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

_____	X	
AMY BURKE, Individually and	:	Civil Action No. 2:12-cv-06742(KSH)(PS)
On Behalf of All Others Similarly Situated,	:	
	:	AMENDED CLASS ACTION COMPLAINT
Plaintiff,	:	AND DEMAND FOR JURY TRIAL
	:	
vs.	:	
	:	
WEIGHT WATCHERS INTERNATIONAL,	:	
INC. and WELLS ENTERPRISES, INC.	:	
	:	
Defendants.	:	
_____	X	

Plaintiff Amy Burke (“Plaintiff”), individually and on behalf of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, files this Amended Class Action Complaint against Defendant Weight Watchers International, Inc. (“Weight Watchers”) and Wells Enterprises, Inc. (“Wells”) (collectively, “Defendants”). Plaintiff’s allegations against Defendants are based upon information and belief, except as to her own action, the investigation of Plaintiff’s counsel, and the facts that are a matter of public record.

### **INTRODUCTION**

1. This is a putative class action on behalf of a class of persons seeking redress for Defendants’ deceptive practices in its advertising, labeling and marketing of Defendants’ Weight Watchers ice cream products; specifically the Diet Bars (defined below).

2. The Diet Bars are part of Defendants’ larger program of providing consumers with “sensible options that provide consumers a way to save calories.”<sup>1</sup> In 2011, consumers around the world spent almost \$5 billion on Weight Watchers branded products and services in large part based on Weight Watchers promise to provide consumers with such sensible options and ways of saving calories.

3. In reality, Defendants take advantage of consumers’ desire to save calories by deceptively advertising, labeling and marketing the Diet Bars to Plaintiff and other consumers nationwide as healthier, low-calorie snacks.

4. Indeed, consistent with Weight Watchers’ goal of “providing consumers a way to save calories” the marketing of the Diet Bars focuses primarily on the amount of calories per

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<sup>1</sup>[http://www.facebook.com/ weightwatcherssupermarketfoods /info](http://www.facebook.com/weightwatcherssupermarketfoods/info)) (last visited on October 24, 2012).

serving. For example, the amount of calories is listed first in the bolded and highlighted box on the front of the Diet Bars packaging.

5. Specifically, Defendants' Ice Cream Candy Bar are deceptively advertised, labeled, marketed and sold to Plaintiff and other consumers as containing only 140 calories per serving when, in fact, they contain significantly more calories per serving.

6. In reality, Defendants' Ice Cream Candy Bar contain as much as 191 calories per bar – an astonishing ***36 percent increase!***

7. Such information is clearly important to consumers who purchase the Ice Cream Candy Bar as a way to save calories and to Weight Watchers, which admits that the amount of calories is “key nutritional information.” Indeed, by virtue of deceptively listing the amount of calories in the Diet Bars and by making the amount of calories a central theme in their marketing of the Diet Bars, Defendants are able to increase their sales and profits from the Diet Bars.

8. Consistent with Rule 11 of the Federal Rules of Civil Procedure, prior to filing this lawsuit, Plaintiff's undersigned counsel retained the services of an independent and respected laboratory which separately tested the number of calories of certain Diet Bars and concluded that, contrary to Defendants' advertising, labeling, and marketing, the Diet Bars contained substantially more calories than advertised.

9. Defendants' claims regarding their Ice Cream Candy Bar are also false and misleading because they are promoted as being made with “low fat” ice cream when the products as a whole are anything but “low fat.”

10. Indeed, 57% of the calories in Defendants' Ice Cream Candy Bar are from fat.

11. Defendants have a full line of similarly-mislabeled frozen ice cream bars, including Divine Triple Chocolate Bars, Dark Chocolate Dulcé de Leché Ice Cream Bars, Dark Chocolate

Raspberry Cheesecake Ice Cream Bars, Strawberry Fruit Bars, Chocolate Dipped Strawberry Ice Cream Bars, GIANT Chocolate Fudge Bars, Snack Size Fudge Bars, Strawberry Smoothie Bars, GIANT Latté Bars, Dark Chocolate Raspberry Ice Cream Bars, GIANT Chocolate Cookies & Cream Bars, GIANT Cookies & Cream Bars, and English Toffee Crunch Bars (collectively, along with the Ice Cream Candy Bar, as the “Diet Bars”).

