

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

MARK PRINCIPE, individually on behalf of:
himself and all others similarly situated,

Plaintiff,

-against-

EDISON NATION, LLC, PLYMOUTH DIRECT,
INC., JOHN DOES 1-25,

Defendants. _____

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Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Mark Principe (also referred to as the “Plaintiff”), on behalf of himself and all others similarly situated, by his attorneys, alleges the following upon information and belief, except for those allegations pertaining to Plaintiff, which are based on personal knowledge:

NATURE OF THE ACTION

1. Defendant Edison Nation, LLC (hereinafter “Edison Nation”) and Defendant Plymouth Direct, Inc. (hereinafter “Plymouth Direct”) (collectively “Defendants”) market and sell various types of purportedly “Spill-Proof” children’s snack bowls called “Gyro Bowls” (hereinafter the “Gyro Bowl” or the “product”). Defendants specifically market the Gyro Bowls to the parents of young children.

2. The packaging for each type of Gyro Bowl -- which is viewed by every person who purchases a Gyro Bowl from a store – prominently advertises that it is “Spill-Proof.” Specifically, written on the packaging is: “The Kid-Proof, Spill-Proof Bowl!”, “Spins and Spins...And Stuff Stays in!” and “Open Side Up...No Matter What!”

3. The packaging for each type of Gyro Bowl features identical representations regarding the “Spill-Proof” nature of the product. Each type of Gyro Bowl is designed identically regarding its resistance to spilling.

4. Substantially similar claims about the products’ “Spill-Proof” nature are made online where Gyro Bowls are sold.

5. A truly “Spill-Proof” bowl is, of course, particularly valuable to the parents of a young child, and such representations are therefore material to a purchasing decision.

6. However Defendants do not disclose that the Gyro Bowl actually has a very strong tendency to spill. The tendency to spill is inherent in the design of the Gyro Bowl.

7. As a result of Defendants’ deceptive claims, Defendants have been able to charge a significant premium for the Gyro Bowl over other bowls designed for use by children. The Gyro Bowls range in cost from approximately \$7.50 to \$14.99, while similar bowls that are not represented as “Spill-Proof” can be purchased for under \$1.00.

8. Plaintiff brings this lawsuit against Defendants and various John Does on behalf of himself and other similarly situated consumers who purchased the Gyro Bowl in order to (a) halt the dissemination of Defendants’ deceptive advertising, (b) correct the false and misleading perception Defendants have created in the minds of consumers, and (c) secure redress for consumers who have purchased one or more Gyro Bowls throughout the statute of limitations period (hereinafter the “Class Period”). Plaintiff alleges violations of New York General Business Law §§ 349 and 350 and all similar state consumer protection laws, a claim for negligent misrepresentation, intentional misrepresentation, breach of express warranty, violation of the Magnusson-Moss Warranty Act, breach of implied warranty of fitness for a particular purpose and a claim for unjust enrichment.

JURISDICTION AND VENUE

9. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). The aggregate claims of Plaintiff and the proposed Class members exceed \$5,000,000, exclusive of interest and costs, and there is diversity of citizenship between at least one member of the proposed Class and Defendants.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because many of the acts and transactions giving rise to this action occurred in this district and because:

- a. Plaintiff and many class members reside in this district;
- b. Defendants have intentionally availed themselves of the laws and markets within this district through the promotion, marketing, distribution and sale of their products in this district;
- c. Defendants do substantial business in this district; and
- d. Defendants are subject to personal jurisdiction in this district.

PARTIES

Plaintiff

11. Plaintiff is a citizen of New York and currently resides in Long Island, New York.

12. On or about August 5, 2015, Plaintiff was exposed to and saw Defendants' materially deceptive labeling and advertising and, as a result, purchased two Gyro Bowls online for \$11.09 each. *See* Exhibit (Ex.) A at 2 (the products purchased by Plaintiff).

13. Plaintiff was specifically seeking to purchase a spill-proof bowl for each of his two children. Plaintiff saw and relied upon Defendants' representations that the products were "Spill-Proof." Had the Gyro Bowls not been advertised as being "Spill-Proof," Plaintiff would not have purchased them and/or would not have paid a premium for them.

14. Defendant Edison Nation, LLC is a corporation organized under the laws of the State of North Carolina with its principal place of business located in Charlotte, North Carolina.

15. Defendant Plymouth Direct, Inc. is a corporation organized under the laws of the State of Pennsylvania with its principal place of business located in Montgomeryville, Pennsylvania.

16. Plaintiff does not know the true names or capacities of the persons or entities sued herein as DOES 1-25 (the “DOE Defendants”), inclusive, and therefore sues these DOE Defendants by such fictitious names. Plaintiff is informed and believes, and upon such information and belief alleges, that each of the DOE Defendants is in some manner responsible for having sold and/or advertised and/or marketed the Gyro Bowls and are legally responsible for the damages suffered by Plaintiff and the members of the Class as alleged herein. Plaintiff will amend this Complaint to set forth the true names and capacities of the DOE Defendants when they have been ascertained, along with appropriate charging allegations, as may be necessary.

17. At all times herein mentioned, Defendants, and each of them, were the alter egos, agents, principals, partners, members, associates, servants, employees, and subsidiaries of each of the remaining Defendants, and were at all times acting within the purpose and scope of such agency, service, and employment and directed, consented, ratified, permitted, encouraged, and approved committing the alleged acts and/or omissions of each remaining Defendant in their representative and respective relationship.

