

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

ADAM KARHU, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

CORR-JENSEN LABS INC., CORR-  
JENSEN INC., GENERAL NUTRITION  
CORP., GENERAL NUTRITION  
CENTERS, INC. and KENDRA  
WILKINSON,

Defendants.

Case No.

STATT, J.

**CLASS ACTION COMPLAINT**

LINDSAY, M.D.

**JURY TRIAL DEMANDED**

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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Plaintiff Adam Karhu, by and through his attorneys, makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to allegations specifically pertaining to himself and his counsel, which are based on personal knowledge.

### **NATURE OF THE ACTION**

1. This is a class action lawsuit on behalf of purchasers of Abdominal Cuts supplements (collectively “Ab Cuts”), which are marketed by Defendants as an effective and safe way to reduce fat in the abdominal, hip, and thigh areas. Defendants represent that Ab Cuts will provide a “3.1% reduction in body fat percentage,” “lean tissue enhancement,” “amplified metabolism,” and “overall physique enhancement.” Each of these representations is false and misleading.

2. Ab Cuts is ineffective for weight control and the reduction of fat in the abdominal, hip, or thigh areas because studies show that the active ingredient in Ab Cuts, Conjugated Linoleic Acid (“CLA”),<sup>1</sup> does not reduce body fat mass or sagittal abdominal diameter<sup>2</sup> and does not cause weight loss.

3. Defendants market Ab Cuts through a multimedia advertising campaign featuring reality TV star Kendra Wilkinson, whose image adorns nearly every advertisement for the product. She also solicits sales of the products through her Facebook account, Twitter account, through appearances at GNC stores, and through frequent paid appearances in celebrity magazines including Life & Style, Reality Weekly Magazine, and OK! Magazine.

4. On the official Ab Cuts website, <https://revolutionlifestyle.com>, Ab Cuts is touted as a healthy supplement that can “assist with body-fat reduction (particularly in the abdominal area), healthy metabolism, antioxidant supply and anti-inflammatory assistance.” Each of these representations is false and misleading.

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<sup>1</sup> CLA is a fatty acid found in animal products.

<sup>2</sup> Sagittal Abdominal Diameter is the distance from the small of the back to the upper abdomen, and a measure of visceral obesity (the amount of fat in the gut region).

5. Ab Cuts' labeling and advertising represents that Ab Cuts products (a) provide "stimulant free weight loss support" (b) "support: •Reduction in abdominal area fat •Lean tissue enhancement •Reduction in hip fat area •Overall physique enhancement •Reduction in thigh area fat" (c) are "not a diet pill" (d) "are clinically tested to reduce fat around the belly, hips and butt" (e) contain "a healthy blend of CLA and omega-3 fish oils, [that] helps to keep that cut look as you build and sculpt your physique" (f) "will allow the body to use the fat in the midsection as fuel for energy!" (g) "increase metabolism without the use of stimulants" (h) "support Enhanced metabolism, Increased energy, Enhance lean physique, Reduction in body fat, Enhanced endurance, Appetite suppression, Improved mental performance, Improved mood" (i) "support Amplified Metabolism, Increased Energy, Body Fat Reduction, Increased Exercise Intensity, Appetite Suppression, Improved Mental Performance, Positive Mood" (j) "Help[] Satisfy Between Meal Cravings" (k) "...help to support...Modest Reduction In Overall Body Fat" (l) "Fight[] Stubborn Cellulite, Smooth[], Tone[], and Firm[]" (m) "help to support Increased Energy and Mental Alertness, Modest Reduction in Overall Body Fat, Increased Exercise Intensity, Stimulated Metabolic Rate" (n) are supported by a "randomized controlled clinical trial at a Division I American University" (o) are "formulated to support enhancements in 4 weeks: Body Fat Loss – 3.1% reduction in body fat percentage...Lean Muscle – 2.2% average increase in lean muscle" (p) are "For Fat Loss" (q) "help to support Modest Reduction in Overall Body Fat, Improved Appetite Control by Prolonging Feelings of Fullness, Reduced Hunger Between Meals, Improved Muscle Tone and Sustained Lean Muscle Tissue, Optimized Muscle and Overall Health." (hereafter, the "Misrepresentations").

6. Each of the Misrepresentations is false and misleading. Ab Cuts is not effective for any of these purposes. Ab Cuts does not support fat loss or weight loss, and has never been clinically tested to reduce fat around the belly, hips, and butt.

7. Plaintiff is a purchaser of Ab Cuts who asserts claims for violation of the Magnuson Moss Warranty Act, for breach of express warranty, for breach of the implied warranty of merchantability, for unjust enrichment, and for violation of the consumer protection laws of the state of New York, on behalf of himself and similarly situated purchasers of Ab Cuts.

**PARTIES**

8. Plaintiff Adam Karhu is a citizen of New York who resides in Woodmere, New York.

9. Defendant Corr-Jensen Labs Inc. is a Colorado limited liability company with its principal place of business at 6341 South Troy Circle, Suite E, Centennial, CO 80111. Corr-Jensen Labs Inc. promotes, markets, distributes, and sells Ab Cuts across the United States, including to hundreds of thousands of consumers in New York.

10. Defendant Corr-Jensen Inc. (together with Corr-Jensen Labs Inc., "Corr-Jensen") is a Colorado limited liability corporation with its principal place of business and mailing address at 21 South Cherokee Street, Denver, CO 80223. Corr-Jensen Inc. promotes, markets, distributes, and sells Ab Cuts across the United States, including to hundreds of thousands of consumers in New York.

