

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ANNIQUE BELLOT and TARA)
STEFANI, individually and on behalf of)
all others similarly situated,)
)
Plaintiffs,)

vs.)

Civil Action No. _____

MAIDENFORM BRANDS, LLC,)
f/k/a MAIDENFORM BRANDS, INC. and)
WACOAL AMERICA, INC.,)
)
Defendants.)

**CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiffs Annique Bellot and Tara Stefani, on behalf of themselves and all others similarly situated, for the Class Action Complaint against Defendants Maidenform Brands, LLC, f/k/a Maidenform Brands, Inc. (“Maidenform”) and Wacoal America, Inc. (“Wacoal”), bring this class action for damages and other relief pursuant to state consumer protection law, and demand a trial by jury.

I. OVERVIEW

1. Defendants Maidenform and Wacoal manufacture, market and sell “shapewear,” which have been defined as undergarments for women who want a flawless, bulge-free silhouette. Defendants Maidenform and Wacoal use shapewear fabric produced by Nurel, S.A. (“Nurel”) a Spanish company located in Zaragoza, Spain, claiming the fabric is constructed with minerals and nutrients that are absorbed by the skin and can permanently change women’s body shape and skin tone. For example, Defendant Wacoal claims that the shapewear fabric from Nurel is

constructed “with embedded microcapsules containing caffeine to promote fat destruction; vitamin E to prevent the effects of aging; ceramides to restore and maintain the skin’s smoothness; and retinol and aloe vera to moisturize and increase the firmness of the skin.”¹

2. The Federal Trade Commission calls false weight-loss claims “about as credible as a note from the Tooth Fairy.”²

3. Yet Defendants make misrepresentations about their shapewear containing fabric produced by Nurel in order to prey upon women’s insecurities about their body images, because Defendants know that the annual revenue of the U.S. weight-loss industry is \$20 billion, sales of shapewear are estimated at over \$750 million annually,³ and sales of “nutrient-infused” textiles or “cosmeto-textiles” are estimated at more than \$600 million annually.⁴

4. Defendants Maidenform and Wacoal charge as much as 50 percent more for the shapewear made with Nurel’s cosmeto-textile than for equivalent non-nutrient infused shapewear, despite the fact that the purported nutrients cannot permanently cure cellulite, destroy fat, or cause weight loss. As a result of Defendants’ misrepresentations, Plaintiffs and the class have suffered out-of-pocket losses, did not receive the benefit of the bargain, and have been damaged.

5. Nurel has trademarked its brand name “Novarel Slim” with the United States Patent and Trademark Office (“PTO”). On October 30, 2009, Nurel filed a trademark

¹ Formerly found at http://www.wacoal-america.com/shop/shapewear/new-arrivals/query_ipant/ipant-anti-cellulite-longlegshaper_809171.html?index=0&searchCategoryId=10052&totalResults=5&displayMarkdownsOnly=false (emphasis in original).

² USFTC Press Release, FTC Launches Big Fat Lie Initiative Targeting Bogus Weight-Loss Claims (Nov. 9, 2004), available at <http://www.ftc.gov/opa/2004/11/bigfatliesweep.shtm> (last accessed Mar. 27, 2014).

³ <http://online.wsj.com/article/SB10001424052748704328104574515481839938404.html> (last accessed Mar. 27, 2014).

⁴ Debra Cobb, “Cosmeto Textiles Resonate With Health-Conscious Consumers and Shapewear Fans,” Textile Insight, at 6 (Sept./Oct. 2012).

application for the name “Novarel Slim” with the PTO. The “Novarel Slim” trademark was registered on November 16, 2010.

6. Nurel provides its branding tags, called “hangtags,” reflecting the phrase “Novarel Slim” to Defendants and other U.S.-based shapewear companies for attachment to shapewear sold in the United States. Examples follow:⁵



II. JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter presented by this Complaint because it is a class action arising under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the federal courts of any class action in which any member of the 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 \$5,000,000.00, exclusive of interest and costs. Plaintiffs allege that the total claims of individual class members in this action are in excess of \$5,000,000.00 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. §§ 1332(d)(2) and (6). Plaintiffs are citizens of the Commonwealth of Massachusetts, whereas Defendants are citizens of New Jersey, North Carolina and Delaware for the purposes of diversity. Therefore, diversity of citizenship exists as required by 28 U.S.C. § 1332(d)(2)(A).

⁵ <http://www.nurel.com/saludBellezaSlim.do> (last accessed Nov. 3, 2013).

Furthermore, Plaintiffs allege that more than two-thirds of all of the members of the proposed class in the aggregate are citizens of a state other than Massachusetts, where this action is originally being filed, and that the total number of members of the proposed class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B).

Venue is appropriate in this District because Defendants reside here and/or do business within this District. 28 U.S.C. § 1391(b)(1). Venue also is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

III. PARTIES

8. Plaintiff Annique Bellot is a resident of the Commonwealth of Massachusetts. On or about March 27, 2014, Plaintiff Bellot purchased “iPant” shapewear manufactured, marketed and/or sold by WACOAL AMERICA, INC. that was constructed with cosmeto-textile sold by Nurel under the “Novarel Slim” brand name. Plaintiff Bellot was deceived by Defendants’ misrepresentations regarding the Novarel Slim technology. Plaintiff did not receive the benefit of the bargain and suffered out-of-pocket losses and harm as a result of Defendants’ misrepresentations.

9. Plaintiff Tara Stefani is a resident of the Commonwealth of Massachusetts. On or about March 31, 2014, Plaintiff Stefani purchased Flexees shapewear manufactured, marketed and/or sold by Maidenform that was constructed with cosmeto-textile sold by Nurel under the “Novarel Slim” brand name. Plaintiff Stefani was deceived by Defendants’ misrepresentations regarding the Novarel Slim technology. Plaintiff did not receive the benefit of the bargain and suffered out-of-pocket losses and harm as a result of Defendants’ misrepresentations.

10. Defendant Maidenform Brands, LLC, f/k/a Maidenform Brands, Inc.

(“Maidenform”) is a Delaware corporation with its principal place of business in Winston-Salem, North Carolina. Maidenform describes itself as “a global intimate apparel company,” which “design[s], source[s] and market[s] an extensive range of intimate apparel products, including bras, panties and shapewear.” According to its Annual Report for the year ending December 31, 2012, Maidenform’s sales of shapewear comprised more than 33% of its sales for the last three years.

11. Defendant Wacoal America, Inc. (“Wacoal”) is a Delaware corporation with its principal place of business in Lyndhurst, New Jersey. Wacoal is engaged in sales of foundation garments, *i.e.* shapewear and lingerie.

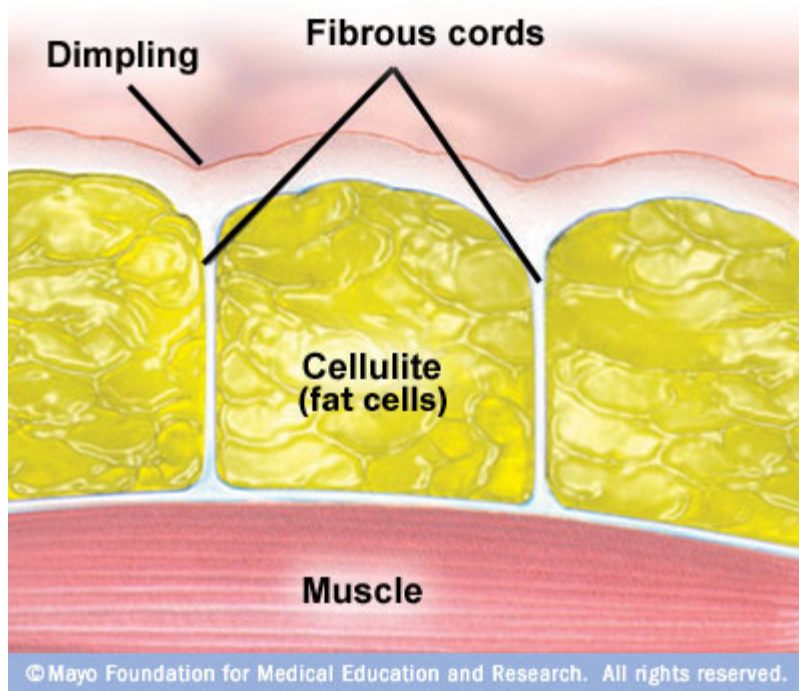
IV. FACTS

A. Cellulite Is a Non-Serious Medical Condition That Cannot Be “Cured” Through Topical Applications.

12. According to the Mayo Clinic, cellulite refers to the appearance of dimpled skin on the thighs, hips, buttocks and abdomen. Cellulite is most common in areas of fat deposits and is the result of the unevenness of fatty tissue beneath the skin surface.

13. Cellulite is caused by fibrous connective cords that tether the skin to the underlying muscle, with the fat lying between. As the fat cells accumulate, they push up against the skin, while the long, tough cords are pulling down. This creates an uneven surface or dimpling. A depiction of cellulite follows:⁶

⁶ <http://www.mayoclinic.org/diseases-conditions/cellulite/multimedia/anatomy-of-cellulite/img-20005630> (last accessed Mar. 27, 2014).



14. Cellulite is much more common in women than in men, and at least 8 out of 10 women have some degree of cellulite because fat is typically distributed in women in the thighs, hips and buttocks.

15. While cellulite is not a serious medical condition, cellulite can be unsightly and may cause embarrassment.

16. According to the Mayo Clinic, “[m]any devices, products and creams claim to treat cellulite. But there is little or no scientific evidence to support these claims. If you do find a cellulite treatment that improves your skin, the results aren’t likely to last long term.”

17. The Mayo Clinic warns consumers that most treatments have not been proven effective in removing cellulite, including but not limited to:

Vigorous massage. Some cellulite treatments are based on the concept that vigorous massage will increase blood flow, remove

toxins and reduce excess fluid in cellulite-prone areas. One method in particular, Endermologie (also referred to as Lipomassage), uses a hand-held machine to knead the skin between rollers. You may notice a slight improvement to your skin after this treatment, but the results are typically short-lived.

Mesotherapy. This procedure involves injecting a solution – which may contain a combination of aminophylline, hormones, enzymes, herbal extracts, vitamins and minerals – under the skin. This treatment can cause several unwanted effects, including infection, rashes, and bumpy or uneven skin contours.

Cellulite creams. Creams that contain a variety of ingredients, such as vitamins, minerals, herbal extracts and antioxidants, are often marketed as the cure for cellulite. But no studies show that these creams used by themselves offer any improvement. In some cases, the ingredients in these products cause skin reactions or rashes.⁷

18. Various states categorize claims concerning the elimination of cellulite as a “Health/Medical Scam.” For example, the State of California’s website states:⁸

HEALTH/MEDICAL SCAM

A scammer sells products that cannot back their claim of being medically effective or beneficial to health.

How this scam works

A scammer sells medications, vitamin supplements, exercise equipment or other products that claim to help you lose weight, clear your skin, stop snoring, eliminate cellulite, or provide other health or medical benefits. These products have not been proven safe or effective. Besides providing no real benefit, these products can be detrimental to your health.

19. Similarly, in 2004, the Federal Trade Commission launched “Operation Big Fat Lie,” a nation-wide law enforcement sweep against six companies making false weight-loss claims, as well as claims regarding cellulite cures, in national advertisements.

⁷ <http://www.mayoclinic.org/diseases-conditions/cellulite/basics/definition/con-20029901?p=1> (last accessed Mar. 27, 2014).

⁸ http://www.takechargeca.ca.gov/campaigns/scams_types.shtml#health (last accessed Mar. 27, 2014).

B. Nurel Claims That Its Novarel Slim Fabric Will Destroy Fat and Cellulite.

20. Nurel manufactures, markets and sells fabric to lingerie companies, including Defendants, for use in shapewear. Nurel differentiates its fabric by claiming that the fabric is constructed with “active principles embedded in the fibers in a homogeneous way. During the garment use, principles are released providing benefits to your skin.” Nurel claims that “Novarel Fibers contain thousands of microcapsules specially designed to preserve, contain and release different kinds of active principles helping your skin feel better day after day.”⁹

21. Nurel claims that, based on several years of research and development, it is the “first company worldwide in developing and patenting an internal micro-encapsulation technology for Nylon fibers.” Nurel explains this technology as follows:¹⁰



22. Nurel claims that its Novarel Slim fabric contains the following active ingredients: caffeine, retinol and Vitamin E, as well as fatty acids and aloe vera.¹¹ Nurel

⁹ <http://www.novarel.com/idioma.do?idioma=en&pagina=technology> (last accessed Mar. 27, 2014).

¹⁰ Formerly found at <http://www.nurel.com/saludBelleza.do>.

¹¹ <http://www.nurel.com/idioma.do?idioma=en&pagina=saludBellezaSlim> (last accessed Mar. 27, 2014).

represents that these ingredients in the Novarel Slim fabric are scientifically-proven to control cellulite and reduce fat. Nurel states:¹²



23. Contrary to Nurel’s representations, the Novarel Slim fabric cannot and does not reduce cellulite or destroy fat permanently or long-term.

24. Nurel intends that consumers rely on and believe that the Novarel Slim fabric can reduce cellulite and destroy fat. Nurel provides its branding tags, called “hangtags,” reflecting the phrase “Novarel Slim” to Defendants and other U.S.-based shapewear companies for attachment to shapewear sold in the United States.

C. Wacoal Misrepresents That its “Anti-Cellulite iPant” Will Promote Fat Destruction.

25. On January 26, 2011, Wacoal debuted its shapewear called the iPant, claiming that the iPant “works with your body to visually reduce the appearance of cellulite from your waist, hips and thighs as you move. The first in America to utilize Novarel Slim® technology in shapewear, Wacoal’s iPant will help you redefine your silhouette and reshape your lower body in

¹² Formerly found at <http://www.nurel.com/saludBellezaSlim.do>.

28 days with lasting results.”¹³ Wacoal advertises its iPant as anti-cellulite:



26. Wacoal represents that its iPant “is constructed of Novarel Slim® nylon microfibers with embedded microcapsules containing **caffeine** to promote fat destruction; **vitamin E** to prevent the effects of aging; **ceramides** to restore and maintain the skin’s smoothness; and **retinol** and **aloe vera** to moisturize and increase the firmness of the skin.”¹⁴ An example from its website provided:

¹³ <http://www.prnewswire.com/news-releases/wacoal-debuts-revolutionary-ipant-114640574.html>.

¹⁴ Formerly found at http://www.wacoal-america.com/shop/shapewear/new-arrivals/ipant-anti-cellulite-long-legshaper_809171.html (emphasis in original).



27. Wacoal advised consumers “to wear the iPant 8 hours a day, 7 days a week for 28 days,” stating “Novarel Slim® test results show most women reported improved appearance, a reduction in thigh measurement and that their clothes felt less tight.” Wacoal also claimed that the active ingredients are still present after 100 washes.¹⁵

28. Wacoal preys upon the insecurities of consumers by referring to its iPant product as “HOPE ON A HANGER.”¹⁶

29. Wacoal charged as much as 50 percent more for the iPant than for the same shapewear without the claimed fat-destroying and anti-cellulite properties. Yet Wacoal’s iPant does not reduce thigh measurement or promote fat destruction as Wacoal claims. At best,

¹⁵ Formerly found at http://www.wacoal-america.com/shop/shapewear/anti-cellulite-ipant/ipant-anti-cellulite-mid-thigh-shaper_804271.html?index=0&searchCategoryId=20001&totalResults=5&displayMarkdownsOnly=false.

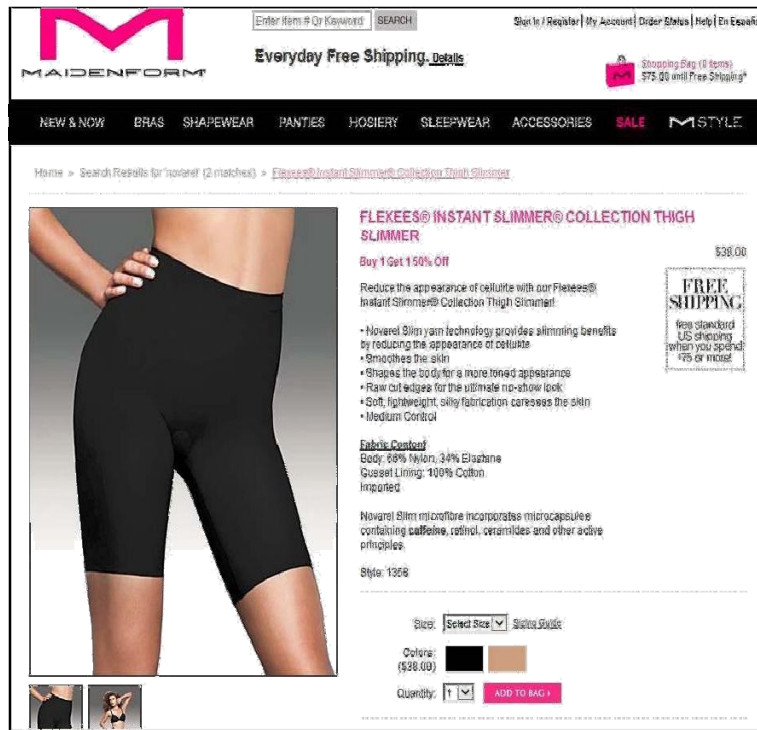
¹⁶ http://www.youtube.com/watch?feature=player_detailpage&v=1SDr84_szHU.

consumers who purchase Wacoal's iPants receive the same body shapewear that Wacoal sells made without Novarel Slim technology.

D. Maidenform Misrepresents That its “Instant Slimmer” Shapewear “Fights Against Cellulite.”

30. In or about March 2012, Maidenform launched its “Instant Slimmer” collection of shapewear under its Flexees brand name.¹⁷ Maidenform markets its Instant Slimmer collection as being constructed with Novarel Slim “yarn technology” that provides “slimming benefits” and incorporates microcapsules containing caffeine, retinol, ceramides, and other active principles.¹⁸

31. Maidenform's website provides:



32. Maidenform posted a video on its website purporting to show the Novarel Slim-

¹⁷ Formerly found at <http://www.maidenform.com/new-and-now/trending-now/summer-must-haves/flexees-instant-slimmer-collectionthigh-slimmer-1358?showSearchBC=true>.

¹⁸ Formerly found at <http://www.maidenform.com/collections/collections/instant-slimmer/>.

fabric “fights against cellulite.” A screenshot follows:¹⁹



33. Similarly, Maidenform represented on retailer Macy’s website that the Instant Slimmer shapewear is constructed with “[y]arn embedded with microcapsules containing

¹⁹ Formerly found at <http://www.maidenform.com/collections/collections/instant-slimmer/>.

caffeine to promote fat destruction.” On another retailer’s website, Maidenform made the following representations regarding the Instant Slimmer shapewear:

- Fat-burning caffeine reduces appearance of cellulite
- Ceramides restore and maintain skin’s smoothness
- Retinol increases the firmness of skin

34. Maidenform charged as much as 62 percent more for its Instant Slimmer shapewear than for the same shapewear without the claimed fat-destroying and anti-cellulite properties. Yet Maidenform’s Instant Slimmer shapewear cannot and does not reduce or fight against cellulite nor promote fat destruction. At best, consumers who purchase Maidenform’s Instant Slimmer shapewear receive the same body shapewear that Maidenform sells made without Novarel Slim technology.

