

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

RHONDA GOEKE, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

WELLNESS AND HEALTH, LLC, and
BRUCE R. GEZON,

Defendants.

Case No. 3:14-cv-00807-MJR-PMF

JURY TRIAL DEMAND

COMPLAINT

Plaintiffs Rhonda Goeke, by and through undersigned counsel, bring this class action complaint, individually and on behalf of all others similarly situated, against Wellness and Health, LLC and Bruce R. Gezon (collectively, “Defendants”). Plaintiff’s allegations are based upon personal knowledge as to her own acts and upon information and belief as to all other matters.

Nature of the Action

1. Plaintiff brings this class action against Defendants for violations of the Illinois Consumer Fraud Act (“ICFA”), 815 ILCS 505/2, and the Illinois Uniform Deceptive Trade Practices Act (“UDTPA”), 815 ILCS 510/2, and the federal Electronic Funds Transfer Act, EFTA § 907(a), 15 U.S.C. § 1693e(a); Regulation E § 205.10(b), 12 C.F.R. § 205.10(b), arising out of Defendants’ sale of Max Detox pills to Plaintiff in Illinois and failing to disclose material information about the true length of its 15-day free trial program, for enrolling Plaintiff in a negative option auto-shipment purchase program without her consent, and for making 5 unauthorized charges against her credit/debit card

on a recurring basis without providing Plaintiff with a copy of a written authorization signed or similarly authenticated authorization for preauthorized electronic fund transfers from their accounts.

Parties

2. Plaintiff, Rhonda Goeke, is a resident of DuQuoin, Illinois, located in Perry County within this judicial district.

3. Defendant Wellness and Health, LLC (“Wellness”) is a domestic limited liability company registered in Michigan and headquartered in Caledonia, Michigan, operating, among others companies, a direct-to-consumer online retail company which advertises and sells Max Detox weight-loss dietary supplements in Michigan and throughout the United States via internet websites, including to Rhonda Goeke in Perry County, Illinois.

4. Defendant Bruce R. Gezon, is a resident of Michigan, and is a co-founder, a partner, and an executive officer of Wellness and Health, LLC. At all times material to this Complaint, acting alone or in concert with others, Defendant Gezon has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. In connection with the matters alleged herein, Defendant Gezon transacts business in Michigan and throughout the United States, including the state of Illinois.

5. Defendants have operated as a common enterprise while engaging in deceptive, unfair, and unlawful acts and practices alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions,

employees, office locations, and have commingled funds. Because Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below.

Jurisdiction and Venue

6. Plaintiffs' claims arise out of Defendants' internet advertisement and sale of a dietary supplement called Max Detox to Rhonda Goeke in Perry County, Illinois.

7. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331, which confers upon the Court original jurisdiction over all civil action arising under the laws of the United States. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367.

8. Additionally, this Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action in excess of five million dollars (\$5,000,000.00) exclusive of interest and costs, and because Plaintiff and many members of the putative Class are citizens of different states than Defendants.

9. This Court has personal jurisdiction over Defendants pursuant to the Illinois long-arm statute, 735 ILCS 5/2-209(a)(1) and (a)(2), because Defendants transacted business within the State of Illinois by selling dietary supplements to an Illinois resident and because Defendants committed a tortious act within the State of Illinois through its illegal, unfair, and deceptive trade practices.

General Allegations of Fact

10. Since at least 2011, Defendants have advertised, marketed, promoted, offered for sale, and sold numerous weight loss dietary supplements via internet websites throughout the United States, including Max Detox.

11. Defendants offer their products through a variety of channels, including numerous websites or “landing pages” that Defendants own and operate such as, among others, www.turbocoloncleanse.com.

The screenshot shows a website for "Turbo Colon Cleanse.com". At the top, a blue banner reads "FEATURED ITEM". Below this, the website's name "Turbo Colon Cleanse.com" is displayed in a blue script font. The main heading is "DETOXIFICATION & ELIMINATE TOXINS" in large, bold, blue letters. To the left is a product image of a blue bottle of "Max Detox Detox Blend", labeled as a "Dietary Supplement" containing "60 Capsules" and featuring a "USA" seal. To the right of the bottle, under the heading "Detoxification May Help:", are four bullet points with checkmarks: "FLUSH YOUR SYSTEM CLEAN", "PROMOTES WEIGHT LOSS", "PROMOTES BETTER METABOLISM", and "ENHANCES ENERGY LEVELS". In the background, a woman in a colorful bikini is shown. On the right side of the page is a form titled "TELL US WHERE TO SEND YOUR ORDER" with fields for "First Name:", "Last Name:", "Address:", "City:", "State:" (a dropdown menu showing "-- Choose a state --"), "ZIP Code:", "Country:" (a dropdown menu showing "United States"), "Phone:", and "Email:". Below the form is a checkbox labeled "I am 18 years and older and agree to Terms and Conditions of this site." At the bottom, there are two large buttons: a blue one that says "ORDER YOUR BOTTLE TODAY!" and a red one that says "RUSH MY ORDER".

(www.turbocoloncleanse.com last viewed 7/15/2014).

12. Defendants’ products are also promoted via internet social media sites such as Facebook.

A. Defendants’ Max Detox Product Claims

13. Defendants claim that each Max Detox capsule contains 646 milligrams of a proprietary blend of ingredients.

14. Defendants represent on their website offering Max Detox that if consumers use Max Detox they will lose a substantial amount of weight.

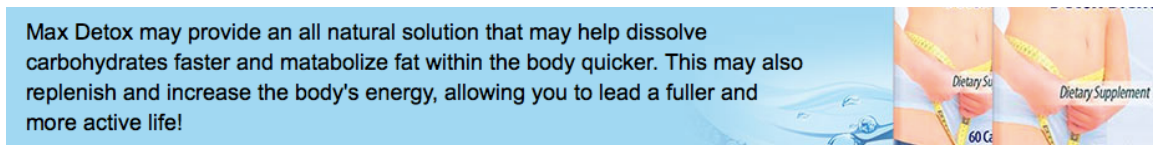
15. For example, typical weight-loss representations made by Defendants on its Max Detox website, www.turbocoloncleanse.com include, but are not limited to, the following:

(a) Max Detox “Promotes Weight Loss”



(www.turbocoloncleanse.com last viewed 7/15/2014);

(b) “Max Detox may provide an all natural solution that may help dissolve carbohydrates faster and metabolize fat within the body quicker.”



(www.turbocoloncleanse.com last viewed 7/15/2014);

(c) “May people use detox supplement every day as an all natural method to gently flush pounds away...”



(www.turbocoloncleanse.com last viewed 7/15/2014);

16. In truth and in fact, Max Detox does not cause substantial weight loss, nor do Defendants possess and rely upon a reasonable basis to substantiate representations that consumers who use Max Detox will lose a substantial amount of weight.

B. Defendants' 15-Day No Commitments, Risk Free Trial Program

17. Defendants typically have offered their products to Plaintiff and Class member on a “trial” basis and have represented that consumers need only pay a nominal charge, usually for shipping and handling. Defendants typically have represented that the offered trial is available only for a limited time.

18. After Plaintiff and Class members enter their email and physical addresses (which are often their billing addresses as well), Defendants make additional representations about the purported risk free nature of their trial program on the top half of the second page of their websites. For example, Defendants make the following representations:

- (a) “15-day trial package”
- (b) “No Commitments, and no hidden fees”
- (c) “Guaranteed Top Quality Ingredients”
- (d) “100% guaranteed or your money back”

CONGRATULATIONS YOU'RE ALMOST DONE



Max Detox
Detox Blend
Dietary Supplement
60 Capsules
USA

>> 15-day trial package

>> No Commitments, and no hidden fees

>> Guaranteed Top Quality Ingredients

>> 100% guaranteed or your money back

Trial

Shipping:	\$9.95
Shipping Promo Code Discount Applied	-\$5.00
Total	\$4.95

GuaranteeShip (☐ Accept)
Shipment Guaranteed and Rush Delivery \$1.95

ORDER YOUR BOTTLE TODAY!




(www.turbocoloncleanse.com/checkout.php last viewed 7/15/2014).

19. After Plaintiff and Class members enter their payment information on Defendants' websites, ostensibly to pay the nominal shipping charge, Defendants then ship a one-month supply of product to the consumer. This represents the trial product.

20. Defendants specifically represent that that the risk free trial period is 15 days.

21. Plaintiff and Class members are led to believe that they have 15 days to sample the product. In actual fact, Defendants commence the 15-day trial period on the date consumers place the order, not on the day that consumers receive the order. Defendants do not disclose this fact at the point of sale where the consumers enter their credit or debit card information.

FINAL STEP!
COMPLETE YOUR ORDER

We Accept   

Card Type


Credit Card #

Exp. Date

CVV [What's This?](#)

☐ By clicking order now you agree to be enrolled in a 15 day trial of Max Detox for \$4.95. After the trial expires, you agree that your card will be charged \$85.99 for the bottle and you will be shipped and charged for a new bottle every 30 days unless you cancel beforehand. You agree to the [Terms & Conditions](#) and [Privacy Policy](#).

RUSH MY ORDER

 SECURE & SAFE TRANSACTION

22. To avoid being charged the full purchase price for this allegedly “no commitments” risk free trial, Defendants represent that consumers are required to cancel the trial within 15 days from the date consumers placed their order—not the date that consumers received their product—or be charged \$85.99 for the trial product.

23. Defendants do not disclose at the point of sale that in order to avoid being charged the full purchase price of the trial product, Plaintiff and Class members must

return the product unopened and only if they first obtain a return merchandise authorization (“RMA”) number from Defendants prior to shipping the return package, and clearly mark the package with the RMA number. Consumers must incur the postage cost and a restocking fee for returning the product. Defendants require consumers to contact Defendants’ customer service representatives by telephone—not by email or on through their websites—to obtain a RMA number. In many instances, Defendants fail to provide or delay providing consumers with RMA numbers when requested. In numerous other instances, consumers are unaware that they are required to obtain an RMA number before sending the product back to Defendants.

24. Thus, the risk free trial is illusory, deceptive, and fraudulent. First, consumers who agree to the trial have significantly less than 15 days to actually test the product because they must cancel within 15 days of the day they placed the order, not the day they received the product. Given the time for order fulfillment and shipping, the typical consumer has less than a week to test the product and determine whether to purchase the product at the price of \$85.99 at the end of the trial period. Second, even if consumers decide to cancel within the allotted time, they must obtain a nearly unobtainable RMA number and return the trial product to Defendants in the allotted time in order to avoid being charged \$85.99 by Defendants. Thus, there is no way for consumers who tried the trial product during the trial period to avoid being charged \$85.99 by Defendants who already collected consumers’ credit card information to cover the \$4.95 shipping charge related to the trial product. In the end, every consumer who agrees to the “no commitments” risk free trial ends up paying at least \$85.99 to Defendants.

C. Defendants' Auto-Shipment Program

25. Consumers are lead to believe that the 15-day trial is without a commitment. In actual fact, without Plaintiff's or Class members' consent, Defendants enroll consumers to an "auto-shipment" program in which Defendants automatically ship monthly supplies of the product to consumers and charge consumers the full \$85.99 price every 30 days unless the consumer calls the customer service telephone number and cancels. The monthly shipments and charges begin 30 days after consumers are charged for the "no commitments" risk free trial product.

26. The first page of Defendants' website containing their promotional statements does not disclose that by requesting Defendants' products, Plaintiff and Class members will be enrolled in an auto-shipment program whereby they will incur a continuing month-to-month obligation to pay for monthly supplies of the product.

27. Defendants have collected payments from Plaintiff and Class members by charging the credit/debit card accounts that they previously provided to pay for the one-time nominal shipping fee associated with the "no commitments" risk free trial for the additional, continuing, recurring monthly shipments without obtaining Plaintiff's or Class members' express written authorization signed or similarly authenticated for preauthorized electronic fund transfers.

28. Plaintiff and Class members first become aware of their enrollment in Defendants' auto-shipment program when they receive their second shipment of product from Defendant or when they see Defendants' charges on their credit/debit card bills. By this time, Defendants already have charged consumers not only for the allegedly "no commitments" risk free trial shipment, but also for the second shipment.

29. Upon information and belief, in instances when Defendants' charges to consumers' credit or debit cards are rejected, either because the consumer has insufficient funds or has closed the account, Defendants have aggressively attempted to collect the purported "debt" by sending consumers letters or calling them demanding payment, and by threatening to send consumers' purported "delinquent" accounts to third-party collection agencies, and telling them that this will harm their credit ratings and result in additional hefty fees.

30. Defendants fail to disclose in clear and conspicuous manner the fact that by agreeing to accept the "no commitments" risk free trial product, Plaintiff and Class members are agreeing to receive and pay for additional product unrelated to the trial.

D. Defendants' Joint and Several Liability

31. Defendants have operated as a common enterprise while engaging in deceptive, unfair, and unlawful acts and practices alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, office locations, and have commingled funds. Because Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged above and below.

32. As described below, Defendants have deceived hundreds, if not thousands, of consumers across the country out of hundreds of thousands of dollars. The acts and practices alleged herein also have generated consumer complaints to the Better Business Bureau.

Allegations of Fact Specific to Plaintiff Rhonda Goeke

33. On July 5, 2013, Rhonda Goeke responded to a social media ad on her Facebook page, which redirected her to Defendants' Max Detox website.

34. Plaintiff reviewed Defendants' representations on the first page of their website regarding Max Detox, including the representations that the her use of Defendants' product "promotes weight loss" and might help her "metabolize fat quicker in the body."

35. Based upon these representations, Plaintiff submitted her contact information, including her email address, on the first page of Defendants' website and clicked the "RUSH MY ORDER" button.

36. Plaintiff reviewed Defendants' representations on the second page of their website regarding the 15-day trial package, including the representations that there were "no commitments, and no hidden fees," and that she could "cancel [her] trial at any time, no questions asked."

37. Based upon these representations, Plaintiff submitted her credit card information on the second page of Defendants' website and clicked "Rush My Order" button.

38. Defendants charged Plaintiff's credit card account for \$4.95 on July 5, 2013.

39. At the time that Plaintiff placed her order, unbeknownst to Plaintiff and without her consent, Defendants automatically enrolled Plaintiff into their "auto-shipment" continuity program for their Max Detox product.

40. Plaintiff received the trial bottle of Max Detox by standard United States Postal Service parcel post on or about July 10, 2013.

41. Without Plaintiff's written authorization, Defendants charged her credit card account for \$85.99 on July 19, 2013. Defendant charged Plaintiff for the trial bottle during the 15-day "no commitments" risk free trial period—on the 15th day not after the 15th day as promised.

42. Without Plaintiff's written authorization, Defendants charged her credit card account for \$85.99 on August 19, 2013.

43. Without Plaintiff's written authorization, Defendants charged her credit card account for \$85.99 on September 17, 2013.

44. Without Plaintiff's written authorization, Defendants charged her credit card account for \$85.99 on October 17, 2013.

45. Without Plaintiff's written authorization, Defendants charged her credit card account for \$85.99 on November 18, 2013.

46. On or about November 30, 2013, Plaintiff realized Defendants had been charging her credit card account without her authorization and called the telephone number on the credit card statement to cancel the charges.

47. Defendants refused to refund her the \$429.95 they had collected from her credit card account.

48. Plaintiff suffered damages in the amount of \$429.95 as a result of Defendants' illegal conduct.

Class Action Allegations

49. Plaintiff Rhonda Goeke seeks to represent a Class (“Class 1”) defined as:

“All persons in the United States who ordered and paid for the 15-Day Trial Package of Max Detox from Wellness and Health, L.L.C. at any time after July 15, 2011 and were subscribed into the negative option auto-shipment purchase program at any time during or after the expiration of the 15-day trial period by the sellers.”

50. Plaintiff Albright seeks to represent a second Class (“Class 2”) defined as:

“All persons in the United States who ordered and paid for the 15-Day Trial Package of Max Detox from Wellness and Health, L.L.C. at any time after July 15, 2013, and who had their credit or debit cards charged for the full purchase price of the product at any time after the expiration of the 15-day trial period by the sellers without a written authorization to do so.”

51. Excluded from both Class 1 and Class 2 are Defendants, Defendants’ affiliates, parents, subsidiaries, employees, officers, directors, and co-conspirators, and anyone who purchased “Green Coffee Bean Extract” for resale. Also excluded are any judges, judicial officers and/or judicial staff members directly presiding over this matter and the members of their immediate families.

52. This action is properly maintainable as a class action pursuant Rule 23 of the Federal Rules of Civil Procedure, Fed R. Civ. P. 23, and is desirable for the reasons set forth below.

