to wait until some[one] called  
6 me back.” The consumer noted that “this started in November and to date [I] have never heard  
7 from anyone[;] right now I have three extinguishers which are defective and two new ones that are  
8 empty.” The consumer concluded that “hopefully I don’t have a fire in my house while I am  
9 waiting around for Kidde to respond.” Kidde was informed of this consumer’s complaint twice:  
10 once by the consumer and again by the CPSC on January 17, 2018. Kidde responded that it “will  
11 be reaching out to . . . discuss the replacement units.”

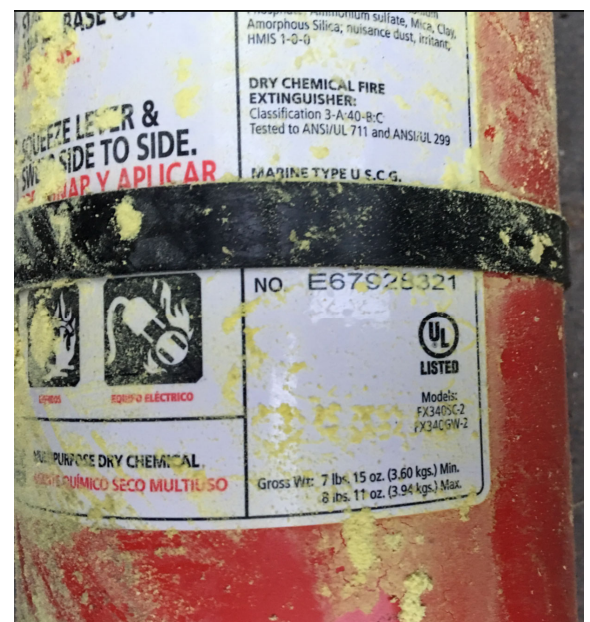
12           53. Another consumer reported to the CPSC on December 30, 2017 that “I made a  
13 submission to Kidde and was promptly shipped a replacement. Unfortunately, what they sent me  
14 was a damaged and unusable extinguisher.” The consumer stated that “[a]fter I reported the  
15 problem with the replacement to Kidde . . . they have ignored me.” The consumer concluded “I  
16 don’t think this is the way a recall is supposed to work.” Kidde was informed of this consumer’s  
17 complaint twice: once by the consumer and again by the CPSC on January 17, 2018. Kidde  
18 responded that it “will be reaching out . . . to discuss the replacement.”

19           54. Another consumer reported to the CPSC on January 12, 2018 that “[a] Kidde fire  
20 extinguisher which I purchased was recalled two years after I purchased it. [Kidde] sent me a  
21 replacement. Now, one year later, they informed me that the replacement is recalled.” The  
22 consumer stated that Kidde “said they would send me a new one; it took them three months to do  
23 so.” The consumer continued that “[w]hen I received the new fire extinguisher the gauge was on  
24 empty. In other words, they sent me a faulty extinguisher to replace the faulty extinguisher they  
25 had sent me to replace the original faulty extinguisher.” The consumer reported that “[i]n addition,  
26 I checked the other Kidde extinguisher which I had purchased at the same time as the first one, and  
27 the gauge is on empty. This extinguisher [is] several years away from the expiration of Kidde’s  
28 warranty. And this extinguisher was not part of any recall.” The consumer concluded that “[i]t

1 seems to me that this company should be investigated and that all consumers should be advised to  
 2 check the gauge on their Kidde extinguishers on a regular basis.” Kidde was informed of this  
 3 complaint twice: once by the consumer and again by the CPSC on January 23, 2018. Kidde  
 4 responded that it “would invite the individual making this report to contact” customer service.

5 55. Another consumer reported to the CPSC on February 3, 2018 that “I did everything  
 6 needed to have one of my extinguishers replaced through the recall. Unfortunately, the  
 7 replacement unit I was sent was damaged before I received it.” The consumer stated that “[a]ll of  
 8 my attempts via phone and email to contact Kidde to remedy the situation have gone unanswered.  
 9 I am concerned that I now have two unsafe fire extinguishers, and I don’t know how to proceed.”  
 10 Kidde was informed of this complaint by the CPSC on May 7, 2018. Kidde responded that it  
 11 “would invite the individual making this report to contact” customer service.

12 56. Another consumer reported to the CPSC on May 24, 2018 that his “Kidde Fire  
 13 extinguisher was recalled. Got replacement unit, however it was defective on arrival.” He stated  
 14 that the “[y]ellow retardant material / powder was already leaking from the box. This was  
 15 extremely unfortunate as I just happened to have brought home my ~8 month [infant] from the  
 16 hospital with chronic lung disease.” The consumer the also included the following photographs  
 17 with their complaint:



1 Kidde was informed of this complaint by the CPSC on August 15, 2018. Kidde responded that it  
2 “will be reaching out to [the consumer] to [e]nsure that his fulfillment requests have been  
3 satisfied.”

### 4 **III. Defendants’ Pre-Sale Knowledge Of The Defect**

#### 5 **A. Defendants Received Complaints Directly From Consumers And** 6 **Through The CPSC Before The 2017 Recall**

7 57. For at least five years before issuing their encompassing 2017 recall, Defendants  
8 received reports of the plastic handle fire extinguishers and push-button Pindicator fire  
9 extinguishers frequently becoming detached, becoming clogged, or requiring excessive force to  
10 discharge causing a failure to activate during a fire emergency.

11 58. As demonstrated above, the United States Consumer Products Safety Commission  
12 operates a website where consumers can post complaints about unsafe products and provide details  
13 about any incidents they experienced.

14 59. Online safety reports to the CPSC show that Defendants knew or should have  
15 known of the Product Defect since at least 2012, yet it continued to sell the defective products  
16 anyway.

17 60. Per federal regulations, all safety reports that are submitted online through the  
18 CPSC website are sent directly to the product’s manufacturer. As set forth in more detail below,  
19 the CPSC website indicates that all safety complaints referenced herein were sent to Kidde,  
20 including the dates on which they were sent. Defendants also monitor safety complaints from the  
21 CPSC, and thus Defendants would have independently become aware of each safety reported  
22 referenced herein separate and apart from notice received from the CPSC.

23 61. On December 31, 2012, a consumer submitted a report to the CPSC concerning  
24 Kidde Model FA110. The consumer stated that he “was cooking on November 8th, 2012 . . . when  
25 a small grease fire began building with flames of approx[imately] 6-12’ high, causing me to grab  
26 [a] fire extinguisher to put it out.” He stated that he “removed the safety pin, verified the pressure  
27 indicator was green[,] pressed on the lever[,] but nothing came out.” The consumer stated that he  
28 “kept trying for approximately a minute longer pressing on [the] lever over and over[,] but nothing

1 was coming out to end the fire.” The consumer stated that “there have been no injuries, but there  
2 was about \$1000 worth of fire damages that could have been averted had this fire extinguisher  
3 worked.” The consumer stated that he independently contacted and alerted Kidde about this  
4 Product Defect. The CPSC also sent the report to Kidde on February 15, 2013. Kidde responded  
5 shortly afterwards. Hence, Kidde was alerted twice about this incident – once by the consumer  
6 directly and then against later by the CPSC. Kidde responded instructing the consumer to “contact  
7 [the] customer service manager.”

8 62. On August 10, 2013, another consumer submitted a report to the CPSC concerning  
9 Kidde Model H110G. The consumer stated that his “pick up truck caught on fire on August 8,  
10 2013.” He stated that “I grabbed my fire extinguisher (that has never been used before) and pulled  
11 the tab and squeezed the trigger.” The consumer noted that “[a] very small amount of chemical  
12 came out and the gauge then read empty, however it [was] still full.” As a consequence of this  
13 failure, the consumer reported that “[t]he cab of my truck went up in flames and is now totaled.”  
14 The consumer attached the following photograph of his truck:



1 The CPSC sent this complaint to Kidde on August 19, 2013. Kidde responded, stating that  
2 “[b]ased on a review of the information provided here, Kidde does not have sufficient information  
3 to believe that the specific product concerns suggest a defect that presents a substantial product  
4 hazard.”

5 63. On November 5, 2014, a Fire Department submitted a report to the CPSC  
6 concerning Kidde Model FX340SC-2. A representative of the Department stated that the  
7 Department “responded to a fire at an apartment complex.” That “[t]he occupant had tried to use a  
8 fire extinguisher and it would not function.” The representative stated that “[a]bout 8 other fire  
9 extinguishers were tried and none of them worked” despite the fact that “[a]ll the extinguishers  
10 were new.” The representative “advised that the extinguishers malfunctioned due to the plastic  
11 discharging mechanism not working” and further that “[t]he plastic handle was not strong enough  
12 to depress the discharge piston before collapsing.” The CPSC sent this report to Kidde on  
13 December 4, 2014. Kidde responded that “[b]ased on the information provided to date, Kidde is  
14 unable to determine if the particular incident described involved a defect.”

