

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

CV 14

5546

MATSUMOTO, J.

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FILED

-----x  
ADAM STOLTZ, on behalf of himself and  
others similarly situated,

Plaintiff,

- against -

CONAGRA FOODS, INC.,

Defendant,  
-----x

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Case No.

SCANLON, M.J.

Plaintiff, ADAM STOLTZ, individually, and on behalf of all other persons similarly situated, by his undersigned attorneys, as and for his Complaint against the Defendant, Conagra Foods, Inc., alleges the following based upon personal knowledge as to himself and his own action, and, as to all other matters, respectfully alleges, upon information and belief, as follows (Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery):

**NATURE OF THE ACTION**

1. This action seeks redress for a deceptive and otherwise improper business practice that Defendant, Conagra Foods, Inc. ("CONAGRA" or "Defendant"), engages in with respect to the packaging of its "Slim Jim®" products. The Slim Jims are snack products that are marketed and categorized as "meat sticks" and come in a variety of flavors. The Slim Jim snacks are sold individually and in various count packages of individually wrapped sticks (ranging from four to one hundred counts). The Original and Mild flavor Slim Jims are sold in a package of four individually wrapped sticks with a net weight of 1.12 oz (32g) (herein the "Slim Jim Products" or "Products").

2. There is non-functional slack-fill in the packing of Slim Jim Products in violation of the Federal Food Drug & Cosmetic Act ("FDCA") Section 403 (21 U.S.C. 343 (d)), Section 403(d) (21 U.S.C. 343(d)), the Code of Federal Regulations Title 21 part 100, et. seq. and New York General Business Code ("NY GBL") §§ 349 and 350. The size of the box in comparison to the actual Product makes it appear that the consumer is buying more than what is actually being sold. Additionally, the "actual size" depiction of the snack stick on the box is misleadingly larger than the real actual size of the Product to make it seem that the consumer is buying more than what is actually being sold.

3. The Slim Jim Products are sold in a box which is  $5\frac{1}{4}$  inches in height,  $2\frac{1}{2}$  inches in length and  $\frac{5}{8}$  inches in width. Inside the box are four individually wrapped cylindrical Slim Jim sticks that are  $3\frac{3}{8}$  inches long and  $\frac{3}{8}$  inches in diameter. Thus, the size of the box is designed to give the impression that there is more product sold in the box than there actually is. The size of the Slim Jim box in relation to the actual amount of the Product contained therein gives the false impression that the consumer is buying more than they are actually receiving.

4. The Slim Jim Products' packaging depicts the "actual size" of each meat stick to be  $3\frac{3}{8}$  inches tall and  $\frac{5}{8}$  inches wide when the true actual size of the stick is only  $3\frac{5}{8}$  inches tall with a diameter of  $\frac{3}{8}$  inches; yielding an implied volume increase of 197% than what is provided. The "actual size" depiction on the Slim Jim packaging in relation to the actual amount of the Product contained therein gives the false impression that the consumer is buying more than they are actually receiving.

5. Plaintiff and Class members viewed Defendant's misleading Product packaging, reasonably relied in substantial part on the representations and were thereby deceived in deciding to purchase the Products for a premium price.

6. Plaintiff brings this proposed consumer class action on behalf of himself and all other persons nationwide, who from the applicable limitations period up to and including the present (the “Class Period”), purchased for consumption and not resale the Slim Jim Products.

7. During the Class Period, Defendants manufactured, marketed and sold the Products throughout the United States. Defendants purposefully sold the Products with non-functional slack-fill.

8. Defendant’s actions constitute violations of the federal Food Drug & Cosmetic Act (“FDCA”) Section 403 (21 U.S.C. 343 (d)), Section 403(d) (21 U.S.C. 343(d)), the Code of Federal Regulations Title 21 part 100, et. seq. and New York’s Deceptive Acts or Practices New York Gen. Bus. Law § 349 and New York’s Unlawful False Advertising, Gen. Bus. Law § 350., as well as those similar deceptive and unfair practices/and/or consumer protection laws in other states.

9. Defendant violated statutes enacted in each of the fifty states and the District of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

- a. Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.*;
- b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak\_ Code § 45.50.471, *et seq.*;
- c. Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;
- d. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- e. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- f. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
- g. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
- h. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- i. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
- j. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- k. Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
- l. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statues § 480 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
- m. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;

- n.* Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
- o.* Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;
- p.* Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
- q.* Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.*;
- r.* Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;
- s.* Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.*;
- t.* Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
- u.* Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- v.* Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- w.* Michigan Consumer Protection Act, § § 445.901, *et seq.*;
- x.* Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
- y.* Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;
- z.* Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- aa.* Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.*;
- bb.* Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- cc.* Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;
- dd.* New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*;
- ee.* New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et seq.*;
- ff.* New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 1, *et seq.*;
- gg.* New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.*;
- hh.* North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;
- ii.* North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.*;
- jj.* Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*;
- kk.* Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- ll.* Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- mm.* Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.*;
- nn.* Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- oo.* South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;
- pp.* South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;
- qq.* Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.*;
- rr.* Texas Stat. Ann. §§ 17.41, *et seq.*, Texas Deceptive Trade Practices Act, *et seq.*;
- ss.* Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.*;
- tt.* Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;
- uu.* Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.*;
- vv.* Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;
- ww.* West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*;
- xx.* Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.*;
- yy.* Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

10. Defendant's misbranding is intentional. Defendant has been unjustly enriched as a result of its conduct. Through these unfair and deceptive practices, CONAGRA has collected millions of dollars from the sale of its Products that it would not have otherwise earned.

### **JURISDICTION AND VENUE**

11. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than Defendant, and the amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

12. The Court has jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C § 1331 because it arises under the laws of the United States.

13. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

14. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states.

15. The Court has personal jurisdiction over Defendant because its Slim Jim Products are advertised, marketed, distributed and sold throughout New York State; Defendant engaged in the wrongdoing alleged in this Complaint throughout the United States, including in New York State; Defendant is authorized to do business in New York State; and Defendant has sufficient minimum contacts with New York and/or otherwise has intentionally availed itself of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendant is engaged in substantial and not isolated activity within New York State.

16. Venue is proper in this District pursuant to 28 U.S.C § 1391(a) and (b), because a substantial part of the events giving rise to Plaintiff's claims occurred in this District, and Defendant is subject to personal jurisdiction in this District. Plaintiff purchased and consumed Defendant's Products in Queens County. Moreover, Defendant distributed, advertised, and sold the Products, which are the subject of the present Complaint, in this District.

### **PARTIES**

17. Plaintiff STOLTZ is, and at all times relevant hereto has been, a citizen of the State of New York and resides in Queens County. Plaintiff STOLTZ has purchased the Slim Jim Products for personal consumption in Queens County.

18. Defendant is a Delaware corporation with its headquarters at One ConAgra Drive, Omaha, Nebraska 68102. Defendant manufactured, advertised, marketed and sold Slim Jim Products and other food products to tens of thousands of consumers nationwide, including in New York.

### **FACTUAL ALLEGATIONS**

19. Pursuant to C.F.R. 100.100:

In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

- (1) Protection of the contents of the package;
- (2) The requirements of the machines used for enclosing the contents in such package;
- (3) Unavoidable product settling during shipping and handling;

(4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;

(5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or

(6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other non-mandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

20. Defendant manufactures and distributes various snack products such as meat sticks under the brand Slim Jim® including Slim Jim Products.

21. Defendant sells its Products at most supermarket chains, convenience stores and major retail outlets throughout the United States, including but not limited to Costco, The Food Emporium, Walgreens and Rite Aid. The Slim Jim website also facilitates sales by linking the particular snack, flavor and pack size selected towards an affiliated retailer such as WalMart, Office Depot, Lowe's and Amazon.com.

22. Defendant has routinely employed slack-filled packaging containing non-functional slack-fill to mislead consumers into believing that they were receiving more than they actually were.

23. Defendant lacked any lawful justification for doing so.

24. On May 14, 2014, Plaintiff purchased (i) a box of Original flavored Slim Jim Product for the purchase price of \$3.99 and (ii) a Mild flavored three-pack of Slim Jim Product for the purchase price of \$7.99. The packaging of the Slim Jim Products that Plaintiff purchased

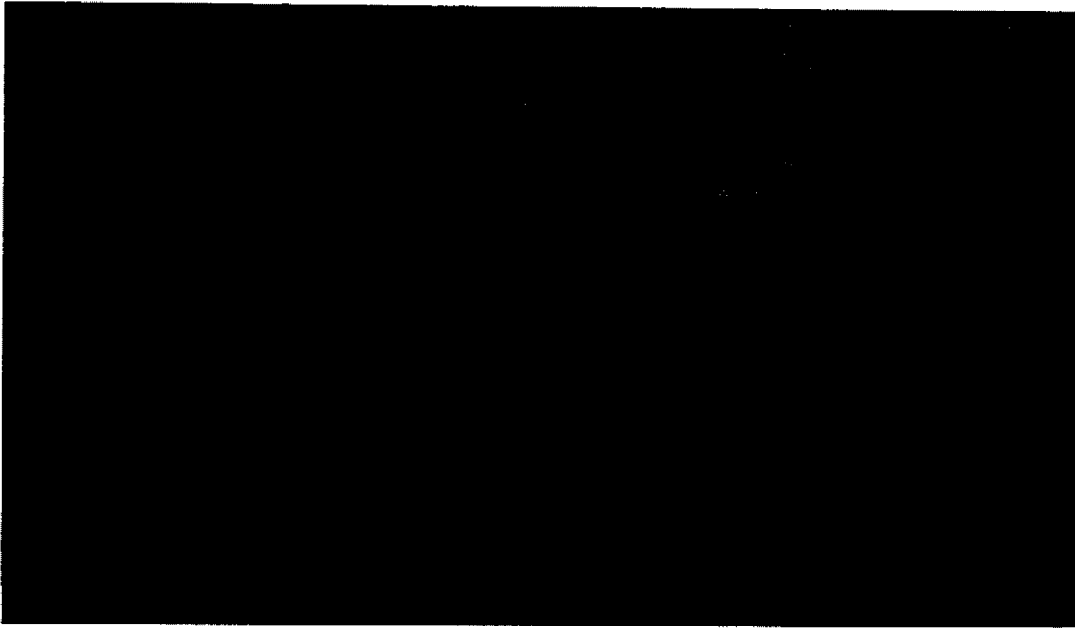
were 5¼ inches in height, 2½ inches in length and ⅝ inches wide. The Products inside the packaging were individually wrapped.

25. A picture of the Product and packaging is shown below:









26. The individual wrapping of the Slim Jim was 5 inches long and  $\frac{7}{8}$  inches wide.
27. The actual Slim Jim Product inside of the individual wrapping was only  $3\frac{5}{8}$  inches in height with a diameter of  $\frac{3}{8}$  inches.
28. The volume of the box was 8.2 cubic inches whereas the volume of each Slim Jim stick was only 0.4 cubic inches and the volume of all four Slim Jim sticks combined was 1.6

cubic inches leaving a difference of 6.6 cubic inches or approximately 80% of non-functional slack-fill.

29. Non-functional “slack-fill is the difference between the actual capacity of a container and the volume of product contained within” (21 C.F.R. 100.00). Plaintiff was (and a consumer would reasonably be) misled about the volume of the product contained within the box in comparison to the size of the Slim Jim Products’ packaging. Plaintiff paid the full price of the Slim Jim Products and only received 20% of what Defendant represented he would be getting due to 80% of the non-functional slack-fill. In order for Plaintiff and Class members to be made whole, they need to receive a refund of the purchase price of the Products equal to the percentage of non-functional slack-fill in the Products.

