

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Case No. 1:15-CV-00422**

JOSEPHINE GUZMAN, individually and  
as a representative of a class of those  
similarly situated,

Plaintiff,

v.

DIAMOND CANDLES, LLC,

Defendant.

**COMPLAINT -- CLASS ACTION**

Plaintiff Josephine Guzman, on behalf of herself and the Class set forth below, brings this Complaint against Defendant, Diamond Candles, LLC, and alleges as follows:

**I. INTRODUCTION.**

1. This class action is brought against a North Carolina company that engages in unfair trade practices by operating an illegal lottery in violation of the law.

2. Defendant sells "Ring Candles" which are really lottery tickets. Originally the Defendant sold candles that promised to have "[a] ring worth \$10, \$100, \$1,000 or \$5,000 in every earth friendly all natural soy candle." This message was put right on the candle's glass container. Also Defendant put instructions on the candle including that "[w]e know you can hardly wait to find out which ring lies hidden in your candle." Defendant engaged in a massive, cutting-edge internet marketing campaign prominently touting the chance to win a valuable ring if you bought the candles, and has reported more than \$30 million in sales, and revenues of \$1 million per month.

3. More recently, the Defendant changed how it offers the lottery. Now, Defendant

advertises that if you buy the candle, it will come with a costume jewelry ring and a “ring code” inside which gives you a chance to win a much more valuable ring. By typing the ring code into the company’s “Ring Reveal” website, the customer brings up a screen display showing spinning numbers including \$0, \$100, \$1000 and \$5000 just like on a slot machine. Videos of this feature are prominent on the website: See <https://www.diamondcandles.com/reveal>. The winner whose number comes up as \$0 gets nothing, \$100 means the customer has won a ring worth \$100, \$1000 means the customer won a ring worth \$1000, and if the number \$5000 appears this means the customer won a \$5000 ring.

4. The candles themselves are 21-ounce candles in glass containers. On the Diamond Candles website one can be bought for \$24.95 plus shipping. By comparison, similar sized glass-container candles can be bought off the Amazon website for as little as \$3.00. In an interview, the company’s co-founder confirmed about \$20 profit on each candle shipped.

5. The marketing of this product emphasizes the lottery aspect. Here is how the website is listed on Google:

[diamondcandles.com - Diamond Candles® Official](https://www.diamondcandles.com/official)

Ad [www.diamondcandles.com/official](https://www.diamondcandles.com/official)

5.0 rating for diamondcandles.com

Find A Ring In Your **Candle** Worth \$10 - \$5,000! Shop Now

Free Shipping Available · Save 25% On Selections · Get Refer-A-Friend Bonus

6. That is a sponsored search result on Google. The company is responsible for its content. What is prominently touted is not the candle but the prize; not the “candle” but the “diamond,” and the active lottery-playing, gambling experience of finding the ring.

7. Gambling, for-profit sweepstakes and lotteries are justifiably controversial. Experts have described them as a regressive tax. Peer-review studies describe the addictive nature of

gambling. Not for nothing is it generally outlawed in North Carolina as well as many other States.

8. Many news articles, media sources and customer reviews have noted the lottery nature of the business model. Thus a New York Post article dated November 29, 2014 reported how the company cofounder Justin Winter decided he “would combine the popularity of candles with the thrill of buying a lottery ticket (emphasis added) and created Diamond Candles — a Durham, NC, business that promised customers a 1-in-5,000 chance of finding a \$5,000 diamond ring at the bottom on a fully used 21 oz. candle.” The article reported how “Winter’s privately-held company this year will expect to ring up nearly \$30 million in sales.”

9. Such growth would be unprecedented for a mere candle company, but not for a company offering customers unregulated opportunity on the internet to pay to play a game of chance. The business model was conceived and implemented in North Carolina and Diamond Candles operates its enterprise out of a company headquarters in Durham. Accordingly, it is proper to apply North Carolina law to this commercial enterprise. Defendant admits its enterprise is a “vertically integrated” business model where it uses its website and the internet to market the product, lure customers, take orders, receive payments and ship orders. Accordingly the customer coming onto the website to pay to play the Ring Reveal lottery is analogous to a customer coming to a brick-and-mortar store in our State. Further on its website Defendant states that any disputes related to the website are governed by North Carolina law, and it is this very website that allows the proliferation of the lottery scheme and that is disputed. Lottery schemes based in our State are categorically outlawed by criminal and consumer protection statutes. Plaintiff claims entitlement to damages and injunctive relief individually and on behalf of a putative class.

## **II. THE PARTIES.**

10. Plaintiff Josephine Guzman is a resident of Congers, New York.

11. Defendant Diamond Candles, LLC is a North Carolina limited liability company headquartered in Durham. The company has a business address of 3128 East Geer St., Suite D, Durham NC. It may be served with process at that address or at 10308 Rougemont Road, Bahama, NC 27503-8954.

## **III. JURISDICTION AND VENUE.**

12. This Court has jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d), as there is over \$5,000,000 in controversy and at least one member of the proposed class is diverse from the Defendant.<sup>1</sup>

13. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) because Defendant resides in this District; and under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in the District.

