No. 129183

In The Illinois Supreme Court

TRI-PLEX TECHNICAL SERVICES, LTD. *Plaintiff-Appellee*, v. JON-DON, LLC; LEGEND BRANDS, INC.; CHEMICAL TECHNOLOGIES INTERNATIONAL, INC.; BRIDGEPOINT SYSTEMS; GROOM SOLUTIONS; AND HYDRAMASTER, LLC., *Defendants-Appellants*.	) On Appeal from the) Illinois Appellate Court,) Fifth District)) No. 5-21-0210)) There On Appeal from the) Circuit Court of) St. Clair County)) No. 20-L-237)) Judge Heinz M. Rudolph))

BRIEF AND APPENDIX OF DEFENDANTS-APPELLANTS

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POINTS AND AUTHORITIES

Defendants-Appellants Jon-Don, LLC, Legend Brands, Inc., Chemical Technologies International, Inc., Bridgeport Systems, Groom Solutions and Hydramaster, LLC (collectively "Defendants") respectfully request that the Court reverse the decision of the Illinois Appellate Court, Fifth District. That decision in turn reversed an order of the Circuit Court of St. Clair County dismissing, with prejudice, the Second Amended Complaint of Plaintiff-Appellee Tri-Plex Technical Services, Ltd. ("Plaintiff") under both 735 ILCS 5/2-615 and 2-619.

NATURE OF THE ACTION

In this case a private business that sells its products exclusively to other businesses is trying to use consumer fraud and unfair trade practice statutes to sue its competitors, who also only sell to other businesses, over alleged violations of state environmental laws that it is not itself allowed to enforce. The Circuit Court dismissed Plaintiff's Second Amended Complaint ("the 2AC") on eight separate grounds, but the Fifth District disagreed with all of them. That decision should be reversed.

The Circuit Court's ruling dismissing the 2AC included three grounds that were raised in Defendants' Petition for Leave to Appeal. *First*, the Circuit Court held that Plaintiff's claims were barred by statutes that expressly provide that enforcement of state environmental laws and rules, including those Plaintiff alleges that Defendants have violated, is an exclusive function of the State and its agencies and that do not allow private suits under those laws. *Second*, the Circuit Court also ruled that

Plaintiff, a business that (like Defendants) sells its commercial carpet cleaning products exclusively to carpet cleaning businesses, lacked standing under the "consumer nexus" test, which is used to determine whether a plaintiff (like this one) that is not itself a "consumer" as defined in the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/1 *et seq.*, ("ICFA") nonetheless has standing to bring ICFA claims. *Third*, the Circuit Court held that Plaintiff had not adequately pled claims under either ICFA or the Illinois Uniform Deceptive Trade and Unfair Practices Act, 815 ILCS 510/1 *et seq.* ("UDTPA") because Plaintiff's allegation that Defendants had failed to "disclose" to their business customers that their products were "illegal" involved only a misrepresentation of law, rather than one of fact. For these and five other reasons, the Circuit Court dismissed Plaintiff's complaint.

The Fifth District reversed on all eight of the Circuit Court's stated grounds. As regards the issues here on appeal, while the Appellate Court claimed to agree that state environmental laws and regulations neither provide for nor imply private rights of action, it nonetheless held that Plaintiff, whose claims rest *entirely* on its allegations that Defendants violated state environmental statutes and rules, was not "enforcing" those laws by suing Defendants, but was instead merely invoking them as "evidence" of "public policy." And it said so despite the fact that Plaintiff asked for every kind of relief you can get in a civil case: compensatory and punitive damages, declaratory relief, attorney fees, costs and an

injunction. If that decision stands, it will reduce to surplusage the plain language of the statutes that reserve the enforcement of Illinois environmental laws exclusively to the State.

The Fifth District's decision also distorts ICFA's consumer nexus" test. ICFA defines "consumer" as "any person who purchases or contracts for the purchase of merchandise not for resale in the ordinary course of his trade or business but for his use or that of a member of his household." 815 ILCS 505/1(e). Plaintiff admits that it does not fit that definition because, like Defendants, it sells its products exclusively "to carpet care industry professionals" who use them in *their own* businesses. No consumer ever buys or uses what either Plaintiff or Defendants sell, and neither Defendants nor Plaintiff ever market their products to consumers. The Fifth District acknowledged that Plaintiff is not a "consumer," but it held nonetheless that Plaintiff satisfied the "consumer nexus" test without ever actually identifying any impact on anyone who fits ICFA's definition of "consumer." The Court's holding that Plaintiff had standing to sue its business competitors under ICFA even though it is not itself a consumer, and even though neither Plaintiff nor the Court identified any impact on anyone that *is* a consumer, was reversible error.

Finally, the Fifth District acknowledged that ICFA and UDTPA claims cannot be based on an alleged misrepresentation of law, but held that, by alleging that Defendants had failed to disclose to their exclusively business customers that their products are "illegal," Plaintiff had somehow

alleged a misrepresentation of fact. But calling an assertion of illegality a "misrepresentation of fact" does not make it one, and the Court's holding would essentially eliminate the distinction. Neither the Fifth District nor Plaintiff ever identified any misrepresentation by Defendants other than the allegation that Defendants fail to disclose that their products are "illegal" in that they violate the environmental laws on which Plaintiff wholly bases its claims. That allegation plainly describes a misrepresentation of law that falls outside UDTPA and ICFA, and the Fifth District's contrary holding is wrong as a matter of law, has serious implications for product labeling, and proposes an irrational requirement that a seller of a product "disclose" on its label that its own product is "illegal." This error, too, warrants reversal.

ISSUES PRESENTED FOR REVIEW

1. Whether Plaintiff, a private business, can bring claims against competitors under ICFA and UDTPA based entirely on violations of Illinois environmental statutes and regulations that expressly provide that they can only be enforced by the State and that imply no private right of action.

2. Whether Plaintiff, a manufacturer of carpet cleaning products sold exclusively to carpet cleaning businesses for their use in their own businesses, has standing under ICFA to sue competitors who also sell exclusively to businesses.

3. Whether alleging that a seller of a product failed to disclose to buyers that its product is "illegal" alleges a misrepresentation of fact actionable under ICFA or UDTPA.

STATEMENT OF JURISDICTION

The Fifth District issued its decision (A1-27)[1] on November 4, 2022. No party requested rehearing. On December 9, 2022, Defendants timely filed a petition for leave to appeal pursuant to Supreme Court Rule 315(a), which this Court granted on March 29, 2023. This Court has jurisdiction over this appeal under Supreme Court Rule 315.

STATUTES INVOLVED

1. Regulation of Phosphorus in Detergents Act, 415 ILCS 92/5(a):

> On and after July 1, 2010, no person may use, sell, manufacture, or distribute for sale any cleaning agent containing more than 0.5% phosphorus by weight, expressed as elemental phosphorus, in Illinois, except as otherwise provided in this Section.

2. Regulation of Phosphorus in Detergents Act, 415 ILCS 92/5(e):

> ….The Illinois Pollution Control Board shall promulgate rules for the administration and enforcement of the provisions of this Section.

3. Regulation of Phosphorus in Detergents Act, 415 ILCS 92/5(f):

> The regulation of phosphorus in detergents is an exclusive power and function of the State. A home rule unit may not regulate phosphorus in detergents. This

[1] Citations to items included in the Appendix to this Brief will take the form "A___," listing corresponding page numbers.

> Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

4. Illinois Environmental Protection Act, 415 ILCS 5/30:

> The [Illinois Environmental Protection] Agency shall cause investigations to be made upon the request of the [Illinois Pollution Control] Board or upon receipt of information concerning an alleged violation of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, and may cause to be made such other investigations as it shall deem advisable.

5. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1(e):

> The term "consumer" means any person who purchases or contracts for the purchase of merchandise not for resale in the ordinary course of his trade or business but for his use or that of a member of his household.

STATEMENT OF FACTS

Plaintiff's Allegations. The following facts, except where noted, are taken from the 2AC, A43-89, which is the complaint the Circuit Court dismissed.

Plaintiff manufactures and sells commercial-grade carpet cleaning products to "carpet care industry professionals." A45. Defendants are Plaintiff's competitors; they also manufacture, distribute and/or sell commercial-grade carpet cleaning products that compete with Plaintiff's and that are also sold exclusively to carpet-cleaning businesses. A45-50. Plaintiff claims that Defendants' products violate the Regulation of Phosphorus in Detergents Act, 415 ILCS 92/5 ("the Detergents Act"),

purportedly because their products contain more than 0.5% percent phosphorous by weight. A43, A51-52. Plaintiff also alleges that products made and sold by Defendants Jon-Don, LLC and Legend Brands, Inc. contain "volatile organic material," also referred to as "VOM," in an amount more than 0.1% by weight, and therefore violate regulations of the Illinois Pollution Control Board ("Board"), namely Ill. Admin. Code tit. 35, § 223.205(a)(17)(B). A43-44, A53-54.

Plaintiff does not allege that Defendants' products violate the law in *any* respect other than allegedly containing amounts of phosphorous and VOM in excess of what is allowed under the Detergents Act and Board rules. And it also does not claim that Defendants either misrepresent the contents of their products in their product labels or otherwise make any false statements or representations about their contents (or anything else). Instead it casts these alleged breaches of environmental laws as ICFA and UDTPA violations by claiming that Defendants fail to disclose to the carpet cleaning businesses to which they exclusively sell, who use these products in their own businesses, that their products are "illegal" because they supposedly violate those laws. *See, e,g.,* A44, A50-51, A52-53, A54. Plaintiff claims that, as a result, "consumers" are harmed because they do not know that Defendants' products are "illegal," even though "consumers" do not buy these products because Defendants, like Plaintiff, only sell to other businesses.

For its own part, though, aside from generic references to "health and safety," *see, e.g.*, A59, A64, Plaintiff's only allegation of actual injury to anyone is its claim that the carpet cleaning businesses to which all parties exclusively sell "prefer" Defendants' products because they clean better than Plaintiff's products, supposedly because of their allegedly excessive phosphorous and VOM content. A44. But Plaintiff does not allege that *it* is a consumer of Defendant's products (it is not, it is a competitor of Defendants), or that *it* was deceived by the labels on Defendants' products, or that anyone that comes within ICFA's definition of "consumer" was deceived by, or ever even saw, Defendants' product labels.

The 2AC includes counts alleging separately that each Defendant violated UDTPA and ICFA. It also contains a claim for civil conspiracy (Count V, A64-67) naming only Defendants Jon-Don and Legend Brands and accusing them of entering into a contract "for the purpose of… distributing, selling, advertising, marketing and/or delivering… illegal… products to customers in the state of Illinois in an overt violation of the Detergents Act and/or Illinois EPA regulations." A66. Plaintiff asked the Circuit Court to award declaratory relief, injunctive relief prohibiting the sale of Defendants' products in Illinois, compensatory damages, punitive damages, costs, and attorney fees. A88-89.

Circuit Court Decision. Defendants moved under both 735 ILCS 5/2-615 and 5/2-619 to dismiss the 2AC in its entirety. A6-7. After briefing and oral argument, the Circuit Court granted those motions on

eight separate grounds in a 15-page opinion. A28-42. First, the Court held that the environmental laws and regulations relied on by Plaintiff could not support ICFA or UDTPA claims, framing the issue thusly: "Can alleged violations of environmental statutes and regulations (which do not create a private right of action and over which the State maintains exclusive enforcement authority) form the basis of statutory claims under the UDTPA and ICFA?" A30.

Answering in the negative, the Circuit Court noted that the environmental laws and rules that form the basis of Plaintiff's overarching assertion that Defendants' products are "illegal" provide for no private right of action, and that their enforcement is, as they expressly say, the exclusive province of the State, including the Board. A30-31, citing 415 ILCS 92/5(e) and (f). The Circuit Court observed that the General Assembly's decision to allow the enforcement of environmental laws only by the State and its agencies barred private plaintiffs from using UDTPA and ICFA "as a backdoor method" to bring claims grounded on laws only the State or its agencies can enforce. A31 (citation and internal quotation marks omitted). And the Court rejected Plaintiff's additional contention that alleged statutory or regulatory violations a plaintiff could not enforce could instead be used merely to inform standards of conduct under UDTPA and ICFA, in the same way rules or laws might help set standards of conduct in common-law negligence cases. The Court noted that standards

of conduct under ICFA and UDTPA are statutorily defined, and not undefined (or court-defined), as they would be in a negligence case. A31.

As alternative grounds for dismissal, the Circuit Court also held that Plaintiff had not stated a claim under either UDTPA or ICFA, for several reasons. As relevant to this appeal, the Court held that Plaintiff, concededly not itself a "consumer" as ICFA defines that term, lacked standing to bring an ICFA claim because its allegations did not pass the "consumer nexus" test employed by Illinois and federal courts to determine standing when, as here, ICFA claims are brought by businesses against other businesses. As Plaintiff itself alleged, Defendants (like Plaintiff) only market and sell their products to businesses, not to consumers. The Circuit Court thus held that Plaintiff had not alleged any harm to "consumers" as defined in ICFA. A34-36. And the Court also ruled that that Plaintiff's allegations that Defendants failed to "disclose" to their business customers that their products were "illegal" under the Detergents Act and Board rules alleged a misrepresentation of law rather than of fact, and was therefore not actionable under ICFA or UDTPA. A37-38.

Appellate Court Decision. The Fifth District reversed. On the issues raised in this appeal, the Court agreed that the enforcement of Illinois environmental laws is the exclusive function of the State and that those laws offer civil plaintiffs no private rights of action. A10-11. But it held nonetheless that Plaintiff was not trying to "enforce" those laws (even though it sought compensatory and punitive damages, declaratory and

injunctive relief and costs and attorney fees (*see* A88-89) in making claims that exclusively relied on the Detergents Act and Board rules), but was instead merely citing "evidence to support its claims" A11) and "simply offer[ing] a quantum of proof regarding the deceptive actions" it had alleged A12).

The Appellate Court also reversed the dismissal of Plaintiff's ICFA claims on substantive grounds. In doing so it applied the "consumer nexus" test, but it ruled that Plaintiff, although it is not itself a consumer as defined in ICFA and did not allege that it was deceived in any way by any of Defendants' products or their labels, nonetheless had standing to claim under ICFA because it had "alleged that the defendants directed their deceptive practices toward consumers." A19. But the Fifth District spoke of "consumers" generically, and never identified the "consumers" it was talking about or placed them within ICFA's definition. Nor did it address the undisputed facts that neither Plaintiff nor Defendants ever market or sell their products to actual "consumers," or that the only harm to anyone alleged in the 2AC was Plaintiff's claim that it was damaged because carpet cleaning businesses preferred Defendants' products to Plaintiff's because they work better (*see* A44).

The Fifth District also ruled that by alleging that Defendants had failed to "disclose" to customers that their products were "illegal"—solely because they purportedly violate the Detergents Act and the Board VOM rules—Plaintiff had alleged a misrepresentation of fact rather than one of

law. The Court acknowledged that misrepresentations or omissions of law are not actionable, A21, but held nonetheless that Plaintiff had alleged "misrepresentations or omissions of fact," including that "the subject products contained quantities of phosphorous and/or VOMs *in excess of the amounts permitted under Illinois law,"* which the Court called "misrepresentations or omissions of fact that concern the specific ingredients, qualities, and uses of the subject products." A21 (emphasis added). And the Fifth District also said that Plaintiff had alleged that Defendants' products "posed potential harm to human health and the environment," A21 (though on the next page the Court said "substantial harm," A22). But the Fifth District never tied that assertion either to anything in the 2AC or any harm cognizable under ICFA or UDTPA. In fact, while the 2AC mentions "health and safety" only in passing, *see, e.g.*, A59, A64, it never alleges that anyone's health was threatened, much less the health of any consumer. Indeed, the only harm the 2AC actually alleges to *anyone*, much less to Plaintiff, is lost sales by Plaintiff because Defendants' products allegedly sell better to carpet cleaning businesses than Plaintiff's products do. A44.

ARGUMENT

I. Standards of Review.

The Circuit Court granted Defendants' motions to dismiss under both 735 ILCS 5/2-615 (for failure to state a claim) and 735 ILCS 5/2-619 (for lack of standing). A63-75. A motion under § 2-615 "tests the legal sufficiency of a complaint," while a motion under § 2-619 "admits the sufficiency of the complaint but asserts a defense outside of the complaint that defeats it." *O'Connell v. County of Cook*, 2022 IL 127527, ¶ 18-19; *see also In re Scarlett Z-D.*, 2015 IL 117904, ¶ 20. Lack of standing is properly raised by a defendant on a motion to dismiss under § 2-619. *Ill. Rd. & Transp. Builders Assoc. v. County of Cook*, 2022 IL 127126, ¶ 12.

A motion under either § 2-615 or § 2-619 requires courts to "accept as true all well-pleaded facts, as well as any reasonable inferences that may arise from them[.]" *Patrick Eng'g, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. That said, though, courts "cannot accept as true mere conclusions unsupported by specific facts." *Id.* "Illinois is a fact-pleading jurisdiction. Although the plaintiff is not required to set forth evidence in the complaint, the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action and not simply conclusions." *Quiroz v. Chicago Trans. Auth.*, 2022 IL 127603, ¶ 12 (citation and internal quotation marks omitted). "Fact pleading imposes a heavier burden on the plaintiff, so that a complaint that would survive a motion to dismiss in a notice-pleading jurisdiction might not do so in a fact-pleading

jurisdiction." *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 368 (2004).

This Court reviews dismissals of complaints under both § 2-615 and § 2-619 *de novo*. *Patrick Eng'g*, 2012 IL 113148, ¶ 31.

II. The Fifth District's Decision Improperly Allowed Plaintiff To Pursue A Private Lawsuit Under Statutes That Do Not Allow Them, And to Exercise The State's Exclusive Authority To Enforce Environmental Laws.

The Fifth District erred when it held, in contravention of plain and strict statutory limitations, that businesses can use UDTPA and ICFA to assert claims that rest entirely on allegations that their competitors have violated environmental laws that are not otherwise privately enforceable. Both the Detergents Act and the Illinois Environmental Protection Act, by their express terms, can only be enforced by the State. *See* 415 ILCS 92/5(f) ("The regulation of phosphorus in detergents is an *exclusive power and function of the State*") (emphasis added); 415 ILCS 92/5(e) (granting Board authority to promulgate rules governing phosphorous content); 415 ILCS 5/30 (providing that the Illinois Environmental Protection Agency is responsible for IEPA enforcement).

Those provisions reflect the considered judgment of the General Assembly that private plaintiffs should not be able to use civil lawsuits to enforce these laws and regulations, as Plaintiffs here would do. The Fifth District's decision evades those strict jurisdictional limitations by allowing claims like Plaintiff's that are exclusively based on alleged violations of those laws—Plaintiff alleges no other illegality—to proceed under the

pretext that Plaintiff's allegations of violations of environmental laws are merely "evidence" supporting an ICFA claim. That ruling should be reversed.

The Appellate Court acknowledged that the General Assembly has reserved enforcement of environmental laws like the Detergents Act and Board rules to the State alone, and that none of those laws afford plaintiffs a private right of action. A10-11. But it got around what should have been a dispositive problem by holding that, in basing its claims exclusively on alleged violations of those laws, Plaintiff is not actually trying to "enforce" them, but instead is merely referencing those laws as "evidence" or "proof" of "public policy" that would support violations of ICFA or UDTPA. A11-12.

If allowed to stand, that reasoning will swallow any limitation on private rights of action imposed by environmental laws (or any other laws). Any plaintiff that wanted to sue over violations of the Detergents Act or the Board's VOM limits (or any other laws for which authority is reserved to the State or for which private rights of action are not available) could, following the Fifth District's reasoning, simply plead some other underlying statutory or common-law cause of action and argue that the legal violations on which its claims depend, not privately actionable themselves, are merely "evidence" of "public policy." But the General Assembly's clear decision to confine authority to enforce certain laws only to the State and to imply no private right of action cannot be so easily evaded.

The UDTPA, ICFA, and civil conspiracy claims in Plaintiff's 2AC all rest entirely on Plaintiff's allegations that Defendants' products violate the Detergents Act and the Board's VOM rules promulgated under the IEPA. *Nowhere* in the 2AC does Plaintiff allege anything else unlawful about Defendants' commercial carpet cleaning products. As a result of those claimed violations, Plaintiff seeks compensatory and punitive damages, injunctive and declaratory relief, and attorney fees and costs.

It could not be clearer that this lawsuit, in which Plaintiff seeks every sanction a civil action can possibly impose solely based on alleged violations of the Detergents Act and Board rules, represents an effort by a private party to "enforce" those laws, a function that the Fifth District itself conceded (A10) is exclusively reserved to the State under 415 ILCS 92/5(e) and (f) and 415 ILCS 5/30. The Court got around the problem by characterizing Plaintiff's claims not as an effort to enforce environmental laws—which is what the 2AC plainly seeks to do—but instead as merely offering "proof" or "evidence" of those violations in order to support Plaintiff's UDTPA and ICFA claims. See A11 ("In this case, the plaintiff did not bring suit under the Detergents Act or any other environmental laws or regulations. Rather, the plaintiff invoked those laws and regulations as evidence to support its claims of unfair competition and unfair practices.") But even the Appellate Court itself had to recognize reality; in its very next paragraph, the Court characterized Plaintiff's claims as alleging that Defendants had violated ICFA and UDTPA "by manufacturing,

distributing, and selling cleaning products that *did not comply with Illinois environmental laws*," A11 (emphasis added).[2] Even the Fifth District, then, could not describe Plaintiff's claims without acknowledging that they depend entirely on assertions that Defendants' products violated laws Plaintiff is not allowed to enforce.

As noted, the Fifth District did not purport to dispute either that jurisdiction to "enforce" the Detergents Act and the Board's rules lies exclusively with the State or, as its logical corollary, that those laws imply no private rights of action. *See* A11-12. Its error was in failing to see that allowing a lawsuit based entirely on claims of "evidence" of violations of those laws amounts to the same thing, that is, enforcement of those laws by a private party in a private suit that alleges no other illegality.

That holding is inconsistent with both the way Illinois courts police statutory limitations on enforcement jurisdiction and the skeptical manner in which they consider whether a statute implies a private right of action. As to the latter:

> The standard that must be met for a court to imply a private right of action in a statute is quite high. We will take that extraordinary step only when it is clearly needed to advance the statutory purpose and when the statute would be ineffective, as a practical matter, unless a private right of action were implied.

Channon v. Westward Mgmnt., Inc., 2022 IL 128040, at ¶ 33 (citation and

[2] Plaintiff's civil conspiracy claims in the 2AC are even more direct on the point, alleging that Defendants Jon-Don and Legend Brands committed "an overt violation of the Detergents Act and/or Illinois EPA regulations." A66.

internal quotation marks omitted). When a plaintiff claims that a statute implies a private right of action—a claim not actually made here either by Plaintiff or the Fifth District, though the result is the same—this Court has prescribed consideration of four factors: whether "(1) the plaintiff is a member of the class for whose benefit the statute was enacted; (2) the plaintiff's injury is one the statute was designed to prevent; (3) a private right of action is consistent with the underlying purpose of the statute; and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute." *Metzger v. DaRosa*, 209 Ill. 2d 30, 36 (2004), *citing Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 460 (1999).

The Fifth District performed no such analysis. It never addressed whether a business plaintiff suing a competitor was the intended beneficiary of environmental laws (an unlikely proposition), or whether the loss of product sales—the only actual harm Plaintiff alleges—is what those laws were designed to prevent (also unlikely), or whether allowing ICFA or UDTPA lawsuits exclusively based on claims that environmental laws were violated would be consistent with the General Assembly's reservation of enforcement jurisdiction to the State, or whether allowing a private plaintiff to sue based solely on claims that environmental laws have been violated was "necessary" to the enforcement of those laws, much less whether they would be ineffective unless private plaintiffs are allowed to sue.

The Fifth District's ruling cannot be squared with numerous cases rejecting private suits based on statutes, like the ones Plaintiff relies on, that do not allow private rights of action. Some of those rulings are specific to environmental statutes like IEPA. *See Chrysler Realty Corp. v. Thomas Indus., Inc.*, 97 F. Supp. 2d 877, 880 (N.D. Ill. 2000) ("[T]his court is bound to follow the holding that there is no private right of action under the IEPA."), *citing NBD Bank v. Krueger Ringier, Inc.*, 292 Ill. App. 3d 691, 697 (1st Dist. 1997) (IEPA provides no private cause of action; "there is no clear need for civil actions under the statute; the existing legislative scheme which provides for prosecution by the State of Illinois and allows contribution claims against third-party violators more than adequately serves the purpose of the statute, which is to protect the environment and minimize environmental damage.").

While a private right to sue can sometimes be implied by a statute, it certainly cannot be where, as here, the legislature has expressly prohibited private lawsuits. Statutes are interpreted so that all of their language is given effect and no language is rendered meaningless or superfluous. *People v. Whitehead*, 2023 IL 128051, ¶ 31. Applying those rules, Illinois courts have barred private suits that contravene (and thus render superfluous or meaningless) statutory provisions granting regulatory and enforcement authority exclusively to the State, even when, unlike here, those statutes only imply (rather than expressly state) that the State's enforcement authority is exclusive. *See, e.g.*, *Metzger*, 209 Ill.

2d at 43 ("[W]hen a statute grants a state official broad authority to enforce the statute, we believe it indicates the legislature's intent not to imply a private right of action for others to enforce the statute."); *see also Zahn v. N. Am. Power & Gas, LLC*, 2016 IL 120526, ¶19 ("When the legislature established the regulatory structure for public utilities under the Public Utilities Act and then conferred on the Commerce Commission responsibility for determining whether rates charged by those utilities are just and reasonable, it also vested exclusive jurisdiction in the Commerce Commission to consider complaints that a utility has charged an amount for its product, commodity or service that is excessive or unjust."); *Am. Fed'n of State, Cnty. & Muni. Employees, Council 31 v. Ryan*, 332 Ill. App. 3d 866, 872 (4th Dist. 2002) ("[I]n this case, the plain language of sections 15 and 17 of the Planning Act clearly preempts plaintiffs from seeking to enjoin defendants to comply with the Planning Act's permit requirements, as enforcement of the Planning Act is an exclusive power of the State.").

These cases establish that a statute that provides specifically for exclusive enforcement by the State should not be read to imply that it can also be enforced through private lawsuits. *See, e,g,*, *Fisher,* 188 Ill. 2d at 467 ("The legislature provided a statutory framework to encourage reporting of violations and to punish retaliation. The legislature could have gone further and granted employees a private action for damages, but it did not do so."); *King v. First Cap. Fin. Svces. Corp.*, 215 Ill. 2d 1, 27 (2005) (statute prohibiting unauthorized practice of law provided for contempt

sanction; "Had the legislature intended to provide a cause of action for damages for violation of the Attorney Act, it could have easily done so. Accordingly, we hold that there exists no private right of action under the Attorney Act for damages.").

The rule that a statute or set of regulations that specifically prescribes its own enforcement does not also allow for private lawsuits has been applied by this Court to reject an attempt, like Plaintiff's herein, to use ICFA to pursue such a claim. In *Cripe v. Leiter*, 184 Ill. 2d 185 (1998) the Court considered whether a plaintiff could use ICFA to sue an attorney for charging excessive fees. In holding that it could not, the Court noted that attorney conduct, including the reasonableness of fees, is already "subject to extensive regulation by this court," and concluded that this comprehensive regulation scheme did not allow for ICFA claims also:

> The legislature did not, in the language of [ICFA], specify that it intended [ICFA's] provisions to apply to the conduct of attorneys in relation to their clients. Given this court's role in that arena, we find that, had the legislature intended [ICFA] to apply in this manner, it would have stated that intention with specificity.... Absent a clear indication by the legislature, we will not conclude that the legislature intended to regulate attorney-client relationships through [ICFA].

184 Ill. 2d at 197. In this case, by comparison, ICFA says nothing about environmental law claims, and the Detergents Act and IEPA do more than suggest that they cannot be enforced by private parties: they say so explicitly by reserving enforcement authority to the State alone. *See* 415 ILCS 92/5(f) ("The regulation of phosphorus in detergents is an *exclusive*

power and function of the State"). The Fifth District's decision cannot be reconciled with these well-settled rules of statutory interpretation.

Not surprisingly, none of the cases relied on by the Fifth District for the general proposition that "[a] practice may offend public policy if it violates a standard of conduct set forth in an existing statute or common law doctrine that typically applies to such a situation" (A11) involved reliance on "proof" of violations of laws that, by statute, cannot be enforced by private parties at all. For one thing, none of the statutes invoked to "prove" violations in any of those cases contain provisions that expressly reserve enforcement authority to the State. In *Gainer Bank, N.A. v. Jenkins*, 284 Ill. App. 3d 500, 503 (1st Dist. 1996), for example, the court held that a plaintiff could invoke provisions of the Illinois Motor Vehicle Retail Installment Sales Act, 815 ILCS 375/1 *et seq.*, to prove an ICFA violation. But nothing in that statute reserves enforcement of its requirements for retail vehicle sale contracts to the State, nor was there any indication that a private suit by a plaintiff that was a party to a vehicle sales contract invoking it to prove other violations would upset its "statutory framework" or "existing legislative scheme."

The Fifth District's reliance on cases that hold that other statutes can be invoked to establish "public policy" in support of a UDTPA or ICFA claim are no help to that Court either. *See* A11 (citing *Robinson v. Toyota Motor Credit Corp.,* 201 Ill. 2d 403, 417-18 (2002), and *Elder v. Coronet Ins. Co.*, 201 Ill. App. 3d 733, 743 (1st Dist. 1990)). Neither *Robinson* nor *Elder*

involved statutes that reserve enforcement authority to the State; to the contrary, both cases expressly relied on a provision of ICFA that directs courts to consider other specified laws, namely 815 ILCS 505/2 ("In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act."). *See Robinson*, 201 Ill. 2d at 417-18; *Elder*, 201 Ill. App. 3d at 743. Not surprisingly, neither ICFA nor UDTPA contains a similar reference to any environmental statute, much less the Detergents Act or IEPA specifically. Accordingly none of the cases cited by the Appellate Court support the idea that an ICFA or UDTPA plaintiff can invoke any statute it likes in support of a claim that conduct violates "public policy," much less a statute that does not imply a private right of action and that, by its own terms, prohibits private parties from invoking it at all.

Finally, even if private plaintiffs could invoke the Detergents Act and IEPA as "evidence" of a UDTPA or ICFA violation as a general matter—and, as explained above, they cannot—*this* Plaintiff, a business suing its competitors, cannot do so because its claims do not allege the sort of injury environmental statutes are designed to address. All three cases cited by the Appellate Court (A11) for the proposition that violations of other laws could be relied on as "evidence" in support of a claim under those statutes involved plaintiffs that claimed they were injured by the very violations of the laws they cited. *See Robinson,* 201 Ill. 2d at 406-07 (vehicle lessee

claimed her lease violated federal and state statutes); *Elder*, 201 Ill. App. 3d at 743-44 (plaintiff denied insurance based on required polygraph test, in violation of state statute prohibiting non-consensual polygraphs); *Gainer Bank*, 284 Ill. App. 3d at 502 (plaintiff suing for deficiency balance on vehicle sales contract). Unlike those cases, though, Plaintiff herein does not allege that *it* has suffered the sort of environmental or health injury the Detergents Act or IEPA are intended to prevent, or that anyone else has either; rather, Plaintiff's only allegation of actual injury to anyone is its allegation that it has lost sales because Defendants' carpet cleaning products work better (and thus sell better) than its own products do, an injury that those environmental laws do not address. The Fifth District erred when it allowed Plaintiff to invoke environmental statutes to support such a claim.

The Fifth District's holding that Plaintiff could pursue ICFA and UDTPA claims against its competitors based solely on alleged violations of environmental laws and regulations runs afoul of the General Assembly's considered and explicit decision that only the State can enforce those laws. Moreover, it allows, without saying so, what is essentially a private right of action under those laws where none can be implied. That ruling should be reversed.

III. The Fifth District Erroneously Held That Plaintiff, Admittedly Not Itself A Consumer, Has Standing Under ICFA To Sue Its Competitors, None Of Whom Sell To Consumers.

The Fifth District also erred in holding that Plaintiff, a business that, like Defendants, sells only to other businesses, had standing under ICFA to sue its competitors. ICFA defines "consumer" as "any person who purchases or contracts for the purchase of merchandise not for resale in the ordinary course of his trade or business but for his use or that of a member of his household." 815 ILCS 505/1(e). As Plaintiff and the Appellate Court concede, A18, Plaintiff does not fit within that definition; rather, it is undisputed that Plaintiff is a competing manufacturer and seller of carpet cleaning products that, like Defendants' products, are sold exclusively to carpet cleaning businesses. A45-50. Plaintiff is thus not a consumer itself, and neither Plaintiff nor Defendants ever market or sell to consumers. To determine whether Plaintiff had standing to bring an ICFA claim, then, the Appellate Court applied the "consumer nexus" test to Plaintiff's allegations. A18-19. The Court's holding that Plaintiff's claims satisfied that test is reversible error.

The "consumer nexus" test has been evolved by lower Illinois courts and also considered, perhaps just as often, by federal courts applying Illinois law in ICFA cases. As the Seventh Circuit has explained in doing so, "businesses can sometimes sue one another under [ICFA], but a business plaintiff under the ICFA must show a nexus between the complained of conduct and consumer protection concerns, *i.e.*, a

'consumer nexus.'" *Comm'ty. Bank of Trenton v. Schnuck Mkts., Inc.*, 887 F.3d 803, 823 (7th Cir. 2018) (citation and further internal quotation marks omitted). "Illinois courts have long recognized that a business may maintain a cause of action under [ICFA] even when it was not a consumer of the defendant's goods, so long as 'the alleged conduct involves trade practices addressed to the market generally or otherwise implicates consumer protection concerns.'" *Kim v. State Farm Mut. Auto. Ins. Co.*, 2021 IL App (1st) 200135, ¶ 46, *quoting Downers Grove Volkswagen, Inc. v. Wigglesworth Imports, Inc.*, 190 Ill. App. 3d 524, 534 (2d Dist. 1989). "In other words, the conduct involved must be of sufficient magnitude to be likely to affect the market generally, 'and thus be likely to harm consumers in the colloquial sense of the ultimate buyers of the finished product.'" *Edge Capture LLC v. Barclays Bank PLC*, 2011 WL 13257073, at *6 (N.D. Ill. July 26, 2011), *quoting Williams Elec. Games, Inc. v. Garrity*, 366 F.3d 569, 579 (7th Cir. 2004).

The 2AC does not allege any such impact on either "the market generally" or other "consumer protection concerns," and the Fifth District, aside from using similar generic language, did not cite any either. In conclusory fashion, Plaintiff alleged in the 2AC that Defendants are "profiting at Plaintiff's expense by selling illegal products to *reasonable Illinois consumers* without telling them that purchasing, possessing, or otherwise using [Defendants'] Products is in violation of Illinois law." *See, e.g.*, A58 (emphasis added). As noted above, though, neither Plaintiff nor

Defendants are alleged to market or sell their products to anyone who fits the statutory definition of "consumer"; rather, both Plaintiff and Defendants market and sell exclusively to other businesses. A45-50.

Conduct directed only to businesses that buy products for use in their own business is not covered by ICFA. As the Seventh Circuit has explained, in applying the consumer nexus test "the business purchaser is not a consumer, because his only use of the purchased product is as an input into the making of a product that he sells…." *Williams Elec. Games*, 366 F.3d at 579; *see also Biggers Holdings LLC v. Garcia*, 2022 WL 3107617, at *6 (N.D. Ill. August 4, 2022) ("For this theory to be availing, Biggers must provide some explanation as to why the advertisement was directed to consumers and not just at other business entities."); *Tile Unlimited, Inc. v. Blanke Corp.*, 788 F.Supp.2d 734, 740 (N.D. Ill. 2011) ("[T]he complaint alleges only that Defendants' false representations about Uni–Mat Pro were directed to Tile Unlimited 'and other tile installers,' not to consumers."); *Kraft Foods Grp., Inc. v. SunOpta Ingredients, Inc.*, 2016 WL 5341809, at *6 (N.D. Ill. September 23, 2016) ("This case is farther removed from consumers, and therefore from 'consumer protection concerns,' because Kraft's claim is not that Kraft was availing itself of SunOpta's products as a consumer would or that SunOpta targeted consumers directly with its deceptive practices; rather, SunOpta's alleged deceptive conduct occurred in the context of its commercial relationship with Kraft as a supplier of ingredients for the food products Kraft produced

and sold."); *Ivanhoe Fin., Inc. v. Highland Banc Corp*, 2004 WL 2091997, at *5 (N.D. Ill. September 15, 2004) ("ICFA is intended to protect ordinary consumers from predators in the business world.... Because Ivanhoe's alleged relationship to defendants is more akin to that of a manufacturer to a supplier than an individual consumer to a business, Ivanhoe does not fall within the ICFA's definition of consumer.") (citations and internal quotation marks omitted).

Like the plaintiffs in those cases, Plaintiff here has not alleged any actual consumer impact. Despite its repeated (but conclusory) references to "consumers" or "the marketplace," the 2AC does not allege any conduct by Defendants that is directed either at consumers (as defined in ICFA) or "the market generally." Rather the 2AC makes clear that Defendants, like Plaintiff, sell only to "business purchasers," that is, to carpet cleaning businesses that use Defendants' products in cleaning the carpets of *their* customers. That is not "the market generally"; rather, it is a highly specific market, and one that does not include any "consumers" as defined by ICFA. Nor can Plaintiff rely on any impact on the customers of those carpet cleaning businesses, for at least two reasons. *First*, Plaintiff does not claim anywhere in the 2AC that Defendants have made any representations to, or even interacted with, customers of the carpet-cleaning businesses to whom Defendants sell their products. To the contrary, there is no allegation that Defendants market or sell to anyone other than carpet cleaning businesses themselves. *Second*, as Judge Feinerman explained

in *Tile Unlimited*, the argument that the sale of a product to a business that then uses it to deliver its own products or services to consumers implicates consumer protection concerns "has been soundly, repeatedly, and correctly rejected." 788 F.Supp.2d at 740, *citing Stepan Co. v. Winter Panel Corp.*, 948 F.Supp 802, 807 (N.D. Ill. 1996) ("Almost every product sold by one commercial party to another will ultimately be sold to or otherwise effect [*sic*] a consumer. Consequently, if allegations such as Winter Panel's are sufficient to bring the claim within the ambit of [ICFA], the Act would apply to nearly all commercial transactions, a result contrary to the intent of the legislature as presently interpreted.").

The Circuit Court recognized this problem when it held that Plaintiff had only claimed that Defendants' actions had been directed to "other business entities," and thus dismissed Plaintiff's ICFA claims for lack of standing. A36. In reversing that ruling, though, the Fifth District , while purporting to apply the consumer nexus test, *see* A18 ("The question is whether the plaintiff has alleged sufficient facts to establish standing under the 'consumer nexus' test."), did not accurately describe what is actually in the 2AC:

> Here, the plaintiff alleged that the defendants directed their deceptive practices toward consumers. The defendants allegedly deceived consumers about the ingredients, approved uses, and quality of defendants' cleaning products, and the harmful impact of those products on the environment and human health. The plaintiff further alleged that the defendants knowingly and willfully charged a premium for their products, as if those products were legal and of a superior quality; and that the defendants profited from the

> sale of illegal products to unwary Illinois consumers. The plaintiff also asserted that the defendants' practices created an anticompetitive effect on the plaintiff's ability to place safe and compliant products into the marketplace and to compete there.

A19.

The Court neither cited nor quoted anything in the 2AC in support of any of those assertions, and none can be found there. *First*, as noted above, the only claimed misrepresentation or omission Plaintiff actually alleges is that Defendants fail to disclose to their commercial carpet cleaner customers that their products are "illegal" because they purportedly violate the Detergents Act and Board rules. A43-44; A51-54. But the 2AC never alleges that Defendants inaccurately represent the contents of their products to anyone, including their phosphorous or VOM content. *Second*, although the Fifth District referred to "consumers" several times in its discussion of the issue without making clear who those consumers were, by its references it had to be talking about the carpet cleaning *businesses* to which Plaintiff and Defendants exclusively market and sell their products ("allegedly deceived consumers about the ingredients, approved uses, and quality of defendants' cleaning products," "sale of illegal products to unwary Illinois consumers"). As the 2AC alleges, though, Defendants do not sell to, or make representations of any kind to, customers of the carpet cleaning businesses to whom they exclusively sell their products, who would never see or interact with Defendants or their products or marketing materials. And the Fifth District never even

addressed the longstanding series of cases, some of which are cited *supra* pp. 27-28, that hold that sales to "business purchasers" who buy a product to use in creating or delivering their own products or services do not implicate consumer protection concerns. Those cases dictate reversal of the Court's standing ruling.

The cases cited by the Appellate Court (A19) in support of applying the "consumer nexus" test all involved communications directed to end-user consumers, that is, to consumers as defined in ICFA. As those cases make clear, when a business sues another business under ICFA, deception of someone else that fits within the statutory definition of "consumer" must be pled. *See, e.g., Empire Home Svces., Inc. v. Carpet Amer., Inc.*, 274 Ill. App. 3d 666, 669 (1st Dist. 1995) (dispute among non-consumers must "involve[] trade practices addressed to the market generally or otherwise implicates consumer protection concerns"; competitor used similar phone number to plaintiff's and deceived consumers who dialed in into thinking they were dealing with plaintiff); *Wigglesworth Imports, Inc.,* 190 Ill. App. 3d at 527, 534 (consumer concerns implicated by claim that competing car dealer sent false information about plaintiff's prices to plaintiff's car service customers).[3] These cases, though they involve businesses suing other businesses,

[3] The Appellate Court (at A19) also cited *Brody v. Finch University of Health Sciences/The Chicago Medical School*, 298 Ill. App. 3d 146, 149, 160 (2d Dist. 1998) for the general contours of the consumer nexus test, but that case also involved allegedly false communications directed to consumers, that is, to prospective students of the defendant medical school.

describe interactions between defendants and consumers that are entirely absent here.

And, of course, Plaintiff never claims that it was itself deceived by anything Defendants did. This Court has often rejected ICFA claims where, as here, a plaintiff alleges "market" deception generally but does not claim that *it* was among those deceived. *See Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 155 (2002) ("[T]o properly plead the element of proximate causation in a private cause of action for deceptive advertising brought under [ICFA], a plaintiff must allege that *he was, in some manner, deceived.*") (emphasis added); *see also Shannon v. Boise Cascade Corp.*, 208 Ill. 2d 517, 525 (2004) ("The teaching of *Oliveira* and *Zekman* is that deceptive advertising cannot be the proximate cause of damages under the Act *unless it actually deceives the plaintiff*") (emphasis added; *citing Zekman v. Direct Amer. Marketers, Inc.*, 182 Ill. 2d 359, 375-76 (1998)); *Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill. 2d 45, 76 (2007) ("Under *Oliveira* and its progeny, plaintiffs must prove that each and every consumer who seeks redress actually saw and was deceived by the statements in question."). These decisions make clear that cases like this one, where Plaintiff is suing competitors but does not claim to have been deceived by them, and where no Defendant is alleged to sell products to, or even communicate with, any consumers as defined in ICFA, fail as a matter of law.

For all these reasons, the Fifth District's ruling that Plaintiff has standing to sue Defendants under ICFA should be reversed.

IV. The Decision Below Erroneously Allows ICFA And UDTPA Liability Based On A Misrepresentation Of Law.

The Fifth District also erred in holding that Plaintiff's allegations that Defendants failed to disclose to their customers that their products were "illegal" (because they supposedly violate environmental laws Plaintiff is not allowed to enforce) alleged misrepresentations of fact actionable under ICFA and UDTPA, and not misrepresentations of law. *See* A21. The Court claimed to recognize that "a deceptive representation of law does not constitute a violation of the ICFA because both parties are presumed to be equally capable of knowing and interpreting the law." A21 (citations omitted) That is, indeed, the law in Illinois. *See, e.g.*, *McIntosh v. Walgreens Boots All., Inc.*, 2019 IL 123626, at ¶ 39 ("It is understood that misrepresentations or mistakes of law cannot form the basis of a claim for fraud.") (citations omitted). "An erroneous conclusion of the legal effect of known facts constitutes a mistake of law and not of fact." *Id.*, *citing, inter alia, Purvines v. Harrison*, 151 Ill. 219, 223 (1894).

On this issue *McIntosh* is instructive. In that case the plaintiff claimed that Walgreen's had violated ICFA by "unlawfully collecting a municipal tax imposed by the City of Chicago (City) on purchases of bottled water that were exempt from taxation under the City ordinance." 2019 IL 123626, at ¶ 1. The plaintiff alleged that "the disclosure of the bottled water tax on the receipt constituted a representation that 'the total price [of the purchase] included the tax required and allowable by law.'" *Id.* at ¶ 40 (citation omitted). This Court characterized that claim as one of a

misrepresentation of law rather than of fact: "Such a representation would be one of law, constituting Walgreens' understanding and interpretation of what the bottled water tax ordinance required." *Id.*

In this case the Appellate Court allowed Plaintiff to pursue ICFA and UDTPA claims that assert that Defendant's products are "illegal," a result it reached by the simple expedient of calling alleged omissions about illegality representations about facts:

> Here, the plaintiff alleged that the defendants engaged in unfair and deceptive practices in that defendants failed to notify consumers that the subject products contained quantities of phosphorous and/or VOMs *in excess of the amounts permitted under Illinois law*; that they had *restricted uses*; and that they posed potential harm to human health and the environment. These are misrepresentations or omissions of fact that concern the specific ingredients, qualities, and uses of the subject products.

A21 (emphasis added); *see also* A25 (regarding UDTPA claims: "The defendants also allegedly failed to disclose that their products contained excessive quantities of phosphorous and VOMs, and *as such, did not comply with Illinois environmental laws and regulations*.") (emphasis added). But calling alleged misrepresentations about whether a product contains ingredients "in excess of… Illinois law" or has uses "restricted" by those laws "misrepresentations of fact" does not make them so. The subject of these allegations, even as described by the Fifth District, was whether Defendants' products comply with the law, a plain representation

about law and not fact.[4] Under the Fifth District's reasoning, any misrepresentation or omission of law could be recharacterized as a misrepresentation of the "fact" of whether something was legal or not.

Contrary to the Fifth District's view, the 2AC does not actually allege any misrepresentations about "the specific ingredients, qualities, and uses of the subject products." Indeed, it alleges *no* misrepresentations of fact by Defendants; it does not, for example, allege that they misrepresent the contents of their carpet cleaning products, including their phosphorous or VOM content. Rather, it alleges only that Defendants "employ[] deception, fraud, and false pretenses to conceal, suppress, and omit *the material facts that [Defendants'] Products do not comply with Illinois law*.... Indeed, if [Defendants] provided on its labeling or packaging that [their] Products are *illegal under Illinois law* and that they could neither be purchased nor sold *legally* in Illinois, then no reasonable person would purchase [Defendants'] Products." A57-58 (emphasis added). These are allegations that Defendants misrepresent the law, not facts.

[4] The same is true for the Fifth District's assertion that Plaintiff had alleged "potential harm to human health and the environment." A21. While the 2AC makes repeated reference to "harm to… the environment" and "health and safety," *see, e.g.,* A59, A64, A71, A75, A79, A83, A88, those allegations are contained in requests for relief and are entirely conclusory; the 2AC alleges no actual risk of harm to the health or safety of anyone, including the professional carpet cleaning businesses that are the only users of Defendants' products. Plaintiff's claims of "harm" are thus also based on nothing but its bare assertion that these products violate environmental laws.

In an effort to salvage its theory of liability—a theory not actually pled in the complaint before it—the Fifth District added, as an afterthought, that "[i]n addition, on this record, we cannot conclude that consumers might have learned whether they could safely and lawfully use these products by reviewing provisions of the Detergents Act." A21. But the Court did not cite any allegations in the 2AC to support this contention, and there are none; rather, it never alleges that Defendants misrepresented or omitted any facts about the contents of their products or any other information a buyer would need to look into whether they violated the Detergents Act or Board rules. Moreover, Illinois law is also to the contrary on this point; indeed, a similar argument failed in *McIntosh*. 2019 IL 123626, at ¶ 40. In that case this Court rejected the idea that the plaintiff could claim he was deceived by the purchase receipt's supposed implication that the tax listed on it was lawful. In doing so, the Court said that:

> Because McIntosh is charged with knowledge of the law, he cannot claim to have been deceived by the information disclosed on the receipt. McIntosh had the ability to investigate the ordinance to determine if the bottled water tax applied to his purchases of carbonated or flavored water. *He has not alleged that Walgreens had superior access* to the information set forth in the bottled water tax ordinance or that *he could not have discovered what the ordinance required through the exercise of ordinary prudence*.

Id. (citations omitted; emphasis added).

The same is true in this case. The Fifth District's reference to "this record" (A21) put the burden in the wrong place; it was Plaintiff's job to

plead that Defendants somehow had "superior access" to the Detergents Act or Board rules it claims Defendants' products violate, or that their requirements could not be "discovered… through the exercise of ordinary prudence." Like the plaintiff in *McIntosh*, Plaintiff herein alleges nothing in the 2AC about whether the carpet cleaning businesses that are the only buyers of Plaintiff's and Defendants' products somehow had less ability than Plaintiff or Defendants to access those laws and determine what they required. Here, again, the 2AC fails to support the theory conjured by the Fifth District.

The Fifth District's ruling that Plaintiff alleged misrepresentations of fact actionable under ICFA and UDTPA by failing to disclose that their products supposedly violated the Detergents Act and Board rules should be reversed. It would seem self-evident that whether a product misrepresents or fails to disclose its legal status speaks to an issue of law, and that a claim that a seller of that product violates those statutes when it fails to disclose to purchasers that its product is "illegal" consequently alleges an omission or misrepresentation of law not actionable under them.

CONCLUSION

For the foregoing reasons, the decision of the Fifth District reversing the dismissal of Plaintiff's Second Amended Complaint with prejudice should be reversed.

Dated: June 21, 2023

Respectfully submitted,

/s/ Joel D. Bertocchi

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CERTIFICATE OF COMPLIANCE

I certify, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 38 pages and 9,291 words.

/s/ Joel D. Bertocchi
Joel D. Bertocchi

NOTICE OF FILING AND CERTIFICATE OF SERVICE

I certify that on June 21, 2023, the above Petition for Leave to Appeal and the attached Appendix were filed and served electronically on the Clerk of the Illinois Supreme Court, and that true and correct copies of the same were served by electronic mail on the following counsel for Respondent:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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2022 IL App (5th) 210210-U

NO. 5-21-0210

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

TRI-PLEX TECHNICAL SERVICES, LTD.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	St. Clair County.
	)	
v.	)	No. 20-L-237
	)	
JON-DON, LLC; LEGEND BRANDS, INC.; CHEMICAL TECHNOLOGIES INTERNATIONAL, INC.; BRIDGEPOINT SYSTEMS; GROOM SOLUTIONS; and HYDRAMASTER, LLC.,	)	
	)	Honorable
	)	Heinz M. Rudolf,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in dismissing the second amended complaint with prejudice where the plaintiff alleged sufficient facts to state claims under the Illinois Consumer Fraud Act and the Uniform Deceptive Trade Practices Act, and for civil conspiracy. The judgment dismissing the second amended complaint with prejudice is reversed, and the cause is remanded for further proceedings.

¶ 2 The plaintiff, Tri-Plex Technical Services, Ltd., appeals from the trial court's judgment, dismissing the plaintiff's claims against the defendants, Jon-Don, LLC,

Legend Brands, Inc., Chemical Technologies International, Inc., Bridgepoint Systems, Groom Solutions, and Hydramaster, LLC, with prejudice. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 The plaintiff is an Illinois corporation in the business of developing, manufacturing, distributing, and selling commercial grade carpet cleaning products to carpet care professionals in Illinois. The defendants are plaintiffs' competitors. They also manufacture, distribute, and/or sell commercial grade carpet cleaning products to carpet care professionals in Illinois.

¶ 5 On March 25, 2020, the plaintiff brought this action against the defendants, under the Consumer Fraud and Deceptive Business Practices Act (ICFA) (815 ILCS 505/1 *et seq.* (West 2020)) and the Uniform Deceptive Trade Practices Act (UDTPA)[1] (815 ILCS 510/1 *et seq.* (West 2020)). In the second amended complaint, at issue here, the plaintiff asserts that each defendant has engaged in unfair competition and unfair and deceptive trade practices with respect to the manufacture, distribution, and sale of its carpet cleaning products[2] in violation of the ICFA and the UDTPA.

¶ 6 In the general allegations pertaining to all counts of the complaint, the plaintiff initially noted that Illinois regulates the amount of phosphorous and volatile organic materials (VOMs) in cleaning products because phosphorous and VOMs are harmful to the environment and human health. The Regulation of Phosphorous in Detergents Act

[1]The abbreviations "ICFA" and "UDTPA" were used in the parties' pleadings and the trial court's order. We retained those abbreviations in this order for consistency.

[2]The various carpet cleaning products that were manufactured, distributed, and/or sold by the defendants to Illinois consumers were specifically identified by their brand names in the second amended complaint. In addressing the issues raised in this appeal, we need only identify these products collectively.

(Detergents Act) provides that "no person may use, sell, manufacture, or distribute for sale any cleaning agent containing more than 0.5% phosphorous by weight, expressed as elemental phosphorous, in Illinois, except as otherwise provided in this Section." 415 ILCS 92/5(a) (West 2020). Additionally, the Illinois Environmental Protection Agency (Illinois EPA) limits the amount of VOMs used in dilutable carpet cleaners to 0.1% or less by weight (35 Ill. Adm. Code 223.205(a)(17)(B) (2012)). The plaintiff claimed that its cleaning products comply with Illinois laws and regulations, while the defendants' cleaning products do not. The plaintiff alleged that the defendants' products contain more than 0.5% phosphorous by weight and do not fall within any of the exceptions enumerated in the Detergents Acts. It further alleged that the products manufactured, distributed, and/or sold by Don-Joy products and Legend Brands contain more than 0.1% VOMs by weight and do not fall within any exceptions set out in the Illinois EPA regulations.

¶ 7 According to the more specific allegations under the UDTPA, each defendant omitted from its labeling, and otherwise failed to notify consumers in the marketplace, that its cleaning products contain more than 0.5% phosphorous by weight and do not comply with the Detergents Act. In addition, defendants Jon-Don and Legend Brands omitted from their labeling and otherwise failed to notify consumers that their cleaning products contain more than 0.1% VOMs by weight and do not comply with Illinois EPA regulations limiting VOMs. The plaintiff further alleged that consumers in the marketplace purchased the defendants' products and refused to purchase plaintiff's products because the defendants' phosphorus-laden products and VOM-laden products

clean better. These consumers were unaware that products containing excessive amounts of phosphorous and VOMs could not be legally sold in Illinois. They assumed that the defendants' cleaning products complied with Illinois law because they were able to purchase them in Illinois. They would be surprised to learn that the approval, uses, and quality of the cleaning products were not as represented. The plaintiff asserted that the defendants' deceptive acts caused a likelihood of confusion and misunderstanding in the marketplace as to "the sponsorship, approval, characteristics, ingredients, uses, benefits, or certification" of the subject products, and constituted deceptive practices under subsections 2(a)(2), (5), and (12) of the UDTPA (815 ILCS 510/2(a)(2), (5), (12) (West 2020)).

¶ 8 The plaintiff alleged that the defendants' deceptive practices created and continued to create unfair competition in the marketplace. The plaintiff further alleged that the defendants willfully engaged in these practices. The plaintiff asserted that as a direct result of the defendants' practices, it "suffered and continues to suffer a loss of ability to compete in the marketplace and a loss of sales." The plaintiff sought a finding that each defendant willfully engaged in deceptive trade practices, an order enjoining each defendant from distributing or selling the subject products in Illinois, and an award of reasonable attorney fees and costs.

¶ 9 In the specific allegations under the ICFA, the plaintiff initially incorporated all of the preceding allegations. According to the allegations, each defendant employed "deception, fraud, and false pretenses" to conceal the fact that its products contained excessive quantities of phosphorous and/or VOMs, and did not comply with Illinois laws.

Each defendant committed these acts with the intent that unwary consumers rely upon the misrepresentations and purchase its products. The misrepresentations were material because they concerned the type of information upon which a reasonable consumer would be expected to rely in making purchasing decisions. The plaintiff further alleged the defendants knowingly and willfully misled consumers into purchasing the subject products, and charged a premium for the products, as if those products were legal and of a superior quality. The plaintiff also alleged that the practices exposed consumers to unwanted, harmful, and illegal levels of phosphorous and VOMs.

¶ 10 The plaintiff asserted that the defendants' acts constituted unfair methods of competition and unfair and deceptive acts or practices. In addition, the defendants' unfair practices offended Illinois public policy because the subject products did not comply with Illinois environmental laws, and because Illinois consumers have an interest in purchasing products that do not harm the environment. These practices also offended the public's expectation that it would be told the truth about products sold in the marketplace.

¶ 11 The plaintiff claimed that the defendants acted willfully and with the intent to economically harm the plaintiff; that the defendants profited by selling illegal products to unwary consumers in Illinois, at the expense of the plaintiff and consumers alike; and that the plaintiff was and is unable to fairly compete in the markets where the subject products are sold. The plaintiff requested a finding that each defendant willfully violated the ICFA, and an order enjoining each defendant from distributing or selling the subject products in Illinois. The plaintiff also requested actual damages; punitive damages for

willful violations of Illinois law that negatively impacted competition, the environment, and consumer health and safety; and reasonable attorney fees and costs.

¶ 12 In the sole count for civil conspiracy, the plaintiff incorporated all of its preceding factual allegations. The plaintiff then alleged that Jon-Don and Legend Brands, acting in concert, intentionally and knowingly marketed, distributed, sold, and/or delivered illegal Legend Brands' phosphorous-laden and VOM-laden products to unwary customers in Illinois in open violation of Illinois environmental laws. The plaintiff further alleged that these defendants conspired to rebrand and sell certain Legend Brands products as Jon-Don products to Illinois customers in open violation of Illinois environmental laws. The plaintiff claimed that Jon-Don and Legend Brands engaged in a civil conspiracy to deprive the plaintiff of sales and profits, and that it suffered and continues to suffer a significant loss of sales and profits as a result of this conspiracy. The plaintiff requested a finding that Jon-Don and Legend Brands engaged in a civil conspiracy, and a judgment awarding the plaintiff an amount to be determined at trial, equal to its lost profits, incidental and consequential damages, punitive damages, and reasonable attorney fees and costs.

¶ 13 The defendants filed separate motions to dismiss the second amended complaint. They also adopted the arguments made in their codefendants' motions. The defendants moved to dismiss the complaint for failure to state a cause of action under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2020)). They also sought dismissal under section 2-619 of the Code (735 ILCS 5/2-619 (West 2020)),

asserting that the plaintiff lacked standing under the ICFA, and that other affirmative matters barred the plaintiff's claims.

¶ 14 On May 6, 2021, the trial court heard arguments on the defendants' motions and took the matter under advisement. On June 8, 2021, the court dismissed all counts in the second amended complaint with prejudice. In its order, the court noted the pending motions included overlapping arguments and some unique arguments. The court addressed all of the arguments collectively because each defendant adopted the arguments of its codefendants.

¶ 15 Initially, the trial court found that the alleged violations of environmental statutes and regulations could not form the basis for claims under the ICFA and the UDTPA. The court reasoned that the Illinois Pollution Control Board has the exclusive authority to enforce the provisions of the Detergents Act and environmental laws and regulations governing emissions, and that the plaintiff could not use its UDTPA and ICFA claims as a means to enforce those laws and regulations.

¶ 16 The trial court also found that those claims that were based upon a failure to adequately label the subject products were barred "due to compliance with federal regulations." The court found that the content of a product label "falls within the scope of the federal regulations requiring the disclosure of certain information, including the presence of hazardous chemicals," citing 29 C.F.R. § 1910.1200(a)(1). The court concluded that the plaintiff did not "plausibly allege" that the defendants' product labels were not in compliance with that regulation, or identify any other law or regulation that

would require the defendants to notify consumers of their noncompliance with the Detergents Act or Illinois's emission standards.

¶ 17 Next, the trial court found that the plaintiff had failed to adequately allege facts that established a "likelihood of confusion" under the UDPTA. Applying the meaning of "likelihood of confusion," as used in trademark infringement cases, the court stated that a "likelihood of confusion" only existed when a defendant's use of a deceptive trade name, trademark, or other distinctive symbol was likely to confuse or mislead consumers "as to the source or origin of the product or service." The court concluded that the plaintiff did not allege the type of marketplace confusion prohibited by the UDPTA.

¶ 18 Turning to the ICFA claims, the trial court found that the plaintiff failed to establish standing because it was not a consumer and could not satisfy the "consumer nexus" test. The court also found that the ICFA claims were deficient because the plaintiff alleged an omission of law, rather than an omission of fact, and because the plaintiff did not adequately allege that it suffered damages proximately caused by the defendants' conduct.

¶ 19 Finally, the court concluded that the civil conspiracy claim failed as a matter of law. The court found that the conspiracy claim was dependent on the existence of a viable cause of action under the ICFA or the UDTPA, and that the plaintiff failed to state a cause of action under either statute.

¶ 20 II. ANALYSIS

¶ 21 On appeal, the plaintiff claims that the trial court erred in dismissing its second amended complaint with prejudice. The trial court set forth five main grounds for dismissal, and the plaintiff challenges each one.

¶ 22 A motion to dismiss under section 2-615 of the Code (735 ILCS 5/2-615 (West 2020)) challenges the legal sufficiency of the complaint based upon defects apparent on the face of the complaint. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). When ruling on a section 2-615 motion to dismiss, the court will consider whether the allegations in the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a claim upon which relief can be granted. *Marshall*, 222 Ill. 2d at 429. All well-pleaded facts are taken as true, and all reasonable inferences are drawn in favor of the nonmoving party. *Marshall*, 222 Ill. 2d at 429. A complaint should not be dismissed under section 2-615 unless it is clearly apparent that no set of facts can be proven that will entitle the plaintiff to relief. *Marshall*, 222 Ill. 2d at 429. An order granting a 2-615 motion is reviewed *de novo*. *Marshall*, 222 Ill. 2d at 429.

¶ 23 A motion to dismiss under section 2-619 of the Code (735 ILCS 5/2-619 (West 2020)) admits the legal sufficiency of the complaint, accepts all well-pleaded facts as true, and asserts that an affirmative matter outside the complaint bars or defeats the plaintiff's claim. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 31. A 2-619 motion should be granted only if the plaintiff can prove no set of facts that would support a cause of action. *Reynolds*, 2013 IL App (4th) 120139, ¶ 31. Lack of standing is an "affirmative matter" that is properly raised in a motion to dismiss

under section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2020)). *Reynolds*, 2013 IL App (4th) 120139, ¶ 33. The propriety of an order dismissing an action based on a lack of standing presents a question of law that is reviewed *de novo*. *Reynolds*, 2013 IL App (4th) 120139, ¶ 31.

¶ 24 *Claims Premised on Violations of Environmental Law*

¶ 25 In its order, the trial court found that the alleged violations of the Detergents Act and the environmental regulations governing emissions could not form the bases for claims under the ICFA and the UDTPA.[3] The court reasoned that the Illinois Pollution Control Board has the exclusive authority to enforce those environmental laws and regulations, and that the plaintiff could not use the ICFA and UDTPA as a means to enforce those laws and regulations.

¶ 26 The regulation of phosphorous in detergents is an exclusive power of the State of Illinois. 415 ILCS 92/5(f) (West 2020). The Illinois Pollution Control Board has been authorized to promulgate rules for the administration, regulation, and enforcement of the Detergents Act (415 ILCS 92/5(e), (f) (West 2020)), and to implement other environmental control standards for Illinois (415 ILCS 5/5 (West 2020)).

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[3]In considering this matter, the trial court found that *Manzo v. Uber Technologies, Inc.*, 2014 WL 3495401 (N.D. Ill. July 14, 2014), an unpublished decision cited by the defendants, was instructive. In *Manzo*, the federal district court found that that the alleged deception hinged on the anticipated interpretation of an ambiguous regulation. The federal court determined that the plaintiff could not state a cause of action based upon the plaintiff's preferred interpretation of the regulation where the regulatory framework was ambiguous with regard to the defendant's activity. In contrast, federal courts have allowed unfair competition claims based upon violations of unambiguous statutes and regulations. See, *e.g.*, *Malden Transportation, Inc. v. Uber Technologies, Inc.*, 286 F. Supp. 3d 264, 278 (D. Mass. 2017). As distinguished from *Manzo*, the unfair competition claims in this case do not involve alleged violations of ambiguous statutes or regulations.

¶ 27 In this case, the plaintiff did not bring suit under the Detergents Act or any other environmental laws or regulations. Rather, the plaintiff invoked those laws and regulations as evidence to support its claims of unfair competition and unfair practices. See *Gainer Bank, N.A. v. Jenkins*, 284 Ill. App. 3d 500, 503 (1996). A plaintiff may establish an unfairness claim by showing that the defendants' deceptive practices offend public policy. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417-18 (2002). A practice may offend public policy if it violates a standard of conduct set forth in an existing statute or common law doctrine that typically applies to such a situation. See, *e.g.*, *Robinson*, 201 Ill. 2d at 417-18; *Elder v. Coronet Insurance Co.*, 201 Ill. App. 3d 733, 743 (1990).

¶ 28 In the second amended complaint, the plaintiff alleged that the defendants engaged in unfair or deceptive practices under the ICFA, and unfair competition under the UDPTA by manufacturing, distributing, and selling cleaning products that did not comply with Illinois environmental laws, without notifying unwary consumers about the excessive quantities of phosphorous and/or VOMs in those products, and the restrictions on use of those products in Illinois. The plaintiff also alleged that the defendants intentionally mispresented the approvals, permitted uses, and qualities of those products with the intent to profit at the expense of the plaintiff and Illinois consumers. The unfair and deceptive practices that the plaintiff sought to remedy through its ICFA and UDTPA claims were separate and distinct from the regulatory decisions and enforcement actions of the Pollution Control Board. We do not agree that the plaintiff used the ICFA and UDTPA as a means to bring a private right of action to enforce the Detergents Act or

environmental laws governing emissions. Rather, these statutes and regulations simply offer a quantum of proof regarding the deceptive actions. Therefore, this was not a proper ground for dismissal.

¶ 29 *Deceptive Practices & OSHA Regulations*

¶ 30 Next, the trial court determined that plaintiff's claims based on a failure to adequately label the subject products were barred "due to compliance with federal regulations." The court stated that compliance with federal regulations was a complete defense to a consumer fraud claim based on the alleged failure to make additional disclosures related to a product. The court found that the content of a product label "falls within the scope of the federal regulations requiring the disclosure of certain information, including the presence of hazardous chemicals," citing 29 C.F.R. § 1910.1200(a)(1), and that the plaintiff did not "plausibly allege" that defendants' product labels did not comply with that regulation. The court concluded that the product labeling allegations fell within the exemptions in the UDTPA and ICFA.

¶ 31 Section 4 of the UDTPA provides that the Act does not apply to "conduct in compliance with the orders or rules of or a statute administered by a Federal, state or local governmental agency." 815 ILCS 510/4(a) (West 2020). Similarly, the ICFA does not apply to "[a]ctions or transactions specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this State or the United States." 815 ILCS 505/10b(1) (West 2020). To trigger these exemptions, a regulatory body must be acting within its statutory authority and the challenged conduct must be "specifically authorized" by that regulatory body. *Price v. Philip Morris, Inc.*, 219 Ill. 2d

182, 247-49 (2005); *Martin v. Heinold Commodities, Inc.*, 163 Ill. 2d 33 (1994) (mere compliance with applicable federal regulations is not necessarily a shield against liability under the ICFA).

¶ 32 In the second amended complaint, the plaintiff specifically alleged that each defendant "omits from its labeling, and otherwise fails to notify" consumers that its products contain excessive amounts of phosphorous and/or VOMs. The plaintiff further alleged that consumers purchased the subject products, unaware that those products did not comply with environmental laws and regulations and were potentially harmful to the environment and human health. In its order, the trial court did not discuss the plaintiff's allegations regarding the overall failure to notify consumers about the subject products' ingredients, restrictions on use, and potential harm to the environment and human health. The trial court limited its consideration to the "omits from its labeling" portion of the allegation, and found that the labeling allegation was barred due to compliance with 29 C.F.R. § 1910.1200.

¶ 33 At the outset, we note that the subject product labels were not attached or incorporated into the second amended complaint. In addition, the labels were not attached in support of defendants' arguments that their labeling complied with 29 C.F.R. § 1910.1200. Neither the labels themselves, nor the specific content of the labels, were before the trial court as it considered the motions to dismiss. Grounds for dismissal that do not appear on the face of the pleadings should be supported by affidavit or other documentary evidence. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485-86 (1994). A motion to dismiss is legally insufficient when extrinsic facts crucial to the motion are

not supported by affidavit or other documentary evidence. *Becker v. Zellner*, 292 Ill. App. 3d 116, 124 (1997). Whether the subject product labels were covered by, and/or complied with, 29 C.F.R. § 1910.1200, or another federal regulation, cannot be discerned from the pleadings. Likewise, whether the labels adequately informed consumers or users of the products' ingredients, qualities, and restrictions on use cannot be determined from the pleadings. Thus, the trial court's findings of compliance are not supported by the record.

¶ 34 In addition, we note that section 1910.1200 contains workplace safety regulations[4] implemented under the Occupational Safety and Health Act (OSHA). See 29 U.S.C. § 651(b); 29 C.F.R. § 1910.1200 (2020). Congress enacted OSHA to assure so far as possible that every worker has "safe and healthful working conditions." 29 U.S.C. § 651(b). Congress included a "savings clause" that demonstrates a clear intent to preserve and not preempt state tort law. See 29 U.S.C. § 653(b)(4); *In re Welding Fume Product Liability Litigation*, 364 F. Supp. 2d 669, 688-89 (2005); *Wickham v. American Tokyo Kasei, Inc.*, 927 F. Supp. 293 (1996); *Pedraza v. Shell Oil Co.*, 942 F.2d 48, 54 (1st Cir. 1991). Section 1910.1200 contains a preemptive provision.[5] 29 C.F.R. § 1910.1200(a)(2). This provision has been construed to preempt state tort law only when

[4]Each employer has a duty to furnish to his employees "employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees," and a duty to comply with OSHA standards, rules, regulations, and orders. 29 U.S.C. § 654(a).

[5]The HazCom Standard contains a provision indicating that it is "intended to address comprehensively the issue of classifying the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, and to preempt any legislative or regulatory enactments of a state, or political subdivision of a state, pertaining to this subject." 29 C.F.R. § 1910.1200(a)(2).

a state's tort law directly, clearly, and substantially conflicts with federal law. *Welding Fume Product Liability Litigation*, 364 F. Supp. 2d at 692.

¶ 35 Section 1910.1200 is commonly called the "HazCom Standard." The stated purpose of the HazCom Standard is to "ensure that the hazards of all chemicals produced or imported are classified, and that information concerning the classified hazards is transmitted to all employers and employees by means of safety data sheets or labels." 29 C.F.R. § 1910.1200(a)(1). Containers holding hazardous chemicals must be labeled, tagged, and marked with "appropriate hazard warnings." 29 C.F.R. § 1910.1200(f)(1), (5). The HazCom Standard requires that labels include a product identifier, signal words, hazard statement, pictograms, precautions statements, and contact information for the chemical manufacturer, importer, or other responsible party (29 C.F.R. § 1910.1200(f)(1)), but it does not mandate a specific label, prescribe specific content or wording, or define what makes a hazard warning "appropriate." Furthermore, these labeling requirements do not apply to all chemicals and hazardous waste substances. See 29 C.F.R. § 1910.1200(b)(5), (6).

¶ 36 The HazCom Standard pertains to regulations governing employers and employees in the workplace, and "does not reach broadly to include common law duties to warn owed by manufacturers and suppliers to end users of their products." *Welding Fume Product Liability Litigation*, 364 F. Supp. 2d at 692-93 (citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 488-89 (1996)). The plaintiff's unfair and deceptive practice claims do not pertain to workplace safety. Additionally, these claims are directed at the manufacturers, distributors, and suppliers of the subject products, not employers. The

alleged deception involves the failure to notify consumers that the defendants' products contain excessive amounts of phosphorous and VOMs; that there are limits on the approved uses of the products; and that the products could be harmful to the environment and human health. Even if the subject product labeling is found to comply with an applicable federal regulation, consumers may nonetheless be deceived about the quality and safety of the products. See *Martin*, 163 Ill. 2d at 50-52 (customers may be deceived about material facts despite receiving information required by an agency's regulations).

¶ 37 Bare assertions that a product label complies with a federal regulation are insufficient to support a motion to dismiss. A defendant must provide legal arguments and supporting documentation so that the trial court can determine whether the federal regulation applies to a particular claim, and whether compliance with that regulation provides a complete defense to the claim. In this case, the defendants have not established that section 1910.1200 would trigger the exemptions in the UDPTA and/or the ICFA. Accordingly, it was error to dismiss the second amended complaint on that basis.

¶ 38 *The ICFA Claims*

¶ 39 The trial court also determined that the plaintiff failed to plead actionable claims under the ICFA. The court found that the plaintiff did not establish standing to pursue its claims. The court also found that the ICFA claims were deficient because the plaintiff alleged an omission of law, rather than an omission of fact, and because the plaintiff did not adequately allege that it suffered damages proximately caused by the unfair or deceptive practices.

¶ 40 The ICFA is a regulatory and remedial statute intended to protect consumers, borrowers, and businesspersons from fraud, unfair methods of competition, and other unfair and deceptive acts or practices in the conduct of trade or commerce, and it is to be liberally construed to effectuate its purpose. *Robinson*, 201 Ill. 2d at 416-17. To state a claim under the ICFA, a plaintiff must allege that (1) the defendant committed a deceptive act or practice, (2) the defendant intended the plaintiff to rely on the deception, and (3) the deception occurred during a course of conduct involving trade or commerce. *Robinson*, 201 Ill. 2d at 417. The plaintiff's actual reliance is not an element of statutory fraud, but the plaintiff must show that the consumer fraud proximately caused the plaintiff's injury. *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 501 (1996). A complaint for statutory consumer fraud violation must be alleged with the same particularity and specificity as required under common law fraud. *Connick*, 174 Ill. 2d at 501. To bring an action for civil damages under the ICFA, the plaintiff must prove that it suffered actual damages. 815 ILCS 505/10a(a) (West 2020); *White v. DaimlerChrysler Corp.*, 368 Ill. App. 3d 278, 283 (2006).

¶ 41 Section 2 of the ICFA provides:

> "Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact *** in the conduct of any trade or

commerce[6] are hereby declared unlawful whether any person has in fact been misled, deceived or deceived or damaged thereby." 815 ILCS 505/2 (West 2020).

¶ 42 The protections of the ICFA are not limited to consumers. That is made clear by the full title of the Act, "An Act to protect consumers and borrowers and businessmen against fraud, unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce ***." (Emphasis omitted and internal quotation marks omitted.) *Sullivan's Wholesale Drug Co. v. Faryl's Pharmacy, Inc.*, 214 Ill. App. 3d 1073, 1082 (1991). There is "a clear mandate from the Illinois legislature that [Illinois] courts *** utilize the Act to the utmost degree in eradicating all forms of deceptive and unfair business practices and grant appropriate remedies to injured parties." (Internal quotation marks omitted.) *Downers Grove Volkswagen, Inc. v. Wigglesworth Imports, Inc.*, 190 Ill. App. 3d 524, 534 (1989). Thus, aggrieved businesses have standing to sue under the ICFA. *Sullivan's Wholesale Drug Co.*, 214 Ill. App. 3d at 1083; *Wigglesworth Imports*, 190 Ill. App. 3d at 534.

¶ 43 The plaintiff readily admits it is not a consumer of the defendants' products. The question is whether the plaintiff has alleged sufficient facts to establish standing under the "consumer nexus" test.

¶ 44 When a dispute involves two businesses who are not consumers of each other's products or services, the test for standing is whether the deceptive conduct involves trade

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[6]The terms "trade" and "commerce" mean "the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State." 815 ILCS 505/1(f) (West 2020).

practices addressed to the market generally or otherwise implicates consumer protection concerns. See *Empire Home Services, Inc. v. Carpet America, Inc.*, 274 Ill. App. 3d 666, 669 (1995); *Wigglesworth Imports*, 190 Ill. App. 3d at 534. To sufficiently establish an implication of consumer protection concerns, plaintiffs must plead and otherwise prove the following: "(1) that their actions were akin to a consumer's actions to establish a link between them and consumers; (2) how defendant's representations *** concerned consumers other than themselves; (3) how defendant's particular breach *** involved consumer protection concerns; and (4) how the requested relief would serve the interests of consumers." *Brody v. Finch University of Health Sciences/The Chicago Medical School*, 298 Ill. App. 3d 146, 160 (1998).

¶ 45 Here, the plaintiff alleged that the defendants directed their deceptive practices toward consumers. The defendants allegedly deceived consumers about the ingredients, approved uses, and quality of defendants' cleaning products, and the harmful impact of those products on the environment and human health. The plaintiff further alleged that the defendants knowingly and willfully charged a premium for their products, as if those products were legal and of a superior quality; and that the defendants profited from the sale of illegal products to unwary Illinois consumers. The plaintiff also asserted that the defendants' practices created an anticompetitive effect on the plaintiff's ability to place safe and compliant products into the marketplace and to compete there. Taking these allegations and all reasonable inferences therefrom as true, we find that the alleged conduct sufficiently implicates consumer protection concerns to establish standing. Thus, the trial court erred in dismissing the plaintiff's ICFA claims based on a lack of standing.

¶ 46 The trial court next found that the plaintiff failed to adequately allege a deceptive statement or omission under the ICFA. Initially, the court pointed to the plaintiff's allegation that the defendants deceptively omitted to inform customers that their products were "illegal *per se*" because they contained excessive phosphorous. The court found that this allegation was legally incorrect in many circumstances because the Detergents Act contains several exceptions to the 0.5% limit on phosphorous in detergents, including exceptions for cleaning products used in health care facilities, nursing homes, commercial bathrooms, and veterinary facilities.

¶ 47 Under the Detergents Act, "no person may use, sell, manufacture, or distribute for sale any cleaning agent containing more than 0.5% phosphorous by weight, *** except as otherwise provided in this Section." 415 ILCS 92/5(a) (West 2020). There are limited exceptions. For example, cleaning agents containing more than 0.5% phosphorous may be used in hospitals, clinics, nursing homes, and veterinary hospitals. 415 ILCS 92/5(b) (West 2020). The plaintiff has conceded that the "illegal *per se*" language is imprecise, acknowledging that when it alleged the subject products were "illegal *per se*," it meant that Illinois bans them "for general sale and use." Viewing this specific allegation in isolation, we agree that it is not accurate. Upon proper motion, the *per se* language in the allegation may be stricken from the second amended complaint, or excised and corrected. The inaccurate allegation, however, is not a proper basis for dismissing the ICFA claims in their entirety. Considered as a whole, the ICFA claims are premised upon the defendants' failure to disclose the ingredients, quality, restrictions on uses of their

products, and the defendants' actions in misleading consumers into purchasing their products, while charging a premium as if the products were of superior quality.

¶ 48 The trial court also found that the ICFA claims were deficient because the plaintiff alleged an omission of law, rather than an omission of fact. Generally, a deceptive representation of law does not constitute a violation of the ICFA because both parties are presumed to be equally capable of knowing and interpreting the law. See generally *Capiccioni v. Brennan Naperville, Inc.*, 339 Ill. App. 3d 927, 933 (2003); *Randels v. Best Real Estate, Inc.*, 243 Ill. App. 3d 801, 805 (1993). The test is whether the misrepresentation could have been discovered by merely reviewing the applicable law. *Capiccioni*, 339 Ill. App. 3d at 934.

¶ 49 Here, the plaintiff alleged that the defendants engaged in unfair and deceptive practices in that defendants failed to notify consumers that the subject products contained quantities of phosphorous and/or VOMs in excess of the amounts permitted under Illinois law; that they had restricted uses; and that they posed potential harm to human health and the environment. These are misrepresentations or omissions of fact that concern the specific ingredients, qualities, and uses of the subject products. In addition, on this record, we cannot conclude that consumers might have learned whether they could safely and lawfully use these products by reviewing provisions of the Detergents Act.

¶ 50 The plaintiff also argues that the trial court failed to consider its allegations under the unfairness prong of its ICFA claim. The statute affords redress not only for deceptive business practices, but also for business practices that, though not deceptive, are unfair. *Robinson*, 201 Ill. 2d at 417. Factors to be considered when determining whether a course

of conduct or an act is unfair are "(1) whether the practice offends public policy; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers." *Robinson*, 201 Ill. 2d at 418 (citing *Federal Trade Comm'n v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 n.5 (1972)). All three criteria do not need to be satisfied to support a finding of unfairness, as a practice may be unfair because of the degree to which it meets one of the factors or because it meets all three to a lesser extent. *Robinson*, 201 Ill. 2d at 418.

¶ 51 The plaintiff adequately alleged that the defendants have engaged in conduct that offends the public policies underlying the Detergents Act, and other Illinois environmental laws. The plaintiff also alleged substantial injury to consumers in that the defendants knowingly and willfully charged a premium for their products, as if they were legal and of a superior quality, and thus, profited at the expense of unwary consumers. Additionally, the plaintiff alleged that defendants' conduct posed substantial harm to human health and the environment. Thus, we find that the plaintiff sufficiently alleged a claim for unfair business practices under the ICFA. *Robinson*, 201 Ill. 2d at 417-18.

¶ 52 The trial court also found that the plaintiff failed to adequately allege proximate cause. Proximate cause means any cause which, in nature or probable sequence, produced the alleged injury. *Capiccioni*, 339 Ill. App. 3d at 937. Proximate cause is a question of fact for the trier of fact. *Sullivan's Wholesale Drug Co.*, 214 Ill. App. 3d at 1086. Our supreme court has said that the required allegation of proximate harm is "minimal" because that determination is best left to the trier of fact. *Connick*, 174 Ill. 2d at 504. Here, the plaintiff alleged the defendants knowingly and willfully misled consumers into

purchasing their products, and knowingly and willfully charged a premium as if their products were of superior quality. Potential customers allegedly refused to purchase the plaintiff's phosphorous-free products because the defendants' phosphorous-laden products cleaned better than plaintiff's products. The plaintiff alleged that the defendants acted willfully and intentionally, with the intent to economically harm the plaintiff, and further, that as a direct and proximate result of the defendants' acts, the plaintiffs were unable to compete in the marketplace. The plaintiff also alleged that the defendants profited from the sale of their products, and that the plaintiff suffered and continues to suffer a loss of the ability to compete in the marketplace and a loss of sales caused by the defendants' deceptive trade practices. The plaintiff has adequately alleged injuries proximately caused by the defendants' deceptive practices.

¶ 53 Taking the allegations under the ICFA as true, and viewing them in a light most favorable to the plaintiff, for purposes of the section 2-615 motions to dismiss, we do not find them to be so non-specific or speculative as to require dismissal. Whether the plaintiff can present evidence to support its allegations is for another day. At this stage of the litigation, we find that the plaintiff's complaint contains sufficient allegations under the ICFA to survive the defendants' motions to dismiss.

¶ 54 *The UDTPA Claims*

¶ 55 The trial court also found that the plaintiff failed to plead actionable claims under the UDTPA. Applying "likelihood of confusion," as defined in trademark infringement cases, the court concluded that the plaintiff failed to adequately allege the type of marketplace confusion among products and services that is actionable under the UDTPA.

¶ 56 The UDTPA provides consumers and business competitors with a means to address and remedy a company's deceptive trade practices, but limits the relief available. 815 ILCS 510/3 (West 2020); *Empire Home Services, Inc. v. Carpet America, Inc.*, 274 Ill. App. 3d 666, 670 (1995); *Zinser v. Rose*, 245 Ill. App. 3d 881, 889 (1993). The purpose of the UDTPA is "to prohibit unfair competition." *Phillips v. Cox*, 261 Ill. App. 3d 78, 81 (1994). It is primarily directed toward acts that "unreasonably interfere with another's conduct of his business." (Internal quotation marks omitted.) *Phillips*, 261 Ill. App. 3d at 81. Under the UDTPA, business competitors have standing to file suit and enjoin deceptive business practices of a rival company. *Zinser*, 245 Ill. App. 3d at 889.

¶ 57 Section 2 of the UDTPA provides in pertinent part:

> "(a) A person engages in a deceptive trade practice when, in the court of his or her business, vocation, or occupation, the person:
>
> * * *
>
> (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;
>
> ***
>
> (7) represents that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another;
>
> * * *

(12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

(b) In order to prevail in an action under this Act, a plaintiff need not prove competition between the parties or actual confusion or misunderstanding." 815 ILCS 510/2 (West 2020).

¶ 58 In this case, the trial court incorrectly concluded that a "likelihood of confusion" under the UDTPA was limited to cases in which a defendant's use of a trade name, trademark, or other distinctive symbol was likely to confuse or mislead consumers as to the source or origin of the product. " 'Unfair competition is a broader concept than trademark infringement and depends upon likelihood of confusion as to the source of plaintiff's goods when the whole product, rather than just the service mark, is considered.' " *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 865 (2008) (quoting *Thompson v. Spring-Green Lawn Care Corp.*, 126 Ill. App. 3d 99, 113 (1984)); *Empire Home Services*, 274 Ill. App. 3d at 670. Any conduct that creates a likelihood of consumer confusion or misunderstanding is potentially actionable under subsection 2(a)(12). *Phillips*, 261 Ill. App. 3d at 81-82.

¶ 59 The plaintiff alleged that the defendants represented their cleaning products to have approvals, uses, and qualities that they did not have. The defendants also allegedly failed to disclose that their products contained excessive quantities of phosphorous and VOMs, and as such, did not comply with Illinois environmental laws and regulations. The plaintiff further alleged that unwary consumers in the marketplace believed that the defendants' products were legal and complied with Illinois law because those products

were offered for sale alongside the plaintiff's compliant products. Those consumers, confused by the defendants' misrepresentations, purchased defendants' cleaning products (and refused to purchase the plaintiff's cleaning products) because they were led to believe that the defendants' products were safe and of superior quality. The allegations fit within the deceptive acts set forth in section 2(a) of the UDTPA (815 ILCS 510/2(a) (West 2020)). Taking the allegations and the reasonable inferences therefrom as true, and viewing them in a light most favorable to the plaintiff, we find that the plaintiff alleged sufficient facts to show a likelihood of marketplace confusion that is actionable under the UDTPA.

¶ 60 Some of the defendants contend that the plaintiff failed to allege sufficient facts to establish willful violations of the UDTPA to support its prayer for attorney fees, and they ask this court to strike that claim. Section 3 of the UDTPA provides that costs and reasonable attorney fees may also be awarded, but only if the court finds that the defendant "willfully engaged" in a deceptive practice. 815 ILCS 510/3 (West 2020). After reviewing the second amended complaint, we find that the plaintiff adequately alleged willful violations sufficient to support a prayer for attorney fees under section 3 of the UDTPA. Whether the plaintiff can present sufficient evidence to prove its claims is not before us.

¶ 61 *Civil Conspiracy*

¶ 62 Finally, the trial court found that the plaintiff's civil conspiracy claim failed as a matter of law. The court reasoned that civil conspiracy is not an independent tort, and that there must be an independent cause of action underlying a plaintiff's conspiracy claim.

The court concluded that the conspiracy count was dependent on the existence of violations of the ICFA or the UDTPA, and that the plaintiff failed to plead sufficient facts to state a cause of action under either theory. Here, we have determined that the plaintiff adequately asserted claims under the ICFA and the UDTPA, and therefore the plaintiff's claim for civil conspiracy also survives defendants' 2-615 motions to dismiss.

¶ 63 III. CONCLUSION

¶ 64 Although the plaintiff's second amended complaint is not a model pleading, it is not so lacking in relevant factual allegations as to warrant a dismissal on the pleadings. Upon proper motion by any party, inaccurate and surplus allegations can be stricken. As we noted early on, the granting of a motion to dismiss for failure to state of cause of action should be affirmed when no set of facts can be proved that will entitle the plaintiff to relief. Taking the allegations and reasonable inferences as true, and viewing them in a light most favorable to the plaintiff, we find that the plaintiff has alleged sufficient facts to state claims under the ICFA, the UDTPA, and for civil conspiracy. Accordingly, the trial court's judgment dismissing the plaintiff's second amended complaint with prejudice is reversed, and the cause is remanded for further proceedings.

¶ 65 Reversed and remanded.

IN THE CIRCUIT COURT FOR THE
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

TRI-PLEX TECHNICAL SERVICES, LTD.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 20-L-0237
	)	
JON-DON, LLC, *et al.*,	)	
	)	
Defendants.	)	

ORDER

I. Background.

The Second Amended Complaint filed by Plaintiff, Tri-Plex Technical Services, Ltd., asserts claims against a number of Plaintiff's competitors under the Illinois Uniform Deceptive Trade Practices Act ("UDTPA"), 815 ILCS 510/1 *et seq.*, and the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/1 *et seq*. Specifically, Plaintiff asserts claims under the UDTPA against Defendants Jon-Don, LLC ("JDL"), Legend Brands, Inc. ("Legend"), Chemical Technologies International, Inc. ("CTI"), Bridgepoint Systems ("Bridgepoint"), Groom Industries ("Groom"), and HydraMaster LLC ("HydraMaster") in Counts I, III, VI, VIII, X, XII, and XIV, respectively. Plaintiff asserts claims under the ICFA against JDL, Legend, CTI, Bridgepoint, Groom, and HydraMaster in Counts II, IV, VII, IX, XI, and XIII, respectively. Plaintiff also asserts a civil conspiracy claim against JDL and Legend in Count V.[1]

[1] Counts XIV and XV of the Second Amended Complaint assert claims against Defendant Chemeisters, Inc., which Plaintiff voluntarily dismissed from the case. Accordingly, those Counts are no longer pending.

Each of Plaintiff's UDTPA and ICFA claims are based on the allegation that each Defendant's products contain more than 0.5% phosphorous by weight in violation of the Illinois Regulation of Phosphorous in Detergents Act (the "Detergents Act"), 415 ILCS 92/5 (*see, e.g.*, Second Am. Compl. ¶ 75) and/or contain more than 0.1% VOM by weight in violation of the Illinois Pollution Control Board's Standards and Limitations of Organic Material Emissions for Area Sources (the "Board Emissions Standards"), 25 Ill. Adm. Code 223.205(a)(17)(B) (*see, e.g.*, Second Am. Compl. ¶¶ 78-79).

This matter is before the Court on the following motions:

1. CTI's Motion to Strike as to Count VI and the Prayer for Relief in Plaintiff's Second Amended Complaint;
2. CTI's Combined Motion to Dismiss Count VII of Plaintiff's Second Amended Complaint and Supporting Memorandum of Law;
3. HydraMaster's Motion to Dismiss Second Amended Complaint;
4. JDL's Motion to Dismiss Plaintiff's Second Amended Complaint for Failure to State a Claim and for Lack of Standing;
5. Legend's Motion to Dismiss Second Amended Complaint; and
6. Bridgepoint's and Groom's Motion to Dismiss Second Amended Complaint.

The above motions are fully briefed, and the Court heard arguments on May 6, 2021. While the pending motions contain both overlapping and unique arguments, the moving parties have indicated that each incorporates the arguments of the others to the extent applicable. Accordingly, this Opinion and Order will address the pending motions collectively.

II. Analysis.

A. Standard of Review.

"A motion to dismiss under section 2-615(a) . . . tests the legal sufficiency of a plaintiff's claim." *Solaia Tech., LLC v. Specialty Pub. Co.*, 221 Ill. 2d 558, 579 (2006). Illinois is a "fact-pleading jurisdiction," which requires Plaintiff to "allege facts sufficient to bring a claim within a legally recognized cause of action . . . , not simply conclusions[.]" *Marshall v. Burger King Corp.*, 222 Ill.2d 422, 429-30 (2006). "[A] plaintiff may not rely on mere conclusions of law or fact unsupported by specific factual allegations." *Pooh-Bah Enters., Inc. v. Cty. of Cook*, 232 Ill. 2d 463, 473 (2009). "Fact pleading imposes a heavier burden on the plaintiff" than other jurisdictions that only require a plaintiff to put a defendant on notice of a claim, "so that a complaint that would survive a motion to dismiss in a notice-pleading jurisdiction might not do so in a fact-pleading jurisdiction." *City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099, 1112 (Ill. 2004).

B. Alleged Violations of Environmental Laws Cannot Form the Basis of Plaintiff's Claims.

The Second Amended Complaint presents this Court with the following question:

> Can alleged violations of environmental statutes and regulations (which do not create a private right of action and over which the State maintains exclusive enforcement authority) form the basis of statutory claims under the UDTPA and ICFA?

As this Court will outline below, respectfully the authority cited by the moving parties confirms this above question must be answered in the negative.

Plaintiff does not dispute that neither the Detergents Act nor the Board Emissions Standards creates a private right of action for Plaintiff to bring against its competitors. Indeed, the language of the relevant statutes and regulations confirm otherwise. Point in fact, the Detergents Act expressly provides "[t]he regulation of phosphorus in detergents is an exclusive power and

function of the State." 415 ILCS § 92/5(f). It further provides "[t]he Illinois Pollution Control Board shall promulgate rules for the administration and enforcement of the provisions of this Section." *Id.* § 92/5(e). Similarly, the Illinois Pollution Control Board hears and decides environmental enforcement actions related to the Board Emissions Standards. *See* 415 ILCS 5. The moving parties cite *Manzo v. Uber Technologies, Inc.*, No. 13 C 2407, 2014 WL 3495401 (N.D. Ill. July 14, 2014) in support of their argument that Plaintiff's UDTPA and ICFA claims cannot be premised on alleged violations of the Detergents Act and Board Emissions Standards. In *Manzo*, the court applied Illinois law to dismiss UDTPA and ICFA claims based on alleged violations of the Chicago Municipal Code. The court held that the plaintiff "cannot use the ICFA or the []UDTPA 'as a backdoor method'" to bring a claim that the defendants violate laws and ordinances. *Id.* at *4. Here, this Court finds *Manzo* to be both instructive and persuasive. In addition, Plaintiff was unable to identify any authority – from Illinois or elsewhere – recognizing deceptive trade or consumer practices claims based on alleged violations of environmental statutes and regulations enforced by the government.

Plaintiff suggested during oral argument that its claims are akin to a negligence claim based on conduct like speeding, which could constitute both a violation of an ordinance and evidence of a breach of a standard of care. This analogy is inapposite. Plaintiff's claims under the UDTPA and ICFA are not common law claims in which the actionable conduct is generally undefined. Rather, Plaintiff's claims are creatures of statute designed to provide a remedy for improper trade or consumer sales practices. Similar to the ordinances at issue in *Manzo*, alleged violations of the Detergents Act and Board Emissions Standards are not within the scope of conduct that give rise to a private cause of action under the UDTPA or ICFA. Accordingly, Counts I through IV and VI through XIII fail to state a claim and must be dismissed.

C. Plaintiff's UDTPA and ICFA Claims Are Barred Due to Compliance with Federal Regulations.

BridgePoint, JDL, and Groom raise an additional basis for dismissing Plaintiff's UDTPA and ICFA claims pursuant to exemptions set forth in those statutes. Specifically, the UDTPA provides that it does not apply to "conduct in compliance with the orders or rules of or a statute administered by a Federal, state or local governmental agency." 815 ILCS 510/4(1). Similarly, the ICFA provides that "nothing in this Act shall apply to . . . [a]ctions . . authorized by laws administered by any regulatory body . . . acting under statutory authority of this State or the United States." 815 ILCS 505/10b(1); *see Swanson v. Bank of Am., N.A.*, 566 F. Supp. 2d 821, 828 (N.D. Ill. 2008) (finding that the plaintiff could not state a claim under the ICFA because the defendants' practices complied with federal law), *aff'd*, 559 F.3d 653 (7th Cir. 2009). Compliance with federal regulations is a complete defense to consumer fraud claims based on the alleged failure to make additional disclosures related to a product. *Lanier v. Assocs. Fin., Inc.*, 114 Ill. 2d 1, 17, 499 N.E.2d 440, 447 (1986) ("[W]e perceive in the disclosure provisions of Illinois' consumer credit statutes a consistent policy against extending disclosure requirements under Illinois law beyond those mandated by [federal law], in situations where both [federal law] and the Illinois statutes apply."); *Jackson v. S. Holland Dodge, Inc.*, 197 Ill. 2d 39, 49, 755 N.E.2d 462, 469 (2001) ("[T]here is a consistent policy throughout Illinois law against extending disclosure requirements beyond what is mandated by federal law.").

Plaintiff alleges that Defendants' product labels fail to specify that particular products do not comply with Illinois law. *See, e.g.*, Second Am. Compl. ¶¶ 132, 151. The content of product labels falls within the scope of federal regulations requiring the disclosure of certain information, including the presence of hazardous chemicals. *See* 29 C.F.R. § 1910.1200(a)(1). Plaintiff does not plausibly allege noncompliance with such regulations nor identify any other law or regulation

requiring disclosure of alleged noncompliance with the Detergents Act or Board Emissions Standards. Accordingly, BridgePoint's, JDL's, and Groom's argument in this regard is well-taken, and Defendants' alleged conduct falls within the scope of the exemptions set forth in the UDTPA and ICFA.

D. Plaintiff Fails to Otherwise Plead Actionable Claims Under the UDTPA or ICFA.

In addition to the impermissible environmental underpinnings to Plaintiff's UDTPA and ICFA claims, the moving parties have identified additional bases for dismissal that must be addressed. This Court finds Plaintiff has failed to plausibly allege claims under UDTPA and ICFA for several reasons. Plaintiff has not alleged marketplace confusion under the UDTPA; cannot satisfy the "consumer nexus" test to confer standing under the ICFA; and has not sufficiently alleged a deceptive statement or omission under ICFA.

1. No deceptive conduct or marketplace confusion under the UDTPA.

Under the UDTPA, Plaintiff must show that Defendants engaged in one of the types of deceptive conduct enumerated in the statute. Plaintiff relies on the following sections of the UDTPA to support its claim:

> [a] person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person:
>
> . . .
>
> (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods and services;
>
> . . .
>
> (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;
>
> . . .
>
> (12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

815 ILCS 510/2(a). Specifically, for example, Plaintiff alleges that Legend Brands violated subsections (a)(2), (5), and (12) of the UDTPA because it "omits from its labeling or otherwise

fails to notify the consuming public" that its products are allegedly "illegal" under the Detergents Act and Board Emissions Standards. Second Am. Compl. ¶¶ 76, 82. These allegations fail to describe the type of confusion necessary to plead a UDTPA claim.

It is this Court's understanding, "likelihood of confusion" under the UDTPA has the same meaning as it does in trademark infringement cases. *See McGraw–Edison Co. v. Walt Disney Prods.*, 787 F.2d 1163, 1174 (7th Cir. 1986). In trademark infringement cases, "'likelihood of confusion' exists when the defendant's use of a deceptive trade name, trademark, or other distinctive symbol is likely to confuse or mislead consumers as to the source or origin of the product or service." *ATC Healthcare Servs., Inc. v. RCM Techs., Inc.*, 192 F. Supp. 3d 943, 953 (N.D. Ill. 2016) (citations omitted).

Examining the allegations against this definition, Plaintiff fails to allege a deceptive trade practice under the UDTPA. Plaintiff's allegations do not involve confusion between Defendants' products and Plaintiff's (or any other entity's) products. *See Patel v. Zillow, Inc.*, No. 17 C 4008, 2018 WL 2096453, at *7 (N.D. Ill. May 7, 2018), *aff'd*, 915 F.3d 446 (7th Cir. 2019). Instead, Plaintiff alleges that Defendants caused "a likelihood of confusion or of misunderstanding in the marketplace" because its products are "marketed, advertised and sold as legal products" when in fact they are "are illegal." Second Am. Compl. ¶¶ 77, 82. *See Patel*, 2018 WL 2096453, at *7 (dismissing UDTPA claim in part based on plaintiffs' "fail[ure] to assert the type of confusion among products or services that is actionable under the [U]DTPA."). Even taking Plaintiff's allegations as true, they do not allege the type of marketplace confusion prohibited by the UDTPA.

2. No standing under the ICFA.

The ICFA "is a regulatory and remedial statute intended to protect consumers, borrowers, and business persons against fraud, unfair methods of competition, and other unfair and deceptive

practices." *Siegel v. Shell Oil Co.*, 612 F.3d 932, 934 (7th Cir. 2010) (quoting *Robinson v. Toyota Motor Credit Corp.*, 201 Ill.2d 403, 416 (Ill. 2002). As a threshold requirement, to bring an ICFA claim, a plaintiff must either: (1) be a "consumer"; or (2) if a non-consumer, satisfy the "consumer nexus" test. *Tile Unlimited, Inc. v. Blanke Corp.*, 788 F. Supp. 2d 734, 738 (N.D. Ill. 2011).

As Plaintiff concedes it is not a consumer, Plaintiff must satisfy the challenging "consumer nexus" test to bring a claim under the ICFA. *Tile Unlimited, Inc.*, 788 F. Supp. at 738; *Cmty. Bank of Trenton v. Schnuck Markets, Inc.*, 887 F.3d 803, 823 (7th Cir. 2018) ("Illinois courts are skeptical of business-v.-business ICFA claims when neither party is actually a consumer in the transaction."). The consumer nexus test requires Plaintiff to allege "conduct that involves trade practices addressed to the market generally or otherwise implicates consumer protection concerns." *Roppo v. Travelers Co.*, 100 F. Supp. 3d 636, 651 (N.D. Ill. 2015) (citation and alteration omitted). Put differently, "[t]o implicate consumer protection concerns, there must be a connection between the alleged misconduct and the wider marketplace, as well as a connection between the requested relief and consumers generally." *ATC Healthcare Servs., Inc.*, 282 F. Supp. 3d at 1051 (citing *Brody v. Finch Univ. of Health Scis./The Chicago Med. Sch.*, 298 Ill.App.3d 146, 159 (2d Dist. 1998)).

A plaintiff fails to meet the consumer nexus test where "the complaint alleges only that [d]efendants' false representations about [a product] were directed to [the plaintiff] and other [business entities], not to consumers." *Tile Unlimited, Inc.*, 788 F. Supp. at 740; *see also Onvi, Inc. v. Radius Project Dev., Inc.*, No. 19 C 3201, 2020 WL 4607242, at *5 (N.D. Ill. Aug. 11, 2020) (dismissing plaintiff's non-consumer ICFA claims because plaintiff's allegations demonstrated that defendant's conduct was directed at potential business clients as opposed to consumers generally). Here, Plaintiff alleges that Defendants "manufacture[], distribute[], sell[],

advertise[], market[], and deliver[] . . . carpet cleaning products to carpet care industry professionals." *See, e.g.*, Second Am. Compl. ¶¶ 10, 11. As such, Plaintiff concedes that Defendants direct their conduct at other business entities as opposed to consumers generally, and the Second Amended Complaint contains no allegations to the contrary.

Moreover, Plaintiff's allegations of any purported market impact are limited to its own competitive interests based on the buying habits of other business entities – "carpet care industry professionals" that Plaintiff refers to as its "potential customers." *See, e.g.*, Second Am. Compl. ¶¶ 10, 36, 46, 91, 93, 94, 95. Averments directed toward other business entities and Plaintiff's "potential customers" cannot establish a consumer nexus. Accordingly, Plaintiff lacks standing under the ICFA.

3. Failure to allege a deceptive statement or omission under ICFA.

The Court finds that Plaintiff's ICFA claims are deficient for another reason: Plaintiff fails to plead a deceptive statement or omission. To state a claim under ICFA, Plaintiff must allege a statement or omission that would be deceptive to a reasonable customer. *See Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill.2d 45, 74 (2007). Plaintiff alleges that Defendants deceptively omitted to inform customers that their products were "illegal per se" because they contain excessive phosphorus. *See, e.g.*, Second Am. Compl. ¶¶ 132-33. However, as Defendants point out, their products are not illegal "per se." There are numerous exceptions to the Detergents Act's prohibition. For example, the phosphorus limit does not apply to cleaning products used in health care facilities, veterinary facilities, nursing homes, commercial bathrooms, or medical and scientific laboratories. *See* 415 ILCS 92/5(c)(3)-(4). A product containing more than 0.5% phosphorus may be illegal to use and sell. Or it may not be, depending on where and how the customer intends to use it. In many instances, the statement Plaintiff alleges the Defendants were

required to make—that their products were not in compliance with Illinois law—would be incorrect. The Court cannot conclude it is plausibly alleged that a reasonable customer would be deceived by Defendants' failure to make a statement that would be incorrect legally in many circumstances.

4. Failure to allege a misrepresentation of fact.

The ICFA claims fail for the additional reason that the claim is based on alleged omissions of law rather than misrepresentations or omissions of material fact. As noted above, Plaintiff alleges that the Defendants' phosphorus-containing products identified in the Second Amended Complaint are "illegal per se" in Illinois, but that is not correct: the products are allegedly legal for some uses and illegal for others.

Because the mere sale of a phosphorus-containing product to a carpet-cleaning professional is not prohibited, the ICFA claim depends on the allegation that the defendants do not specifically advise their customers that Illinois law prohibits phosphorus-containing products from being used in certain situations. More directly, Plaintiff complains that Defendants do not specifically make their customers aware of the existence of, or the provisions of, the Detergents Act. The failure to advise another of the legal implications of an act or transaction is not an actionable omission for purposes of the ICFA. *See, e.g., Notaro Homes, Inc. v. Chicago Title Ins. Co.*, 309 Ill.App.3d 246 (2d Dist. 1999); *Randels v. Best Real Estate, Inc.*, 243 Ill.App.3d 801 (2d Dist. 1993).

Plaintiff responds by claiming that it is not complaining that Defendants fail to advise their customers of the provisions of the Detergents Act, but that Defendants fail to advise their customers of the exact amount of phosphorus in their products. However, as Plaintiff has apparently conceded, Defendants do in fact disclose the existence of phosphorus in their products through their Material Safety Data Sheets. Plaintiff argues that it would be difficult (although not

impossible) for a purchaser of Defendants' products to ascertain the exact amount of phosphorus from the Safety Data Sheets alone, but nothing prevents them from doing so. Since all parties are presumed to be equally capable of knowing and interpreting the law (*Notaro Homes, Inc. v. Chicago Title Ins. Co.*, 309 Ill.App.3d 246, 258 (2d Dist. 1999)), it must be assumed that the potential customers of Defendants are aware of the Detergents Act and can conduct their business accordingly.

Plaintiff does not allege that Defendants actively conceal or misrepresent to potential customers the amount of phosphorus in their products. Rather, Plaintiff's allegations make clear that its grievance with Defendants is that they do not tell their customers about the potential legal ramifications of the use of Defendants' products. Simply stated, the Second Amended Complaint alleges that Plaintiff has been damaged because Defendants do not give their customers legal advice regarding the use of their products. This is not actionable under ICFA.

5. Failure to allege proximate cause.

An ICFA claim requires the plaintiff to plead and prove that it has suffered damages as a result of the defendant's alleged conduct. *See Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill.App.3d 849, 869 (1st Dist. 2008). "Although a *violation* of the Consumer Fraud Act may occur in the absence of damages, a *private cause of action* does not arise absent a showing of both a violation and resultant damages." *Id.* (quoting *Tarin v. Pellonari*, 253 Ill.App.3d 542, 554 (1st Dist. 1993) (emphasis in original)). In other words, allegations that a defendant's conduct may be injurious to the public as a whole are not sufficient to state a private cause of action for damages under the Act.

The Second Amended Complaint contains several *conclusory* allegations that Plaintiff has been harmed as a result of the defendants' alleged conduct, but the only allegation of causation

that can arguably be classified as a specific *factual* allegation of causation is in Paragraph 36, which is directed to all defendants collectively: "Potential customers refuse to purchase or use the Plaintiff's phosphorous-free Go Clean Pre-Spray cleaning agent, because, they report, Defendants' *collective* phosphorous-laden products clean better than Plaintiff's phosphorous-free product" (emphasis added). These allegations are insufficient to allege a specific causal connection between alleged conduct of any individual defendant and Plaintiff's alleged loss of customers. Plaintiff alleges only that its potential customers prefer phosphorus-containing products *in general*. There are no allegations that any of Plaintiff's customers or potential customers have purchased any product from any particular Defendant or have expressed any intention to do so. This does not meet the fact-pleading standards under Illinois law.

E. Plaintiff's Civil Conspiracy Claim Against JDL and Legend Fails as a Matter of Law.

Under Illinois law, the "elements of civil conspiracy are: (1) a combination of two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act." *Fritz v. Johnston*, 209 Ill.2d 302, 317, 282 Ill.Dec. 837, 807 N.E.2d 461 (2004). Civil conspiracy is not an independent tort. *Thomas v. Fuerst*, 345 Ill.App.3d 929, 936, 281 Ill.Dec. 215, 803 N.Ed.2d 619 (2004). Instead, there must be an independent cause of action underlying a plaintiff's conspiracy claim. *Thomas*, 345 Ill.App.3d at 936, 281 Ill.Dec. 215, 803 N.E.2d 619; *Indeck N. Am. Power Fund, L.P. v. Norweb PLC*, 316 Ill.App.3d 416, 432, 249 Ill.Dec. 45, 735 N.E.2d 649 (2000).

As set forth above, Plaintiff's UDTPA and ICFA claims against JDL and Legend fail as a matter of law. Plaintiff's derivative claim for civil conspiracy is equally futile as Plaintiff's independent claim is based on the same alleged conduct. *See Sassak v. City of Park Ridge*, 431 F.

Supp.2d 810, 821 (N.D. Ill. 2006) ("[V]iability of state law conspiracy claim depends on the existence of independent state law claims[.]"). Moreover, Plaintiff fails to allege that Legend or JDL committed a tort, an essential element of civil conspiracy. Instead, Plaintiff claims that JDL and Legend "[i]n furtherance of the civil conspiracy . . . distributed, sold, advertised, marketed, and/or delivered" illegal products, which is not itself a tortious act in furtherance of an alleged agreement to sell noncompliant products. Second Am. Compl. ¶¶ 102, 104, 105, 107. Allegedly selling, advertising, marketing, or delivering products that fail to comply with the Detergents Act or Board Emissions Standards is not a tort. Nor does Plaintiff allege that such conduct is tortious conduct. *See Starks v. City of Waukegan*, 123 F. Supp. 3d 1036, 1064 (N.D. Ill. 2015) ("An agreement to commit a wrongful act is not a tort, even if it might be a crime."); *Tucker v. Soy Capital Bank & Tr. Co.*, 974 N.E.2d 820, 835 (Ill. App. Ct. 2012) (dismissing civil conspiracy count because, "[e]ven taking all the allegations in plaintiffs' amended complaint as true, there is no tortious act by [the defendant].").

Accordingly, because Plaintiff's ICFA and UDTPA claims fail and Plaintiff fails to allege any tort committed by JDL or Legend, Count V of the Second Amended Complaint fails to state a claim for civil conspiracy and must be dismissed.

F. The Legal Authorities Relied Upon by Plaintiff Are Not Analogous to this Case.

Plaintiff has amended its pleadings several times. Without question, this Court appreciates the colossal effort expended by Plaintiff and recognizes the commendable legal research exhausted here to find a legal theory that fit this set of allegations. However, Plaintiff ultimately cannot point to a legal authority which would permit it to bring private causes of action based on a party's failure to affirmatively disclose all environmental laws and regulations affecting its product. This is because the type of broad enforcement of environmental laws generally that Plaintiff attempts

to accomplish with this lawsuit is left to the State and not private parties. *Chrysler Realty Corp. v. Thomas Indus., Inc.*, 97 F. Supp. 2d 877, 880 (N.D. Ill. 2000) ("[T]his court is bound to follow the holding that there is no private right of action under the IEPA."); *NBD Bank v. Krueger Ringier, Inc.*, 686 N.E.2d 704, 709 (Ill. App. Ct. 1997).

The two cases upon which Plaintiff hinges its argument and relies most heavily, *Francorp, Inc. v. Siebert*, 211 F. Supp. 2d 1051, 1054 (N.D. Ill. 2002) and *Russian Media Grp., LLC v. Cable Am., Inc.*, No. 06 C 3578, 2008 WL 360692, at *1 (N.D. Ill. Feb. 7, 2008) are not analogous or persuasive, and do not stand for the premise which underlies Plaintiff's theory—that Defendants must affirmatively disclose any noncompliance with Illinois environmental laws on product labels.

In *Francorp*, the defendant affirmatively "promote[d] itself as a 'one stop shop' and tout[ed] its experience in dealing with franchise law" when performing certain services without a law license—which was claimed to give the defendant an unfair competitive advantage. *Id.* Unlike a label disclosing hazardous properties of a product that is not expected to affirmatively provide any legal analysis, the law requires that legal services are to be provided by a lawyer or other person licensed to perform such services. Plaintiff does not plausibly allege that businesses providing cleaning products to carpet care industry professionals are required to or even expected to provide lengthy treatises on product labels concerning a particular product's compliance or non-compliance with all Illinois environmental laws and regulations affecting such product. Rather, as outlined above, Defendants' alleged conduct is in compliance with federal regulations regarding disclosure of hazardous chemicals, which is unlike the factual circumstances presented in *Francorp*.

For the same reasons, this case is unlike *Russian Media*. That case involved allegations of a defendant that obtained television programming illegally and affirmatively resold it at discount

prices. *Russian Media Grp., LLC*, 2008 WL 360692, at *1. It is plainly required under the law to first obtain the rights to sell television programming, because such programming is naturally advertised and represented as programming provided by certain cable or satellite companies. The conduct in *Russian Media* is far removed from a product label intended to disclose facts regarding hazardous characteristics of a product rather than affirmatively provide legal analysis as to whether and what regulations and laws are violated. Indeed, unlike *Russian Media*, there is no plausible allegation here that Defendants violate what is required or even expected under federal or other laws related to affirmative disclosures on product labels. Instead, Defendants disclose what is required under federal regulations, which renders *Russian Media* unpersuasive. Accordingly, although the Plaintiff has attempted to find a legal theory allowing it to bring a suit to broadly enforce environmental laws and regulations, it has not alleged any facts that state an actionable claim against Defendants.

III. Conclusion.

Respectfully, for the foregoing reasons, after careful consideration of the parties' submissions and oral argument, the motions to dismiss filed by CTI, HydraMaster, JDL, Legend, Bridgepoint, and Groom are hereby granted. Plaintiff's Second Amended Complaint is hereby dismissed with prejudice in its entirety. So ordered.

Date: Tuesday, June 8, 2021

Circuit Judge Heinz Rudolf

Mailed out of this Office on 6-9
☐ Plaintiff
☐ Defendant
☑ All Parties
KOD

FILED
ST. CLAIR COUNTY
JUN 08 2021
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CIRCUIT CLERK

4815-9014-8843, v.4

CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT
COUNTY OF ST. CLAIR, STATE OF ILLINOIS

TRI-PLEX TECHNICAL SERVICES, LTD.,	)	
Plaintiff,	)	
v.	)	No. 20-L-0237
JON-DON, LLC, LEGEND BRANDS INC., CHEMICAL TECHNOLOGIES INTERNATIONAL INC., BRIDGEPOINT SYSTEMS, GROOM SOLUTIONS, HYDRAMASTER LLC, and CHEMEISTERS, INC.,	)	
Defendants.	)	

SECOND AMENDED COMPLAINT

Plaintiff, Tri-Plex Technical Services, Ltd., alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

CASE SUMMARY

1. All of the Defendants knowingly manufacture, distribute, sell, advertise, market, and deliver certain cleaning agents set out below with excessive elemental phosphorous in St. Clair County and the State of Illinois, which violates the Regulation of Phosphorus in Detergents Act (the "**Detergents Act**"), 415 ILCS 92/5 and causes unfair competition in the marketplace at Plaintiff's expense.

2. Defendant Jon-Don, LLC and Legend Brands, Inc. are each knowingly advertising, marketing, selling, distributing and delivering certain cleaning agents as set out below with

excessive volatile organic material ("**VOM")** in St. Clair County and throughout the State of Illinois for use in violation of Illinois EPA regulations which limit the amount of VOM in dilutable carpet cleaners to 0.1% VOM or less, by weight. Ill. Adm. Code. tit. 35, § 223.205(a)(17)(B).

3. Defendants each fail to disclose to the marketplace that their cleaning agents containing excessive amounts of VOM are illegal as sold, which is an unfair business practice and anticompetitive to Plaintiff under Illinois law. Further, consumers in the marketplace know that cleaning agents with phosphorous clean better than those not containing phosphorous. Due to the Defendants' omissions however, consumers are unaware that the Defendants' products are illegal in Illinois. This harms Plaintiff as well because Plaintiff's products comply with Illinois law and do not contain phosphorous, and consumers prefer and purchase Defendants' products because they contain phosphorous and clean better, albeit illegally.

4. As such, Defendants' acts and omissions constitute deceptive trade practices under the Illinois Uniform Deceptive Trade Practices Act ("**UDTPA**"), 815 ILCS 510/2(a)(12); constitute unfair competition and unfair or deceptive acts under the Illinois Consumer Fraud and Deceptive Business Practices Act ("**ICFA**"), 815 ILCS 505/2; and Defendants Jon-Don's and Legend Brands' conduct constitutes a civil conspiracy to deprive Plaintiff of sales and profits in selling their illegal products in St. Clair County and the State of Illinois. Courts allow "businesses to sue under the ICFA for competitive injury when other business deceive customers." *Russian Media Grp., LLC v. Cable Am., Inc.*, No. 06 C 3578, 2008 WL 360692, at *3 (N.D. Ill. Feb. 7, 2008) (citing cases); *see also Recreation Servs., Inc. v. Odyssey Fun World, Inc.*, 952 F. Supp. 594, 597 (N.D. Ill. 1997) (same). "In such situations, there is no requirement that the deceptive conduct be aimed at the plaintiff." *Id.* (citation omitted).

PARTIES

5. Plaintiff Tri-Plex Technical Services, Ltd. ("**Tri-Plex**") is an Illinois corporation with its headquarters and principal place of business in St. Clair County, Illinois. Tri-Plex specializes in developing, manufacturing, distributing, and selling commercial-grade carpet and upholstery cleaning agents for carpet care industry professionals. Tri-Plex's cleaning agents compete with the Defendants' cleaning agents for customers in St. Clair County and throughout the State of Illinois. Plaintiff's cleaning agents comply with the Detergents Act and the Illinois EPA's VOM regulations. Plaintiff researched, developed, and tested its cleaning agents in St. Clair County, Illinois. Plaintiff manufactures in and sells out of its headquarters in St. Clair County, Illinois.

6. Defendant Jon-Don, LLC ("**Jon-Don**") is an Illinois corporation with its headquarters and principal place of business in DuPage County, Illinois. Jon-Don sells tens of thousands of dollars of Jon-Don products to over 100 customers with business addresses in St. Clair County. Jon-Don distributes thousands of dollars of Legend Brand products in St. Clair County. Based upon an agreement with Legend Brands, Jon-Don relabels Legend Brands' products with its own Jon-Don label and sells thousands of dollars of the relabeled products in St. Clair County.

7. Jon-Don manufactures, distributes, sells, advertises, markets, and delivers the following carpet cleaning products to carpet care industry professionals in St. Clair County, the State of Illinois, and throughout the United States: (1) Matrix Grand Slam SC TLC Pre-Spray; (2) Matrix Grand Slam SC TLC Pre-Spray (Fragrance Free); (3) Matrix Enzyme Pre-Spray; (4) Matrix Maxflex; (5) Matrix Fast Acting TLC; (6) Matrix Enzyme Detergent; (7) Matrix Olefin

Traffic Lane Cleaner; (8) Matrix Wipe Out TLC; (9) Matrix Accomplish Fine Fabric Pre-Spray; and (10) Matrix Enzyme Detergent Pre-Spray and Spotter (the "**Jon-Don Phosphorus Products**").

8. In addition to the Jon-Don Phosphorous Products, Jon-Don manufactures, distributes, sells, advertises, markets, and delivers the following carpet cleaning products to carpet care industry professionals in St. Clair County, the State of Illinois, and throughout the United States: (1) Matrix Double Strength Encapsulant Plus; (2) Matrix Tri-Foam Shampoo Carpet & Upholstery Cleaner; (3) Matrix Radiant Fine Fabric Shampoo; (4) Matrix Citrusolve Spotter; (5) Matrix Fast Acting TLC; (6) Matrix Grand Slam (fragrance free); (7) Matrix Grand Slam SC TLC/Pre-Spray; (8) Citrus Force ASD; (9) Matrix Odorless Mineral Spirits for Dry Cleaning; (10) Matrix Ink Away; (11) Matrix Break Down POG; and (12) Matrix Soil Out Filtration Soil Remover (the "**Jon-Don VOM Products**") (collectively, the Jon-Don Phosphorous Products and the Jon-Don VOM Products are referred to as the "**Jon-Don Products**").

9. Defendant Legend Brands, Inc. ("**Legend Brands**") is a Delaware corporation with its headquarters and principal place of business in Skagit County, Washington. Legend Brands sells thousands of dollars of Legend Brands products in St. Clair County by direct sales and through distributors. Based upon an agreement with Jon-Don, Legend Brands allows Jon-Don to relabel Legend Brand products with its own Jon-Don label and sells thousands of dollars of the relabeled products in St. Clair County.

10. Legend Brands manufactures, distributes, sells, advertises, markets, and delivers the following carpet cleaning products to carpet care industry professionals in St. Clair County,

the State of Illinois, and throughout the United States: (1) Prochem Olefin Pre-Clean E827; (2) Prochem Power Burst SR S732; (3) Prochem Power Burst S789; (4) Prochem Power Strike S787; (5) Prochem Ultrapac Trafficlean S71;1 (6) Prochem Ultrapac Trafficlean S712; (6) Prochem Ultrapac Trafficlean Mint Fresh S888; (7) Prochem Ultrapac Pre-Treat with LVC S903; (8) Prochem Ultrapac Extreme S785; (9) Prochem Traffic Lane Cleaner S708; (10) Prochem Dry Slurry S776; (11) Prochem Clean Green S777; (12) Prochem Heat Wave S778; (13) Prochem Liquid Slurry S876; (14) Prochem UltraPac Renovate A217; (15) Prochem Fine Fabric Pre-Spray; (16) Prochem Crystal Blue Liquid Extracction Detergent S800; (18) Prochem Fine Fabric Cotton Detergent S704; (19) Prochem Liquid Pro S781; (20) Prochem Citrus Crush Pre-Spray S783 (16) Chemspec Upholstery Pre-Spray ; (17) Chemspec Traffic Lane Cleaner Bio Solv; (18) Chemspec Professional Carpet Shampoo; (19) Chemspec PreKleen Ensyme Soil Lifter Bio Solv; (20) Chemspec One Clean; (21) Chemspec Double-Strength Inplant; (22) Chemspec DynaForce 77; (23) Chemspec Fission; (24) Chemspec Formula 90 Bio Solv; (25) Chemspec Formula 161 Bio Solv; (26) Chemspec Enz-All; (27) Chemspec Professional Spot Lifter Bio Solv; (28) Chemspec Powdered Cotton Upholstery Cleaner; (the "**Legend Brands Phosphorus Products**").

11. In addition to the Legend Brands Phosphorous Products, Legend Brands manufactures, distributes, sells, advertises, markets, and delivers the following carpet cleaning products to carpet care industry professionals in St. Clair County, the State of Illinois, and throughout the United States: (1) Prochem Ultrapac Trafficlean VOC S712; (2) Prochem Ultrapac Pre-Treat with LVC S903; (3) Prochem Trafficlean Mint S888; (4) Prochem Trafficlean S710; (5) Prochem Axiom Clean Pre-Spray S717; (6) Prochem Axiom Clean Spotter B343; (7) Prochem

Fluorosil II Protector B129; (8) Prochem Upholstery Pre-Spray B108; (9) Prochem Solvent Cleaner B123; and (10) Prochem Power Burst SR S732 (the "**Legend Brands VOM Products**") (collectively, the Legend Brands Phosphorous Products and the Legend Brands VOM Products are referred to as the "**Legend Brands Products**")..

12. Defendant Chemical Technologies International Inc. ("**CTI**") is California corporation with its headquarters and principal place of business in Sacramento County, California. CTI sells thousands of dollars of CTI products in St. Clair County by direct sales and through distributors.

13. CTI manufactures, distributes, sells, advertises, markets, and delivers the following carpet cleaning products to carpet care industry professionals in St. Clair County, the State of Illinois, and throughout the United States: (1) Ultra TLC; (2) Prozyme; (3) Dirt Chaser; (4) Oxygen Release; and (5) Extreme Clean (the "**CTI Phosphorus Products**").

14. Defendant Bridgepoint Systems ("**Bridgepoint**") is an operating company owned by Aramsco, Inc. with its headquarters and principal place of business in Salt Lake County, Utah. Bridgepoint sells thousands of dollars of Bridgepoint products in St. Clair County by direct sales and through distributors.

15. Bridgepoint manufactures, distributes, sells, advertises, markets, and delivers the following carpet cleaning products to carpet care industry professionals in St. Clair County, the State of Illinois, and throughout the United States: (1) Flex Heavy-Duty Traffic Lane Cleaner; (2) Zone Perfect Ultra-Concentrated Carpet Prespray; (3) Flex Powder with Citrus Solv Heavy Duty Carpet Prespray; (4) Traffic Slam Olefin and Commercial Carpet Pre-Spray; (5) Bio Break with Citrus Solv Powdered Prespray for Carpet & Upholstery; (6) End Zone Extraction

Emulsifier and Neutralizer (the "**Bridgepoint Phosphorus Products**").

16. Defendant Groom Industries ("**Groom**") is an operating company owned by Aramsco, Inc. with its headquarters and principal place of business in Salt Lake County, Utah. Groom sells thousands of dollars of Groom products in St. Clair County by direct sales and through distributors.

17. Groom manufactures, distributes, sells, advertises, markets, and delivers the following carpet cleaning products to carpet care industry professionals in St. Clair County, the State of Illinois, and throughout the United States: (1) Grungegone Powdered Extraction Rinse; (2) Vibrant Carpet Extraction Detergent; (3) Megapack Traffic Lane Cleaner; (4) Grungegone Carpet Prespray; (5) Stunned Traffic Lane Cleaner; (6) Select Pro Carpet Extraction Detergent; and (7) Grungegone Carpet Prespray; (the "**Groom Phosphorus Products**").

18. Defendant HydraMaster LLC ("**HydraMaster**") is a Washington limited liability company with its headquarters and principal place of business in Snohomish County, Washington. HydraMaster sells thousands of dollars of HydraMaster products in St. Clair County by direct sales and through distributors.

19. HydraMaster manufactures, distributes, sells, advertises, markets, and delivers the following carpet cleaning products to carpet care industry professionals in St. Clair County, the State of Illinois, and throughout the United States: (1) HydraMaster Soil Break; (2) HydraMaster Quake HD; and (3) HydraMaster Blitz With Greasebreaker (the "**HydraMaster Phosphorus Products**").

20. Defendant Chemeisters, Inc. ("**Chemeisters**") is a Michigan corporation with its headquarters and principal place of business in Wayne County, Michigan. Chemeisters sells

thousands of dollars of Chemeisters products in St. Clair County by direct sales and through distributors.

21. Chemeisters manufactures, distributes, sells, advertises, markets, and delivers the following carpet cleaning products to carpet care industry professionals in St. Clair County, the State of Illinois, and throughout the United States: (1) Grease Aggressor; (2) Gumolene; and (3) Grease Eraser (the "**Chemeisters Phosphorus Products**").

JURISDICTION AND VENUE

22. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court.

23. This Court has personal jurisdiction over Defendants because Defendants have had more than minimum contacts with the State of Illinois and have purposefully availed themselves of the privilege of conducting business in this State. In addition, as explained below, Defendants have committed affirmative tortious acts within the State of Illinois that give rise to civil liability including the distribution and sale of illegal products throughout the State of Illinois, including in this County.

24. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 because, among other reasons, the transactions out of which the causes of action arise occurred in this County; specifically, Defendants sell tens of thousands of dollars of their illegal cleaning products, equipment, and training to over 100 customers in St. Clair County. In so doing, the Defendants cause confusion in the St. Clair County marketplace by passing off illegal products as legal ones. Additionally, Plaintiff's business is injured due to the loss of sales it sustains in St. Clair County proximately caused by Defendants' illegal products being sold to and preferred by consumers.

But for the Defendants' sale of their illegal products and their omissions that the products are illegal as sold, consumers in St. Clair County and elsewhere would purchase Plaintiff's products.

FACTUAL ALLEGATIONS

I. Illinois Detergents Act

25. Illinois, like many states,[1] regulates the use of phosphorous in cleaning agents due its harmful effects on the environment. For example, phosphorous pollutes water, encourages algae blooms, starves fish of oxygen.

26. The Detergents Act declares that "no person may use, sell, manufacture, or distribute for sale any cleaning agent containing more than 0.5% phosphorous by weight, expressed as elemental phosphorous, in Illinois, except as otherwise provided in this Section." 415 ILCS 92/5.

27. The Jon-Don Phosphorous Products contain more than 0.5% elemental phosphorous by weight. The Jon-Don Phosphorous Products do not fall within any of the Detergents Act's exceptions.

28. The Legend Brands Phosphorous Products contain more than 0.5% elemental phosphorous by weight. The Legend Brands Phosphorous Products do not fall within any of the Detergents Act's exceptions.

29. The CTI Phosphorous Products contain more than 0.5% elemental phosphorous by weight. The CTI Phosphorous Products do not fall within any of the Detergents Act's

[1] The following states have similar laws and/or regulations prohibiting the use, manufacture, distribution, or sale of any cleaning agent containing more than 0.5% phosphorous by weight: District of Columbia, Georgia, Indiana, Maryland, Minnesota, Montana, New Hampshire, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and Wisconsin.

exceptions.

30. The Bridgepoint Phosphorous Products contain more than 0.5% elemental phosphorous by weight. The Bridgepoint Phosphorous Products do not fall within any of the Detergents Act's exceptions.

31. The Groom Phosphorous Products contain more than 0.5% elemental phosphorous by weight. The Groom Phosphorous Products do not fall within any of the Detergents Act's exceptions.

32. The HydraMaster Phosphorous Products contain more than 0.5% elemental phosphorous by weight. The HydraMaster Phosphorous Products do not fall within any of the Detergents Act's exceptions.

33. The Chemeisters Phosphorous Products contain more than 0.5% elemental phosphorous by weight. The Chemeisters Phosphorous Products do not fall within any of the Detergents Act's exceptions.

34. Plaintiff develops and manufactures a commercial-grade industrial carpet cleaning agent and marketed, distributed, and sold as Go Clean Pre-Spray. Go Clean Pre-Spray does not contain phosphorous and is compliant with the Detergents Act.

35. Plaintiff attempts to distribute and sell its Go Clean Pre-Spray cleaning agent and other lawful cleaning agents in the marketplace.

36. Potential customers refuse to purchase or use the Plaintiff's phosphorous-free Go Clean Pre-Spray cleaning agent because, they report, Defendants' collective phosphorous-laden products clean better than Plaintiff's phosphorous-free product.

37. Purchasers do not know that the Jon-Don, Legend Brands, CTI, Groom,

HydraMaster, or Chemeisters Phosphorous Products are illegal in the State of Illinois

38. Plaintiff acknowledges that phosphorous-laden cleaning agents clean better than phosphorous-free products, but unlike Defendants' Phosphorous Products, Plaintiff's products comply with the law.

II. Illinois EPA Regulations

39. The State of Illinois, like many states,[2] regulates the amount of VOMs permitted in many products, including dilutable carpet cleaners.

40. Illinois EPA regulations limit the amount of VOMs in dilutable carpet cleaners to 0.1% VOM or less by weight. Ill. Adm. Code. tit. 35, § 223.205(a)(17)(B).

41. "Volatile Organic Material" or "VOM" is an acronym used in Illinois safety regulations and elsewhere to describe organic chemicals that have a high vapor pressure at ordinary room temperature. Illinois regulations use VOM interchangeably with VOC, which stands for "Volatile Organic Compound." *See* Ill. Adm. Code. tit. 35, §211.7150. Their high vapor pressure results from a low boiling point, which causes large numbers of molecules to evaporate or sublimate from the liquid or solid form of the compound and enter the surrounding air, a trait known as volatility. Some VOMs are dangerous to human health or cause harm to the environment, and are thus regulated by laws, especially indoors where concentrations are often the highest.

42. The Jon-Don VOM Products contain more than 0.1% VOM by weight. The Jon-

[2] The following states have similar laws and/or regulations limiting VOMs in dilutable carpet cleaners to 0.1% VOM or less, by weight: California, Connecticut, District of Columbia, Indiana, Maine, Maryland, Massachusetts, Michigan, New Jersey, New Hampshire, New York, Ohio, Pennsylvania, Rhodes Island, Utah, Vermont, and Virginia.

Dom VOM Products do not fall within any of the Illinois EPA regulations' exceptions.

43. The Legend Brands VOM Products contain more than 0.1% VOM by weight. The Legend Brands VOM Products do not fall within any of the Illinois EPA regulations' exceptions.

44. Plaintiff developed and manufactures a commercial-grade industrial carpet cleaning agent marketed, distributed, and sold as Go Clean Carpet/Upholstery Cleaner. Go Clean Carpet/Upholstery cleaner does not contain VOM and is compliant with Illinois' EPA regulations.

45. Plaintiff attempts to distribute and sell its Go Clean Carpet/Upholstery Cleaner cleaning agent and other cleaning agents in the marketplace.

46. Potential customers refuse to purchase or use the Plaintiff's phosphorous-free Go Clean Carpet/Upholstery Cleaner cleaning agent because, they report, Defendants' collective VOM-laden products clean better than Plaintiff's VOM-free products.

47. Purchasers do not know that the Jon-Don and Legend Brands VOM Products are illegal in the State of Illinois

48. Plaintiff acknowledges that VOM-laden cleaning agents clean better than VOM-free products, but unlike Defendants Jon-Don and Legend Brands VOM Products, Plaintiff's products comply with the law.

CLAIMS FOR RELIEF

COUNT I

Jon-Don's Violation of the Illinois Uniform Deceptive Trade Practices Act

49. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

50. The UDTPA declares that "caus[ing] likelihood of confusion or of

misunderstanding as to the source, sponsorship, approval, or certification of goods," "represent[ing] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," and "any other conduct which similarly creates a likelihood of confusion or misunderstanding" are unlawful. 815 ILCS 510/2(a)(2), (5), and (12).

51. The Jon-Don Phosphorous Products contain more than 0.5% phosphorous by weight, and the Detergents Act prohibits the Jon-Don Phosphorous Products from being used, sold, manufactured, or distributed for sale in Illinois. *See* 415 ILCS 92/5.

52. Jon-Don omits from its labeling, and otherwise fails to notify the consuming public, that the Jon-Don Phosphorous Products contain more than 0.5% phosphorous by weight and are illegal per se under the Detergents Act. Purchasers of the Jon-Don Phosphorous Products assume that, because those products are able to be bought, they comply with Illinois law.

53. Jon-Don's omissions cause a likelihood of confusion or of misunderstanding in the marketplace. Selling illegal products (Jon-Don's) in the same market where legal products are sold (Plaintiff's) creates a likelihood of confusion and misunderstanding Jon-Don's omissions cause a likelihood of confusion or of misunderstanding as to the sponsorship, approval, characteristics, ingredients, uses, benefits, or certification of the Jon-Don Phosphorous Products because they contain more than 0.5% phosphorous by weight; are illegal under the Detergents Act; and are marketed, advertised, and sold as legal products. *See* 815 ILCS 510/2(a)(2), (5), and (15).

54. Furthermore, Illinois EPA regulations strictly limit the amount of VOMs in dilutable carpet cleaners to 0.1% VOM or less, by weight. Ill. Adm. Code. tit. 35, §

223.205(a)(17)(B).

55. The Jon-Don VOM Products contain more than 0.1% VOM by weight.

56. The Jon-Don VOM Products do not fall within any of the exceptions provided in the Illinois EPA regulations.

57. The product label Jon-Don provides with each of the Jon-Don VOM Products fails to disclose that the Jon-Don VOM Products do not comply with Illinois EPA regulations limiting VOMs.

58. Jon-Don's omissions cause a likelihood of confusion or of misunderstanding in the marketplace. Purchasers would be confused to find out that the Jon-Don VOM Products they purchase are illegal under Illinois law. Jon-Don's omissions cause a likelihood of confusion or of misunderstanding as to the sponsorship, approval, characteristics, ingredients, uses, benefits, or certification of the Jon-Don Phosphorous Products because they contain more than 0.1% VOM by weight; violate Illinois EPA regulations; and are marketed, advertised, and sold as legal products. *See* 815 ILCS 510/2(a)(2), (5), and (15).

59. Jon-Don's conduct in distributing and selling the Jon-Don Phosphorus Products and the Jon-Dom VOM Products in Illinois while concealing, suppressing, or omitting the material fact that the Jon-Don Products violate Illinois law creates a likelihood of confusion or misunderstanding and constitutes a deceptive trade practice.

60. Jon-Don willfully engaged in this deceptive trade practice.

61. Plaintiff suffered and continues to suffer a loss of the ability to compete in the marketplace and a loss of sales caused by Jon-Don's deceptive trade practice.

62. The UDTPA provides: "A person likely to be damaged by a deceptive trade

practice of another may be granted injunctive relief upon terms that the court considers reasonable. Proof on monetary damage, loss of profits or intent to deceive is not required." 815 ILCS 510/3. Plaintiff is likely to be, and in fact is, damaged by the deceptive acts alleged herein.

63. Wherefore, Plaintiff requests the Court to provide injunctive relief by entering an order: (a) finding that Jon-Don willfully engaged in a deceptive trade practice; (b) enjoining Jon-Don from distributing or selling the Jon-Don Products in the State of Illinois; (c) ordering Jon-Don to pay Plaintiff's reasonable attorneys' fees and costs; and (d) for all such other and further relief, as may be just and proper.

COUNT II

Jon-Don's Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act

64. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

65. The ICFA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce." 815 ILCS 505/2. The ICFA has a "broad protective philosophy." *See id.*

66. Jon-Don's conduct in manufacturing, distributing, selling, advertising, marketing, and delivering the Jon-Don Phosphorus Products and/or the Jon-Don VOM Products in Illinois constitutes unfair methods of competition, unfair and deceptive acts or practices, and is against public policy. Specifically, Jon-Don employs deception, fraud, and false pretenses to conceal,

suppress, and omit the material facts that the Jon-Don Products do not comply with Illinois law.

67. Jon-Don intends for others, including consumers, to rely upon its concealment, suppression, and omission. Indeed, if Jon-Don provided on its labeling or packaging that the Jon-Don Products are illegal under Illinois law and that they could neither be purchased nor sold legally in Illinois, then no reasonable person would purchase the Jon-Don Products. Therefore, Jon-Don employs the use of deception, fraud, and false pretense by manufacturing, distributing, selling, advertising, marketing, and delivering the Jon-Don Products to unwary purchasers in Illinois that rely upon Jon-Don to ensure that the Jon-Don Products are compliant with Illinois law.

68. Jon-Don's representations and omissions are material because they concern the type of information upon which a reasonable consumer would be expected to rely upon in deciding whether to purchase the Jon-Don Products.

69. Jon-Don is profiting at Plaintiff's expense by selling illegal products to reasonable Illinois consumers without telling them that purchasing, possessing, or otherwise using the Jon-Don Products is in violation of Illinois law. All of Jon-Don's conduct was intentional, willful, and with intent to economically harm Plaintiff. Plaintiff is unable to fairly compete with Jon-Don in the markets where the Jon-Don Products are sold because Jon-Don sells illegal products in that market.

70. Jon-Don's conduct also offends public policy and is immoral, unethical, and unscrupulous because Illinois consumers are interested in purchasing and using legal products that do not harm the environment and that comply with Illinois laws including, but not limited to, the Detergents Act and/or Illinois EPA Regulations. Selling the Jon-Don Products as being legal

when they are not, offends the public's expectation to be told the truth about the products they are buying.

71. Jon-Don's conduct directly and proximately caused substantial injury to Plaintiff. Jon-Don knowingly and willfully misled reasonable consumers into purchasing Jon-Don Products that are not what they are represented to be, and not what the consumers paid for. Moreover, Jon-Don knowingly and willfully charged a premium for the Jon-Don Products as if they were legal, superior, and of higher quality than Jon-Don represented them to be. Finally, Jon-Don exposed reasonable consumers to unwanted, harmful, illegal levels of chemical exposure.

72. Wherefore, Plaintiff requests the Court to provide injunctive and monetary relief by entering an order: (a) finding that Jon-Don willfully violated the ICFA; (b) enjoining Jon-Don from distributing or selling the Jon-Don Products in the State of Illinois; (c) awarding Plaintiff actual damages, reasonable attorneys' fees, and costs; (d) assessing punitive damages against Jon-Don for its willful violations of Illinois law and negative effects on competition, the environment, and consumers' health and safety; and (e) for all such other and further relief, as may be just and proper.

COUNT III

Legend Brands' Violation of the Illinois Uniform Deceptive Trade Practices Act

73. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

74. The UDTPA declares that "caus[ing] likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods,"

"represent[ing] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," and "any other conduct which similarly creates a likelihood of confusion or misunderstanding" are unlawful. 815 ILCS 510/2(a)(2), (5), and (12).

75. The Legend Brands Phosphorous Products contain more than 0.5% phosphorous by weight, and the Detergents Act prohibits the Legend Brands Phosphorous Products from being used, sold, manufactured, or distributed for sale in Illinois. *See* 415 ILCS 92/5.

76. Legend Brands omits from its labeling, and otherwise fails to notify the consuming public, that the Legend Brands Phosphorous Products contain more than 0.5% phosphorous by weight and are illegal per se under the Detergents Act. Purchasers of the Legend Brands Phosphorous Products assume that, because those products are able to be bought, they comply with Illinois law.

77. Legend Brands' omissions cause a likelihood of confusion or of misunderstanding in the marketplace. Selling illegal products (Legend Brands') in the same market where legal products are sold (Plaintiff's) creates a likelihood of confusion and misunderstanding Legend Brands' omissions cause a likelihood of confusion or of misunderstanding as to the sponsorship, approval, characteristics, ingredients, uses, benefits, or certification of the Legend Brands Phosphorous Products because they contain more than 0.5% phosphorous by weight; are illegal under the Detergents Act; and are marketed, advertised, and sold as legal products. *See* 815 ILCS 510/2(a)(2), (5), and (15).

78. Furthermore, Illinois EPA regulations strictly limit the amount of VOMs in dilutable carpet cleaners to 0.1% VOM or less, by weight. Ill. Adm. Code. tit. 35, §

223.205(a)(17)(B).

79. The Legend Brands VOM Products contain more than 0.1% VOM by weight.

80. The Legend Brands VOM Products do not fall within any of the exceptions provided in the Illinois EPA regulations.

81. The product label Legend Brands provides with each of the Legend Brands VOM Products fails to disclose that the Legend Brands VOM Products do not comply with Illinois EPA regulations limiting VOMs.

82. Legend Brands' omissions cause a likelihood of confusion or of misunderstanding in the marketplace. Purchasers would be confused to find out that the Legend Brands VOM Products they purchase are illegal under Illinois law. Legend Brands' omissions cause a likelihood of confusion or of misunderstanding as to the sponsorship, approval, characteristics, ingredients, uses, benefits, or certification of the Legend Brands Phosphorous Products because they contain more than 0.1% VOM by weight; violate Illinois EPA regulations; and are marketed, advertised, and sold as legal products. *See* 815 ILCS 510/2(a)(2), (5), and (15).

83. Legend Brands' conduct in distributing and selling the Legend Brands Phosphorus Products and the Legend Brands VOM Products in Illinois while concealing, suppressing, or omitting the material fact that the Legend Brands Products violate Illinois law creates a likelihood of confusion or misunderstanding and constitutes a deceptive trade practice.

84. Legend Brands willfully engaged in this deceptive trade practice.

85. Plaintiff suffered and continues to suffer a loss of the ability to compete in the marketplace and a loss of sales caused by Legend Brands' deceptive trade practice.

86. The UDTPA provides: "A person likely to be damaged by a deceptive trade

practice of another may be granted injunctive relief upon terms that the court considers reasonable. Proof on monetary damage, loss of profits or intent to deceive is not required." 815 ILCS 510/3. Plaintiff is likely to be, and in fact is, damaged by the deceptive acts alleged herein.

87. Wherefore, Plaintiff requests the Court to provide injunctive relief by entering an order: (a) finding that Legend Brands willfully engaged in a deceptive trade practice; (b) enjoining Legend Brands from distributing or selling the Legend Brands Products in the State of Illinois; (c) ordering Jon-Don to pay Plaintiff's reasonable attorneys' fees and costs; and (d) for all such other and further relief, as may be just and proper.

COUNT IV

Legend Brands' Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act

88. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

89. The ICFA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce." 815 ILCS 505/2. The ICFA has a "broad protective philosophy." *See id.*

90. Legend Brands' conduct in manufacturing, distributing, selling, advertising, marketing, and delivering the Legend Brands Phosphorus Products and/or the Legend Brands VOM Products in Illinois constitutes unfair methods of competition, unfair and deceptive acts or practices, and is against public policy. Specifically, Legend Brands employs deception, fraud,

and false pretenses to conceal, suppress, and omit the material facts that the Jon-Don Products do not comply with Illinois law.

91. Legend Brands intends for others, including consumers, to rely upon its concealment, suppression, and omission. Indeed, if Legend Brands provided on its labeling or packaging that the Legend Brands Products are illegal under Illinois law and that they could neither be purchased nor sold legally in Illinois, then no reasonable person would purchase the Legend Brands Products. Therefore, Legend Brands employs the use of deception, fraud, and false pretense by manufacturing, distributing, selling, advertising, marketing, and delivering the Legend Brands Products to unwary purchasers in Illinois that rely upon Legend Brands to ensure that the Jon-Don Products are compliant with Illinois law.

92. Legend Brands' representations and omissions are material because they concern the type of information upon which a reasonable consumer would be expected to rely upon in deciding whether to purchase the Legend Brands Products.

93. Legend Brands is profiting at Plaintiff's expense by selling illegal products to reasonable Illinois consumers without telling them that purchasing, possessing, or otherwise using the Legend Brands Products is in violation of Illinois law. All of Legend Brands' conduct was intentional, willful, and with intent to economically harm Plaintiff. Plaintiff is unable to fairly compete with Legend Brands in the markets where the Legend Brands Products are sold because Legend Brands sells illegal products in that market.

94. Legend Brands' conduct also offends public policy and is immoral, unethical, and unscrupulous because Illinois consumers are interested in purchasing and using legal products that do not harm the environment and that comply with Illinois laws including, but not limited to,

the Detergents Act and/or Illinois EPA Regulations. Selling the Legend Brands Products as being legal when they are not, offends the public's expectation to be told the truth about the products they are buying.

95. Legend Brands' conduct directly and proximately caused substantial injury to Plaintiff. Legend Brands knowingly and willfully misled reasonable consumers into purchasing Legend Brands Products that are not what they are represented to be, and not what the consumers paid for. Moreover, Jon-Don knowingly and willfully charged a premium for the Legend Brands Products as if they were legal, superior, and of higher quality than Legend Brands represented them to be. Finally, Legend Brands exposed reasonable consumers to unwanted, harmful, illegal levels of chemical exposure.

96. Wherefore, Plaintiff requests the Court to provide injunctive and monetary relief by entering an order: (a) finding that Legend Brands willfully violated the ICFA; (b) enjoining Legend Brands from distributing or selling the Legend Brands Products in the State of Illinois; (c) awarding Plaintiff actual damages, reasonable attorneys' fees, and costs; (d) assessing punitive damages against Legend Brands for its willful violations of Illinois law and negative effects on competition, the environment, and consumers' health and safety; and (e) for all such other and further relief, as may be just and proper.

COUNT V

Civil Conspiracy Between Jon-Don and Legend Brands

97. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

98. Illinois common law prohibits civil conspiracies in which (1) a combination of

two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act.

99. Jon-Don and Legend Brands are both "persons" under Illinois law, though they act by and through their respective directors and officers.

100. The Detergents Act prohibits the distribution, sale, advertising, marketing, and/or delivery of the Legend Brands Phosphorus Products to customers in the State of Illinois.

101. Jon-Don and Legend Brands, by and through their respective directors and officers, knowingly and intentionally entered into one or more written contracts between the parties for the purpose of distributing, selling, advertising, marketing, and/or delivering the illegal Legend Brands Phosphorus Products to customers in the State of Illinois.

102. In furtherance of the civil conspiracy, Jon-Don, by and through its directors and officers, knowingly and intentionally distributed, sold, advertised, marketed, and/or delivered the illegal Legend Brands Phosphorus Products to customers in the State of Illinois in an overt violation of the Detergents Act.

103. Section 223.205(a)(17)(B) of the Illinois EPA regulations (Ill. Adm. Code. tit. 35, § 223.205(a)(17)(B)) prohibits the distribution, sale, advertising, marketing, and/or delivery of the Legend Brands VOM Products to customers in the State of Illinois.

104. Jon-Don and Legend Brands, by and through their respective directors and officers, knowingly and intentionally entered into one or more written contracts between the parties for the purpose of distributing, selling, advertising, marketing, and/or delivering the illegal Legend Brands VOM Products to customers in the State of Illinois.

105. In furtherance of the civil conspiracy, Jon-Don, by and through its directors and officers, knowingly and intentionally distributed, sold, advertised, marketed, and/or delivered the illegal Legend Brands VOM Products to customers in the State of Illinois in an overt violation of Illinois EPA regulations.

106. Jon-Don and Legend Brands, by and through their respective directors and officers, knowingly and intentionally entered into one or more written contracts between the parties for the purpose of rebranding the certain Legend Brands as Jon-Don products and distributing, selling, advertising, marketing, and/or delivering the following illegal, rebranded products to customers in the State of Illinois: (1) Matrix Grand Slam SC (Fragrance Free) which is a rebranded from Prochem Ultrapac Pretreat with LVC; (2) Matrix Grand Slam which is rebranded from Prochem Ultrapac Trafficlean S712; (3) Matrix Radiant Fine Fabric Shampoo which is rebranded from Prochem Fine Fabric Shampoo B105; and (4) Matrix Accomplish which is also rebranded from Prochem Fine Fabric Shampoo B105.

107. In furtherance of the civil conspiracy, Jon-Don, by and through its directors and officers, knowingly and intentionally distributed, sold, advertised, marketed, and/or delivered the illegal, rebranded products to customers in the State of Illinois in an overt violation of the Detergents Act and/or Illinois EPA regulations.

108. Plaintiff suffered and continues to suffer a significant loss of sales caused by the civil conspiracy between Jon-Don and Legend Brands, and their respective directors and officers, to sell illegal products in the State of Illinois.

109. Wherefore, Plaintiff requests the Court to provide actual relief by entering an order: (a) finding that Jon-Don and Legend Brands engaged in a civil conspiracy to sell illegal

products in Illinois; (b) enter judgment in favor of Plaintiff and against Jon-Don and Legend Brands, jointly and severally, in an amount to be determined at trial equal to the lost profits; (c) for incidental and consequential damages; (d) punitive damages; (e) Plaintiff's reasonable attorneys' fees and costs; and (f) for all such other and further relief, as may be just and proper.

COUNT VI

CTI's Violation of the Illinois Uniform Deceptive Trade Practices Act

110. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

111. The UDTPA declares that "caus[ing] likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods," "represent[ing] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," and "any other conduct which similarly creates a likelihood of confusion or misunderstanding" are unlawful. 815 ILCS 510/2(a)(2), (5), and (12).

112. The CTI Phosphorous Products contain more than 0.5% phosphorous by weight, and the Detergents Act prohibits the CTI Phosphorous Products from being used, sold, manufactured, or distributed for sale in Illinois. *See* 415 ILCS 92/5.

113. CTI omits from its labeling, and otherwise fails to notify the consuming public, that the CTI Phosphorous Products contain more than 0.5% phosphorous by weight and are illegal per se under the Detergents Act. Purchasers of the CTI Phosphorous Products assume that, because those products are able to be bought, they comply with Illinois law.

114. CTI's omissions cause a likelihood of confusion or of misunderstanding in the

marketplace. Selling illegal products (CTI's) in the same market where legal products are sold (Plaintiff's) creates a likelihood of confusion and misunderstanding CTI's omissions cause a likelihood of confusion or of misunderstanding as to the sponsorship, approval, characteristics, ingredients, uses, benefits, or certification of the CTI Phosphorous Products because they contain more than 0.5% phosphorous by weight; are illegal under the Detergents Act; and are marketed, advertised, and sold as legal products. *See* 815 ILCS 510/2(a)(2), (5), and (15).

115. CTI's conduct in distributing and selling the CTI Phosphorus Products while concealing, suppressing, or omitting the material fact that the CTI Phosphorus Products violate Illinois law creates a likelihood of confusion or misunderstanding and constitutes a deceptive trade practice.

116. CTI willfully engaged in this deceptive trade practice.

117. Plaintiff suffered and continues to suffer a loss of the ability to compete in the marketplace and a loss of sales caused by CTI's deceptive trade practice.

118. The UDTPA provides: "A person likely to be damaged by a deceptive trade practice of another may be granted injunctive relief upon terms that the court considers reasonable. Proof on monetary damage, loss of profits or intent to deceive is not required." 815 ILCS 510/3. Plaintiff is likely to be, and in fact is, damaged by the deceptive acts alleged herein.

119. Wherefore, Plaintiff requests the Court to provide injunctive relief by entering an order: (a) finding that CTI willfully engaged in a deceptive trade practice; (b) enjoining CTI from distributing or selling the CTI Phosphorous Products in the State of Illinois; (c) ordering CTI to pay Plaintiff's reasonable attorneys' fees and costs; and (d) for all such other and further relief, as may be just and proper.

COUNT VII

CTI's Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act

120. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

121. The ICFA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce." 815 ILCS 505/2. The ICFA has a "broad protective philosophy." *See id.*

122. CTI's conduct in manufacturing, distributing, selling, advertising, marketing, and delivering the CTI Phosphorus Products in Illinois constitutes unfair methods of competition, unfair and deceptive acts or practices, and is against public policy. Specifically, CTI employs deception, fraud, and false pretenses to conceal, suppress, and omit the material facts that the CTI Phosphorous Products do not comply with Illinois law.

123. CTI intends for others, including consumers, to rely upon its concealment, suppression, and omission. Indeed, if CTI provided on its labeling or packaging that the CTI Phosphorous Products are illegal under Illinois law and that they could neither be purchased nor sold legally in Illinois, then no reasonable person would purchase the CTI Phosphorous Products. Therefore, CTI employs the use of deception, fraud, and false pretense by manufacturing, distributing, selling, advertising, marketing, and delivering the CTI Phosphorous Products to unwary purchasers in Illinois that rely upon CTI to ensure that its products are compliant with

Illinois law.

124. CTI's representations and omissions are material because they concern the type of information upon which a reasonable consumer would be expected to rely upon in deciding whether to purchase the CTI Phosphorous Products.

125. CTI is profiting at Plaintiff's expense by selling illegal products to reasonable Illinois consumers without telling them that purchasing, possessing, or otherwise using the CTI Phosphorous Products is in violation of Illinois law. All of CTI's conduct was intentional, willful, and with intent to economically harm Plaintiff. Plaintiff is unable to fairly compete with CTI in the markets where the CTI Phosphorous Products are sold because CTI sells illegal products in that market.

126. CTI's conduct also offends public policy and is immoral, unethical, and unscrupulous because Illinois consumers are interested in purchasing and using legal products that do not harm the environment and that comply with Illinois laws including, but not limited to, the Detergents Act. Selling the CTI Phosphorous Products as being legal when they are not, offends the public's expectation to be told the truth about the products they are buying.

127. CTI's conduct directly and proximately caused substantial injury to Plaintiff. CTI knowingly and willfully misled reasonable consumers into purchasing CTI Phosphorous Products that are not what they are represented to be, and not what the consumers paid for. Moreover, CTI knowingly and willfully charged a premium for the CTI Phosphorous Products as if they were legal, superior, and of higher quality than CTI represented them to be. Finally, CTI exposed reasonable consumers to unwanted, harmful, illegal levels of chemical exposure.

128. Wherefore, Plaintiff requests the Court to provide injunctive and monetary relief

by entering an order: (a) finding that CTI willfully violated the ICFA; (b) enjoining CTI from distributing or selling the CTI Phosphorous Products in the State of Illinois; (c) awarding Plaintiff actual damages, reasonable attorneys' fees, and costs; (d) assessing punitive damages against CTI for its willful violations of Illinois law and negative effects on competition, the environment, and consumers' health and safety; and (e) for all such other and further relief, as may be just and proper.

COUNT VIII

Bridgepoint's Violation of the Illinois Uniform Deceptive Trade Practices Act

129. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

130. The UDTPA declares that "caus[ing] likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods," "represent[ing] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," and "any other conduct which similarly creates a likelihood of confusion or misunderstanding" are unlawful. 815 ILCS 510/2(a)(2), (5), and (12).

131. The Bridgepoint Phosphorous Products contain more than 0.5% phosphorous by weight, and the Detergents Act prohibits the Bridgepoint Phosphorous Products from being used, sold, manufactured, or distributed for sale in Illinois. *See* 415 ILCS 92/5.

132. Bridgepoint omits from its labeling, and otherwise fails to notify the consuming public, that the Bridgepoint Phosphorous Products contain more than 0.5% phosphorous by weight and are illegal per se under the Detergents Act. Purchasers of the Bridgepoint

Phosphorous Products assume that, because those products are able to be bought, they comply with Illinois law.

133. Bridgepoint's omissions cause a likelihood of confusion or of misunderstanding in the marketplace. Selling illegal products (Bridgepoint's) in the same market where legal products are sold (Plaintiff's) creates a likelihood of confusion and misunderstanding Bridgepoint's omissions cause a likelihood of confusion or of misunderstanding as to the sponsorship, approval, characteristics, ingredients, uses, benefits, or certification of the Bridgepoint Phosphorous Products because they contain more than 0.5% phosphorous by weight; are illegal under the Detergents Act; and are marketed, advertised, and sold as legal products. *See* 815 ILCS 510/2(a)(2), (5), and (15).

134. Bridgepoint's conduct in distributing and selling the Bridgepoint Phosphorus Products while concealing, suppressing, or omitting the material fact that the Bridgepoint Phosphorus Products violate Illinois law creates a likelihood of confusion or misunderstanding and constitutes a deceptive trade practice.

135. Bridgepoint willfully engaged in this deceptive trade practice.

136. Plaintiff suffered and continues to suffer a loss of the ability to compete in the marketplace and a loss of sales caused by Bridgepoint's deceptive trade practice.

137. The UDTPA provides: "A person likely to be damaged by a deceptive trade practice of another may be granted injunctive relief upon terms that the court considers reasonable. Proof on monetary damage, loss of profits or intent to deceive is not required." 815 ILCS 510/3. Plaintiff is likely to be, and in fact is, damaged by the deceptive acts alleged herein.

138. Wherefore, Plaintiff requests the Court to provide injunctive relief by entering an

order: (a) finding that Bridgepoint willfully engaged in a deceptive trade practice; (b) enjoining Bridgepoint from distributing or selling the Bridgepoint Phosphorous Products in the State of Illinois; (c) ordering Bridgepoint to pay Plaintiff's reasonable attorneys' fees and costs; and (d) for all such other and further relief, as may be just and proper.

COUNT IX

Bridgepoint's Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act

139. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

140. The ICFA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce." 815 ILCS 505/2. The ICFA has a "broad protective philosophy." *See id.*

141. Bridgepoint's conduct in manufacturing, distributing, selling, advertising, marketing, and delivering the Bridgepoint Phosphorus Products in Illinois constitutes unfair methods of competition, unfair and deceptive acts or practices, and is against public policy. Specifically, Bridgepoint employs deception, fraud, and false pretenses to conceal, suppress, and omit the material facts that the Bridgepoint Phosphorous Products do not comply with Illinois law.

142. Bridgepoint intends for others, including consumers, to rely upon its concealment, suppression, and omission. Indeed, if Bridgepoint provided on its labeling or packaging that the

Bridgepoint Phosphorous Products are illegal under Illinois law and that they could neither be purchased nor sold legally in Illinois, then no reasonable person would purchase the Bridgepoint Phosphorous Products. Therefore, Bridgepoint employs the use of deception, fraud, and false pretense by manufacturing, distributing, selling, advertising, marketing, and delivering the Bridgepoint Phosphorous Products to unwary purchasers in Illinois that rely upon Bridgepoint to ensure that its products are compliant with Illinois law.

143. Bridgepoint's representations and omissions are material because they concern the type of information upon which a reasonable consumer would be expected to rely upon in deciding whether to purchase the Bridgepoint Phosphorous Products.

144. Bridgepoint is profiting at Plaintiff's expense by selling illegal products to reasonable Illinois consumers without telling them that purchasing, possessing, or otherwise using the Bridgepoint Phosphorous Products is in violation of Illinois law. All of Bridgepoint's conduct was intentional, willful, and with intent to economically harm Plaintiff. Plaintiff is unable to fairly compete with Bridgepoint in the markets where the Bridgepoint Phosphorous Products are sold because Bridgepoint sells illegal products in that market.

145. Bridgepoint's conduct also offends public policy and is immoral, unethical, and unscrupulous because Illinois consumers are interested in purchasing and using legal products that do not harm the environment and that comply with Illinois laws including, but not limited to, the Detergents Act. Selling the Bridgepoint Phosphorous Products as being legal when they are not, offends the public's expectation to be told the truth about the products they are buying.

146. Bridgepoint's conduct directly and proximately caused substantial injury to Plaintiff. Bridgepoint knowingly and willfully misled reasonable consumers into purchasing

Bridgepoint Phosphorous Products that are not what they are represented to be, and not what the consumers paid for. Moreover, Bridgepoint knowingly and willfully charged a premium for the Bridgepoint Phosphorous Products as if they were legal, superior, and of higher quality than Bridgepoint represented them to be. Finally, Bridgepoint exposed reasonable consumers to unwanted, harmful, illegal levels of chemical exposure.

147. Wherefore, Plaintiff requests the Court to provide injunctive and monetary relief by entering an order: (a) finding that Bridgepoint willfully violated the ICFA; (b) enjoining Bridgepoint from distributing or selling the Bridgepoint Phosphorous Products in the State of Illinois; (c) awarding Plaintiff actual damages, reasonable attorneys' fees, and costs; (d) assessing punitive damages against Bridgepoint for its willful violations of Illinois law and negative effects on competition, the environment, and consumers' health and safety; and (e) for all such other and further relief, as may be just and proper.

COUNT X

Groom's Violation of the Illinois Uniform Deceptive Trade Practices Act

148. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

149. The UDTPA declares that "caus[ing] likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods," "represent[ing] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," and "any other conduct which similarly creates a likelihood of confusion or misunderstanding" are unlawful. 815 ILCS 510/2(a)(2), (5), and (12).

150. The Groom Phosphorous Products contain more than 0.5% phosphorous by weight, and the Detergents Act prohibits the Groom Phosphorous Products from being used, sold, manufactured, or distributed for sale in Illinois. *See* 415 ILCS 92/5.

151. Groom omits from its labeling, and otherwise fails to notify the consuming public, that the Groom Phosphorous Products contain more than 0.5% phosphorous by weight and are illegal per se under the Detergents Act. Purchasers of the Groom Phosphorous Products assume that, because those products are able to be bought, they comply with Illinois law.

152. Groom's omissions cause a likelihood of confusion or of misunderstanding in the marketplace. Selling illegal products (Groom's) in the same market where legal products are sold (Plaintiff's) creates a likelihood of confusion and misunderstanding Groom's omissions cause a likelihood of confusion or of misunderstanding as to the sponsorship, approval, characteristics, ingredients, uses, benefits, or certification of the Groom Phosphorous Products because they contain more than 0.5% phosphorous by weight; are illegal under the Detergents Act; and are marketed, advertised, and sold as legal products. *See* 815 ILCS 510/2(a)(2), (5), and (15).

153. Groom's conduct in distributing and selling the Groom Phosphorus Products while concealing, suppressing, or omitting the material fact that the Groom Phosphorus Products violate Illinois law creates a likelihood of confusion or misunderstanding and constitutes a deceptive trade practice.

154. Groom willfully engaged in this deceptive trade practice.

155. Plaintiff suffered and continues to suffer a loss of the ability to compete in the marketplace and a loss of sales caused by Groom's deceptive trade practice.

156. The UDTPA provides: "A person likely to be damaged by a deceptive trade

practice of another may be granted injunctive relief upon terms that the court considers reasonable. Proof on monetary damage, loss of profits or intent to deceive is not required." 815 ILCS 510/3. Plaintiff is likely to be, and in fact is, damaged by the deceptive acts alleged herein.

157. Wherefore, Plaintiff requests the Court to provide injunctive relief by entering an order: (a) finding that Groom willfully engaged in a deceptive trade practice; (b) enjoining Groom from distributing or selling the Groom Phosphorous Products in the State of Illinois; (c) ordering Groom to pay Plaintiff's reasonable attorneys' fees and costs; and (d) for all such other and further relief, as may be just and proper.

COUNT XI

Groom's Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act

158. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

159. The ICFA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce." 815 ILCS 505/2. The ICFA has a "broad protective philosophy." *See id.*

160. Groom's conduct in manufacturing, distributing, selling, advertising, marketing, and delivering the Groom Phosphorus Products in Illinois constitutes unfair methods of competition, unfair and deceptive acts or practices, and is against public policy. Specifically, Groom employs deception, fraud, and false pretenses to conceal, suppress, and omit the material

facts that the CTI Phosphorous Products do not comply with Illinois law.

161. Groom intends for others, including consumers, to rely upon its concealment, suppression, and omission. Indeed, if Groom provided on its labeling or packaging that the Groom Phosphorous Products are illegal under Illinois law and that they could neither be purchased nor sold legally in Illinois, then no reasonable person would purchase the Groom Phosphorous Products. Therefore, Groom employs the use of deception, fraud, and false pretense by manufacturing, distributing, selling, advertising, marketing, and delivering the Groom Phosphorous Products to unwary purchasers in Illinois that rely upon Groom to ensure that its products are compliant with Illinois law.

162. Groom's representations and omissions are material because they concern the type of information upon which a reasonable consumer would be expected to rely upon in deciding whether to purchase the Groom Phosphorous Products.

163. Groom is profiting at Plaintiff's expense by selling illegal products to reasonable Illinois consumers without telling them that purchasing, possessing, or otherwise using the Groom Phosphorous Products is in violation of Illinois law. All of Groom's conduct was intentional, willful, and with intent to economically harm Plaintiff. Plaintiff is unable to fairly compete with Groom in the markets where the Groom Phosphorous Products are sold because Groom sells illegal products in that market.

164. Groom's conduct also offends public policy and is immoral, unethical, and unscrupulous because Illinois consumers are interested in purchasing and using legal products that do not harm the environment and that comply with Illinois laws including, but not limited to, the Detergents Act. Selling the Groom Phosphorous Products as being legal when they are not,

offends the public's expectation to be told the truth about the products they are buying.

165. Groom's conduct directly and proximately caused substantial injury to Plaintiff. Groom knowingly and willfully misled reasonable consumers into purchasing Groom Phosphorous Products that are not what they are represented to be, and not what the consumers paid for. Moreover, Groom knowingly and willfully charged a premium for the Groom Phosphorous Products as if they were legal, superior, and of higher quality than Groom represented them to be. Finally, Groom exposed reasonable consumers to unwanted, harmful, illegal levels of chemical exposure.

166. Wherefore, Plaintiff requests the Court to provide injunctive and monetary relief by entering an order: (a) finding that Groom willfully violated the ICFA; (b) enjoining Groom from distributing or selling the Groom Phosphorous Products in the State of Illinois; (c) awarding Plaintiff actual damages, reasonable attorneys' fees, and costs; (d) assessing punitive damages against Groom for its willful violations of Illinois law and negative effects on competition, the environment, and consumers' health and safety; and (e) for all such other and further relief, as may be just and proper.

COUNT XII

HydraMaster's Violation of the Illinois Uniform Deceptive Trade Practices Act

167. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

168. The UDTPA declares that "caus[ing] likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods," "represent[ing] that goods or services have sponsorship, approval, characteristics, ingredients,

uses, benefits, or quantities that they do not have," and "any other conduct which similarly creates a likelihood of confusion or misunderstanding" are unlawful. 815 ILCS 510/2(a)(2), (5), and (12).

169. The HydraMaster Phosphorous Products contain more than 0.5% phosphorous by weight, and the Detergents Act prohibits the HydraMaster Phosphorous Products from being used, sold, manufactured, or distributed for sale in Illinois. *See* 415 ILCS 92/5.

170. HydraMaster omits from its labeling, and otherwise fails to notify the consuming public, that the HydraMaster Phosphorous Products contain more than 0.5% phosphorous by weight and are illegal per se under the Detergents Act. Purchasers of the HydraMaster Phosphorous Products assume that, because those products are able to be bought, they comply with Illinois law.

171. HydraMaster's omissions cause a likelihood of confusion or of misunderstanding in the marketplace. Selling illegal products (HydraMaster's) in the same market where legal products are sold (Plaintiff's) creates a likelihood of confusion and misunderstanding HydraMaster's omissions cause a likelihood of confusion or of misunderstanding as to the sponsorship, approval, characteristics, ingredients, uses, benefits, or certification of the HydraMaster Phosphorous Products because they contain more than 0.5% phosphorous by weight; are illegal under the Detergents Act; and are marketed, advertised, and sold as legal products. *See* 815 ILCS 510/2(a)(2), (5), and (15).

172. HydraMaster's conduct in distributing and selling the HydraMaster Phosphorus Products while concealing, suppressing, or omitting the material fact that the HydraMaster Phosphorus Products violate Illinois law creates a likelihood of confusion or misunderstanding

and constitutes a deceptive trade practice.

173. HydraMaster willfully engaged in this deceptive trade practice.

174. Plaintiff suffered and continues to suffer a loss of the ability to compete in the marketplace and a loss of sales caused by HydraMaster's deceptive trade practice.

175. The UDTPA provides: "A person likely to be damaged by a deceptive trade practice of another may be granted injunctive relief upon terms that the court considers reasonable. Proof on monetary damage, loss of profits or intent to deceive is not required." 815 ILCS 510/3. Plaintiff is likely to be, and in fact is, damaged by the deceptive acts alleged herein.

176. Wherefore, Plaintiff requests the Court to provide injunctive relief by entering an order: (a) finding that HydraMaster willfully engaged in a deceptive trade practice; (b) enjoining HydraMaster from distributing or selling the HydraMaster Phosphorous Products in the State of Illinois; (c) ordering HydraMaster to pay Plaintiff's reasonable attorneys' fees and costs; and (d) for all such other and further relief, as may be just and proper.

COUNT XIII

HydraMaster's Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act

177. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

178. The ICFA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce." 815 ILCS 505/2. The ICFA has a

"broad protective philosophy." *See id.*

179. HydraMaster's conduct in manufacturing, distributing, selling, advertising, marketing, and delivering the HydraMaster Phosphorus Products in Illinois constitutes unfair methods of competition, unfair and deceptive acts or practices, and is against public policy. Specifically, HydraMaster employs deception, fraud, and false pretenses to conceal, suppress, and omit the material facts that the HydraMaster Phosphorous Products do not comply with Illinois law.

180. HydraMaster intends for others, including consumers, to rely upon its concealment, suppression, and omission. Indeed, if HydraMaster provided on its labeling or packaging that the HydraMaster Phosphorous Products are illegal under Illinois law and that they could neither be purchased nor sold legally in Illinois, then no reasonable person would purchase the HydraMaster Phosphorous Products. Therefore, HydraMaster employs the use of deception, fraud, and false pretense by manufacturing, distributing, selling, advertising, marketing, and delivering the HydraMaster Phosphorous Products to unwary purchasers in Illinois that rely upon HydraMaster to ensure that its products are compliant with Illinois law.

181. CTI's representations and omissions are material because they concern the type of information upon which a reasonable consumer would be expected to rely upon in deciding whether to purchase the HydraMaster Phosphorous Products.

182. HydraMaster is profiting at Plaintiff's expense by selling illegal products to reasonable Illinois consumers without telling them that purchasing, possessing, or otherwise using the HydraMaster Phosphorous Products is in violation of Illinois law. All of HydraMaster's conduct was intentional, willful, and with intent to economically harm Plaintiff. Plaintiff is

unable to fairly compete with HydraMaster in the markets where the HydraMaster Phosphorous Products are sold because HydraMaster sells illegal products in that market.

183. HydraMaster's conduct also offends public policy and is immoral, unethical, and unscrupulous because Illinois consumers are interested in purchasing and using legal products that do not harm the environment and that comply with Illinois laws including, but not limited to, the Detergents Act. Selling the HydraMaster Phosphorous Products as being legal when they are not, offends the public's expectation to be told the truth about the products they are buying.

184. HydraMaster's conduct directly and proximately caused substantial injury to Plaintiff. HydraMaster knowingly and willfully misled reasonable consumers into purchasing HydraMaster Phosphorous Products that are not what they are represented to be, and not what the consumers paid for. Moreover, HydraMaster knowingly and willfully charged a premium for the HydraMaster Phosphorous Products as if they were legal, superior, and of higher quality than HydraMaster represented them to be. Finally, HydraMaster exposed reasonable consumers to unwanted, harmful, illegal levels of chemical exposure.

185. Wherefore, Plaintiff requests the Court to provide injunctive and monetary relief by entering an order: (a) finding that HydraMaster willfully violated the ICFA; (b) enjoining HydraMaster from distributing or selling the HydraMaster Phosphorous Products in the State of Illinois; (c) awarding Plaintiff actual damages, reasonable attorneys' fees, and costs; (d) assessing punitive damages against HydraMaster for its willful violations of Illinois law and negative effects on competition, the environment, and consumers' health and safety; and (e) for all such other and further relief, as may be just and proper.

COUNT XIV

Chemeisters' Violation of the Illinois Uniform Deceptive Trade Practices Act

186. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

187. The UDTPA declares that "caus[ing] likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods," "represent[ing] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," and "any other conduct which similarly creates a likelihood of confusion or misunderstanding" are unlawful. 815 ILCS 510/2(a)(2), (5), and (12).

188. The Chemeisters Phosphorous Products contain more than 0.5% phosphorous by weight, and the Detergents Act prohibits the Chemeisters Phosphorous Products from being used, sold, manufactured, or distributed for sale in Illinois. *See* 415 ILCS 92/5.

189. Chemeisters omits from its labeling, and otherwise fails to notify the consuming public, that the Chemeisters Phosphorous Products contain more than 0.5% phosphorous by weight and are illegal per se under the Detergents Act. Purchasers of the Chemeisters Phosphorous Products assume that, because those products are able to be bought, they comply with Illinois law.

190. Chemeisters' omissions cause a likelihood of confusion or of misunderstanding in the marketplace. Selling illegal products (Chemeisters') in the same market where legal products are sold (Plaintiff's) creates a likelihood of confusion and misunderstanding Chemeisters' omissions cause a likelihood of confusion or of misunderstanding as to the sponsorship, approval,

characteristics, ingredients, uses, benefits, or certification of the Chemeisters Phosphorous Products because they contain more than 0.5% phosphorous by weight; are illegal under the Detergents Act; and are marketed, advertised, and sold as legal products. *See* 815 ILCS 510/2(a)(2), (5), and (15).

191. Chemeisters' conduct in distributing and selling the Chemeisters Phosphorus Products while concealing, suppressing, or omitting the material fact that the Chemeisters Phosphorus Products violate Illinois law creates a likelihood of confusion or misunderstanding and constitutes a deceptive trade practice.

192. Chemeisters willfully engaged in this deceptive trade practice.

193. Plaintiff suffered and continues to suffer a loss of the ability to compete in the marketplace and a loss of sales caused by Chemeisters' deceptive trade practice.

194. The UDTPA provides: "A person likely to be damaged by a deceptive trade practice of another may be granted injunctive relief upon terms that the court considers reasonable. Proof on monetary damage, loss of profits or intent to deceive is not required." 815 ILCS 510/3. Plaintiff is likely to be, and in fact is, damaged by the deceptive acts alleged herein.

195. Wherefore, Plaintiff requests the Court to provide injunctive relief by entering an order: (a) finding that Chemeisters willfully engaged in a deceptive trade practice; (b) enjoining Chemeisters from distributing or selling the Chemeisters Phosphorous Products in the State of Illinois; (c) ordering Chemeisters to pay Plaintiff's reasonable attorneys' fees and costs; and (d) for all such other and further relief, as may be just and proper.

COUNT XV

Chemeisters' Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act

196. Plaintiff repeats and re-alleges the preceding factual allegations as if fully set forth herein.

197. The ICFA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce." 815 ILCS 505/2. The ICFA has a "broad protective philosophy." *See id.*

198. Chemeisters' conduct in manufacturing, distributing, selling, advertising, marketing, and delivering the Chemeisters Phosphorus Products in Illinois constitutes unfair methods of competition, unfair and deceptive acts or practices, and is against public policy. Specifically, Chemeisters employs deception, fraud, and false pretenses to conceal, suppress, and omit the material facts that the Chemeisters Phosphorous Products do not comply with Illinois law.

199. Chemeisters intends for others, including consumers, to rely upon its concealment, suppression, and omission. Indeed, if Chemeisters provided on its labeling or packaging that the Chemeisters Phosphorous Products are illegal under Illinois law and that they could neither be purchased nor sold legally in Illinois, then no reasonable person would purchase the Chemeisters Phosphorous Products. Therefore, Chemeisters employs the use of deception, fraud, and false pretense by manufacturing, distributing, selling, advertising, marketing, and delivering the

Chemeisters Phosphorous Products to unwary purchasers in Illinois that rely upon Chemeisters to ensure that its products are compliant with Illinois law.

200. Chemeisters' representations and omissions are material because they concern the type of information upon which a reasonable consumer would be expected to rely upon in deciding whether to purchase the Chemeisters Phosphorous Products.

201. Chemeisters is profiting at Plaintiff's expense by selling illegal products to reasonable Illinois consumers without telling them that purchasing, possessing, or otherwise using the Chemeisters Phosphorous Products is in violation of Illinois law. All of Chemeisters' conduct was intentional, willful, and with intent to economically harm Plaintiff. Plaintiff is unable to fairly compete with Chemeisters in the markets where the Chemeisters Phosphorous Products are sold because Chemeisters sells illegal products in that market.

202. Chemeisters' conduct also offends public policy and is immoral, unethical, and unscrupulous because Illinois consumers are interested in purchasing and using legal products that do not harm the environment and that comply with Illinois laws including, but not limited to, the Detergents Act. Selling the Chemeisters Phosphorous Products as being legal when they are not, offends the public's expectation to be told the truth about the products they are buying.

203. Chemeisters' conduct directly and proximately caused substantial injury to Plaintiff. Chemeisters knowingly and willfully misled reasonable consumers into purchasing Chemeisters Phosphorous Products that are not what they are represented to be, and not what the consumers paid for. Moreover, Chemeisters knowingly and willfully charged a premium for the Chemeisters Phosphorous Products as if they were legal, superior, and of higher quality than

Chemeisters represented them to be. Finally, Chemeisters exposed reasonable consumers to unwanted, harmful, illegal levels of chemical exposure.

204. Wherefore, Plaintiff requests the Court to provide injunctive and monetary relief by entering an order: (a) finding that Chemeisters willfully violated the ICFA; (b) enjoining Chemeisters from distributing or selling the Chemeisters Phosphorous Products in the State of Illinois; (c) awarding Plaintiff actual damages, reasonable attorneys' fees, and costs; (d) assessing punitive damages against Chemeisters for its willful violations of Illinois law and negative effects on competition, the environment, and consumers' health and safety; and (e) for all such other and further relief, as may be just and proper.

PRAYER FOR RELIEF

WHEREFORE, in conformance with the preceding paragraphs, Plaintiff prays the Court grant judgment in its favor and enter an order:

(1) Relating to Counts I, III, VI, VIII, X, XII, and XIV, (a) finding that the Defendants willfully engaged in a deceptive trade practice; (b) enjoining the Defendants from distributing or selling their illegal products in the State of Illinois; (c) ordering the Defendants to pay Plaintiff's reasonable attorneys' fees and costs; and (d) for all such other and further relief, as may be just and proper.

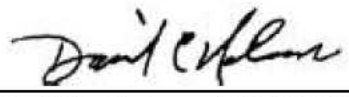
(2) Relating to Counts, II, IV, VII, IX, XI, XIII, and XV, (a) finding that the Defendants willfully violated the ICFA; (b) enjoining the Defendants from distributing or selling their illegal products in the State of Illinois; (c) awarding Plaintiff actual damages, reasonable attorneys' fees, and costs; (d) assessing punitive damages against the Defendants for their willful violations of Illinois law and negative effects on competition, the environment, and consumers' health and safety; and (e) for all such other and further relief, as may be just and proper.

(3) Relating to Count V, (a) finding that Jon-Don and Legend Brands engaged in a civil conspiracy to sell illegal products in Illinois; (b) enter judgment in favor of Plaintiff and against Jon-Don and Legend Brands, jointly and severally, in an amount to be determined at trial equal to the lost profits; (c) for incidental and

consequential damages; (d) punitive damages; (e) Plaintiff's reasonable attorneys' fees and costs; and (f) for all such other and further relief, as may be just and proper.

Dated: December 1, 2020

Tri-Plex Technical Services, Ltd., Plaintiff

By: 

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