30. Further the Slim Jim Product packaging depicts the meat stick in its individual wrap as “actual size” on the front of the box itself. The dimensions of the stick as depicted on the box are  $3\frac{7}{8}$  inches long and  $\frac{5}{8}$  inches wide when the actual sizes as noted above, are respectively only  $3\frac{3}{4}$  inches and  $\frac{3}{8}$  inches. This seemingly slight increase in depiction would imply a volume of 1.19 cubic inches of meat per stick rather than the actual .4 cubic inches, thus yielding an implied volume increase of 197% than what is actually provided.

31. The size of the box in relation to the actual amount of the Product contained therein as well as the false depiction of the “actual size” of the Product on the box was intended to mislead the consumer into believing the consumer was getting more of the Product than what was actually being sold and a reasonable consumer would justifiably rely on such misleading packaging in purchasing the Slim Jim Products.

32. Under the Federal Food Drug and Cosmetic Act (herein “FDCA”), the term “false” has its usual meaning of “untruthful,” while the term “misleading” is a term of art.

Misbranding reaches not only false claims, but also those claims that might be technically true, but still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. “Misleading” is judged in reference to “the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze.” *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled.

33. Defendant’s packaging and advertising of the Products violate various state laws against misbranding. New York State law broadly prohibits the misbranding of food in language identical to that found in regulations promulgated pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.*:

Pursuant to N.Y. AGM. LAW § 201, “[f]ood shall be deemed to be misbranded: 1. If its labeling is false or misleading in any particular... 4. If its container is so made, formed, colored or filled as to be misleading.”

34. Defendant’s Products are misbranded under New York law because they misled Plaintiff and Class members about the volume of the Products contained within the Slim Jim box in comparison to the size of the Slim Jim Products’ packaging. The size of the Slim Jim box in relation to the actual amount of the Product contained therein gives the false impression that the consumer is buying more than they are actually receiving.

35. The types of misrepresentations made above would be considered by a reasonable consumer when deciding to purchase the Products. A reasonable person would attach importance to whether Defendant’s Products are “misbranded,” *i.e.*, not legally salable, or capable of legal possession, and/or contain non-functional slack-fill.

36. Plaintiff did not know, and had no reason to know, that the Slim Jim Products contained non-functional slack fill.

37. Defendant's Product packaging was a material factor in Plaintiff's and Class members' decisions to purchase the Products. Based on Defendant's Product packaging, Plaintiff and Class members believed that they were getting more of the Slim Jim Products than was actually being sold. Had Plaintiff known Defendant's packaging was slack-filled, he would not have bought the slack-filled Products.

38. Defendant's Product packaging as alleged herein is deceptive and misleading and was designed to increase sales of the Slim Jim Products. Defendant's misrepresentations are part of its systematic Product packaging practice.

39. At the point of sale, Plaintiff and Class members did not know, and had no reason to know, that the Slim Jim Products were misbranded as set forth herein, and would not have bought the Products had they known the truth about them.

40. Defendants' non-functional slack-fill packaging is misleading and in violation of FDA and consumer protection laws of each of the 50 states and the District of Columbia, and the Products at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold in the United States. Plaintiff and Class members would not have bought the Products had they known they were misbranded and illegal to sell or possess.

41. As a result of Defendant's misrepresentations, Plaintiff and thousands of others throughout the United States purchased the Products.

42. Plaintiff and the Class (defined below) have been damaged by Defendant's deceptive and unfair conduct in that they purchased Products with non-functional slack-fill and paid prices they otherwise would not have paid had Defendant not misrepresented the Products' actual size.