18. Plaintiff is informed and believes, and thus alleges, that at all times herein, Defendants’ agents, employees, representatives, and/or partners were acting within the course and scope of such agency, employment, and representation, on behalf of Defendants.

FACTUAL ALLEGATIONS

19. Defendants sells a number of different types of Gyro Bowls, including the Gyro Bowl Kid-Proof Spill-Proof Bowl (Ex. A), and four Gyro Bowls that are licensed by Disney, including the Disney Pixar Cars 2 Kid-Proof Spill-Proof Gyro Bowl, the Disney Princess Kid-Proof Spill-Proof Gyro Bowl, the Disney Toy Story Kid-Proof Spill-Proof Gyro Bowl and the Disney Minnie Mouse Kid-Spool Spill-Proof Gyro Bowl (Exs. B-C).

Defendants' Deceptive Advertising and Marketing

20. Starting in or around 2008, and throughout the Class Period, Defendants have sold Gyro Bowls in stores throughout the United States, on television, from their website¹ and through numerous other websites such as Amazon.com.

21. In-store advertising appears on the packaging of every Gyro Bowl. Online advertising appeared on the Gyro Bowl website, where the Gyro Bowl was available for sale, and also on other websites where the Gyro Bowl is currently available for sale. Defendants also ran infomercials advertising the Gyro Bowl.

22. Every Gyro Bowl available for in-store purchase is displayed with packaging surrounding the item. The packaging emphasizes the "Spill-Proof" nature of the product, stating: "The Kid-Proof, Spill-Proof Bowl!", "Spins and Spins...And Stuff Stays In!" and "Open Side Up...No Matter What!"² Thus, the main feature of the product is the fact that it purportedly does not spill. By way of example, below is a picture of that packaging. The packaging for each of the Gyro Bowls makes the same representations regarding the products' "Spill-Proof" nature.

¹ <https://web.archive.org/web/20130829232449/https://www.buygyrobowl.com/>.

² *See Id.*



23. Defendants' online advertising for the Gyro Bowl was essentially identical and equally deceptive. Defendants represented as the product's central feature that it was "Spill-Proof" and that it was specifically designed to prevent spills. For example, Defendants made the following representations about the product on the Gyro Bowl website: "Spill proof bowl," "Spins and Spins . . . and Stuff Stays In!", "Stays open side up...NO MATTER WHAT!" and "100% KID-PROOF."

24. Similar claims are made on other websites where Gyro Bowls are currently sold, including Amazon.com, which describes the Gyro Bowl as follows:

Product Description

Gyro Bowl is the amazing spill-proof bowl that keeps food in place no matter how much your child spins, turns, dumps or drops the bowl. Gyro Bowl is specially designed to spin 360 degrees so that the open side always stays up, keeping the contents in the bowl and off of your floor. Gyro Bowl is completely kid-proof and virtually indestructible.³

25. Defendants make substantially similar claims in the infomercial through which the Gyro Bowl is sold, stating: “Let’s face it, kids spill stuff, but now parents can relax whenever kids snack”, “introducing the Gyro Bowl Spill proof bowl,” “the first ever snack bowl that Spins and Spins . . . and Stuff Stays In!”, “the Gyro Bowl is 100% totally absolutely kid-proof”, “stays open side up, no matter what.”⁴

26. Thus, the overall consistent message of the advertising -- whether online or in-store -- is that these products **do not spill**.

27. By advertising the Gyro Bowls as “Spill-Proof,” Defendants are able to price them at a premium to similar products that do not provide such a guarantee. While the Gyro Bowls retail for approximately \$7.50 to \$14.99, other snack bowls that are not advertised as “Spill-Proof” can be purchased for under \$1.00. This provides further evidence that the supposed “Spill-Proof” nature of the item is a material factor in a consumer’s decision to purchase it.

³ See http://www.amazon.com/Gyro-Bowl--Spill-Resistant-Gyroscopic/dp/B0051WGJ3E/ref=sr_1_2?rps=1&ie=UTF8&qid=1440195610&sr=8-2&keywords=gyro+bowl, last visited August 21, 2015.

⁴ In addition to being run on television, the Gyro Bowl infomercial was also available on Defendants’ website and played automatically for consumers who landed on Gyro Bowl’s homepage. See <https://web.archive.org/web/20130829232449/https://www.buygyrobowl.com/> (last visited August 23, 2015).

The “Spill-Proof” Gyro Bowls Are Not “Spill-Proof”

28. As Plaintiff and other members of the Class discovered after purchasing the Gyro Bowl products, they are anything but “Spill-Proof.” Indeed, the products regularly spill.

Facts Specific to Plaintiff

29. On or about August 5, 2015, Plaintiff purchased two Gyro Bowls online. He saw the representations on the packaging stating that the product was “Spill-Proof.” Because the Gyro Bowl was advertised as being “Spill-Proof,” Plaintiff purchased two Gyro Bowls at a price of \$11.09 each.

30. Upon use by his two children, Plaintiff noticed that the Gyro Bowls easily and readily spilled.

31. If the Gyro Bowl products had not been advertised as being “Spill-Proof,” Plaintiff would not have purchased them and/or would not have paid a premium price for them. Thus, like the other members of the Class, Plaintiff suffered an economic loss as a result of Defendants’ materially deceptive claims that the products are “Spill-Proof.”

CLASS DEFINITION AND ALLEGATIONS

32. Plaintiff seeks certification of a class of all individuals (the “Class”) throughout the United States who purchased one or more Gyro Bowls at any time during the applicable statute of limitations period (the “Class Period”).

33. Plaintiff also seeks certification, to the extent necessary or appropriate, of a subclass of individuals who purchased the Gyro Bowls in the State of New York at any time during the Class Period (the “New York Subclass”).

34. The Class and the New York Subclass shall be referred to collectively throughout the Complaint as the Class.

35. Excluded from the Class are Defendants and their officers, directors and employees and those who purchased a Gyro Bowl for the purpose of resale or who assert claims for personal injury.

36. Plaintiff reserves the right to amend the definition of the Class if discovery or further investigation reveals that the Class should be expanded or otherwise modified.

37. This action has been brought and may properly be maintained on behalf of the Class proposed above under the criteria of the Federal Rules of Civil Procedure, insofar as the Class meets all the requirements of Rule 23:

a. ***Numerosity:*** The members of the Class are so numerous that their individual joinder is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of the Gyro Bowls who have been damaged by Defendants' conduct as alleged herein. While the precise number of Class members and their addresses are presently unknown to Plaintiff, that information is known to Defendants or is otherwise discoverable, and thus those Class members may be notified of the pendency of this action by first class mail, electronic mail, and/or published notice.

b. ***Existence and Predominance of Common Questions of Law and Fact:***

This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. Common questions of law and fact include, but are not limited to, the following:

- i. Whether Defendants' claims about the Gyro Bowls discussed above are true, or are reasonably likely to deceive;
- ii. Whether the alleged conduct violates New York General Business Law §§ 349 and 350 and similar state consumer protection laws nationwide;

- iii. Whether the alleged conduct constitutes negligent misrepresentation;
- iv. Whether the alleged conduct constitutes intentional misrepresentation;
- v. Whether the alleged conduct constitutes a breach of the express warranty which exists between Defendants and Plaintiff and other members of the Class;
- vi. Whether the alleged conduct constitutes a violation of the Magnusson-Moss Warranty Act;
- vii. Whether the alleged misconduct constitutes a breach of the implied warranty of fitness for a particular purpose;
- viii. Whether the alleged conduct constitutes unjust enrichment;
- ix. Whether Defendants engaged in deceptive advertising;
- x. Whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and
- xi. Whether Plaintiff and Class members are entitled to injunctive relief.

c. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class because, *inter alia*, all Class members were injured through the uniform misconduct described above, and all Class members were subject to Defendants' deceptive statements, including deceptive claims that accompanied each and every Gyro Bowl sold. Plaintiff is advancing the same claims and legal theories on behalf of himself and all members of the Class.

d. ***Adequacy of Representation:*** Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

e. ***Superiority:*** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members are relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendants. It would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them by Defendants. Furthermore, individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding and presents no unusual management difficulties under the circumstances here.

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

COUNT I
For Violation of New York General Business Law § 349
(On Behalf of Plaintiff and New York Subclass Members)

39. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

40. New York General Business Law § 349 prohibits “deceptive acts or practices in the conduct of any business, trade, or commerce” in New York state.

41. The conduct of Defendants alleged herein violates General Business Law § 349 in that Defendants' representations and claims, in the advertising and on the packaging of the Gyro Bowl, lead consumers such as Plaintiff and the New York Subclass Members to believe that the product is "Spill-Proof," while in actuality it is in fact prone to spilling.

42. Such conduct is inherently and materially deceptive and misleading because Defendants knew or should have known that the product is not "Spill-Proof," and thus Defendants knew or should have known that their statements were materially misleading and deceptive.

43. The materially misleading conduct of Defendants alleged herein was directed at the public at large.

44. Defendants' acts and practices described above are likely to mislead a reasonable consumer acting reasonably under the circumstances.

45. Defendants' deceptive and misleading acts are a willful and knowing violation of General Business Law § 349 because Defendants knew or acted with reckless disregard to the fact that their claims and representations regarding the supposedly "Spill-Proof" nature of the Gyro Bowl was false and misleading.

46. As a result of Defendants' deceptive and misleading acts, Plaintiff and the New York Subclass Members have been injured as alleged herein in amounts to be proven at trial because they purchased one or more of the Gyro Bowls after seeing representations that the products do not spill. Had Plaintiff and the New York Subclass Members known that the products were actually prone to spilling, they either would not have purchased the products or would not have paid the price they paid for the products.

47. As a result of Defendants' false and misleading representations, Plaintiff and New York Subclass Members are entitled to monetary, compensatory, treble and punitive damages, injunctive relief, restitution and disgorgement of all monies obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs.

COUNT II
For Violation of New York General Business Law § 350
(On Behalf of Plaintiff and the New York Subclass)

48. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

49. N.Y. Gen. Bus. Law § 350 provides, in part, as follows:

False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.

50. N.Y. Gen. Bus. Law § 350-a(1) provides, in part, as follows:

The term 'false advertising' means 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. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions proscribed in said advertisement, or under such conditions as are customary or usual

51. Defendants' advertisements contain untrue and materially misleading statements concerning the Gyro Bowl inasmuch as they misrepresent that the product is "Spill-Proof." In actuality, the Gyro Bowl is prone to spilling.

52. Plaintiff and the New York Subclass members have been injured inasmuch as they relied upon Defendants' labeling and advertising and paid a premium for Gyro Bowls that are prone to spilling.

53. Defendants made their untrue and/or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

54. Defendants' advertising induced the Plaintiff and New York Subclass members to pay a premium for the Gyro Bowls.

55. Defendants' untrue and misleading statements about the Gyro Bowl were material to Plaintiff and New York Subclass Members. The reasonable consumer would expect the Gyro Bowl to perform as represented by Defendants.

56. Defendants' conduct constitutes multiple, separate violations of N.Y. Gen. Bus. Law § 350.

57. Defendants' material misrepresentations were substantially uniform in content, presentation, and impact upon consumers at large. Moreover, all consumers purchasing the Gyro Bowl were, and continue to be, exposed to Defendants' material misrepresentations.

58. As a result of Defendants' false and misleading advertising, Plaintiff and New York Subclass Members are entitled to monetary, compensatory, treble and punitive damages, injunctive relief, restitution and disgorgement of all monies obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs.

COUNT III
Violation of State Consumer Protection Statutes
(On Behalf of Plaintiff and the Class)

59. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

60. Plaintiff and Class members have been injured as a result of Defendants' violations of the following state consumer protection statutes, which also provide a basis for redress to Plaintiff and Class members based on Defendants' fraudulent, deceptive, unfair and unconscionable acts, practices and conduct.

61. Defendants' conduct as alleged herein violates the consumer protection, unfair trade practices and deceptive acts laws of each of the following jurisdictions:

- a. **Alaska:** Defendants' practices were and are in violation of Alaska's Unfair Trade Practices and Consumer Protection Act, Alaska Stat. § 45.50.471, *et seq.*
- b. **Arizona:** Defendants' practices were and are in violation of Arizona's Consumer Fraud Act, Ariz. Rev. Stat. Ann. §§ 44-1521, *et seq.*
- c. **Arkansas:** Defendants' practices were and are in violation of Arkansas Code Ann. § 4-88-101, *et seq.*
- d. **California:** Defendants' practices were and are in violation of California Consumer Legal Remedies Act, Civil Code § 1750, *et seq.*, and California's Unfair Competition Law, California Business and Professions Code § 17200, *et seq.*
- e. **Colorado:** Defendants' practices were and are in violation of Colorado's Consumer Protection Act, Colo. Rev. Stat. §§ 61-1-101, *et seq.*

- f. **Connecticut:** Defendants' practices were and are in violation of Connecticut's Gen. Stat. § 42-110a, *et seq.*
- g. **Delaware:** Defendants' practices were and are in violation of Delaware's Consumer Fraud Act, Del. Code Ann. tit. 6, § 2511, *et seq.* and the Deceptive Trade Practices Act, Del. Code Ann. tit. 6, § 2531, *et seq.*
- h. **District of Columbia:** Defendants' practices were and are in violation of the District of Columbia's Consumer Protection Act, D.C. Code § 28-3901, *et seq.*
- i. **Florida:** Defendants' practices were and are in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*
- j. **Hawaii:** Defendants' practices were and are in violation of the Hawaii's Uniform Deceptive Trade Practices Act, Haw. Rev. Stat. § 481A-1, *et seq.* and Haw. Rev. Stat. § 480-2.
- k. **Idaho:** Defendants' practices were and are in violation of Idaho's Consumer Protection Act, Idaho Code Ann. § 48-601, *et seq.*
- l. **Illinois:** Defendants' acts and practices were and are in violation of Illinois' Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/2; and Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/2.
- m. **Indiana:** Defendants' practices were and are in violation of Indiana's Deceptive Consumer Sales Act, Ind. Code Ann. § 24-5-0.5-1, *et seq.*
- n. **Kansas:** Defendants' practices were and are in violation of Kansas's Consumer Protection Act, Kat. Stat. Ann. § 50-623, *et seq.*
- o. **Kentucky:** Defendants' practices were and are in violation of Kentucky's Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*

- p. **Maine:** Defendants' practices were and are in violation of the Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. Ann. Tit. 5, § 205-A, *et seq.* and 10 Me. Rev. Stat. Ann. § 1101, *et seq.*
- q. **Maryland:** Defendants' practices were and are in violation of Maryland's Consumer Protection Act, Md. Code Ann. Com. Law § 13-101, *et seq.*
- r. **Massachusetts:** Defendants' practices were unfair and deceptive acts and practices in violation of Massachusetts' Consumer Protection Act, Mass. Gen. Laws ch. 93A, § 2.
- s. **Michigan:** Defendants' practices were and are in violation of Michigan's Consumer Protection Act, Mich. Comp. Laws Ann. § 445.901, *et seq.*
- t. **Minnesota:** Defendants' practices were and are in violation of Minnesota's Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.* and the Unlawful Trade Practices law, Minn. Stat. § 325D.09, *et seq.*
- u. **Missouri:** Defendants' practices were and are in violation of Missouri's Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*
- v. **Nebraska:** Defendants' practices were and are in violation of Nebraska's Consumer Protection Act, Neb. Rev. Stat. § 59-1601, *et seq.* and the Uniform Deceptive Trade Practices Act, § 87-302, *et seq.*
- w. **Nevada:** Defendants' practices were and are in violation of Nevada's Deceptive Trade Practices Act, Nev. Rev. Stat. Ann. §§ 598.0903 and 41.600.
- x. **New Hampshire:** Defendants' practices were and are in violation of New Hampshire's Regulation of Business Practices for Consumer Protection, N.H. Rev. Stat. Ann. § 358-A:1, *et seq.*

- y. **New Jersey:** Defendants' practices were and are in violation of New Jersey's Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.*
- z. **New Mexico:** Defendants' practices were and are in violation of New Mexico's Unfair Practices Act, N.M. Stat. Ann. § 57-12-1, *et seq.*
- aa. **New York:** Defendants' practices were in and are in violation of New York's Gen. Bus. Law §§ 349 and 350.
- bb. **North Carolina:** Defendants' practices were and are in violation of North Carolina's Unfair Deceptive Trade Practices Act, N.C. Gen. Stat. Ann. § 75-1, *et seq.*
- cc. **North Dakota:** Defendants' practices were and are in violation of North Dakota's Unlawful Sales or Advertising Practices law, N.D. Cent. Code § 51-15-01, *et seq.*
- dd. **Ohio:** Defendants' practices were and are in violation of Ohio's Consumer Sales Practices Act, Ohio Rev. Code Ann. § 1345.01, *et seq.* and Ohio's Deceptive Trade Practices Act. Ohio Rev. Code Ann. § 4165.01, *et seq.*
- ee. **Oklahoma:** Defendants' practices were and are in violation of Oklahoma's Consumer Protection Act, Okla. Stat. Ann. tit. 15 § 751, *et seq.*, and Oklahoma's Deceptive Trade Practices Act, Okla. Stat. Ann. tit. 78 § 51, *et seq.*
- ff. **Oregon:** Defendants' practices were and are in violation of Oregon's Unlawful Trade Practices law, Or. Rev. Stat. § 646.605, *et seq.*
- gg. **Pennsylvania:** Defendants' practices were and are in violation of Pennsylvania's Unfair Trade Practice and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-1, *et seq.*

- hh. **Rhode Island:** Defendants' practices were and are in violation of Rhode Island's Deceptive Trade Practices Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*
- ii. **South Dakota:** Defendants' practices were and are in violation of South Dakota's Deceptive Trade Practices and Consumer Protection Act, S.D. Codified Laws § 37-24-1, *et seq.*
- jj. **Texas:** Defendants' practices were and are in violation of Texas' Deceptive Trade Practices Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.41, *et seq.*
- kk. **Utah:** Defendants' practices were and are in violation of Utah's Consumer Sales Practices Act, Utah Code Ann. § 13-11-1, *et seq.*, and Utah's Truth in Advertising Law, Utah Code Ann. § 13-11a-1, *et seq.*
- ll. **Vermont:** Defendants' practices were and are in violation of Vermont's Consumer Fraud Act, Vt. Stat. Ann. tit. 9 § 2451, *et seq.*
- mm. **Washington:** Defendants' practices were and are in violation of Washington Consumer Protection Act, Wash. Rev. Code Ann. § 19.86, *et seq.*
- nn. **West Virginia:** Defendants' practices were and are in violation of West Virginia's Consumer Credit and Protection Act, W. Va. Code § 46A-6-101, *et seq.*
- oo. **Wisconsin:** Defendants' practices were and are in violation of Wisconsin's Consumer Act, Wis. Stat. §421.101, *et seq.*
- pp. **Wyoming:** Defendants' practices were and are in violation of Wyoming's Consumer Protection Act, Wyo. Stat. Ann. §40-12-101, *et seq.*

62. Defendants violated the aforementioned states' unfair and deceptive acts and practices laws by representing that the Gyro Bowl is "Spill-Proof" when it is actually quite prone to spilling.

63. These misrepresentations were material to Plaintiff's and Class members' decision to purchase the Gyro Bowl and to pay a premium price for the product. The reasonable consumer would expect the Gyro Bowl to conform to the representations made in the product's advertising and on its packaging.

64. Defendants made their untrue and/or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

65. As a result of Defendants' violations of the aforementioned states' unfair and deceptive practices laws, Plaintiff and Class members purchased the products at a premium price.

66. As a result of Defendants' violations, Defendants have been unjustly enriched.

67. Pursuant to the aforementioned states' unfair and deceptive practices laws, Plaintiff and Class members are entitled to recover compensatory damages, restitution, punitive and special damages including but not limited to treble damages, reasonable attorneys' fees and costs and other injunctive or declaratory relief as deemed appropriate or permitted pursuant to the relevant law.

COUNT IV
Negligent Misrepresentation
(On Behalf of Plaintiff and the Class)

68. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

69. Defendants misrepresented to Plaintiff and the Class that the Gyro Bowl is "Spill-Proof."

70. The “Spill-Proof” claims by Defendants concerning the Gyro Bowl are false and misleading because they misrepresent the nature and/or qualities of the Gyro Bowl. The Gyro Bowl is, in actuality, very prone to spilling.

71. At the time Defendants made and publicized the “Spill-Proof” claims, Defendants had no reasonable grounds for believing that these representations were true.

72. At the time that these representations were made and publicized, Plaintiff and the Class were unaware that the “Spill-Proof” claims were false.

73. The “Spill-Proof” claims deceived and confused Plaintiff and the Class. The “Spill-Proof” claims have also influenced or are likely to influence future purchasing decisions of the buying public. Plaintiff and the Class reasonably acted in reliance upon Defendants’ “Spill-Proof” claims.

74. As a direct and proximate result of Plaintiff’s and Class members’ reliance upon the Defendants’ “Spill-Proof” claims, Plaintiff and the Class have sustained damages.

COUNT V
Intentional Misrepresentation
(On Behalf of Plaintiff and the Class)

75. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

76. Defendants misrepresented to Plaintiff and the Class that the Gyro Bowl is “Spill-Proof.”

77. Defendants’ representations were false and misleading. The Gyro Bowl is very prone to spilling.

78. At the time Defendants made the “Spill-Proof” claims, Defendants knew the representations were false.

79. Defendants made the misrepresentations alleged herein with the intention of inducing and persuading Plaintiff and the Class to purchase the Gyro Bowl.

80. As a direct or proximate result of Defendants' intentional misrepresentations, Plaintiff and Class members were induced to purchase the products at a premium price.

81. Defendants knew that the Gyro Bowl is not actually "Spill-Proof" and that it is in fact prone to spilling. Defendants made their "Spill-Proof" claims with the intention that their customers and the general public would rely on them. Plaintiff and the Class purchased and used the Gyro Bowls in reliance on Defendants' false representations.

82. Plaintiff and Class members were damaged through their purchase and use of the products.

83. Plaintiff's and Class members' reliance on Defendants' advertising and representations of the use and characteristics of the Gyro Bowl was reasonable.

84. Based upon the allegations stated herein, Defendants were and are guilty of malice, oppression and fraud, and Plaintiff and the Class are thereby entitled to recover exemplary or punitive damages.

COUNT VI
Breach of Express Warranty
(On Behalf of Plaintiff and the Class)

85. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

86. Plaintiff brings this claim individually and on behalf of the Class.

87. Plaintiff and each member of the Class formed a contract with Defendants at the time Plaintiff and the other members of the Class purchased their Gyro Bowls. The terms of that contract included the promises and affirmations of fact made by Defendants on the Gyro Bowl's packaging and in the marketing and advertising for the products. The marketing and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between Plaintiff and the members of the Class and Defendants.

88. Defendants, through their advertising and packaging, created express warranties that the Gyro Bowl is “Spill-Proof.” Plaintiff and the Class relied on those express warranties as being a part of the bargain between the parties.

89. All conditions precedent to Defendants’ liability under the contract have been performed by Plaintiff and the Class.

90. Defendants breached the express warranties about the “Spill-Proof” nature of the Gyro Bowl because Defendants’ statements about the products were false and the products do not conform to Defendants’ affirmations and promises described above. Plaintiff and the Class members would not have purchased the products, or would not have paid as much as they did for the products, had they known the true nature of them -- namely, that they are, in reality, highly susceptible to spilling.

91. As a result of Defendants’ breach of their express warranties, Plaintiff and the Class have been damaged in the amount of the purchase price of the Gyro Bowls they purchased and any consequential damages resulting from the purchases.

COUNT VII
Violation of the Magnusson-Moss
Warranty Act, 15 U.S.C. § 2301 *et seq.*
(On Behalf of Plaintiff and the Class)

92. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

93. Plaintiff brings this claim individually and on behalf of all members of the Class. Upon certification, the Class will consist of more than 100 named Plaintiffs.

94. The Magnusson-Moss Warranty Act provides a federal remedy for consumers who have been damaged by the failure of a supplier or warrantor to comply with any obligation

under a written warranty or implied warranty, or other various obligations established under the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*

95. The Gyro Bowl is a “consumer product” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

96. Plaintiff and other members of the Class are “consumers” within the meaning of the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301(3).

97. Each Defendant is a “supplier” and “warrantor” within the meaning of the Magnusson-Moss Warranty Act, 15 U.S.C. §§ 2301(4) & 2301(5).

98. Defendants represented in writing that the Gyro Bowl is “Spill-Proof.”

99. These statements were made in connection with the sale of the Gyro Bowl, relate to the product’s nature, and promise that it is defect free. As such, the Defendants’ “Spill-Proof” claims are “written warranties” within the meaning of the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301(6)(A).

100. As alleged herein, Defendants have breached the written warranty by selling consumers Gyro Bowls that are, in fact, prone to spilling.

101. The Gyro Bowls do not conform to the Defendants’ written warranty and therefore violate the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* Consequently, Plaintiff and the other members of the Class have suffered injury and are entitled to damages in an amount to be proven at trial.

COUNT VIII
Breach of Implied Warranty of Fitness For a Particular Purpose
(On Behalf of Plaintiff and the Class)

102. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

103. Plaintiff and Class Members sought a bowl with qualities that Defendants claimed were possessed by the Gyro Bowls. Plaintiff and the Class relied on Defendants' skill, expertise and judgment to furnish goods for that stated purpose. When Defendants sold the Gyro Bowls – directly or indirectly – to Plaintiff and Class members, Plaintiff and Class members bought these goods from Defendants in reliance on Defendants' skill and judgment.

104. At the time of advertising and sale, Defendants had reason to know the particular purpose for which the goods were required. Defendants knew that Plaintiff and Class members were relying on Defendants' skill and judgment to select and furnish suitable goods, thereby creating and confirming an implied warranty that the goods were fit for their stated and advertised purpose.

105. Defendants, however, breached the implied warranty. Plaintiff and members of the Class did not receive goods suitable in the form of the Gyro Bowl. The Gyro Bowl is not fit for the particular purpose for which it was sought, purchased and required in that it was not "Spill-Proof" as claimed by Defendants but rather is quite prone to spilling.

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

COUNT IX
Restitution Based on Unjust Enrichment
(On behalf of Plaintiff and the Class in the alternative)

107. Plaintiff repeats and realleges the above allegations as if set forth fully herein.

108. Plaintiff brings this claim individually and on behalf of the Class.

109. Defendants, through false and misleading labeling, enticed Plaintiff and members of the Class to purchase the Gyro Bowls.

110. Plaintiff and the Class members conferred a benefit on Defendants by purchasing the Gyro Bowl.

111. By their wrongful acts, Defendants have been unjustly enriched at the expense of, and to the detriment of, Plaintiff and members of the Class.

112. Defendants benefitted financially from the revenues and other compensation tied to the sale of Gyro Bowl, which was unjust in light of Defendants' wrongful conduct.

113. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits they received from Plaintiff and the Class as the result of their deceptive marketing and advertising practices.

114. Because Defendants' retention of the non-gratuitous benefit conferred on them by Plaintiff and the Class members is unjust and inequitable, Plaintiff seeks restitution from, and an order from the Court disgorging all profits, benefits and other compensation obtained by Defendants due to their wrongful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. Determining that this action is a proper class action and designating Plaintiff as Class representative under Rule 23 of the Federal Rules of Civil Procedure and his undersigned counsel as Class counsel;

B. Awarding compensatory damages in favor of Plaintiff and the other proposed Class members;

C. Awarding statutory and punitive damages to the extent available;

D. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and the proposed Class members;

E. Awarding injunctive relief as permitted by equity, including enjoining Defendants from continuing their unlawful practices as set forth herein and directing Defendants to engage in a corrective advertising campaign;

F. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including attorneys' fees and expert fees; and

G. Providing such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: September 21, 2015

THE SULTZER LAW GROUP, P.C.

By: _____

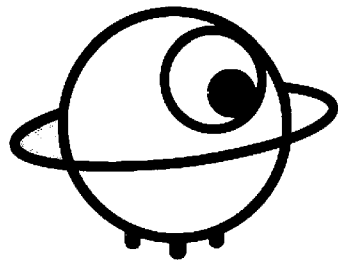
Jason P. Sultzer, Esq. (Bar ID #: JS4546)
Joseph Lipari, Esq. (Bar ID #: JL3194)
Jean M. Sedlak, Esq. (Bar ID #: JS4895)
77 Water Street, 8th Floor
New York, NY 10005
Tel: (646) 722-4266
Fax: (888) 749-7747
sultzerj@thesultzerlawgroup.com
liparij@thesultzerlawgroup.com
sedlakj@thesultzerlawgroup.com

Brett D. Zinner /s/

Brett D. Zinner, Esq. (Bar ID # BZ3324)
**ROSENBERG FORTUNA &
LAITMAN, LLP**
666 Old Country Road, Suite 810
Garden City, New York 11530
Tel: (516) 228-6666
Fax: (516) 228-6672
brett@rosenbergfortuna.com

Counsel for Plaintiff and the Class

EXHIBIT A



Gyro Bowl

Kid Proof
Kid Proof Bowl!!



Spins and Spins... And Stuff Stays In!



Lid
Included!

Open Side Up... No Mother Mayhem!

BPA Free!

Dishwasher Safe

For Ages 2 yrs. And Up

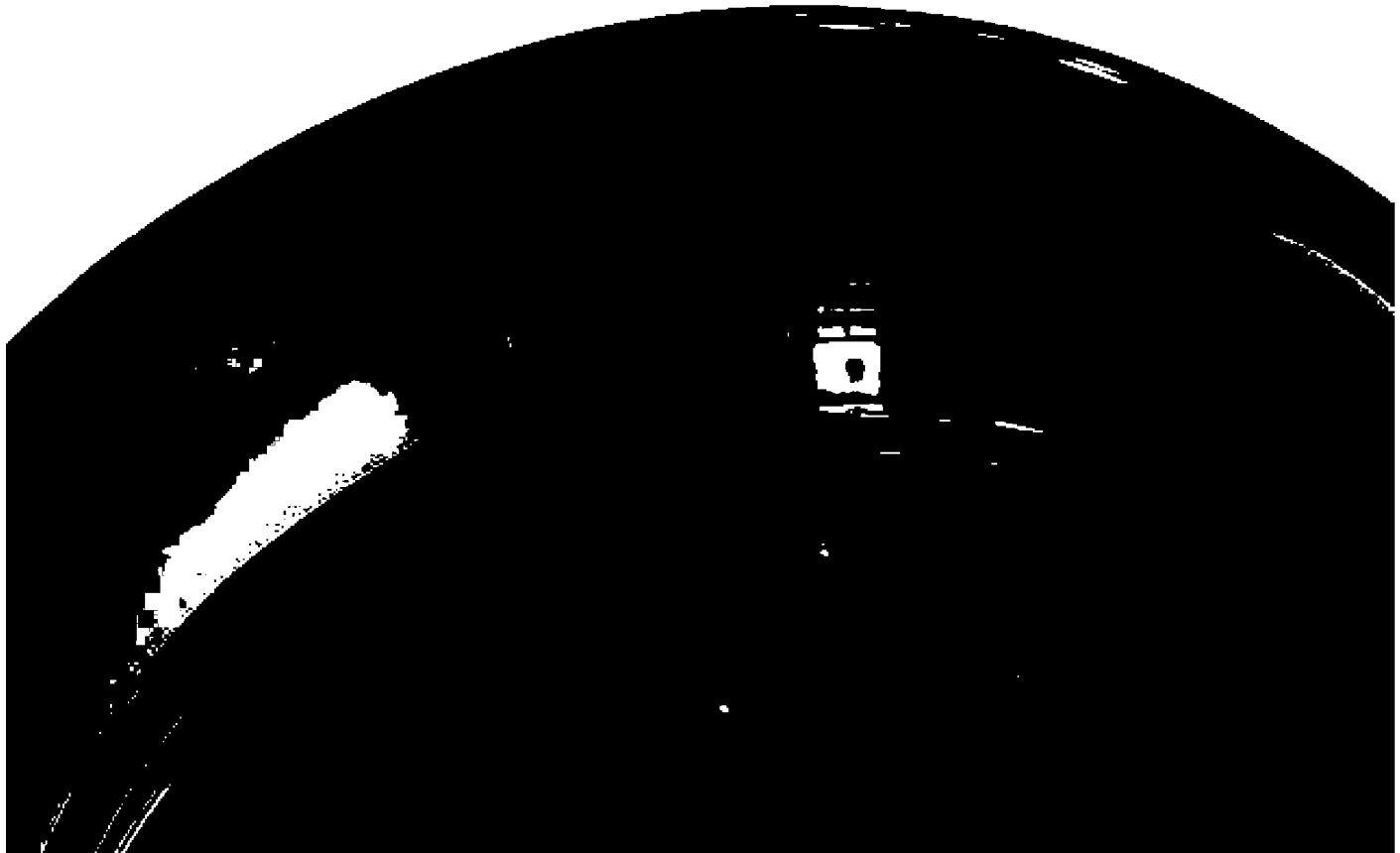


EXHIBIT B








Disney® GYRO BOWL

It Spins, Spins & Stuff Stays In!

Only \$16.99

Buy Now

FREE SHIPPING!




Disney® GYRO BOWL

It Spins, Spins & Stuff Stays In!

BUY NOW!

FREE SHIPPING!



Close




EXHIBIT C



- [Sign Up](#)
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- [About](#)
- [Successes](#)
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- [Insiders](#)
- [FAQ](#)

[Menu](#)

Gyro Bowl® Gets a Very Disney® Makeover!

April 3, 2012

[Mary Dickson](#)

Tweet

6

Share

2

Share

0



As we embark on Season 4 of *Everyday Edisons* and continue [casting for Season 5](#), we're ecstatic to share an update on Season One inventors, Brad and Melinda Shepard, and their popular kid-proof, no-spill bowl called the Gyro Bowl. If the 360 degree spinning inner-bowl wasn't enough to prompt kids' special requests, the new bowls featuring licensed Disney® characters will definitely seal the deal!

The Gyro Bowl is now available in four Disney characters: *Cars*™, *Minnie Mouse*™, the *Disney Princesses*™, and *Toy Story*™!

A huge CONGRATS to Brad & Melinda on the continued success of the Gyro Bowl!

But wait – there's more! 😊 Check out the video below for a look at how our team created the brand new Disney Gyro Bowl website!

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

Mark Principe, individually on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Long Island, New York
(EXCEPT IN U.S. PLAINTIFF CASES)

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

The Sultz Law Group PC (646) 722-4266
77 Water St, 8th Floor
New York, NY 10005

DEFENDANTS

Edison Nation, LLC, Plymouth Direct, Inc., John Does 1-25,

County of Residence of First Listed Defendant Mecklenburg County, NC
(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 checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input 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):
28 U.S.C. § 1332(d)(2)

Brief description of cause:

state consumer protection statutes, neg. & int. misrep., breach of warranty, magnusson-moss, unjust enrichment

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

09/21/2015

SIGNATURE OF ATTORNEY OF RECORD

Jason P. Sultz /s/

FOR OFFICE USE ONLY

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

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, Jason P. Sultzer, counsel for Plaintiff and Class Members, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

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

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

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

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

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

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

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

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

(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: Jason P. Sultzer /s/

Eastern District of New York

Mark Principe, individually on behalf of himself and
all others similarly situated

Plaintiff(s)

V.

Edison Nation, LLC, Plymouth Direct, Inc., John
Does 1-25,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Edison Nation, LLC
520 Elliot Street, Suite 200
Charlotte, NC 28202-1363

Plymouth Direct, Inc.
425 Stump Road, Box 427
Montgomeryville, PA 18936-0427

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Jason P. Sultzer, Esq.

Jason P. Sultzer, Esq.
The Sultzer Law Group PC
77 Water Street, 8th Floor
New York, New York 10005
(646) 722-4266

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: