

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DULCE GARCIA and YARITZA
VIZCARRA, On Behalf of Themselves
and All Others Similarly Situated,

Plaintiffs,

v.

PLAYTEX PRODUCTS, LLC, a
Delaware Limited Liability Company,

Defendant.

Case No.:

**COMPLAINT and
DEMAND FOR JURY TRIAL**

Plaintiffs Dulce Garcia and Yaritza Vizcarra bring this action on behalf of themselves and all others similarly situated against Defendant Playtex Products, LLC and state:

NATURE OF ACTION

1. Playtex markets, sells and distributes the Diaper Genie line of odor-reducing diaper disposal products commonly referred to as “diaper pails.” Through an extensive, widespread, comprehensive and uniform nationwide marketing campaign, Playtex promised that its Diaper Genie II Elite was proven superior in controlling odor when compared to other diaper disposal products. Prominently featured by itself in a gold banner running across the front of the Diaper Genie II Elite packaging, Playtex stated: “Proven #1 in Odor Control*¹” (the “Proven #1” claim). In truth, the Diaper

¹ The asterisk (*) references a disclaimer on the Product’s packaging and labeling displayed remotely from the “Proven #1” claim on the back panel in fine print and amid other legal

Genie II Elite product was not proven to be superior to other diaper pails in controlling odor. There are no well-designed scientific studies that support Playtex's "Proven #1" claim, when subjected to testing by Playtex's competitors the "Proven #1" claim proved to be false, and other diaper pails that also use film bags are demonstrably superior even in tests conducted by Playtex. Playtex's "Proven #1" claim is false, misleading, and reasonably likely to deceive the public.

2. Playtex employed numerous methods to convey its uniform, deceptive "Proven #1" claim to consumers, including print advertisements, the internet and, importantly, on the front of the Product's packaging and labeling where it could not be missed by consumers. As a result of its "Proven #1" claim, Defendant was able to and did charge a premium price for its Product over and above what it would have been able to charge in the absence of this false and deceptive claim.

3. The only reason a consumer would have purchased and paid the premium price for Defendant's Diaper Genie II Elite product instead of less expensive diaper disposal products offered by Playtex's competitors, was to obtain the advertised superior odor control benefits, which the Diaper Genie II Elite did not provide.

4. As a result of Playtex's deceptive "Proven #1" claim, consumers—including Plaintiffs and members of the proposed Class—purchased the Product, which does not perform as advertised.

5. Plaintiffs bring this action on behalf of themselves and other similarly situated consumers in New Jersey and states with consumer fraud laws similar to that of New Jersey under the facts particular to this case. Plaintiffs seek to obtain redress for those who purchased the Diaper Genie II Elite product before Playtex removed the

language that reads "proven #1 in odor control when tested against other major competitors that use ordinary garbage bags and/or carbon refills under the most rigorous conditions of emptying the pail." As discussed below, the disclaimer is also false and reasonably likely to deceive the average consumer.

“Proven #1” claim from the Product’s label, which it did only after it was sued by a competitor for false advertising in January 2011. Based on violations of state unfair competition laws, Plaintiffs seek monetary relief for consumers who purchased the Product.

JURISDICTION AND VENUE

6. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which there are in excess of 100 class members and many members of the Class are citizens of a state different from Defendant.

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that many of the acts and transactions giving rise to the alleged claims occurred in this district and because Defendant:

- is headquartered in this district;
- is authorized to conduct business in this district and has intentionally availed itself of the laws and markets within this district through the promotion, marketing, distribution, and sale of its Product in this district; and
- does substantial business in this district.

PARTIES

8. Plaintiff Dulce Garcia resides in Los Angeles County, California. In or around February 2009, Plaintiff was exposed to and saw Playtex’s “Proven #1” claim by reading the Diaper Genie II Elite label at a Wal-Mart in Rosemead, California. After reading the Product label, including Playtex’s “Proven #1” claim, during that same shopping trip, Plaintiff purchased the Diaper Genie II Elite in reliance on the “Proven #1” claim believing that the Diaper Genie II Elite was the superior order control product on the market. Although Plaintiff considered purchasing less expensive diaper disposal products available at the Wal-Mart when she was making her purchase decision, she

purchased the Diaper Genie II Elite because she believed based on the label representations that it was a superior product. She paid approximately \$35-\$40 for the Diaper Genie II Elite. The Diaper Genie II Elite that Plaintiff purchased did not provide Plaintiff with superior odor control benefits as represented. As a result, Plaintiff suffered injury in fact and lost money. Had Plaintiff known the truth about Playtex's misrepresentations and omissions, she would not have paid the price premium for the Diaper Genie II Elite.

