

# CV 15 - 6551

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U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK

**LEE LITIGATION GROUP, PLLC**

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

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**BRODIE, J.**

MENG WANG, on behalf of herself  
and others similarly situated,

**ORENSTEIN, M.J.**

Plaintiff,

Case No.:

v.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

JB LINE, INC. d/b/a JB COSMETICS,

Defendant.

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Plaintiff, MENG WANG (hereinafter, "Plaintiff"), on behalf of herself and others similarly situated, by and through her undersigned attorneys, hereby files this Class Action Complaint against Defendant, JB LINE, INC. (collectively, "Defendant") and states as follows based upon her own personal knowledge and the investigation of her counsel:

**NATURE OF THE ACTION**

1. This is a consumer protection class action arising out of Defendant's deceptive practices in the marketing, advertising, and promotion of their "LashFood Phyto-Medic Eyelash Enhancer" (hereinafter "LashFood Eyelash Enhancer" or "Product"). As alleged with specificity herein,

through an extensive, widespread, comprehensive, and uniform nationwide marketing campaign, Defendant claims that the LashFood Eyelash Enhancer, with its “**Phyto-Medic Complex**,” a “**medicinal herb extracts**” which has been “developed by a team of cosmetic scientists through a series of **clinical tests**,” and is “demonstrated to prevent hair loss and trigger the **regrowth** of lashes,” “**activate lash follicles**,” “trigger [the] natural **growth** of lashes,” and “transforms lashes, making them longer, thicker, stronger, and healthier in as little as **four to eight weeks**.” Defendant’s lash growth/regrowth claims however, are false, misleading, and reasonably likely to deceive the public because there is nothing in the LashFood Eyelash Enhancer that could actually grow or trigger the regrowth of lashes.

2. Defendant makes the same lash growth/regrowth claims on all of the LashFood Eyelash Enhancer products and throughout their marketing materials. Each person who purchased the LashFood Eyelash Enhancer has been exposed to Defendant’s misleading advertising message multiple times. For example, on the front of the packaging of the LashFood Eyelash Enhancer, Defendant represents in all capital letters, that the LashFood Eyelash Enhancer will result in “LONGER, THICKER, STRONGER LASHES.” Also in all capital letters on the front of the Product packaging, Defendant states that the Product contains a certain “PHYTO-MEDIC COMPLEX.” On the side of the Product packaging Defendant represents the “CLINICAL RESULTS” with a diagram showing that “100% Noticed improvement in eyelash length” and “85% Noticed improvement in eyelash fullness.” The only reason a consumer would purchase the LashFood Eyelash Enhancer is to obtain the advertised lash growth/regrowth benefits and longer lashes.

3. Nothing in the LashFood Eyelash Enhancer is demonstrated to actually trigger the growth or regrowth of eye lashes. As a result of the misleading lash growth/regrowth message conveyed

by Defendant's marketing campaign, Defendant has caused Plaintiff and other consumers to purchase a product that does not perform as represented. Plaintiff and other similarly situated consumers have been harmed in the amount they paid for the LashFood Eyelash Enhancer.

4. Plaintiff brings this action on behalf of herself and all other similarly situated consumers nationwide, who, from the applicable limitations period up to and including the present (the "Class Period"), purchased the Product. Plaintiff seeks to end Defendant's dissemination of this false and misleading advertising message, correct the false and misleading perception it has created in the minds of consumers, and to obtain redress for those who have purchased the LashFood Eyelash Enhancer.

#### **JURISDICTION AND VENUE**

5. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d). This is a putative class action whereby: (i) the proposed class consists of over 100 class members; (ii) at least some of the proposed class members have a different citizenship from Defendant; and (iii) the amount in controversy exceeds the sum of value of \$5,000,000.00, excluding interest and costs.

6. 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.

7. 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.

8. 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.

9. This Court has personal jurisdiction over Defendant because their Product is 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 have intentionally availed themselves 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.

10. Venue is proper in the Eastern 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 resides in, purchased and used Defendant's Product in Queens County.

#### PARTIES

11. Plaintiff MENG WANG is a citizen of the State of New York and resides in Queens County, New York. In the twelve month period prior to the filing of this Complaint, Plaintiff was exposed to and saw Defendant's lash growth/regrowth claims on [www.sephora.com](http://www.sephora.com) and the video advertisement on the same site. She was also exposed to Defendant's marketing campaign on [www.lashfood.com](http://www.lashfood.com). In reliance on the lash growth/regrowth claims, as conveyed in Defendant's representations that the Product contains the "**Phyto-Medic Complex**," a "[r]evolutionary **medicinal** herb extracts" which has been "developed by a team of cosmetic scientists through a series of **clinical tests**," and is "**clinically** demonstrated to prevent hair loss and trigger the **regrowth** of lashes," "**activate lash follicles**," "trigger [the] natural **growth** of lashes," and "transforms lashes, making them longer, thicker, stronger, and healthier in as little as **four to eight weeks**[,] Plaintiff purchased the Product for personal consumption on Sephora's website, [www.sephora.com](http://www.sephora.com). The retail purchase price was approximately \$78.00 for one tube of the