53. Members of the Classes are so numerous that their individual joinder is impracticable. The precise number of Class members and their identities are unknown to Plaintiff at this time, but will be determined through discovery of Defendants’ customer records. Class members may be notified of the pendency of this action by direct email address or shipping addresses retained by Defendants, and/or publication.

54. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. These common legal and factual questions include, but are not limited to:

- (a) Whether Defendants' representations to Class 1 members were either false, misleading, fraudulent, made under false pretense, false promises, misrepresentations or omissions of material fact, or such that they created a likelihood of confusion or misunderstanding;
- (b) Whether Defendants' false or misleading representations to Class 1 members were knowingly made in connection with the sale of Max Detox;
- (c) Whether Defendants' false or misleading representations to Class 1 members were willfully made in connection with the sale of Max Detox;
- (d) Whether Defendants' conduct toward Class 1 members occurred in the regular course of their trade or commerce;
- (e) Whether Defendants' conduct resulted in actual damage to the Class 1 members;
- (f) Whether the Class 1 members' damages were proximately caused by Defendants' conduct;
- (g) Whether Defendants violated the Illinois Consumer Fraud and Deceptive Trade Practices Act, 815 ILCS 505/2 ("ICFA");
- (h) Whether Defendants violated the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2 ("UDTPA");

- (i) Whether Defendants obtained a written authorization from Plaintiff and Class 2 members to charge their credit or debit cards for the purchase price of the products; and
- (j) Whether Defendants violated the Electronic Funds Transfer Act, 15 U.S.C. § 1693, *et seq.*

55. Plaintiff's claims are typical of the claims of the proposed Classes. Each Class 1 and Class 2 member was subjected to the same illegal conduct, was harmed in the same way, and has claims for relief under the same legal theories.

56. Plaintiff is an adequate representative of the Classes she seeks to represent because her interest do not conflict with the interests of the Class 1 or Class 2 members she seeks to represent, she has retained counsel competent and experienced in prosecuting class actions, and she intends to vigorously prosecute this action. Plaintiff and her counsel will fairly and adequately protect the interests of the Class members.

57. The class mechanism is superior to other available means for fair and efficient adjudication of the claims of Class 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.

58. Unless a class is certified, Defendants will retain monies received as a result of their conduct that were taken from Plaintiff and Class members. Unless a class-wide injunction is issued, Defendants will continue to commit the violations of law alleged, and the members of the Class and the general public will continue to be harmed.

COUNT I

Violations of the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/2, and of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2.

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

60. Plaintiff brings this claim individually and on behalf of members of the proposed Class 1 against Defendants.

61. The purpose of the Illinois Consumer Fraud and Deceptive Practices Act (ICFA) and the Illinois Uniform Deceptive Trade Practice Act (UDTPA) is to protect consumers against fraud and unfair and deceptive acts in the conduct of trade and commerce.

62. To make a *prima facie* claim for violation of the ICFA, Plaintiff must show the following, in pertinent part:

- (a) Defendants made statements or other representations that were either false or misleading, or fraudulent, or false promises, or misrepresentations, or the concealment, suppression or omission of material facts (“false or misleading representations”);

- (b) Defendants' false or misleading representations were made with the intent that consumers would rely upon the deception;
- (c) Defendants' false or misleading representations were made in the course of trade or commerce;
- (d) Defendants' false or misleading representations resulted in actual damage to Plaintiff; and
- (e) Plaintiff's actual damage was proximately caused by Defendants' false or misleading representations.

63. To make a *prima facie* claim for violation of the UDTPA, Plaintiff must show the following, in pertinent part:

- (a) Defendants knowingly made statements or other representations that created a likelihood of confusion or misunderstanding; and
- (b) Defendants' false or misleading representations were made in the course of trade or commerce.

64. Defendants knowingly made the following false or misleading representation and material omissions on their websites:

- (a) That Plaintiff and Class members could try Defendants' products on a "no commitments" risk free trial basis for 15 days and pay only a nominal charge for shipping and handling, when in fact Plaintiffs and Class members paid an additional \$85.99 for the trial bottle;
- (b) That Plaintiff and Class members could try Defendants' products on a risk free trial basis with "no commitments or hidden fees" and

pay only a nominal charge for shipping and handling, when in fact Defendants subscribed and enrolled Plaintiff and Class members, without their authorization, in Defendants' negative option auto-shipment program whereby Defendants automatically shipped subsequent bottles of product on a monthly basis to Plaintiff and Class members and, without their authorization, charged their credit or debit cards \$85.99 for each bottle of product shipped; and/or

- (c) That use of Max Detox pills would allow Plaintiff and Class members to lose substantial weight when in fact the use of Max Detox pills does not cause substantial weight loss, nor do Defendants possess and rely upon a reasonable basis to substantiate representations that consumers who use Max Detox will lose a substantial amount of weight.

65. Defendants knew or should have know that their statements about Max Detox were false, misleading, and unsubstantiated and that those statements and material omissions would induce consumers to purchase Max Detox.

66. Defendants' statements and representations were not true and Defendants did not exercise reasonable diligence, care, or competence in obtaining or communication this information. In fact, Defendants' claims in connection with Max Detox are inconsistent with and/or in conflict with the guidelines and or statements of the federal Food & Drug Administration and Federal Trade Commission which, in an effort to promote real weight loss and to prevent consumers from being defrauded by "miracle

pills,” instruct that the only proven way to lose weight is either to reduce the caloric intake or increase caloric burn through exercise or both.

67. Defendants’ sale of Max Detox to Plaintiff and Class members as described herein constitutes the conduct “in the course of trade or commerce” within the meaning of the ICFA.

68. Defendants’ sale of Max Detox to Plaintiff and Class members as described herein constitutes a “deceptive act or practice” within the meaning of the ICFA because (1) Defendants mislead Plaintiff and Class members with respect to the actual cost and length of the “no commitments” risk free 15-day trial package; (2) Defendants mislead Plaintiff and Class members subscribed and enrolled customers into negative option auto-shipment program through the “no commitments” free trial package; (3) Defendants charged Plaintiff and Class members for subsequent bottles of pills under false pretenses, (4) Defendants took advantage of Plaintiff and Class members’ lack of knowledge and experience; and/or (5) there is a “gross disparity” between the value received by Plaintiff and Class members and the \$85.99 per bottle price they paid Defendants.

69. Defendants’ false, misleading, and unsubstantiated statements and material omissions in its marketing and advertising of Max Detox as described herein constitute false, deceptive, misleading, and unconscionable practices in violation of the ICFA.

70. Plaintiff and Class members have suffered actual damages by virtue of paying for Max Detox that they would not have purchased but for Defendants’ unfair and unconscionable marketing and advertising.

71. Pursuant to IFCA, 815 ILCS 505/7 and 505/10, and UDTPA, 815 ILCS 510/3, Plaintiff and Class members seek an order enjoining Defendants' unfair, deceptive and/or unconscionable trade practices that violate the ICFA.

72. Pursuant to IFCA, 815 ILCS 505/10, Plaintiff and Class members seek to an order awarding them their actual damages.

73. Pursuant to IFCA, 815 ILCS 505/10, Plaintiff and Class members seek an order awarding them punitive damages.

74. Pursuant to IFCA, 815 ILCS 505/10, and UDTPA, 815 510/3, Plaintiff and Class members seek an order awarding them attorneys' fees and costs of litigation.

COUNT II

Violation of the Electronic Funds Transfer Act, 15 U.S.C. § 1693, *et seq.*

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

76. Plaintiff brings this claim individually and on behalf of members of the proposed Class 2 against Defendants.

77. The purpose of the federal Electronic Fund Transfers Act (EFTA) is to establish the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems, and primarily to protect individual consumer rights in such transactions. 15 U.S.C. § 1693(b).

78. The EFTA requires that any preauthorized electronic fund transfer from a consumer's account be authorized in writing, and that a copy of such authorization be provided to the consumer when made. EFTA § 907(a), 15 U.S.C. § 1693e(a); Regulation E § 205.10(b), 12 C.F.R. § 205.10(b).

79. Defendants charged Plaintiff's and Class 2 members' credit/debit accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated from the consumer for preauthorized electronic fund transfers from their accounts in violation of Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a) and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

80. Defendants charged Plaintiff's and Class 2 members' credit/debit accounts on a recurring basis without providing Plaintiff and Class members with a copy of a written authorization signed or similarly authenticated from the consumer for preauthorized electronic fund transfers from their accounts in violation of Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a) and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

81. For every violation of the EFTA, Defendants are liable to Plaintiff and Class 2 members in an amount equal to the sum of (1) any actual damages they sustained by as a result of the violation, and (2) an additional amount allowed by the Court not more than the lesser of \$500,000 or 1% of the Defendants' net worth, and (3) reasonable attorneys' fee and costs of the action. 15 U.S.C. § 1693m(a).