## **IV. NORTH CAROLINA'S REGULATION OF LOTTERIES.**

14. A lottery is a scheme for the distribution of prizes by chance where in order to participate, the player must give something of value to the lottery operator.<sup>2</sup> There are three

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<sup>1</sup> See *Ferrell v. Express Check Advance of SC LLC*, 591 F.3d 698, 700 (4th Cir. 2010) (holding that under the Class Action Fairness Act, "a limited liability company is an 'unincorporated association' as used in §1332(d)(10) whose citizenship is that of the State under whose laws it is organized and the State where it has its principal place of business.").

<sup>2</sup> *State v. Lowe*, 178 N.C. 770, 101 S.E. 385, 386 (1919) ("A 'lottery,' for all practical purposes, may be defined as any scheme for the distribution of prizes, by lot or chance, by which one, on paying money or giving any other thing of value to another, obtains a token which entitles him to receive a larger or smaller value, or nothing, as some formula of chance may determine.").

essential elements to all lotteries: (1) prize, (2) chance, and (3) consideration.

15. North Carolina has a longstanding public policy against private lotteries. Over 180 years ago, North Carolina banned lotteries, and operating a private lottery is a crime. *See* N.C. Gen. Stat. § 14-290, “Dealing in Lotteries” (originally promulgated in 1834). Even lotteries with small prizes are illegal. *See Lowe*, 101 S.E. at 389 (deeming lottery illegal when prize was a 50 cent box of candy).

16. The only legal lottery in North Carolina is the state-run lottery that generates revenue for public schools. In addition, there are narrow, carefully circumscribed carve-outs in the law for certain Indian casinos, bingo and raffles. N.C. Gen. Stat. §§ 18C-101 to -173 (education lottery), 14-292.2 (Indian casinos), 14-309.5 to -309.14 (bingo for nonprofit charitable causes), 14-309.15 (raffles for nonprofit purposes).

17. Private for-profit lotteries are illegal because they are a “widespread pestilence” that are detrimental to the public welfare and contrary to public policy. *Phalen v. Commonwealth of Virginia*, 49 U.S. 163, 168 (1850).

18. As described by the North Carolina Supreme Court, a lottery is “one of the worst and most demoralizing forms of gambling, because it induces and inveigles others to become victims of its debasing tendencies, and fosters the evil habit of trying to get something for nothing, in order to make riches quickly and by what is mistakenly supposed to be the shortest and easiest method.” *Lowe, supra*, 101 S.E. at 389.

19. According to the National Gambling Impact Study Commission, lotteries are as the most common form of gambling in the adult population (accounting for over fifty percent), and the second most common form of gambling in adolescents. National Gambling Impact

Study Commission, Final Report, Chapter 7, Gambling's Impacts on People and Places, at p. 7-22 (June 18, 1999), available at <http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html>.

20. Amongst its most troubling findings, the Commission identified the serious impact of gambling on youth and adolescents. National Gambling Impact Study Commission, Final Report, Chapter 4, Problem and Pathological Gambling, at p. 4-12. The Commission concluded that "adolescent gamblers are more likely than adults to develop problem and pathological gambling." *Id.* The Commission identified an association between gambling and drug and alcohol use, truancy, lower grades and illegal activities. *Id.* at Chapter 7, p. 7-23.

21. Despite the long-standing prohibition on private lotteries in North Carolina, Defendant is currently operating an illegal private lottery scheme using its North Carolina-based website to lure customers and featuring a slot-machine-like interface.

## **V. DEFENDANT'S ILLEGAL BUSINESS PRACTICES.**

22. Defendant's business model has drawn comments noting its similarity to a lottery. Thus the New York Post article observed how Defendant's founder desired to "combine the popularity of candles with the thrill of buying a lottery ticket." New York Post, Kevin Dugan, "Candle Company Catches Fire with Hidden Diamonds," November 29, 2014, available at <http://nypost.com/2014/11/29/candle-company-catches-fire-with-hidden-diamonds/>.

23. Defendant sells "Ring Candles" which were originally marketed as scented jar candles that included a ring within the candle. The purchaser would burn the candle down until he or she could retrieve the ring from the candle.

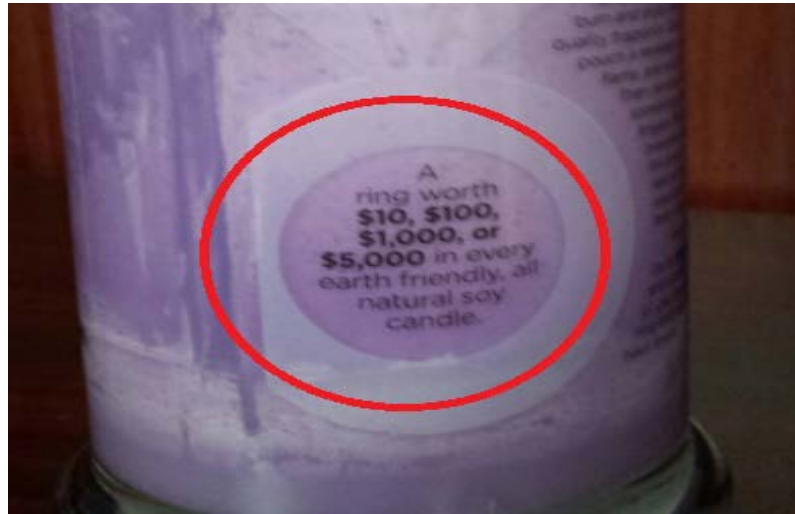
24. As company cofounder Mr. Winter has described in touting the amazing sales growth of the company, the business model was that "[e]ach candle has a ring inside worth at least