11. Defendant Kendra Wilkinson is a citizen of California who resides in Los Angeles, California.

12. Defendant General Nutrition Corporation ("GNC Corp.") is a Pennsylvania corporation that has its principal place of business in Pennsylvania.

13. Defendant General Nutrition Centers, Inc. ("GNC Inc.," and together with GNC Corp., "GNC") is a Delaware corporation that has its principal place of business in Pennsylvania. GNC Inc. is a wholly owned subsidiary of GNC Corp.

14. GNC advertises, promotes, distributes, and sells Ab Cuts to consumers. It advertises the product on its website and in-stores. Kendra Wilkinson also makes personal appearances at GNC stores to promote Ab Cuts. GNC has received and continues to receive substantial benefits and income from its activities through promotion, distribution, and sale of Ab Cuts. GNC sells Ab Cuts to consumers throughout the United States, and authorizes the false, misleading, deceptive, and unlawful misrepresentations about Ab Cuts through its officers, directors, and agents.

15. At all times relevant to the allegations in this matter, each defendant acted in concert with, with the knowledge and approval of, and/or as the agent of the other defendants within the course and scope of the agency, regarding the acts and omissions alleged.

### **JURISDICTION AND VENUE**

16. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question). This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

17. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendants.

18. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendants do business throughout this district, and Plaintiff resides in this district.

### **FACTS COMMON TO ALL CAUSES OF ACTION**

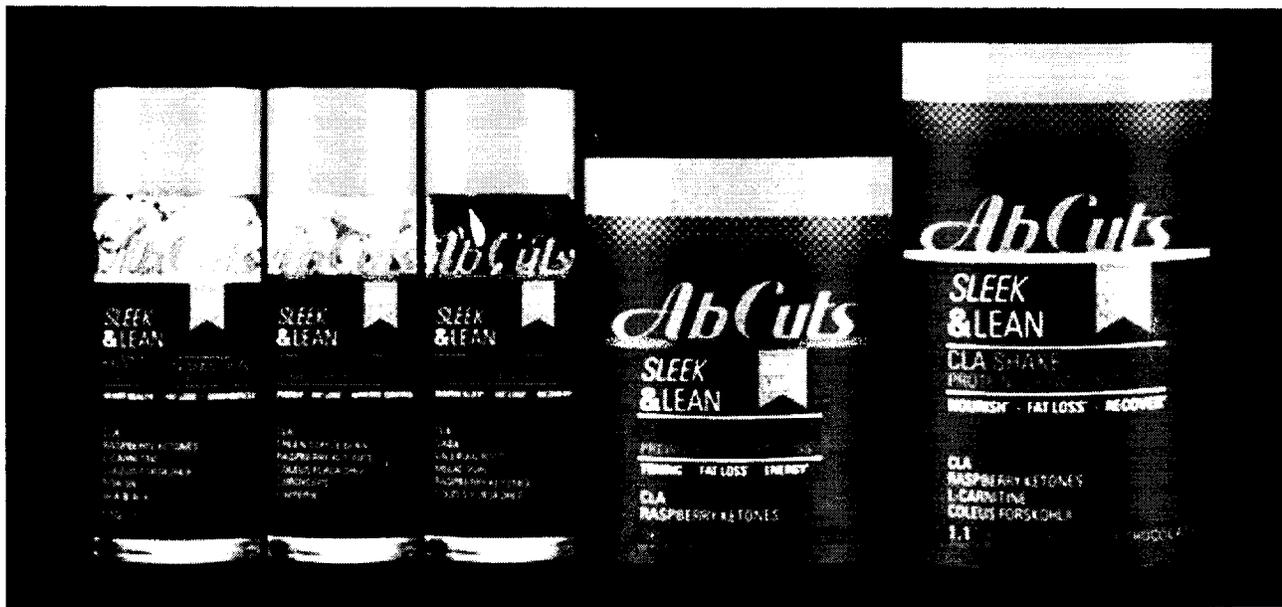
#### **The Ab Cuts Product Line**

19. The Ab Cuts product line, shown below, includes eleven component products:
- (1) **Revolution Abdominal Cuts**, which is described as follows: “Stimulant free weight loss support, formulated to support: •Reduction in abdominal area fat •Lean tissue enhancement •Reduction in hip fat area •Overall physique enhancement •Reduction in thigh area fat.”
  - (2) **Ab Cuts Sport Midsection Formula**, which is described as follows: “Abdominal Cuts Sport was designed for men that are looking for that extra edge in the gym.” “Abdominal Cuts Sport has been shown to help your body increase its natural production of testosterone, while aiding in suppressing estrogen. This, with a healthy blend of CLA and omega-3 fish oils, helps to keep that cut look as you build and sculpt your physique.”
  - (3) **Ab Cuts Active for Women**, which is described as follows: “Ab Cuts Active is for women who have extra stress in their life! Ab Cuts Active contains ingredients that help reduce cortisol levels, which will allow the body to use the fat in the midsection as fuel for energy!”
  - (4) **Ab Cuts Green**, which is described as follows: “...the organically formulated ingredients in Ab Cuts Green have been shown to increase

metabolism without the use of stimulants. In Ab Cuts Green, an all organic seaweed is used called wakeme, this seaweed is best known to contain fucoxanthin. Fucoxanthin has been shown in recent studies to promote fat burning within fat cells around the midsection, it does this by increasing thermogenin, utilizing fat as fuel.”