12. As a result of their deceptive marketing and advertising of the Diet Bars, Defendants have generated (and continue to generate) substantial revenues from the sale of the Diet Bars to unwitting consumers nationwide, who would not have purchased the Diet Bars had they known the truth about their caloric and fat content.

### **THE PARTIES**

13. Plaintiff is, and was at all relevant times a resident of Springfield, New Jersey. Plaintiff regularly purchases Weight Watchers Diet Bars—including the Ice Cream Candy Bar and GIANT Chocolate Fudge Bar— from various ShopRite supermarkets in the borough of Garwood and township of Springfield, which are located in Union County, New Jersey.

14. Defendant Weight Watchers is a Virginia corporation with its principal executive offices in New York, located at 11 Madison Avenue, New York, NY 10010. Weight Watchers is authorized to conduct business, and does conduct business, in the State of New Jersey. In 2011, Weight Watchers reported annual revenues of approximately \$1.8 billion.

15. Weight Watchers offers a variety of dieting products and services for the ostensible purpose of helping people lose weight. Weight Watchers is the world’s leading provider of weight management services, operating globally through a network of Company-owned and franchise operations. Weight Watchers brand food products are sold by supermarket retailers and other wholesale and retail chains and outlets (*e.g.*, Costco, Wal-Mart, Target).

16. Defendant Wells Enterprises is an Iowa corporation with its principal place of business located at 1 Blue Bunny Drive, Le Mars, Iowa 51031. Wells is authorized to conduct business, and does conduct business, in the State of New Jersey. Wells, based on publicly available information, has annual sales of over \$1 billion.

17. Wells, is the third largest ice cream maker in the United States, and the nation's largest family-owned ice cream manufacturer. In addition to producing its own Blue Bunny brand and several other private brands, Wells has an exclusive license to manufacture, sell, and distribute Weight Watchers brand ice cream products.

18. Defendants, upon becoming involved with the manufacture, distribution, advertising, marketing and sale of the Diet Bars, knew or should have known that their representations regarding that product were false and misleading.

### **JURISDICTION AND VENUE**

19. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d) , which, under the provisions of the Class Action Fairness Act (“CAFA”), provides federal courts original jurisdiction over any class action in which any member of a class is a citizen of a state different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5 million, exclusive of interests and costs, and over supplemental state law claims pursuant to 28 U.S.C. §1367. Defendant Weight Watchers is a citizen of Virginia and/or New York. Defendant Wells is a citizen of Iowa. The amount in controversy, exclusive of interests and costs, exceeds \$5 million.

20. Venue properly lies in this District pursuant to 28 U.S.C. §1391(a), because Plaintiff resides and Defendants reside, are found, have an agent, or have transacted substantial business within the District of New Jersey within the meaning of 28 U.S.C. §1391(a) as defined in 28 U.S.C. §1391(c), and because a substantial part of the events giving rise to the claims alleged herein

occurred in the District of New Jersey. Specifically, Defendants marketed and sold the Diet Bars throughout the State of New Jersey, including throughout this District, and Plaintiff, as well as other members of the Class, purchased Defendants' mislabeled products from retail outlets located within this District.

## **ALLEGATIONS OF FACT**

### **Defendants and Their Deceptive Labeling**

21. Founded in 1963, Weight Watchers has grown into an international corporation that currently operates in approximately thirty countries around the globe. According to the company, "Weight Watchers has been established as one of the most recognized and trusted brand names among weight-conscious consumers."<sup>2</sup>

22. Weight Watchers credits its success to the "high awareness and credibility of our brand among all types of weight-conscious consumers—women and men, consumers online and offline, the support-inclined and the self-help-inclined." Weight Watchers states that its brand credibility provides the company with "a significant competitive advantage and growth opportunity" over other weight-loss organizations and that as "the number of overweight and obese people worldwide grows, we believe our global presence and brand awareness uniquely position us to capture an increasing share of the global weight management market."<sup>3</sup>

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<sup>2</sup> See <http://www.weightwatchersinternational.com/phoenix.zhtml?c=130178&p=irol-IRHome> (last visited on October 24, 2012).