\$10 but up to \$100, \$1,000, or even \$5,000.” Justin Winter, “7 Shortcuts for Building an E-Commerce Startup to \$1M in 12 Months,” published on Clarity.com, available at <http://blog.clarity.fm/7-shortcuts-for-building-an-ecommerce-startup-to-1m/>.

25. The marketing prominently touts the lottery aspect of the enterprise, that is, that when one purchases the candle they are purchasing a chance to win a valuable ring. Thus, the candle itself states prominently on it, how there is “A Ring in Every Candle”:



26. Likewise, elsewhere on the surface of the candle glass is text touting how there is “[a] ring worth \$10, \$100, \$1,000 or \$5,000” in the candle, just like there is a chance of winning more than you paid for it, in every lottery ticket:



27. Yet another portion of the same glass candle exterior has more text extolling the presence of the lottery ring inside the wax, stating “[w]e know you can hardly wait to find out which ring is hidden in your candle” and thus luring customers:



28. Before October 2014, Defendant randomly inserted a ring purportedly worth between \$10 and \$5,000 into every Ring Candle. According to Defendant, a purchaser had a 1 in 100 chance of winning a \$100 ring, a 1 in 1,000 chance of winning a \$1,000 ring, and a 1 in 5,000 chance of winning a \$5,000 ring.



29. Starting October 8, 2014, Defendant announced it had modified its practices slightly. Defendant stated that it now placed into every Ring Candle a ring with a purported value of \$10 and a piece of paper that contains a "Ring Reveal" code.

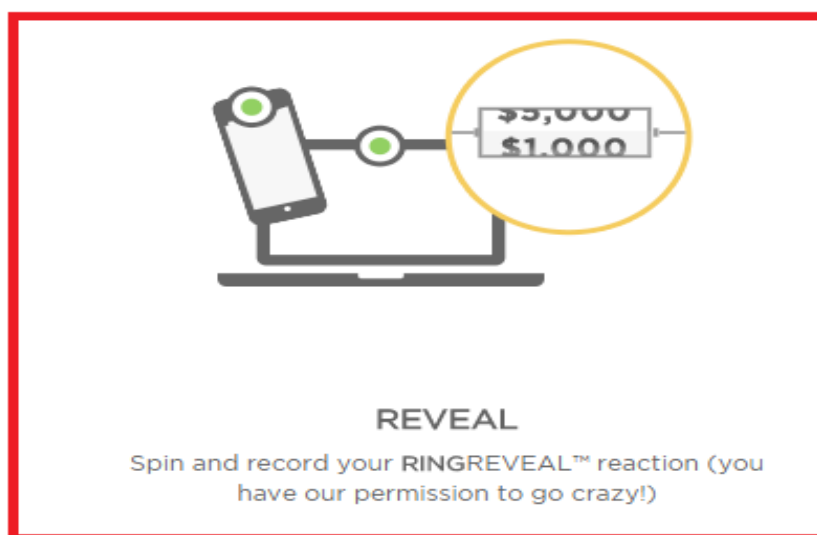
30. On information and belief, the Defendant changed its sales practices from putting rings worth up to \$5000 in the candles, to putting the Ring Reveal code in them, in part was because customers were unsure whether the ring they received in the candle was worth the \$10, \$100, \$1000 or \$5000 amount. A customer would have to take the ring to a jewelry appraiser to confirm its value.

31. Also, the interactive internet feature of the Ring Reveal concept enhances the thrill of the gambling experience. The customer registers, logs in, types in the code and “spins” a slot-machine-like function showing the different prize amounts in dollar amounts spinning by before settling on one. In Defendant’s internet-based business model, the Ring Reveal feature was a way to both make the lottery/gambling aspect more explicit, lure more customers, and obtain personal customer information via the login and register process that could be used to market to the customers further.

32. On its website, the company publicizes videos of customers who win the valuable rings, as a way to further market the enterprise. These videos are generated as part of the Ring Reveal process. The purchaser digs out the Ring Reveal code from in the candle, and enters the code on Defendant's Ring Reveal website to see if he or she has won an additional ring valued at \$100, \$1,000, or \$5,000.

33. After the purchaser types in the Ring Reveal code, he or she "spins" a virtual wheel resembling a slot machine display which cycles between \$0, \$100, \$1000, and \$5,000.

Spinning the wheel can also activate the camera on the purchaser's computer or smartphone, capturing video of the excited customer at the moment of finding out if their lottery ticket – i.e., the Ring Reveal code -- wins. The website page instructions show in a gold circle a graphic of the “slot machine” feature that teases the \$1000 and \$5000 amounts:



34. The Defendant calls the spinning numbers feature of the website a “spinner bar,” describing in a communication with the Better Business Bureau:

The Ring Reveal system is like a sweepstakes where a customer would receive a code with their candle. The code then is used to reveal if they were a winner of a second, higher value, ring. During the reveal there is a spinner bar and then after the spin the results are given. If the code is not a winner the customer is sent to a screen that has a second chance coupon that the customer can use help to purchase another candle.

35. The odds of winning a valuable ring are not displayed anywhere on the purchase page of the Diamond Candles website where a consumer can add a candle to their shopping cart or on the packaging of the candle itself. Instead, the odds of winning a valuable candle are buried on another page on Defendant's website, and a consumer can purchase a candle

without the odds of winning a candle ever being displayed to the consumer.

36. Defendant does not disclose the actual number of \$100, \$1,000, or \$5,000 rings awarded. However it has put up many videos of customers playing the Ring Reveal lottery and having the spinning numbers land on one of the prize amounts, leading to an exciting reaction and luring more customers to order a candle to play.

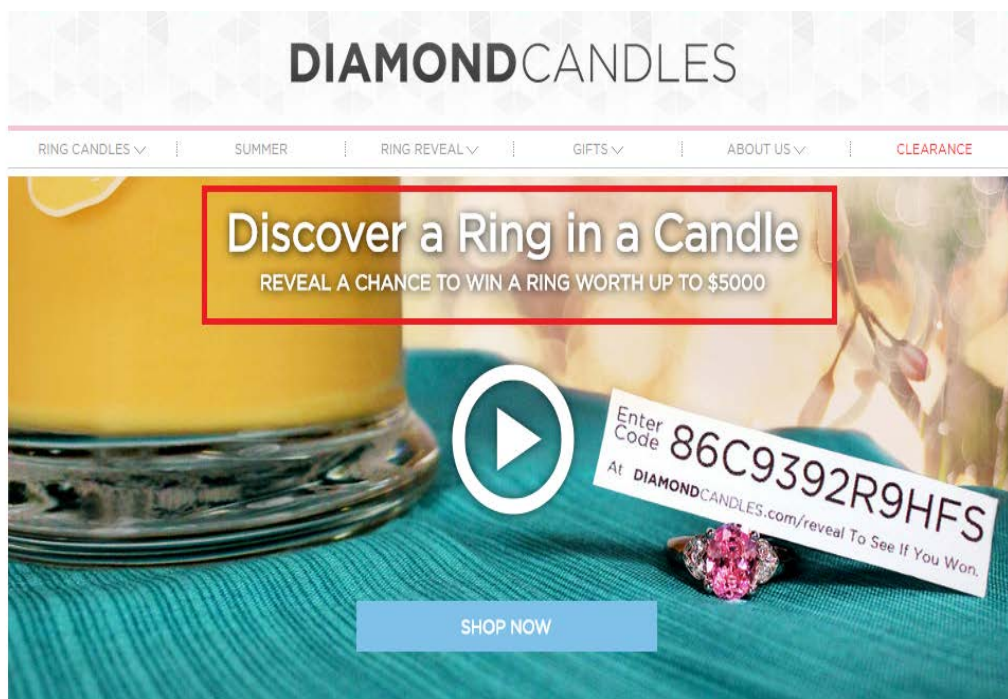
37. Apparently aware of the existence of North Carolina law outlawing private for-profit lotteries, Defendant has buried in an obscure niche of its internet website a purported second method of obtaining a Ring Reveal code. In a single place amidst the mountain of promotional material on its website, Defendant sets out what it terms “official rules” of the “Diamond Candles Ring Reveal Contest,” in which it purports to state that in addition to obtaining a code by buying a candle, a person may also obtain a code by sending in a postcard to a Diamond Candles address. This purported alternative cost-free mode of playing the ring lottery is inadequate to protect the business enterprise from running afoul of the gambling laws.

38. First, it is buried in an obscure corner of the company website, and nowhere else is the terminology used that this is all a “Diamond Candles Ring Reveal Contest,” as opposed to a sales pitch to purchase a candle with a code which may win you something. The substance of the enterprise is not a contest that is free to enter but rather a sales scheme.

39. Second, the unlikely individual who stumbles on this provision and notices it, and who purchases, fills out, properly addresses and mails in the postcard, must still once they receive the code, go and log in and register with the Defendant’s Ring Reveal website. See <https://www.diamondcandles.com/reveal>. Also the postcard mechanism is obviously more inconvenient, slow and cumbersome than simply ordering the candle electronically over the

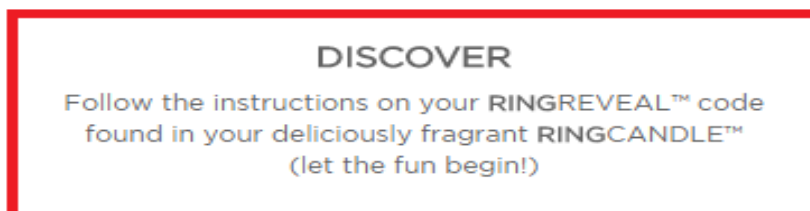
website. Clearly the reason why Defendant does not offer a similar method to seek the free code is that Defendant has no interest in letting customers know this can be done and making it easy to do. The difference between how the lottery ticket (the code in the candle) can so easily be ordered online, versus the completely different postcard “snail mail” process to obtain a free code, reflects the illusory, pretextual and inadequate nature of this attempt to avoid liability.

40. Third, the purportedly free means of participating is contradicted elsewhere in the website, where Defendant consistently encourages the customer to believe that the sole way of winning a ring is by buying a candle. The front page of the website makes clear that what the company is marketing is the chance to get a valuable ring by buying a candle, with no mention of any other way of obtaining one: “Discover a Ring in a Candle”:



41. The Ring Reveal part of the website instructs customers not on how they may go obtain a free code, but rather on how they may participate by using the code hidden in the

purchased candle: “Follow the instructions on your RINGREVEAL™ code found in your deliciously fragrant RINGCANDLE™ (let the fun begin!)”:



42. Another page of the website describes how “[i]nside every deliciously fragrant Ring Candle, you’ll discover a surprise \$10 ring packaged with a special code. Enter your code on our RINGREVEAL™ website to reveal if you’ve discovered a ring worth \$100, \$1000, or \$5000. Lucky winners will choose their ring’s style and size from our exclusive ring collection.” Conspicuously missing is any mention of any cost-free way of getting the code.

43. On that same website page Defendant instructs: “Want to see for yourself? Watch our RINGREVEAL™ videos or go ahead and take the plunge and get your first Ring Candle today.” Thus Defendant is instructing the customers that if they want to get the code and play the game, they need to buy the candle.

44. Nowhere in the high-tech internet marketing of the Ring Candles does Defendant also prominently advise that a customer can also obtain one of the Ring Reveal codes without buying one of the candles.

45. Likewise, the list of Frequently Asked Questions or FAQs on the Diamond Candles website conspicuously fail to mention anything about a cost-free way to play the game. Instead it consistently leads a reasonable reader to believe that in order to play you must purchase the candle:

What is RINGREVEAL™?

We are very excited to introduce our new RINGREVEAL™ experience. Now every Ring Candle comes with a ring plus a special RINGREVEAL™ code. Enter the code on the RINGREVEAL™ website for a chance to reveal up to \$5000 to use in our exclusive ring boutique where you can choose your very own style and size ring. We can't wait to see what you reveal! Shop Ring Candles to start your RINGREVEAL™.

46. Even the Q&A for a customer complaining that they bought the candle but it had no code in it, oddly fails to mention anything about how the individual may obtain the code by some other method besides buying a candle:

I didn't receive a code in my ring candle, what do I do?

A code comes with every single ring candle. You can expect to find it with your \$10 value ring inside the golden packet embedded in the candle. There are only two exceptions:

1. If you purchased a ring candle before October 8, 2014 we used a different system without codes.
2. If you received a sticker with a code right on top of the jar. We did this for a temporary period of time when we were transitioning to the new RINGREVEAL system in October 2014....

47. Defendant's illegal lottery scheme is an essential part of its business model. As described by one reviewer, the thrill of buying a Diamond Candle is analogous to playing the lottery or blackjack:

Not only do you get a quality candle, but you get the added fun of a surprise piece of jewelry! The rings are purchased wholesale, and obviously a good portion of them will be in the \$10-\$20 range; can't put a piece of fine jewelry in every single candle! But that's what makes this such a compelling business concept. The anticipation of finally unwrapping your piece of jewelry and seeing what you get can be such a rush. It's like that feeling you get when you buy that lottery ticket that you think could be The One, or when you sit down at the blackjack table with a stack of chips at the casino. We all love that feeling that there could be a chance we hit it big. That's what keeps us coming back. Every time the Powerball

jackpot hits a certain amount, we all rush to the store to get that lottery ticket. You hit 21 at the tables? You keep on going! Or at least I do, because when you get on a hot streak it's hard to stop.

48. When asked in an interview whether there might be "legal ramifications" and issues with its business model that sells candles as "lottery ticket[s]," Defendant's co-founder responded "No. Definitely not really worried about that."

49. An individual identifying herself as a Customer Service Representative for Defendant provided additional insight on the company's enterprise in an internet posting dated August 2, 2013. The CSR, giving her name as Savannah, described that "We get letters each day telling us how they wish their candle contained the \$5k ring or even one of the smaller ones such as \$1k or even \$100 dollars. The truth is each ring put in is completely random." These statements are an admission first, that customers buy the candles for the chance at the lottery prize, and two, it is a game of chance. She admits that a customer who buys the candle gets "the added bonus of possibly getting that big winner!"

50. Defendant's illegal scheme has been highly profitable. Despite being founded a little more than four years ago with only a \$50,000 initial investment, Defendant was reported to be on target for nearly \$30 million in revenue as of late 2014. Defendant has claimed that as of February 2013 it was raking in \$1 million per month. A marketing video brags that by the end of the company's first year in business it was processing more than 10,000 orders per month.

51. The explosive growth of Defendant's business selling candles is explicable by the fact that Defendant is not really selling candles but tickets to a lottery for a valuable ring. As one disgruntled customer expressed on June 17, 2014:

I received my candle in February. I was so excited to have gotten it! When I got home with it, I started to burn it down immediately! When I finally got down to my ring and unwrapped it... It was broken! A 3 stone ring had the 3rd stone broken out. I contacted them immediately. The response I received was that they wouldn't do much for me seeing how they see the ring as a "bonus". **I am sorry, but no one pays \$30.00 for a candle. They pay for the chance at a nice ring.**

(Emphasis added).

52. As another customer complained on March 8, 2013:

The customer service agent also stated, "we are a candle company and selling candles with the ring as just an added bonus." If that is the case, I do not feel it is appropriate to advertise that their candles are guaranteed to contain rings worth \$10 or more.

53. Furthermore, a review of Defendant's website reveals that the website's check-out and shopping cart feature misrepresents the cost of standard and expedited shipping. Specifically, the website states that standard shipping can be obtained for an additional cost, but the actual cost billed for that mode of shipping is significantly greater. The same deception exists with regard to the expedited shipping option, in that the actual amount billed to the customer for that shipping is greater than the additional cost the website recites. Specifically the website currently states that the cost of standard shipping is \$5 more than economy, but if one selects standard, the charge increases from \$3.99 to \$12.95 – an \$8.96 increase. Again for expedited shipping the site says it costs \$19 more than economy, but if one selects that option the charge actually goes up to \$26.95 – a jump of \$22.96.

54. Defendant's lottery scheme ignores the legal prohibition against gambling and lotteries and Defendant has unjustly reaped millions of dollars as a result.

## **VI. FACTS RELATING TO PLAINTIFF GUZMAN.**

55. In early 2015, Plaintiff Guzman purchased a "Cupcake Ring" scented Ring Candle



from Defendant's website.

56. The purchase price was \$24.95 plus \$7.95 in shipping charges.

57. But for Defendant's lottery scheme, Plaintiff would not have purchased Defendant's candle.

## **VII. CLASS ACTION ALLEGATIONS.**

58. In accordance with Fed. R. Civ. P. 23 and Local Rule 23.1, Plaintiff asserts her claims against Defendant on behalf of the class defined as follows: “All persons who have purchased Defendant's Ring Candles within the applicable limitations period before the filing of this complaint through the date of final judgment in this action.”

59. Numerosity: The Class is so numerous that joinder of all Class members is impracticable. Defendant states that it has sold over one million candles.

60. Typicality: Plaintiff's claims are typical of the Class members' claims. The violations suffered by Plaintiff are typical of those suffered by other Class members, and Defendant treated Plaintiff consistent with other Class members in accordance with its standard policies and practices.

61. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class, has no known conflicts with Class Members and has retained counsel experienced in complex class action litigation.

62. Commonality: Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members, including but not limited to:

a. Whether Defendant's business practices constitute an illegal lottery;

- b. Whether North Carolina substantive law properly may apply to a nationwide class;
- c. Whether Defendant has engaged in unfair and deceptive trade practices under North Carolina's Unfair and Deceptive Trade Practice Act;
- d. Whether Defendant willfully engaged in its unfair and deceptive acts and practices;
- e. Whether Defendant has been unjustly enriched through its business practices;
- f. The proper measure of damages; and
- g. The proper scope of injunctive relief.

63. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(2) because Defendant acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

64. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Class predominate over any questions affecting only individual Class members, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendant's conduct described in this complaint stems from common and uniform policies and practices, resulting in common violations of North Carolina law. Class members do not have an interest in pursuing separate actions against Defendant, as the amount of each Class member's individual claims is small compared to the expense and burden of individual prosecution, and Plaintiff is unaware of any similar claims brought against Defendant by any Class members on an individual basis. Class certification also will obviate the need for unduly duplicative litigation that might result in

inconsistent judgments concerning Defendant's practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Class members' claims in a single forum.

65. North Carolina law properly applies to the entire putative class. All purchasers of the Ring Candles should be allowed recourse and protection under the North Carolina law categorically criminalizing and outlawing lotteries and gambling given that Defendant chose to solicit customers from a website in North Carolina, and customers came to this website and purchased the candles there. Defendant originated and operated its lottery enterprise in North Carolina, administered its marketing and website from here, took orders and sold Ring Candles from here, and customers purchased the candles through calling Defendant's business or ordering over its website, which states that "[a]ny claim relating to Diamond Candles's web site shall be governed by the laws of the State of North Carolina without regard to its conflict of law provisions." The instant claims are indeed related to the Defendant's website and its features which include the slot-machine like Ring Reveal page and allows the electronic purchase of candles with the rings and ring codes.