15 64. On March 10, 2015, another Fire Department submitted a report to the CPSC  
16 concerning Kidde Model Pro 5 TCM-8. A representative of the Department stated that “[t]he  
17 department responded to a report of an outside fire at a retail grocery store. The Ambulance was  
18 the first unit to arrive and found . . . cardboard on fire against the exterior of the store.” The  
19 representative noted that “[t]he staff on the ambulance deployed the fire extinguisher from the  
20 ambulance in an attempt to extinguish, if not at least slow the fire until the arrival of the [Fire]  
21 Engine.” The representative continued that “[t]he firefighter pulled the pin, removed the hose and  
22 squeezed the handle. After somewhat of a brief delay the powder ‘dribbled’ out [of] the end of the  
23 hose.” The fire fighter “looked at the gauge which was still showing in the green. She again  
24 squeezed the handle and the agent slowly left the hose. She attempted to shake the hose towards  
25 the flames to get any powder to be useful.” Eventually the Fire Engine arrived mitigating the  
26 circumstance. The representative noted that “[t]his situation ended without injury or major  
27 property damage but could easily have ended differently should it [have] occurred in a structure or  
28

1 confined space, or [had there been] trapped occupants.” The CPSC sent this report to Kidde on  
2 March 25, 2015. Kidde responded that it “is in the process of investigating this report.”

3 65. On March 23, 2015, another consumer submitted a report to the CPSC concerning  
4 Kidde Model H110G. The consumer stated that “I attempted to use my Kidde Fire Extinguisher on  
5 a brush fire at a neighbor’s home.” He noted that he “depressed the plastic lever one time which  
6 worked.” But “[t]he second time I tried, it was impossible to depress it. Another one could not be  
7 operated at all. The lever could not be depressed. Striking it on a tree or rock was the only way to  
8 depress the valve.” The CPSC sent this report to Kidde on March 30, 2015. Kidde responded to  
9 this consumer’s complaint shortly afterwards.

10 66. On August 14, 2015, another consumer submitted a report to the CPSC concerning  
11 Kidde Model FX340SC-2. The consumer stated that “I had a small fire in my house.” He noted  
12 that “I proceeded to use my Kidde fire extinguisher for the first time to put it out. The tank  
13 capacity point[ed] to full as it was never used before. After I pulled out the pin and squeezed the  
14 lever, the extinguisher puffed once and died.” The consumer continued “[i]f the fire was larger or  
15 spread faster, it would [have] put my family’s life in danger.” The CPSC sent this report to Kidde  
16 on August 24, 2015. Kidde responded inviting the consumer to contact the customer service  
17 center.

18 67. On August 18, 2015, another consumer submitted a report to the CPSC concerning  
19 Kidde Model FA110. The consumer reported that “[d]uring annual fire extinguisher training we  
20 are required to put out a controlled fire. I pulled [the] pin and gave a short burst of extinguisher. I  
21 then proceeded to approach [the] base of fire and attempted to discharge the remainder of the bottle  
22 and nothing happened.” The consumer stated that “[s]queezing the handle did nothing, it appears  
23 the valve is stuck. I had fire fighter person[ne]l try also and nothing.” The CPSC sent this report  
24 to Kidde on August 26, 2015. Kidde responded “invit[ing] the individual making this report . . . to  
25 please contact [the] customer service center.”