9. Plaintiff Yaritza Vizcarra resides in San Diego County, California. In or around February 2010, Plaintiff was exposed to and saw Playtex's "Proven #1" claim by reading the Diaper Genie II Elite label at a Wal-Mart. After reading the Product label, including Playtex's "Proven #1" claim, during that same shopping trip, Plaintiff purchased the Diaper Genie II Elite in reliance on the "Proven #1" claim believing that the Diaper Genie II Elite was the superior odor control product on the market. Although she considered purchasing less expensive diaper disposal products available at the Wal-Mart, she purchased the Diaper Genie II Elite because she believed based on the label representations it was a superior product. She paid approximately \$35-\$40 for the Diaper Genie II Elite. The Diaper Genie II Elite that Plaintiff purchased did not provide Plaintiff with superior odor control benefits as represented. As a result, Plaintiff suffered injury in fact and lost money. Had Plaintiff known the truth about Playtex's misrepresentations and omissions, she would not have paid the price premium for the Diaper Genie II Elite.

10. Defendant Playtex Products, LLC ("Playtex") is a Delaware limited liability corporation headquartered in New Jersey. From its headquarters in New Jersey, Playtex promoted, marketed and sold the Diaper Genie II Elite to tens of thousands of consumers throughout the United States, including New Jersey.

FACTUAL ALLEGATIONS

The Diaper Genie II Elite

11. Since the 1990's when Playtex launched the original Diaper Genie, it has been the market leader in odor reducing diaper disposal products. Playtex launched the Diaper Genie II in 2006 touting the product as "tested and proven #1 in odor control." In 2008, Playtex launched its new diaper disposal system—the Diaper Genie II Elite with the "Proven #1" claim prominently featured on the packaging and labeling. At or about the time Playtex launched the Diaper Genie II Elite, Playtex removed the "Proven #1" claim from the Diaper Genie II. This lawsuit concerns the Diaper Genie II Elite.

12. The Diaper Genie II Elite is sold online and in a variety of third-party retailers across the country, including: Target, Wal-Mart, and Babies-R-Us. The Diaper Genie II Elite retails for approximately \$35.00-\$40.00.

13. Since the August/September 2008 introduction of the Diaper Genie II Elite, until after Playtex was sued for false labeling in January 2011 by Munchkin, Inc.,² Playtex consistently conveyed the message to consumers throughout the United States, including New Jersey, that the Diaper Genie II Elite was "Proven #1 in Odor Control." It was not. Playtex's "Proven #1" claim is false, misleading and deceptive.

14. Each and every consumer who purchased the Diaper Genie II Elite was exposed to Playtex's deceptive "Proven #1" claim because it appeared prominently and conspicuously on the front of each box until its removal after January 2011. The front shot of a representative Playtex Diaper Genie II Elite label appears as follows:

² Munchkin, Inc. ("Munchkin") manufactures and sells the Arm & Hammer Diaper Pail which retails for \$7.00-\$10.00 less than the Diaper Genie Elite II and, unlike the Diaper Genie II Elite, is proven #1 in odor control.



The “Proven #1” Claim is False

15. Playtex purportedly has several internal studies (2006 and 2008) to substantiate its “Proven #1” claim. While the studies tested for odor control, for the most part, the studies did not compare the Diaper Genie II Elite to other, similar diaper pails that also use proprietary film bags. Instead, Playtex compared its Diaper Genie II Elite to diaper pail systems that use ordinary garbage bags or carbon refills. The only competitive diaper pail Playtex did test that utilizes a proprietary film like the film Playtex utilizes in the Diaper Genie II Elite, the Diaper Dékor, outperformed the Diaper Genie II Elite in all three test stages. And, with one exception, the diaper pail systems Playtex chose for comparison purposes comprise less than 5% of the market. Thus, Playtex did not compare like products or products that consumers deem equivalent alternatives to the Diaper Genie II Elite. Because Playtex did not, and still does not, have proper scientific evidence to support its “Proven #1” claim, the claim is false, misleading,

and likely to deceive consumers.

