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14 UNITED STATES DISTRICT COURT  
15 SOUTHERN DISTRICT OF CALIFORNIA

16 M.C., through her guardian *ad litem*,  
17 Plaintiff,

18 vs.

19 BLUE BOX OPCO LLC dba BLUE  
20 BOX INFANTINO LLC,  
21 Defendant.

Case No. 3:20-cv-00934-WQH-RBB

**COMPLAINT – DEFECTIVE  
PRODUCT**

**DEMAND FOR JURY TRIAL**

[Plaintiff M.C.s Petition for Appointment of Guardian *Ad Litem*; Declaration in Support Thereof; and Proposed Order Appointing Guardian Ad Litem are filed concurrently herewith]

**INTRODUCTION**

22 1. Defendant Blue Box OPCO LLC dba Infantino LLC (“Infantino”)  
23 makes baby carriers that are intended to be worn by parents who wish to carry their  
24 infants for extended periods of time. The baby carrier at issue in the lawsuit is the  
25 Infantino “Flip” (the “Baby Carrier”). The Baby Carrier can be worn as a  
26 backpack, or on the front of the parent, with straps over the parent’s shoulders and  
27 around the parent’s waist. In the front position, a child can be positioned facing the  
28 parent, or facing away from the parents (forwards). In either direction, the infant’s

1 legs hang straight down in an unsafe position of extension and abduction. Properly  
2 designed carriers have a wider, more structured bottom, one that provides more  
3 support for the infant's hips. These Baby Carriers are defectively designed,  
4 however. The narrow bottom does not provide sufficient support for the infant's  
5 hips. As a result, the Baby Carrier presents a dangerous risk of hip dysplasia,  
6 particularly with prolonged use.

7 2. From at least 2002, Infantino was aware, or should have been aware,  
8 that the Baby Carrier's design carried a dangerous propensity to cause hip dysplasia  
9 in children.

10 3. Cecilia Blea ("Guardian Blea"), who has petitioned the Court to be  
11 appointed guardian *ad litem* for her daughter, M.C. ("Plaintiff M.C."), used one of  
12 Infantino's dangerously defective Baby Carriers to carry her daughter. As a result,  
13 Plaintiff M.C. developed hip dysplasia. As a result of this preventable injury,  
14 Plaintiff M.C. has suffered greatly, having spent months in a stiff brace for 12-16  
15 hours per day at a young age.

#### 16 **PARTIES**

17 4. Plaintiff M.C. is a minor who, at all applicable times, resided, and still  
18 resides, in Imperial Beach, California.

19 5. Defendant Blue Box OPCO LLC dba Infantino LLC is incorporated in  
20 Delaware but maintains its principal place of business in California. Infantino  
21 conducts business throughout the United States, including in California, where it is  
22 registered with the California Secretary of State.

#### 23 **JURISDICTION AND VENUE**

24 6. The amount in controversy between Plaintiff and Defendant exceeds  
25 \$75,000, exclusive of interest and cost.

26 7. This Court has jurisdiction over Infantino and this action pursuant to  
27 28 U.S.C. § 1331, federal question jurisdiction. The Court has supplemental  
28 jurisdiction of the state law claims pursuant to 28 U.S.C. § 1367.

1 8. Venue is proper within this district pursuant to 28 U.S.C. § 1391 in  
2 that a substantial part of the acts and/or omissions giving rise to these claims  
3 occurred within this district. Defendant is subject to personal jurisdiction in this  
4 district. Within the statutory time period, Infantino sold, marketed, and/or  
5 distributed the Baby Carriers within the Southern District of California. Having  
6 systematically and purposefully directed products to the State of California, which  
7 products gave rise to Plaintiff's claims for relief herein, Defendant is subject to the  
8 personal jurisdiction of this Court.

9 **FACTUAL ALLEGATIONS**

10 9. Infantino designed, manufactured, labeled, marketed, sold and  
11 distributed the Baby Carrier giving rise to Plaintiff's injuries.

