

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2015 JUL 28 AM 9:29

Case No.

WAKE COUNTY, C.S.C.

DLYEDY INC, DAVID WORRELL, Individually,
And on behalf of all similarly situated, and
The general public,
Plaintiffs,

RY _____

Versus

**COMPLAINT AND DEMAND FOR JURY TRIAL
(Class Action)**

CHURCH AND DWIGHT CO.
WALMART,
Defendants.

_____ /

Plaintiff DLEDY INC., and David Worrell individually and on behalf of all similarly situated,
and

The general public complains against the defendants as follows:

- a. Created a public nuisance by causing Arm and Hammer Baking Soda (Sodium Bicarbonate) to be present and/or to be used as a crack cocaine enabling device (CED) in a manner that has interfered with plaintiffs enjoyment of life and property;
- b. Placed in the presence of the plaintiffs drug paraphernalia (CED) that is not suitably fit nor safe for its intended purposes because of defective design, and Inadequate warnings;
- c. Knowingly ad willfully participated in, facilitated, aided and abetted the manufacture, possession, distribution and/or use of crack cocaine;
- d. Breached their contract with the intended and foreseeable users of Arm & Hammer Baking Soda products;
- e. Caused bodily injury and death, and the fear of bodily injury and death to the plaintiffs;
- f. Interfered with the economic advantages that would have been available to the plaintiffs had the State of North Carolina not been forced to expand its resources to address the harms caused by crack cocaine being introduced into the community; and
- g. Acted through and in concert with certain of its own officers and various other parties operated as an "enterprise" within the meaning of the Racketeer Influenced and Corrupt Organization Act (RICO), 18 U.S.C. section 1961 et. Seq., through a pattern of racketeering activity, which resulted injury to the members of the plaintiff class. See also N.C.Gen.Stat. Section 75 D-1, et. (NCRICO).

PARTIES

2. Plaintiff DLYEDY, INC., a not for profit corporation, organized and operating under the laws of the State of North Carolina, and has its principle place of business in Clinton, North Carolina.

3. Plaintiff David Worrell individually and on behalf of all other similarly situated citizens of the State of North Carolina, residing in Clinton, North Carolina. The plaintiffs have incurred and continue to incur a myriad of significant and substantial cost associated with the illegal improper manufacture, possession, distribution, and/or use of crack cocaine within the State of North Carolina. Plaintiffs seek to redress the harms resulting from the manufacture production and sale by the defendants of Crack Enabling Devices (CED) (Baking Soda). These costs include but are not limited to the following:

- a. The cost of funding the lawyers needed for the detection, arrest, indictment, and prosecution of offenders whose criminal activity entails the manufacture, possession, distribution, and/or use of crack cocaine;
- b. The cost of funding law enforcement officers for identification, detection, and arrest of offenders whose criminal activity entails the manufacture, possession, distribution, and/or use of crack cocaine;
- c. The cost of operating the Correctional Facilities, which house, among other inmates those who have been accused of or have been convicted of crimes relating to the manufacture, possession, distribution, and/or use of crack cocaine;
- d. The cost associated with the operation of certain aspects of the judicial system within the State of North Carolina, including cost associated with the adjudication of legal matters including the manufacture, possession, distribution, and/or use of crack cocaine;
- e. The cost of establishing and operating the juvenile detention facilities and other related facilities and programs that deal with delinquent youth, many of whom have been involved with peril of crack cocaine;
- f. The cost of breaking the cycle of criminal recidivism, increase public safety and addressing the growing population of criminal offenders who return to their communities and commit new crack cocaine related crimes;
- g. The cost of establishing and maintain various training facilities for law enforcement personnel, whose programs, in part, focus on the critical law enforcement issues related to the manufacture, possession, distribution, and/or use of crack cocaine in the State of North Carolina;
- h. The cost to the plaintiff from the growing problem of addiction and management of addicted patients is too great for the available care provided, many of the addicted patients have no medical insurance coverage; and
- i. The human cost of crack cocaine abuse, families are destroyed, and people can't get jobs, become homeless, and die. They don't send their children to school, which ultimately contributes to truancy, delinquency, another generation of crime and a host of other problems; including births of addicted babies.

4. The following defendant manufacturers distribute, or cause to be distributed in the State of North Carolina, a crack cocaine enabling device (CED) (Baking Soda) that is used for illegal purposes of manufacturing crack cocaine.

5. Defendant Church & Dwight Co., Inc., manufacturers, produces and sells the drug paraphernalia (CED) containing baking soda which is used for improper purposes.

6. Defendant Wal-Mart distributes or causes to be distributed in the State of North Carolina the drug paraphernalia (CED) containing baking soda which is used for the manufacture, possession, distribution, and/or use of crack cocaine.

JURISDICTION AND VENUE

7. This court has subject matter jurisdiction over the class action, because:

a. There are 100 or more class members;

b. There is an aggregate amount in controversy of at least \$5,000,000, exclusive of interest and cost; and

c. There is minimal diversity because the Plaintiffs and Defendants are citizens of different States.

8. This court may exercise personal jurisdiction over the defendants, because the defendants have and continues to have, significant contacts within the State of North Carolina. Among other things:

a. The defendants do business in the State of North Carolina; and

b. The defendants have derived and continue to derive significant revenue and income from residents of the State of North Carolina.

9. Venue is proper in this district pursuant to 28 U.S.C. section 1391 because the defendants provided services to Class members located in this district, and conducted substantial business in this district.

10. This action is brought pursuant to the provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO), and North Carolina Racketeer Influenced and Corrupt Organizations Act (NCRICO).

GENERAL STATEMENT OF THE CASE

11. The linchpin of this case is hinged upon the defendant's foreseeability of the intervening criminal act of third parties. The defendants, by placing into commerce the component (baking soda) necessary to make crack cocaine has exposed the plaintiffs to a foreseeable risk of harm.

12. Church & Dwight Co., is responsible for the intentional misuse of its product, and the intervening negligent acts of third parties. It can reasonably be inferred that the possibility that criminals will employ baking soda to make crack cocaine and attempt to distribute it somewhere

in North Carolina or the United States was foreseeable to the defendants. It's the defendants duty to anticipate and prevent the dangers of crack cocaine placed upon the plaintiffs; since without baking soda there would be no crack cocaine in America.

13. The manufacture and distribution of crack cocaine can readily be anticipated. It is hard to imagine what the defendant can premise placing crack enabling devices on the market besides making crack cocaine. Church & Dwight Co. has designed other products including laundry detergent, washing soda, borax, oven cleaner and personal deodorant for which contain baking soda and market them to the public: None of which can be mixed with cocaine to make crack. Thus, no other marketable use for baking soda exist besides a crack enabling device, and defendants cannot claim crack cocaine, manufacture, and distribution in America as unforeseen, and not a proximate cause of such.

14. In the case of the Tragic bombing of the Murrah Federal Building in Oklahoma City, the Court of Appeals for the 10th Circuit held:

"The act of a third person in committing an intentional tort or crime is a super ceding cause of harm to another resulting there from , although the actor's negligent conduct created a situation which afforded an opportunity to the third person to commit such a tort crime, unless the actor at the time of his negligent conduct realized or should have realized the likelihood that such a situation might be created, and that third person might avail himself of the opportunity to commit such a tort crime. The criminal acts of a third party are foreseeable if: (1) the situation provides a temptation to which a recognizable percentage of persons would yield, or (2) temptation is created at a place where persons of a particular vicious type are likely to be." See **Gaines-Tabb v. ICI Explosives, USA, Inc.**, 160 F.3d 613 (10th Cir.1998).

15. In a similar case terrorist detonated an explosive device on the World Trade Center in 1993 plaintiff owners sued defendant manufacturers of fertilizer Products on theories of negligence and products liability based on the terrorist alleged use of defendants fertilizer products and construction of explosive devices. See **Port Auth. v. Arcadian Corp.**, 189 F.3d 305 (3rd Cir.1998)(Defendant fertilizer manufacturers had no duty to prevent terrorist purchasers of their materials, which were not in and of themselves dangerous, from incorporating the materials into another part that was dangerous; alternately, terrorist' actions were superseding and intervening events breaking the chain of causation). Further, the Court of Appeals for the Third Circuit held:

"Regarding the fact that under N.J. law a manufacturer's duty to encompass objectively foreseeable misuses and alterations of its product, objective foreseeability means reasonable foreseeability. The standard does not affix responsibility for future events that are only theoretically, remotely, or just possibly foreseeable, or even simply subjectively foreseen by a particular manufacturer. Rather, it applies to those future occurrences that, in light of the general experience within the industry when the product was manufactured, objectively and reasonably could have been anticipated." **Port Auth** at Id.

15. In concurring, the Honorable William M. Hoeveler stated: "The precedential value of our decision, as well as that of the Tenth Circuit in **Gaines-Tabb**, rest largely on the temporal reed: **lack of foreseeability of the intervening criminal act.**" See **Gaines-Tabb** at Id.

16. In the instant matter, plaintiffs will show that the defendants have a duty to protect the public from criminal activity of third parties. Defendants' affirmative action's or omissions (placing baking soda into commerce) have exposed plaintiffs to a foreseeable high risk of harm from the intentional misconduct of third persons whom manufacture, possess, distribute, and/or use crack cocaine.

BACKGROUND AND FACTS

17. Church & Dwight Company is a Delaware Corporation which under its registered trademark Arm & Hammer has advertised and sold baking soda to the public since the year 1874. This trademark has been universally known and recognized as indicating that the articles on packages having such trade-mark were manufactured by Church & Dwight Company, and said trademark became and ever since has been a valuable property right, and a protection to purchasers of baking soda. This trademark (Arm & Hammer) has been universally known as the property of Church & Dwight Company and has been uniformly respected as such around the world. See **Church & Dwight Co., v. Russ**, 99 F. 276 (7th Cir. 1900).

18. Baking soda is the component used to manufacture crack cocaine. Congress refers to crack, as the smokable form of cocaine made by dissolving cocaine hydrochloride in water and baking soda and reducing it to a solid substance. See **U.S. S.G. section 2D1.1(C), n. (d)** ("the street name for a form of cocaine base, usually prepared by processing cocaine hydrochloride and sodium bicarbonate, and usually appearing in a lumpy, rocklike form.")(2013).

19. Cocaine is derived from the coca plant native to South America, and is a naturally occurring alkaloid-that is a base found in the leaves of the coca plant¹. An alkaloid is a base compound capable of reacting with an acid to form a salt. As a matter of chemistry, cocaine is an alkaloid. The leaves typically undergo extensive processing before reaching the United States. Processors shred the leaves and mash them with strong alkali (like lime), a solvent (like kerosene), sodium bicarbonate, and sulfuric acid. The result is a light brown paste containing cocaine base (cocaine in its natural alkaloid form). When dried, the resulting coca paste can be vaporized (though the application of heat) and inhaled, i.e., smoked. The ability to smoke the drug is important because smoking produces a quicker, shorter, and more intense high than snorting. This makes it more addictive. Smoking coca paste, which contains cocaine base, is common in the Andes but rare in the United States because cocaine is imported in its powdered, non smokable form.

20. The cocaine paste is processed with hydrochloric acid to create a salt, cocaine hydrochloride, a white or off-white powder. It is this powder that is shipped to the United States, where it is colloquially known as cocaine. Users generally consume powdered cocaine by snorting it. Since cocaine is water soluble, the nasal mucous membranes absorb the chemical, allowing it to enter the blood stream and eventually reach the brain. Users can also apply the powder to other mucous membranes, or dissolve it in water and inject it intravenously. But they

¹ 1 The following sources, from which plaintiff have drawn, provide scientific and technical information on cocaine: Edith Farman Cooper, *THE EMERGENCE OF CRACK COCAINE ABUSE* (2002); and Marian W. Fischman, *Coca Paste*, in *Encyclopedia of Drugs, Alcohol and Addictive Behavior* (2001).

cannot smoke it. The temperature at which cocaine hydrochloride evaporates is higher than the temperature which its active ingredient breaks down.

**CRACK IS A COMBINATION PRODUCT COCAINE BASE & BAKING SODA RENDERING
BAKING SODA A CRACK ENABLING DEVICE ("CED")**

21. Beginning in the early 1970's, American Drug Dealers developed several methods to free cocaine base from cocaine hydrochloride so that it could be smoke. The most common method used to produce this free base cocaine involved flammable substances and could result in dangerous explosions. In 1980, entertainer Richard Pryor received third degree burns when freebasing cocaine made with either. This danger, along with the high price of cocaine limited freebase's popularity in the United States.

22. In the mid-1990's, a new form of smokable cocaine became available, known by the street name "ready rock" or "crack." This form was much easier to manufacture than other forms of freebase because the process did not involve volatile chemical. Crack cocaine is formed by dissolving powder cocaine and baking soda in boiling water. Generally, for every kilogram of cocaine a kilogram of baking soda is used to process cocaine into crack. The chemical reaction changes the cocaine hydrochloride molecule into a chemically basic cocaine molecule, and the resulting solid is cooled with ice. This resulting solid is divided into single dose "rocks" that users smoke. This substance is commonly known as crack or "crack cocaine." Also, unlike the traditional method of making freebase, the "baking soda method" used to make crack did not remove impurities and adulterants present in the powder. These characteristics combined to produce a highly addictive form of smokable cocaine that was far cheaper and more profitable than either powder or freebase had ever been. While cost had previously limited cocaine to people of means, crack made it available to large numbers of young and low income users.

23. Crack spread rapidly through several large cities. In 1986, Congress passed the Anti-Drug Abuse Act of 1986, but crack was already a matter of great public concern: "Drug Abuse in general, and crack cocaine in particular, had become in public opinion and in members' minds a problem of overwhelming dimensions. See 1995 Report 121; also Crack Cocaine Hearing (statement of Chairman Roth) ("We meet today to examine a frightening and dangerous new twist in the drug abuse problem-the growing availability and use of cheap, highly addictive, and deadly form of cocaine known on the streets as 'crack.'") see also Crack Cocaine Hearing Statement of Dr. Robert Byck, Yale University School of Medicine. ("We are dealing with a worse drug...than we have ever dealt with, or that anybody has ever dealt with in history.") It should be noted that on June 6, 1986, while the Commission created the first guideline amendment, University of Maryland of Maryland Basketball Star Len Bias died of a crack cocaine overdose and gained national attention.

24. There is no question that smokeability alone would not have made crack as compelling a legislative target. Wide availability was also critical in distinguishing crack from its chemical cousins. Smokable cocaine existed before the mid-1980's. Yet before the advent of crack congress did not punish it more seriously than powdered cocaine. Congress also never distinguished between snorting cocaine hydrochloride and injecting it, since it produces the same short intense and addictive high as smoking cocaine base. This is probably because the

potential market for these drug taking methods is limited. Traditional freebase cocaine is dangerous to manufacture, and use, and like powdered cocaine, extremely expensive; cocaine paste smoking never caught on in the United States; and there may be a social stigma against injecting drugs intravenously, even among drug users.

25 There is no method to replace the "Baking Soda Method" used to prepare crack 30 years later crack appears to be the only form of smokable cocaine that is cheap, easy to manufacture and extremely profitable. Congress apparently believed that crack was significantly more dangerous than powder, cocaine that: (1) crack was highly addictive; (2) crack users and dealers were more likely to be violent than users of other drugs; (3) crack was more harmful to users than powder, particularly for children who were exposed by their mothers' drug use during pregnancy; (4) crack use was especially prevalent among teenagers; and (5) crack potency and low cost were making it increasingly popular. See 2002 Report 90.

A. THE LINK BETWEEN BAKING SODA AND INCIDENTS OF CRACK COCAINE MANUFACTURE, POSSESSION, DISTRIBUTION, AND/OR USE BY THIRD PERSONS IS FORSEEABLE TO THE DEFENDANTS.

26. The plaintiffs face substantial numbers of incidents of violence or threat of violence related to the manufacture.

27. In 2012, criminals in the State of North Carolina committed numerous unlawful acts related to the manufacture, possession, distribution, and/or use of crack cocaine.

28. In 2014, multiple tons of crack cocaine was manufactured, possessed, distributed, and used in the State of North Carolina grossing billions of dollars to illegal drug enterprises.

29. In order to produce one kilogram of crack cocaine, the equivalent sodium bicarbonate must be mixed with cocaine. Meaning, for every kilogram of crack cocaine manufactured, possessed, distributed and/or used in the State of North Carolina, one kilogram of baking soda is sold by the defendants.

30. The defendants knew or should have known of the casual connection.

31. The actions of the defendants in so causing this manufacture and distribution have specifically caused harm to plaintiffs and will continue to cause harm in the future.

B. THE DEFENDANT'S SALE AND DISTRIBUTION OF CRACK ENABLING DEVICE (CED) FOR ILLEGAL USE IN THE STATE OF NORTH CAROLINA CONSTITUTES THE SALE OF DRUG PARAPHERNALIA.

32. Defendants, consistent with their nationwide patterns and practices have, in jurisdictions outside of the State of North Carolina, encouraged, or permitted to occur the sale of CED's for the manufacture, possession, distribution, and/or use of crack cocaine, and with the knowledge that there is a reasonable likelihood that the purchaser will illegally transport crack cocaine to the State of North Carolina.

33. The defendants have caused substantial quantities of crack cocaine to enter into North Carolina, by among other practices, their use of, or facilitation of market saturation techniques to purchasers with multiple criminal traces and no legitimate use for baking soda other than to manufacture, possess, distribute, ad/or use of crack cocaine.

34. The defendants by these actions, together with other marketing and distribution techniques, have facilitated the continued existence of drug paraphernalia in North Carolina and an underground market for the manufacture, possession, distribution, and/or use of crack cocaine. Drug paraphernalia defined as any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under the Controlled Substance Act. See 21 U.S.C. section 863.

35. Defendants knew or should have known that specific locations within the United States, including the State of North Carolina, constitute high crime areas where significant trafficking in crack cocaine occurs, and that their actions, in causing or facilitating crack cocaine to reach such areas, have caused and will continue to cause the ale and resale of crack cocaine and have caused and will continue to cause the injury, fear, mayhem, and other harms resulting from the manufacture, possession, distribution, and use of this hazardous product.

36. The defendants knew or should have known that nearly 2.23 million people or 1 out of every 100 adults; currently sit in an American prison or jail. Resources are misspent as more than half of the Federal Bureau of Prisons 200,000 inmates are incarcerated for drug-related offenses, and only 6 percent for violent crimes. Almost half of the inmates suffer from substance abuse disorders. Each inmate cost the plaintiffs' system, \$29,291 annually. A Brookings Institute project shows that direct corrections expense totals \$80 billion a year; total expenditure soars to more than \$260 billion once police, judicial, and legal services are included. See **The Hamilton Project**. (2014).

37. Despite their knowledge that their actions have produced the flow of crack cocaine, and resulting harms, defendants have failed and continued to fail to regulate or control, in a reasonable manner, their baking soda marketing, distribution, and marketing activities.

C. THE DESIGN AND MARKETING OF BAKING SODA INTENDED FOR ILLEGAL OR IMPROPER OR DANGEROUS PURPOSES.

38. Defendant Church & Dwight Co., has designed and marketed, and continued to design and market its Arm & Hammer product with intent of appealing to those who will likely use raw sodium bicarbonate for criminal or improper or dangerous purposes in, among other places, the State of North Carolina. Church & Dwight Co., Inc. also sells other household and personal care products under the Arm & Hammer trademark, including laundry detergent, washing soda, borax, oven cleaner and personal deodorant. Therefore, no grounds exist to placing baking soda into commerce other than use as a CEO to manufacture, possess, distribute, and/or use crack cocaine for unlawful purposes.

39. Defendant Church & Dwight Co., Inc.'s manufacturing and marketing strategies have caused crack cocaine to enter and remain in North Carolina.
40. Defendants knew or should have known that their activities by causing and maintaining the presence of CEDs have in the past and until in the future:
- a. Promote criminal activity, violence, and the violation of law;
 - b. Cause a grave physical, emotional, and economic injury to the plaintiffs;
 - c. Jeopardize the public health and safety of the plaintiffs; and
 - d. Cause the plaintiffs to expend substantial dollars for the purposes of ameliorating these harms.
40. Despite their knowledge that their actions have produced and will continue to produce these harms, defendants have failed and continued to fail to regulate or control in a reasonable manner, baking soda marketing, distribution and manufacturing activities.
41. Defendants have chosen not to supervise, regulate or set reasonable marketing, distribution, and manufacturing standards because such practices would limit sales of their Arm & Hammer CED to a significant illegal market, thereby reducing sales and profits.

D. THE PLACEMENT OF DEFECTIVE PRODUCTS INTO THE MARKET PLACE.

42. Church & Dwight Co., Inc., the post and continues now to manufacture and cause defective Arm & Hammer Baking Soda products to reach users in North Carolina.
43. Church & Dwight Co. causes to be distributed in North Carolina baking soda which is the component necessary to manufacture crack cocaine and a hazardous flaw and danger to society.
44. Among other defects, one or more of the following flaws exist in the Arm & Hammer Baking Soda products placed into commerce by the defendants:
- a. Baking soda comes "ready to use" as a crack enabling device (CED) which turns cocaine into crack when mixed with water heated and cooled;
 - b. Designs which fail to incorporate adequate warnings of crack cocaine manufacture, possession, distribution, and/or use; and
 - c. Arm & Hammer baking soda product designs fail to incorporate features which would render cocaine unsmokable when it is used as a CED.
45. Defendant's defective designs have caused crack to enter and remain in North Carolina.
46. Despite their knowledge that their defective designs have produced and continue to produce these harms, defendants have failed and continue to fail to manufacture non-defective Arm & Hammer baking soda products.

CLASS ACTION ALLEGATIONS

47. Plaintiffs DLYEDY INC, and David Worrell, brings this action, individually and on behalf of all similarly situated, and the general public. Plaintiffs seek certification of F.R.Civ.P.Rule 23(b) (3) seeking damages for plaintiff and each class member.
48. The representative plaintiffs will fairly and adequately protect the interest of the class,
49. The proposed F.R.Civ.P.Rule 23(b) (3) class is defined as follows:

a. All persons and entities in the State of North Carolina harmed by the defendants whom caused baking soda to be present and to be foreseeably used as crack cocaine enabling device (CED) by third parties.

b. All purchasers in the STATE of North Carolina of Arm & Hammer baking soda, manufactured, produced and sold by the defendants that were purchased between 2012 and the present.

c. All persons and entities who incurred economic damages from the manufacture, possession, and distribution, and/or use of crack cocaine; or any combination of such damages.

50. Plaintiff seeks certification of an F.R.Civ.P.Rule 23(b) (2) class to:

a. Enjoin defendants from selling current inventory of baking soda with their current inadequate warnings;

b. Enjoin defendants from selling any products containing baking soda manufactured in the future with a warning identical or substantially similar to the current inadequate warning; and

c. Obtain a declaration from the court that the current warning is inadequate and must be changed, or in the alternative product the discontinued until a baking soda product is designed to render cocaine unsmokable when it is used as CED.

51. The classes for those whose benefit this action is brought is so numerous and geographically dispersed that joinder of all members are impractical. Plaintiff is informed and believes and on that basis alleges, the numbers of members in the proposed classes exceeds 100 and that there are substantial numbers of class members in all 50 States.

52. There are common questions of law or fact common to each proposed class, including but not limited to:

a. Whether baking soda could be made safe and not as a crack enabling device by rendering crack unsmokable when mixed with cocaine;

b. Whether Church & Dwight Co., provided adequate warnings of the foreseeable risk to plaintiff and Class Members of the possible consequences of use of Arm & Hammer baking soda;

c. Whether Church & Dwight Co., warnings mislead purchasers of baking soda concerning the likelihood of adverse consequences that could flow from the use of this drug paraphernalia;

d. Whether defendant breached any express or implied warranties with respect to Arm & Hammer baking soda;

e. Whether defendant's failed to warn the general public of the dangers of crack cocaine, and should

f. Whether the foreseeable risk of harm posed by baking soda could have been reduce or avoided by the provision of reasonable warnings and the omissions of the warnings renders baking soda not reasonably safe;

- g. Whether a duty exist for the defendants to anticipate and prevent the accts of third parties due to the foreseeable dangers of crack cocaine;
- h. Whether defendants' business practices constitute violations of the Unfair and Deceptive Business Trade Practices Acct of the State of North Carolina (UDTPA);
- i. Whether crack cocaine manufacture, possession, distribution, and use by third parties are foreseeable superseding and intervening events (proximate cause) which do not break chain of causation based on prior criminal activity;
- j. Whether the defendants are engaging in the pattern of racketeering activity by supplying crack enabling devices to conspirators whom convert cocaine onto crack cocaine with baking soda in violation of RICO's State and Federal Statutes.
- k. Whether facts pled in this complaint support an inference of open ended continuity due to ongoing unlawful criminal activity (crack dealing) whose scope and persistence pose a specific threat to plaintiffs social well being?
- l. Whether defendants conspire with third parties to manufacture, possess, distribute, and use through aiding and abetting theory by providing readily accessible crack enabling paraphernalia.
- m. Whether North Carolina RICO ACT (NCRICO) entitles plaintiffs to relief due to defendants pattern of racketeering activity by third parties.
- n. Whether defendants manufacturing and distribution of crack cocaine enabling device (baking soda) constitutes a violation of the consumer product safety act (CPSA). 15 U.S.C. section 2051;
- o. Whether baking soda presents a substantial product hazard within the meaning of the (CPSA) (Banned Hazardous Product).
- p. Whether defendants have been unjustly enriched by its practices as detailed in this complaint;
- q. Whether defendants' actions were sufficiently wrongful so as to entitle plaintiffs and all others similar situated to punitive damages;
- r. Whether the class has been damages or suffered irreparable harm and, if so, the extent of such damages or the nature of the equitable and injunctive relief to which each member of the class is entitled.

53. The claims of plaintiffs are typical of the claims of class members in that the link between baking soda and incidents of crack manufacture, possession, distribution and/or use by third parties is foreseeable to the defendants. The defendants have created a public nuisance by causing baking soda to

Be present and/or used as a crack enabling device in a manner that has interfered with plaintiffs' enjoyment of life and property. The defendants have placed in the possession of the plaintiffs and the general public drug paraphernalia that is not suitably fit nor safe for its intended

purpose because of defective design and inadequate warnings, causing plaintiffs to incur expenses and economic loss that would have been available had they not been forced to expend resources to address the harms caused by crack cocaine being introduced into the community.

54. Plaintiffs are informed and believe, and on that basis allege, that these consequences flowing from the use of defendant's products, and these expenses and damages, are typical and widespread throughout membership of the proposed classes.

55. Plaintiffs will fairly and adequately represent and protect the interest of the class, as demonstrated by:

- a. Investigating the facts behind the losses suffered by the plaintiffs and similarly of these losses and injuries among the general public throughout the State of North Carolina;
- b. Engaging experience class action counsel to prosecute this action; and
- c. Agreeing with counsel to devote substantial time and effort in the prosecution of this action.

56. The proposed class is one in which:

- a. The common question of law and fact predominate over questions affecting individual class members and;
- b. A class action is superior to individual adjudication of product liability claims involving the presentable harm to society due to the manufacture, possession, distribution, and/or use of crack cocaine.

57. The proposed class is one in which the defendants have acted in an identical manner towards plaintiffs and all proposed class members, so that final injunctive relief is appropriate with respect to the class as a whole.

COUNT ONE: PUBLIC NUISANCE

58. Each paragraph of this complaint is incorporated by referenced and relied upon by the plaintiffs.

59. For the purpose of reducing and restricting in the State of North Carolina, the availability of (a) crack cocaine that is linked to violence or crime, and (b) drug paraphernalia used as crack enabling devices (referred to in this complaint as CEDs').

60. The federal government and the State of North Carolina have enacted strict controlled substance offense laws. These controlled substance offense laws place strict prohibitions on the manufacture, possession, distribution and/or use of crack cocaine in the State of North Carolina.

61. Such laws reflect the policy of the State of North Carolina that the general public should not be caused to suffer the cost associated with responding to and attempting to control the homicides, drug overdoses, and other violence, injury, other obstruction of public rights, and apprehension of harm occasioned by the presence of crack cocaine in the State of North Carolina.

62. In contradiction of the intent of these Controlled Substance Statutes, and in contravention of plaintiffs, and general public's common-law rights, the actions of the defendants in causing the manufacture, possession, distribution, and/or use of crack cocaine by placing into commerce baking soda, have unreasonably obstructed, disturbed, and interfered with the ability of plaintiffs and the general public to use and enjoy their own property, to use and enjoy the public lands of the State of North Carolina, and to be free from disturbance and unreasonable apprehension of

danger and unreasonable apprehension of danger to person and property, and to otherwise be free from endangerment to their health, safety, and welfare.

63. In contravention of the intent of these controlled substance statutes, and in contravention of the plaintiffs common-law rights, the actions of these defendants, in foreseeably causing the presence of CEDs North Carolina by making baking soda available to third parties, whom manufacture, possess, distribute, and/or use crack cocaine, have caused the plaintiffs to expend large sums of money in attempts to abate and ameliorate the harms caused by these Hazardous Substances.

64. Defendants past conduct and ongoing conduct constitutes a continuing nuisance under the law of the State of North Carolina.

COUNT TWO: STRICT LIABILITY-DEFENDANTS' PRODUCTS ARE NOT REASONABLY FIT, SUITABLE OR SAFE FOR THEIR INTENDED PURPOSE.

65. Each prior paragraph of this complaint is incorporated by reference and relied on by the Plaintiffs.

66. Defendants have manufactured or distributed or sold or caused to be sold sodium bicarbonate that is not reasonably fit, suitable, or safe for their intended purpose in that;

- a. Enables cocaine to be converted into crack when mixed with water, heated and cooled;
- b. Fails to possess features that render cocaine unusable for illicit and/or illegal purposes;
- c. Places the general public at a risk of harm due to the manufacture of crack cocaine; a risk that could be reduced or averted by another reasonable design;
- d. Has a duty to protect society from the criminal activity since baking soda as designed renders it a crack enabling device;
- e. Is engaged in the business of selling and distributing a CED and subject to liability or harm to society and/or property caused by crack cocaine into which baking soda is integrated;
- f. Fails in its duty to anticipate and prevent the acts of third parties due to foreseeable dangers of crack cocaine; fails to possess adequate warnings for the general public; and
- g. Is otherwise defective and unreasonably dangerous.

67. At all pertinent times, technical and feasible alternative designs existed and were available to the defendants that would have corrected these defects without substantially impairing any intended legitimate function of baking soda.

68. at all pertinent times, baking soda's described defect were egregiously unsafe, and renders it unlawful drug paraphernalia.

69. At all pertinent times, baking soda's described defects were ultra hazardous.

70. At all pertinent times, the ordinary and foreseeable users and consumers of the defective CED could not reasonably have been expected to have knowledge of the risks associated with the use or exposure to baking soda.

71. at all pertinent time, baking soda posed a serious risk of injury to persons others than the persons who the defendant's intended to be the users and consumers of baking soda.

72. As a direct and proximate result of the actions of the defendants in manufacturing or marketing baking soda, the citizens of North Carolina have been caused to suffer innumerable harms, including, but limited to, homicides, and other violence, injury demand from the

growing problem of addiction from a growing problem of addiction, and apprehension of harm occasioned by the presence of CED's in the State of North Carolina.

COUNT THREE: NEGLIGENCE

73. Each prior paragraph of this complaint is incorporated by reference and relied on by the plaintiff.

74. At all pertinent times, defendants in contravention of their duty to act with reasonable care, negligently, carelessly, and recklessly marketed and distributed, or caused to marketed and distributed baking soda to persons residing or entering the State of North Carolina.

75. The failure to remove baking soda from the market has resulted in the incurring of excessive healthcare, treatment, and rehabilitation cost among other expenses;

76. As a direct and proximate result of these actions by defendants, the plaintiffs has been caused to suffer the cost associated with responding to and attempting to control, abate, and ameliorate the homicides, accidents, and other violence injury and apprehension of harm occasioned by the illegal, or improper, or dangerous use of baking soda in the State of North Carolina.

77. As further direct and proximate result of these actions by defendants, the plaintiffs has been caused to suffer innumerable harms, including, but not limited to homicides, accidents, and other violence, injury, and apprehension of harm.

COUNT FOUR: UNJUST ENRICHMENT:

78. Plaintiffs incorporates by referenced each of the predicated allegations as though fully set forth here.

79. As set forth in greater detail above, defendants profited and benefited from the sale of defective Arm & Hammer Baking Soda products, even as the baking soda product caused plaintiffs and class members to incur damages.

80. As a result of the conduct described in this Count, plaintiffs and class members paid monies to defendant for which plaintiffs and class members received no benefit and to which defendants were not entitled.

81. At all pertinent times a reasonable person would anticipate baking soda to be used to convert cocaine into crack and distributed to the public; the enormity of the drug trade, scale of the crack cocaine pandemic, and resulting calamity rendered upon society.

82. Defendants have voluntarily accepted and retained these profits and benefits derived from consumers, including plaintiffs and class members, were not receiving products of the quality, nature, fitness, or value that had been represented by the defendants on that reasonable consumers expected.

83. In consequences of the acts set forth in this Count, defendant has been unjustly enriched at the expense of plaintiff and class members.

84. In consequences of the acts set forth in the Count, defendant has been unjustly enriched at the expense of plaintiff and class members.

85. Plaintiffs and class members are entitled to the amount of defendants' unjust enrichment as restitution.

COUNT FIVE: WHETHER THE HARM CAUSED BY THE MANUFACTURE, POSSESSION, DISTRIBUTION, AND/OR USE OF CRACK COCAINE IS FORSEEABLE TO THE DEFENDANTS.

86. Each paragraph of this complaint is incorporated by reference and relied on by the plaintiffs.

87. At all pertinent times, the actions of the defendants in causing baking soda to be present in North Carolina and employed by criminals to manufacture, possess, distribute, and/or use crack cocaine is "reasonably foreseeable."

88. Defendants have failed in their duty to warn the plaintiffs of third party criminal acts which are the proximate cause of injuries to the plaintiffs and foreseen by the defendants.

89. Such actions constitute manufacture, possession, distribution and/or use of crack cocaine by the defendants, to harm the plaintiffs.

90. As a direct and proximate result of the manufacture, possession, distribution, and/or use of crack cocaine by the defendants, the plaintiffs have been caused to suffer the cost associated with responding to and attempting to control, abate, and ameliorate the homicides, accidents, and other violence, injury, and apprehension of harm occasioned by the illegal or improper or dangerous use of baking soda in the State of North Carolina.

COUNT SIX: DEFENDANTS BUSINESS PRACTICES CONSTITUTE VIOLATIONS OF THE UNFAIR AND DECEPTIVE TRADE PRACTICES ACT (UPTPA) OF THE STATE OF NORTH CAROLINA.

91. Each prior paragraph of the complaint is incorporated by reference and relied on by the plaintiffs.

92. Despite the defendants' knowledge of the fact that third parties continually destroy society with crack cocaine, they conceal this problem and continue to misrepresent the quality, safety and value of Arm and Hammer baking soda, in violation of the North Carolina UPTPA.

93. Further, the defendants violated the UPTPA by:

a. Placing into commerce drug paraphernalia (CED) that offend established public and drug policy

And is immoral, unethical, oppressive, unscrupulous and injurious to consumers;

b. Marketing a baking soda product in ways which are misleading and deceptive to conceal its use as

a crack enabling device;

c. Possessing foreseeable knowledge that these as a likelihood of illegal conduct on the part of third

persons which endangers the safety of defendants' customers;

d. Failing to acknowledge that baking soda is the sole ingredient and means to convert cocaine into

crack and distributed to the public.

94. At all pertinent times the defendants have placed into the market Arm & Hammer baking soda for no other purpose than to manufacture crack cocaine.

95. At all pertinent time's defendants placed into commerce legitimate Arm & Hammer baking soda products (laundry detergent, washing soda, borax, oven cleaner and personal deodorant) that contain baking soda but can't be used to convert cocaine into crack due to the impurities contained within them.

96. Church & Dwight Co., is the researcher, developer, designer, tester, manufacturer, inspector, labeler, distributor, marketer, and seller of the Arm & Hammer baking soda products, and rerelease these products into the stream of commerce while promoting their sale.

97. At all pertinent times, a reasonable person would anticipate baking soda to be used to convert cocaine to crack and distributed to the public: The enormity of the drug trade, scale of the crack pandemic, and resulting calamity rendered upon society.

98. As a direct and proximate result of the defendants violations of UDTPA in manufacturing or marketing CEDs', the plaintiffs have been caused to suffer innumerable harms, including, but not limited to homicides, accidents, and other violence, injury, and the apprehension of harm occasioned by the presence of crack cocaine in the State OF North Carolina.

COUNT SEVEN: DEFENDANTS ENGAGE IN PATTERN OF RACKETEERING ACTIVITY BY SUPPLYING CRACK ENABLING DEVICES TO CONSPIRATORS WHO CONVERT COCAINE INTO CRACK WITH BAKING SODA IN VIOLATIO OF RICO'S STATE AND FEDERAL STATUTES.

99. Each paragraph of this complaint is incorporated by reference and relied on by the plaintiffs.

100. In violation of the RICO Act, defendants, all persons within the meaning of RICO, commencing on or about 1986 committed acts of furthering or facilitating dealing in a controlled substance and drug paraphernalia (baking soda). RICO defines "racketeering activity" as "any act or threat involving specified state law claims, any 'act' indictable under various specified federal statutes, and certain federal offenses."

101. Dealing in a controlled substance or listed chemical constitutes "racketeering activity" as that term is defined in section 102 of the Controlled Substance Act. See 21 U.S.C. sections 802.

102. Dealing in drug paraphernalia constitutes racketeering activity as that term is defined in 21 U.S.C. section 863.

103. Defendants, through and I concert with others as engaging in a pattern of racketeering activity by supplying baking soda to conspirators whom manufacture, possess, distribute, and/or use crack cocaine within the meaning of 18 U.S.C. section 1964.

104. As a direct and proximate result of defendants pattern of racketeering activity, the plaintiffs have been caused to suffer the cost associated with responding to and attempting to control, abate, and ameliorate the homicides, accidents, and other violence, injury, and apprehension of harm occasioned by the illegal, or improper or dangerous use of baking soda in the State of North Carolina.

COUNT EIGHT: PLAINTIFFS ARE ENTITLED TO RELIEF PURSUANT TO THE NORTH CAROLINA RICO ACT (NCRICO).

105. Each paragraph of this complaint is incorporated by reference and relied on by the plaintiffs.

106. In violation of N.C.Gen.Stat. sections 75D-1, et.seq. (NCRICO), defendant within the meaning of RICO commencing on or about 1986 committed acts of furthering or facilitating dealing in a controlled substance (crack cocaine), and drug paraphernalia (baking soda).

107. Dealing in a controlled substance or listed chemical constitutes "racketeering activity" as defined in

N.C.Gen.Stat. section 90-95(a).

108. Defendants through and in concert with others are engaging in a pattern of racketeering activity by supplying baking soda to parties whom manufacture, possess, distribute, and/or use crack cocaine within the meaning of N.C.Gen.Stat. section 75D-1, et.seq.

109. Defendants through and concert with others aided and abetted third party principals in the manufacture, possession, distribution, and/or use of crack cocaine with the meaning of the NCRICO Act.

110. As a direct and proximate result of defendants' pattern of racketeering activity, the plaintiffs have been caused to suffer the cost associated with responding to and attempting to control, abate, and ameliorate the homicides, accidents, and other violence, injury, and apprehension of harm occasioned by the illegal, or improper or dangerous use of baking soda in the State of North Carolina.

COUNT NINE: DEFENDANTS' MANUFACTURE AND DISRIBUTION OF BAKING SODA AS A CRACK ENABLING DEVICE CONSTITUTES VIOLATIONS OF THE CONSUMER PRODUCT SAFETY ACT(CPSA).

111. Each paragraph of this complaint is incorporated by reference and relied on by the Plaintiffs.

112. Despite the defendants' knowledge of the fact that third parties continually destroy society with crack cocaine, they conceal this problem and continue to misrepresent the quality, safety and value of Arm & Hammer Baking Soda, in violation of the Consumer Products safety Act. (CSPA)

113. further, the defendants violated the CPSA by:

a. Failing to protect the public against unreasonable risk of injury associated with the manufacture, possession, distribution, and/or use of crack cocaine;

b. Failing to assist consumers in evaluating the comparative safety of baking soda of products; and

c. Failing to promote research and investigation into the causes and prevention of crack cocaine related deaths, illness, and injuries.

114. baking soda presents a substantial product safety hazard within the meaning of the CSPA and must be declared a Banned Hazardous Product as defined in 15 U.S.C. section 2057.

115. Defendants have failed to comply with applicable consumer product safety rules, and placed a defective product into commerce which creates a substantial risk of injury to the public.

116. At all pertinent times the defendants have placed on the market Arm & Hammer baking soda for no other use besides than to manufacture, possess, distribute, and/or use crack cocaine.

117. At all pertinent time's defendants placed into commerce legitimate Arm & Hammer products (laundry detergent, washing soda, borax, oven cleaner and personal deodorant) that

contain baking soda but cannot be used to convert cocaine into crack due to the impurities contained within them.

118. At all pertinent times, a reasonable person would anticipate baking soda to be used to convert cocaine into crack and distributed to the public: the calamity of the drug trade, scale of the crack pandemic, and resulting calamity rendered upon society.

119. As a direct and proximate result of the defendants violations of CPSA in manufacturing or marketing CED's, the plaintiffs have been caused to suffer the cost associated with the responding to and attempting to control the injury and apprehensions of harm occasioned by the presence of crack cocaine in the State of North Carolina.

COUNT TEN: INTENTIONAL INTERFERENCE WITH AN ECONOMIC ADVANTAGE.

120. Each paragraph of this complaint is incorporated by reference and relied on by the plaintiff.

121. The State of North Carolina, pursuant to statute, provides for the health, safety, and welfare of its citizens and visitors.

122. In order to provide for such health, safety, and welfare, the State of North Carolina must allocate its resources, provided by its citizens through its tax dollars, for various purposes, including but not limited to the collective advantage of the taxpayers, in a manner that fairly allocates those resources to accomplish the preeminent public good.

123. The defendants knew or should have known of the economic expectations of the State of North Carolina.

124. Defendants by their actions and omissions, wrongfully and without justification interfered with the plaintiffs' expectation of economic advantage.

DAMAGES

125. Each prior paragraph of this complaint is incorporated by reference and relied on by the plaintiff.

126. The conduct of the defendants in the matters set forth in this complaint was in reckless disregard of the rights and safety of consumers such as the plaintiffs, was grossly negligent, or in the alternative, was intentional in that the defendants knowingly took the actions complained of with, or in the alternative was intentional in that defendants knowingly took the actions complained of with full knowledge of the dangers and defects of its products.

127. as a direct and proximate result of these wrongful actions as set forth above, plaintiffs has in the past and will in the future be required to continue to spread large sums of money to enhance the operations of various departments and agencies.

128. as a direct and proximate result of the wrongful actions set forth above, plaintiffs has in the past and will in the future be required to continue to spend large sums of money to enhance the operations of various departments and agencies.

129. As a direct result of the actions of the defendants, the plaintiffs have experienced lost growth and investment opportunities that would have increased the tax based of the general public, which in turn would lower property taxes and otherwise cause monetary advantages to accrue to North Carolina and its citizens.

PRAYER