16. On November 5, 2010, the National Advertising Division of the Better Business Bureau (“NAD”) found Playtex’s “Proven #1” claim misleading. According to NAD, the “Proven #1” claim “convey[s] a broad claim of comparative superior product efficacy” and such claims “are held to a very high standard of proof because they are in essence, a promise that there is scientific evidence that proves or ‘establishes’ the truth of the advertiser’s claim,” which Playtex does not have. Accordingly, NAD recommended that Playtex “discontinue its use of the claim ‘Proven #1 in Odor Control.’” Playtex, however, continued to make the “Proven #1” claim on its Diaper Genie II Elite.

17. When properly tested against its leading competitors’ comparable diaper pail products, including those that also use the film bag technology, the Product is not “#1” in odor control. For example, in 2010, Munchkin retained an independent laboratory to measure the odor released from several diaper pails, including the Diaper Genie II Elite.³ The laboratory tests found that Munchkin’s Arm & Hammer Diaper Pail controlled odor better than any of the other diaper disposal systems tested, including the Diaper Genie II Elite. Munchkin, Inc. added the following representation to the Arm & Hammer Diaper Pail: “The NEW #1 in odor control. Proven better at odor control than Diaper Genie II & Diaper Genie II Elite in a laboratory test.” Munchkin also sued Playtex for, *inter alia*, false advertising and Playtex filed a false advertising counter claim against Munchkin. *See Munchkin, Inc., v. Playtex Products, LLC*, 2:11-cv-00503-AHM-RZ (C.D. Cal.) (“the Munchkin lawsuit”).

18. On July 19, 2012, the jury returned a verdict in the Munchkin lawsuit. The jury found, *inter alia*, that Playtex’s “Proven #1 in Odor Control” claim was “literally false,” that Playtex “deliberately sought to deceive consumers,” and that the “Proven #1”

³ The tests examined the following diaper pails: Munchkin Arm & Hammer Diaper Pail, the Diaper Genie Elite II, the Diaper Genie II, Baby Trend Diaper Champ, Dekor Plus, Safety 1st Simple Step, and Safety 1st Easy Saver.

claim “actually deceived” a substantial number of consumers. *See* the Munchkin Lawsuit (Dkt. #8243). In addition, with respect to Playtex’s counter claim, the jury found that Playtex failed to prove that Munchkin’s statement on its Arm & Hammer Diaper Pail— “The NEW #1 in odor control. Proven better at odor control than Diaper Genie II & Diaper Genie II Elite in a laboratory test”—was “literally false” or that the statement “was likely to mislead, confuse or deceive the consuming public.” *Id.* The jury verdict was overturned and a new trial was granted based upon the fact that the trial court found that it had improperly instructed the jury on the issue of injury to Munchkin. Notably, the trial court did not overturn or call into question the jury’s verdict regarding the literal falsity of Playtex’s representations.

The Impact of Playtex’s Wrongful Conduct

19. Despite evidence that the Diaper Genie II Elite is not superior to other diaper disposal products in controlling odor and without possessing any competent and reliable scientific evidence to support its “Proven #1” representation, Playtex conveyed through its advertising and labeling one uniform message: the Diaper Genie II Elite is “Proven #1 in Odor Control.”

20. As the distributor of the Diaper Genie II Elite, Playtex possesses specialized knowledge regarding the content and effects of its Product and was in a superior position to learn of the effects, and has learned of the effects, which the Diaper Genie II Elite had on consumers.

21. Specifically, Playtex knew or should have known, but failed to disclose that the Diaper Genie II Elite was not “Proven #1” at providing odor control and Playtex did not have competent and reliable scientific evidence to support its “Proven #1” claim.

22. Plaintiffs and Class members were deceived or misled by Playtex’s deceptive “Proven #1” claim. Plaintiffs purchased and used the Diaper Genie II Elite during the Class period and in doing so, read and considered the Diaper Genie II Elite labeling and packaging and based their decision to buy and pay a premium price for the

Diaper Genie II Elite on the “Proven #1” claim. Playtex’s “Proven #1” claim was a material factor influencing Plaintiffs’ decisions to purchase and use the Diaper Genie II Elite because they believed the Diaper Genie II Elite was the superior product for odor control based on the “Proven #1” claim. Plaintiffs would not have purchased the Diaper Genie II Elite had they known that Playtex’s “Proven #1” claim was false and misleading and that Playtex did not possess competent and reliable scientific evidence to support its “Proven #1” claim. Instead, Plaintiffs and other Class members would not have paid a price premium for the Diaper Genie II Elite.

23. As a result, Plaintiffs and the Class members have been damaged by their purchases of the Diaper Genie II Elite and have been deceived into purchasing a Product that they believed, based on Playtex’s representations, were “Proven #1 in Odor Control”, when, in fact, it was not.

24. Playtex has reaped enormous profits from its false marketing and sale of the Diaper Genie II Elite.

CLASS DEFINITION AND ALLEGATIONS

25. Plaintiffs bring this action on behalf of themselves and all other similarly situated Class members pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

Nationwide Class Action

All consumers who purchased the Diaper Genie II Elite in the United States with the “Proven #1 in Odor Control” claim on the Product’s label.

Excluded from this Class are Playtex and its officers, directors and employees, and those who purchased the Diaper Genie II Elite for the purpose of resale.

26. In the alternative, Plaintiffs bring this action on behalf of themselves and all other similarly situated consumers in New Jersey and states with similar consumer fraud

laws pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

Multi-State Class Action

All consumers in New Jersey and states with similar laws who purchased the Diaper Genie II Elite with the “Proven #1 in Odor Control” claim on the Product’s label.

Excluded from this Class are Playtex and its officers, directors and employees and those who purchased the Diaper Genie II Elite for the purpose of resale.

27. *Numerosity.* The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiffs are informed and believe that the proposed Class contains thousands of purchasers of the Diaper Genie II Elite who have been damaged by Playtex’s conduct as alleged herein. The precise number of Class members is unknown to Plaintiffs.

28. *Existence and Predominance of Common Questions of Law and Fact.* This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (a) whether the claims discussed above are true, or are misleading, or objectively reasonably likely to deceive;
- (b) whether Playtex’s alleged conduct violates public policy;
- (c) whether the alleged conduct constitutes violations of the laws asserted;
- (d) whether Playtex engaged in false or misleading advertising;
- (e) whether Plaintiffs and Class members have sustained monetary loss and the proper measure of that loss; and
- (f) whether Plaintiffs and Class members are entitled to other appropriate remedies.

29. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the Class because, *inter alia*, all Class members were injured through the uniform misconduct described above and were subject to Playtex's deceptive "Proven #1" claim that accompanied each and every Diaper Genie II Elite package and/or label. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all members of the Class.

30. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained counsel experienced in complex consumer class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the Class.

31. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Playtex. It would thus be virtually impossible for Plaintiffs and Class members, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

32. Unless a Class is certified, Playtex will retain monies received as a result of its conduct that were taken from Plaintiffs and Class members.

COUNT I

For Violations of the New Jersey Consumer Fraud Act, N.J. Stat. §56:8-1 et seq.

33. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth herein.

34. Plaintiffs bring this claim individually and on behalf of the Class.

35. Plaintiffs and other members of the Class are consumers who purchased consumer goods – the Diaper Genie II Elite – pursuant to a consumer transaction for personal use and are, therefore, subject to protection under the NJCFA, and similar laws. Plaintiffs and Class members read, and relied upon, Defendants’ advertising and marketing materials, including the Product packaging before purchasing the Diaper Genie II Elite.

36. Defendant is a “person” within the meaning of the Act, and as such is prohibited from engaging in any unconscionable commercial practice, deception, fraud, false pretense, false promise, or misrepresentation of material fact.

37. Defendant's conduct in connection with the promotion, labeling, advertising, marketing, distribution and sale of the Diaper Genie II Elite as alleged herein constitutes an unconscionable commercial practice and a deception, fraud, false promise and misrepresentation of material fact.

38. Defendant's conduct as alleged herein stands outside the norm of reasonable business practices.

39. Plaintiffs and the members of the Class purchased the Diaper Genie II Elite and paid a premium price for the Product because they believed that the Products provided superior order protection as represented.

40. As a direct and proximate result of Defendant’s violation of the New Jersey Consumer Fraud Act, Plaintiffs and members of the Class suffered damages and an ascertainable loss because: (a) they purchased a Diaper Genie II Elite in reliance on Playtex’s claim that the Product was “Proven #1 in Odor Control,” (b) they paid a price

premium due to the misrepresentation on the label that the Diaper Genie II Elite was “Proven #1 in Odor Control”; and (c) the Diaper Genie II Elite did not perform as promised.

41. Plaintiffs and members of the Class are entitled to all statutory remedies available under the Act, including but not limited to preliminary and permanent injunctive relief, actual and treble damages, reasonable attorneys' fees, filing fees and the reasonable costs of suit.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for a judgment:

- A. Certifying the Class as requested herein;
- B. Awarding Plaintiffs and the proposed Class members damages;
- C. Awarding restitution and disgorgement of Playtex’s revenues to Plaintiffs and the proposed Class members;
- D. Awarding attorneys’ fees and costs;
- E. Awarding statutory and punitive damages, as appropriate; and
- F. Providing such further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

Dated: March 1, 2013

TRUJILLO RODRIGUEZ & RICHARDS, LLC

s/ Lisa J. Rodriguez

s/ Nicole M. Acchione

Lisa J. Rodriguez
Nicole M. Acchione
258 Kings Highway East
Haddonfield, New Jersey 08033
(856) 795-9002
lisa@trrlaw.com
nacchione@trrlaw.com

LEVIN FISHBEIN SEDRAN & BERMAN

Howard J. Sedran
510 Walnut Street
Philadelphia, Pennsylvania 19106
(215) 592-1500
HSedran@lfsblaw.com

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

Elaine A. Ryan
Patricia N. Syverson
Lindsey M. Gomez-Gray
2325 E. Camelback Road, #300
Phoenix, AZ 85016
eryan@bffb.com
psyverson@bffb.com
lgomez-gray@bffb.com
Telephone: (602) 274-1100

STEWART M. WELTMAN LLC

STEWART M. WELTMAN

53 W. Jackson Suite 364

Chicago, IL 60604

Telephone: 312-588-5033

sweltman@weltmanlawfirm.com

(Of Counsel Levin Fishbein Sedran & Berman)

Attorneys for Plaintiffs

JS 44 (Rev. 12/12)

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.)

<p>I. (a) PLAINTIFFS Dulce Garcia and Yaritza Vizcarra</p> <p>(b) County of Residence of First Listed Plaintiff <u>California</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, Email and Telephone Number) Lisa J. Rodriguez & Nicole M. Acchione, Trujillo Rodriguez & Richards, LLC, 258 Kings Highway East, Haddonfield, NJ 08033, (856) 795- 9002, lisa@trrlaw.com, nacchione@trrlaw.com</p>	<p>DEFENDANTS Playtex Products, LLC</p> <p>County of Residence of First Listed Defendant <u>Union County</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
--	--

<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		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 checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" 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
	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 checked="" type="checkbox"/> 4																				
Citizen of Another State	<input checked="" 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)*

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	<p>PERSONAL INJURY</p> <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	<p>PERSONAL INJURY</p> <input 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 <p>PERSONAL PROPERTY</p> <input checked="" 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
<p>REAL PROPERTY</p> <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	<p>CIVIL RIGHTS</p> <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	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <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	<p>LABOR</p> <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	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			<p>SOCIAL SECURITY</p> <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))	<input type="checkbox"/> 375 False Claims Act <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 <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
			<p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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

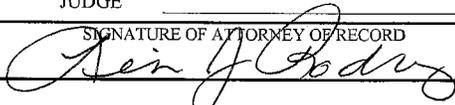
VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
28 U.S.C. 1332 (d)

Brief description of cause:
Violations of state unfair competition laws.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** To be determined at trial But greater than \$150,000 **CHECK YES only if demanded in complaint:** **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE 03/01/2013 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____