- (5) **Ab Cuts Thermogenic Push Female**, which is described as follows: “Revolution Thermogenic Push Female is specially constructed to create a strong thermogenic response.” “...may help to support: •Enhanced metabolism •Increased energy •Enhance lean physique •Reduction in body fat •Enhanced endurance •Appetite suppression •Improved mental performance •Improved mood.” “For peak results: use with Ab Cuts Original or Active.”
- (6) **Ab Cuts Thermogenic Push Extreme**, which is described as follows: “Thermogenic Push Extreme contains a combination of naturally occurring ingredients, which creates a strong thermogenic response.” “...may help to support: •Amplified Metabolism •Increased Energy •Body Fat Reduction •Increased Exercise Intensity •Appetite Suppression •Improved Mental Performance •Positive Mood.”
- (7) **Dreamweaver**, which the product’s label describes as follows: “Fat Loss” “Chocolate Fudge Soft Chew; Feel Satisfied Naturally; Helps Satisfy Between Meal Cravings” “...to support...•Modest Reduction In Overall Body Fat.”
- (8) **Ab Cuts Sleek & Lean Midsection Formula**, which the product’s label describes as follows: “Body Sculpting Gel ... •Fights Stubborn Cellulite; •Smooths, Tones and Firms; •Spot Treatment For Problem Areas.”
- (9) **Ab Cuts Sleek & Lean Thermo Rise O2 Toning Thermogenic**, which the product’s label describes as follows: “Sleek & Lean Thermo Rise O2 Toning Thermogenic •Energy •Fat Loss •Appetite Control” “may help to support: •Increased Energy and Mental Alertness •Modest Reduction in Overall Body Fat •Increased Exercise Intensity •Stimulated Metabolic Rate.”
- (10) **Ab Cuts Sleek & Lean Core Cardio Blast**, which the product’s label describes as follows: “Sleek & Lean Core Cardio Blast PreWorkout For Fat Loss •Toning •Fat Loss •Energy” “Based on a randomized, controlled clinical trial at a Division 1 American university, when taken with one scoop of Ab Cuts Protein, Ab Cuts PreWorkout is formulated to support enhancements in 4 weeks: Body Fat Loss •3.1% reduction in body fat percentage; Endurance •10.5% average increase in time to exhaustion; Exercise Intensity •11.6% average increase in training volume; Lean Muscle •2.2% average increase in lean muscle.”

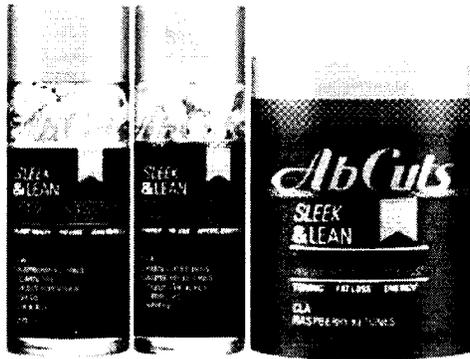
- (11) **Ab Cuts Sleek & Lean CLA Shake**, which is described as follows: "Sleek & Lean CLA Shake Protein For Fat Loss •Nourish •Fat Loss •Recover"  
"...may help to support: •Modest Reduction in Overall Body Fat •Improved Appetite Control by Prolonging Feelings of Fullness •Reduced Hunger Between Meals •Improved Muscle Tone and Sustained Lean Muscle Tissue •Optimized Muscle and Overall Health."



20. All of the Ab Cuts component products are made with the same active ingredient, Conjugated Linoleic Acid ("CLA"), which Defendants claim promotes weight loss and fat loss.

21. Corr-Jensen claims that, used together, the component products provide a “synergistic blend of effective fat-burning ingredients.” For example, the following advertisement for Ab Cuts states that to “Get Trim & Tone Mix and Match! Use any 2 of these products to get your daily 3.4 grams of CLA:”

**Get Trim & Tone**  
Mix and Match! Use any 2 of these products  
to get your daily **3.4 grams** of CLA



22. Corr-Jensen also represents that “For peak results” use Ab Cuts Thermogenic Push Female “with Ab Cuts Original or Active.”

23. Corr-Jensen further claims, as shown in the image below, that Thermo Push Extreme, Ab Cuts Original and Dreamweaver “is a great stack designed for men and women that includes a synergistic blend of effective fat-burning ingredients.”



2013-06-25 10:10:10 AM  
C:\Users\james\Documents\Ab Cuts  
120

Ab Cuts

#### **False Claims Of Efficacy And Safety**

24. Defendants' marketing and promotion of Ab Cuts includes numerous false and misleading claims concerning the products' efficacy and mechanism of action.

25. By branding the products with the name "Ab Cuts," Corr-Jensen represents that the product will result in "abs" that are "cut."

26. Defendants prominently claim on the product labels that the products will produce "FAT LOSS," "TONING," "ENERGY," "STIMULANT FREE WEIGHT LOSS SUPPORT," "Lean Muscle," "Lean Tissue Enhancement," "Reduction in Abdominal Area Fat," "Reduction in Hip Area Fat," "Overall Physique Enhancement," "Reduction in Thigh Area Fat," "Amplified Metabolism," and "Appetite Suppression."

27. But all of these claims are provably false. Scientific evidence demonstrates that Ab Cuts is not effective and does not support weight loss or fat loss.

**Scientific Evidence Demonstrates That CLA Does Not Support Weight Loss Or Fat Loss**

28. The active ingredient in each of the products, CLA, does not deliver weight loss or fat loss results in humans.

29. In a study entitled “Conjugated Linoleic Acid Supplementation Does Not Reduce Visceral Adipose Tissue in Middle-Aged Men Engaged in Resistance-Training Program,” thirty overweight men aged 35-55 were randomly assigned into CLA and placebo groups in a double-blind, placebo controlled study. The study lasted for 12 weeks and consisted of three four-week periods. No significant reduction in visceral adipose tissue was determined in the CLA group during the study. On the contrary, a significant reduction in cross-sectional area of visceral adipose tissue during the supplementation was measured in the *placebo* group. Accordingly, Adams et al. concluded that CLA supplementation for four weeks does not promote decrease in visceral adipose tissue in middle-aged men currently participating in a resistance-training program.<sup>3</sup>

30. An 8-week study performed by Canadian scientists (Jones 2011) demonstrated that CLA does not improve body composition or lipid profile. Jones et al. recruited 27 men aged 18-60 to participate in a 3-phase crossover trial. Upon completion of the crossover trial, Jones et al. stated that:

“Compared with the control treatment, the CLA treatments did not affect changes in body weight, body composition, or blood lipids. In addition, CLA did not affect the  $\beta$ -oxidation rate of fatty acids”

Jones et al. concluded that CLA supplementation at 3.5 grams per day did not produce any favorable effects.<sup>4</sup> Thus, Defendants’ representations that the “daily 3.4 grams of CLA” provided by the component Ab Cuts products will provide weight loss and fat loss are false.

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<sup>3</sup> Adams, R. et al.: “Conjugated Linoleic Acid Supplementation Does Not Reduce Visceral Adipose Tissue in Middle-Aged Men Engaged in a Resistance-Training Program,” *Journal of the International Society of Sports Nutrition* 2006, 3:28-36.

<sup>4</sup> Jones et al.: “Conjugated Linoleic Acid Supplementation for 8 Weeks Does Not Affect Body Composition, Lipid Profile, of Safety Biomarkers in Overweight, Hyperlipidemic Men,” *The Journal of Nutrition* 2011.

31. Moreover, as stated by Whigham et al. (2007):

***“In conclusion, when the body of evidence is considered as a whole, CLA does not have a beneficial effect on human body composition.”***<sup>5</sup>

32. Similarly, Larsen et al. (2006) found that, after one year of CLA supplementation, CLA did not result in a difference in body weight or body fat.<sup>6</sup> In an earlier study, Larsen et al. (2003) also concluded that:

***“although CLA appears to attenuate increases in bodyweight and body fat in several animal models, CLA isomers sold as dietary supplements are not effective as weight loss agents in humans and may actually have adverse effects on human health.”***<sup>7</sup>

33. Additionally, Smedman et al. (2001) did not find a significant change in sagittal abdominal diameter between subjects fed CLA as compared to the placebo groups. The CLA group also showed no change in BMI, and body waist-to-hip ratio.<sup>8</sup>

34. Zambell et al. (2000) also found no statistical difference between the body compositions of participants in the CLA supplemented group and the control group. Zambell et al. tightly controlled energy intake and activity levels in a metabolic ward study. The high level of control in the Zambell et al. study substantially increases the quality of their results. Thus, thirteen years ago, Zambell et al. showed that, contrary to Defendants’ claims, CLA does no more than a placebo pill.<sup>9</sup>

35. Scientific research proves that Defendants’ claims about the efficacy of its products are false.

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<sup>5</sup> Whigham, L. et al.: “Efficacy of conjugated linoleic acid for reducing fat mass: a meta-analysis in humans” *American Journal of Clinical Nutrition* 2007, 85: 1203-1211 (emphasis added).

<sup>6</sup> Larsen, T. et al.: “Conjugated linoleic acid supplementation for 1 year does not prevent weight or body fat regain.” *American Journal of Clinical Nutrition* 2006, 83: 606-612.

<sup>7</sup> Larsen, T. et al.: “Efficacy and safety of dietary supplements containing CLA for the treatment of obesity: evidence from animal and human studies.” *Journal of Lipid Research* 2003, 44: 2234-2241 (emphasis added).

<sup>8</sup> Smedman A, Vessby B: “Conjugated linoleic acid supplementation in humans – metabolic effects,” *Lipids* 2001, 36:773-781.

<sup>9</sup> Zambell, K. et al.: “Conjugated linoleic acid supplementation in humans: effects on body composition and energy expenditure.” *Lipids* 2000, 35: 777-782.

**Scientific Evidence Demonstrates That CLA Is Not Safe**

36. Not only is Ab Cuts ineffective, it is also unsafe. However, Corr-Jenson's website, <https://revolutionlifestyle.com>, claims that:

"While our products deliver revolutionary results, we are committed to safety not sensationalism. Our solutions are simple. We offer Ab Cuts to reduce belly fat for core fitness and a healthier heart..."

37. Under the heading "CORR-JENSON," the website further assures consumers that "we only use the most pure ingredients to ensure the safety of all our products."

38. Likewise, the principal endorser of Ab Cuts, Kendra Wilkinson, represents that Ab Cuts is safe. In Kendra's words: "there are so many... diet pills out there that are so like harmful for you...[Ab Cuts is] so healthy for you, it's a health supplement, it's not a diet pill."

39. Contrary to Defendants' representations, the active ingredient in Ab Cuts, CLA, increases the risk of type II diabetes, hypertension, and cardiovascular disease.

40. There is evidence that CLA increases levels of pro-insulin, an unrefined insulin that inhibits the body's ability to process glucose, and, as a result, raises blood sugar levels and increases the risk of type II diabetes.

41. Several studies have found that use of CLA by people with diabetes may *worsen* blood sugar control, and that, in overweight people without diabetes, CLA might decrease insulin sensitivity, creating a prediabetic state.<sup>10,11,12</sup> One study found that CLA impairs endothelial (blood vessel) function that could increase the risk of cardiovascular disease.<sup>13</sup>

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<sup>10</sup> Moloney F, Yeow TP, Mullen A, et al. "Conjugated linoleic acid supplementation, insulin sensitivity, and lipoprotein metabolism in patients with type 2 diabetes mellitus." *American Journal of Clinical Nutrition* 2004; 80:887-895

<sup>11</sup> Riserus U, Arner P, Brismar K, et al.: "Treatment with dietary trans10cis12 conjugated linoleic acid causes isomer-specific insulin resistance in obese men with the metabolic syndrome." *Diabetes Care* 2002, 25:1516-1521

<sup>12</sup> Larsen TM, Toubro S, Astrup A.: "Efficacy and safety of dietary supplements containing conjugated linoleic acid (CLA) for the treatment of obesity-evidence from animal and human studies." *Journal of Lipid Research* 2003.

<sup>13</sup> Taylor JS, Williams SR, Rhys R, et al.: "Conjugated Linoleic Acid Impairs Endothelial Function" *Arteriosclerosis, Thrombosis, and Vascular Biology* 2005, Dec 8.

42. Another study found that CLA increases levels of C-reactive protein (a protein found in blood that augments in response to inflammation) that increases the risk of diabetes, hypertension and cardiovascular disease.<sup>14</sup>

43. Since scientific evidence demonstrates that the active ingredient in Ab Cuts increases the risk of type II diabetes, hypertension and cardiovascular disease, Corr-Jensen's claim on the Ab Cuts website that the "pure ingredients" in Ab Cuts "ensure the safety" of Ab Cuts is false and misleading. Ms. Wilkinson's assertion that Ab Cuts "is healthy for you" is also false and misleading

#### **Kendra Wilkinson's Marketing And Promotion Of Ab Cuts**

44. Kendra Wilkinson is a public figure best known for her reality television appearances. From 2005 through 2009 Wilkinson starred in a reality television series "The Girls Next Door," chronicling the lives of the girlfriends of Playboy Enterprises, Inc. founder Hugh Hefner. The series aired 91 episodes over six seasons. Ms. Wilkinson also starred in a spin-off reality series "Kendra" from 2009 through 2001. "Kendra" focused on Ms. Wilkinson's life after moving out of the Playboy Mansion, including her engagement and marriage to NFL player Hank Baskett. The series aired 45 episodes over four seasons. In June 2012, Ms. Wilkinson's latest reality series "Kendra on Top" premiered. The series was recently renewed for a second season, to begin airing in 2013. Ms. Wilkinson has also appeared on reality shows "Dancing with the Stars" and "Celebrity Wife Swap."

45. Ms. Wilkinson is the principal endorser of Ab Cuts. She appears in nearly every advertisement for the product. She promotes Ab Cuts on her own website, on Facebook, on Twitter, during daytime talk show appearances, and in celebrity gossip magazines.

46. Ms. Wilkinson also hawks Ab Cuts through paid appearances in GNC stores nationwide, including in New York. The following image was taken of Ms. Wilkinson promoting Ab Cuts in New York City:

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<sup>14</sup> *Herbs & Supplements*: Conjugated Linoleic Acid, NAT main index, NYU Langone Medical Center (available at <http://www.med.nyu.edu/content?ChunkIID=21676#ref29>)(last visited May 2013).



47. The following image was taken at a GNC store in Los Angeles, California:



48. The image below was taken at a GNC in Woodbury, New Jersey:



49. In March 2013, Ms. Wilkinson told OK! Magazine “how she got into bathing suit shape” through her “use of the Ab Cuts supplement” that “really helped transform her body.” As stated by OK! Magazine:

“On her plan, Kendra lost 10 pounds in 10 days! That’s like a woman’s diet dream come true. Kendra told OK! That the Ab Cuts supplement helped boost her metabolism.”

Next to her claims about Ab Cuts, OK! Magazine included the following picture:



50. On January 19, 2012, Reality Weekly Magazine ran a story on Ms. Wilkinson, reproduced below, featuring before and after pictures of Ms. Wilkinson at 129 lbs and 110 lbs. The story reports that Ms. Wilkinson says "I love Ab Cuts!" and touts the product as her "I-Cheat-Every Day Diet":

**Loss Weight 10/11**

**Kendra:**

**Now her body is even better than in her Playboy days**

**F**...

**Kendra Says: I love Ab Cuts!**

"I love Ab Cuts every night before I go to sleep," says Kendra, who's the only one to lose 10 lbs and still the same size as, well, you. "I love Ab Cuts for women, and it really helped me lose 10 pounds in just 1 week. I was the perfect wife (remember the 2011...)"

The last 10 lbs are the hardest to lose

51. On May 6, 2011, fashion blog [www.BettyConfidential.com](http://www.BettyConfidential.com) published a video interview with Ms. Wilkinson in which she purported to be “working with Ab Cuts to celebrate Mother’s Day.” In the interview, as shown below, Ms. Wilkinson was filmed in front of an “Ab Cuts” backdrop and next to a table of bottles of Ab Cuts products, stating:

“there are so many diet pills out there that are so like harmful for you, especially after pregnancy, you want to find what’s right for you and your body and Ab Cuts has pure oil, fish oil, and it’s so healthy for you, it’s a health supplement, it’s not a diet pill. And it’s something that really triggered my metabolism back into gear, and it’s something that I recommend for everybody.”



52. Ms. Wilkinson also regularly advertises Ab Cuts in social media.

53. On February 28, 2013, Ms. Wilkinson posted a picture of a bottle of Ab Cuts to her Facebook profile page, with the caption: “If you are a fan of Ab Cuts like I am, don’t forget to grab your bottle on sale....” Ms. Wilkinson has posted similar pictures and comments about Ab Cuts since 2010.

54. Ms. Wilkinson also regularly tweets about Ab Cuts on Twitter. For example, in the tweet below, Ms. Wilkinson stated: "If you are a fan of Ab Cuts like I am, don't forget to grab your bottle on sale now at Walmart for only \$16!"



**Kendra Wilkinson**  
@KendraWilkinson

Follow

If you are a fan of Ab Cuts like I am, don't forget to grab your bottle on sale now at Walmart for only \$16!

<https://www.abcuts.com/?Q759001133>

Ab Cuts    Follow    Retweet    Like



31  
RETWEETS

73  
FAVORITES



55. Ms. Wilkinson represents on television, in social media, in print media, and during public appearances that Ab Cuts is healthy supplement that promotes fat loss, weight loss, and metabolic stimulation. These representations are false, misleading, and deceptive.

**GNC's Marketing And Promotion Of Ab Cuts**

56. In addition to selling the products in prominent-in store displays, GNC invites Ms. Wilkinson to its stores around the country to promote Ab Cuts.

57. GNC also publishes and distributes Ab Cuts advertisements. For example, in the print ad below, GNC claims that "Ab Cuts are clinically tested to reduce fat around the belly, hips and butt."

advanced formula **NEW!**

**GET SLEEK & LEAN**

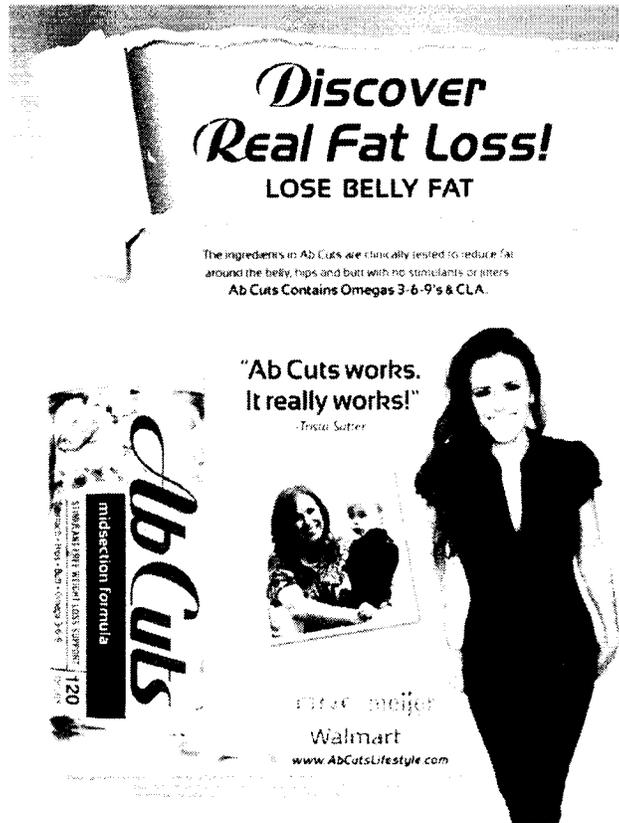
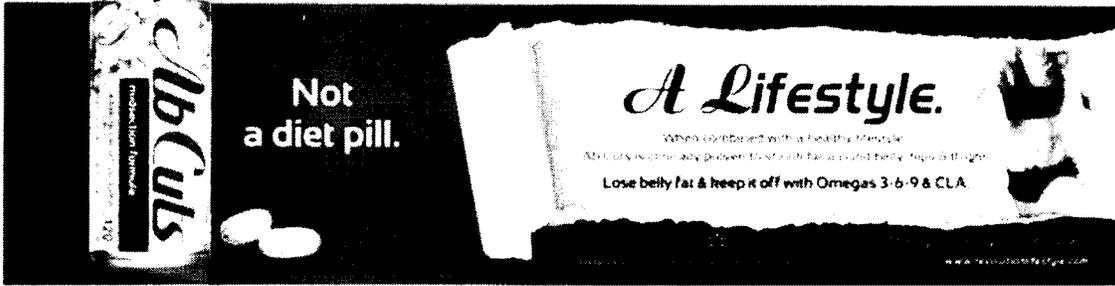
The ingredients in Ab Cuts are clinically tested to reduce fat around the belly, hips and butt. Ab Cuts are clinically tested to reduce fat. Ingredients include: Raspberry Ketone and L-Carnitine.

**Advanced Formula Includes:**

- Raspberry Ketones
- L-Carnitine
- Coleus Forstohlii

**GNC**  
www.TrySleeknLean.com

58. As shown in the images below, GNC further endorses Ab Cuts in Corr-Jenson's promotional material:



59. GNC sales representatives routinely market Ab Cuts to consumers as a pill that is "clinically tested to reduce fat around the belly, hips, and butt," without the need for consumers to change their diets.

60. Each of GNC's representations about Ab Cuts is false, misleading, and deceptive.

**FACTUAL ALLEGATIONS CONCERNING THE CLASS REPRESENTATIVE**

61. Plaintiff Adam Karhu purchased a bottle of Revolution Abdominal Cuts in or about mid-2010 from a GNC store located at 630 Old Country Road, Garden City, NY, for approximately \$39.99.

62. Mr. Karhu spoke with a sales representative at the store who told him that Ab Cuts was "great if you want to tone up your midsection without changing your diet."

63. Thereafter, Mr. Karhu carefully read the Ab Cuts label, including representations that it would cause him to lose "Midsection Fat," as well as fat from his "Stomach," "Hips," and "Butt."

64. Mr. Karhu relied on the representations made by the GNC sales representative and the representations on the product's label in deciding to purchase Ab Cuts. The representations from the sales representative and on the label were part of the basis of the bargain, in that he would not have purchased Ab Cuts if he had known that they were false. Moreover, Mr. Karhu would not have purchased Ab Cuts if he had known that it was not a safe and effective treatment for weight loss.

**CLASS REPRESENTATION ALLEGATIONS**

65. Plaintiff seeks to represent a class defined as all persons in the United States who purchased Ab Cuts (the "Class"). Excluded from the Class are persons who made such purchase for purpose of resale.

66. Plaintiff also seeks to represent a subclass of all Class members in the state of New York (the "New York Subclass").

67. Members of the Class and Subclass are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class and Subclass number in the hundreds of thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendants and third party retailers and vendors.

68. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to whether Defendants' labeling, marketing and promotion of Ab Cuts is false and misleading.

69. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff was exposed to Defendants' false and misleading marketing and promotional materials and representations, purchased Ab Cuts, and suffered a loss as a result of that purchase.

70. Plaintiff is an adequate representative of the Class and Subclass because his interests do not conflict with the interests of the Class members he seeks to represent, he has retained competent counsel experienced in prosecuting class actions, and he intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and his counsel.

71. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class and Subclass members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendants' liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

#### **COUNT I**

**(Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*)**

72. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

73. Plaintiff brings this Count I individually and on behalf of members of the Class against all Defendants.

74. Ab Cuts products are consumer products as defined in 15 U.S.C. § 2301(1).

75. Plaintiff and Class members are consumers as defined in 15 U.S.C. § 2301(3).

76. Defendants are suppliers and warrantors as defined in 15 U.S.C. § 2301(4) and (5).

77. In connection with the sale of the Ab Cuts products, Defendants issued written warranties as defined in 15 U.S.C. § 2301(6), by making the Misrepresentations.

78. In fact, Ab Cuts products do not conform to the Misrepresentations because each of the Misrepresentations is false, and misleading, and competent and reliable scientific evidence proves that those statements are false.

79. By reason of Defendants' breach of warranties, Defendants violated the statutory rights due Plaintiff and Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*, thereby damaging Plaintiff and Class members.

80. Plaintiff and Class members were injured as a direct and proximate result of Defendants' breach because they would not have purchased Ab Cuts products if the true facts had been known.

## **COUNT II**

### **(Breach Of Express Warranty)**

81. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

82. Plaintiff brings this Count II individually and on behalf of members of the Class against all Defendants.

83. Defendants, as the designers, manufacturers, marketers, distributors, and/or sellers issued written warranties by making the Misrepresentations.

84. Defendant GNC, as the designer, manufacturer, marketer, distributor, and/or seller also issued express warranties by misrepresenting to Plaintiff and Class members that Ab Cuts is

“great if you want to tone up your midsection without changing your diet,” and that “Ab Cuts are clinically tested to reduce fat around the belly, hips and butt.”

85. Defendant Kendra Wilkinson, as the marketer and/or seller also issued express warranties by misrepresenting that Ab Cuts is “so healthy for you, it’s a health supplement, it’s not a diet pill” and that Ab Cuts promotes fat loss, weight loss, and metabolic stimulation.

86. Each of these warranties is false and misleading, as proven by competent and reliable scientific evidence, as detailed above.

87. Plaintiff and Class members were injured as a direct and proximate result of Defendants’ breaches because they would not have purchased Ab Cuts products if the true facts concerning their safety and efficacy had been known.

### **COUNT III**

#### **(Breach Of Implied Warranty Of Merchantability)**

88. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

89. Plaintiff brings this Count III individually and on behalf of members of the Class against all Defendants.

90. Defendants as the designers, manufacturers, marketers, distributors, and/or sellers impliedly warranted that Ab Cuts was fit for its intended purpose in that it was safe and effective treatments for weight loss and fat loss.

91. Defendants breached the warranty implied in the contract for the sale of the Ab Cuts products in that Ab Cuts could not pass without objection in the trade under the contract description, the goods were not of fair average quality within the description, and the goods were unfit for their intended and ordinary purpose because there is evidence that Ab Cuts is not a safe and effective treatment for weight loss or fat loss. In fact, the active ingredient in Ab Cuts increases the risk of type II diabetes, a prediabetic state, hypertension and cardiovascular disease. As a result, Plaintiff and Class members did not receive the goods as impliedly warranted by Defendants to be merchantable.

92. In reliance upon Defendants' skill and judgment and the implied warranties of fitness for the purpose, Plaintiff and Class members purchased Ab Cuts for use as a treatment for weight loss and fat loss.

93. The Ab Cuts products were not altered by Plaintiff or Class members.

94. The Ab Cuts products were defective when they left the exclusive control of Defendants.

95. Defendants knew that Ab Cuts would be purchased and used without additional testing for safety or efficacy by Plaintiff and Class members.

96. The Ab Cuts products were defectively designed and unfit for their intended purpose, and Plaintiff and Class members did not receive the goods as warranted.

97. As a direct and proximate cause of Defendants' breach of the implied warranty, Plaintiff and Class members have been injured and harmed because they would not have purchased Ab Cuts products if the true facts concerning their safety and efficacy had been known.

#### **COUNT IV**

##### **(Deceptive Acts Or Practices, New York Gen. Bus. Law § 349)**

98. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

99. Plaintiff brings this Count IV individually and on behalf of members of the New York Subclass against all Defendants.

100. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts and practices by making false representations about Ab Cuts.

101. The foregoing deceptive acts and practices were directed at consumers.

102. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the safety and efficacy of Ab Cuts products to induce consumers to purchase those products.

103. Plaintiff and members of the New York Subclass were injured as a result because they paid for Ab Cuts products, which they would not have purchased had they known the true facts.

104. On behalf of himself and other members of the New York Subclass, Plaintiff seeks to enjoin the unlawful acts and practices described herein, to recover his actual damages or fifty dollars, whichever is greater, three times actual damages, and reasonable attorney's fees.

#### **COUNT V**

#### **(Unjust Enrichment)**

105. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

106. Plaintiff brings this Count V individually and on behalf of members of the Class against all Defendants.

107. Plaintiff and Class members conferred benefits on Defendants by purchasing Ab Cuts.

108. Defendants have knowledge of such benefits.

109. Defendants have been unjustly enriched in retaining the revenues derived from Plaintiff and Class members' purchases of Ab Cuts. Retention of those moneys under these circumstances is unjust and inequitable because Defendants misrepresented that Ab Cuts was a safe and effective treatment for weight loss when in fact it was ineffective and worthless, which caused injuries to Plaintiff and Class members because they would not have purchased Ab Cuts if the true facts had been known.

110. Because Defendants' retention of the non-gratuitous benefits conferred on it by Plaintiff and Class members is unjust and inequitable, Defendants must pay restitution to Plaintiff and the Class members for their unjust enrichment, as ordered by the Court.

#### **RELIEF DEMANDED**

111. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seek judgment against Defendants, as follows:

- a. For an order certifying the nationwide Class and the New York Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Subclass and Plaintiff's attorneys as Class Counsel to represent the Class and Subclass members;
- b. For an order declaring the Defendants' conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiff, the nationwide Class, and the New York Subclass on all counts asserted herein;
- d. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For injunctive relief as pleaded or as the Court may deem proper; and
- h. For an order awarding Plaintiff and the Class and New York Subclass their reasonable attorneys' fees and expenses and costs of suit.

**JURY TRIAL DEMANDED**

Plaintiff demands a trial by jury on all claims so triable.

Dated: June 25, 2013

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By:   
Joseph I. Marchese

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CV 13 3583

JS 44 (Rev. 1/2013)

**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><b>I. (a) PLAINTIFFS</b> Adam Karhu</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Nassau</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c) Attorneys (Firm Name, Address, and Telephone Number)</b> Joseph I. Marchese, Bursor &amp; Fisher, P.A. 888 Seventh Avenue New York, NY 10019 Tel: (646) 837-7150</p>	<p><b>DEFENDANTS</b> Corr-Jensen Labs Inc., Corr-Jensen Inc., General Nutrition Corp., General Nutrition Centers, Inc., Kendra Wilkinson</p> <p>County of Residence of First Listed Defendant <u>Denver</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>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width: 100%;"> <tr> <td style="width: 25%;"></td> <td style="width: 10%; text-align: center;"><b>PTF</b></td> <td style="width: 10%; text-align: center;"><b>DEF</b></td> <td style="width: 55%;"></td> <td style="width: 10%; text-align: center;"><b>PTF</b></td> <td style="width: 10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	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
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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)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>	
<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 checked="" 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	<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 <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 <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>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 1581 <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"/> 840 Trademark <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	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 440 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

**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):  
15 U.S.C. Section 2301

Brief description of cause:  
Plaintiff alleges that Defendants make false representations re: AbCuts

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ 5,000,000.00    CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes     No

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

DATE 06/25/2013    SIGNATURE OF ATTORNEY OF RECORD Joseph I. Marchese

FOR OFFICE USE ONLY

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

3583

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Joseph I. Marchese, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No.
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes.
  - b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes.

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? \_\_\_\_\_

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.  
 Yes  No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?  
 Yes (If yes, please explain)  No

I certify the accuracy of all information provided above.

Signature: Joseph I. Marchese