12 10. Guardian Blea carried Plaintiff M.C. in the Baby Carrier beginning in  
13 June 2019, from the time she was approximately one month old, on a daily basis,  
14 often multiple times per day, and often for extended periods of time during each  
15 use, until Plaintiff M.C. was approximately six months old.

16 11. Guardian Blea's use of the Baby Carrier was consistent with the  
17 intended use for which it was designed, marketed, and sold.

18 12. Despite Guardian Blea's use of the Baby Carrier in the manner  
19 intended by Infantino and reasonably foreseeable by Infantino, the Baby Carrier  
20 caused Plaintiff M.C. to develop hip dysplasia. Plaintiff M.C. has experienced and  
21 will continue to suffer on an ongoing basis, significant mental and physical pain  
22 and suffering, and permanent injury, which will likely require corrective surgery,  
23 and financial or economic loss.

24 13. As a result of the hip dysplasia, Plaintiff M.C. has been confined to a  
25 hard brace for four months, to date, and is expected to be required to continue using  
26 the hard brace for another six months. Each day, Plaintiff M.C. is in the brace for  
27 12-16 hours.

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## Infantino and the “Flip” Baby Carrier

14. Infantino claims that one of its core values is safety: “We’ve always put safety first and use harm-free materials in all of our products. We’ve been innovating and inventing for decades, always putting the health and happiness of our little customers above all.”<sup>1</sup>

15. The marketing for the Flip Baby Carrier belies Infantino’s claims regarding safety. Instead, their marketing is focused on the carrier being easy to use and stylish, while maintaining comfort for the parent wearing the carrier.<sup>2</sup>

16. Infantino also markets the Flip Baby Carrier as being “a great all-rounder” and “perfect for everyone.”<sup>3</sup>

17. The owner’s manual for each and every model within the Swift Classic Baby Carrier line is identical.

18. There are no warnings in the owner’s manual for the Flip Baby Carrier regarding the positioning of an infant’s hips.

19. In addition to the Flip Baby Carrier, Infantino also makes, sells, and offers to sell various other baby carrier products, including a line of ergonomic baby carriers.

20. Infantino offers important “Do’s and Don’ts” on its website regarding carrying an infant in a baby carrier. Infantino specifically advises practicing,<sup>4</sup> checking an infant’s airways and maximizing parent comfort.<sup>5</sup>

21. Infantino claims on its website that: “there is no evidence that babywearing with modern carriers causes hip dysplasia.”<sup>6</sup>

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<sup>1</sup> <http://infantino.com/pages/about>.

<sup>2</sup> <https://www.youtube.com/watch?v=-ijoymtlPJQ>.

<sup>3</sup> *Id.*

<sup>4</sup> <https://infantino.com/pages/dos-donts>.

<sup>5</sup> *Id.*

<sup>6</sup> <https://infantino.com/blogs/the-baby-monitor/myth-busting-babywearing>.

1 **What Infantino Knew or Should Have Known**

2 22. Baby-carrying is an ancient practice. For baby-carrying to be safe,  
3 infants must be carried in a particular way. The thighs must be supported, and the  
4 hips must be bent into an “M” position.<sup>7</sup> Abduction of 35 to 40 degrees and flexion  
5 of 90 to 120 degrees is the ideal position of an infant’s hips for optimal  
6 development.<sup>8</sup>

7 23. If an infant’s hips are forced into a straight, stretched-out position too  
8 early, there is a risk that the ball of the hips may deform the edges of the socket, or  
9 slip out of the socket altogether. The risk of developing these disorders is greatest  
10 in the first six months of an infant’s life.<sup>9</sup> To prevent this, the International Hip  
11 Dysplasia Institute advises that “[w]hen babies are carried, especially for prolonged  
12 periods of time, the hips should be allowed to spread apart with the thighs  
13 supported and the hips bent.”<sup>10</sup> The diagram on the next page illustrates the  
14 problem, and the safe position.<sup>11</sup>

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24 <sup>7</sup> <https://hipdysplasia.org/developmental-dysplasia-of-the-hip/prevention/baby-carriers-seats-and-other-equipment/>.