Product. Plaintiff purchased the Product believing it would provide the advertised lash growth/regrowth benefits, even though it did not. As a result of her purchases, Plaintiff suffered injury in fact and lost money. Had Plaintiff known the truth about Defendant's misrepresentations and omissions, she would not have purchased the Product. Plaintiff is not claiming physical harm or seeking the recovery of personal injury damages.

12. Defendant JB LINE, INC. was a business corporation organized under the laws of the state of California, with its principal place of business at 6200 Artesia Blvd., Buena Park, CA 90620 and an address for service of process located at 1709 Rimpau Ave Ste #104, Corona, CA 92881. Defendant developed and manufactured cosmetic products for consumer and professional markets. It provides cosmetic products throughout the United States through a network of suppliers. Defendant manufactures, markets, and sells the LashFood cosmetics line which includes mascaras and eyelash conditioners.

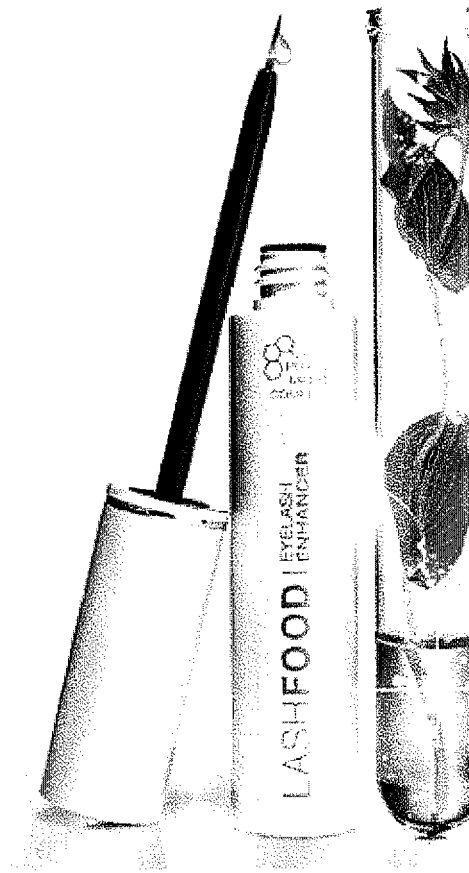
### **FACTUAL ALLEGATIONS**

#### **The LashFood Eyelash Enhancer**

13. The LashFood cosmetics line is sold online at large e-commerce websites such as [www.sephora.com](http://www.sephora.com), [www.skinstore.com](http://www.skinstore.com) and [www.amazon.com](http://www.amazon.com).

14. Defendant manufactures, distributes, markets, and sells nationwide the LashFood Eyelash Enhancer as part of the LashFood cosmetics line. The LashFood Eyelash Enhancer is a wand not unlike a regular mascara which contains an applicator and liquids inside the wand.

15. Inside the wand is a clear liquid that Defendant refers to as the "natural lash enhancing serum." This gel-like serum is applied to the roots of the lashes. The Product retails for approximately \$78.00. See the Product below:



<http://www.askepot-klinik.dk/images/Lashfood%20Eyelash%20Enhancer-p.jpg>

### **Defendant's False and Deceptive Advertising of the LashFood Eyelash Enhancer**

16. Throughout its advertising of the LashFood Eyelash Enhancer, Defendant has consistently conveyed the very specific message to consumers that the Product, with its “natural lash enhancing serum,” which contains a “**phyto-medic complex**” and is “**99.49% natural**,” will “trigger the **regrowth** of lashes,” “**activate lash follicles**,” “trigger [the] **natural growth** of lashes” and cause eyelashes to “become longer, thicker, and stronger” in “as little as 4-8 weeks.”

17. The whole concept of the LashFood Eyelash Enhancer is premised upon the idea that it contains the “phyto-medic complex,” a natural, organic herb-extract ingredient based on a “proprietary” formula, which has lash growth/regrowth effect and provides an alternative to using synthetic chemicals to grow lashes. Defendant claims that the Product’s “powerful, proprietary

blend of organic medicinal herb extracts has been scientifically demonstrated to support the growth of stunning lashes.










DESCRIPTION	INGREDIENT INNOVATION	FEATURES	HOW TO USE
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The world's first & only Ecocert lash enhancing serum. The safe and effective alternative to lash growth. Phyto-Medic Complex was developed by a team of cosmetic scientists through a series of clinical tests. The breakthrough results proved to transform lashes into longer, thicker, stronger and healthier lashes in just 4-8 weeks. Its powerful, proprietary blend of organic medicinal herb extracts has been scientifically demonstrated to support the growth of stunning lashes.

<http://www.lashfood.com/r/products.php?p=45>, under the "Description" tab.

DESCRIPTION	INGREDIENT INNOVATION	FEATURES	HOW TO USE
-------------	-----------------------	----------	------------

	<b>Phyto-Medic Complex</b> Revolutionary medicinal herb extracts demonstrated to prevent hair loss and trigger the regrowth of lashes.		<b>Peony Root Complex</b> Essential peony nutrition to revitalize and rejuvenate skin
	<b>Adenosine</b> Bio-ingredient that promotes the ideal environment for optimal lash growth		<b>Rice Protein</b> Strengthens and expands the diameter of lash follicles to create noticeably thicker and stronger looking lashes
	<b>Lavender Water</b> Treats a variety of hair problems including alopecia		<b>Arginine</b> Bio-ingredient that promotes the ideal environment for optimal lash growth
	<b>Soy Protein</b> Natural protein to strengthen, condition, and sooth lashes		

<http://www.lashfood.com/r/products.php?p=45>, under the "Ingredient Innovation" tab.

18. In reality, the LashFood Eyelash Enhancer does not contain any ingredient which has been scientifically or clinically proven to grow lashes or trigger the regrowth of lashes, let alone any "natural" "phyto-medic complex" which contributes to lash growth.

19. Since launching the LashFood Eyelash Enhancer, Defendant has consistently conveyed such uniform, deceptive message to consumers throughout the United States, including New York.

20. Defendant has made and repeated this lash growth/regrowth message across a variety of media including on the website of large online stores such as Sephora (see below) and Amazon where the Product can be ordered online, Defendant's own website at [www.lashfood.com](http://www.lashfood.com) and online promotional materials, as well as on the front and back of the LashFood Eyelash Enhancer's packaging where it cannot be missed by consumers when purchasing the Product in physical stores. In truth, Defendant's lash growth/regrowth claims are false, misleading, and deceptive.





# SEPHORA

3 FREE SAMPLE WITH ANY PURCHASE

KIN CARE FRAGRANCE BATH & BODY NAILS HAIR TOOLS & BRUSHES MEN GIFTS SALE BRANDS ADVICE HOW-TO'S

makeup > eyelash enhancers & primers

all LASHFOOD



**LASHFOOD**  
**Phyto-Medic Eyelash Enhancer**  
ITEM 1585634 • SIZE 0.10 oz

\$78.00

QTY 1

ADD TO BASKET

FREE SHIPPING

ADD TO LOVES

54 REVIEWS | 2913 LOVES

FIND IN STORE

enter zip code

DETAILS HOW TO USE INGREDIENTS ABOUT THE BRAND SHIPPING & RETURNS

**What it is:**  
A powerful lash enhancing serum.

**What it is formulated to do:**  
The safe alternative to lash growth, Phyto-Medic Complex was developed by a team of cosmetic scientists through a series of clinical tests. The breakthrough results prove it transforms lashes, making them longer, thicker, stronger, and healthier in as little as four to eight weeks. Its powerful, proprietary blend of organic medicinal herb extracts has been scientifically demonstrated to activate lash follicles and support the natural growth of stunning lashes. The patented formulation of organic medicinal extracts was demonstrated to minimize lash loss and trigger natural growth of lashes.

**What it is formulated WITHOUT:**  
- Parabens  
- Sulfates  
- Phthalates

**What else you need to know:**  
Use with eyelash extensions to get longer lasting bond life. This product is Ecocert certified, dermatologist tested and approved, and vegan. It is free of gluten as well as cruelty- and irritation-free. It is formulated without prostaglandin, silicone, synthetic fragrances, synthetic dyes, mineral oils, phenoxyethanol, PEG, petrochemicals, GMOs, and formaldehyde donors.

LashFood is safe, effective, and no prescription is required. Its distinction lies in its drug-free cosmetic alternative category, providing users with results without the side effects. LashFood packaging components are made with Ecocert compliant and sustainable materials. Ingredients have been evaluated for its environmental impact (biodegradability and ecotoxicity).

**Research results:**  
**Independent study conclusions:**  
- 85% noticed an improvement in eyelash fullness  
- 100% noticed an improvement in eyelash length  
- 100% noticed an improvement in eyelash density  
- 0% noticed irritation  
  
- 99.49% of the total ingredients are from natural origin  
- 25.02% of the total ingredients are from organic farming

Sign in or register ACCOUNT BEAUTY INSIDER 3 FREE SAMPLES STORES BASKET

SEARCH **SEPHORA** JOIN FLASH FREE 2-DAY SHIPPING

MAKEUP SKIN CARE FRAGRANCE BATH & BODY NAILS HAIR TOOLS & BRUSHES MEN GIFTS SALE BRANDS ADVICE HOW-TO

makeup > eye makeup > eyelash enhancers & primers [all LASHFOOD](#)

**LASHFOOD** \$78.00 QTY 1 **ADD TO BASKET**

**Phyto-Medic Eyelash Enhancer** FREE SHIPPING **ADD TO LOVES**

ITEM 1585934 • SIZE 0.10 oz

★★★★ 54 REVIEWS | ♥ 2913 LOVES

FIND IN STORE enter zip code

DETAILS HOW TO USE **INGREDIENTS** ABOUT THE BRAND SHIPPING & RETURNS

Phyto-Medic Complex: Revolutionary medicinal herb extracts clinically demonstrated to prevent hair loss and trigger natural regrowth of lashes.

- Arginine: An essential amino acid for hair growth.
- Lavender Water: Treats a variety of hair problems including alopecia.
- Soy Protein: Natural protein to strengthen, condition, and soothe lashes.

Water, Bergamot Peel Water, Lavender Flower Water, Citrus Orange Fruit Water, Butylene Glycol, Paeonia Alba Root Extract, Panax Ginseng Root Extract, Trehalose, Aloe Barbadensis Leaf Juice, Hydrolyzed Rice Protein, Portulaca Oleracea Extract, Prunus Mume Fruit Extract, Xanthan Gum, Phenethyl Alcohol, Sorbic Acid, Hydrogenated Phosphatidylcholine, Potassium Sorbate, Arginine, Hydrolyzed Soy Protein

21. As illustrated above, on the product page on [www.sephora.com](http://www.sephora.com) where the LashFood Eyelash Enhancer can be ordered directly, Defendant represents that the LashFood Eyelash Enhancer, with its “**Phyto-Medic Complex**,” a “[r]evolutionary **medicinal** herb extracts” which has been “developed by a team of cosmetic scientists through a series of **clinical tests**,” and is “**clinically** demonstrated to prevent hair loss and trigger the **regrowth** of lashes,” “**activate lash follicles**,” “trigger [the] natural **growth** of lashes,” and “transforms lashes, making them longer, thicker, stronger, and healthier in as little as **four to eight weeks**.”

22. Customers who had ordered from [www.amazon.com](http://www.amazon.com) would also be exposed to the same representations by Defendant:

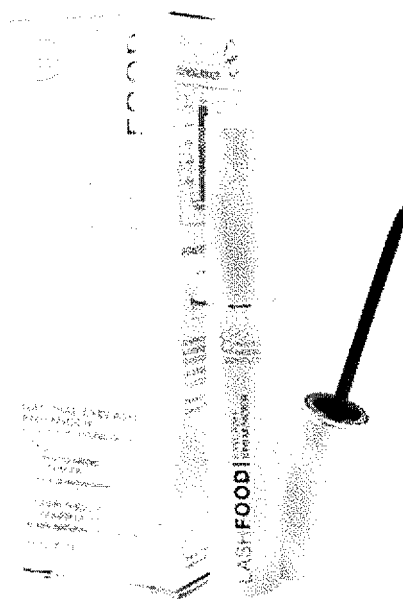
Department - Your Amazon.com Today's Deals Gift Cards Sell Help

All Beauty Luxury Beauty Makeup Skin Care Hair Care Fragrance Tools & Accessories Men's

Back to LashFood store

## Lashfood Phyto Medic, Natural Eyelash Enhancer, .10 Ounce from LashFood

☆☆☆☆☆ - 10 customer reviews



### About the Product

- Its powerful, proprietary blend of organic medicinal herb extracts has been scientifically demonstrated to support the growth of stunning lashes
- Phyto-Medic Complex - Revolutionary medicinal herb extracts demonstrated to prevent hair loss and trigger the regrowth of lashes
- Soy Protein - Natural protein to strengthen, condition, and sooth lashes
- This product is Ecocert Certified and Dermatologist Tested and Approved

23. Defendant's own website at [www.lashfood.com](http://www.lashfood.com), where Products can be directly purchased, also contains the same lash growth/regrowth claims. See Defendant's official website product page below:

LASHFOOD®

PRODUCTS

REAL STORIES

OUR STORY

PRESS

C



PRODUCTS

LASHFOOD -

Phyto-Medic,  
Natural Eyelash Enhancer

Phyto-Medic,  
Natural Eyebrow Enhancer

Original,  
Natural Eyelash Conditioner

Conditioning  
Lash Primer with Fiber

Conditioning  
Drama Mascara

Conditioning Drama Mascara,  
waterproof

Conditioning Lash  
Extending Mascara

Clear Brow  
Enhancing Gelfix

Tinted Brow  
Enhancing Gelfix

Conditioning Liquid  
Eyeliner

Conditioning Instant  
Eye Makeup Remover

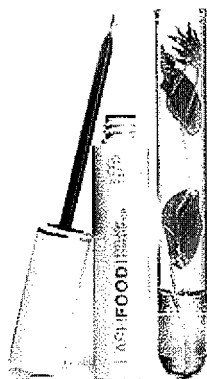
Lash Transformation System

Brow Transformation System

Eco Precision 2-Tone  
Brow Pencil

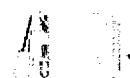
Eco Precision 2-Tone  
Brow Pencil Refill

Conditioning Volume 3-D  
Mascara



LASHFOOD  
Phyto-Medic,  
Natural Eyelash Enhancer

ITEM # LFPMEL | SIZE: 3ml / 10 fl. oz.



1 ▼ \$80  
ADD TO CART

DESCRIPTION    INGREDIENT INNOVATION    FEATURES    HOW TO USE

The world's first & only Ecocert lash enhancing serum. The safe and effective alternative to lash growth, Phyto-Medic Complex was developed by a team of cosmetic scientists through a series of clinical tests. The breakthrough results proved to transform lashes into longer, thicker, stronger and healthier lashes in just 4-8 weeks. Its powerful, proprietary blend of organic medicinal herb extracts has been scientifically demonstrated to support the growth of stunning lashes.

**Independent Study Conclusions:**  
85% of users noticed an improvement in eyelash fullness  
100% of users noticed an improvement in eyelash length  
100% of users noticed an improvement in eyelash density  
0% noticed irritation.