### **CLASS ACTION ALLEGATIONS**

43. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

All persons or entities in the United States who made retail purchases of Slim Jim Products in packages with non-functional slack-fill, specifically four-packs of individually wrapped sticks with a Net wt 1.12 oz (32g), during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant's legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

44. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through the appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Other members of the Class may be identified from records maintained by Defendant and may be notified of the pendency of this action by mail, or by advertisement, using the form of notice similar to that customarily used in class actions such as this.

45. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's wrongful conduct.

46. Plaintiff will fairly and adequately protect the interests of the members of the Class in that he has no interests antagonistic to those of the other members of the Class. Plaintiff has retained experienced and competent counsel.

47. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages sustained by individual Class members may

be relatively small, the expense and burden of individual litigation make it impracticable for the members of the Class to individually seek redress for the wrongful conduct alleged herein. If Class treatment of these claims were not available, Defendant would likely unfairly receive thousands of dollars or more in improper charges.

48. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the common questions of law fact to the Class are:

- i. Whether Defendant labeled, packaged, marketed, advertised and/or sold Slim Jim Products to Plaintiff, and those similarly situated, using false, misleading and/or deceptive packaging and labeling;
- ii. Whether Defendant's action constitute violations of 16 C.F.R. 100, *et. seq.*;
- iii. Whether Defendant's actions constitute violations of the New York General Business Law § 349;
- iv. Whether Defendant's actions constitute violations of the New York General Business Law § 350;
- v. Whether Defendant omitted and/or misrepresented material facts in connection with the labeling, packaging, marketing, advertising and/or sale of Slim Jim Products;
- vi. Whether Defendant's labeling, packaging, marketing, advertising and/or selling Slim Jim Products constituted an unfair, unlawful or fraudulent practice;
- vii. Whether Defendant's packaging of the Slim Jim Products constituted non-functional slack-fill;

- viii. Whether Defendant's improperly mischaracterized the size of the meat sticks of the Slim Jim Products by its deceptively large representation on the Slim Jim Products' packaging;
- ix. Whether, and to what extent, injunctive relief should be imposed on Defendant to prevent such conduct in the future;
- x. Whether the members of the Class have sustained damages as a result of Defendant's wrongful conduct;
- xi. The appropriate measure of damages and/or other relief;
- xii. Whether Defendant has been unjustly enriched by their scheme of using false, misleading and/or deceptive labeling, packaging or misrepresentations, and;
- xiii. Whether Defendant should be enjoined from continuing their unlawful practices.

49. The class is readily definable, and prosecution of this action as a Class action will reduce the possibility of repetitious litigation. Plaintiff knows of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a Class action.

50. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.



51. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

52. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members; and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

53. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

54. Defendant's conduct is generally applicable to the Class as a whole and Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)**

55. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein and further alleges the following:

56. Plaintiff brings this claim individually and on behalf of the other members of the Class for an injunction for violations of New York's Deceptive Acts or Practices Law, ("NY GBL") § 349.

57. NY GBL § 349 provides that "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are . . . unlawful."

58. Any person who has been injured by reason of any violation of NY GBL § 349 may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

59. The practices employed by Defendant, whereby Defendant advertised, promoted, marketed and sold its Slim Jim Products in packages resulting in approximately 80% non-functional slack-fill are unfair, deceptive and misleading and are in violation of the NY GBL § 349 and 21 C.F.R. 100.100 in that said Slim Jim Products are misbranded. 21. C.F.R. 100.100 provides in part:

In accordance with section 403(d) of the [FDCA], a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading. (a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained within.

60. Defendant should be enjoined from packaging their Slim Jim Products with 80% non-functional slack-fill as described above pursuant to NY GBL § 349 and 21 C.F.R. 100.100.

61. The practices employed by Defendant, whereby Defendant advertised, promoted, marketed and sold its Slim Jim Products in packages displaying a falsely larger depiction of the

“actual size” of the product on the box are unfair, deceptive and misleading and are in violation of the NY GBL § 349 in that said Slim Jim Products are misbranded.

62. Under NY GBL §§ 349 and 350, it is not necessary to prove justifiable reliance. (“To the extent that the Appellate Division order imposed a reliance requirement on General Business Law §§ 349 and 350 claims, it was error. Justifiable reliance by the plaintiff is not an element of the statutory claim.” *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (N.Y. App. Div. 2012) (internal citations omitted)).

63. Defendant should be enjoined from packaging their Slim Jim Products with a falsely larger depiction of the “actual size” of the Product on the box as described above pursuant to NY GBL § 349.

64. Plaintiff, on behalf of himself and all others similarly situated, respectfully demands a judgment enjoining Defendant’s conduct, awarding costs of this proceeding and attorneys’ fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

## **COUNT II**

### **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)**

65. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

66. Plaintiff brings this claim individually and on behalf of the other members of the Class for violations of NY GBL § 349.

67. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts and practices by misbranding their Slim Jim Products as seeming to contain more in the packaging than is actually included.

68. The practices employed by Defendant, whereby Defendant advertised, promoted, marketed and sold its Slim Jim Products in packages resulting in approximately 80% non-functional slack-fill are unfair, deceptive and misleading and are in violation of 21 CFR 100.100 in that said Slim Jim Products are misbranded.

69. The practices employed by Defendant, whereby Defendant advertised, promoted, marketed and sold its Slim Jim Products in packages displaying a falsely larger depiction of the “actual size” of the Product on the box are unfair, deceptive and misleading and are in violation of the NY GBL § 349 in that said Slim Jim Products are misbranded.

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

71. Plaintiff and the other Class members suffered a loss as a result of Defendant’s deceptive and unfair trade acts. Specifically, as a result of Defendant’s deceptive and unfair acts and practices, Plaintiff and the other Class members suffered monetary losses associated with the purchase of Slim Jim Products, i.e., receiving only approximately 20% of the capacity of the packaging due to approximately 80% non-functional slack-fill as well as receiving less of the Product than falsely depicted on the box as “actual size.”

### **COUNT III**

#### **INJUNCTIONS FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAWS § 350 (UNLAWFUL FALSE ADVERTISING ACT)**

72. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

73. Plaintiff brings this claim individually and on behalf of the other members of the Class for violations of NY GBL § 350.

74. NY GBL § 350 provides that false advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state are unlawful.

75. NY GBL § 350-a defines “false advertising” as “advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment opportunity if such advertising is misleading in a material respect.”

76. Any person who has been injured by reason of any violation of the NY GBL may bring an action in his own name to enjoin unlawful act or practice, an action to recover his actual damages or five hundred dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to ten thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney’s fees to a prevailing plaintiff.

77. As fully alleged above, by advertising, marketing, distributing, labeling and selling Slim Jim Products to Plaintiff and other members of the Class, Defendant engaged in, and continues to engage in, false advertising.

78. Defendant engaged in false advertising by advertising, marketing, distributing and selling Slim Jim Products with approximately 80% non-functional slack-fill.

79. Defendant engaged in false advertising by depicting the “actual size” of the Slim Jim Product as larger than it actually is on the front of the box.

80. Plaintiff and other members of the Class further seek to enjoin such unlawful deceptive acts and practices as described above. Each of the members of the Class will be irreparably harmed unless the unlawful actions of Defendants are enjoined, in that Defendant will continue to falsely advertise a higher content of product than it actually contains.

81. Defendant should be enjoined from packaging their Slim Jim Products with 80% non-functional slack-fill and falsely advertising its Slim Jim Products as containing more product than actually provided.

82. Defendant should be enjoined from packaging their Slim Jim Products with a falsely larger depiction of the “actual size” of the product on the box to the detriment of consumers.

83. In this regard, Defendant has violated, and continues to violate, NY GBL § 350, which makes false advertising unlawful. As a direct and proximate result of Defendant’s violation of GBL § 350 above, Plaintiff and other members of the Class have suffered damages in an amount to be determined at trial.

#### **COUNT IV**

#### **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW 350 (UNLAWFUL FALSE ADVERTISING ACT)**

84. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

85. Plaintiff brings this claim individually and on behalf of the other members of the Class for violations of NY GBL § 350.

86. As fully alleged above, by advertising, marketing, distributing, labeling and selling Slim Jim Products to Plaintiff and other members of the Class, Defendant engaged in, and continues to engage in, false advertising.

87. Defendant engaged in false advertising by advertising, marketing, distributing and selling Slim Jim Products with approximately 80% non-functional slack-fill.

88. Defendant engaged in false advertising by depicting the “actual size” of the Slim Jim Product as larger than it actually is on the front of the box.

89. The foregoing false advertising acts were directed at consumers.

90. Plaintiff and other members of the Class suffered a loss as a result of Defendant's false advertising. Specifically, as a result of Defendant's false advertising, Plaintiff and other Class members suffered monetary losses associated with the purchase of Slim Jim Products in four-packs, i.e., receiving less of the product than would be reasonably expected from such packaging size and as advertised as part of the box size and by receiving less of the product than falsely depicted on the box as "actual size."

91. In this regard, Defendant has violated, and continues to violate, GBL § 350, which makes false advertising unlawful. As a direct and proximate result of Defendant's violation of GBL § 350 above, Plaintiff and other members of the Class have suffered damages in an amount to be determined at trial.

#### **COUNT V**

#### **NEGLIGENT MISREPRESENTATION (All States and the District of Columbia)**

92. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

93. Defendant, directly or through its agents and employees, made false representations, concealment and nondisclosures to Plaintiff and members of the Class.

94. Defendant as the manufacturer, packager, labeler and initial seller of the Slim Jim Products purchased by the Plaintiff had a duty to disclose the true nature of the Products and not sell them with non-functional slack-fill. Defendant had exclusive knowledge of material facts not known or reasonably accessible to the Plaintiff; Defendant actively concealed material facts from the Plaintiff and Defendant made partial representations that are misleading because some other material fact has not been disclosed. Defendant's failure to disclose the information it had a duty

to disclose constitutes material misrepresentations and materially misleading omissions which misled the Plaintiff who relied on Defendant in this regard to disclose all material facts accurately and truthfully and fully.

95. Plaintiff and members of the Class reasonably relied on Defendants' representation that their Products contain more product than actually packaged.

96. In making the representations of fact to Plaintiff and members of the Class described herein, Defendant has failed to fulfill its duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendant's negligence and carelessness.

97. Defendant, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendant made and intended the misrepresentations to induce the reliance of Plaintiff and members of the Class.

98. Plaintiff and members of the Class relied upon these false representations when purchasing Slim Jim Products in four-packs, which reliance was justified and reasonably foreseeable.

99. As a result of Defendant's wrongful conduct, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for Slim Jim Products, and any interest that would have been accrued on all those monies, all in an amount to be determined according to proof at time of trial.



**COUNT VI**

**BREACH OF EXPRESS WARRANTIES  
(All States and the District of Columbia)**

100. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

101. Defendant provided Plaintiff and other members of the Class with written warranties, including, but not limited to, warranties that its Slim Jim Products depicted on its packaging as “actual size” with dimensions of 3 $\frac{7}{8}$ ” tall and  $\frac{5}{8}$ ” wide.

102. Defendant breached these warranties by failing to provide the product as advertised and described above.

103. This breach resulted in damages to Plaintiff and the other members of the Class who bought Defendant’s Products but did not receive the goods as warranted in that the Products were not the size that they claim to be.

104. As a proximate result of Defendant’s breach of warranties, Plaintiff and the other Class members have suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for Products that did not conform to what Defendant promised in its promotion, marketing, advertising and packaging and they were deprived of the benefit of their bargain and spent money on Products that had less value than warranted.

**COUNT VII**

**COMMON LAW FRAUD  
(All States and the District of Columbia)**

105. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

106. Defendant intentionally made materially false and misleading representations regarding the size, amount and contents of the Slim Jim Products.

107. Plaintiff and the Class were induced by, and relied on, defendant's false and misleading packaging, representations and omissions and did not know at the time that they were purchasing the Product that they were only purchasing an amount of product that was much less than the size of the box in which the Product was packaged.

108. Defendant knew or should have known of its false and misleading labeling, packaging and misrepresentations and omissions. Defendant nevertheless continued to promote and encourage customers to purchase the Product in a misleading and deceptive manner.

109. Plaintiff and the Class have been injured as a result of defendant's fraudulent conduct.

110. Defendant is liable to plaintiff and the Class for damages sustained as a result of defendant's fraud, in an amount to be determined at trial.

### **COUNT VIII**

#### **UNJUST ENRICHMENT (All States and the District of Columbia)**

111. Plaintiff realleges and incorporates by reference the above paragraph as if set forth herein.

112. As a result of defendant's deceptive, fraudulent and misleading labeling, packaging, advertising, marketing and sales of Slim Jim Products, Defendant was enriched, at the expense of Plaintiff and the Class, through the payment of the purchase price for Defendant's Slim Jim Products.

113. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from Plaintiff, and all others

similarly situated, in light of the fact that the quantity of the Slim Jim Products purchased by Plaintiff and the Class, was not what Defendant purported it to be by its labeling and packaging. Thus, it would be unjust or inequitable for Defendant to retain the benefit without restitution to Plaintiff, and all others similarly situated, for 80% of the purchase price of Slim Jim Products, which represents the percentage of the amount of product actually received (20%) to the size of the packaging.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment as follows:

(A) For an Order certifying the nationwide Class and under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Plaintiff's attorneys as Class Counsel to represent members of the Class;

(B) For an Order declaring the Defendant's conduct violates the statutes referenced herein;

(C) For an order finding in favor of Plaintiff and the Class;

(D) For compensatory and punitive damages in amounts to be determined by the Court and/or jury;

(E) For prejudgment interest on all amounts awarded;

(F) For an order of restitution and all other forms of equitable monetary relief;

(G) For injunctive relief as pleaded or as the Court may deem proper;

(H) For an Order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit; and

(I) For such other and further relief as the Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: September 22, 2014

**Respectfully submitted,**

**LEE LITIGATION GROUP, PLLC**

C.K. Lee (CL 4086)

30 East 39<sup>th</sup> Street, Second Floor

New York, NY 10016

Tel.: 212-465-1188

Fax: 212-465-1181

*Attorneys for Plaintiff and the Class*

BY: C.K. Lee



## CIVIL COVER SHEET

CV 14

5546

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

ADAM STOLTZ

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

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

C.K. Lee, Esq. Lee Litigation Group, PLLC  
30 East 39th Street, Second Floor, New York, NY 10016  
Tel: (212) 465-1188

## DEFENDANTS

CONAGRA FOODS, INC.

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

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

Attorneys (If Known)

MATSUMOTO, J.

## 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	PROPERTY	LABOR	OTHER
<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	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
<b>REAL PROPERTY</b> <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	<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	<b>Habeas Corpus:</b> <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 <b>Other:</b> <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	<input type="checkbox"/> 424 Appeal 28 USC 159 <input type="checkbox"/> 425 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 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 checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

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

Brief description of cause:  
Defendant's products misleadingly contain non-functional slack-fill

## 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

9/22/14

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Scanlon

4653079104

14CV 5546

### CERTIFICATION OF ARBITRATION ELIGIBILITY

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

I, C.K. LEE, counsel for ADAM STOLTZ, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

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

### DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

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

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

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

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

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

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

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

### BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: \_\_\_\_\_