26 68. On April 13, 2017, a Fire Investigator submitted a report to the CPSC concerning a  
27 defective extinguisher. The Fire Investigator stated that “[o]n April 12, 2017, 2350hrs, there was a  
28 kitchen fire I investigated. The occupant of the residence attempted to use a Kidde 3lb disposable

1 fire extinguisher and it failed to operate.” The Fire Investigator stated that “[t]he date stamp on the  
2 base of the extinguisher was ‘2015.’ The extinguisher was rated for ABC type fires and contained  
3 a number on the label of ‘A99014677.’ This model extinguisher appears to be the same type of a  
4 recall previously issued on extinguishers made up to 2014.” The Fire Investigator stated that “I  
5 attempted to use the extinguisher to see if I could get it to operate and I was unable to squeeze the  
6 handle to activate the extinguisher. The pin had been pulled . . . As a result of the inoperability of  
7 the extinguisher, an occupant of the residence used water to extinguisher a cooking oil fire and as a  
8 result spread the fire.” The Fire Investigator continued that “upon my examination of the  
9 extinguisher I noticed a piece of plastic on the upper handle that is to extend into a hole in the  
10 lower handle; in my attempt to activate the extinguisher, I had to manually manipulate this  
11 protruding piece of plastic into the lower handle.” The Fire Investigator concluded that “[t]his  
12 utilized a fine motor skill that, I believe a normal person would not be able to perform under a high  
13 stress situation as a fire.” Kidde was informed of this incident by the CPSC on July 18, 2017.  
14 Kidde responded that it is “unable to determine what may have caused the alleged failure.”

15 69. Every time the CPSC’s website describes a consumer complaint, the website also  
16 discloses the date when CPSC sent that complaint to the manufacturer. This is separate from the  
17 portion of the safety complaint where the consumer states whether he or she independently  
18 contacted the manufacturer. As alleged above, all of the above-referenced complaints were sent to  
19 Defendants by CPSC shortly after being submitted to the CPSC.

20 70. For each of the following reasons, Kidde’s management knew or should have  
21 known about the complaints referenced above as soon as they began appearing on the CPSC  
22 website in 2012:

23 (a) First, as noted above, Kidde was repeatedly contacted directly by consumers  
24 and by the CPSC about the same problem.

25 (b) Second, the CPSC website is a government-run repository for complaints  
26 about safety-related defects, and many of Kidde’s products appear on the website. The CPSC  
27 website can provide businesses with early warnings of product defects, and monitoring reports is  
28 easy because users can search for reports by company names. Hence, since at least 2012, it

1 required negligible effort for Kidde’s management and other personnel to visit the CPSC website,  
2 type “Kidde” in the search field, and view a list of reports of safety incidents related to Kidde  
3 products, including reports about the Product Defect at issue here.

4 (c) Third, Kidde knows about the CPSC website because for each of the reports  
5 described above, Kidde registered a response. For example, with regards to the first incident  
6 described and reported on December 31, 2012, Kidde responded that the consumer should contact  
7 customer service.

8 (d) Fourth, for each of the recalls pertaining to the Defective Products, Kidde  
9 has a hard-to-locate tab on its website linking consumers to details of the recall as posted on the  
10 CPSC’s website.

11 71. Despite Kidde’s knowledge of these complaints, Kidde continued to manufacture,  
12 market, and sell these defective products for purchase for five additional years from the date of the  
13 first reported complaint on the CPSC website. This does not include numerous complaints that  
14 were only made to Kidde and were not otherwise publicly disclosed. Nonetheless, only on  
15 November 2, 2017 did Kidde issue a recall on these Defective Products. And, even then, Kidde  
16 underreported the extent of these defects.

#### 17 **B. Other Indicia Of Defendants’ Pre-Sale Knowledge**

18 72. In addition to receiving safety complaints from the CPSC, Defendants also knew or  
19 should have known about the defects from several other sources. First, online reputation  
20 management (commonly called “ORM” for short), is now a standard business practice among most  
21 major companies and entails monitoring consumer forums, social media, and other sources on the  
22 internet where consumers can review or comment on products. “Specifically, [online] reputation  
23 management involves the monitoring of the reputation of an individual or a brand on the internet,  
24 addressing content which is potentially damaging to it, and using customer feedback to try to solve  
25 problems before the damage to the individual’s or brand’s reputation.”<sup>15</sup> Many companies offer  
26 ORM consulting services for businesses.

27 \_\_\_\_\_  
28 <sup>15</sup> WebSolutions Maine, “Online Reputation,” Available at <https://websolutions-maine.com/online-reputation/> (last visited March 15, 2021).



1           73. Like most companies, Defendants presumably care about their reputation and  
2 regularly monitor on-line consumer reviews because they provide valuable data regarding quality  
3 control issues, customer satisfaction, and marketing analytics. Reviews like those copied above  
4 would be particularly attention-grabbing for Defendants' management because extreme reviews are  
5 sometimes the result of extreme problems, and – just like any other company – Defendants are  
6 presumably sensitive to the reputational impact of negative online reviews. Hence, Defendants'  
7 management knew or should have known about the above-referenced consumer complaints shortly  
8 after each complaint was posted online.

9           74. Defendants' management also knew or should have known about the Product Defect  
10 because of the similarity of complaints to the CPSC, the Better Business Bureau, Consumer  
11 Reports, and other websites. The fact that so many consumers made similar complaints about the  
12 same product indicates that the complaints were not the result of user error or an anomalous  
13 incident, but instead a systematic problem with the product. Here, the reports and complaints from  
14 consumers – whether made directly to Defendants employees or forwarded from the CPSC – were  
15 similar enough to put Defendants' management on notice that the incidents described were the  
16 result of a defect, and that the Products were experiencing unusually high levels of complaints  
17 about the nozzles frequently becoming detached, becoming clogged, or requiring excessive force to  
18 discharge causing a failure to activate during a fire emergency.

19           75. If Defendants were not made aware of the Product Defect through the above sources  
20 – they were – Defendants also would have learned through court filings. Since at least 2012,  
21 several complaints have been filed against Defendants by plaintiffs in their individual capacities  
22 alleging the Defect described herein. Descriptions contained in those complaints and information  
23 learned through discovery therefore would have disclosed the Defect.

#### 24                           **TOLLING OF THE STATUTE OF LIMITATIONS**

25           76. Any applicable statute of limitations has been tolled by the deceptive conduct  
26 alleged herein. Through no fault or lack of diligence, Plaintiffs and Class members were deceived  
27 regarding the Product Defect and could not reasonably discover the latent nature of the defect.  
28



1           84. Subject to additional information obtained through further investigation and  
2 discovery, the above-described Classes may be modified or narrowed as appropriate, including  
3 through the use of multi-state subclasses.

4           85. At this time, Plaintiff does not know the exact number of members of the  
5 aforementioned Class and California Subclass (“Class Members” and “California Subclass  
6 Members,” respectively); however, given the nature of the claims and the number of retail stores in  
7 the United States selling Defendants’ Products, Plaintiff believes that Class and California Subclass  
8 Members are so numerous that joinder of all members is impracticable.

9           86. There is a well-defined community of interest in the questions of law and facts  
10 involved in this case. Questions of law and fact common to the members of the Class that  
11 predominate over questions that may affect individual Class Members include:

12                   (a) whether Defendants misrepresented and/or failed to disclose material facts  
13                   concerning the Products;

14                   (b) whether Defendants’ conduct was unfair and/or deceptive;

15                   (c) whether Defendants have been unjustly enriched as a result of the unlawful  
16                   conduct alleged in this Complaint such that it would be inequitable for  
17                   Defendants to retain the benefits conferred upon Defendants by Plaintiff and the  
18                   Class;

19                   (d) whether Plaintiff and the Class sustained damages with respect to the common  
20                   law claims asserted, and if so, the proper measure for their damages.

21           87. With respect to the California Subclass, additional questions of law and  
22 fact common to the members that predominate over questions that may affect individual members  
23 include whether Defendants violated the California Consumers Legal Remedies Act as well as  
24 California’s Unfair Competition Law.

25           88. Plaintiff’s claims are typical of those of the Class because Plaintiff, like all members  
26 of the Class, purchased, in a typical consumer setting, Defendants’ Products, and Plaintiff sustained  
27 damages from Defendants’ wrongful conduct.

1 89. Plaintiff is an adequate representative of the Class and the California Subclass  
2 because his interests do not conflict with the interests of the Class Members he seeks to represent,  
3 he has retained competent counsel experienced in prosecuting class actions, and he intends to  
4 prosecute this action vigorously. The interests of the Class members will be fairly and adequately  
5 protected by Plaintiff and his counsel.

6 90. The class mechanism is superior to other available means for the fair and efficient  
7 adjudication of the claims of Class Members. Each individual Class Member may lack the  
8 resources to undergo the burden and expense of individual prosecution of the complex and  
9 extensive litigation necessary to establish Defendants' liability. Individualized litigation increases  
10 the delay and expense to all parties and multiplies the burden on the judicial system presented by  
11 the complex legal and factual issues of this case. Individualized litigation also presents a potential  
12 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer  
13 management difficulties and provides the benefits of single adjudication, economy of scale, and  
14 comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment  
15 of the liability issues will ensure that all claims and claimants are before this Court for consistent  
16 adjudication of liability issues.

#### **COUNT I**

#### **(Violation of California's Consumers Legal Remedies Act ("CLRA"), California Civil Code § 1750, *et seq.*)**

17  
18  
19  
20 91. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged  
21 above.

22 92. Plaintiff brings this claim individually and on behalf of the members of the  
23 proposed California Subclass against Defendants.

24 93. Civil Code § 1770(a)(5) prohibits "[r]epresenting that goods or services have  
25 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not  
26 have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she  
27 does not have."  
28

1           94. Civil Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a  
2 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of  
3 another.”

4           95. Civil Code § 1770(a)(9) prohibits “advertising goods or services with intent not to  
5 sell them as advertised.”

6           96. Defendants violated Civil Code § 1770(a)(5), (a)(7), and (a)(9) by holding out  
7 Products as fit for use as fire extinguishers, when in fact the products were defective, dangerous,  
8 and useless.

9           97. The Defect at issue here involves nozzles frequently becoming detached, becoming  
10 clogged, or requiring excessive force to discharge causing a failure to activate during a fire  
11 emergency. This Defect affected Defendants’ plastic handle fire extinguishers and push-button  
12 Pindicator fire extinguishers as identified throughout.

13           98. Defendants have exclusive knowledge of the Defect, which was not known to  
14 Plaintiff or California Subclass Members.

15           99. Defendants made partial representations to Plaintiff and California Subclass  
16 Members, while suppressing the Product Defect. Specifically, by displaying the Products and  
17 describing their features, the product packaging and Defendants’ website implied that the product  
18 was suitable for use as a fire extinguisher, without disclosing that the Products had a critical safety-  
19 related defect that could result in harm to users of the Products.

20           100. Plaintiff and the California Subclass Members have suffered harm as a result of  
21 these violations of the CLRA because they have incurred charges and/or paid monies for the  
22 Products that they otherwise would not have incurred or paid.

23           101. On February 10, 2021, prior to the filing of this Complaint, Plaintiff’s counsel sent  
24 Defendants a CLRA notice letter, which complies in all respects with California Civil Code §  
25 1782(a). The letter was sent via certified mail, return receipt requested, advising Defendants that  
26 they were in violation of the CLRA and demanding that they cease and desist from such violations  
27 and make full restitution by refunding the monies received therefrom. The letter stated that it was  
28

1 sent on behalf of Plaintiff and all other similarly situated purchasers. Defendants responded to the  
2 letter on February 25, 2021.

3 102. Plaintiff and the California Subclass Members seek all relief available under the  
4 CLRA, including restitution, the payment of costs and attorneys' fees, and any other relief deemed  
5 appropriate and proper by the Court.

6 **COUNT II**  
7 **(Violation of California's Unfair Competition Law)**

8 103. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged  
9 above.

10 104. Plaintiff brings this claim individually and on behalf of the proposed California  
11 Subclass against Defendants.

12 105. By committing the acts and practices alleged herein, Defendants have violated  
13 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17210, as to the  
14 California Subclass, by engaging in unlawful, fraudulent, and unfair conduct.

15 106. Defendants have violated the UCL's proscription against engaging in unlawful  
16 conduct as a result of its violations of the CLRA, Cal. Civ. Code § 1770(a)(5) and (a)(7) as alleged  
17 above.

18 107. Defendants' acts and practices described above also violate the UCL's proscription  
19 against engaging in fraudulent conduct.

20 108. As more fully described above, Defendants' misleading marketing, advertising,  
21 packaging, and labeling of the Products is likely to deceive reasonable consumers.

22 109. Plaintiff and the other California Subclass Members suffered a substantial injury by  
23 virtue of buying the Products that they would not have purchased absent Defendants' unlawful,  
24 fraudulent, and unfair marketing, advertising, packaging, and omission about the defective nature  
25 of the Products, or by virtue of paying an excessive premium price for the unlawfully, fraudulently,  
26 and unfairly marketed, advertising, packaged, and labeled products.

27 110. There is no benefit to consumers or competition from deceptively marketing and  
28 omitting material facts about the defective nature of the Products.