SEE RESULTS, NOT SIDE EFFECTS. >



LASH TRANSFORMATION KIT TUTORIAL >

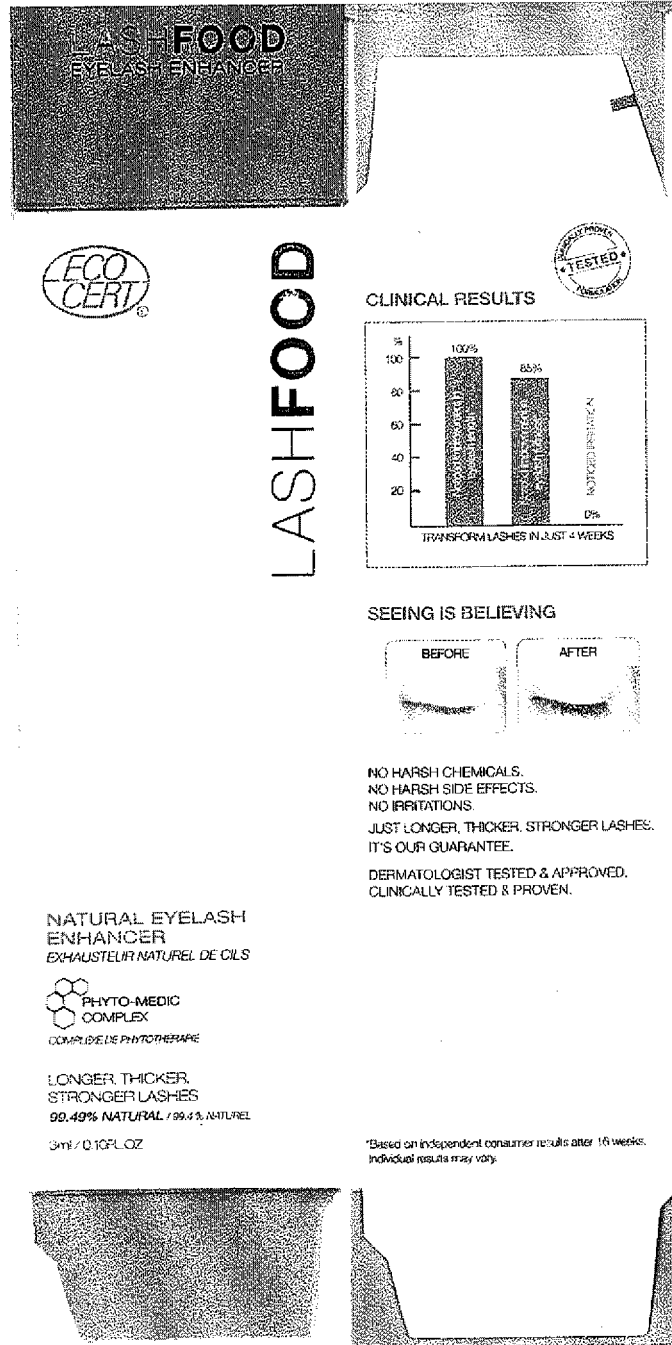


SHARE

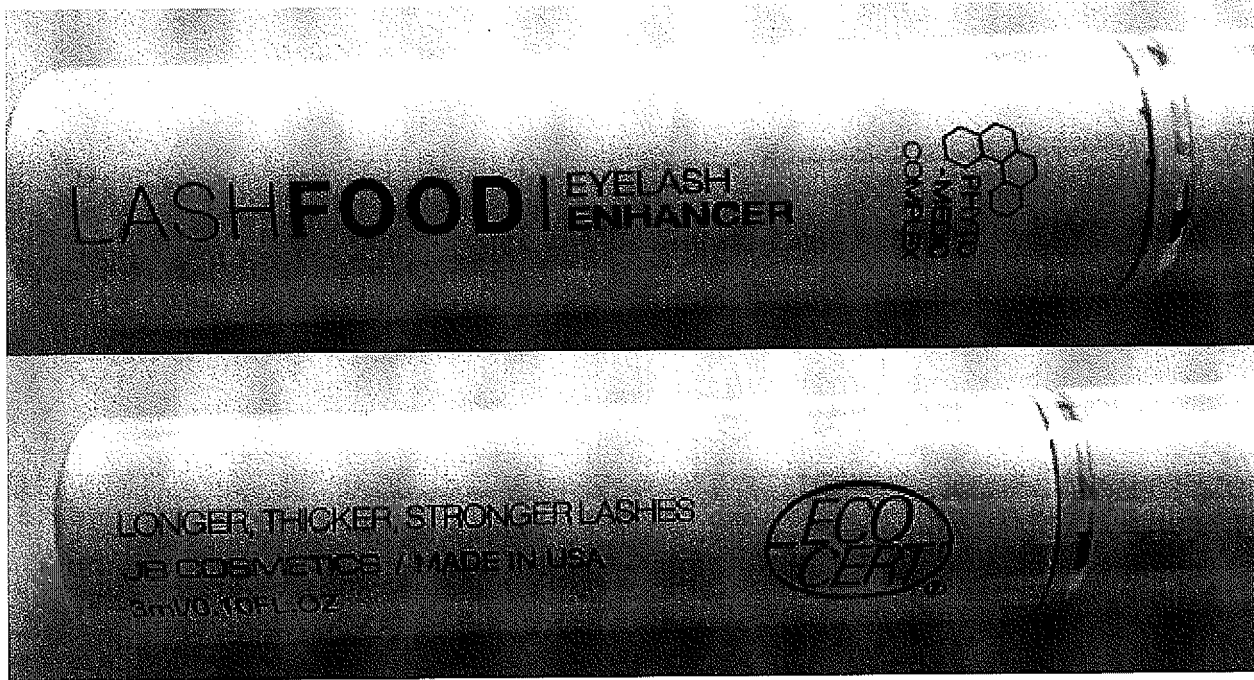
<http://www.lashfood.com/r/productsp.php?p=45>.

24. The front of every LashFood Eyelash Enhancer's packaging and labeling states prominently in all capital letters, printed in large font, that the LashFood Eyelash Enhancer is a "NATURAL LASH ENHANCER" will provide "LONGER, THICKER, STRONGER LASHES"

with its “PHYTO-MEDIC COMPEX” and “99.49% NATURAL” ingredients. The right side panel of the Product packaging and labeling represents a diagram of “CLINICAL RESULTS,” which indicates that “100%” “Noticed improvement in eyelash length\*,” “85%” “Noticed improvement in eyelash fullness\*” and the asterisks link to the statement on the bottom of the right side panel, “Based on independent consumer results after 16 weeks. Individual results may vary.” Under such diagram states the slogan, “SEEING IS BELIEVING,” which is accompanied by a before-and-after image representing a closed eye with significantly longer and thicker lashes in the “after” image. Defendant further states, “NO HARSH CHEMICALS, NO HARSH SIDE EFFECTS. NO IRRITATIONS. JUST LONGER, THICKER, STRONGER LASHES. IT’S OUR GUARANTEE. DERMATOLOGIST TESTED & APPROVED. CLINICALLY TESTED & PROVEN.” See front and right side panel of the Product packaging and labeling below:



25. The labeling on the wand of the LashFood Eyelash Enhancer, again, reinforces Defendant's claim that the Product will grow "LONGER, THICKER, STRONGER LASHES" with its mysterious "PHYTO-MEDIC COMPLEX." See picture of front and back of the wand below:



26. On the back of the Product packaging, Defendant states:

“Introducing the world’s first & only Ecocert eyelash enhancer by LashFood. Nourish lashes to become longer, thicker, and stronger with this revolutionary, natural eyelash enhancing serum. Created by a team of cosmetic scientists, this breakthrough, powerful formula is clinically demonstrated to provide the appearance of longer, thicker lashes and to transform frail and brittle lashes to become healthy and strong. Enjoy visibly different, stunning lashes **in 4-8 weeks.**”

And as part of the “Directions” Defendant states,

“Directions: Apply **nightly** onto clean, dry skin. Sweep applicator brush along the eyelash line in the same manner as liquid eyeliner. Let product absorb into skin before applying additional products... .”

27. Defendant's online marketing campaign repeats and reinforces the false and misleading lash growth/regrowth claims. For example, Defendant prominently represents the following on the front page of its website at [www.LashFood.com](http://www.LashFood.com):

LASHFOOD®



28. Under the "Real Stories" tab, Defendant continues to elaborate on the same idea that the Product grows eyelashes in "just 4 weeks:"

**LASHFOOD. SEE THE DIFFERENCE A MONTH MAKES.**

LashFood treatment cosmetics are a drug-free, **natural** alternative for those with not enough eyelashes. Apply product onto lashes as directed and **notice visibly longer, thicker, stronger lashes** in just one month. The 24-Hour Eyelash Conditioning System delivers at the cellular level to feed lashes with nature's most powerful ingredients.

<http://www.lashfood.com/r/testimonials.php>.

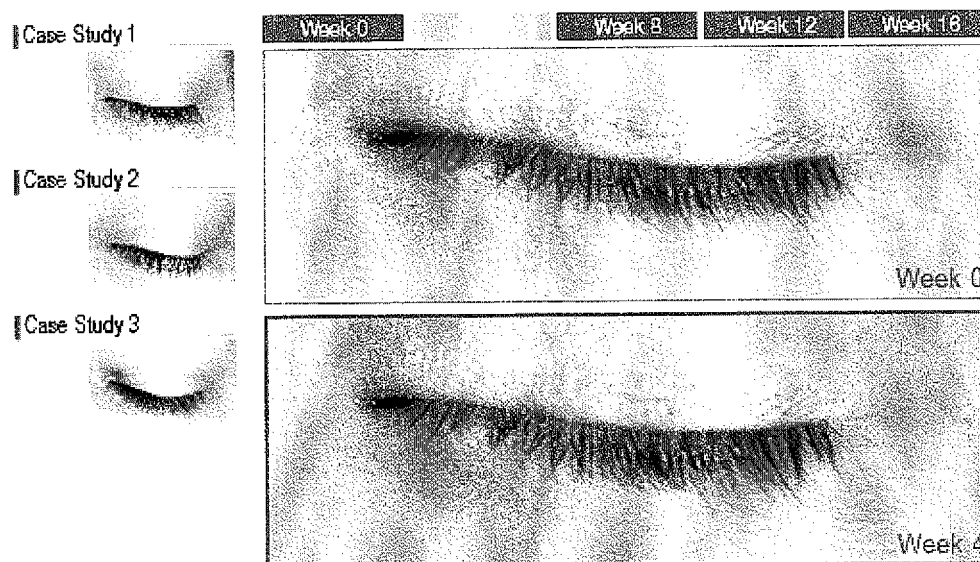
29. Under the "Clinical Trial Gallery" tab, Defendant posted 3 "case studies" of women who photographed their eyelashes every 4-week intervals during a 16-week study. The message



conveyed by these pictures is clear: the Product is not purely cosmetic in nature, but also has the physiological impact when used “every night.”

### SEEING IS BELIEVING

Women, between 19 and 44 years of age, completed a 16 week study to evaluate the efficacy of LashFood Natural Eyelash Conditioners, to increase the appearance of eyelash length, fullness, and thickness. Subjects applied the conditioner along the base of their lashes every night onto clean, dry skin. Close-up photography of clinical study subject's eyelashes at Weeks 0, 4, 8, 12, and 16 are shown below.



[http://www.lashfood.com/r/clinical\\_trial\\_g.php](http://www.lashfood.com/r/clinical_trial_g.php).

### Defendant's Lash Growth Claims Are False and Misleading

30. In truth, the Product does not actually grow, trigger the regrowth of, or thicken eyelashes and certainly not within the short time frames advertised by Defendant.