<sup>3</sup> Obesity is reaching epidemic proportions in the United States. According to the Center for Disease Control, approximately one-third of Americans are considered overweight or obese. More locally, 37% of New Jerseyans are overweight and 22% are obese. Obesity is a known risk factor for numerous chronic diseases, including diabetes, heart disease, high blood pressure, gall bladder disease, arthritis, breathing problems, and some forms of cancer. As awareness of these dangers has increased, many consumers have sought to make healthier choices when it comes to the foods they

23. In order to capture that larger market share, Weight Watchers' product-sales strategy has admittedly been "focused on selling consumables that drive recurring purchases."<sup>4</sup> Weight Watchers' advertising slogan states: "Don't eat less, eat smart." Weight Watchers purports to "provide information, knowledge, tools and motivation" to help weight- and health-conscious people "make the decisions that are right for [them] about nutrition and exercise." According to Weight Watchers' website, "what counts are the little choices you make every day."<sup>5</sup> To help the consumer make informed and "healthy eating decisions," Weight Watchers sells a variety of food products claiming to be healthy alternatives to regular mass-marketed foods.

24. For example, Weight Watchers offers "a delectable line of frozen treats that allow you to eat what you love and still help you meet your weight loss goals." And the "the best part," according to the company: "They're from Weight Watchers! So you know you're making a smart choice no matter which tasty treat you choose."<sup>6</sup>

25. The Diet Bars that bear the Weight Watchers brand name are manufactured and packaged by Wells in its main factory in Le Mars, Iowa.

26. One of the "tasty treats" produced by Defendants is the Weight Watchers Ice Cream Candy Bar, which they describe as: "low fat" peanut butter ice cream topped with caramel and peanuts and covered in a milk chocolate coating.

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eat. As a result, "low calorie" diet foods are being sought out as replacements for traditional mass-produced food products.

<sup>4</sup> Weight Watchers Foods, 2011 Annual 10-K.

<sup>5</sup><http://www.weightwatchers.com/shop/productList.aspx?gcmspid=1010541&gcmscid=1010591&navid=moreww> (last visited on October 24, 2012).

<sup>6</sup>*Id.*

27. The labeling for the Ice Cream Candy Bar represents that each bar contains 140 calories.

28. On or about April 2012, Defendants unveiled new packaging for its food products, including the Ice Cream Candy Bar and other Diet Bars.

29. A true and correct representation of the front panel of the package for the Ice Cream Candy Bar appears below:



30. In a message on the back panel of the Ice Cream Candy Bar box, Defendants state, “You’ve made the commitment to a healthier lifestyle—we’ve made the commitment to help you get there. To make our product easier to shop, we have improved our packing, *placing our key nutrition information on the front panel where you can quickly find it*” (emphasis added). One of those “key” portions of information it placed on the front panel was the product’s caloric content, which Defendants’ represented as 140 calories.



31. A true and correct representation of the back panel of the package for the Ice Cream Candy Bar appears below:



32. The actual number of calories of each Ice Cream Candy Bar product, as packaged and sold to the public, is significantly higher.

33. In a *Today Show* segment aired on August 20, 2012, the results of the show's investigation relating to so-called "low-calorie" ice creams was discussed. Its testing revealed that one Weight Watchers Ice Cream Candy Bar contained more calories than listed on the nutrition panel.

34. In response, Weight Watchers issued the following statement:

Both the Ice Cream Candy Bar and the Giant Chocolate Fudge Ice Cream Sundae Cone are manufactured by Wells Enterprises under a licensing agreement with us. We choose our licensed partners carefully and Wells Enterprises continues to be a reputable partner.

The quality of our licensed products, including the accuracy of the labels, is of the utmost importance to us, and we have quality controls in place with our licensees to ensure this. In particular, Weight Watchers requires manufacturers to conduct rigorous testing on product samples and provide full lab results from a designated independent and credentialed testing facility on nutritional information for our review. The test results Wells Enterprises has provided to us to date reflect that the products meet our quality standards and are consistent with the nutrition labels on the packaging.

35. Weight Watchers did not refute the damning results of the testing performed on behalf of the *Today Show*.

36. Wells also issued a statement in response to the *Today Show* segment, stating that it “takes the integrity of our products and their nutritional labeling very seriously” and that all of the frozen novelty products it produces for the Weight Watchers brand are “subjected to rigorous nutritional testing program by an accredited third party laboratory.” According to Wells, “Maintaining the trust and confidence of our consumers is critical and we work hard to make sure they have a clear and accurate understanding of the nutritional content of the food we produce.”