1 111. Plaintiff and the other California Subclass Members had no way of reasonably  
2 knowing that the Products they purchased were not as marketed, advertised, packaged, or labeled.  
3 Thus, they could not have reasonably avoided the injury each of them suffered.

4 112. The gravity of the consequences of Defendants' conduct as described outweighs any  
5 justification, motive, or reason therefore, particularly considering the available legal alternatives  
6 which exist in the marketplace, and such conduct is immoral, unethical, unscrupulous, offends  
7 established public policy, or is substantially injurious to Plaintiff and the other California Subclass  
8 Members.

9 113. Pursuant to California Business and Professional Code § 17203, Plaintiff and the  
10 California Subclass seek an order of this Court that includes, but is not limited to, an order  
11 requiring Defendants to (a) provide restitution to Plaintiff and the other California Subclass  
12 Members; (b) disgorge all revenues obtained as a result of violations of the UCL; and (c) pay  
13 Plaintiff's and the California Subclass' attorneys' fees and costs.

14 **COUNT III**  
15 **(Fraud by Omission)**

16 114. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged  
17 above.

18 115. Plaintiff brings this claim individually and on behalf of the members of the  
19 proposed Class and California Subclass against Defendants.

20 116. This claim is based on fraudulent omissions concerning the safety of consumers  
21 who use the Products. As discussed above, Defendants failed to disclose that the Products had a  
22 dangerous defect.

23 117. The false and misleading omissions were made with knowledge of their falsehood.  
24 Defendants knew of reports of the Products' defective and dangerous nature. Nonetheless,  
25 Defendants continued to sell their worthless fire extinguishers to unsuspecting consumers.

26 118. The false and misleading omissions were made by Defendants, upon which Plaintiff  
27 and members of the proposed Class and California Subclass reasonably and justifiably relied, and  
28

1 were intended to induce and actually induced Plaintiff and members of the proposed Class and  
2 California Subclass to purchase the Products.

3 119. The fraudulent actions of Defendants caused damage to Plaintiff and members of  
4 the proposed Class and California Subclass, who are entitled to damages and punitive damages.

5 **COUNT IV**  
6 **(Unjust Enrichment)**

7 120. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged  
8 above.

9 121. Plaintiff brings this claim individually and on behalf of the members of the  
10 proposed Class and California Subclass against Defendants.

11 122. Plaintiff and Class Members conferred benefits on Defendants by purchasing the  
12 Products.

13 123. Defendants have been unjustly enriched in retaining the revenues derived from  
14 Plaintiff and Class Members' purchase of the Products. Retention of those moneys under these  
15 circumstances is unjust and inequitable because Defendants failed to disclose that the Products  
16 were unfit for use as fire extinguishers. These omissions caused injuries to Plaintiff and Class  
17 Members because they would not have purchased the Products if the true facts were known.

18 124. Retention of those moneys is unjust and inequitable because, as alleged above,  
19 Defendants commenced an ineffective recall that was calculated to result in few returns, and  
20 generally no refunds, thereby protecting profits Defendants collected from selling the defective  
21 products.

22 125. Because Defendants' retention of the non-gratuitous benefits conferred on them by  
23 Plaintiff and Class Members is unjust and inequitable, Defendants must pay restitution to Plaintiff  
24 and Class Members for their unjust enrichment, as ordered by the Court.

25 **COUNT V**  
26 **(Breach of Implied Warranty Under the Song-Beverly Act, Cal. Civ. Cod**  
27 **§ 1790 *et seq.* and California Commercial Code § 2314)**

28 126. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged



1 above.

2 127. Plaintiff brings this claim individually and on behalf of the members of the  
3 proposed Class and California Subclass against Defendants.

4 128. Under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790. et seq.,  
5 and California Commercial Code § 2314, every sale of consumer goods in this State is  
6 accompanied by both a manufacturer's and retailer seller's implied warranty that the goods are  
7 merchantable, as defined in that Act. In addition, every sale of consumer goods in this State is  
8 accompanied by both a manufacturer's and retail seller's implied warranty of fitness when the  
9 manufacturer or retailer has reason to know that the goods as represented have a particular  
10 purposes (here, to be used as fire extinguishers) and that the buyer is relying on the manufacturer's  
11 or retailer's skill or judgment to furnish suitable goods consistent with that represented purpose.

12 129. The Products at issue here are "consumer goods" within the meaning of Cal. Civ.  
13 Code § 1791(a).

14 130. Plaintiff and the Class Members who purchased one or more Products are "retail  
15 buyers" within the meaning of Cal. Civ. Code § 1791.

16 131. Defendants are in the business of manufacturing, assembling, product and/or selling  
17 the Products to retail buyers, and therefore are a "manufacturer" and "seller" within the meaning of  
18 Cal. Civ. Code § 1791.

19 132. Defendants impliedly warranted to retailer buyers that the Products were  
20 merchantable in that they would: (a) pass without objection in the trade or industry under the  
21 contract description, and (b) were fit for the ordinary purposes for which the Products are used.  
22 For a consumer good to be "merchantable" under the Act, it must satisfy both of these elements.  
23 Defendants breached these implied warranties because the Products were unsafe and defective.  
24 Therefore, the fire extinguishers would not pass without objection in the trade or industry and were  
25 not fit for the ordinary purpose for which they are used.

26 133. Plaintiff and Class Members purchased the Products in reliance upon Defendants'  
27 skill and judgment in properly packaging and labeling the Products.

28 134. The Products were not altered by Plaintiff or Class Members.

1           135. The Products were defective at the time of sale when they left the exclusive control  
2 of Defendants. The Defect described in this complaint was latent in the product and not  
3 discoverable at the time of sale.

4           136. Defendants knew that the Products would be purchased and used without additional  
5 testing by Plaintiff and Class Members.

6           137. As a direct and proximate cause of Defendants’ breach of the implied warranty,  
7 Plaintiff and Class Members have been injured and harmed because they would not have purchased  
8 the Products if they knew the truth about the Products, namely, that they were unfit for use as fire  
9 extinguishers.

10                                                                   **COUNT VI**  
11                                           **(Violation Of The Magnuson-Moss Warranty Act,**  
                                                                  **15 U.S.C. §§ 2301, *et seq.*)**

12           138. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged  
13 above.

14           139. Plaintiff brings this claim individually and on behalf of the members of the  
15 proposed Class and California Subclass against Defendants.

16           140. The Products are consumer products defined in 15 U.S.C. § 2301(1).

17           141. Plaintiff and the Class and California Subclass Members are consumers as defined  
18 in 15 U.S.C. § 2301(3).

19           142. Defendants are suppliers and warrantors as defined in 15 U.S.C. § 2301(4) and (5).

20           143. In connection with the marketing and sale of the Products, Defendants impliedly  
21 warranted that the Products were fit for use as fire extinguishers. The Products were not fit for use  
22 as fire extinguishers to the Defect described in the allegations above.

23           144. By reason of Defendants’ breach of warranties, Defendants violated the statutory  
24 rights due Plaintiff and the Class and California Subclass Members pursuant to the Magnuson-  
25 Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, thereby damaging Plaintiff and the Class and  
26 California Subclass Members.  
27  
28

1 145. Plaintiff and the Class and California Subclass Members were injured as a direct  
2 and proximate result of Defendants' breach because they would not have purchased the Products if  
3 they knew the truth about the defective nature of the Products.

4  
5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seek  
7 judgment against Defendants, as follows:

- 8 a. For an order certifying the nationwide Class and California Subclass under Rule 23 of  
9 the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class  
10 and California Subclass and Plaintiff's attorneys as Class Counsel to represent the Class  
11 and California Subclass Members;
- 12 b. For an order declaring that Defendants' conduct violates the statutes referenced herein;
- 13 c. For an order finding in favor of Plaintiff, the Class, and the California Subclass on all  
14 counts asserted herein;
- 15 d. For compensatory and punitive damages in amounts to be determined by the Court  
16 and/or jury;
- 17 e. For pre-judgment interest on all amounts awarded;
- 18 f. For an order of restitution, disgorgement, and all other forms of monetary relief;
- 19 g. For an order awarding Plaintiff and the Class and California Subclass their reasonable  
20 attorneys' fees and expenses and costs of suit.

21 **DEMAND FOR TRIAL BY JURY**

22 Plaintiff demands a trial by jury of all issues so triable.

23 Dated: March 29, 2021

Respectfully submitted,

24 **BURSOR & FISHER, P.A.**

25 By: /s/ L. Timothy Fisher

26 L. Timothy Fisher (State Bar No. 191626)  
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