E. Defendants’ Conduct Injured Plaintiffs And The Class Members.

35. Based on Defendants’ misleading and deceptive sales scheme, Defendants were able to charge a premium for the shapewear constructed of Novarel Slim fabric over the costs of the same style shapewear made from non-nutrient infused fabric.

36. For example, Wacoal charged \$60 for an iPant thigh slimmer product made from Novarel Slim fabric compared to \$40 for the same thigh slimmer product marketed without the deceptive claims.

37. Similarly, Maidenform charged \$38 for an Instant Slimmer thigh slimmer made from the Novarel Slim fabric, compared to \$24 for the same thigh slimmer shapewear product marketed without the deceptive claims.

38. Plaintiffs, and the class members they seek to represent, suffered economic damages by purchasing Defendants’ products, did not receive the benefit of the bargain, suffered out-of-pocket loss, and are entitled to a full refund for their purchases.

V. CLASS ACTION ALLEGATIONS

39. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23(b)(3), on behalf of themselves and a Class defined as follows:

All persons who paid for shapewear constructed with Novarel Slim fabric and manufactured, marketed and/or sold by Wacoal or Maidenform.

Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest, and Defendants' legal representatives, predecessors, successors, assigns, and employees.

40. The definition of the Class is unambiguous. Plaintiffs are members of the Class they seek to represent. The Class members can be notified of the class action through publication and direct mailings to address lists maintained in the usual course of business by Defendants and retail clothing stores.

41. The Class members are so numerous that their individual joinder is impracticable. The precise number of Class members is unknown at this time but, based on Defendants' reported sales figures; it is clear that the number greatly exceeds the number to make joinder possible.

42. Common questions of law and fact predominate over the questions affecting only individual Class members. Some of the common legal and factual questions include:

- a. Whether this Court has personal jurisdiction over Nurel;
- b. Whether Defendants' conduct as set forth herein constitutes a breach of the express and/or implied warranties of merchantability;
- c. Whether Massachusetts law applies to the proposed nationwide Class;
- d. Whether Defendants violated consumer protection statutes and/or false advertising statutes and/or state deceptive business practices statutes;
- e. Whether Defendants violated the common law of unjust enrichment; and

- f. The nature and extent of damages and other remedies to which the conduct of Defendants entitles the Class members.

43. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by the Class members. Similar or identical statutory and common law violations and deceptive business practices are involved. Individual questions, if any, pale by comparison to the numerous common questions that predominate.

44. The injuries sustained by the Plaintiffs and the Class members flow, in each instance, from a common nucleus of operative facts, the Defendants' misconduct. In each case, Defendants marketed and sold shapewear constructed from Novarel Slim fabric and misled and deceived Plaintiffs and the Class members that the shapewear had been proven to be effective for their marketed purposes of fighting cellulite and destroying fat.

45. Plaintiffs and the Class members have been damaged by Defendants' misconduct. Plaintiffs and the Class members have paid a premium price for the shapewear, products which would not have been purchased in the absence of Defendants' marketing campaigns and deceptive scheme.

46. Plaintiffs' claims are typical of the claims belonging to absent Class members. Plaintiffs paid for Defendants' shapewear products constructed with Novarel Slim fabric.

47. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs are familiar with the basic facts that form the bases of the Class members' claims. Plaintiffs' interests do not conflict with the interests of the other Class members that they seek to represent. Plaintiffs have retained counsel competent and experienced in Class action litigation and intend to prosecute this action vigorously. Plaintiffs' counsel have successfully prosecuted many complex class actions, including consumer protection class actions. Plaintiffs and their counsel will fairly and adequately protect the interests of the class members.

48. The class action device is superior to other available means for the fair and efficient adjudication of the claims belonging to Plaintiffs and the class members. The relief sought for each individual class member is small given the burden and expense of individual prosecution of the potentially extensive litigation necessitated by the conduct of Defendants. Furthermore, it would be virtually impossible for the class members to seek redress on an individual basis. Even if the class members themselves could afford such individual litigation, the court system could not.

49. Individual litigation of the legal and factual issues raised by the conduct of Defendants would increase delay and expense to all parties and to the court system. The class action device presents far fewer management difficulties and provides the benefits of a single, uniform adjudication, economies of scale and comprehensive supervision by a single court. Given the similar nature of the class members' claims and the absence of material differences in the state statutes and common laws upon which the class members' claims are based, a nationwide class will be easily managed by the Court and the parties.

VI. CAUSES OF ACTION

COUNT I

BREACH OF EXPRESS WARRANTY OF MERCHANTABILITY; M.G.L. ch. 106, § 2-313

50. Plaintiffs restate and incorporate herein by reference the preceding paragraphs 1-49 as if fully set forth herein.

51. Defendants are in the business of selling lingerie, undergarments and shapewear to consumers such as Plaintiffs and the members of the Class, including but not limited to shapewear of the kind sold to Plaintiffs and the members of the Class.

52. Plaintiffs and the members of the Class purchased Defendants' shapewear constructed with Novarel Slim fabric.

53. Defendants expressly warranted that the shapewear constructed with Novarel Slim fabric fights cellulite and destroys fat.

54. The shapewear does not conform to these express representations because they do not fight cellulite or destroy fat. Thus, Defendants breached their express warranties.

55. As a direct and proximate result of the breach of said warranties, Plaintiffs and the Class members suffered and/or will continue to be harmed and suffer economic loss.

56. Plaintiffs and the Class members did rely on the express warranties of the Defendants herein.

57. Defendants knew or should have known that said representations and warranties were false, misleading and untrue.

58. Defendants' conduct breached their express warranties in violation of, among other state express warranty laws, M.G.L. ch. 106, § 2-313.

59. M.G.L. ch. 106, § 2-313 does not require privity of contract to recover for breach of express warranty.

60. As a direct and proximate result of the foregoing acts and/or omissions, Plaintiffs and the Class members have suffered damages entitling them to compensatory damages, equitable and declaratory relief, punitive damages, costs and reasonable attorneys' fees.

COUNT II

**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;
M.G.L. ch. 106, § 2-314**

61. Plaintiffs restate and incorporate herein by reference the preceding paragraphs 1-60 as if fully set forth herein.

62. Defendants are in the business of selling lingerie, undergarments and shapewear to consumers such as Plaintiffs and the members of the Class, including but not limited to shapewear of the kind sold to Plaintiffs and the members of the Class.

63. Plaintiffs and the members of the Class purchased Defendants' shapewear constructed with Novarel Slim fabric.

64. Defendants impliedly warranted that the shapewear constructed with Novarel Slim fabric fights cellulite and destroys fat.

65. The shapewear does not conform to these implied representations because they do not fight cellulite or destroy fat. Thus, Defendants breached their implied warranties.

66. As a direct and proximate result of the breach of said warranties, Plaintiffs and the Class members suffered and/or will continue to be harmed and suffer economic loss.

67. Plaintiffs and the Class members did rely on the implied warranties of the Defendants herein.

68. Defendants knew or should have known that said representations and warranties were false, misleading and untrue.

69. Defendants' conduct breached their implied warranties in violation of, among other state implied warranty laws, M.G.L. ch. 106, § 2-314.

70. M.G.L. ch. 106, § 2-313 does not require privity of contract to recover for breach of implied warranty.

71. As a direct and proximate result of the foregoing acts and/or omissions, Plaintiffs and the Class members have suffered damages entitling them to compensatory damages, equitable and declaratory relief, punitive damages, costs and reasonable attorneys' fees.

COUNT III

UNJUST ENRICHMENT

72. Plaintiffs incorporate by reference all preceding paragraphs 1-71 as if fully set forth herein and further allege as follows.

73. At all relevant times, Defendants designed, manufactured, produced, marketed and/or sold the shapewear products.

74. Defendants have benefitted from their unlawful acts by receiving payments for the sales of the shapewear products. Defendants knew that the shapewear products did not fight cellulite or destroy fat, but falsely advertised that they did.

75. Plaintiffs and the Class members conferred non-gratuitous benefits upon Defendants by paying for the shapewear.

76. Defendants appreciated, or had knowledge of the non-gratuitous benefits conferred upon them by Plaintiffs and the Class members.

77. Defendants accepted or retained the non-gratuitous benefits conferred by Plaintiffs and the Class members, with full knowledge that, as a result of Defendants' unconscionable wrongdoing, Plaintiffs and the Class members were not receiving products of the high quality, nature, fitness, or value as reasonable consumers expected. Allowing Defendants

to retain the non-gratuitous benefits Plaintiffs and the Class members conferred would be unjust and inequitable under these circumstances.

78. Because Defendants' retention of the non-gratuitous benefits conferred by Plaintiffs and the Class members would be unjust and inequitable, Plaintiffs and the Class members are entitled to, and hereby seek disgorgement and restitution of Defendants' wrongful profits, revenue, and benefits in a manner established by the Court.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class members request that the Court enter an order or judgment against Defendants including the following:

- a. Certification of the action as a class action pursuant to Federal Rule of Civil Procedure 23(b)(3); appointment of Plaintiffs as the Class Representatives and appointment of their counsel as Class Counsel;
- b. Damages in the amount of monies paid for Defendants' shapewear products;
- c. Such other relief as provided by the statutes cited herein;
- d. Pre-judgment and post-judgment interest to the full extent permitted by law;
- e. All appropriate injunctive relief;
- f. The costs of bringing this suit, including reasonable attorneys' fees;
- g. All other relief to which Plaintiffs and the Class members may be entitled at law or in equity; and
- h. Such other further relief as the Court deems just and proper.

VIII. JURY DEMAND

Plaintiffs hereby demand trial by jury on their own behalf, and on behalf of the absent Class members, on all issues and claims presented above that are so triable by jury.

Dated: April 14, 2014

Respectfully submitted,

/s/ Matthew F. Pawa

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) _____

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ___ I. 410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- ___ II. 110, 130, 140, 160, 190, 196, 230, 240, 290, 320, 362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.
- ___ III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☐

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☐

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☐

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME _____

ADDRESS _____

TELEPHONE NO. _____

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.)

I. (a) PLAINTIFFS

Annique Bellot and Tari Stefani, individually and on behalf of all others similarly situated

DEFENDANTS

Maidenform Brands LLC (f/k/a Maidenform Brands Inc.), Wacoal America Inc.

(b) County of Residence of First Listed Plaintiff Middlesex County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Matthew F. Pawa, Benjamin A. Krass
Pawa Law Group, P.C., 1280 Centre Street, Suite 230 Newton Centre,
MA 02459 (617) 641-9550

Attorneys (If Known)

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

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

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

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" 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 checked="" 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	PERSONAL INJURY <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	PERSONAL INJURY <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 PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" 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 LABOR <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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <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)) FEDERAL TAX SUITS <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"/> 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
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <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			

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)(2)(A), (6)

Brief description of cause
Consumer protection action - breach of warranties and unjust enrichment

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/14/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE