

Beth E. Terrell, WSBA #26759  
Attorneys for Plaintiff and the Class  
TERRELL MARSHALL LAW GROUP PLLC  
936 North 34th Street, Suite 300  
Seattle, Washington 98103  
Telephone: (206) 816-6603  
Facsimile: (206) 319-5450  
Email: bterrell@terrellmarshall.com

[Additional Counsel Appear On Signature Page]

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF WASHINGTON

LINDSAY REED, individually and on  
behalf of herself and all others similarly  
situated,

Plaintiff,

v.

EVENFLO COMPANY, INC.,

Defendant.

NO.

**CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff, Lindsay Reed (“Plaintiff”), by and through the undersigned  
counsel, on behalf of herself and all others similarly situated, brings this Class  
Action Complaint against Defendant, Evenflo Company, Inc. (“Defendant” or  
“Evenflo”), and in support alleges, upon information and belief and based on the  
investigation to date of her counsel, as follows:

## I. INTRODUCTION

1  
2 1. Every parent remembers the first drive home from the hospital with a  
3 newborn baby. Leading up to that big day, parents purchase what they believe to  
4 be a safe car seat, spend even more time ensuring that the car seat is properly  
5 installed in their vehicles, and then proceed to drive home at a cautious speed of  
6 approximately 12 miles per hour.

7 2. As children grow and develop, so do their needs with respect to car  
8 seats. The American Academy of Pediatrics (“AAP”) recommends that infants and  
9 toddlers ride in rear-facing car seats as long as possible, until they reach the top  
10 height or weight limit allowed by the car seat manufacturer.<sup>1</sup> In recent years, car  
11 seat manufacturers have created seats that allow children to remain rear-facing  
12 until they weigh 40 pounds or more, which means that most children can remain  
13 rear-facing past their second birthday. *Id.* When children outgrow the allowable  
14 height and weight limitations of their rear-facing car seats, they transition to  
15 forward-facing car seats featuring harnesses. *Id.* Again, the AAP recommends  
16 that children ride in forward-facing car seats with harnesses as long as possible,  
17 until they reach the top height or weight limit allowed by the car seat manufacturer.

18  
19  
20 <sup>1</sup> <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAP-Updates-Recommendations-on-Car-Seats-for-Children.aspx> (last visited Feb. 20, 2020).

1 *Id.* Many forward-facing car seats with harnesses accommodate children up to 65  
2 pounds or more. *Id.* Once children reach the top height or weight limit allowed by  
3 the forward-facing car seat manufacturer, they graduate to a belt-positioning  
4 booster seat (which does not feature a harness) until the vehicle's lap and shoulder  
5 seat belt fit properly, which is typically when children are at least 4 feet, nine  
6 inches in height and are 8 to 12 years old. *Id.*

7 3. While the type and size of a child's car seat may change over time, the  
8 one constant is parents' commitment and determination to ensure the safety of their  
9 children. To this end, parents with children of every age strive to identify and  
10 purchase safe car seats from reputable manufacturers. Since the average parents  
11 are not in a position to conduct their own safety testing, in order to make informed  
12 purchasing decisions, they must rely on the marketing, labeling, and  
13 representations of car seat manufacturers regarding the safety of a given car seat  
14 and its appropriateness for children of a specific age and/or size. But what happens  
15 when a car seat manufacturer puts profits before child safety and misrepresents the  
16 safety or suitability of its car seats? This is the situation in the instant case.

1 4. Evenflo has manufactured, marketed, distributed, and sold car seats  
2 since 1995.<sup>2</sup> On its website and car seat packaging, Evenflo claims that “Safety is  
3 our #1 priority.”<sup>3</sup>

4 5. Evenflo’s website includes a page entitled “Our Promise On Safety,”  
5 wherein Defendant states:

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

13 Evenflo tests all of our car seats to energy levels  
14 approximately twice that of the federal crash test standard.  
15 Additionally, our engineers developed the Evenflo Side  
16 Impact test protocol, which simulates the energy in severe  
17 5-star government side impact tests conducted for  
18 automobiles.<sup>4</sup>

19 6. The Big Kid booster seat (“Booster Seat”) is one of several car seat  
20 models manufactured, marketed, and sold by Evenflo.

---

2 <https://www.evenflo.com/about/about-us.html> (last visited Feb. 20, 2020).

3 <https://www.evenflo.com/car-seats/> (last visited Feb. 20, 2020).

4 <https://www.evenflo.com/safety-learning/promise-on-safety.html> (last visited Feb. 20, 2020).

1 7. Defendant offers five models of the Booster Seat: the 2-in-1, the Amp  
2 2-in-1, the LX 2-in-1, the Sport, and the Essential.<sup>5</sup> According to Defendant's  
3 website, the price range for the three models is \$39.99 to \$44.99. *Id.* To date,  
4 Defendant has sold more than 18 million Booster Seats.<sup>6</sup>



10 **Amp 2-in-1 Model**



11 **2-in-1 Model**



16 **LX 2-in-1 Model**



17 **Sport Model**

18 <sup>5</sup> <https://www.evenflo.com/car-seats/> (last visited Feb. 20, 2020).

19 <sup>6</sup> [https://www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-](https://www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-put-profits-over-child-safety)  
20 [put-profits-over-child-safety](https://www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-put-profits-over-child-safety) (last visited Feb. 20, 2020).



**Essential Model**

8. The Booster Seat is marketed and sold by numerous nationwide retailers, including Target, Walmart, Kohl's, and Buy Baby, as well as online via Defendant's own website, Amazon, and the websites of the aforementioned retailers.

9. For years, Defendant marketed that its Booster Seat is appropriate for children weighing less than 40 pounds, has been side impact tested, and "meets or exceeds all applicable federal safety standards and Evenflo's side impact standards."<sup>7</sup>

---

<sup>7</sup> [https://www.evenflo.com/car-seats/big-kid/us\\_bigkid.html?dwvar\\_us\\_bigkid\\_fashion=31912230&cgid=car-seat-booster#start=8](https://www.evenflo.com/car-seats/big-kid/us_bigkid.html?dwvar_us_bigkid_fashion=31912230&cgid=car-seat-booster#start=8) (last visited Feb. 14, 2020).



**Packaging states “30-110 lbs.”**

10. To the detriment of parents and children nationwide, Defendant’s marketing of the Booster Seat is deceptive and misleading, as the use of booster seats by children weighing less than 40 pounds is in direct contravention to the safety recommendations of the AAP, and further, there is no federal safety standard or test governing side impact for car seats. Given the absence of any such standard or test, Defendant created its own test – with no basis in safety or science – and then proceeded to consistently give itself a passing grade and market the Booster Seat as “side impact tested.”

1           11. Contrary to Evenflo’s marketing and safety representations, it has  
2 recently been revealed that Defendant has known for a significant period of time  
3 that the Booster Seat is not safe for children lighter than 40 pounds, and that  
4 Defendant’s own testing confirmed that a child seated in the Booster Seat could be  
5 in grave danger in the event of a side-impact collision.<sup>8</sup>

6           12. Sadly, the real-world repercussions of Defendant’s dangerous  
7 deception and misrepresentations have been established by the unforgiveable and  
8 irreversible aftermath of car accidents involving children weighing less than 40  
9 pounds who were seated in Defendant’s Booster Seat during the time of their  
10 accidents.

11           13. If Defendant had been honest and not deceptively misrepresented the  
12 very real safety risks posed by its Booster Seat in the event of a side-impact  
13 collision, no parent would have ever purchased Defendant’s Booster Seat.

14           14. Plaintiff filed this case in order to address Defendant’s deception and  
15 misrepresentations in connection with the Booster Seat, as discussed in greater  
16 detail below.

17  
18  
19 <sup>8</sup> [https://www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-  
20 put-profits-over-child-safety](https://www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-put-profits-over-child-safety) (last visited Feb. 20, 2020).



**II. PARTIES**

1  
2 15. Plaintiff, Lindsay Reed, is a resident and citizen of Spokane, Spokane  
3 County, Washington.

4 16. Defendant, Evenflo Company, Inc., is an Ohio corporation with its  
5 principle place of business located in Miamisburg, Ohio. Defendant is a wholly-  
6 owned subsidiary of China-based Goodbaby International Holdings Limited and  
7 manufactures, markets, and sells car seats and other baby and child-related  
8 products. Upon information and belief, Defendant's deceptive conduct originated  
9 from its principle place of business in Ohio and was uniformly disseminated  
10 nationwide.

**III. JURISDICTION AND VENUE**

11  
12 17. This Court has subject matter jurisdiction over this action pursuant to  
13 28 U.S.C. § 1332(d) because (1) there are more than one hundred Class Members,  
14 (2) there is an aggregate amount in controversy exceeding \$5,000,000.00,  
15 exclusive of interest and costs, and (3) there is minimal diversity because Plaintiff  
16 and Defendant are citizens of different states. This Court also has supplemental  
17 jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367.

18 18. This Court has personal jurisdiction over Defendant because  
19 Defendant does substantial business in this state and within this District, receives  
20 substantial compensation and profits from the marketing, distribution, and sale of

1 its products in this District, and has engaged in the unlawful conduct described in  
2 this Class Action Complaint within this District.

3 19. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because  
4 a substantial part of the events or omissions giving rise to Plaintiff's claims  
5 occurred in this District.

#### 6 IV. THE DEVELOPMENT OF CAR SEATS

7 20. The first child restraint systems were introduced in 1968, and the first  
8 child passenger safety law was passed in Tennessee 10 years later.<sup>9</sup>

9 21. In the late 1970s, the U.S. public's increasing awareness of the high  
10 rates of morbidity and mortality for child passengers resulted in rapid proliferation  
11 of state laws on the issue.<sup>10</sup>

12 22. Between 1977 and 1985, all 50 states adopted one or more laws aimed  
13 at reducing harm to infants and child passengers by requiring the use of some sort  
14 of child restraint device. *Id.*

15 23. In the early 1980s, crash testing for car seats became required.<sup>11</sup>

16  
17 <sup>9</sup> <https://www.sun-sentinel.com/entertainment/sfp-then-and-now-25-years-of-car-seat-safety-20150828-story.html> (last visited Feb. 20, 2020).

18 <sup>10</sup> Child Passenger Safety Laws in the United States, 1978–2010: Policy Diffusion  
19 in the Absence of Strong Federal Intervention,  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3899584/> (last visited Feb. 20,  
20 2020).

<sup>11</sup> <https://www.sun-sentinel.com/entertainment/sfp-then-and-now-25-years-of-car->

1           24. Beginning in the 1990s, the National Highway Traffic Safety  
2 Association (“NHTSA”), as well as professional associations like the AAP, have  
3 developed child passenger safety standards and guidelines that cover a wider range  
4 of child passenger safety issues and better protect children from injuries.<sup>12</sup> Among  
5 other things, they emphasized the importance of three types of safety practices in  
6 protecting child passengers: (1) device-based restraints that are tailored to the  
7 age/size of individual child passengers; (2) rear seating, and; (3) seatbelt wearing  
8 of minors who have outgrown child restraint devices but are still in need of  
9 supervision to comply with seatbelt requirements. *Id.*

10           25. In the early 2000s, the CDC Task Force strongly recommended that  
11 states adopt laws mandating the use of age and size appropriate child restraints. *Id.*  
12 Subsequently, the NHTSA and AAP guidelines were updated with similar  
13 emphasis. *Id.*

14  
15  
16  
17 

---

[seat-safety-20150828-story.html](https://www.seat-safety-20150828-story.html) (last visited Feb. 20, 2020).

18 <sup>12</sup> Child Passenger Safety Laws in the United States, 1978–2010: Policy Diffusion  
19 in the Absence of Strong Federal Intervention,  
20 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3899584/> (last visited Feb. 20,  
2020).

1           26. The first booster seat law was implemented in 2000, when  
2 Washington state, and then California, implemented laws requiring booster seats  
3 for children over 40 pounds.<sup>13</sup>

4           27. Specifically, the AAP guidelines are as follows:<sup>14</sup>

AGE GROUP	TYPE OF SEAT	GENERAL GUIDELINES
Infants and Toddlers	Rear-Facing Only Rear-Facing Convertible	All infants and toddlers should ride in a rear-facing seat until they reach the highest weight or height allowed by their car seat manufacturer. Most convertible seats have limits that will allow children to ride rear facing for 2 years or more.

17  
18 <sup>13</sup> <https://www.sun-sentinel.com/entertainment/sfp-then-and-now-25-years-of-car-seat-safety-20150828-story.html> (last visited Feb. 20, 2020).

19  
20 <sup>14</sup> <https://www.healthychildren.org/English/safety-prevention/on-the-go/Pages/Car-Safety-Seats-Information-for-Families.aspx> (last visited Feb. 20, 2020).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

AGE GROUP	TYPE OF SEAT	GENERAL GUIDELINES
Toddlers and Preschoolers	Forward-Facing Convertible Forward-Facing with Harness	Children who have outgrown the rear-facing weight or height limit for their convertible seat should use a forward-facing seat with a harness for as long as possible, up to the highest weight or height allowed by their car seat manufacturer. Many seats can accommodate children up to 65 pounds or more.
School-Aged Children	Booster	All children whose weight or height exceeds the forward-facing limit for their car safety seat should use a belt-positioning booster seat until the vehicle seat belt fits properly, typically when they have reached 4 feet 9 inches in height and are 8 through 12 years of age. All children younger than 13 years should ride in the back seat.

AGE GROUP	TYPE OF SEAT	GENERAL GUIDELINES
Older Children	Seat Belts	When children are old enough and large enough for the vehicle seat belt to fit them correctly, they should always use lap and shoulder seat belts for the best protection. All children younger than 13 years should ride in the back seat.

## V. THE DEVELOPMENT OF THE EVENFLO BOOSTER SEAT

28. Evenflo introduced the Booster Seat in the early 2000s in an effort to compete in the developing booster seat category, which was prompted by certain states requiring school-age children to use such seats until they could fit in regular seat belts.<sup>15</sup> Evenflo’s internal records indicate that the Booster Seat was specifically developed for the purpose of “regaining control in the market” from Graco, which was marketing its booster seat as safe for children at least 3 years old with a minimum weight of 30 pounds and minimum height of 38 inches. *Id.* With this goal in mind, Defendant priced its Booster Seat at \$10 less than Graco’s seat

<sup>15</sup> <https://www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-put-profits-over-child-safety> (last visited Feb. 20, 2020).

1 and marketed the Booster Seat as safe for babies as young as 1 year old with a  
2 minimum weight of 30 pounds and no minimum height. *Id.*

3 29. There is scientific consensus that booster seats do not adequately  
4 protect toddlers. To get the full safety benefit in a crash, the adult seat belt has to  
5 remain on the strong parts of a child’s body: across the middle of the shoulder and  
6 across the upper thighs. Even if toddlers are tall enough for the belt to reach the  
7 shoulders, children that young rarely sit upright for long and often wriggle out of  
8 position. *Id.* “In contrast, a tightly adjusted five-point harness secures shoulders  
9 and hips, and goes between the legs. Harnesses secure children’s bodies so that  
10 they are less likely to be ejected and disperse the crash forces over a wider area.  
11 There’s a reason NASCAR drivers wear harnesses.” *Id.*

12 30. Defendant markets, packages, and labels its Booster Seat as “side  
13 impact tested.” This claim appears on the product box, and on a permanent tag  
14 affixed to the Booster Seat itself.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20



### Evenflo’s Booster Seat Packaging Features “Side Impact Tested” Claim



### Label on Booster Seat Indicating “Side Impact Tested”

31. Clearly, Defendant included the claim of “side impact tested” on the packaging and stitched it onto the product itself to appeal to safety-conscious parents and to indicate to reasonable consumers that the Booster Seat is of a certain quality or standard and has satisfied or surpassed rigorous safety standard. But in reality, the “side impact tested” representation is meaningless at best, and a dangerous deception at worst.



1           32. The fact is, there is currently no government standard for testing car  
2 seat performance in side-impact collision scenarios. Currently, the only  
3 government-issued standard crash test involves simulated head-on collisions.<sup>16</sup>  
4 Defendant took advantage of this regulatory gap and seized the opportunity to  
5 concoct its own side impact testing, the specifics of which have never been  
6 voluntarily disclosed to consumers. *Id.* Had the specifics of Defendant’s “side  
7 impact testing” been disclosed to consumers, including Plaintiff, they would not  
8 have purchased the Booster Seats.

9           33. Side impact collisions were responsible for more than a quarter of  
10 deaths of children under 15 killed in vehicle collisions in 2018.<sup>17</sup> While less  
11 common than head-on crashes, side impacts are more likely to result in serious  
12 injuries because there is only a door separating the passenger from the intruding  
13 vehicle. *Id.*

---

14  
15  
16  
17 <sup>16</sup> Significantly, the lobbying efforts of the car seat manufacturing industry itself  
18 caused the further delay of establishing a side-impact safety standard for car seats.  
19 *See* [https://www.propublica.org/article/the-car-seat-industry-helped-delay-a-child-  
20 safety-regulation-again](https://www.propublica.org/article/the-car-seat-industry-helped-delay-a-child-safety-regulation-again) (last visited Feb 20, 2020).

<sup>17</sup> [https://www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-  
put-profits-over-child-safety](https://www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-put-profits-over-child-safety) (last visited Feb. 20, 2020).

1 34. On its website, Defendant communicates through its marketing to  
2 consumers that its side-impact testing is rigorous and simulates realistic side-  
3 impact crashes. *Id.*

4 **Safety Testing**

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

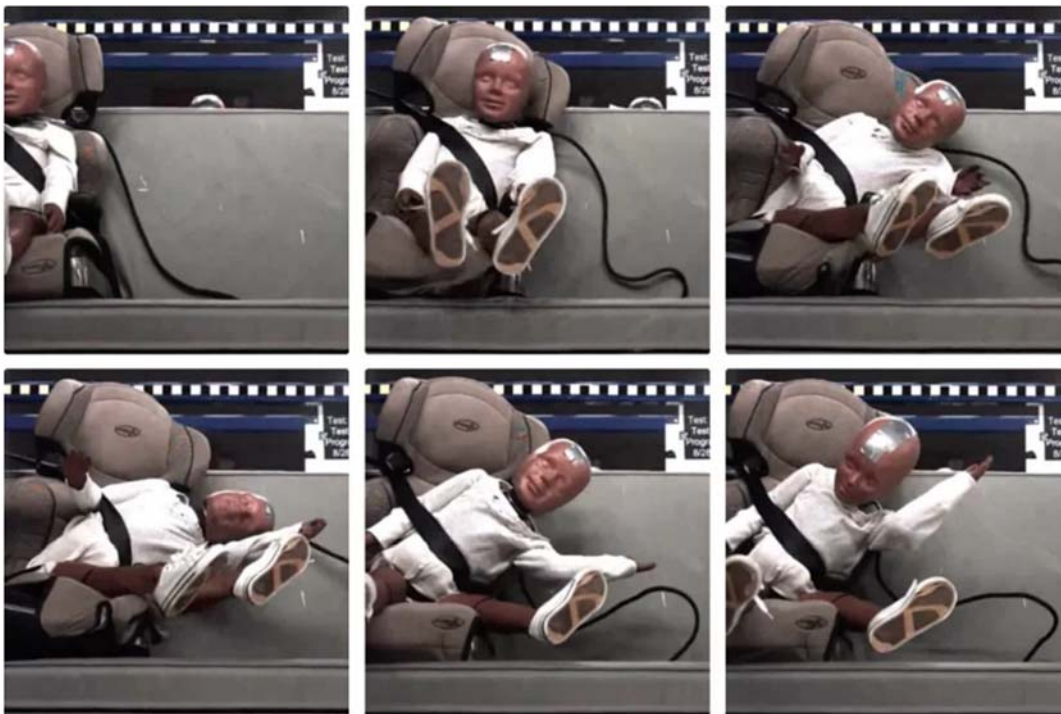
- 8 • Side Impact Tested: Meets or exceeds all applicable  
9 federal safety standards and Evenflo's side impact  
10 standards.
- 11 • Designed and tested for structural integrity at energy  
12 levels approximately 2X the federal crash test standard.
- 13 • FMVSS 213: Federal Motor Vehicle Safety Standards  
14 for Child Restraint Systems
- 15 • FMVSS 302: Federal Motor Vehicle Safety Standards  
16 for Flammability of Interior Materials
- 17 • CMVSS 302: Canada Motor Vehicle Safety Standard
- 18 • CMVSS 213: Canada Motor Vehicle Safety Standard
- 19 • Evenflo Temperature Testing: All current Evenflo car  
20 seats are tested for product integrity at both high and  
low temperatures.

15 **Evenflo's Website Misleads Consumers to Believe Its Booster Seat Meets or**  
16 **Exceeds Federal Safety Standards for Side Impact Testing as well as Evenflo's**  
17 **Own Side Impact Standards**

17 35. The truth is that Evenflo's side impact tests were anything but  
18 stringent, according to internal company documents. Defendant's tests showed  
19 that when child-sized crash dummies seated in the Booster Seat were subjected to  
20 the forces of a T-bone collision, they were thrown far out of their shoulder belts.

1 Evenflo's top booster seat engineer would later admit in a deposition that if real  
2 children moved that way, they could suffer catastrophic head, neck and spinal  
3 injuries or die. *Id.*

4 36. Videos from the company's side-impact tests show child-sized  
5 dummies careening far outside the boundaries of the booster seat, where a child's  
6 head, neck and spine would be vulnerable. While the purpose of a seat belt is to  
7 distribute the crash forces over the strong bones of the body — the shoulders and  
8 hips — the Evenflo test instead showed the belt slipped off the shoulder and  
9 wound up taut around the soft abdomen and ribs. In real life, that could cause  
10 internal organ damage. *Id.*



1 **Video of Evenflo Side Impact Tests Show Child-Sized Dummies Thrown**  
2 **Violently Out of Shoulder Belts and Their Heads and Torsos Flying Outside**  
3 **the Seat**

4 37. Defendant's side-impact collision test videos were shown to Dr.  
5 Benjamin D. Hoffman, a pediatrician and lead author of the AAP's car seat  
6 recommendations. *Id.* Dr. Hoffman opined that such violent movement at high  
7 speed of the dummy in the booster could lead to abdominal, brain and spinal  
8 injuries in a real child, including paralysis or death. *Id.* "This looks horrific, and I  
9 can't imagine it being in any way shape or form better under real life  
circumstances," Hoffman said. *Id.*

10 38. Notwithstanding these horrific, simulated test results, because there is  
11 no regulatory standard for side-impact collision testing, Defendant has consistently  
12 given its own Booster Seat a passing grade by setting its internal test bar so low  
13 that, the only way to fail the test was if the child-sized crash test dummy ended up  
14 on the floor or the Booster Seat itself broke into pieces. *Id.*

15 39. An Evenflo senior technician, Jeremy Belzyt, testified during a  
16 deposition that, after each side impact crash test, a technician would complete a  
17 form by checking "yes" or "no" as to whether the test showed "dummy retention."  
18 *Id.* When asked to explain the meaning of "dummy retention," Mr. Belzyt  
19 answered, "It's just did it stay in the seat or did it fall out of the seat and end up on  
20 the floor." *Id.*

1 40. During the aforementioned deposition, Mr. Belzyt was shown each of  
2 the following photos from Evenflo's self-conducted side impact tests. In response  
3 to each photo, Mr. Belzyt confirmed that each of these would have resulted in a  
4 technician checking "yes" on the form for "dummy retention." *Id.* As a result, an  
5 Evenflo engineer decided that each of these Booster Seats passed the test. *Id.*





1  
2  
3  
4  
5  
6 **These Booster Seats Passed Evenflo’s Internal Side Impact Testing**

7 41. According to Belzyt, during his 13 years at Evenflo, he never  
8 performed a side impact test on a Booster Seat that was deemed to be a failure. *Id.*

9 42. Defendant further misleads consumers by claiming on its Booster Seat  
10 website, “**Side Impact Tested:** Meets or exceeds all applicable federal safety  
11 standards and Evenflo’s side impact standards.”<sup>18</sup> Again, there is no federal safety  
12 standard for side impact, thus, it is deceptive for Defendant to indicate that its  
13 product has surpassed a nonexistent standard.

14 43. Notwithstanding the fact that there is no federal safety standard for  
15 side impact, Defendant deceptively misrepresented on a website called “The Safety  
16 Net” that its “rigorous test simulates the government side-impact tests conducted  
17 for automobiles.”

18  
19  
20 <sup>18</sup> <https://www.evenflo.com/car-seats/big-kid/31911431.html> (last visited Feb. 20, 2020).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20


**Making the Transition – How to Choose a Booster Seat**

الترقي من ٤ إلى ٨ سنوات ٢٠٢٠ من

everflo

**the safety net**

with sarah haverstick



There are so many booster seat options on the market it can be hard to know where to start when shopping for this important piece of safety equipment. Here are some tips to make the experience a little easier.

**First - don't transition your child too early.** At a minimum, your child should be 4 years old to use a booster seat. Your child must be mature enough to sit in the booster seat with the seat belt in the proper position – without putting it under their arm, behind their back or slouching.

**Next – make sure your child actually fits in the booster.** Belt positioning booster seats are all about proper seat belt fit. Booster seats are designed to make your child a little taller so they can use the lap/shoulder seat belt, which is made to fit an adult. The lap belt should be low and snug across the hips (not across the belly) and the shoulder belt should cross the chest and shoulder (not the neck and face). Every booster seat fits in every vehicle differently, so ideally, ask the store if you can bring it out to your car to test for fit with your child.

Once you have proper belt fit – there are many other features you can look for.

**Extended Use**  
Combination car seats are forward facing only car seats that allow you to use a harness for your child and then remove the harness to use the seat as a booster. Upper weight limits on the harness will vary. Using a car seat with a higher weight rating for the harness (over 40 pounds) will help delay your child's transition into a booster seat.

**High Back Booster vs. No Back Booster**  
You will need a high back booster if your vehicle does not have a headrest for the seating position that your child will be using (fairly uncommon with most newer vehicles, but more common in older vehicles or pickup trucks). Otherwise, high back boosters are a great option when first transitioning a child to a booster, and are also helpful if your child is prone to napping in the car. No back boosters are great options for travel, or to have on hand in case you frequently car pool with other booster-age kids, since they are compact and easy to store.

**Lower Anchors**  
Combination seats will often allow the use of the lower anchors and tether when the seat is used in booster mode. When used with a booster, lower anchors are not designed to help with crash safety for the child (the seat belt protects the child in a crash – which is why it is important that it fits right). However, the lower anchors do keep the booster seat in the same place. This is helpful when your independent child wants to climb in and buckle the seat belt on their own. The lower anchors are also helpful in keeping the booster seat tied down when not in use so it does not become a projectile in a crash. That way you do not need to remember to buckle the seat in every time it is not in use.

**Side Impact Testing**  
Currently, there is no federal standard for side impact testing of car seats and booster seats. However, the engineers at Everflo have designed the Everflo Side Impact Test protocol. This rigorous test simulates the government side impact tests conducted for automobiles.

**Cool factor!**  
This might not sound as important – but as safety advocates, we know that booster seats have been proven to be more effective than seat belts alone for kids ages 4 through 8. But, we also know that older kids do not want to look (or feel) like babies in the car. To encourage kids to be excited about using boosters, Everflo has added fun colors, cup holders and even lights and speakers in some booster seat models. If possible, bring your child with you when you are shopping for their new seat. Allowing them to help with the decision may make them more interested in using the seat.

44. Equally misleading is Defendant’s representation on its website and packaging that its Booster Seat is designed and tested at “2X the Federal Crash

1 Test Standard.” *Id.* By not identifying a particular standard, Defendant misleads  
2 reasonable consumers to believe that this is a reference to a federal side-impact  
3 standard. As discussed above, there is no such standard.

#### 4 **Evenflo Modifies, But Does Not Improve the Booster Seat**

5 45. Beginning in 2007, Defendant began representing that the minimum  
6 age on the Booster Seat was 3 and, for the first time, listed a minimum height of 38  
7 inches. *Id.* Evenflo warned that, failure to follow these instructions “can result in  
8 your child striking the vehicle’s interior during a sudden stop or crash, potentially  
9 resulting in serious injury or death.” *Id.*

10 46. At no time did Defendant attempt to contact or otherwise  
11 communicate to consumers who previously purchased the Booster Seat based on  
12 the earlier representations as to the demographic for which the Booster Seat was  
13 appropriate.

14 47. In February 2012, an Evenflo safety engineer, Eric Dahle,  
15 recommended to high-ranking Evenflo executives that the company stop selling  
16 the Booster Seat for children who weigh less than 40 pounds and increase the age  
17 rating to 4 years old. *Id.* Mr. Dahle presented the Evenflo executives with  
18 government research regarding the effectiveness of booster seats and advised that  
19 children lighter than 40 pounds would be safer in car seats that use harnesses,  
20 which would align with Canadian regulations and recommendations from the AAP.



1 *Id.* According to Evenflo’s internal records, marketing executive McKay  
2 Featherstone “vetoed” Mr. Dahle’s recommendation on more than one occasion.

3 *Id.* Evenflo refused to heed Mr. Dahle’s advice because doing so would have  
4 placed Evenflo at a disadvantage alongside its main competitors, Graco and Dorel.  
5 Put simply, Defendant put profits ahead of child safety.

6  
7 **FROM:** Featherstone, McKay  
**SUBJECT:** RE: amp fixtures  
**Date:** Wednesday, July 25, 2012 9:33 AM

8  
9 **Gregg, why are we even talking about this?** It has always been this way  
10 in Canada so I don’t understand why it is now a big problem that  
11 requires a \$30k investment or us to change product. **I have looked at  
12 40 lbs for the US numerous times and will not approve this.**

13 **A marketing executive vetoed an engineer’s recommendation to stop  
14 marketing the Booster Seat as safe for children weighing less than 40 pounds  
15 or younger than four years old**

16 48. Defendant’s representations about the safety of its Booster Seat were  
17 further contradicted by one of its own project engineers, Joshua Donay, during a  
18 2016 deposition in a case in Duval County Circuit Court in Florida, wherein Mr.  
19 Donay testified that he would “not put a 1-year-old in any belt-positioning booster,  
20 Big Kid, Graco, you name it. I would keep them in an infant seat.” *Id.*

1 49. Similarly, during a separate deposition in a separate lawsuit, the  
2 aforementioned safety engineer, Eric Dahle, testified that not only should a 1 year  
3 old never use the Booster Seat, but a 2 year-old should not either. *Id.*

4 50. By 2008, Graco products were still outselling Defendant’s Booster  
5 Seat. *Id.* Defendant believed that this was due to a perception issue – specifically,  
6 that Graco seats appeared to be safer in terms of providing more side support. *Id.*

7 51. In an effort to make the Booster Seat look safer, Defendant added side  
8 wings that extend from the backrest. *Id.* Defendant’s internal documents listed  
9 one consumer benefit of the newly added side wings as “increased perceived side  
10 protection.” *Id.*

11 52. Videos of Defendant’s internal side impact testing show that, even  
12 with the addition of side wings, a child’s head, neck, and spine remain vulnerable  
13 to serious injuries. *Id.*

14 **BIG KID BOOSTER SEAT**  
15 Model 338 — No Side Wings



**BIG KID BOOSTER SEAT**  
Model 309 — With Side Wings



1 **Video of Evenflo Side Impact Tests Show Child-Sized Dummies Thrown**  
2 **Violently Regardless of Added Side Wings**

3 53. Indeed, children placed in Defendant’s Booster Seat have been  
4 severely and permanently injured, including internal decapitation and paralysis.<sup>19</sup>

5 54. Consistent with Defendant’s focus on providing the perception of  
6 safety, as opposed to providing actual safety, during a 2016 deposition in a  
7 negligence case involving the Booster Seat, an Evenflo engineer, David Sander,  
8 testified that “We side-impact test our seats, but I don’t think we say that we offer  
9 any type of side-impact protection.” *Id.*

10 55. On February 12, 2020, it was announced that the U.S. House of  
11 Representatives’ Subcommittee on Economic and Consumer Policy is launching an  
12 investigation of Defendant’s Booster Seat.<sup>20</sup>

13 **VI. PLAINTIFF’S FACTS**

14 56. On or around October 29, 2019, Plaintiff purchased an Evenflo Big  
15 Kid Booster Seat to use for her son.

16 57. Plaintiff paid approximately \$44.99 for the Booster Seat.

17  
18 <sup>19</sup> <https://www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-put-profits-over-child-safety> (last visited Feb. 20, 2020).

19  
20 <sup>20</sup> <https://www.propublica.org/article/house-subcommittee-opens-investigation-of-evenflo-maker-of-big-kid-booster-seats> (last viewed Feb. 20, 2020).

1           58. As a reasonable consumer, Plaintiff perceived Defendant's  
2 representations regarding side-impact collision testing as an indication that the  
3 Booster Seat had succeeded under rigorous safety testing standards beyond those  
4 required by the government when, in fact, it did not.

5           59. Plaintiff's decision to purchase the Booster Seat was directly impacted  
6 by Defendant's representations regarding its supposedly rigorous side-impact  
7 collision testing.

8           60. Had Plaintiff known of the significant safety risks posed by  
9 Defendant's Booster Seat, and the low threshold for Defendant giving its own  
10 Booster Seat a passing grade regarding side-impact testing, she would not have  
11 purchased the Booster Seat for use by her child.

## 12           **VII. TOLLING AND ESTOPPEL OF STATUTE OF LIMITATIONS**

13           61. Defendant has had actual knowledge for several years that the  
14 marketing, packaging, and labeling of its Booster Seat was deceptive and  
15 misleading because Defendant's internal and undisclosed side-impact tests confirm  
16 that the Booster Seat poses serious safety risks to children, there are no  
17 government-issued side-impact safety standards that the Booster Seat could meet  
18 or exceed, and Defendant's own side-impact standards and testing are made up and  
19 not based on science or safety.

1 **A. Discovery Rule Tolling**

2 62. During the period of any applicable statutes of limitation, Plaintiff and  
3 Class Members could not have discovered, through the exercise of reasonable  
4 diligence, that Defendant's Booster Seat is unsafe in the event of a side-impact  
5 collision.

6 63. Plaintiff and Class Members did not discover, and did not have  
7 knowledge of, facts that would cause a reasonable person to suspect that  
8 Defendant's Booster Seat is unsafe in side-impact collision scenarios, or that  
9 Defendant's marketing, packaging, and labeling of the Booster Seat as "side  
10 impact tested" was false, deceptive, and/or misleading.

11 64. Until recently, only Defendant had knowledge of the fact that its  
12 Booster Seat poses a serious safety risk to children. Plaintiff, Class Members, and  
13 the public at-large had no way of obtaining knowledge of this important fact until  
14 ProPublica published a robust article exposing these facts on February 6, 2020.  
15 While some of the information reported by ProPublica may have been disclosed in  
16 connection with earlier, individual litigation, it was sealed by the court or only  
17 available via a fee-based access system, such as CM/ECF, which the average  
18 person typically does not know how to access or navigate.

19 65. Plaintiff and Class Members could not have reasonably discovered the  
20 true extent of Defendant's illegal conduct in connection with the safety risks posed

1 by its Booster Seat until ProPublica published the aforementioned article on  
2 February 6, 2020.

3 66. For the foregoing reasons, all applicable statutes of limitation have  
4 been tolled by operation of the discovery rule.

5 **B. Fraudulent Concealment Tolling**

6 67. All applicable statutes of limitation have also been tolled by way of  
7 Defendant's fraudulent concealment of its internal side-impact collision testing  
8 through the relevant time period.

9 68. Rather than disclose to Plaintiff and Class Members that Defendant's  
10 own side-impact collision testing confirmed that children using its Booster Seat are  
11 at risk of serious injury or death, Defendant continued to manufacture, market, and  
12 sell the Seat without disclosing this information.

13 **C. Estoppel**

14 69. At all times relevant to this action, Defendant had a duty to disclose to  
15 Plaintiff, Class Members, and the public at-large, the serious risks posed to  
16 children by using the Booster Seat

17 70. Defendant knowingly, affirmatively, and actively concealed or  
18 recklessly disregarded the serious risks of posed to children by using the Booster  
19 Seat, and persisted with the deceptive marketing of the Booster Seat as "side  
20 impact tested."

1           71. For the foregoing reasons, Defendant is estopped from relying on any  
2 statutes of limitations in defense of the allegations raised in this Complaint.

3                           **VIII. CLASS ACTION ALLEGATIONS**

4           72. Plaintiff brings this action individually and as a class action pursuant  
5 to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3) on behalf of the following Classes:

6                         Nationwide Class:

7                         All persons residing in the United States who purchased  
8 an Evenflo Big Kid booster seat between February 21,  
2007 and the present.

9                         Washington Class:

10                        All persons residing in the state of Washington who  
11 purchased an Evenflo Big Kid booster seat between  
February 21, 2007 and the present.

12 Excluded from the Classes are Defendant, any entity in which Defendant has a  
13 controlling interest, any of Defendant’s legal representatives, officers, directors,  
14 assignees, and successors, as well as the Judge handling the case, and his or her  
15 family members and staff.

16           73. Plaintiff reserves the right to modify the Class definitions, if  
17 necessary, to include additional Big Kid car seat models, additional time periods,  
18 and/or other car seats manufactured by Defendant, but bearing different brand  
19 names, that were deceptively marketed and misrepresented to consumers.

1           74. Numerosity: The Members of the Classes are so numerous that  
2 joinder of all Members is impracticable. While the exact number of Class  
3 Members is presently unknown, it consists of thousands of people geographically  
4 disbursed throughout the United States. The number of Class Members can be  
5 determined by sales information and other records. Moreover, joinder of all  
6 potential Class Members is not practicable given their numbers and geographic  
7 diversity. The Class is readily identifiable from information and records in the  
8 possession of Defendant and its third-party distributors and retailers.

9           75. Commonality: Common questions of law and fact exist as to all Class  
10 Members. These questions predominate over questions that may affect only  
11 individual Class Members because Defendant has uniformly acted on grounds  
12 generally applicable to the Classes. These common legal or factual questions  
13 include, *inter alia*:

14           a. Whether the Booster Seat is unsafe in side-impact collisions;

15           b. Whether Defendant knew or reasonably should have known that  
16 the Booster Seat was unsafe in side-impact collisions;

17           c. Whether Defendant knew or reasonably should have known that  
18 the Booster Seat was unsafe in side-impact collisions before marketing,  
19 distributing, and selling the Booster Seat to Plaintiff and the Class;

20



1 d. Whether Defendant knew or reasonably should have known that  
2 the Booster Seat was unsafe in side-impact collisions after marketing, distributing,  
3 and selling the Booster Seat to Plaintiff and the Class;

4 e. Whether Defendant concealed from and/or failed to disclose to  
5 Plaintiff and Class Members that the Booster Seat is unsafe in side-impact  
6 collisions;

7 f. Whether Defendant made affirmative misrepresentations  
8 regarding the side-impact testing of the Booster Seat;

9 g. Whether Defendant made affirmative misrepresentations  
10 regarding the safety and appropriateness of the Booster Seat for children weighing  
11 less than 40 pounds;

12 h. Whether Defendant acted to conceal from Plaintiff and Class  
13 Members the standards for its internal side-impact collision testing of the Booster  
14 Seat;

15 i. Whether Defendant acted to conceal from Plaintiff and Class  
16 Members the results of its internal side-impact collision testing of the Booster Seat;

17 j. Whether Defendant's conduct was knowing and willful;

18 k. Whether Defendant violated the Washington Consumer  
19 Protection Act, RCW §§ 19.86, *et seq.*;

20

1           l.       Whether Defendant violated the Washington Product Liability  
2 Act, RCW §§ 7.72.010, *et seq.*;

3           m.       Whether Defendant breached the express warranties relating to  
4 the Booster Seat;

5           n.       Whether Defendant was unjustly enriched by receiving money  
6 in exchange for the Booster Seat;

7           o.       Whether Defendant should be ordered to disgorge all or part of  
8 the ill-gotten profits it received from the sale of the Booster Seat;

9           p.       Whether Plaintiff and Class Members are entitled to damages,  
10 including compensatory, exemplary, statutory damages, treble damages, and/or  
11 punitive damages, and the amount of such damages;

12           q.       Whether Defendant should be enjoined from marketing,  
13 distributing, and selling the Booster Seat; and

14           r.       Whether Defendant engaged in unfair, unconscionable, or  
15 deceptive trade practices in connection with the marketing, packaging, labeling  
16 and/or representations of the Booster Seat.

17       76.   Typicality: Plaintiff's claims are typical of the other Class Members,  
18 as all Members of the Class were and are similarly affected by the same deceptive  
19 marketing, packaging, labeling, and misrepresentations in connection with  
20 Defendant's Booster Seat and Defendant's actionable conduct. In addition,

1 Defendant's conduct that gave rise to the claims of Plaintiff and Class Members is  
2 the same for all Members of the Class.

3 77. Adequacy of Representation: Plaintiff will fairly and adequately  
4 protect the interests of the Class because she has no interests antagonistic to, or in  
5 conflict with, the Class that Plaintiff seeks to represent. Furthermore, Plaintiff has  
6 retained counsel experienced and competent in the prosecution of complex class  
7 action litigation.

8 78. Injunctive/Declaratory Relief: The elements of Rule 23(b)(2) are met  
9 here. Defendant will continue to commit the unlawful practices alleged herein, and  
10 Class Members will remain at an unreasonable and serious safety risk as a result of  
11 the Booster Seat, which Defendant deceptively markets, packages, labels, and  
12 misrepresents with respect to its side-impact collision testing. Defendant has acted  
13 and refused to act on grounds that apply generally to the Class, such that final  
14 injunctive relief and corresponding declaratory relief is appropriate with respect to  
15 the Class as a whole.

16 79. Predominance: The elements of Rule 23(b)(3) are met here. The  
17 common questions of law and fact enumerated above predominate over the  
18 questions affecting only individual Class Members, and a class action is the  
19 superior method for the fair and efficient adjudication of this controversy. The  
20 likelihood that individual Class Members will prosecute separate actions is remote

1 due to the time and expense necessary to conduct such litigation. Serial  
2 adjudication in numerous venues is not efficient, timely, or proper. Judicial  
3 resources will be unnecessarily depleted by resolution of individual claims.  
4 Joinder on an individual basis of hundreds or thousands of claimants in one suit  
5 would be impracticable or impossible. Individualized rulings and judgments could  
6 result in inconsistent relief for similarly-situated Plaintiffs.

7 80. Plaintiff knows of no difficulty to be encountered in the maintenance  
8 of this action that would preclude its maintenance as a class action.

9 81. Defendant has acted or refused to act on grounds generally applicable  
10 to the Class, thereby making appropriate final injunctive relief or corresponding  
11 declaratory relief with respect to the Class as a whole.

## 12 IX. CAUSES OF ACTION

### 13 COUNT I

#### 14 **Breach of Express Warranty – RCW § 62A.2-313** 15 **(Plaintiff Individually and on Behalf of the Washington Subclass)**

16 82. Plaintiff hereby realleges and incorporates by reference all allegations  
17 raised in the preceding paragraphs as if fully set forth herein.

18 83. Plaintiff brings this cause of action individually and on behalf of the  
19 Washington Subclass against Defendant.  
20

1 84. Plaintiff and Washington Subclass Members purchased Defendant's  
2 Booster Seat either directly from Defendant or through retailers, such as Target,  
3 Walmart, Kohl's, Buy Baby, and Amazon, among others.

4 85. Defendant is and was at all relevant times a "seller" under RCW §  
5 62A.2-313.

6 86. Defendant, as the designer, manufacturer, marketer, distributor, and/or  
7 seller, expressly warranted through the terms of its express limited warranty that  
8 the Booster Seat was free of defects in material or workmanship.

9 87. Defendant, as the designer, manufacturer, marketer, distributor, and/or  
10 seller, expressly warranted through the marketing, packaging, and labeling of the  
11 Booster Seat that the product was "side impact tested" and that its side impact  
12 testing "meets or exceeds all applicable federal safety standards and Evenflo's side  
13 impact standards."

14 88. Defendant, as the designer, manufacturer, marketer, distributor, and/or  
15 seller, expressly warranted through the marketing, packaging, and labeling of the  
16 Booster Seat that the product was appropriate for children weighing 30 to 110  
17 pounds, as well as for children weighing 40 to 110 pounds.

18 89. Each model of the Booster Seat has an identical or substantially  
19 identical warranty.

1           90. Plaintiff and Washington Subclass Members have privity of contract  
2 with Defendant through their purchase of the Booster Seat, and through the express  
3 warranties that Defendant issued to its customers. Defendant's warranties  
4 accompanied the Booster Seat and were intended to benefit end-users of the  
5 Booster Seat. To the extent that Plaintiff and/or Washington Subclass Members  
6 purchased the Booster Seat from third-party retailers, privity is not required  
7 because Plaintiff and Washington Subclass Members are intended third-party  
8 beneficiaries of the contracts between Defendant and third-party retailers, and  
9 because the express warranty is intended to benefit purchasers or owners  
10 subsequent to the third-party retailers. In other words, the contracts are intended to  
11 benefit the ultimate consumer or user of the Booster Seat.

12           91. Defendant made the foregoing express representations and warranties  
13 to all consumers, which became the basis of the bargain between Plaintiff,  
14 Washington Subclass Members, and Defendant.

15           92. In fact, Defendant's Booster Seat is not safe in the event of a side-  
16 impact collision because each of the express warranted is a false and misleading  
17 misrepresentation.

18           93. Defendant breached these warranties and/or contract obligations by  
19 placing the Booster Seats into the stream of commerce and selling them to  
20 consumers, when the Seats are unsafe and pose a significant safety risk to children.

1 The lack of safety inherent in the Booster Seat renders it unfit for its intended use  
2 and purpose and substantially and/or completely impairs the use and value of the  
3 Booster Seat.

4 94. Defendant breached its express warranties by selling the Booster  
5 Seats, which are in actuality not free of defects, are unsafe for use, and cannot be  
6 used for their ordinary purpose of protecting children in the event of a side-impact  
7 collision. Defendant breached its express written warranties to Plaintiff and  
8 Washington Subclass Members in that the Booster Seats are not safe for their  
9 intended purpose at the time that they left Defendant's possession or control and  
10 were sold to Plaintiff and Washington Subclass Members, creating a serious safety  
11 risk to Plaintiff, Washington Subclass Members, and their children.

12 95. Defendant further breached its express warranty to adequately repair  
13 or replace the Booster Seat despite its knowledge of the defect, and/or despite its  
14 knowledge of alternative designs, materials, and/or options for manufacturing safe  
15 Booster Seats.

16 96. To the extent that Defendant offers or offered to replace the Booster  
17 Seats, the warranty of replacement fails in its essential purpose given it is  
18 insufficient to make Plaintiff and Washington Subclass Members whole because  
19 the warranty covering the Booster Seats gives Defendant the option to repair or  
20 replace the Booster Seats, where neither is sufficient.

1           97. Accordingly, recovery by Plaintiff and Washington Subclass  
2 Members is not limited to the limited warranty of replacement, and they seek all  
3 remedies allowed by law.

4           98. Despite having notice and knowledge of the safety risks posed by the  
5 Booster Seat, Defendant failed to provide any relief to Plaintiff and Washington  
6 Subclass Members, failed to provide a safe replacement Booster Seat to Plaintiff  
7 and Washington Subclass Members, and otherwise failed to offer any appropriate  
8 compensation.

9           99. The express written warranties covering the Booster Seats were a  
10 material part of the bargain between Defendant and consumers. At the time it  
11 made these express warranties, Defendant knew of the purpose for which the  
12 Booster Seat was to be used.

13           100. Defendant was provided constructive notice of the aforementioned  
14 breaches of the above-described warranties through the results of its own internal  
15 side impact testing, as well as through previous lawsuits against Defendant  
16 involving serious and permanent injuries sustained by children while using the  
17 Booster Seats.

18           101. The Booster Seats that Plaintiff and Washington Subclass Members  
19 purchased were uniformly deficient with respect to their ability to protect children  
20



1 in the event of a side-impact collision, which caused each of them damages  
2 including loss of the benefit of their bargain.

3 102. Plaintiff and Washington Subclass Members were injured as a direct  
4 and proximate result of Defendant's breach of its express warranties because they  
5 did not receive the benefit of the bargain, lost the product's intended benefits, and  
6 suffered damages at the point-of-sale, as they would not have purchased the  
7 Booster Seats if they had known the truth about the unreasonable safety risk to  
8 children posed by the Booster Seats.

9 **COUNT II**

10 **Violation of the Washington Consumer Protection Act**  
11 **RCW §§ 19.86, *et seq.***  
**(Plaintiff Individually and on Behalf of the Washington Subclass)**

12 103. Plaintiff hereby realleges and incorporates by reference all allegations  
13 raised in the preceding paragraphs as if fully set forth herein.

14 104. Plaintiff brings this cause of action individually and on behalf of the  
15 Washington Subclass against Defendant.

16 105. Defendant's foregoing unfair and deceptive acts and practices,  
17 including its omissions, were and are committed in its course of trade or  
18 commerce, directed at consumers, affect the public interest, and injured Plaintiff  
19 and Washington Subclass Members.

1           106. Defendant’s foregoing deceptive acts and practices, including its  
2 omissions, were material, in part, because they concerned an essential part of the  
3 Booster Seats’ intended use and provision of safety to children. Defendant omitted  
4 material facts regarding the safety (or lack thereof) of the Booster Seat by failing to  
5 disclose the results of its internal side impact testing, or that the Seat will not  
6 adequately protect children in the event of a side-impact collision. Rather than  
7 disclose this information, Defendant marketed and labeled the Booster Seat as  
8 “side impact tested” and misrepresented that the Seat “meets or exceeds all  
9 applicable federal safety standards and Evenflo’s side impact standards.”

10           107. The Booster Seat poses an unreasonable risk to the safety of children  
11 in the event of a side-impact collision, despite Defendant’s representation that the  
12 Seat is “side impact tested.”

13           108. Defendant did not disclose this information to consumers.

14           109. Defendant’s foregoing deceptive acts and practices, including its  
15 omissions, were and are deceptive acts or practices in violation of the Consumer  
16 Protection Act, RCW §§ 19.86, *et seq.*, in that:

17           a. Defendant manufactured, labeled, packaged, marketed,  
18 advertised, distributed, and/or sold the Booster Seats as “side impact tested,” when,  
19 through its own internal side impact testing it knew, or should have known, that the  
20

1 Booster Seats posed an unreasonable risk to the safety of children in the event of a  
2 side-impact collision;

3 b. Defendant knew that the unreasonable risk to the safety of  
4 children and the results of its own internal side impact testing were unknown to  
5 and would not be easily discovered by Plaintiff and Washington Subclass  
6 Members, and would defeat their ordinary, foreseeable and reasonable expectations  
7 concerning the performance of the Booster Seats;

8 c. Plaintiff and Washington Subclass Members were deceived by  
9 Defendant's failure to disclose and could not discover the unreasonable risk to the  
10 safety of children posed by the Booster Seat in the event of a side-impact collision;  
11 and

12 d. Defendant's deceptive acts and practices, including its  
13 omissions, injured Plaintiff and Washington Subclass Members, and had – and still  
14 has – the potential to injure members of the public at-large.

15 110. Plaintiff and Washington Subclass Members suffered damages when  
16 they purchased the Booster Seats. Defendant's unconscionable, deceptive and/or  
17 unfair practices caused actual damages to Plaintiff and the Washington Subclass  
18 Members who were unaware that the Booster Seat posed an unreasonable safety  
19 risk to children in the event of a side-impact collision, notwithstanding  
20 Defendant's representations at the time of purchase.

1 111. Defendant's foregoing deceptive acts and practices, including its  
2 omissions, were likely to deceive, and did deceive, consumers acting reasonably  
3 under the circumstances.

4 112. Consumers, including Plaintiff and Washington Subclass Members,  
5 would not have purchased the Booster Seats had they known about the  
6 unreasonable safety risk they pose to children, or the results of Defendant's  
7 internal side impact testing.

8 113. As a direct and proximate result of Defendant's deceptive acts and  
9 practices, including its omissions, Plaintiff and Washington Subclass Members  
10 have been damaged as alleged herein, and are entitled to recover actual damages  
11 and/or treble damages to the extent permitted by law, including class action rules,  
12 in an amount to be proven at trial.

13 114. In addition, Plaintiff and Washington Subclass Members seek  
14 equitable and injunctive relief against Defendant on terms that the Court considers  
15 reasonable, and reasonable attorneys' fees and costs.

16 **COUNT III**

17 **Unjust Enrichment**  
18 **(Plaintiff Individually and on Behalf of the Nationwide Class and/or**  
19 **Washington Subclass)**

19 115. Plaintiff hereby realleges and incorporates by reference all allegations  
20 raised in the preceding paragraphs as if fully set forth herein.

1 116. Plaintiff brings this cause of action individually and on behalf of the  
2 Class and/or Washington Subclass against Defendant.

3 117. Plaintiff and Class Members conferred a monetary benefit on  
4 Defendant when they purchased the Booster Seats at issue, and Defendant had  
5 knowledge of this benefit. The average price paid by Plaintiff and Class Members  
6 for the Booster Seat was more than \$40.00.

7 118. By its wrongful acts and omissions described within this Complaint,  
8 including the deceptive marketing, packaging, labeling, distribution, and sale of the  
9 Booster Seat as “side impacted tested” and concealing side-impact collision test  
10 results from consumers, Defendant was unjustly enriched at the expense of  
11 Plaintiff and Class Members.

12 119. Plaintiff and Class Members’ detriment and Defendant’s enrichment  
13 were related to and flowed from the wrongful conduct challenged in this  
14 Complaint.

15 120. Defendants have profited from their unlawful, unfair, misleading, and  
16 deceptive practices at the expense of Plaintiff and Class Members under  
17 circumstances in which it would be unjust for Defendant to be permitted to retain  
18 the benefit. It would be inequitable for Defendant to retain the profits, benefits,  
19 and other compensation obtained from their wrongful conduct as described herein  
20

1 in connection with in connection with the deceptive marketing, packaging,  
2 labeling, distribution, and sale of the unsafe Booster Seats.

3 121. Plaintiff and Class Members have been damaged as a direct and  
4 proximate result of Defendant's unjust enrichment because they would not have  
5 purchased the Booster Seats had they known that the Seats pose an unreasonable  
6 safety risk to children.

7 122. Defendant either knew or should have known that payments rendered  
8 by Plaintiff and Class Members were given and received with the expectation that  
9 the Booster Seats were safe for their intended use and will keep protect children in  
10 the event of a side-impact collision, as represented by Defendant in marketing, on  
11 Defendants' websites, and on the Booster Seat labels and packaging. It is  
12 inequitable for Defendant to retain the benefit of payments under these  
13 circumstances.

14 123. Plaintiff and Class Members are entitled to recover from Defendant all  
15 amounts wrongfully collected and improperly retained by Defendant.

16 124. When required, Plaintiff and Class Members are in privity with  
17 Defendant because Defendant's sale of the Booster Seats was either direct or  
18 through authorized sellers. Purchase through authorized sellers is sufficient to  
19 create such privity because such authorized sellers are Defendant's agents for the  
20 purpose of the sale of the Booster Seats.



1           131. Defendant's failure to disclose that the Booster Seat was and is unsafe  
2 in the event of a side-impact collision was intentional. Defendant was aware of the  
3 safety risks inherent in its Booster Seat, but intentionally chose not to disclose this  
4 material fact to consumers, including Plaintiff and Class Members.

5           132. Defendant's fraudulent concealment of material facts regarding the  
6 safety of the Booster Seat, coupled with its deceptive marketing, packaging,  
7 labeling, and representations, induced Plaintiff and Class Members to purchase the  
8 Booster Seat. Plaintiff and Class Members would not have purchased Defendant's  
9 Booster Seat if the truth had been disclosed to them regarding the safety (or lack  
10 thereof) of the Seat in the event of a side-impact collision.

11           133. Plaintiff and Class Members had a reasonable expectation that the  
12 Booster Seat they purchased was safe for their children. Defendant should have  
13 reasonably anticipated and intended that Plaintiff and Class Members purchased  
14 the Booster Seat, in part, based upon such expectations and assumptions, and,  
15 indeed, Defendant intended them to do so.

16           134. Defendant's failure to disclose and omission of material facts  
17 regarding the safety risks inherent in its Booster Seat occurred uniformly and  
18 consistently in connection with Defendant's trade or business, was capable of  
19 deceiving and, indeed, did deceive a substantial portion of consumers, and subject  
20 the public to a serious safety risk.





1 D. Grant restitution to Plaintiff and the Classes and require Defendant to  
2 disgorge its ill-gotten gains;

3 E. Permanently enjoin Defendant from engaging in the wrongful conduct  
4 alleged herein;

5 F. Award Plaintiff and the Classes their reasonable litigation expenses  
6 and costs of suit, including reasonable attorneys' fees to the extent provided by  
7 law;

8 G. Award Plaintiff and the Classes pre- and post-judgment interest at the  
9 highest legal rate to the extent provided by law; and

10 H. Award such further relief as the Court deems appropriate.

11 **XI. JURY DEMAND**

12 Plaintiff demands a trial by jury on all claims so triable.

13 RESPECTFULLY SUBMITTED AND DATED this 27th day of February,  
14 2020.

15 TERRELL MARSHALL LAW GROUP PLLC

16 By: /s/ Beth E. Terrell, WSBA #26759

Beth E. Terrell, WSBA #26759

Attorneys for Plaintiff and the Class

936 North 34th Street, Suite 300

Seattle, Washington 98103

Telephone: (206) 816-6603

Facsimile: (206) 319-5450

Email: bterrell@terrellmarshall.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

Alex Straus  
Attorneys for Plaintiff and the Class  
GREG COLEMAN LAW PC  
16748 McCormick Street  
Los Angeles, California 91436  
Telephone: (310) 450-9689  
Facsimile: (310) 496-3176  
Email: alex@gregcolemanlaw.com

Gregory F. Coleman  
Jonathan B. Cohen  
Attorneys for Plaintiff and the Class  
GREG COLEMAN LAW PC  
First Tennessee Plaza  
800 South Gay Street, Suite 1100  
Knoxville, Tennessee 37929  
Telephone: (865) 247-0080  
Facsimile: (865) 522-0049  
Email: greg@gregcolemanlaw.com  
Email: jonathan@gregcolemanlaw.com

Daniel K. Bryson  
Harper T. Segui  
Martha Geer  
Attorneys for Plaintiff and the Class  
WHITFIELD BRYSON & MASON, LLP  
900 W. Morgan Street  
Raleigh, North Carolina 27603  
Telephone: (919) 600-5000  
Email: dan@wbmlp.com  
Email: harper@wbmlp.com  
Email: martha@wbmlp.com