25 <sup>8</sup> See Regine A. Schon, & Maarit Silven, Natural Parenting--Back to Basics in  
26 Infant Care, 5(1) Evolutionary Psychology 102, 118 (2007).

27 <sup>9</sup> <https://hipdysplasia.org/developmental-dysplasia-of-the-hip/prevention/baby-carriers-seats-and-other-equipment/>.

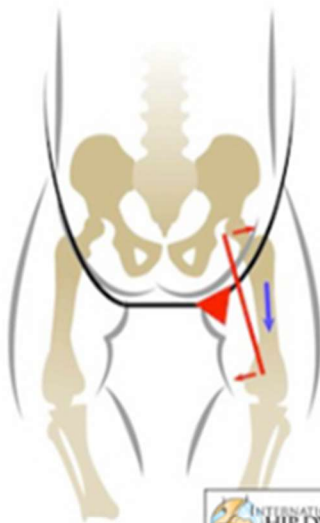
28 <sup>10</sup> *Id.*

<sup>11</sup> *Id.*

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## Baby Carriers

Not Recommended for prolonged use during babywearing (narrow based carrier):



Thigh NOT supported to the knee joint. The resulting forces on the hip joint may be inappropriate for prolonged use when infants have loose hip joints or hip dysplasia.

Better:



Thigh is supported to the knee joint. The forces on the hip joint are minimal because the legs are spread, supported, and the hip is in a more stable position.

1           24. According to Dr. Charles Price from the International Hip Dysplasia  
2 Institute, “[t]he first six months of life is the only time that [hip dysplasia] can be  
3 easily prevented. Numerous research studies have shown that positioning of the  
4 baby’s hips during this time has a tremendous influence on hip development.  
5 Incorrect positioning can prevent natural improvement or even cause the hips to  
6 dislocate. Straightening the legs and binding them together can cause serious  
7 harm.”<sup>12</sup>

8           25. The International Hip Dysplasia Institute notes that: “[t]here is  
9 evidence that carrying a baby on the mother’s body (or father’s body) is likely to  
10 influence hip development during the first six months of life when the baby is  
11 carried for many hours each day for purposes of bonding, or infant care.”<sup>13</sup> Given  
12 the known propensity for infants to develop hip dysplasia if not carried in a safe  
13 manner, the International Hip Dysplasia Institute has acknowledged particular  
14 models of baby carriers as “hip healthy.”<sup>14</sup> Notably, the Infantino Baby Carrier is  
15 not a “hip healthy” product. However, Infantino has five other baby carrier designs  
16 that have been deemed “hip healthy,”<sup>15</sup> confirming the company’s knowledge of  
17 safer alternative designs than the Baby Carrier that caused Plaintiff’s injuries.

18           26. Infantino is well aware of the International Hip Dysplasia Institute’s  
19 “hip healthy” recommended products. It directly mentions the International Hip  
20 Dysplasia Institute on its website, stating: “[t]he International Hip Dysplasia  
21 Institute offers helpful illustrations to indicate the ideal baby carrier positioning for  
22 infants six months and younger when hip health is a medical concern.”<sup>16</sup>

23 \_\_\_\_\_  
24 <sup>12</sup> <https://boba.com/blogs/boba-reads/an-interview-with-dr-charles-price-from-the-international-hip-dysplasia-institute>.

25 <sup>13</sup> <https://hipdysplasia.org/developmental-dysplasia-of-the-hip/prevention/baby-carriers-seats-and-other-equipment/>.

26 <sup>14</sup> <https://hipdysplasia.org/developmental-dysplasia-of-the-hip/prevention/baby-carriers-seats-and-other-equipment/hip-healthy-products/>.

27 <sup>15</sup> *Id.*

28 <sup>16</sup> <https://infantino.com/blogs/the-baby-monitor/myth-busting-babywearing>.

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2 **FIRST CLAIM FOR RELIEF**  
**NEGLIGENCE – NEGLIGENT DESIGN**

3 27. Plaintiff hereby incorporates and realleges each and every preceding  
4 paragraph of this Complaint as if the same were set forth at length herein.

5 28. Infantino had a duty to individuals, including Plaintiff, to use  
6 reasonable care in designing, testing, manufacturing, marketing, labeling,  
7 packaging, and selling the Baby Carrier.

8 29. Infantino’s duty of care to Plaintiff M.C. was heightened since she is a  
9 child.

10 30. Infantino was negligent in failing to use reasonable care in designing,  
11 testing, manufacturing, marketing, labeling, packaging and selling the Baby Carrier.

12 31. Infantino was negligent in failing to use reasonable care to see that the  
13 Baby Carrier was safe for its intended use.

14 32. Infantino knew or had reason to know that the Baby Carrier was  
15 dangerous when put to the use for which it was made.

16 33. Infantino knew or had reason to know that those for whose use the  
17 Baby Carrier was made would not realize the danger.

18 34. Infantino failed to use the amount of care in designing the Baby  
19 Carrier that a reasonably careful designer/manufacturer would use in similar  
20 circumstances to avoid exposing others to a foreseeable risk of harm.

21 35. Infantino’s negligence was a substantial factor in causing Plaintiff’s  
22 harm.

23 36. As a direct and proximate cause of Infantino’s negligence, Plaintiff has  
24 suffered and in the future will continue to suffer on an ongoing basis severe  
25 personal injuries, pain and suffering, severe emotional distress, financial or  
26 economic loss, including, but not limited to, obligations for medical services and  
27 expenses, lost income and earning capacity, and other damages.  
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**SECOND CLAIM FOR RELIEF  
NEGLIGENCE – NEGLIGENT FAILURE TO WARN**

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3       37. Plaintiff hereby incorporates and realleges each and every preceding  
4 paragraph of this Complaint as if the same were set forth at length herein.

5       38. Infantino had a duty to individuals, including Plaintiff, to warn users of  
6 the dangerous propensity of the Baby Carriers.

7       39. Infantino’s duty of care to Plaintiff M.C. was heightened since she is a  
8 child.

9       40. Infantino failed to warn reasonably foreseeable users that the Baby  
10 Carrier was dangerous when put to the use for which it was made.

11       41. Infantino knew or had reason to know that the Baby Carrier was  
12 dangerous when put to the use for which it was made.

13       42. Infantino knew or had reason to know that those for whose use the  
14 Baby Carrier was made would not realize the danger.

15       43. Had Infantino warned of the danger of hip dysplasia, Guardian Blea  
16 and Plaintiff M.C. would not have used the product.

17       44. Infantino’s negligence was a substantial factor in causing Plaintiff’s  
18 harm.

19       45. As a direct and proximate cause of Infantino’s negligence, Plaintiff has  
20 suffered and in the future will continue to suffer on an ongoing basis severe  
21 personal injuries, pain and suffering, severe emotional distress, financial or  
22 economic loss, including, but not limited to, obligations for medical services and  
23 expenses, lost income and earning capacity, and other damages.

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1                                   **THIRD CLAIM FOR RELIEF**  
2                   **NEGLIGENCE – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

3           46.    Plaintiff hereby incorporates and realleges each and every preceding  
4 paragraph of this Complaint as if the same were set forth at length herein.

5           47.    Infantino had a duty to exercise reasonable care in designing,  
6 developing, formulating, manufacturing, testing, packaging, promoting, labeling,  
7 advertising, marketing, instructing on, warning about, distributing, supplying and/or  
8 selling the Baby Carrier, including a duty to ensure that the product did not pose a  
9 significantly increased risk of bodily harm.

10          48.    Infantino failed to exercise such reasonable care, in that Infantino  
11 knew or should have known that the Baby Carrier posed a significantly increased  
12 risk of hip dysplasia and was not safe for use by consumers, but Infantino continued  
13 to design, develop, formulate, manufacture, test, package, promote, label, advertise,  
14 market, instruct on, warn about, distribute, supply and/or sell the product without  
15 adequate labeling and/or adequate warnings.

16          49.    Infantino knew or should have known that consumers, such as  
17 Guardian Blea and Plaintiff M.C., would foreseeably suffer injury as a result of  
18 Infantino’s failure to exercise reasonable care.

19          50.    As a direct and proximate result of Infantino’s negligence, Plaintiff  
20 was in the zone of physical danger, suffered physical injury and emotional distress,  
21 and will continue to suffer such emotional harm in the future.

22                                   **FOURTH CLAIM FOR RELIEF**  
23                   **STRICT LIABILITY – DESIGN DEFECT**

24          51.    Plaintiff hereby incorporates and realleges each and every preceding  
25 paragraph of this Complaint as if the same were set forth at length herein.

26          52.    At the time the Baby Carrier left Infantino’s control, the Baby Carrier  
27 was defective in design and unreasonably dangerous for its intended use, for any  
28

1 reasonably foreseeable misuse, and it created a risk of harm that would not be  
2 contemplated by any foreseeable user.

3 53. The harm caused by the Baby Carrier far outweighed any benefit,  
4 rendering Infantino's product dangerous to an extent beyond that which an ordinary  
5 consumer would contemplate. The Baby Carrier was and is more dangerous than  
6 alternative products, and Infantino could have designed the Baby Carrier to make it  
7 less dangerous. At the time Infantino designed, marketed, and sold the Baby  
8 Carrier, the state of the industry's knowledge was such that a less risky design or  
9 formulation was attainable.

10 54. The Baby Carrier's design was defective because the Baby Carrier did  
11 not perform as safely as an ordinary consumer would have expected it to perform  
12 when it was used in an intended or reasonably foreseeable way.

13 55. At the time the Baby Carrier left Infantino's control, there was a  
14 practical, technically feasible and safer alternative design that would have  
15 prevented the harm to Plaintiff without substantially impairing the reasonably  
16 anticipated or intended function of the Baby Carrier.

17 56. The benefits of the Baby Carrier's design are outweighed by the risks  
18 of the design. The gravity of the potential harm resulting from the use of the Baby  
19 Carrier is great, and the likelihood that this harm would occur is significant. At the  
20 time of manufacture, there existed feasible, alternative, safer designs that were not  
21 overly costly and did not have disadvantages.

22 57. The Baby Carrier's design and/or its failure to perform safely was a  
23 substantial factor in causing Plaintiff's harm.

24 58. As a direct and proximate result of the Baby Carrier's design defects,  
25 Plaintiff has suffered and in the future will continue to suffer on an ongoing basis  
26 severe personal injuries, pain and suffering, severe emotional distress, financial or  
27 economic loss, including, but not limited to, obligations for medical services and  
28 expenses, lost income and earning capacity, and other damages.

1           59. Infantino is strictly liable to Plaintiff for designing, testing,  
2 manufacturing, marketing, labeling, packaging and selling a defective Baby Carrier.

3                                   **FIFTH CLAIM FOR RELIEF**  
4                                   **STRICT LIABILITY – FAILURE TO WARN**

5           60. Plaintiff hereby incorporates and realleges each and every preceding  
6 paragraph of this Complaint as if the same were set forth at length herein.

7           61. The Baby Carrier was not accompanied by sufficient warnings to  
8 inform users, such as Guardian Blea and Plaintiff M.C., of the risks of harm not  
9 readily recognizable while using the Baby Carrier in a reasonably foreseeable  
10 manner.

11          62. At the time of manufacture, Infantino could have provided warnings or  
12 instructions regarding the full and complete risks of the Baby Carrier, because  
13 Infantino knew or should have known of the unreasonable risks of harm associated  
14 with the use of the product.

15          63. The known risks presented a substantial danger to Plaintiff when the  
16 Baby Carrier was used in an intended or foreseeable way.

17          64. Guardian Blea and Plaintiff M.C. could not have reasonably  
18 discovered the defects and risks associated with the Baby Carrier prior to or at the  
19 time of use. Guardian Blea and Plaintiff M.C. relied upon the skill, expertise, and  
20 judgment of Infantino.

21          65. Had Infantino provided adequate warnings and instructions and  
22 properly disclosed and disseminated the risk associated with the Baby Carrier,  
23 Guardian Blea and Plaintiff M.C. could have avoided the risk of developing injuries  
24 and could have obtained or used an alternative product.

25          66. Infantino's failure to warn Guardian Blea and Plaintiff M.C. was a  
26 substantial factor in causing Plaintiff's harm.

27          67. As a direct and proximate result of the Baby Carrier's defects, Plaintiff  
28 has suffered and in the future will continue to suffer on an ongoing basis severe

1 personal injuries, pain and suffering, severe emotional distress, financial or  
2 economic loss, including, but not limited to, obligations for medical services and  
3 expenses, lost income and earning capacity, and other damages.

4 68. Infantino is strictly liable to Plaintiff for designing, testing,  
5 manufacturing, marketing, labeling, packaging and selling the defective Baby  
6 Carrier.

7 **SIXTH CLAIM FOR RELIEF**  
8 **BREACH OF EXPRESS WARRANTY**

9 69. Plaintiff hereby incorporates and realleges each and every preceding  
10 paragraph of this Complaint as if the same were set forth at length herein.

11 70. Infantino made assurances to the general public, retailers, and other  
12 sellers that the Baby Carrier was safe and reasonably fit for its intended purpose to  
13 hold and carry infants.

14 71. Guardian Blea and Plaintiff M.C. chose the Baby Carrier based upon  
15 Infantino's warranties and representations regarding the safety and fitness of the  
16 Baby Carrier.

17 72. Guardian Blea and Plaintiff M.C. relied upon Infantino's express  
18 warranties and guarantees that the Baby Carrier was safe, merchantable, and  
19 reasonably fit for its intended purpose.

20 73. Infantino breached these express warranties because the Baby Carrier  
21 was unreasonably dangerous and defective and not as Infantino warranted it to be.

22 74. Infantino's breaches of the express warranties resulted in Guardian  
23 Blea's and Plaintiff M.C.'s use of the Baby Carrier, thereby, placing Plaintiff's  
24 health and safety in jeopardy.

25 75. As a direct and proximate result of Infantino's breaches of the  
26 aforementioned express warranties, Plaintiff M.C. has suffered and in the future  
27 will continue to suffer on an ongoing basis severe personal injuries, pain and  
28 suffering, severe emotional distress, financial or economic loss, including, but not

1 limited to, obligations for medical services and expenses, lost income and earning  
2 capacity, and other damages.

3 **SEVENTH CLAIM FOR RELIEF**  
4 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

5 76. Plaintiff hereby incorporates and realleges each and every preceding  
6 paragraph of this Complaint as if the same were set forth at length herein.

7 77. At the time of manufacture and sale of the Baby Carrier, Infantino was  
8 a merchant with respect to baby carriers.

9 78. When Guardian Blea and Plaintiff M.C. used the Baby Carrier, it was  
10 used for the ordinary purpose for which it was intended.

11 79. Guardian Blea and Plaintiff M.C. relied upon Infantino's implied  
12 warranty of merchantability in deciding to use the Baby Carrier for the ordinary  
13 purpose for which it was intended.

14 80. Infantino breached this implied warranty of merchantability because,  
15 at the time Guardian Blea purchased the Baby Carrier, it was neither merchantable  
16 nor suited for its intended use as warranted.

17 81. Infantino's breach of its implied warranty resulted in the use of an  
18 unreasonably dangerous and defective Baby Carrier that placed Plaintiff's health  
19 and safety in jeopardy.

20 82. As a direct and proximate result of Infantino's breaches of the  
21 aforementioned implied warranty of merchantability, Plaintiff M.C. has suffered  
22 and in the future will continue to suffer on an ongoing basis severe personal  
23 injuries, pain and suffering, severe emotional distress, financial or economic loss,  
24 including, but not limited to, obligations for medical services and expenses, lost  
25 income and earning capacity, and other damages.

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1 **EIGHTH CLAIM FOR RELIEF**  
2 **BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR**  
3 **PURPOSE**

4 83. Plaintiff hereby incorporates and realleges each and every preceding  
5 paragraph of this Complaint as if the same were set forth at length herein.

6 84. Infantino impliedly warranted that the Baby Carrier was fit for a  
7 particular purpose, namely to safely hold and carry an infant.

8 85. When the Baby Carrier was manufactured and sold by Infantino,  
9 Infantino knew or had reason to know the Baby Carrier would be purchased for  
10 holding and carrying infants and would be used for that particular purpose.

11 86. When Guardian Blea purchased the Baby Carrier, she was relying on  
12 the superior skill and judgment of Infantino to select and furnish material suitable  
13 for that purpose and Infantino had reason to know of this reliance.

14 87. Guardian Blea and Plaintiff M.C. relied upon Infantino's implied  
15 warranty for a particular purpose in deciding to use the Baby Carrier for the  
16 particular purpose for which it was to be used.

17 88. Infantino breached this implied warranty of merchantability because  
18 the Baby Carrier was not fit for its intended purpose.

19 89. Infantino's breach of its implied warranty resulted in the use of an  
20 unreasonably dangerous and defective Baby Carrier that placed Plaintiff's health  
21 and safety in jeopardy.

22 90. As a direct and proximate result of Infantino's breaches of the  
23 aforementioned implied warranty, Plaintiff M.C. has suffered and in the future will  
24 continue to suffer on an ongoing basis severe personal injuries, pain and suffering,  
25 severe emotional distress, financial or economic loss, including, but not limited to,  
26 obligations for medical services and expenses, lost income and earning capacity,  
27 and other damages.

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1 **NINTH CLAIM FOR RELIEF**  
2 **VIOLATION OF THE MAGNUSON MOSS ACT**

3 91. Plaintiff hereby incorporates and realleges each and every preceding  
4 paragraph of this Complaint as if the same were set forth at length herein.

5 92. The breach of express warranties and implied warranties by Infantino  
6 are in violation of the Magnuson Moss Act as set forth at 15 U.S.C. section 2301, *et*  
7 *seq.*

8 93. Infantino failed to comply with its obligations under its implied  
9 warranties.

10 94. Plaintiff suffered damages as a direct and proximate result of  
11 Infantino's violation of the Magnuson Moss Act.

12 **TENTH CLAIM FOR RELIEF**  
13 **VIOLATION OF CALIFORNIA'S BUSINESS & PROFESSIONS CODE §**  
14 **17200 ET SEQ.**

15 95. Plaintiff hereby incorporates and realleges each and every preceding  
16 paragraph of this Complaint as if the same were set forth at length herein.

17 96. California Business & Professions Code, section 17200 *et seq.*  
18 ("Unfair Competition Law," or "UCL") prohibits any "unlawful, unfair, or  
19 fraudulent business acts or practices." Infantino's conduct, as described above, is  
20 unlawful, unfair and fraudulent in violation of the statute.

21 97. Infantino violated the UCL by knowingly selling the defective Baby  
22 Carrier, and by omitting mention of its dangerous propensity of causing hip  
23 dysplasia.

24 98. Infantino's acts and practices are unlawful because they violate  
25 California Civil Code sections 1770(a)(5) and/or 1770(a)(7), as well as common  
26 law. Infantino's acts and practices are also unlawful because they violate section  
27 17500 of the Business and Professions Code.

28 99. Infantino violated the UCL when it concealed and/or failed to disclose  
the known defect to members of the public.



1           100. Infantino violated the UCL by omitting from its marketing and other  
2 communications material information about the Baby Carrier in a manner that has  
3 deceived and is likely to deceive consumers and the public.

4           101. Infantino violated the UCL by holding the Baby Carrier out as safe.

5           102. Infantino violated the UCL by breaching its implied and express  
6 warranties.

7           103. The financial injury and risk of personal safety to consumers by  
8 Infantino's conduct greatly outweighs any alleged countervailing benefit to  
9 consumers of competition under all of the circumstances.

10           104. The injury to consumers by Infantino's conduct is not an injury that  
11 consumers themselves could reasonably have avoided because of Infantino's  
12 concealment of material fact.

13           105. To this day, Infantino continues to violate the UCL by continuing to  
14 actively conceal the material information regarding the defective nature of the Baby  
15 Carrier and by failing to disclose that the Baby Carrier is defective and dangerous.

16           106. In addition to failing to disclose the defect, Infantino's advertising  
17 campaign also violated the UCL. Throughout the relevant time period, Infantino  
18 engaged in a long-term advertising campaign that was likely to deceive members of  
19 the public by failing to disclose the material fact that the Baby Carrier is defective.

20           107. As a direct and proximate cause of Infantino's acts, which constituted  
21 violations under the unlawful, unfair and fraudulent prongs of the UCL, Plaintiff  
22 has suffered an injury in fact and lost money. Plaintiff has lost money and suffered  
23 an injury in fact because, had Infantino disclosed the true defective nature of the  
24 Baby Carrier, Plaintiff would not have incurred medical expenses resulting from  
25 her injuries.

26           108. As a proximate result of Infantino's violation of the UCL, Infantino  
27 has been unjustly enriched and should be required to make restitution to Plaintiff.  
28

1 Plaintiff demands judgment against Infantino for injunctive relief in the form of  
2 restitution.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against Defendant and, as  
3 appropriate to each claim for relief, as follows:

4 1. compensatory damages, including but not limited to, pain, suffering,  
5 emotional distress, loss of enjoyment of life, and other non-economic damages, in  
6 an amount to be determined at trial;

7 2. economic damages in the form of medical expenses, cost of future  
8 medical care, out of pocket expenses, lost earnings and earning capacity, and other  
9 economic damages in an amount to be determined at trial;

10 3. restitution and/or disgorgement;

11 4. an award of costs;

12 4. pre-judgment interest;

13 5. post-judgment interest; and

14 6. any other relief as this Court may deem just and proper.

15  
16 DATE: May 14, 2020

ANDRUS ANDERSON LLP

17 By: 

18 Lori E. Andrus

19 Lori E. Andrus (SBN 205816)

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21 ANDRUS ANDERSON LLP

22 155 Montgomery Street, Suite 900

23 San Francisco, CA 94104

24 Telephone: (415) 986-1400

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27 (*pro hac vice* to be submitted)

28 balaban@denverfirm.com

Andrew Ramos (CO SBN 50543)

(*pro hac vice* to be submitted)

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*Attorneys for Plaintiff*

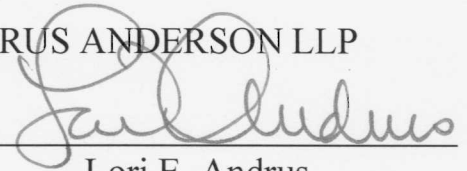
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**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial in this action for all claims so triable.

DATE: May 14, 2020

ANDRUS ANDERSON LLP

By:   
Lori E. Andrus

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*Attorneys for Plaintiff*

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

M.C., through her guardian ad litem

(b) County of Residence of First Listed Plaintiff San Diego County, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (If Known, Name, Address, and Telephone Number)

**ANDROS ANDERSON LLP**  
155 Montgomery St. Ste. 900  
San Francisco, CA 94104  
(415) 986-1400

**BALABAN LAW**  
8055 East Tufts Ave, Suite 325  
Denver, CO 80237  
(303) 377-3474

**DEFENDANTS**

BLUE BOX OPCO LLC dba BLUE BOX INFANTINO LLC

County of Residence of First Listed Defendant San Diego County, CA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1331

Brief description of cause:  
Baby Carriers designed by Defendant has resulted in serious injuries to Plaintiffs.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE May 19, 2020 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_