37. Wells also did not refute the damning results of the testing performed on behalf of the *Today Show*.

38. Defendants knew or had reason to know that the test results from the *Today Show* segment reflected that the true caloric content of the Weight Watchers Diet Bars, including the Ice Cream Candy Bar, was false and misleading.

39. Upon information and belief, Defendants knew or had reason to know that all of the Diet Bars were mislabeled and violated FDA regulations.

### **Independent Laboratory Testing**

40. Prior to filing the instant action, Plaintiff’s undersigned counsel retained the services of the one of the nation’s largest and most respected food testing firms for the purpose of verifying the number of calories in Defendants’ Ice Cream Candy Bar.

41. Several samples of Defendants' Ice Cream Candy Bar were sent to the firm's laboratory to be tested. In particular, the laboratory analyzed said product's ash, crude fat, moisture, protein, and total carbohydrate content in order to determine its true caloric value. All of the testing was done in accordance to, and in compliance of, FDA guidelines, including 21 C.F.R. 101.9.

42. The results of the laboratory's testing indicated that the actual number of calories in Defendants' Ice Cream Candy Bar was significantly higher than what was reported on Defendants' packaging.

43. The results of the testing demonstrated that the sampled Ice Cream Candy Bar had more than 20% more calories than listed, with an upward of 36% more calories. Indeed, none of the products tested resulted in the amount of calories as claimed by Defendants.

44. All of the Diet Bars are manufactured by the same entity (i.e. Defendant Wells) and are made with essentially the same ingredients. Accordingly, upon information and belief, all of Defendants' Diet Bars contain caloric contents significantly higher than as represented by Defendants on the products' packaging, and in violation of FDA regulations.

#### **Factual Allegations Related to Plaintiff**

45. During the summer of 2012, Plaintiff regularly purchased Weight Watchers Diet Bars—including the Ice Cream Candy Bar and GIANT Chocolate Fudge Bar—from three different ShopRite supermarkets in the borough of Garwood and township of Springfield, which are both located within Union County, New Jersey. Plaintiff paid approximately \$4.99 per box of Diet Bars.

46. Plaintiff could not have discovered, even in the exercise of reasonable diligence, that Defendants' product labels were false and misleading.

47. Plaintiff and members of the Class are health-conscious and/or highly aware of the calories they consume on a daily basis. "Calorie counting" is a well-known and widely-accepted practice amongst those individuals on diets, including the Weight Watchers diet regimen, as well as

those who are generally interested in fitness and weight management. Instead of receiving products that had the advantages of being a low-calorie frozen snack, Plaintiff and members of the Class received products that were significantly higher in calories.

48. Plaintiff was unaware that Weight Watchers Diet Bars contained as much as 191 calories per bar.

49. Weight Watchers Diet Bars costs more than similar products without misleading advertisements and misrepresentations, and would have cost less absent the false and misleading statements.

50. Plaintiff and members of the Class paid more for Weight Watchers Diet Bars than they otherwise would have had they not been misled by the false and misleading advertisements and misrepresentations complained of herein.

51. Plaintiff and members of the Class would not have purchased Weight Watchers Diet Bars at the prices they did, or would not have purchased Weight Watchers Diet Bars at all, absent Defendants' false and misleading misrepresentations.

52. For these reasons, Weight Watchers Diet Bars were worth less than what Plaintiff and members of the Class paid for them.

53. Plaintiff and members of the Class were induced to and did purchase Weight Watchers Diet Bars instead of competing products based on the false statements and misrepresentations described herein.

54. Plaintiff and members of the Class lost money as a result of Defendants' deception in that they did not receive what they paid for.

55. Plaintiff and members of the Class altered their position to their detriment and suffered damages in an amount equal to the amount they paid for Weight Watchers Diet Bars.

### CLASS ACTION ALLEGATIONS

56. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3) individually and as a class action on behalf of the following proposed classes:

**National Class: All persons and entities in the United States who purchased the Weight Watchers Diet Bars.**

**New Jersey Class: All persons and entities in the State of New Jersey who purchased the Weight Watchers Diet Bars.**

57. Upon completion of discovery with respect to the scope of the Class, Plaintiff reserves the right to amend the Class definition. Excluded from the Class are Defendants, their parents, subsidiaries and affiliates, directors and officers, and members of their immediate families. Also excluded from the Class are the Court, the Court's spouse, all persons within the third degree of relationship to the Court and its spouse, and the spouses of all such persons.

58. Numerosity: The Class is so numerous that joinder of all individual members is impracticable. While the exact number and identities of members of the Class are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, upon information and belief, Plaintiff alleges that the Class is comprised of thousands of individual members geographically disbursed throughout the United States. The number of Class members and their geographical disbursement renders joinder of all individual members impracticable if not impossible.

59. Commonality: There are questions of fact and law common to members of the Class that predominate over any questions affecting solely individual members including, *inter alia*, the following:

(a) whether Defendants misrepresented the nutrition facts on the products and otherwise mislabeled them so as to have the consumer believe that the Diet Bars were only 140 calories per serving;

(b) whether the actions and activities of Defendants violated the consumer fraud provisions of N.J. Stat. Ann. § 56:8-2;

(c) whether Defendants knew or should have known that the labeling on the Diet Bars was false when issued;

(d) whether Defendants violated the labeling provisions of the Food and Drug and Cosmetic Act, 21 U.S.C. §§ 301, *et. seq.*, 21 C.F.R. § 343(a) and (q);

(e) whether Defendants misled consumers into believing that the Diet Bars, including the Ice Cream Candy Bar, were “low” in fat;

(f) whether Defendants breached its warranties to consumers concerning the Diet Bars; and

(g) whether Defendants were unjustly enriched by the sale and distribution of the misbranded or mislabeled Diet Bars to consumers.

60. Typicality: Plaintiff’s claims are typical of the members of the Class she seeks to represent. Plaintiff and all other members of the Class sustained damages arising out of the Defendants’ common course of conduct as complained herein. The losses of each member of the Class were caused directly by the Defendants’ wrongful conduct alleged herein. The amount of money at issue is such that proceeding by way of class action is the only economical and sensible manner in which to vindicated the injuries sustained by Plaintiff and members of the Class.

61. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff’s claims are coextensive with, and not antagonistic to, the claims of the other members of the Class. Plaintiff is willing and able to vigorously prosecute this action on behalf of the Class, and Plaintiff has retained competent counsel experienced in litigation of this nature.



62. Plaintiff brings this action under Rule 23(b)(3) because common questions of law and fact predominate over questions of law and fact affecting individual members of the Class. Indeed, the predominant issue in this action is whether Defendants' mislabeled and falsely advertised their Diet Bars and whether that mislabeling and false advertising caused damages to Plaintiff and the members of the Class. In addition, the expense of litigating each Class member's claim individually would be so cost prohibitive as to deny Class members a viable remedy. Certification under Rule 23(b)(3) is appropriate because a class action is superior to the other available methods for the fair and efficient adjudication of this action, and Plaintiff envisions no unusual difficulty in the management of this action as a class action.

63. In addition, the Class may also be certified under Rule 23(b)(2) because:

(a) the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudication with respect to individual Class members that would establish incompatible standards of conduct for the Defendants;

(b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or

(c) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Class as a whole.

64. The undersigned counsel for Plaintiff and the Class request that the Court appoint them to serve as Class counsel; first on an interim basis and then on a permanent basis pursuant to Rule 23(g). Undersigned counsel will fairly and adequately represent the interests of the Class, have

identified or investigated the Class' potential claims, are experienced in handling class actions, other complex litigation, and consumer claims of the type asserted in the action, know the applicable law, will commit sufficient resources to represent the Class, and are best able to represent the Class.

## **COUNT I**

### **Breach of Express Warranty**

65. Plaintiff realleges and incorporates the allegations elsewhere in the Amended Complaint as if set forth in full herein.

66. Beginning at an exact date unknown to Plaintiff, but at least since seven months prior to the filing date of this action, and as set forth herein, Defendants made representations to the public, including Plaintiff by its advertising, packaging and other means, that Weight Watchers Diet Bars were a specific number of calories. For example, Defendants made representations to the public, including Plaintiff by its advertising, packaging and other means, that Weight Watchers Ice Cream Candy Bar were 140 calories. These promises became part of the basis of the bargain between the parties and thus constituted an express warranty.

67. Thereon, Defendants sold the goods to Plaintiff and other Class members, who bought the goods from Defendants.

68. However, Defendants breached the express warranty in that the goods did in fact contain calories as set forth in detail herein. As a result of this breach, Plaintiff and other consumers in fact did not receive goods as warranted by Defendants.

69. As a proximate result of this breach of warranty by Defendants, Plaintiff and other consumers have been damaged in an amount to be determined at trial.



## **COUNT II**

### **Violations of the New Jersey Consumer Fraud Act Section 56:8-1**

70. Plaintiff realleges and incorporates the allegations elsewhere in the Amended Complaint as if set forth in full herein.

71. Defendants have used and employed unconscionable commercial practices, deception, fraud, misrepresentations, and/or the knowing concealment, suppression, and/or omission of material facts with the intent that others rely thereon (or, in the case of an omission, with the belief that the parties were ignorant of the true facts), in connection with the marketing, distributing, sale, and advertisement of the Diet Bars.

72. Plaintiff and the other members of the Class, unaware of Defendants' deception, purchased Defendants' ice cream products. Had Plaintiff and the other members of the Class known that Defendants were deceiving them, they would not have purchased Weight Watchers Diet Bars or paid the price that they did.

73. By virtue of the foregoing, Defendants have violated N.J. Stat. Ann. Section 56:8-2.

74. As a direct and proximate result of Defendants' actions, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

## **COUNT III**

### **Breach of Implied Warranty of Merchantability and Fitness for a Particular Purpose**

75. Plaintiff realleges and incorporates the allegations elsewhere in the Amended Complaint as if set forth in full herein.

76. Beginning at an exact date unknown to Plaintiff, but at least since seven months prior to the filing date of this action, and as set forth herein, Defendants made representations to the public, including Plaintiff by its advertising, packaging and other means, that Weight Watchers Diet Bars were a specific number of calories, among other representations. For example, Defendants

made representations to the public, including Plaintiff by its advertising, packaging and other means, that Weight Watchers Ice Cream Candy Bar were 140 calories. Plaintiff and the Class bought those goods from Defendants.

77. Defendants merchants with respect to goods of this kind, which were sold to Plaintiff and the Class, and there was in the sale to Plaintiff and other consumers an implied warranty that those goods were merchantable.

78. However, Defendants breached that warranty implied in the contract for the sale of goods in that Ice Cream Candy Bar is not, in fact, 140 calories as set forth in detail herein.

79. As a result of Defendants' conduct, Plaintiff and other consumers did not receive goods as impliedly warranted by Defendants to be merchantable.

80. As a proximate result of this breach of warranty by Defendants, Plaintiff and the Class have been damaged in an amount to be determined at trial.

#### **COUNT IV**

##### **Unjust Enrichment**

81. Plaintiff realleges and incorporates the allegations elsewhere in the Amended Complaint as if set forth in full herein.

82. As a result of Defendants' fraudulent and misleading labeling, advertising, marketing and sales of its Diet Bars, Defendants were enriched at the expense of Plaintiff and members of the Class.

83. It would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits it received from Plaintiff and members of the Class, in light of the fact that Diet Bars were not what Defendants purported them to be. Thus, it would be unjust and inequitable for Defendants to retain the benefits without restitution to Plaintiff and members of the Class of all monies paid to Defendants for the product at issue.

84. As a direct and proximate result of Defendants' actions, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

**WHEREFORE**, Plaintiff, on behalf of herself and all others similarly situated, prays for relief and judgment against Defendants as follows:

(a) For an order certifying the Class under the appropriate provisions of Rule 23, as well as any appropriate subclasses, and appointing Plaintiff and her legal counsel to represent the Class;

(b) Awarding actual and consequential damages;

(c) Awarding injunctive relief;

(d) Awarding declaratory relief;

(e) Awarding treble damages;

(f) Awarding reimbursement, restitution and disgorgement from Defendants of the benefits conferred by Plaintiff and the Class;

(g) For pre- and post-judgment interest to the Class, as allowed by law;

(h) For reasonable attorneys' fees and costs to counsel for the Class if and when pecuniary and non-pecuniary benefits are obtained on behalf of the Class; and

(i) Granting such other and further relief as is just and proper.

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*Attorneys for Plaintiff and the Proposed Classes*

By /s/ James E. Cecchi  
JAMES E. CECCHI

Dated: February 8, 2013

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**DEMAND FOR JURY TRIAL**

Plaintiff requests a jury trial on all claims so triable.

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