82. Plaintiff and Class 2 members have suffered damages as a result of Defendants' violations of the EFTA and Regulation E.

83. Pursuant to the EFTA, 15 U.S.C § 1693m(a)(1), Plaintiff and Class 2 members seek an order awarding them their actual damages.

84. Pursuant to the EFTA, 15 U.S.C § 1693m(a)(2)(B), Plaintiff and Class 2 members seek an order awarding them additional damages in the amount of \$500,000 or 1% of Defendants' net worth, whichever is lesser.

85. Pursuant to the EFTA, 15 U.S.C § 1693m(a)(3), Plaintiff and Class 2 members seek an order awarding them reasonable attorneys' fees and costs of litigation.

Prayer for Relief

WHEREFORE, Plaintiff Rhonda Goeke prays for judgment and relief as follows:

- (a) Certification this lawsuit as a class action pursuant to Fed R. Civ. P. 23, appoint Plaintiff Rhonda Goeke as the representative of the Class, and appoint attorneys Matthew H. Armstrong and David C. Nelson as Class Counsel;
- (b) An Order preliminarily enjoining Defendants from continuing to engage in the unlawful conduct and practices described herein and for ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, temporary and preliminary injunctions, an order freezing assets, immediate access, and the appointment of a receiver;
- (c) Judgment in favor of Plaintiff and against Defendants on each and every count contained in Plaintiff's Complaint;
- (d) An Order permanently enjoining Defendants from continuing to engage in the unlawful conduct and practices described herein pursuant to IFCA, 815 ILCS 505/7 and 505/10, and UDTPA, 815 ILCS 510/3, or as authorized by law and determined by the Court;

- (e) An order awarding Plaintiff her actual damages in the amount of \$429.95 and Class 1 members their actual damages in an amount to be determined at trial pursuant to IFCA, 815 ILCS 505/10;
- (f) An Order awarding Plaintiff and Class 1 members punitive damages in an amount to be determined at trial treble damages pursuant to IFCA, 815 ILCS 505/10;
- (g) An Order awarding restitution, refund of monies paid, and/or disgorgement to Plaintiff and Class 1 members of an amount to be determined at trial;
- (h) An Order awarding Plaintiff and Class 1 members reasonable attorneys' fees and costs of litigation pursuant to IFCA, 815 ILCS 505/10, and UDTPA, 815 ILCS 510/3, or as authorized by law and determined by the Court;
- (i) An Order awarding Plaintiff and Class 2 members their actual damages pursuant to EFTA, 15 U.S.C § 1693m(a)(1);
- (j) An Order awarding Plaintiff and Class 2 members additional damages in the amount of \$500,000 or 1% of Defendants' net worth, whichever is lesser, pursuant to 15 U.S.C § 1693m(a)(2)(B);
- (k) An Order awarding Plaintiff and Class 2 members reasonable attorneys' fees and costs of litigation pursuant 15 U.S.C § 1693m(a)(3), as determined by the Court; and

- (l) An Order granting such other and further relief as may be just and proper.

Dated: July 16, 2014

Respectfully submitted,

s/ Matthew H. Armstrong

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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

Rhonda Goeke

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

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

Matthew H. Armstrong, Armstrong Law Firm LLC, 8816 Manchester Rd.,
No. 109, St. Louis MO 63144, 314-258-0212 (see attachment)

DEFENDANTS

Wellness and Health, LLC and Bruce R. Gezon

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.

Attorneys (If Known)

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

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

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

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

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

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 checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other 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 (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)) 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):
Electronic Funds Transfer Act, 15 U.S.C. s 1593(e)

Brief description of cause:

Unauthorized Recurring Credit Card Charges and Consumer Fraud

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

07/16/2014

SIGNATURE OF ATTORNEY OF RECORD

Matthew H. Armstrong

FOR OFFICE USE ONLY

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

ATTACHMENT TO CIVIL COVER SHEET

ATTORNEYS FOR PLAINTIFF

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