

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

IN RE: BESTWAY ABOVE-GROUND
POOLS LITIGATION

Case No.: 1:25-cv-09570

**SECOND CONSOLIDATED AMENDED
CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

SECOND CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

Plaintiffs Susana Castro, Pete Piceno, Shannon Gannon, Leah Holloway, Jamie DeSabio, Katrina Hill and Lisa Weeks (“Plaintiffs”), individually and on behalf of all others similarly situated, bring this Second Consolidated Amended Class Action Complaint against Defendants Bestway (USA) Inc., Bestway Inflatables & Material Corp. (“Bestway Inflatables”), and Bestway (Hong Kong) International Ltd (“Bestway Hong Kong”) (collectively “Bestway” or “Defendants”) and allege the following based on personal knowledge as to themselves, and on information and belief as to all other matters, including the investigation of their counsel:

NATURE OF THE ACTION

1. This proposed class action involves approximately 3.4 million uniformly defective Bestway-branded above-ground pools (“Products” or “Pools”) that were designed, manufactured, marketed and sold by Bestway with a safety defect, and later subject to a delayed, deficient, and inadequate recall (the “Recall”).¹ All Plaintiffs purchased a Bestway Pool subject to the Recall. The Recall affects all Bestway-branded pools 48 inches and taller—including Power Steel and

¹See <https://bwrecallsupport.expertinquiry.com/?lang=en> and <https://www.cpsc.gov/Recalls/2025/Bestway-Intex-and-Polygroup-Recall-Certain-Above-Ground-Pools-48-Inches-and-Taller-Due-to-Drowning,-Hazard-Nine-Deaths-Reported-Five-Million-Pools-Sold-Since-2002> (hereinafter “Recall”).

Steel Pro models with compression straps running outside the pool support poles sold between 2008 and 2024 under the Bestway and Coleman names (“Product(s)” or “Pool(s)”).²

2. Bestway markets itself as a leader in the above-ground pool market, boasting “[w]e proudly develop and manufacture our products in-house, ensuring our quality goods reach customers with care;” “[w]e’re committed to innovating and leading the industry through our research, design, development and manufacturing;” “[e]very department at Bestway works closely together—from our technology and quality assurance centers to our laboratories and vertically integrated manufacturing systems to our after-sales service centers around the globe;” “[a]t Bestway, we hold ourselves and our products to a very high standard;” and “[t]he satisfaction and safety of our customers is a top priority.”³

3. The safety of children, an incredibly vulnerable population, is paramount. Bestway, which touts itself as a trusted consumer product industry leader with a commitment to safety and which sells products for use by families and their children, has a legal obligation to honestly and adequately represent the safety of its products and to provide adequate warnings about safety hazards. As shown herein, before and after multiple drowning deaths in pools with the same or similar design as the Pools, Bestway wholly failed to deliver safe Pools to Plaintiffs and Class Members, failed to provide adequate warnings about safety hazards, and offered an inadequate and ineffective Recall that fails to provide Plaintiff and Class Members with proper relief.

4. This action arises from Bestway’s dangerous design and prolonged concealment of a known defect in certain Pools. As indicated in the Recall Notice, Bestway “stopped

² Plaintiffs reserve the right to amend this complaint to include additional products arising from discovery.

³ See Bestway site, <https://bestwayusa.com/our-mission> (last accessed Oct. 9, 2025); *see also* <https://bestwayusa.com/recall-and-safety> (last accessed Oct. 9, 2025).

manufacturing and selling the impacted above-ground pools in June 2024” and “[a]ll Bestway above-ground pools 48 inches or taller in height manufactured since June 2024 have compression straps running on the inside of the vertical support legs.”⁴ Yet, Bestway did not issue the Recall Notice until the following year, 2025.

5. On July 21, 2025, the U.S. Consumer Product Safety Commission (“CPSC”), together with Bestway and other manufacturers, announced the voluntary recall of approximately 5 million above-ground pools sold at major retailers nationwide since 2002 that had resulted in at least nine deaths of children between 22 months and 3 years old from 2007 to 2022, and other incidents of near drownings.⁵ Bestway sold approximately 3.4 million of these recalled pools.

6. The CPSC’s Acting Chairman Peter A. Feldmann and Commissioner Douglas Dziak described the Recall as “long-overdue” and stated the Defect was “a textbook example of a dangerous design flaw, plainly visible and clearly hazardous” and, with respect to the multiple drownings and near drownings, further stated “[y]ears of inaction allowed these tragedies to occur.”⁶ However, the Recall is not a form of adjudication and, as alleged in this Complaint, was at all times, and continues to be, inadequate and ineffective.

⁴ See <https://bestwayusa.com/recalls-pool-strap-faq> (last accessed Nov. 17, 2025).

⁵ See CPSC Press Release, <https://www.cpsc.gov/Recalls/2025/Bestway-Intex-and-Polygroup-Recall-Certain-Above-Ground-Pools-48-Inches-and-Taller-Due-to-Drowning-Hazard-Nine-Deaths-Reported-Five-Million-Pools-Sold-Since-2002> (last accessed Nov. 24, 2025).

⁶ See *Statement of Acting Chairman Peter A. Feldman and Commissioner Douglas Dziak: Deadly Design in Chinese Pools Triggers Massive Recall; CPSC Leaders Cite Years of Inaction* (published on July 21, 2025), <https://www.cpsc.gov/About-CPSC/Commissioner/Douglas-Dziak-Peter-A-Feldman/Statement/Statement-of-Acting-Chairman-Peter-A-Feldman-and-Commissioner-Douglas-Dziak-Deadly-Design-in-Chinese-Pools-Triggers-Massive-Recall-CPSC-Leaders-Cite-Years-of-Inaction> (last accessed Nov. 14, 2025).

7. The Pools were dangerously defective at the point of purchase, which was unknown to reasonable consumers, but known to Bestway. Now, following multiple child deaths, Bestway concedes through its deficient Recall notice that the Pools pose a drowning hazard and cannot be used as sold:

WHAT IS THE HAZARD?

On recalled above-ground pools, the compression strap that surrounds the outside of the pool legs may create a foothold, which could allow a child to gain access to the pool and create a potential drowning hazard. The recall repair consists of a rope that will maintain the structural integrity of the pool (a function previously served by the compression strap).⁷

8. As Bestway admits in the Recall Notice, Bestway designed, manufactured, marketed, distributed and sold the Pools with compression straps located external to the Pools' vertical support poles (the "Defect")—design elements that created an accessible foothold for children to climb into the Pool, posing a drowning hazard for vulnerable children:



Image 1⁸

⁷ See Recall Notice ("Recall Notice"), <https://bestwayusa.com/recalls-pool-strap> (last accessed Nov. 17, 2025).

⁸ Example of a child using the compression strap to stand on the Pool, illustrating the Defect and associated hazard. <https://www.cpsc.gov/Recalls/2025/Bestway-Intex-and-Polygroup-Recall->



Image 2⁹



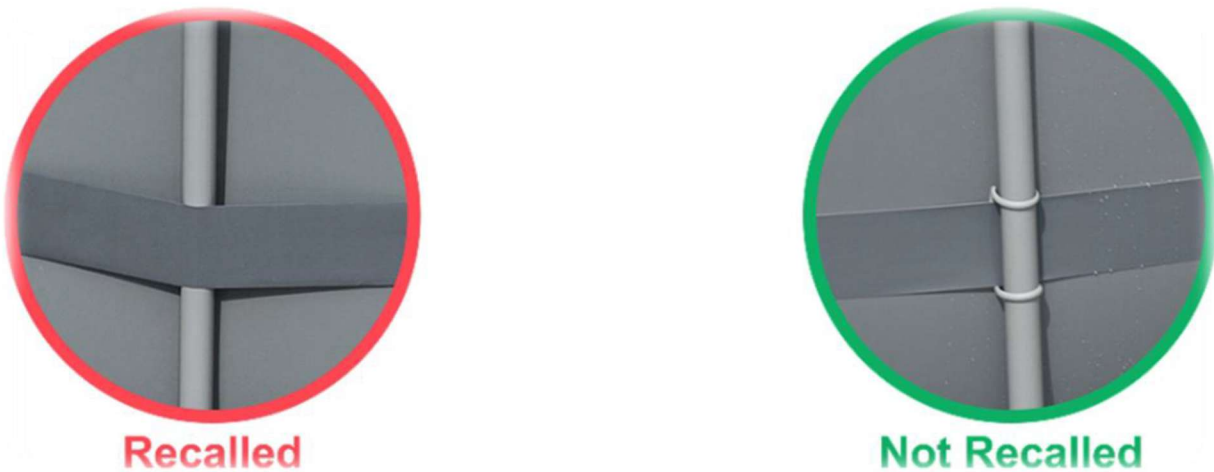
Image 3¹⁰

[Certain-Above-Ground-Pools-48-Inches-and-Taller-Due-to-Drowning-Hazard-Nine-Deaths-Reported-Five-Million-Pools-Sold-Since-2002](#) (last accessed Nov. 24, 2025).

⁹ <https://www.saferproducts.gov/Common/DisplayDocument?documentId=150996> (image on saferproducts.gov of a photograph of the same child from the CPSC press release climbing into a pool with the Defect and associated hazard).

¹⁰ <https://www.saferproducts.gov/Common/DisplayDocument?documentId=150997> (image on saferproducts.gov of a photograph of the same child from the CPSC press release climbing into a pool with the Defect and associated hazard).

9. Through the Recall Notice, Bestway admits that the Pools' Defect was not inherent or unavoidable since other pool models not subject to the Recall, which were manufactured and sold to consumers long before Bestway issued the Recall, contained an internal compression strap that cannot be used as a foothold and does not pose an associated drowning hazard for children.¹¹



10. Notably, *Bestway failed to recall the entire Pool or provide any monetary remedy* to Plaintiffs and Class Members who purchased the defective Pools. Instead, Bestway only offers an inadequate repair kit without providing the assistance of a qualified technician. Even if customers express concerns about repairing the Pools themselves, Bestway does not provide on-site repairs, exclusively offering “further guidance” through a call center or email.¹² With limited instruction and no professional assistance, a consumer must thread a rope behind the vertical legs of the Pool, through a *de minimis* tightener and plastic rope holders at the base of the Pool legs.

¹¹ See CPSC Press Release; Bestway Recall Notice.

¹² See <https://bwrecallsupport.expertinquiry.com/faq?lang=en> (last accessed Oct. 9, 2025) (Note: this link is password-protected, meaning consumers concerned about the effectiveness of the Recall are not even able to fully vet said Recall until they are well into Bestway's ineffective process).

While Bestway maintains that the rope is a convenient and easy-to-apply solution that ensures the structural integrity of the Pool, this representation is a farce as detailed further below.

11. In addition, the Recall was announced far too late and is inadequate and inefficient for the reasons described below. The CPSC confirmed that the Pools' Defect and associated risks were known since 2007, before Bestway distributed and sold the Pools. As detailed in the CPSC Press Release:

CPSC believes that nine children between the ages of 22 months and 3 years old have drowned after gaining access to the pools via the footholds. The incidents occurred in California, Texas, Florida, Michigan, Wisconsin and Missouri between 2007 and 2022.

CPSC is also aware of three other incidents in 2011 and 2012 where children who gained access to the recalled pools were reported to have previously used the compression strap to gain entry to the pool.¹³

12. Prior to the Recall, and despite the serious dangers to child safety presented by the Pools, Bestway intentionally marketed and sold the Pools as safe for families and children and failed to effectively disclose to consumers that the Pools posed a drowning hazard for children.

13. Bestway knew, or should have known, of these incidents, yet it did nothing. Indeed, despite reported incidents dating back to 2007 in pools with the same Defect, Bestway failed to issue any warning or make design changes to remedy the Defect and continued profiting from its sales throughout the United States.

14. Even more egregious, Bestway knowingly continued to design, manufacture, market and sell the defective Pools with an external compression strap—functioning as a built-in ladder—*after* a \$25 million lawsuit in 2019 over the drowning of a two-year-old girl who climbed

¹³ See CPSC Press Release.

into the pool by using that very strap, positioned just a foot above the ground, as a step to gain access.¹⁴

15. Bestway was well aware that if it truthfully informed consumers of the dangers of the Pools' Defect, its sales would be directly impacted, as consumers would have made different purchasing decisions.

16. Due to Bestway's marketing of the Pools, along with Bestway's failure to disclose to consumers at the time of purchase that the Pools contained the Defect, Plaintiffs and Class Members trusted Bestway and its representations that the Pools would be safe to use as intended and paid a premium for that important quality. Additionally, despite the Recall, defects in the Pools persist, rendering them unfit and worth less than advertised and warranted.

17. Every Pool suffers from the uniform Defect, which, unknown to consumers, but known to Bestway, exists at the point of purchase and poses an unreasonable safety hazard to consumers and their children. Likewise, every Pool is subject to the delayed, deficient and inadequate Recall. As such, Plaintiffs and all reasonable consumers are victims of Bestway's unfair bargaining power based on Bestway's superior industry knowledge.

18. The existence of the Defect, as well as the delayed, deficient and inadequate Recall, is a material fact that reasonable consumers, including Plaintiffs and Class Members, would have considered when deciding whether to purchase the Pools.

19. Before purchasing the Pools, Plaintiffs and Class Members did not know that the Pools had the Defect, that using the Pools for their intended and foreseeable purpose would place

¹⁴ See Parents Awarded \$25M for child's drowning in defective pool design: Records (published March 4, 2025), <https://fox2now.com/news/missouri/parents-awarded-25m-for-childs-drowning-in-warren-county/> (last accessed Nov. 24, 2025).

children at risk of drowning and that in the event of such risk, Bestway would offer a delayed, deficient and inadequate remedy.

20. No reasonable consumer would have purchased the Pools on the same terms or conditions if they knew of the Defect and of the subsequent inadequate response from Bestway. Bestway chose to put consumers' and their children's lives at risk to sell more Pools and now, after the inevitable deaths have been brought to light, Bestway still makes decisions that put profit over people. Despite its belated acknowledgment of the Defect, Bestway still has failed to provide a meaningful remedy to consumers, including Plaintiffs and Class Members.

21. Bestway made significant revenue from the sale of the approximate 3.4 million Pools subject to the Recall, which were sold nationwide for approximately \$400.00 to over \$1,000.00 each.¹⁵

22. Bestway was able to charge this premium price for the Pools due to its marketing, and its failure to disclose to consumers that the Pools contain the Defect and associated hazard. Bestway knew that safety and suitability of the Pools for use (which naturally includes structural integrity and lack of a risk of harm or death to themselves and their children) is paramount for consumers.

23. Bestway's refusal to provide refunds, replacements or professional repair underscores its ongoing disregard for consumer safety and demonstrates that the Recall remedy is inadequate.

¹⁵ *Id.*

24. A recall does not moot economic loss claims where the remedy is inadequate, incomplete or fails to restore product value. Bestway's Recall remedy is materially inadequate, leaving consumers with unsafe, unusable Pools worth less than what they paid for the Pools.

25. This action seeks to hold Bestway accountable for its dangerous design, decades of concealment and its knowingly inadequate Recall remedy.

26. Bestway acted with reckless disregard and conscious indifference to known, life-threatening risks.

27. Plaintiffs, on behalf of themselves and Class Members, seek damages and all other relief available under law and equity from Bestway, including punitive damages, for Bestway's appalling and unconscionable misconduct. Plaintiffs also seek classwide injunctive relief, including: (i) a state-of-the-art notice program for the wide dissemination of a factually accurate recall notice for the Pools; (ii) the implementation of a corrective advertising campaign to alert consumers to the dangers of the Defect; (iii) an offer to replace the Pools with a reasonable and safe product; and/or (iv) a full refund of the purchase price of the Pools.

PARTIES

Plaintiff Susana Castro

28. At all relevant times, Plaintiff Castro was and is a resident and citizen of Chicago, Illinois. Plaintiff Castro purchased two recalled Bestway-branded above-ground pools. Plaintiff Castro bought the Bestway Power Steel above-ground pool in 2023 at Sam's Club for \$439.98. In 2024, Plaintiff Castro bought the Bestway Power Steel for \$240.96 on Walmart's website.

29. Plaintiff Castro used the Pools as instructed in order to maintain a safe environment for her family and others.

30. Had Plaintiff Castro known of the Defect and Bestway's response to the Defect with a delayed, ineffective and inadequate Recall, she would not have purchased the Pools or would have paid less for them.

31. Plaintiff Castro considered Bestway a reputable company with a strong reputation for producing safe and reliable pools and believed that these Pools would be no different.

32. Plaintiff Castro relied on Bestway's representations that the Pools were safe for family use and was unaware of the Defect and associated hazard in the Pools.

33. Plaintiff Castro was unaware of the Defect until she learned of the Recall.

34. After learning of the 2025 Recall online, Plaintiff Castro registered for the repair kit, but never received the repair kit.

35. Plaintiff Castro is unable to safely use and maintain her Pools. The Recall issued by Bestway is ineffective and inadequate due to the confounding nature of the repair kit and installation instructions. However, had Plaintiff Castro been able to use the repair kit, it would have remained an ineffective resolution to the Defect because it places the structural integrity of the Pool at risk.

Plaintiff Pete Piceno

36. At all relevant times, Plaintiff Piceno was and is a resident and citizen of California. Plaintiff Piceno purchased a recalled Bestway Power Steel 18 x 48-inch above-ground Pool from Sam's Club on June 21, 2024, for \$438.90.

37. Plaintiff Piceno used the Pool as instructed in order to maintain a safe environment for his family and others.

38. Had Plaintiff Piceno known of the Defect and Bestway's response to the Defect with a delayed, ineffective and inadequate Recall, he would not have purchased the Pool or would have paid less for it.

39. Plaintiff Piceno considered Bestway a reputable company with a strong reputation for producing safe and reliable pools and believed that this Pool would be no different.

40. Plaintiff Piceno relied on Bestway's representations that the Pool was safe for family use and was unaware of the Defect and associated hazard in the Pool.

41. Plaintiff Piceno was unaware of the Defect until he learned of the Recall.

42. Plaintiff Piceno is unable to safely use and maintain his Pool. The Recall issued by Bestway is ineffective and inadequate due to the confounding nature of the repair kit and installation instructions. However, had Plaintiff Piceno been able to install the repair kit, it would have remained an ineffective resolution to the Defect because it places the structural integrity of the Pool at risk.

Plaintiff Shannon Gannon

43. At all relevant times, Plaintiff Gannon was and is a resident and citizen of Indiana. Plaintiff Gannon purchased the recalled Bestway Coleman Power Steel 22x52 round above-ground Pool from Walmart on May 11, 2022, for approximately \$598.00.

44. Plaintiff Gannon used the Pool as instructed in order to maintain a safe environment for her family and others.

45. Had Plaintiff Gannon known of the Defect and Bestway's response to the Defect with a delayed, ineffective and inadequate Recall, she would not have purchased the Pool or would have paid less for it.

46. Plaintiff Gannon considered Bestway a reputable company with a strong reputation for producing safe and reliable pools and believed that this Pool would be no different.

47. Plaintiff Gannon relied on Bestway's representations that the Pool was safe for family use and was unaware of the Defect and associated hazard in the Pool.

48. Plaintiff Gannon was unaware of the Defect until she learned of the Recall.

49. Plaintiff Gannon is unable to safely use and maintain her Pool. The Recall issued by Bestway is ineffective and inadequate due to the confounding nature of the repair kit and installation instructions. However, had Plaintiff Gannon been able to install the repair kit, it would have remained an ineffective resolution to the Defect because it places the structural integrity of the Pool at risk.

Plaintiff Jamie DeSabio

50. At all relevant times, Plaintiff DeSabio was and is a resident and citizen of New York. Plaintiff DeSabio purchased the recalled Bestway Power Steel Above Ground Pool for \$430.92 through Sam's Club's website on June 8, 2025.

51. Plaintiff DeSabio used the Pool as instructed in order to maintain a safe environment for his family and others.

52. Had Plaintiff DeSabio known of the Defect and Bestway's response to the Defect with a delayed, ineffective and inadequate Recall, he would not have purchased the Pool or would have paid less for it.

53. Plaintiff DeSabio considered Bestway a reputable company with a strong reputation for producing safe and reliable pools and believed that this Pool would be no different.

54. Plaintiff DeSabio relied on Bestway's representations that the Pool was safe for family use and was unaware of the Defect and associated hazard in the Pool.

55. Plaintiff DeSabio was unaware of the Defect until he learned of the Recall.

56. After learning of the 2025 Recall online, Plaintiff DeSabio registered for the repair kit but never received the repair kit.

57. Plaintiff DeSabio is unable to safely use and maintain his Pool. The Recall issued by Bestway is ineffective and inadequate due to the confounding nature of the repair kit and installation instructions. However, had Plaintiff DeSabio been able to install the repair kit, it would have remained an ineffective resolution to the Defect because it places the structural integrity of the Pool at risk.

Plaintiff Leah Holloway

58. At all relevant times, Plaintiff Holloway was and is a resident and citizen of California. Plaintiff Holloway purchased the recalled Bestway Steel Pro above-ground Pool on March 4, 2023, from Amazon.com for approximately \$427.38.

59. Plaintiff Holloway used the Pool as instructed in order to maintain a safe environment for her family and others.

60. Had Plaintiff Holloway known of the Defect and Bestway's response to the Defect with a delayed, ineffective and inadequate Recall, she would not have purchased the Pool or would have paid less for it.

61. Plaintiff Holloway considered Bestway a reputable company with a strong reputation for producing safe and reliable pools and believed that this Pool would be no different.

62. Plaintiff Holloway relied on Bestway's representations that the Pool was safe for family use and was unaware of the Defect and associated hazard in the Pool.

63. Plaintiff Holloway was unaware of the Defect until she learned of the Recall.

64. Plaintiff Holloway is unable to safely use and maintain her Pool. The Recall issued by Bestway is ineffective and inadequate due to the confounding nature of the repair kit and installation instructions. However, had Plaintiff Holloway been able to install the repair kit, it would have remained an ineffective resolution to the Defect because it places the structural integrity of the Pool at risk.

Plaintiff Katrina Hill

65. At all relevant times, Plaintiff Hill was and is a resident and citizen of California. Plaintiff Hill purchased the recalled Bestway Coleman Power Steel 18 ft x 48-inch round metal frame above-ground Pool in 2022, from Walmart for approximately \$500.00.

66. Plaintiff Hill used the Pool as instructed in order to maintain a safe environment for her family and others.

67. Had Plaintiff Hill known of the Defect and Bestway's response to the Defect with a delayed, ineffective and inadequate Recall, she would not have purchased the Pool or would have paid less for it.

68. Plaintiff Hill considered Bestway a reputable company with a strong reputation for producing safe and reliable pools and believed that this Pool would be no different.

69. Plaintiff Hill relied on Bestway's representations that the Pool was safe for family use and was unaware of the Defect and associated hazard in the Pool.

70. Plaintiff Hill was unaware of the Defect until she learned of the Recall.

71. Plaintiff Hill is unable to safely use and maintain her Pool. The Recall issued by Bestway is ineffective and inadequate due to the confounding nature of the repair kit and installation instructions. However, had Plaintiff Hill been able to install the repair kit, it would

have remained an ineffective resolution to the Defect because it places the structural integrity of the Pool at risk.

Plaintiff Lisa Weeks

72. At all relevant times, Plaintiff Weeks was and is a resident and citizen of California. Plaintiff Weeks purchased the recalled Bestway Steel Pro 15ft x 48-inch round steel frame above-ground Pool on July 29, 2024, from Amazon.com for approximately \$279.99.

73. Plaintiff Weeks used the Pool as instructed in order to maintain a safe environment for her family and others.

74. Had Plaintiff Weeks known of the Defect and Bestway's response to the Defect with a delayed, ineffective and inadequate Recall, she would not have purchased the Pool or would have paid less for it.

75. Plaintiff Weeks considered Bestway a reputable company with a strong reputation for producing safe and reliable pools and believed that this Pool would be no different.

76. Plaintiff Weeks relied on Bestway's representations that the Pool was safe for family use and was unaware of the Defect and associated hazard in the Pool.

77. Plaintiff Weeks was unaware of the Defect until she learned of the Recall.

78. Plaintiff Weeks is unable to safely use and maintain her Pool. The Recall issued by Bestway is ineffective and inadequate due to the confounding nature of the repair kit and installation instructions. However, had Plaintiff Hill been able to install the repair kit, it would have remained an ineffective resolution to the Defect because it places the structural integrity of the Pool at risk.

Defendants.

79. Defendant Bestway (USA) Inc. is a Delaware corporation headquartered in Chandler, Arizona.

80. Defendant Bestway Inflatables & Material Corp. is a foreign corporation with headquarters in Shanghai, China.

81. Defendant Bestway (Hong Kong) International Ltd is a foreign corporation with headquarters in Tsim Sha Tsui, Kowloon Hong Kong.

82. According to information and belief, Bestway or its subsidiaries are involved in the design, manufacturing, marketing, sale, and distribution of the recalled Pools.

83. Upon information and belief, until July 2025, Bestway directly or through third-party entities, designed, manufactured, distributed, marketed, advertised, and sold the recalled Pools nationwide, including at Walmart, Target, Sears, Lowe's, Kmart, Toys "R" Us, Sam's Club, The Home Depot, Big Lots, Costco and BJ's (among others). The recalled Pools were also sold on Bestway's website and other internet platforms, including Amazon.com, Wayfair.com and Walmart, among other authorized retailers.

JURISDICTION AND VENUE

84. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 of the Class Action Fairness Act because: (1) there are 100 or more putative Class Members; (2) the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs; and (3) there is diversity because Plaintiffs and at least one Defendant are citizens of different states.

85. This Court has personal jurisdiction over Defendants because Defendants do substantial business in this State and within this District, receive substantial compensation and

profit from the marketing, distribution, and sale of products in this District, and have engaged in the unlawful practices described in this Complaint within this District.

86. Under 28 U.S.C. § 1391, venue is proper in this District because a substantial part of the conduct giving rise to Plaintiffs' claims occurred in this District, as Bestway regularly transacts business in this District, and Bestway has intentionally availed itself of the laws and markets within this District.

COMMON FACTUAL ALLEGATIONS

I. Bestway Markets its Pools and Itself as an Industry Leader in Safety, Contrary to Its Actual Business Practices

87. Bestway is a leading manufacturer of above-ground pools and outdoor inflatable products, with a global footprint spanning over 110 countries and over 1,000 product lines. Since its founding in 1994, Bestway emphasized innovation and structural design in its pool products, presenting itself as a trusted brand in pool safety and quality.¹⁶

88. From approximately 2008 through 2024, Bestway manufactured and sold above-ground pool models, including, but not limited to Power Steel®, Steel Pro MAX™ and Coleman® Power Steel™ series, which featured exterior “compression straps” or support belts purportedly designed to maintain the structural integrity of the Pools.¹⁷

89. These straps, which wrap around the Pool's external circumference at mid-height, protrude outward from the Pool frame and are accessible from ground level. According to both

¹⁶ See Bestway site, <https://bestwayusa.com/our-mission> (last accessed on Nov. 24, 2025); *see also* <https://bestwayusa.com/recall-and-safety> (last accessed on Nov. 24, 2025).

¹⁷ See Bestway Recall, <https://bestwayusa.com/recalls-pool-strap> (last accessed Nov. 24, 2025).

Bestway and CPSC, these straps create an unintended foothold that allows children to climb into the Pool without a ladder, creating a significant drowning hazard.¹⁸

90. Nevertheless, Bestway marketed the Pools for the intended use of children and adults, stating, for example: “*Make a Splash of Memories* - Bestway® offers a wide variety of above ground pools for all ages, family sizes and lifestyles, so you can choose a frame pool, inflatable ring pool, family pool or kiddie pool that fits your specific needs and backyard size.” Bestway emphasized that the Pools “are perfect when you want to take a quick dip while you play with the kids in your backyard.”¹⁹

91. Bestway’s marketing of the Pools explicitly highlights the Pools’ safety and durability compared to others in the market, stating, for example: “For over a decade, Bestway USA has designed and produced high-quality, innovative inflatable recreational items to bring joy, relaxation and fun to people’s lives” and “Bestway frame pools feature durable, puncture-resistant liners and corrosion-resistant metal frames. Easy to set up and take down at the end of a season, Bestway frame pools are more cost-effective and convenient than traditional in-ground pools.”²⁰

92. Similarly, Bestway makes additional safety representations in the Pools’ Owner’s Manuals, further assuring consumers that the safety and well-being of its customers and their children are of paramount concern. By way of example, the Owner’s Manuals have a section titled “Important Safety Instructions.” Shockingly, however, neither this nor any other section of any Owner’s Manual gives proper warning or notice that children can use the external compression

¹⁸ See Recall Notice.

¹⁹ <https://bestwayusa.com/pools/pools> (last accessed Nov. 24, 2025).

²⁰ <https://bestwayusa.com/our-story> (last accessed Nov. 24, 2025); <https://bestwayusa.com/pools/pools> (last accessed Nov. 24, 2025).

straps to access the pool. Instead, Bestway only states the following: “Remove pool ladders before leaving pool. Toddlers can climb ladder and get into pool. Position furniture away from pool so that children cannot climb and gain access to pool. When leaving pool, remove floats and toys from pool that might attract a child.”²¹ This leads reasonable consumers to believe that if they follow these instructions, any drowning hazard will be eliminated.

93. Contrary to Bestway’s representations promising the safety and durability of its Pools, Bestway chose to ignore the uniform Defect present in each Pool. In doing so, Bestway revealed that it is, in reality, committed to its own profits—not safe pools and the children who may swim in them.

II. Bestway Knew, or Should Have Known, of the Defect

94. Prior to the design or introduction of the Pools into the marketplace, Bestway knew, or should have known, that the Pools had similar design elements as those that reported drowning incidents beginning in 2007. Consequently, Bestway was or should have been aware of the Pools’ Defect. However, Bestway continued to market, sell and profit from the dangerous and defective Pools.

95. Between 2007 and 2022, at least **nine children between the ages of 22 months and 3 years** drowned in pools with the same or similar Defect to the Bestway Pools. The deaths occurred in six different states: California, Florida, Michigan, Missouri, Texas and Wisconsin.²²

²¹ Bestway Owner’s Manual, Steel Pro, Steel Pro Max and Power Steel, https://bestwayusa.com/media/pdf_files//5617WE.pdf?srsId=AfmBOooW29QuP4rXkbJUTrMTpO6aMaTN3xLYVdKWpLSM2oFV7jvqN6Es (last accessed Nov. 24, 2025).

²² See Recall Notice.

96. The CPSC also confirmed at least **three near-drowning incidents** associated with the recalled pool design in 2011 and 2012.²³

97. Indeed, the Defect existed throughout the 16-year span of the Pools' availability. Notably, Bestway has access to incident data, consumer feedback and industry standards for pool safety and design that should have led to corrective design action far earlier, and long before so many children died.²⁴ The fact that Bestway sold other pool models not subject to the Recall that did not feature an exterior compression strap indicates that Bestway was well aware of a corrective and alternative design long before the Recall was issued.

98. The known risks due to the Defect, the decades-long availability of safer designs, Bestway's dominant position in the above-ground pool market and the likelihood that a substantial portion of defective Pools remain in use, all support Plaintiffs' allegations that Bestway acted with knowledge of the Defect yet still represented, marketed, distributed and sold defective Pools.

99. Furthermore, in January 2022, Bestway was subject to a wrongful death lawsuit resulting from a death caused by an identical Defect as that found in the Pools.²⁵ Notably, the Pool subject to the lawsuit is also part of the Recall at the heart of this action.

100. In the lawsuit, the plaintiffs alleged that "[t]he design of the pool rendered it defective. The lack of adequate warnings accompanying the pool rendered it defective. Defendants failed in their acts and omissions related to the pool to use reasonable care to avoid injuring E. M. J. and [p]laintiffs. Defendants breached express warranties made about the pool. The defective

²³ *Id.*

²⁴ *Id.*

²⁵ *Justice, et al. v. Bestway (USA), Inc., et al.*, No. 4:22-cv-00050-AGF, ECF No. 5 (E.D.Mo. Jan. 18, 2022).

nature of the pool and [d]efendants' negligent conduct and breach of warranties proximately caused E. M. J.'s horrific suffering and death by drowning and caused [p]laintiffs to sustain pecuniary loss, including funeral expenses and burial expenses for their daughter E. M. J., as well as loss of consortium, companionship, comfort, guidance, and counsel of their daughter E. M. J."²⁶

101. In March 2025, after a weeklong trial, the **jury ruled that Bestway was liable for E.M.J.'s death**, primarily due to its defective Pool design and failure to provide adequate warnings about the Defect. The verdict found that the 51-inch-tall pool was designed in a way that allowed toddlers to climb into it using a nylon strap wrapped around the Pool's exterior—the very design flaw that results in the Defect and the associated risk of drowning at issue here—and ordered Bestway to pay \$25 million in damages.

102. In addition to the fatality data and prior litigation, Bestway possessed internal warranty claims, consumer complaints, engineering evaluations and safety reports documenting recurring issues with children accessing the Pools using the external compression strap.

III. The Recall was Untimely and is Inadequate, Ineffective, Creates Further Hazards and was Designed to Fail

103. On July 21, 2025, the CPSC announced a voluntary nationwide recall of approximately **5 million** above-ground pool units sold in the United States by Bestway, Intex and Polygroup, which contain the identical Defect (*e.g.*, compression straps on the exterior poles of the above-ground pools that are 48 inches or taller, which pose a drowning hazard).

104. However, the Recall is nothing short of perilous due to its inexcusable delay in notice and administration, which even the CPSC admitted, and the wholly inadequate repair kit. Despite the Defect rendering the Pools unsafe and unsuitable for their intended use, the Pools

²⁶ *Id.* at ¶ 2.

remained on the market following multiple drowning deaths and near drownings, and remain on the market today after a weak Recall, which continues to put consumers and their children at risk and was ultimately designed to fail.

105. Despite having the capability and expertise to identify and mitigate the Defect, Bestway failed to redesign the Pools, remove the external compression strap or issue sufficient warnings to consumers for *16 years*. This delay contributed to the continued availability of the defective Pools.

106. As stated by CPSC's Acting Chairman Peter A. Feldmann and Commissioner Douglas Dziak, the Recall was "long-overdue."²⁷ Further, Chairman Feldmann and Commissioner Dziak summarized the Defect as "a textbook example of a dangerous design flaw, plainly visible and clearly hazardous," and, with respect to the drowning deaths and near drownings, that "[y]ears of inaction allowed these tragedies to occur."²⁸ Nevertheless, Bestway prioritized profit over the integrity and safety of the Pools and continued to manufacture, market and sell the Pools with the Defect.

107. Bestway's actions and priorities in delaying the Recall clearly indicate a prioritization of profit over the safety of consumers and their children. Bestway made significant revenue from the sale of the Pools, which were sold nationwide, resulting in hundreds of millions of dollars in revenue.

²⁷ See *Statement of Acting Chairman Peter A. Feldman and Commissioner Douglas Dziak: Deadly Design in Chinese Pools Triggers Massive Recall; CPSC Leaders Cite Years of Inaction* (published on July 21, 2025), <https://www.cpsc.gov/About-CPSC/Commissioner/Douglas-Dziak-Peter-A-Feldman/Statement/Statement-of-Acting-Chairman-Peter-A-Feldman-and-Commissioner-Douglas-Dziak-Deadly-Design-in-Chinese-Pools-Triggers-Massive-Recall-CPSC-Leaders-Cite-Years-of-Inaction> (last accessed Oct. 9, 2025).

²⁸ *Id.*

108. Now, with the delayed, ineffective and inadequate Recall, which includes a cut-rate repair kit that adversely impacts the structural integrity of the Pools, Bestway is able to maintain its large profits at the expense of consumers.

109. According to the Recall Notice, consumers with and without children were instructed to identify if their above-ground pool was affected by the Recall and submit the model number through the website for approval. If confirmed, the customer was instructed to order a “repair kit” on the following screen.²⁹

110. Although the repair kit is offered at no charge, installation of the repair kit is a multiple step process.³⁰ Consumers are required to locate and provide the SKU number of their pool, request the kit from Bestway, and wait for delivery before undertaking repairs. The repair process itself imposes substantial burdens, as Plaintiffs and Class Members must install the rope system, and cut away the existing compression straps. These corrective measures require significant time and effort and often result in out-of-pocket costs, including potential labor costs for consumers unable to complete the repairs themselves.

111. Bestway does not offer technicians to assist with the installation of the repair kit, despite the required multiple-step and multiple-part installation process.

112. The so-called repair kit consists of a mere rope that allegedly substitutes for the compression straps to maintain the Pool’s structural integrity, along with a “pulley” and plastic “C-shaped holders” designed to be placed at the base of each leg of the Pool frame after removal

²⁹ See Bestway Notice Recall; *see also* <https://bwrecallsupport.expertinquiry.com/faq?lang=en> (last accessed Oct. 9, 2025) (This website, as indicated, is password protected; *see* n.13, *supra*.)

³⁰ See Bestway instructional video, <https://s3.bestwaycorp.com/qrcode/video/69e7acc5-1a3a-42cf-a15e-9aa3546e9e03.html> (last accessed Nov. 24, 2025).

of the compression strap.³¹ According to the Recall Notice, “[t]he [compression] strap maintains structural integrity and helps the legs of the [P]ool remain upright. The strap should only be cut after the repair kit is installed.”³²

113. A compression strap holds objects together by applying tension and pressure, providing stability to whatever it is applied. The “compression straps” that are subject to the Defect are aptly named because they help to hold the Pools in their intended shape (*i.e.*, to support the significant weight from water held in the Pools that exert outward force against the Pool walls). Here, the Pools were designed with a compression strap that wraps around the Pools, near the mid-section, to help maintain the structural integrity by supporting the critical load that the water exerts on the Pools’ walls.

114. The Recall parameters instruct consumers to remove this structural compression strap in favor of a rope that wraps around the *bottom* of the Pool. By doing so, this creates a longer unsupported length in the Pool walls. For products under these types of loads—where the significant water weight is held by the Pools’ walls and columns—a longer unsupported length lowers the load the Pools’ components can withstand. Removing the compression strap in the mid-section of the Pool in favor of a rope at the bottom of the Pool creates a longer, unsupported length. This change in position adversely impacts the structural integrity of the Pools because an increase in the unsupported length of a structural member (the Pool walls and columns) creates greater deflection under a certain load. In other words, an increased unsupported (or unbraced) length makes the Pools more flexible and less stable, decreases the Pools’ outer structure’s load-bearing capacity and increases its susceptibility to deflection or even buckling. Thus, the rope that

³¹ *Id.*

³² *Id.*

consumers are instructed to install around the bottom of the Pools *decreases* the strength of the Pools' outer structure, making the Pools less capable of withstanding the outward force from the water.

115. By removing the compression strap—an essential structural component designed to hold the Pools in their intended shape under substantial force—and replacing it with a rope that lacks the necessary tensile rigidity and appropriate placement, Bestway's Recall remedy not only fails to fix the Defect, it *creates further hazards*. The increased flexibility and decreased stability of the wall structure make the Pool more susceptible to catastrophic failure, including sudden outward bowing or wall collapse. This is an unreasonable and foreseeable risk introduced solely by the Recall remedy itself.

116. Furthermore, ultraviolet rays from the sun, particularly direct sunlight to which the rope will be exposed, can cause a breakdown of the fibers that make up the rope, which can weaken the fibers over time, making them prone to fraying. The rope is also likely to loosen over time, and requires constant tensioning or could even result in premature failure. Instructions on the importance of and how to ensure continued tension of the rope are not provided in the Recall Notice or repair kit instructions, making it more likely that the “fix” proposed by Bestway will only result in failure of the Pool.

117. Moreover, research shows that response rates are lower for recalls that require complicated steps and fail to provide consumers with a full refund.³³

³³ *Recall Effectiveness Research: A Review And Summary Of The Literature On Consumer Motivation And Behavior* (July 2003), CPSC.gov, https://www.cpsc.gov/s3fs-public/pdfs/foia_RecallEffectiveness.pdf, at page 25 (last accessed Nov. 24, 2025).

118. Although the repair kit is not an adequate substitute for a compression strap running internally at the mid-section of the Pool wall to the support poles around the Pool, installation of the repair kit itself is another failure of the Recall. Installation of the rope requires a multiple step process.³⁴ Bestway's Recall Notice does not offer technicians to assist with the installation of the repair kit despite the required multiple step and multiple part installation process. As evidenced by the instructions provided, Bestway places the onus of ensuring the structural integrity of the Pools upon the consumer in a spectacularly convoluted and intricate manner—the result of which is a very low likelihood that a reasonable consumer would or could properly install the repair kit as instructed.³⁵

119. Given the confusing instructions provided for installing the repair kit and the likelihood that consumers would need support to follow the installation instructions, Bestway knew, or should have known, that it needed to provide consumers with further support in installing the repair kit. However, in continuing its pattern of prioritizing profits over the structural integrity of its Pools and the safety and well-being of its consumers and their children, Bestway refuses to provide consumers with the option to schedule a technician to assist with the installation. Instead, Bestway provides consumers with an 800 number and an email address—neither of which provides reasonable support to consumers.

120. A study conducted by Kids in Danger found that product recalls generally have a low level of participation when the recall includes cognitive overload, requires significant time and effort, offers a repair (versus a refund which has higher participation), and when consumers

³⁴ See Bestway instructional video, <https://s3.bestwaycorp.com/qrcode/video/69e7acc5-1a3a-42cf-a15e-9aa3546e9e03.html> (last accessed Nov. 24, 2025).

³⁵ Bestway, FAQ, <https://bwrecallsupport.expertinquiry.com/faq?lang=en>, at Repair Instructions (English) (last accessed Oct. 9, 2025) (This website is password protected; see n.13 *supra*.)

are asked to repair, deconstruct and/or physically destroy parts of the product but continue using the parts in their destructed form.³⁶

121. As noted by a study prepared for the CPSC, response rates for recalls are significantly reduced when they involve cognitive or task overload, and when they do not adequately motivate consumers to participate.³⁷

122. Thus, Bestway's design of the Recall instructions, as well as its choice to require the surgical removal of parts of the Pools by their consumers—who trusted Bestway to sell them a Product safe and suitable for their and their children's use—renders the Recall's ability to inspire participation a dismal prospect at best. Bestway's failure to offer consumers a monetary refund further curtails the Recall's effectiveness, resulting in a Recall that is inherently stunted and designed to fail.

123. Bestway intentionally chose the more profitable route for its business and, presumably, less damaging to its branding and purported commitment to safe and durable Pools.

124. Further, it is well known that product recalls generally have a low level of participation when consumers are not provided with a full remedy:

Generally, firms should offer full remedy to achieve high recall effectiveness. While this seems like an obvious suggestion, our data shows that firms do not always follow that suggestion, even when the product and defect are the same. This is particularly puzzling as research also indicates that offering full remedy is the

³⁶ New KID Report and Consumer Survey Reveal Need for Improvements in Children's Product Recall Process, Kids In Danger, Press Release, (September 12, 2024) (Note: no longer available online).

³⁷ *Recall Effectiveness Research: A Review And Summary Of The Literature On Consumer Motivation And Behavior*, (July 2003), CPSC.gov, https://www.cpsc.gov/s3fs-public/pdfs/foia_RecallEffectiveness.pdf, at page 25 (last accessed Nov. 24, 2025).

dominant strategy to preserve customer satisfaction after a product recall (Mafael, *et al.*, 2022) and protects firm reputation after the recall (Germann, *et al.*, 2014).³⁸

125. Despite (1) the knowledge that full remedies lead to higher recall rates, (2) the serious risk the Defect presents, and (3) the additional risks the repair kit presents, Bestway offered a minimal remedy in its Recall, ensuring lower participation rates that put more consumers and their children at risk as the Pools remain in homes throughout the country.

126. The inadequacy of the repair kit is further evidenced by the other above-ground pools sold by Bestway, which confirm the existence of safer alternative designs.

127. The below image is of a Bestway Steel Pro Max above-ground pool, featuring internal compression straps, that is currently sold on Bestway's website. The arrows indicate the compression straps are internally situated to maintain the pool's structural integrity.



Image 4³⁹

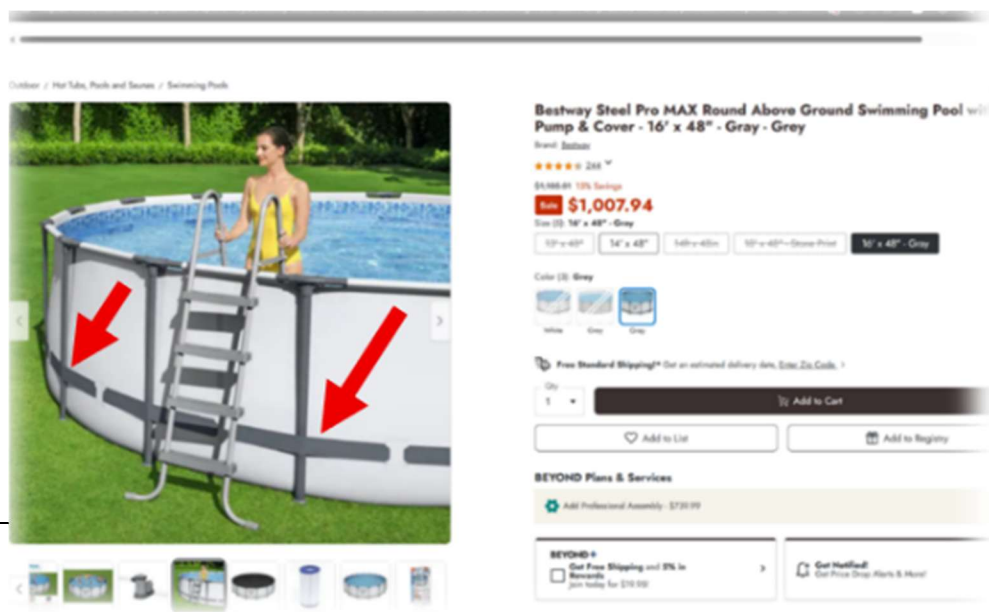
³⁸ Sascha Raithel, *et al.*, *Product recall effectiveness and consumers' participation in corrective actions*, Journal of the Academy of Marketing Science (Aug. 19, 2023), <https://link.springer.com/article/10.1007/s11747-023-00967-x> (last accessed Nov. 24, 2025).

³⁹ See <https://bestwayusa.com/bestway-steel-pro-max-15-x-48-above-ground-pool-set-56690e>, (last accessed Nov. 24, 2025).

128. These pools continue to include the strap wrapped close to the midsection of the pool behind the poles, which prevents the pool legs from sliding, and not a rope on the ground that can fray and requires constant attention, confirming that the rope is not an adequate substitute for maintaining the structural integrity of the pool. Instead, the rope is a cheap way for Bestway to avoid replacing the Pools or providing refunds, ensuring Bestway spends only a few dollars rather than impacting the significant revenue it gains at the expense of consumers.⁴⁰

129. This further confirms that Bestway knows the rope is not a genuine remedy but a low-cost measure that avoids refunds and replacements. Bestway nevertheless presented the rope as a solution to the Defect inherent in the Pools Bestway falsely sold for decades as safe for families and children.

130. Additionally, on information and belief, Bestway has not removed or destroyed all defective Products available for purchase, placing unknowing families and their children in great danger. Below is an August 2025 example of how some websites had still advertise and sell the recalled Pools with exterior compression straps—and on sale:



⁴⁰ Plaintiffs reserve the right to amend the Complaint pertaining to the inadequacy of the repair kit following expert discovery and disclosures.

Image 5⁴¹

131. Bestway's refusal to provide refunds, replacements or professional repairs underscores its ongoing disregard for consumer safety and demonstrates that the Recall remedy fails in its essential purpose.

132. A recall does not moot economic loss claims where the remedy is inadequate, incomplete or fails to restore product value. Bestway's Recall remedy is materially inadequate, leaving consumers with unsafe, unusable and valueless Pools.

133. This action seeks to hold Bestway accountable for its dangerous design, decades of concealment and its knowingly inadequate Recall remedy.

134. Bestway acted with reckless disregard and conscious indifference to known, life-threatening risks.

IV. The Unconscionability and Failure of Essential Purpose of the Warranties

⁴¹ Bed Bath & Beyond website showing the defective Pool for sale. As shown in the image, the compression straps are located externally on the vertical poles of the pool wall, indicating the hazard. The arrows in the image were included to demonstrate the Defect. (<https://www.bedbathandbeyond.com/Sports-Toys/Bestway-Steel-Pro-MAX-16x48-Round-Above-Ground-Swimming-Pool-with-Pump-Cover/41152733/product.html?opre=1&option=85236245>) (Note: this link was last accessed on August 8, 2025. The Pool was still being sold *after* the Recall and upon information and belief, retailers may still be selling these defective Pools.)

135. Bestway expressly warranted, via Owner's Manuals, advertisements, pamphlets, brochures, circulars, samples, and models, that the Pools are fit for the ordinary purpose for which they are sold.

136. Prior to the point of sale, Bestway also warranted that its Pools were safe and durable, as evidenced by its advertisements and warnings in the Owner's Manuals regarding the removal of the ladder and objects adjacent to the Pools when not in use.

137. Moreover, Bestway's Pools are covered by the warranty of merchantability, which guarantees that a seller who deals in particular goods by their occupation promises that the goods sold are fit for their ordinary purpose for which they are intended to be used.

138. Bestway clearly intended its warranties to apply directly to these consumers who depend on Bestway to provide safe and durable Pools.

139. Bestway manifests intent that its warranties apply to Plaintiffs and Class Members as third-party beneficiaries, as is evident from the statements in its product literature, which begins on the date of the consumers' purchases and excludes commercial, non-residential use.

140. However, despite these warranties, as described herein, the Pools contain a uniform Defect prior to and at the time of purchase, causing them to commonly and consistently fail in their primary purpose.

141. Bestway knew, or should have known, of the Defect and dangers posed in its Pools prior to and at the time of sale of the Pools to consumers, including from its design of the Pools, knowledge of industry pool safety guidance and recommendations, receipt of CPSC complaints, prior wrongful death litigation, as well as from warranty claims made directly to Bestway.

142. Plaintiffs and Class Members, on the other hand, had no way of knowing of the Defect or the dangers presented by the Pools prior to purchase.

143. The express warranties relating to the Pools are collectively and individually the result of surprise and oppression and are so one-sided and overly harsh that they are both procedurally and substantively unconscionable.

144. Bestway was in a superior position to know of, remedy, and disclose the Defect in its Pools to Plaintiffs and Class Members who could not have known of their defective nature at the time of purchase.

145. There was a substantial disparity between the parties' bargaining power such that Plaintiffs and Class Members were unable to derive a substantial benefit from these express warranties.

146. A disparity existed because Bestway was aware that the Pools contained the Defect, while Plaintiffs and Class Members had no notice or ability to detect the Defect and had no reason to believe such a Defect existed due to Bestway's marketing of itself and its Pools as industry leaders in pool safety.

147. Bestway abused the special relationship it created with consumers through its marketing and through its designing, manufacturing, and selling the Pools as safe and durable. Consumers had no choice but to trust Bestway's representations and thus accept the terms of the warranties.

148. Bestway knew Plaintiffs and Class Members had no notice or ability to detect the Pools' uniform Defect, and Bestway knew that Plaintiffs and Class Members would bear the cost of remedying or replacing the Pools.

149. Bestway knew of the Defect at the time of sale, while Plaintiffs and Class Members had no ability to discover the Defect at the time of purchase.

150. Bestway was in breach of the warranties at the time Plaintiffs and Class Members purchased the Pools because they were defective when they came off the assembly line. Thus, at the time the defective Pools were sold to consumers, Bestway was already in violation of its warranties.

151. Bestway sold the Pools knowing that they were not capable of being repaired or replaced with non-defective Pools.

152. Plaintiffs and Class Members would have negotiated better terms in the purchase of the Pools had they been aware of the Defect or would not have purchased them at all.

153. Bestway sold the Pools with knowledge of the Defect and of the fact that the Pools failed to conform to Bestway's marketing of itself and the Pools as industry leaders in safety, and failed to be safe and suitable for the Pools' foreseeable and intended purpose and use.

154. The terms of the express warranties unreasonably favor Bestway over Plaintiffs and Class Members.

155. In addition, the express warranties failed in their essential purpose in that: (1) the Defect existed at the time the Pools left the manufacturing facility; and (2) Bestway failed to disclose its knowledge of the Defect at any time, even when contacted by customers about the Pools.

156. Accordingly, recovery by Plaintiffs and Class Members is not restricted to the promise in any express warranties, and they seek all remedies that may be allowed.

V. Injury to the Public at Large, the Potential for Future Harm, and the Need for Injunctive Relief

157. Bestway's wrongful conduct harms the public at large. Namely, by misrepresenting the Pools as safe and durable and by failing to disclose that the Pools contain a uniform Defect and

expose consumers and their children to the risk of serious injury and death, the harm extends to all Class Members and consumers who may purchase the Pools.

158. In addition, because Bestway continues to encourage consumers to use the Pools despite the lack of an effective repair, Bestway's actions pose an ongoing risk to the public.

159. As such, a public injunction is necessary to enjoin Bestway's continued harm to consumers and the public at large.

160. Similarly, should Bestway not be enjoined from its unlawful and deceptive conduct, Plaintiffs, Class Members, and the public face the potential for irreparable future harm, including purchasing Pools which are not safe or durable and which instead contain a uniform Defect and expose consumers and their children to the risk of serious injury and death.

VI. Bestway's Actual or Constructive Knowledge of the Defect and Duty to Disclose the Defect

161. Bestway knew, or should have known, when it sold the Pools to the public that they suffered from the Defect.

162. Additionally, Bestway knew, or should have known, that the Defect caused the Pools to fail in their regular and intended purpose. The Pools were unsafe, unstable, and unsuitable for use by consumers and their children.

163. Bestway's knowledge of the Defect is established through its design of the Pools, knowledge of industry guidance and recommendations regarding pool safety, receipt of multiple reports of infant death in the Pools, and lastly, the Recall, which confirms that multiple children have died as a result of the Defect since at least 2007.

164. Despite its knowledge, upon information and belief, Bestway did not remedy or eliminate the Defect in the Pools or remove them from the stream of commerce.

165. Instead, Bestway continued to unlawfully advertise the Pools as safe and durable and continued to sell the unreasonably dangerous Pools to consumers.

166. The Recall, for the reasons stated above, does not absolve Bestway of liability, especially given its position as a worldwide leader in the above-ground pool market.

167. In conjunction with Bestway's vast experience with above-ground pools, these facts and reports of children's deaths illustrate that Bestway knew, or should have known as an industry leader, of the Defect and the resulting incapability of the Pools to conform to Bestway's marketing of itself and the Pools.

168. Bestway had a duty to disclose the Defect and not conceal the Defect from Plaintiffs and Class Members.

169. Bestway's failure to disclose, and/or its active concealment of, the Defect places Plaintiffs and Class Members and their children at risk of serious injury and/or death.

170. Even in light of the Recall, Bestway is currently still allowing the use of the defective Pools.

171. Plaintiffs, Class Members, and the consuming public would not have purchased the Pools if they had known that the Pools were defective, unsuitable for their marketed and intended use, and risked their children's lives.

172. Bestway wrongly placed the burden, expense, and difficulty involved in discovering the Defect and determining that the Pools are unsafe on Plaintiffs and Class Members. Bestway also wrongly shifted to Plaintiffs and the Class Members the cost of the damages caused by the Defect.

TOLLING AND ESTOPPEL OF THE STATUTE OF LIMITATIONS

173. Bestway continuously manufactured, marketed, and sold the defective Pools to unsuspecting customers. At all relevant times, it continuously represented that the Pools were fit for their intended use.

174. By continuously repeating these false representations and failing to disclose that the Pools contain the Defect, Bestway engaged in a continuing wrong sufficient to render inapplicable any statute of limitations that Bestway might seek to apply.

175. As the designer and manufacturer of the Pools, Bestway knew or should have known of the Defect before distributing the Pools into the consumer marketplace.

176. Bestway's knowledge of the Defect is evidenced by, amongst other things, the Recall Notice and reports of at least nine deaths directly resulting from the Defect.

177. Thus, at all relevant times, Bestway indisputably possessed continuous knowledge of the Defect, and yet Bestway knowingly continued to allow the sale of the Pools. Plaintiffs' and other Class Members' claims are therefore not time-barred.

178. Further, the Recall Notice and the repair kit instructions show Bestway's continued false representations. They mislead consumers into believing the repair kit is an adequate remedy when, in reality, the repair kit introduces additional hazards that present further risks of harm to consumers and their children.

179. Moreover, even after the Recall, there is no evidence that news of the Bestway Recall Notice or Defect reached all Pool owners.

180. Plaintiffs and other Class Members could not reasonably discover, and could not know, facts that would cause a reasonable person to suspect that Bestway knowingly failed to

disclose material information within its knowledge about the Defect to consumers in the United States and elsewhere. Therefore, no potentially relevant statute of limitations applies.

181. Throughout the time period relevant to this action, Bestway concealed from, and failed to disclose to, Plaintiffs and the other Class Members vital information about the Defect described herein.

182. Bestway kept Plaintiffs and the other Class Members ignorant of vital information essential to pursue their claims. As a result, neither Plaintiffs nor the other Class Members could have discovered the Defect, even upon reasonable exercise of due diligence.

183. Bestway had a duty to disclose to Plaintiffs and the Class Members the true quality and nature of the Pools and that the Pools have a uniform Defect.

184. Instead, Bestway continued to market the Pools as suitable for their intended purpose to further profit from the sale of its popular Pool products and prevent Plaintiffs and other Class Members from seeking redress.

185. Plaintiffs and the other Class Members justifiably relied on Bestway to disclose the true nature of the Pool they purchased and/or owned because the Defect was not discoverable by Plaintiffs and the other Class Members through reasonable efforts.

186. Bestway's affirmative acts of concealment, including its continued marketing of the defective Pools as safe, reliable, and fit for its intended purpose when it knew of the Defect, further support estoppel and tolling of any applicable limitations period.

FED. R. CIV. P. 9(b) ALLEGATIONS

187. Although Bestway is in the best position to know information about the design, manufacture, distribution, and sale of the Pools as well as the facts surrounding the Defect, the

Recall Notice, and the repair kit during the relevant timeframe, to the extent necessary, Plaintiffs satisfy the requirements of Rule 9(b) by alleging the following facts with particularity:

188. **WHO:** Bestway made material misrepresentations and/or omissions of fact through its marketing on its website, product packaging, warranties, Owner's Manuals and labeling, which include statements that the Pools are not defective and are safe and suitable for their intended use.

189. **WHAT:** Bestway's conduct was, and continues to be, fraudulent because it omitted and concealed that the Pools are defective, unsafe, and unsuitable for their intended use because the Pools contain the uniform Defect. Bestway's employees and representatives made affirmative misrepresentations regarding these same qualities to Plaintiffs and Class Members at the time of purchase as a part of Bestway's marketing of the Pools. Bestway failed to adequately warn Plaintiffs and Class Members that the Pools contained the Defect, were not suitable for their intended use, and have caused injury and death. Further, Bestway's conduct has the effect of deceiving Plaintiffs and Class Members into believing that the Pools are not defective, and instead, are suitable for their intended use. Bestway knew, or should have known, the existence of the Defect is material to the reasonable consumer, including Plaintiffs and Class Members, and impacts their purchasing decisions. Yet Bestway omitted a necessary warning that the Pools are defective and are unsafe and unsuitable for their intended use. Further, Bestway knew or should have known that its Recall Notice and repair kit contained further deceptive representations as to the safety of the Pools.

190. **WHEN:** Bestway made material misrepresentations and/or omissions during the putative class periods and at the time Plaintiffs and Class Members purchased the Pools, prior to and at the time Plaintiffs and Class Members made claims after realizing the Products contained a

uniform Defect, prior to and at the time Bestway disseminated the Recall Notice and the corresponding repair kits, and continuously throughout the applicable class periods.

191. **WHERE:** Bestway's marketing message and omissions were uniform and pervasive, containing material misrepresentations and omissions on the Pools' labeling and packaging, its website(s), the Recall Notice, and the websites of authorized retailers.

192. **HOW:** Bestway made material misrepresentations of material facts regarding the Pools, including, but not limited to, the existence of the uniform Defect and the associated risks therein; the sufficiency of the Recall remedy; and the further hazards the Recall remedy presents.

193. **WHY:** Bestway made the material misrepresentations and/or omissions detailed herein for the express purpose of inducing Plaintiffs, Class Members, and all reasonable consumers to purchase and/or pay a premium price for the Pools, resulting in Bestway profiting by selling its defective Pools to hundreds of thousands of consumers.

194. **INJURY:** Plaintiffs and Class Members purchased, paid a premium, or otherwise paid more for the Pools which they would not have done absent Bestway's misrepresentations and omissions.

CLASS ACTION ALLEGATIONS

195. Plaintiffs bring this action individually and on behalf of all others similarly situated, pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), 23(b)(3) and 23(c)(4), on behalf of themselves and the members of the following proposed nationwide class ("Nationwide Class"):

During the fullest period allowed by law, all persons who purchased a Pool in the United States, for personal use and not for resale.

196. Plaintiffs Castro, Piceno, Holloway, Hill, Weeks, and DeSabio bring this action individually and as representatives of all those similarly situated, pursuant to Fed. R. Civ. P. 23(a),

23(b)(2) and 23(b)(3), on behalf of themselves and the members of the following proposed multi-state class (“Multi-State Consumer Protection Class”):⁴²

During the fullest period allowed by law, all persons who purchased a Pool in any state with similar consumer protection laws,⁴³ for personal use and not resale.

197. Plaintiffs Piceno, Holloway, Hill and Weeks further bring this action individually and as representatives of all those similarly situated, pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3) on behalf of themselves and the members of the following class (“California Class”):

During the fullest period allowed by law, all persons who purchased a Pool in the State of California, for personal use and not resale.

198. Plaintiff Gannon further brings this action individually and as a representative of all those similarly situated, pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3) on behalf of herself and the members of the following class (“Indiana Class”):

During the fullest period allowed by law, all persons who purchased a Pool in the State of Indiana, for personal use and not resale.

⁴² Unless otherwise specified, all references in this Complaint to “Classes” or the “Class” refer collectively to the Nationwide Class, Multi-State Consumer Protection Class and State Classes.

⁴³ While discovery may alter the following, Plaintiffs assert that the other states with similar consumer protection laws under the facts of this case include, but are not limited to: Alaska (AS §§ 45.50.471, *et seq.*), Arkansas (Ark. Code §§ 4-88-101, *et seq.*), California (Cal. Bus. & Prof. Code §§ 17200, *et seq.*), Connecticut (Conn. Gen. Stat. §§ 42-110, *et seq.*), Delaware (Del. Code tit. 6, §§ 2511, *et seq.*), District of Columbia (D.C. Code §§ 28-3901, *et seq.*), Florida (Fla. Stat. §§ 501.201, *et seq.*), Hawaii (Haw. Rev. Stat. §§ 480-1, *et seq.*), Illinois (815 ICLS §§ 501/1, *et seq.*), Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*), Michigan (Mich. Comp. Law §§ 445.901, *et seq.*), Minnesota (Minn. Stat. §§ 325F.67, *et seq.*), Missouri (Mo. Rev. Stat. §§ 407.010, *et seq.*), New Jersey (N.J. Stat. §§ 56:8-1, *et seq.*), New York (N.Y. Gen. Bus. Law. §§ 349, *et seq.* and §§ 350, *et seq.*), Rhode Island (R.I. Gen. Laws §§ 6-13.1-1, *et seq.*), Vermont (Vt. Stat. tit. 9, §§ 2451, *et seq.*), Washington (Wash. Rev. Code §§ 19.86.010, *et seq.*), and Wisconsin (Wis. Stat. §§ 100.18, *et seq.*). *See Langan v. Johnson & Johnson Consumer Companies, Inc.*, 897 F.3d 88, 96 (2d Cir. 2018); *Mancuso v. RFA Brands, LLC*, 454 F. Supp. 3d 197, 201, 204 (W.D.N.Y. 2020); *see also Benson v. Newell Brands, Inc.*, No. 19 C 6836, 2021 WL 5321510, *9-10 (N.D. Ill. Nov. 16, 2021) (certifying a similar multi-state consumer protection class).

199. Plaintiff Castro further bring this action individually and as a representative of all those similarly situated, pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3) on behalf of herself and the members of the following class (“Illinois Class”):

During the fullest period allowed by law, all persons who purchased a Pool in the State of Illinois, for personal use and not resale.

200. Plaintiff DeSabio further brings this action individually and as a representative of all those similarly situated, pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3) on behalf of herself and the members of the following class (“New York Class”):

During the fullest period allowed by law, all persons who purchased a Pool in the State of New York, for personal use and not resale.

201. Specifically excluded from these definitions are: (1) Bestway, any entity in which Bestway has a controlling interest, and its legal representatives, officers, directors, employees, assigns and successors; (2) the Judge to whom this case is assigned and any member of the Judge’s staff or immediate family; and (3) Class Counsel.

202. This action seeks only injunctive, declaratory and other equitable relief and economic damages; neither the Plaintiffs or the Classes seek recovery for personal injury or wrongful death.

203. Plaintiffs reserve the right to amend, expand or otherwise modify the Class definitions as discovery and further investigation reveal additional information. This action is brought and may properly be maintained as a class action against Bestway because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable.

204. **Numerosity.** Class Members are so numerous and geographically dispersed that joinder of all Class Members is impracticable. While the exact number of Class Members remains currently unknown, Bestway sold more than 2.4 million Pools throughout the United States and

upon information and belief, there are thousands, if not hundreds of thousands, of putative Class Members. Moreover, the number of members of the Class may be ascertained from Bestway's books and records, as well as third-party retailers. Class Members may be notified of the pendency of this action by mail and/or electronic mail, which can be supplemented if deemed necessary or appropriate by the Court with published notice.

205. **Predominance of Common Questions of Law and Fact.** Common questions of law and fact exist for all Class Members and predominate over any questions affecting only individual Class Members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether the Pools contain the Defect alleged herein;
- b. Whether Bestway knew, or should have known, of the Defect;
- c. Whether Bestway had a duty to disclose the Defect to consumers;
- d. Whether Bestway's conduct as alleged violated the consumer protection statutes alleged herein;
- e. Whether Bestway failed to adequately warn Plaintiffs and Class Members that the Pools contained the Defect and drowning hazard;
- f. Whether Bestway's representations and omissions were misleading or deceptive;
- g. Whether Bestway omitted or failed to disclose material information to Plaintiffs and Class Members regarding the Pools;
- h. Whether Bestway concealed from and/or failed to disclose to Plaintiffs and Class Members that the Pools contain the Defect;

- i. Whether the Recall Notice and repair kit representations and omissions were misleading or deceptive;
- j. Whether Bestway failed to adequately warn Plaintiffs and Class Members that the repair kit presented further hazards to consumers;
- k. Whether Bestway breached express and/or implied warranties regarding the Pools;
- l. Whether Bestway's conduct was unfair or illegal;
- m. Whether Plaintiffs and Class Members suffered economic injury;
- n. Whether Bestway's conduct violates public policy;
- o. Whether Bestway was unjustly enriched;
- p. Whether Plaintiffs and putative members of the Class suffered an ascertainable loss of monies or property or other value as a result of Bestway's acts and omissions of material facts;
- q. Whether Plaintiffs and members of the putative Class are entitled to monetary damages and, if so, the nature of such relief; and
- r. Whether Plaintiffs and Class Members are entitled to injunctive, declaratory or other equitable relief, including modification of the Recall.

206. **Typicality.** Plaintiffs' claims are typical of those of the absent Class Members in that Plaintiffs and the Class Members purchased and used the Pools and sustained damages arising from Bestway's wrongful conduct, as alleged above. Plaintiffs share the above facts and legal claims or questions with the putative Class Members. Plaintiffs and all members of the putative Class are similarly affected by Bestway's common misconduct alleged herein. Plaintiffs and all members of the putative Class sustained monetary and economic injuries including—but not

limited to—ascertainable losses resulting from Bestway’s deceptive representations and omissions concerning the Pools, the existence of the Defect, the risks attributable to the Defect and the Pools’ fitness for their intended purpose, as well as the proposed repair kit’s ability to function as intended.

207. **Adequacy.** Plaintiffs will fairly and adequately represent and protect the interests of the members of the putative Class. Plaintiffs retained counsel with substantial experience in handling complex, class action litigation, including complex questions that arise in this type of consumer protection litigation. Further, Plaintiffs and their counsel are committed to the vigorous prosecution of this action. Plaintiffs have no conflicts of interest or interests adverse to those of the putative Class.

208. **Insufficiency of Separate Actions.** Absent a class action, Plaintiffs and members of the Class will continue to suffer the harm described herein, for which they would have no remedy. Even if individual consumers could bring separate actions, the resulting multiplicity of lawsuits would cause undue burden and expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated consumers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for Bestway.

209. **Injunctive/Declaratory Relief:** The elements of Rule 23(b)(2) are met. Bestway will continue to commit the unlawful practices alleged in this Complaint, and Plaintiffs and Class Members will continue to be deceived by Bestway’s representations regarding the inadequate Recall. Bestway acted and refused to act on grounds that apply generally to the Class, such that final injunctive relief, public injunctive relief, and corresponding declaratory relief are appropriate

respecting the Class as a whole. Injunctive relief, and specifically public injunctive relief, are necessary in this action.

210. Plaintiffs further seek injunctive and declaratory relief requiring Bestway to cease its unfair, deceptive, and unlawful conduct, including a complete recall of the Pools and full reimbursement for the Pools' full purchase price.

211. Plaintiffs also seek a declaration that the Pools suffer from the Defect and that all warranties cover the Defect, which existed at the time of sale of the Pools to consumers, which was known to Bestway and unknown to consumers.

212. Plaintiffs and Class Members were harmed and will experience irreparable future harm should Bestway's conduct not be enjoined because they will continue to use the Pools, which still contain the Defect and present further hazards even if the repair kit is installed as instructed by the Recall.

213. **Superiority.** A class action is superior to any other available method for the fair and efficient adjudication of the present controversy for at least the following reasons:

- a. The damages suffered by each individual member of the putative Class do not justify the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Bestway's conduct;
- b. Even if individual members of the Class had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed;
- c. The claims presented in this case predominate over any questions of law or fact affecting individual members of the Class;
- d. Individual joinder of all members of the Class is impracticable;

- e. Absent a Class, Plaintiffs and members of the putative Class will continue to suffer harm as a result of Bestway's unlawful conduct; and
- f. This action presents no manageability concerns that would impede its treatment as a class action and, in fact, is the most appropriate and efficient method by which Plaintiffs and the members of the putative Class can obtain redress for the harm caused by Bestway's misconduct.

214. In the alternative, the Class may be certified for the following reasons:

- a. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudication concerning individual members of the Class, which would establish incompatible standards of conduct for Bestway; and
- b. Adjudications of claims of the individual members of the Class against Bestway would, as a practical matter, be dispositive of the interests of other members of the putative Class who are not parties to the adjudication and may substantially impair or impede the ability of other putative Class Members to protect their interests.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF STATE CONSUMER PROTECTION STATUTES (On behalf of Plaintiffs Castro, Piceno, Holloway, Hill, Weeks, and DeSabio, individually, and on behalf of the Multi-State Consumer Protection Class)

215. Plaintiffs Castro, Piceno, Holloway, Hill, Weeks, and DeSabio individually, and on behalf of the Multi-State Consumer Protection Class, reallege paragraphs 1 through 211 as if fully set forth herein.

216. Plaintiffs Castro, Piceno, Holloway, Hill, Weeks, and DeSabio and the Multi-State Consumer Protection Class Members were injured as a result of Bestway's violations of the state consumer protection statutes alleged herein. These state consumer protection statutes provide a basis for redress to Plaintiffs Castro, Piceno, Holloway, Hill, Weeks, and DeSabio and the Multi-State Consumer Protection Class based on Bestway's fraudulent, deceptive, unfair and unconscionable acts, practices and conduct.

217. Bestway's conduct, as alleged herein, violates the consumer protection, unfair trade practices, and deceptive laws of each of the jurisdictions encompassing the Multi-State Consumer Protection Class.

218. Bestway's marketing of the Pools violates these prohibitions by deceiving consumers into believing that the Pools are fit for their intended purpose despite the presence of the Defect.

219. Bestway engaged in fraudulent, unfair, and/or deceptive conduct which creates the likelihood of confusion or misunderstanding in violation of applicable law.

220. Specifically, Bestway advertised in a misleading and deceptive manner that the Pools are fit for their intended purpose and do not contain the Defect that presents the associated risks. Bestway chose to package, label, and market the Pools in this way to impact consumer choices, extract price premiums, and gain market dominance, as it is aware that all reasonable consumers who purchase the Pools would be impacted by, and would reasonably believe, its false and misleading representations.

221. Bestway intended for Plaintiffs Castro, Piceno, Holloway, Hill, Weeks, and DeSabio and Multi-State Consumer Protection Class Members to reasonably rely upon the material misrepresentations concerning the true nature of the Pools.

222. Bestway's misrepresentations and other deceptive conduct were likely to deceive and cause misunderstanding and/or, in fact, did cause Plaintiffs Castro, Piceno, Holloway, Hill, Weeks, and DeSabio and Multi-State Consumer Protection Class Members to be deceived about the true nature of the Pools.

223. Furthermore, despite Bestway's knowledge of material facts concerning the existence of the serious safety risks posed by the Pools, Bestway actively concealed the serious safety risks and the Defect from consumers by failing to disclose the serious safety risks or Defect to consumers.

224. Bestway knew, or otherwise should have known, that the Pools contained the Defect and posed serious safety risks based upon: (1) Bestway's own internal testing, data and surveys; (2) Bestway's Recall; (3) the multiple incident reports dated from 2007, before Bestway distributed and sold the Pools; and (4) the \$25 million lawsuit in 2019 for the drowning of the 2-year-old girl in which Bestway was found liable based on the same Defect according to the CPSC Press Release.

225. Bestway omitted, concealed, and failed to disclose to consumers that the Pools pose serious safety risks to children, including that the Pools' design is inherently defective; the Pools are unreasonably dangerous; and the Pools are not fit to be used for their intended purpose and/or are capable of causing serious injury and death to children. Rather than disclose this information, Bestway marketed the Pools as safe and suitable for their intended purpose.

226. The facts concealed and/or not disclosed by Bestway to consumers, including Plaintiffs Castro, Piceno, Holloway, Hill, Weeks, and DeSabio and other Class Members, were material, in part, because they concerned an essential aspect of the Pools, including the intended use and safety. Such facts affect the conduct of purchasers and a reasonable person would have

considered those facts to be important in deciding whether to purchase the Pools. Rather than disclose this information, Bestway marketed the Pools as complying with safety standards and regulations, with the utmost manufacturing and design.

227. Bestway intentionally concealed and/or failed to disclose such material facts for the purpose of inducing consumers, including Plaintiffs Castro, Piceno, Holloway, Hill, Weeks, and DeSablo and other Class Members, to purchase the Pools.

228. As a direct and proximate result of Bestway's misrepresentations, Plaintiffs Castro, Piceno, Holloway, Hill, Weeks, and DeSablo and Multi-State Consumer Protection Class Members suffered ascertainable losses.

229. Had they been aware of the true nature of the Pools, Plaintiffs Castro, Piceno, Holloway, Hill, Weeks, DeSablo and Razzano, and Multi-State Consumer Protection Class Members either would have paid less for the Pools or would not have made the purchases at all.

230. Pursuant to the aforementioned states' unfair and deceptive practices laws, Plaintiffs Castro, Piceno, Holloway, Hill, Weeks, and DeSablo and Multi-State Consumer Protection Class Members are entitled to recover compensatory, restitution, punitive and special damages, including, but not limited to treble damages, reasonable attorneys' fees and costs and other injunctive or declaratory relief as deemed appropriate or permitted by relevant law.

COUNT II
VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE TRADE PRACTICES ACT 815 ILCS 505/1, *et seq.* ("ICFA")
(On Behalf of Plaintiff Castro, Individually, and the Illinois Class)

231. Plaintiff Castro, individually and on behalf of the Illinois Class, realleges paragraphs 1 through 211 as if fully set forth herein.

232. Plaintiff Castro brings this Count on behalf of herself and the Illinois Class.

233. Plaintiff Castro and Illinois Class Members are “persons” and “consumers” under 815 ILCS 505/1(c), (e).

234. Bestway is a “person” engaged in “trade or commerce” within the meaning of 815 ILCS 505/1(c), (f).

235. The ICFA prohibits engaging in any “unfair or deceptive acts or practices ... in the conduct of any trade or commerce....” *See*, ICFA, 815 ILCS 505/2.

236. The ICFA prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the Uniform Deceptive Trade Practices Act. *See* 815 ILCS 505/2.

237. Plaintiff Castro and the other Illinois Class Members reasonably relied upon Bestway’s representation that the Pool was safe for personal use and did not present a drowning hazard. Additionally, Bestway concealed the life-threatening Defect even after knowing of prior drowning incidents at its Pools and its competitors' pools of similar build and structure.

238. Bestway’s conduct, as described herein, took place within the State of Illinois and constitutes unfair or deceptive acts or practices in trade and commerce, violating 815 ICFA 505/1, *et seq.*

239. Bestway violated the ICFA by representing that the Pool has characteristics or benefits that they do not have. *See* 815 ILCS 505/2; 815 ILCS 510/2(7).

240. Bestway did not intend to sell the products as advertised, in violation of 815 ILCS 505/2 and 815 ILCS 510/2(9).

241. Bestway engaged in fraudulent and/or deceptive conduct that creates a likelihood of confusion or misunderstanding in violation of 815 ILCS 505/2; 815 ILCS § 510/2(3).

242. Bestway's deceptive and unfair conduct occurred primarily and substantially in Illinois because:

- (a) Bestway marketed, promoted, and sold the Pools to Illinois consumers;
- (b) Plaintiff Castro purchased and used the Pools in Illinois;
- (c) the economic injury was suffered in Illinois; and
- (d) the same misrepresentations and omissions were disseminated uniformly to Illinois consumers.

243. Bestway's conduct violates the fundamental Illinois public policy of preventing concealed safety hazards in consumer products.

244. Bestway violated the ICFA by representing that the Pools were safe, suitable for household use and free of material defects, while concealing the known drowning hazard created by the external compression strap.

245. Bestway's omissions were material because the Defect presented a life-threatening safety risk to children and rendered the Pools unfit for their ordinary purpose. No reasonable consumer would knowingly purchase a pool containing a latent climbing foothold that enabled unsupervised child access to the pool.

246. Prior to selling the Pools, Bestway knew or should have known of the Defect, based on fatal drowning incidents, near-drownings, warranty claims, engineering evaluations, and internal safety data. Despite this knowledge, Bestway failed to warn consumers or redesign the Pools.

247. Bestway's concealment and misrepresentations were likely to, and did, deceive Plaintiff Castro and Illinois Class Members. They reasonably relied on Bestway's uniform safety messaging and absence of warnings regarding the external strap hazard.

248. Bestway's conduct, including manufacturing, marketing, and selling the defective Pools, and the delayed, ineffective, and inadequate Recall, constitutes deceptive and unfair business practices under 815 ILCS 505/2 and under the incorporated provisions of the Uniform Deceptive Trade Practices Act, 815 ILCS 510/2.

249. As a direct and proximate result of Bestway's unfair and deceptive acts and omissions, Plaintiff Castro and Illinois Class Members suffered ascertainable economic losses, including:

- (a) overpayment for unsafe and unmerchantable Pools;
- (b) loss of the benefit of their bargain; and
- (c) diminished or zero product value due to the Defect and inadequate recall remedy.

250. Had Plaintiff Castro and Illinois Class Members known the Pools contained a concealed drowning hazard, they would not have purchased them or would have paid materially less.

251. Although the July 2025 Recall confirmed the existence of the Defect, Bestway has provided no monetary relief to Illinois consumers and continues to deny refunds or replacements.

252. Bestway's conduct was intentional, malicious, and demonstrated a reckless disregard for consumer safety, warranting statutory and punitive damages.

253. Under 815 ILCS 505/10a, Plaintiff Castro and the Illinois Class seek all available remedies, including actual damages, statutory damages, punitive damages, injunctive relief, restitution, attorney's fees, and costs.

COUNT III
CALIFORNIA CONSUMERS LEGAL REMEDIES ACT (“CLRA”)
Violation of Cal. Civ. Code §§ 1750, *et seq.*
(On Behalf of California Plaintiffs Piceno, Holloway, Hill and Weeks, individually and on behalf of the California Class)

254. Plaintiffs Piceno, Holloway, Hill and Weeks (“California Plaintiffs”), individually, and on behalf of the California Class, reallege paragraphs 1 through 211 as if fully set forth herein.

255. California Plaintiffs bring this Count on behalf of themselves and the California Class.

256. This claim is brought under the California Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*

257. California Plaintiffs and California Class Members are “consumers” within the meaning of Cal. Civ. Code § 1761(d). Bestway’s sale of the Pools constitutes “transactions,” and the Pools are “goods,” within §§ 1761(a) and (e).

258. Bestway violated the CLRA by engaging in unfair and deceptive practices proscribed by § 1770(a), including but not limited to the following:

- a. Representing that the Pools have characteristics or uses they do not have (§ 1770(a)(5));
- b. Representing that the Pools are of a particular standard or quality when they are not (§ 1770(a)(7));
- c. Advertising goods with the intent not to sell them as advertised (§ 1770(a)(9));
- d. Misrepresenting the rights and remedies available to consumers (§ 1770(a)(14)); and
- e. Representing that the Pools were supplied in accordance with prior representations when they were not (§ 1770(a)(16)).

259. Bestway deceived consumers by concealing and omitting material facts about the Pools’ Defect and the serious drowning hazards they create.

260. Bestway's unfair or deceptive acts or practices, including its concealments, omissions and/or suppressions of material facts, in the manufacturing, marketing and selling of the defective Pools, and the delayed, ineffective and inadequate Recall, had a tendency or capacity to mislead and create a false impression in consumers. They were likely to and did in fact deceive reasonable consumers, including California Plaintiffs and California Class Members, about the true safety, quality, and value of the Pools.

261. Further, despite Bestway's knowledge of material facts concerning the existence of the serious safety risks posed by the Pools, Bestway actively concealed the serious safety risks and the Defect from consumers by failing to disclose the serious safety risks or Defect to consumers.

262. Bestway knew, or otherwise should have known, that the Pools contained the Defect and posed serious safety risks based upon: (1) Bestway's own internal testing, data and surveys; (2) Bestway's Recall; (3) the multiple incident reports dated from 2007 before Bestway distributed and sold the Pools; and (4) the \$25 million lawsuit in 2019 for the drowning of the 2-year-old girl in which Bestway was found liable based on the same Defect as confirmed by the CPSC Press Release.

263. Bestway omitted material facts that would have been important to any reasonable consumer, including that the Pools were inherently defective, unreasonably dangerous and not suitable for their intended use. Instead, Bestway marketed the Pools as compliant with safety standards and safe for family use.

264. The facts concealed and/or not disclosed by Bestway to consumers, including California Plaintiffs and other Class Members, were material, in part, because they concerned an essential aspect of the Pools: the intended use and safety. Such facts affect the conduct of

purchasers, and a reasonable person would have considered those facts to be important in deciding whether to purchase the Pools.

265. California Plaintiffs and California Class Members suffered injury in fact and actual damages because they purchased the Pools without knowledge of the Defect and would not have purchased—or would have paid substantially less—had the truth been disclosed.

266. On information and belief, Bestway’s actions were willful, wanton, and fraudulent.

267. On information and belief, officers, directors, or managing agents at Bestway authorized the use of unfair or deceptive acts or practices.

268. Bestway’s violations present an ongoing risk to California Plaintiffs, the California Class and the general public, warranting injunctive relief.

269. Accordingly, pursuant to Civil Code § 1780(a)(2), California Plaintiffs, on behalf of themselves and all other members of the Class, seek injunctive relief, including an order to enjoin Bestway from continuing its deceptive advertising and sale practices.

270. Bestway had notice of its violations through the Recall, consumer complaints, internal testing and publicly reported incidents but failed to correct or disclose the Defect.

271. Pursuant to Cal. Civ. Code § 1782(a), California Plaintiffs provided Bestway with written notice of these violations on October 17, 2025, and demanded corrective action. Bestway has failed to respond adequately to California Plaintiffs’ notice.

272. Accordingly, pursuant to Civil Code § 1780(a)(2), California Plaintiffs, on behalf of themselves and all other members of the Class, seek monetary damages, restitution, and injunctive relief, including an order to enjoin Bestway from continuing its deceptive advertising and sale practices.

COUNT IV
CALIFORNIA UNFAIR COMPETITION LAW (“UCL”)

Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*
(On Behalf of California Plaintiffs Piceno, Holloway, Hill and Weeks, individually and on behalf of the California Class)

273. Plaintiffs Piceno, Holloway, Hill and Weeks (“California Plaintiffs”), individually, and on behalf of the California Class, reallege paragraphs 1 through 211 as if fully set forth herein.

274. Bestway is a “person” within the meaning of Cal. Bus. & Prof. Code § 17201.

275. California Plaintiffs and California Class members suffered economic injury because they purchased Pools that were misrepresented and sold without disclosure of the Defect. Had they known the truth, they would not have purchased the Pools or would have paid less.

276. Bestway’s conduct constitutes unlawful, unfair, and fraudulent business practices under the UCL. Bestway violated multiple independent statutes and public policies, including the CLRA, the Song-Beverly Consumer Warranty Act, and California’s common law prohibitions on fraud and concealment.

277. Bestway’s actions and practices constitute “unfair” business practices in violation of the UCL, because, among other things, they are immoral, unethical, oppressive, unconscionable, unscrupulous, or substantially injurious to consumers, and/or because any utility of such practices is outweighed by the harm caused to consumers.

278. Bestway’s conduct was “fraudulent” because it misled consumers into believing the Pools were safe, functional, and suitable for their intended use when Bestway knew or should have known the Pools were defective and dangerous.

279. Bestway had a duty to disclose these material facts because the Pools were unsafe.

280. Bestway’s misrepresentations and omissions were likely to deceive reasonable consumers and did deceive California Plaintiffs and California Class members.

281. As a direct and proximate result of Bestway’s unlawful, unfair, and fraudulent

conduct, California Plaintiffs and California Class members suffered injury in fact and lost money by purchasing defective Pools they otherwise would not have purchased or for which they would have paid materially less.

282. To the extent legal remedies are inadequate, California Plaintiffs and the California Class seek equitable relief under § 17203, including restitution, disgorgement, and injunctive relief prohibiting Bestway from continuing its unlawful practices.

283. Restitution is appropriate because Bestway received money from California Plaintiffs and the California Class through practices that violated the UCL, and equity requires returning those ill-gotten gains. The claims for equitable relief are brought in the alternative, should Plaintiffs not have an adequate remedy at law.

COUNT V
VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW CAL.
BUS. & PROF. CODE §§ 17500 (“FAL”)
(On Behalf of California Plaintiffs Piceno, Holloway, Hill and Weeks, individually and on
behalf of the California Class)

284. Plaintiffs Piceno, Holloway, Hill and Weeks (“California Plaintiffs”), individually, and on behalf of the California Class, reallege paragraphs 1 through 211 as if fully set forth herein.

285. Plaintiffs bring this claim on behalf of the California Class (the “Class” for purposes of this Count).

286. The FAL provides that “[i]t is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services” to disseminate any statement “which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

287. It is also unlawful under the FAL to disseminate statements concerning property or services that are “untrue or misleading, and which [are] known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” *Id.*

288. The advertisements, marketing, acts, and practices of Bestway relating to the safety, manufacture, testing, and oversight of the Pools misled consumers acting reasonably, as stated above.

289. Plaintiffs and Class members suffered injuries in fact as a result of Bestway’s actions as set forth above because they purchased Bestway’s Pools in reliance on Bestway’s false and misleading claims concerning, among other things, the Pools’ safety, quality, and manufacturing oversight.

290. Bestway’s business practices as alleged above constitute deceptive, untrue, and misleading advertising pursuant to the FAL because Bestway advertised and marketed the Pools in a manner that is untrue and misleading, a fact that Bestway knew or reasonably should have known. Bestway also omitted material information from its advertising and marketing regarding the safety and suitability of the Pools for use by consumers.

291. Bestway profited from its sale of the falsely and deceptively advertised and labeled Pools.

292. As a result, Plaintiffs and the Class are entitled to damages, equitable relief, restitution, and an order for the disgorgement of the funds by which Bestway was unjustly enriched.

293. Plaintiffs and the Class were damaged because they would not have purchased Bestway’s Pools, or would have paid less for them, had they known the true facts regarding its safety and defective condition.

COUNT VI
VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349
(On Behalf of New York Plaintiff DeSablo individually and on behalf of the New York Class)

294. Plaintiff DeSablo (“New York Plaintiff”), individually, and on behalf of the New York Class, reallege paragraphs 1 through 211 as if fully set forth herein.

295. New York Plaintiff brings this Count on behalf of herself and the New York Class.

296. New York General Business Law (“GBL”) § 349 prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce.”

297. Bestway engaged in consumer-oriented conduct by marketing, advertising, and selling its Pools to thousands of New York purchasers through uniform representations made on product packaging, online listings, and national advertising.

298. Bestway’s conduct was deceptive within the meaning of § 349 because it misrepresented and concealed material facts about the Pools’ safety, including the presence of a drowning hazard created by the external compression-strap design and Bestway’s knowledge of prior incidents involving the same hazard.

299. Bestway’s deceptive acts include:

- (a) representing that the Pools were safe and suitable for their intended use;
- (b) failing to disclose that the Pools contained a uniform, life-threatening defect;
- (c) failing to disclose that Bestway had long known of the defect and prior drownings; and
- (d) continuing to market and sell the Pools despite this knowledge.

300. These omissions and affirmative statements were material because a reasonable consumer would consider the undisclosed safety risk important in deciding whether to purchase the Pools or pay the price charged.

301. Bestway's deceptive conduct occurred in New York because (i) New York Plaintiff and Class Members purchased and used the Pools in New York; (ii) the misrepresentations were disseminated to consumers statewide; and (iii) the resulting economic injury was suffered in New York.

302. New York Plaintiff and New York Class Members suffered actual injury as a result of Bestway's deceptive acts and omissions, including:

- (a) overpaying for the Pools, which were worth less than represented;
- (b) purchasing products they would not have purchased had the truth been disclosed;
- (c) loss of the entire purchase price because the Pools cannot be safely used and must be discarded; and
- (d) loss of the benefit of the bargain.

303. New York Plaintiff's and Class Members' injuries were directly and proximately caused by Bestway's deceptive acts in violation of GBL § 349.

304. Pursuant to GBL § 349(h), New York Plaintiff DeSablo and the New York Class seek actual damages, statutory damages for each Pool purchased, treble damages up to \$1,000 for Bestway's willful and knowing violations, injunctive relief, and attorney's fees and costs.

COUNT VII
VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350
(On Behalf of New York Plaintiff DeSablo, individually and on behalf of the New York Class)

305. Plaintiff DeSablo ("New York Plaintiff"), individually, and on behalf of the New York Class, reallege paragraphs 1 through 211 as if fully set forth herein.

306. New York Plaintiff DeSablo brings this Count on behalf of herself and the New York Class.

307. GBL § 350 prohibits false advertising in the conduct of any business, trade, or commerce. Pursuant to § 350, false advertising is defined as “advertising, including labeling, of a commodity ... if such advertising is misleading in a material respect.”

308. In its sale of goods throughout the State of New York, Bestway conducts business and trade within the meaning of GBL § 350.

309. Bestway engaged in consumer-oriented conduct that is deceptive or misleading in a material way that constitutes false advertising in violation of GBL § 350.

310. The New York Plaintiff and members of the New York Class are consumers who purchased Pools from Bestway for their personal use.

311. By the alleged acts and conduct, Bestway engaged in deceptive, unfair and misleading acts and practices. Had the New York Plaintiff and members of the New York Class been apprised of these facts, they would not have purchased the Pools.

312. The advertisements, marketing, acts, and practices of Bestway relating to the safety, manufacture, testing, and oversight of the Pools misled consumers acting reasonably, as stated above.

313. Plaintiff DeSabio and Class members suffered injuries in fact as a result of Bestway’s actions as set forth above because they purchased Bestway’s Pools in reliance on Bestway’s false and misleading claims concerning, among other things, the Pools’ safety, quality, and manufacturing oversight.

314. The foregoing deceptive acts and practices were directed at consumers.

315. The foregoing deceptive acts and practices are misleading in a material way. Reasonable consumers, including Plaintiff DeSabio and Class Members, would not have

purchased the Pools if the Pools had been truthfully advertised, or they would not have paid the price premium associated with the Pools.

316. By reason of this conduct, Bestway engaged in deceptive conduct in violation of GBL § 350.

317. Bestway's actions are the direct, foreseeable and proximate cause of the damages that the New York Plaintiff and members of the New York Class sustained from having paid for and used Bestway's Pools.

318. As a result of Bestway's violations, the New York Plaintiff and members of the New York Class suffered damages because: (a) they paid a premium price based on Bestway's deceptive conduct; and (b) the Pools do not have the promised characteristics, uses, benefits or qualities.

319. As a result of Bestway's unlawful and deceptive acts and practices, New York Plaintiff and the New York Class are entitled to monetary, compensatory, statutory, treble and punitive damages, restitution and disgorgement of all money obtained by means of Bestway's unlawful conduct, interest and attorneys' fees and costs.

320. Further, New York Plaintiff, on behalf of herself and the New York Class, seeks statutory damages available under New York Gen. Bus. L. § 350, and all available relief under GBL § 350.

COUNT VIII
VIOLATION OF THE INDIANA DECEPTIVE
CONSUMER SALES ACT (“IDCSA”)

Ind. Code § 23-5, et seq.

(On Behalf of Plaintiff Gannon, individually, and on behalf of the Indiana Class)

321. Plaintiff Gannon, individually, and on behalf of the Indiana Class, reallege paragraphs 1 through 211 as if fully set forth herein.

322. The Indiana Deceptive Consumer Sales Act (“IDCSA”) was enacted to “simplify, clarify, and modernize the law governing deceptive and unconscionable consumer sales practices[.]” “protect consumers from suppliers who commit deceptive and unconscionable sales acts[.]” and “encourage the development of fair consumer sales practices.” Ind. Code § 24-5-0.5-1(b). The IDCSA is intended to be “liberally construed and applied to promote its purposes.” *Id.* § 24- 0.5-5-1(a).

323. The IDCSA prohibits “deceptive representations as to the subject matter of a consumer transaction,” including: “[t]hat such a subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not” and that “[t]he consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.” *Id.* § 24-5- 0.5-3(a)(1), (11).

324. Under the IDCSA, a “consumer transaction” means “a sale, lease, assignment, award by chance or other disposition of an item of personal property, real property, [or] a service . . . to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things.” *Id.* § 24-5-0.5-2(a)(1).

325. A person relying on an “uncured or incurable deceptive act may bring an action for damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars (\$500), whichever is greater.” Id. § 24-5-0.5-4.

326. An “uncured deceptive act” means a deceptive act where a consumer who has been damaged by such act has given notice to the supplier and either (1) no offer to cure has been made to such consumer within 30 days or (2) the action has not been cured as to such consumer within a reasonable time after the consumer’s acceptance of the offer to cure.

327. An “incurable deceptive act” means a deceptive act done by a supplier as part of a scheme, artifice, or device with the intent to defraud or mislead.

328. Bestway committed an “incurable deceptive act” within the meaning of the IDCSA, as follows:

- a. Bestway designed, manufactured, marketed and sold the Pools with a safety defect, which existed when the Pools left Bestway’s control and at the point of sale.
- b. Bestway knew, or otherwise should have known, that the Pools posed serious safety risks to consumers, but omitted and failed to disclose or concealed these risks from consumers;
- c. Bestway knew the serious safety risks posed by the Pools were unknown to consumers, and would not be easily discovered by Plaintiff Gannon and Class Members, and would defeat their ordinary, foreseeable and reasonable expectations concerning the performance of the Pools;
- d. Bestway warranted that the Pools were safe and suitable for use, including children and families when, in fact, the Pools pose serious safety risks to consumers;

- e. Bestway represented to consumers, including Plaintiff Gannon and Class Members, that the Pools are safe and fit for the use for which they were intended despite the fact that Bestway knew, or otherwise should have known, that the Pools were unsafe and unfit for use by families and children, posing serious safety risks to consumers; and
- f. Bestway implemented a delayed, inefficient and inadequate Recall.

329. Bestway had exclusive knowledge of material facts concerning the serious safety risks posed by Pools.

330. Prior to selling the Pools, Bestway knew or should have known of the Defect based on fatal drowning incidents, near-drownings, warranty claims, engineering evaluations, and internal safety data. Despite this knowledge, Bestway failed to warn consumers or redesign the Pools.

331. Further, Bestway knew or should have known that its Recall Notice and repair kit furthered its deceptive representations as to the safety of the Pools.

332. Despite Bestway's knowledge of material facts concerning the existence of the serious safety risks posed by Pools, Bestway actively concealed the serious safety risks from consumers by failing to disclose the serious safety risks to consumers.

333. Bestway's misrepresentations and omissions were material to Plaintiff Gannon's and Indiana Class Members' decisions to purchase the Pools.

334. Bestway's deceptive acts and practices, including their representations and omissions, were material, in part, because they concerned an essential aspect of the Pools, including the intended use and safety. Such facts would naturally affect the conduct of purchasers and a reasonable person would have considered those facts to be important in deciding whether to

purchase the Pools. Rather than disclose this information, Bestway marketed and labeled the Pools as safe for use.

335. Bestway's misrepresentations and omissions regarding the inherently defective and unreasonably dangerous nature of the Pools were and are directed at consumers in a uniform manner.

336. Bestway's practices described above were likely to deceive, and did deceive, consumers acting reasonably under the circumstances.

337. Consumers, including Plaintiff Gannon and Indiana Class Members, would not have purchased the Pools on the same terms if they had known the true facts concerning the risks associated with use of the Pools, both before and after the Recall.

338. Plaintiff and Class Members seek all damages and remedies, including equitable relief, allowable under the IDCSA.

COUNT IX
BREACH OF EXPRESS WARRANTY
(On behalf of all Plaintiffs individually, and on Behalf of the
Proposed State Classes)

339. Plaintiffs, individually, and on behalf of the California, Indiana, Illinois and New York Classes, reallege paragraphs 1 through 211 as if fully set forth herein.

340. All Plaintiffs' home states have adopted the Uniform Commercial Code ("UCC"), including U.C.C. § 2-313, which covers express warranties. See Cal. Com. § 2313; 810 Ill. Comp. Stat. 5/2-313; Ind. Code § 26-1-2-313; N.Y. U.C.C. § 2-313.

341. That section of the UCC provides that "any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise." U.C.C. §

2-313(1)(a). Further, “[a]ny description of the goods which is made part of the basis of the bargain creates an express warranty that the good shall conform to the description.” Id. § 2-313(1)(b).

342. Bestway expressly warranted, in a uniform 180-day written warranty (“Warranty”), that the Pools were free from manufacturing defects and fit for use as above-ground pools. Each Pool was sold with the same or substantially similar written Warranty.

343. Bestway further represented—on packaging and in product listings—that the Pools were safe, functional above-ground pools suitable for ordinary home use.

344. Bestway made representations that the Pools were safe, functional above-ground pools suitable for ordinary home use to induce Plaintiffs and Class Members to purchase the Pools, which did in fact induce Plaintiffs and Class Members to purchase the Pools.

345. The Pools did not conform to these express warranties. As alleged, the Pools contain a dangerous design defect at the time of sale that renders them unsafe and unusable for their ordinary and warranted purpose. Bestway’s own Recall materials confirm that the Pools, as manufactured and sold, cannot be safely used.

346. Plaintiffs and the Class members have privity of contract with Bestway through their purchase of the Pools from an authorized retailer as stated in the written Warranty that accompanied the purchase and expressly applies to purchasers of the Pools: “this warranty applies only to Products that were purchased from Bestway or a Bestway authorized seller in the United States and Canada, unless otherwise prohibited by law.”

347. The express written Warranty was a material part of the bargain between Bestway and consumers. At the time it made this express Warranty, Bestway knew of the purpose for which the Pools would be used and designed and intended them to be used for that specific purpose.

348. At the time of sale, Bestway knew or had reason to know that consumers purchased the Pools for the ordinary purpose of safe, family-use swimming pools, and Plaintiffs relied on Bestway's express representations and written Warranty in making their purchases.

349. Bestway breached its express Warranty by selling Pools that: (a) contained an undisclosed safety defect at the time of sale; (b) were not made from merchantable materials or workmanship; and (c) could not be safely used for their intended purpose on the first day of ownership.

350. Bestway's Warranty also fails of its essential purpose. Rather than provide refunds, replacements, or an effective repair, Bestway offered consumers an inadequate "repair kit" that leaves the Pools unsafe and unusable. A warranty that offers no practical remedy is unenforceable and entitles Plaintiffs to all remedies permitted by law.

351. Had Plaintiffs and Class Members known of the Defect and Bestway's inadequate response to the Defect, they would not have purchased the Pools or would have paid substantially less for the Pools. Under the UCC, they are entitled to recover at least the difference between the value of the Pools as warranted and the value of the Pools as delivered.

352. Upon information and belief, Bestway had notice of the Defect well before the Recall, including through warranty claims, consumer complaints, product testing, and incident reports dating back years. Despite this knowledge, Bestway failed to provide an adequate remedy.

353. Plaintiffs Hill and Weeks provided Bestway with notice of the breach of express warranty via service upon Bestway's registered agents of service on October 10, 2025.

354. As a direct and proximate result of Bestway's breach of express warranty, Plaintiffs and Class Members suffered damages, including economic loss, overpayment, loss of use, and the inability to safely use the Pools as warranted.

COUNT X
BREACH OF IMPLIED WARRANTY
(On behalf of all Plaintiffs, individually,
and on Behalf of the Proposed State Classes)

355. Plaintiffs, individually, and on behalf of the California, Illinois, Indiana and New York Classes, reallege paragraphs 1 through 211 as if fully set forth herein.

356. All Plaintiffs' home states have adopted the UCC, including U.C.C. § 2-314, which covers the implied warranty of merchantability. See Cal. Com. § 2-314;; 810 Ill. Comp. Stat. 5/2-314; Ind. Code § 26-1-2-314; N.Y. U.C.C. § 2-314.

357. That section provides that “a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.” U.C.C. § 2-314(1). 603.

358. Bestway is, and at all relevant times was, a merchant involved in the design, manufacture, distribution, and sale of the Pools.

359. The Pools are “goods” under the applicable UCC provisions.

360. The law imposes a duty requiring manufacturers or sellers of a product to ensure that the products are merchantable and reasonably fit for the ordinary purposes for which such a product is used, and that the product is acceptable in trade for the product description. This implied warranty of merchantability is part of the basis of the bargain between Bestway and purchasers, including Plaintiffs and the Class Members.

361. Bestway knew, or had reason to know, that consumers purchased the Pools for ordinary household swimming and recreational use and relied on Bestway's skill and judgment in providing Pools safe for that ordinary purpose.

362. Bestway entered into agreements with authorized retailers and distributors to sell the Pools to Plaintiffs and Class Members and intended consumers—not retailers—to be the ultimate beneficiaries of those sales.

363. Bestway impliedly warranted that the Pools were of merchantable quality, fit for their ordinary purposes, and free from defects that would render them unsafe or unfit for normal use. These warranties formed part of the basis of the bargain for Plaintiffs and Class Members.

364. The Pools breached the implied warranty of merchantability because they were not fit for their ordinary purpose of providing a reasonably safe above-ground swimming environment. The design defect—an external strap creating an accessible foothold—rendered the Pools unsafe, unmerchantable, and unfit for use at the time of sale.

365. As acknowledged in the Recall, Plaintiffs were required to discontinue use of the Pools due to the life-threatening drowning hazard. A product that cannot be safely used for its intended purpose cannot be merchantable.

366. The Defect created significant and unreasonable safety risks, particularly to young children, making the Pools unsuitable for normal household use and further breaching the implied warranty of merchantability.

367. Because the Recall remedy is untimely and inadequate and introduces additional structural risks, providing Bestway an opportunity to cure the breach would be futile.

368. Plaintiffs and Class Members had sufficient direct dealings with Bestway or its authorized retailers to establish contractual privity, or, in the alternative, privity is not required because Plaintiffs and Class Members are the intended beneficiaries of Bestway's implied warranties. Retailers were mere conduits.

369. It was reasonably foreseeable that consumers—not retailers—would rely on Bestway’s warranties, safety representations, and omissions when purchasing the Pools.

370. Bestway further impliedly warranted that the Pools would conform to its safety representations and affirmations of fact. The Pools did not conform to these affirmations because they contained a dangerous, undisclosed design defect.

371. As a result of the Defect, the Pools failed to meet the basic minimum level of quality required for merchantability and failed to conform to the statements on Bestway’s labeling, packaging, website, and marketing.

372. Bestway failed to warn Plaintiffs and Class Members that the Pools contained a defect that made them unsafe, unfit, and likely to cause serious injury or death.

373. Bestway, therefore, breached the implied warranty of merchantability because the Pools were defective at the time they left Bestway’s control.

374. Any attempt by Bestway to limit or disclaim implied warranties is unconscionable and unenforceable because Bestway possessed superior and exclusive knowledge of the Defect and consumers had no meaningful choice or ability to negotiate warranty terms.

375. A gross disparity in bargaining power existed between Bestway and consumers. Bestway knew, or should have known, that the Pools were defective when sold while consumers did not.

376. Contrary to the implied warranties, the Pools were not fit for their ordinary and intended purposes at the time of sale and have remained defective throughout their useful life.

377. The Recall remedy fails in its essential purpose because it does not restore the product to a safe, merchantable condition, as it instead introduces additional risks and burdens to consumers.

378. As a direct and proximate result of Bestway's breach of implied warranties, Plaintiffs and Class Members suffered economic damages, including overpayment, loss of the benefit of their bargain, and diminished product value. Plaintiffs seek all available damages, including costs, interest, and attorney's fees.

COUNT XI
UNJUST ENRICHMENT/QUASI-CONTRACT
(On Behalf of Plaintiffs, Individually, and the Nationwide Class, or alternatively, the
California, Indiana, Illinois and New York Classes)

379. Plaintiffs, individually, and on behalf of the Nationwide Class, or, alternatively, the California, Indiana, Illinois and New York Classes, reallege paragraphs 1 through 211 as if fully set forth herein.

380. Plaintiffs bring this Count as an alternative to their contract and warranty claims.

381. To the extent any express or implied warranty or contract claim is found unenforceable, unavailable, or inapplicable, equity requires restitution because Bestway profited from selling defective, unsafe Pools while providing no meaningful remedy.

382. Plaintiffs and the putative Class Members conferred a benefit on Bestway by purchasing the Pools—payments that Bestway knowingly accepted while aware of the Pools' Defect and unfitness for their intended use.

383. Bestway either knew, or should have known, that the payments rendered by Plaintiffs and Class Members were given with the expectation that the Pools had the qualities, characteristics and suitability for the use represented and warranted by Bestway. As such, it would be inequitable for Bestway to retain the benefit of the payments under these circumstances.

384. By selling Pools containing a dangerous defect, misrepresenting their safety, concealing material facts, and issuing the delayed, inadequate and ineffective Recall, which saved

Bestway significant money at the cost of consumers, Bestway was unjustly enriched at Plaintiffs' and the Classes' expense.

385. Bestway's wrongful conduct directly caused Plaintiffs' economic detriment and resulted in Bestway retaining ill-gotten revenues linked directly to the misconduct alleged above.

386. Bestway was unjustly enriched by retaining revenue from Class Members' purchases of the Pools. Such enrichment is unjust and inequitable because Bestway knowingly manufactured, marketed, and sold defective Pools while omitting material facts, causing Plaintiffs and Class Members to purchase Pools they otherwise would not have purchased had the truth been disclosed.

387. Bestway continued to manufacture the Pools with the inherent Defect even after knowing—and concealing—at least three incidents that occurred over two decades ago. Even after these known incidents, Bestway continued to tout the safety of its Pools, and issued the delayed, ineffective, and inefficient Recall only after considerably profiting for decades.

388. Bestway's enrichment is unjust because Plaintiffs and Class Members purchased the Pools in reasonable reliance on Bestway's safety representations and omissions. Plaintiffs would not have purchased the Pools, or would have paid less, had Bestway disclosed the Defect.

389. Despite years of incident data and multiple drowning events, Bestway continued selling the Pools and touting their safety while concealing the hazard, thereby generating substantial revenue to the detriment of consumers.

390. Bestway's retention of these benefits is inequitable because the Pools were defective at the time of sale, unsafe for their intended purpose, and later subject to a delayed, ineffective, and inadequate Recall.

391. Under common law principles of unjust enrichment and quasi-contract, Bestway should be required to disgorge the profits and benefits unjustly retained from Plaintiffs' and Class Members' purchases.

392. Plaintiffs and Class Members seek restitution, disgorgement, and all other equitable relief necessary to prevent Bestway from being unjustly enriched.

COUNT XII
COMMON LAW FRAUD
(On Behalf of Plaintiffs, individually, and the Nationwide Class, or in the Alternative, the California, Indiana, Illinois and New York State Class)

393. Plaintiffs, individually, and on behalf of the Nationwide Class, or in the alternative, the California, Indiana, Illinois and New York State Classes, reallege paragraphs 1 through 211 as if fully set forth herein.

394. Bestway's conduct was and continues to be fraudulent because it has the effect of deceiving consumers into believing its marketing of the Pools as safe and durable when in fact the Pools contain the Defect.

395. Bestway knowingly, willfully, fraudulently, and/or recklessly concealed and suppressed material facts regarding the Pools.

396. As detailed above, Bestway made false or misleading statements to Plaintiffs and Class Members regarding the safety of the Pools. These uniform and pervasive representations were made through Bestway's marketing of itself and the Pools as industry leaders in pool safety, labels and packaging materials, the websites of Bestway and its authorized retailers and other promotional materials for the Pools.

397. Bestway's representations were false and misleading because the Pools contain the Defect and because of the associated risks to consumers and their children, including injury and death.

398. As described above, prior to and after distributing the Pools into the consumer marketplace, Bestway knew that the Pools contained the Defect and presented the associated risks to consumers and their children, including injury and death. Bestway also knew that the Pools' design, manufacture and marketing were inconsistent with industry guidance and standards, including from the CPSC. Nonetheless, Bestway, through its misrepresentations, misleading statements and omissions detailed herein, continued to sell the Pools in the United States in order to increase its own profits and garner market share, while putting the lives of consumers and their children at risk.

399. Bestway knew the representations were false and intended that Plaintiffs and Class Members rely on them.

400. Bestway's conduct was further fraudulent because Bestway failed to disclose the Defect associated with the Pools. Specifically, Bestway failed to adequately warn Plaintiffs and Class Members that the Pools contained the Defect, were not safe or durable and could cause and had caused children to suffer injury and death.

401. These misrepresentations and omissions were material to the decision of Plaintiffs' and Class Members to acquire the Pools. Plaintiffs and members of the Classes justifiably relied on Bestway's misrepresentations of material facts and omissions regarding the Pools, as described above.

402. Bestway has a duty to disclose the truth regarding the safety of the Pools because the safety of the Pools has a direct impact on the health and safety of the consumers and their children who utilize them. This duty arose from the fact that Bestway: (a) had exclusive and/or far superior knowledge and access to knowledge regarding the safety and durability of the Pools; (b)

affirmatively and intentionally concealed material facts from Plaintiffs and Class Members; and (c) knew that the Pools were not safe for their marketed and intended use.

403. The material facts Bestway represented and omitted to disclose were made to Plaintiffs and members of the Classes when they purchased the Pools.

404. Bestway intended that its misrepresentations and omissions of material fact would deceive or mislead Plaintiffs and members of the Classes and induce them to purchase the Pools.

405. Plaintiffs and members of the Classes justifiably relied on Bestway's misrepresentations and omissions of material facts regarding the Pools, as described *supra*.

406. Bestway's conduct showed malice, motive and a reckless disregard of the truth such that an award of punitive damages is appropriate. Because Bestway's deceptive and unfair conduct is ongoing, injunctive relief is necessary and proper.

407. Bestway's misrepresentations and omissions of material facts directly and proximately caused the damages suffered by Plaintiffs and members of the Classes.

408. As a result of Bestway's misrepresentations and omissions of material facts, Plaintiffs and members of the Classes were damaged in an amount to be proven at trial.

COUNT XIII
NEGLIGENCE

**(On behalf of Plaintiffs, individually, and the California,
Illinois, Indiana and New York Classes)**

409. Plaintiffs, individually, and on behalf of the California, Illinois, Indiana and New York State Classes, reallege paragraphs 1 through 211 as if fully set forth herein.

410. Bestway directly or indirectly caused the Pools to be sold, distributed, packaged, labeled, marketed, promoted and/or used by Plaintiffs and the other Class Members.

411. At all times relevant, Bestway had a duty to exercise reasonable care in the design, testing, research, manufacture, marketing, advertisement, supply, promotion, packaging, sale and

distribution of the Pools, including the duty to take all reasonable steps necessary to manufacture, promote and/or sell a product that was not unreasonably dangerous to consumers and users of the Pools.

412. Bestway's duty of care owed to consumers and the general public included providing accurate, true and correct information concerning the risks of using the Pools and appropriate, complete and accurate warnings concerning the potential safety risks regarding the use of the Products, and, in particular, their uniform Defect.

413. Bestway knew, or otherwise should have known, that the Pools posed serious safety risks to consumers and their children, because of, among other things, their own internal testing, data and surveys, the Recall and the multiple reports of children's deaths associated with the Defect.

414. Bestway also knew or, in the exercise of reasonable care should have known, that users and consumers of the Pools were unaware of the Defect of the Pools and the associated risks.

415. Bestway omitted, concealed and failed to disclose to consumers that the Pools pose serious safety risks to consumers and their children, including that the Pools were inherently defective; unreasonably dangerous; not fit to be used for their intended purpose; and contained a Defect.

416. Bestway was negligent in the following respects:

- a. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling and/or distributing the Pools without thorough and adequate pre-and post-market testing;
- b. Manufacturing, producing, promoting, formulating, creating, developing, designing, selling and/or distributing the Pools while negligently and/or

intentionally concealing and failing to disclose the results of trials tests, and, consequently, the risk of serious injury and death associated with use of the Pools;

- c. Failing to undertake sufficient studies and to conduct necessary testing and adverse event analysis to determine whether the Pools were safe for their intended use;
- d. Failing to use reasonable and prudent care in the design, research, manufacture and development of the Pools to avoid the risk of serious harm and death to consumers and their children associated with the prevalent use of the Pools;
- e. Failing to provide adequate instructions, guidelines and safety precautions to those consumers whom Bestway could reasonably foresee would use the Pools;
- f. Failing to disclose to Plaintiffs, Class Members, users/consumers and the general public that use of the Pools presented risks or serious injury of death to consumers and their children;
- g. Failing to warn Plaintiffs and Class Members, consumers and the general public that the Pools' risk of harm was unreasonable and that there were safer and effective alternative pools available to Plaintiffs and other consumers;
- h. Representing that its Pools were safe for their intended use when, in fact, Bestway knew, or should have known, that the Pools were not safe for their intended purpose;

- i. Failing to timely or adequately make and/or submit any changes to the Pools' labeling or other promotional materials that would alert the consumers and the general public of the risks of the Pools and related Defect;
- j. Advertising, marketing and recommending the use of the Pools while concealing and failing to disclose or warn of the dangers known by Bestway to be associated with or caused by the use of the Pools and/or Defect;
- k. Continuing to disseminate information to its consumers, which indicates or implies that Bestway's Pools are safe and suitable for their advertised and intended use;
- l. Continuing the manufacture and sale of its Products with the knowledge that the Pools were unreasonably unsafe and dangerous to consumers and their children; and
- m. Implementing the inadequate and ineffective Recall.

417. Bestway knew, or otherwise should have known, that it was foreseeable that consumers and their children, including Plaintiffs and the other Class Members, would be placed at risk of serious injury and death as a result of Bestway's failure to exercise ordinary care in the manufacturing, marketing, promotion, labeling, distribution and sale of the Pools.

418. Plaintiffs and the other Class Members did not know the nature and extent of the injuries that could result from the intended use of the Pools.

419. Bestway's negligence was the proximate cause of the injuries, harm and economic losses that Plaintiffs and the other Class Members suffered, as described herein.

420. Bestway's failure to warn or instruct was a substantial factor in causing Plaintiffs' and other Class Members' harm.

421. Bestway's conduct, as described above, was reckless. Bestway regularly risked the lives of consumers and users of the Pools, including Plaintiffs and the other Class Members and their children, with full knowledge of the dangers of the Pools. Bestway made conscious decisions not to redesign, re-label, warn or inform the unsuspecting public, including Plaintiffs and the other Class Members.

422. Bestway further made the decision to issue the ineffective, insufficient and inadequate Recall, as described above.

423. As a direct and proximate result of Bestway's wrongful acts and omissions in placing the defective Pools into the stream of commerce without adequate warnings of the risks of serious injury and death, Plaintiffs and the other Class Members were damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request that the Court:

1. Certify the Classes under Rule 23, appoint Plaintiffs as Class Representatives, and appoint Plaintiffs' counsel as Class Counsel;
2. Award restitution, disgorgement, and/or refund of all amounts Plaintiffs and Class Members paid for the defective Pools;
3. Declare that Bestway is financially responsible for notifying the Class members of the pendency of this suit;
4. Order Bestway to fund and implement a full refund, replacement, or buy-back program, including corrective advertising and notice to all affected consumers;
5. Award monetary relief, including actual, compensatory, statutory, treble, and punitive damages as permitted by applicable law;

6. Award attorneys' fees, expert fees, and costs pursuant to applicable statutes, including the ICFA, GBL § 349(h) and GBL §350-d(1);, and;
7. Award pre- and post-judgment interest at the maximum rate permitted by law;
8. Establish a Court-supervised remediation program to ensure removal of defective Pools from the marketplace and provision of safe, non-defective replacements or equivalent monetary compensation; and
9. Grant such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all claims so triable.

DATED: April 30, 2026

Respectfully submitted,

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