**COUNT I**  
**Violation of North Carolina's Unfair and Deceptive Trade Practice Act**  
**N.C. Gen. Stat. § 75-1.1, *et seq.***

66. Plaintiff re-alleges and incorporates by reference the preceding paragraphs herein.

67. Defendant's use of lottery scheme in connection with selling candles is an unfair act or practice prohibited by N.C. Gen. Stat. § 75-1.1 *et seq.* ("NC UDAP").

68. Defendant's conduct constitutes an unfair practice because Defendant violates

North Carolina's "Representation of Eligibility to Win a Prize" statute, N.C. Gen. Stat. § 75-33, which mandates that a company offering a prize in connection with the sale of a product "clearly and prominently disclose immediately adjacent to the description of the item or prize...[t]he actual number of each item or prize to be awarded...[and] the odds of receiving each item or prize." Defendant does not disclose the number of valuable rings awarded nor does it clearly and prominently disclose immediately adjacent to the description of the ring or the candle the odds of winning a prize.

69. Specifically, the statute states:

§ 75-33. Representation of eligibility to win a prize.

(a) No person, firm or corporation engaged in commerce shall, in connection with the sale or lease or solicitation for sale or lease of any goods, property or service, represent that another person, firm, and/or corporation has a chance to receive any prize or item of value without clearly disclosing on whose behalf the contest or promotion is conducted, and all material conditions which a participant must meet. Additionally, each of the following must be clearly and prominently disclosed immediately adjacent to the description of the item or prize to which it relates:

(1) The actual retail value of each item or prize (the price at which substantial sales of the item were made in the area within the last 90 days, or if no substantial sales were made, the actual cost of the item or prize to the person on whose behalf the contest or promotion is conducted);

(2) The actual number of each item or prize to be awarded;

(3) The odds of receiving each item or prize.

It shall be unlawful to make any representation of the type governed by this section, if it has already been determined which items will be given to the person to whom the representation is made....

70. Defendant's violation of the consumer disclosure statute set forth at N.C. Gen. Stat.

§ 75-33 constitutes a *per se* violation of NC UDAP.<sup>3</sup>

71. Defendant's operation of an illegal lottery is also unfair because it offends North Carolina's established public policy against lotteries and is immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers.

72. N.C. Gen. Stat. § 75-1.1 declares unlawful “unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.”

73. Section 75-1.1(a) is reproduced verbatim from the Federal Trade Commission Act (FTCA), and the State adopted this section to parallel and supplement the FTC Act. *Hageman v. Twin City Chrysler-Plymouth, Inc.*, 681 F. Supp. 303 (M.D.N.C. 1988).

74. Defendant's act and practices of implementing an unlawful lottery scheme for profit under the pretext of simply selling candles constitute violations of the Federal Trade Commission

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<sup>3</sup> See *Moretz v. Miller*, 126 N.C. App. 514, 517, 486 S.E.2d 85, 87, *rev. denied*, 347 N.C. 137, 492 S.E.2d 24 (1997) (a “violation of a statutory provision designed to protect the consuming public may constitute an unfair and deceptive practice as a matter of law”); *Stanley v. Moore*, 339 N.C. 717, 724, 454 S.E.2d 225, 229 (1995); *Pearce v. American Defender Life Ins. Co.*, 316 N.C. 461, 470, 343 S.E.2d 174, 179 (1986); *Winston Realty Co. v. G.H.G., Inc.*, 314 N.C. 90, 98-99, 331 S.E.2d 677, 682 (1985); *Ellis v. Smith-Broadhurst, Inc.*, 48 N.C.App. 180, 268 S.E.2d 271 (1980); *Alexander v. DaimlerChrysler Corp.*, 2004 WL 179369, \*12 (N.C. Super. 2004) (“The failure to disclose information in connection with a consumer transaction that a state statute specifically designed to protect consumers’ mandates is about as clear an unfair trade practice as can exist.”); *In re Fifth Third Bank, Nat’l Ass’n—Vill. of Penland Litig.*, 217 N.C. App. 199, 207, 719 S.E.2d 171, 176 (2011) (“[A] violation of a consumer protection statute may, in some instances, constitute a *per se* violation of [section 75-1.1].”); *State ex rel. Edmisten v. Zim Chem. Co.*, 45 N.C. App. 604, 607, 263 S.E.2d 849, 851 (1980) (violation of branding statute was predicate for finding of NC UDAP violation); *Kewaunee Sci. Corp. v. Pegram*, 130 N.C. App. 576, 581, 502 S.E.2d 417, 420 (1998) (violation of a criminal statute on commercial bribery “should also be considered a violation of G.S. 75-1.1”); *Noble v. Hooters of Greenville (NC), LLC*, 199 N.C. App. 163, 170, 681 S.E.2d 448, 454 (2009) (“North Carolina appellate courts have held that violations of certain regulatory statutes are *per se* violations of N.C. Gen. Stat. § 75-1.1”); *Odell v. Legal Bucks, LLC*, 192 N.C. App. 298, 319-20, 665 S.E.2d 767, 780-81 (2008) (predicate violation of usury statute); *State ex rel. Cooper v. NCCS Loans, Inc.*, 174 N.C. App. 630, 641, 624 S.E.2d 371, 378 (2005) (same).

Act, 15 U.S.C. § 45(a), which the courts consider when evaluating claims under the Consumer Protection Acts, including the NC UDAP.

75. Defendant's conduct violates one or more other statutes of North Carolina prohibiting lotteries, gambling and sweepstakes, including N.C. Gen. Stat. § 14-289:

Except as provided in Chapter 18C of the General Statutes or in connection with a lawful raffle as provided in Part 2 of this Article, if anyone by writing or printing or by circular or letter or in any other way, advertises or publishes an account of a lottery, whether within or without this State, stating how, when or where the same is to be or has been drawn, or what are the prizes therein or any of them, or the price of a ticket or any share or interest therein, or where or how it may be obtained, he shall be guilty of a Class 2 misdemeanor....

76. In addition or in the alternative, Defendant's conduct violates N.C. Gen. Stat. § 14-306.1A, which provides that "[i]t shall be unlawful for any person to operate ... or keep in that person's possession for the purpose of operation any video gaming machine," defined to include "by way of illustration and not exclusion," "[a]ny other video game not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstakes." Here, the Ring Reveal website page with its slot-machine-like spinning numbers can only be activated by registering, logging in and keying in a code, which code remotely activates the Ring Reveal game.

77. In addition or in the alternative, Defendant's conduct violates N.C. Gen. Stat. § 14-306.4, which provides that it is unlawful to use an electronic machine or device for a sweepstakes. The statute broadly defines "electronic machine or device" to include any electronically operated machine or device, that is intended to be used by a sweepstakes entrant, that uses energy, and that is capable of displaying information on a screen. Under the statute, it is unlawful to use any video game not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstakes. A "sweepstakes" broadly means any game, advertising scheme or plan,

or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, the determination of which is based upon chance. Furthermore the statute states that “[i]t is the intent of this section to prohibit any mechanism that seeks to avoid application of this section through the use of any subterfuge or pretense whatsoever.”

78. Defendant’s violations of one or all of the above-referenced consumer protection statutes constitutes a per se violation of NC UDAP or evidences a violation of NC UDAP.

79. Defendant has sold over a million candles to persons all across the United States, and therefore constitutes a business activity in or affecting commerce.

80. Defendant’s unfair and deceptive practices have caused injury to Plaintiff and the Class, including, but not limited to, the amount of money paid for Defendant's Ring Candles.

81. Defendant knowingly, intentionally, and voluntarily engaged in the aforementioned unfair practices.

82. As a direct and proximate result of Defendant’s acts and practices constituting unfair and deceptive acts under NC UDAP, the Plaintiff and the Class have been damaged in an amount exceeding the jurisdictional minimum for this Court.

**COUNT II**  
**Unjust Enrichment, Rescission and Restitution**

83. Plaintiff re-alleges and incorporates by reference the preceding paragraphs herein.

84. Pursuant to Fed. R. Civ. P. 8(a)(3), the Plaintiff hereby pleads unjust enrichment, rescission and restitution in the alternative to her other claim for relief.

85. In paying for Defendant's Ring Candles, Plaintiff and the Class conferred a non-

gratuitous benefit upon Defendant that Defendant accepted.

86. Because Defendant received these benefits as a result of its illegal lottery scheme, it would be unjust or unfair for Defendant to retain profits, benefits, and other compensation from the practices alleged herein.

87. Defendant's transactions with the Plaintiff and the Class were void *ab initio* due to the fact that Defendant's lottery business was unlawful under the prohibition against lotteries.

88. Accordingly, the Plaintiff and the Class members are entitled to rescission and restitution and disgorgement of the monies received by the Defendant.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for relief as follows and that the Court order and award as follows:

- A. Order and certify that this action may proceed as a class action under Rule 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure;
- B. Designate Plaintiff as class representative and designate Plaintiff's counsel as counsel for the Class;
- C. Order that proper notice be provided to the Class at Defendant's expense;
- D. Enter judgment in favor of Plaintiff on all counts;
- E. Declare that Defendant's practices complained of herein are unlawful;
- F. Order and enjoin that the Defendant cease and desist from engaging in these unlawful practices;
- G. Award all allowable damages and treble damages including pursuant to N.C. Gen. Stat. § 75-16;
- H. Award all allowable pre-judgment and post-judgment interest as provided by law;



- I. Order the disgorgement of all amounts received by Defendant in connection with its sale of Ring Candles; and
- J. Award reasonable attorneys' fees and costs.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff and the Class respectfully demand a trial by jury.

Respectfully submitted, this the 29th day of May, 2015.

s/Mona Lisa Wallace  
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Pro hac vice to be filed

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