31. Not even Latisse®,<sup>1</sup> the only prescription strength eyelash growth product approved by the U.S. Food and Drug Administration, can grow lashes in four weeks. Several well conducted scientific studies of Latisse® did not yield visible eyelash growth results for several months. *See,*

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<sup>1</sup> The active ingredient in LATISSE® is bimatoprost. The Lush Lash System does not contain bimatoprost.

e.g., Smith, S., Eyelash Growth in Subjects Treated with Bimatoprost: A Multicenter, Randomized, Double-Masked, Vehicle-Controlled, Parallel-Group Study, 65(5) J Am Acad Dermatol. 801-6 (2012) (clinical effects of bimatoprost were seen starting at 8 weeks); Yoelin, et al., Safety, Effectiveness and Subjective Experience with Topical Bimatoprost 0.03% for Eyelash Growth (May 2010) (improvement in eyelashes seen within 3 months); Cohn, J., Enhancing the Growth of Natural Eyelashes: The Mechanism of Bimatoprost-Induced Eyelash Growth, Derm. Surgery 1361 (2010). After sixteen weeks of using prescription-strength Latisse®, participants' lashes were 25% longer.<sup>2</sup>

32. There is nothing contained in the LashFood Eyelash Enhancer that can cause eyelashes to grow longer, thicker and stronger in four weeks, a rate much faster than those documented by Latisse®. Defendant does not provide the public with any peer-reviewed, independent clinical studies that show the Product or any of its ingredients, including the “phyto-medic complex”, adenosine, lavender water, soy protein, peony root complex, rice protein or arginine cause eyelashes to physically grow and/or become thicker within the claimed time frames. Thus, Defendant's lash growth/regrowth claims are false, misleading and reasonably likely to deceive the public.

33. When interviewed regarding the Product, Defendant's general manager, Clare Kwon, allegedly stated, “We've been researching this product for three years, [though the iris extract and herbs help nourish the eyelashes,] “the main ingredients that really work are biotin and arginine.”<sup>3</sup>

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<sup>2</sup> <http://professional.latisse.com/About-Latisse/Efficacy/Fullness-Length-Darkness> (last visited Jan. 26, 2015).

<sup>3</sup> Chris Woolston, “LashFood's makers claim it fattens eyelashes. But does it?” LA Times, January 26, 2009, available at <http://www.latimes.com/health/la-he-skeptic26-2009jan26-story.html>.

34. Experts are doubtful of Defendant's claim that the Product, when applied "nightly" after an extended period of time, actually make eyelashes grow "longer, thicker and stronger." According to Dr. Zoe Draelos, clinical associate professor of dermatology at Wake Forest University School of Medicine in Winston-Salem, N.C., "the product probably clings to the lashes to give them more length and depth, at least until it's washed off."<sup>4</sup> But Dr. Draelos highly doubts that the LashFood Eyelash Enhancer actually makes eyelashes grow longer or thicker.<sup>5</sup> This is because, while popularly used in hair-loss remedies, biotin and arginine have never been shown to encourage growth of hair, eyelashes included.<sup>6</sup>

35. Moreover, Defendant's statement that the main ingredients responsible for the claimed eyelash growth effect are biotin and arginine directly contradicts Defendant's representation in its marketing material and online product page that the "phyto-medic complex" is a "[r]evolutionary medicinal herb extracts clinically demonstrated to prevent hair loss and trigger natural regrowth of lashes."

36. A reasonable consumer would not interpret Defendant's lash growth/regrowth claims as being purely cosmetic in nature because Defendant's statements are that lash growth will occur gradually within stated time frames. By contrast, Defendant's LashFood Conditioning Lash Primer, a different eyelash serum, contains language that more clearly indicates that the product's results are purely cosmetic by using phrases such as "instantly achieve the look of false lashes" and that it is a lash primer "to strengthen, nourish, and prepare lashes for mascara."<sup>7</sup>

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<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Product page for LashFood Conditioning Lash Primer on Sephora.com, at <http://www.sephora.com/conditioning-lash-primer-P386265?skuId=1615277>.

37. In comparison, in the “How to Use” section of the product page of LashFood Conditioning Lash Primer, instead of suggesting “nightly” use as Defendant suggests for the Product, Defendant states:

DETAILS    **HOW TO USE**    INGREDIENTS    ABOUT THE BRAND    SHI

**Suggested Usage:**

- Apply to lashes before using regular mascara.
- Complete the lash look with any of LashFood Conditioning Drama Mascara.

Moreover, Defendant continues to recommend in the “What else you need to know” section that the LashFood Conditioning Lash Primer product should be used “as the daytime treatment and LashFood Phyto-Medic Lash Enhancer [the Product] as the nighttime treatment. Enjoy visibly longer, thicker, stronger lashes in as little as four weeks with this regimen.”

**What else you need to know:**

To achieve maximum results, use primer as the daytime treatment and LashFood Phyto-Medic Lash Enhancer as the nighttime treatment. Enjoy visibly longer, thicker, stronger lashes in as little as four weeks with this regimen. This cruelty-free product is formulated without gluten and prostaglandin. Ingredients have also been evaluated for its environmental impact (biodegradability and ecotoxicity).

<http://www.sephora.com/conditioning-lash-primer-P386265?skuId=1615277>.

38. In short, Defendant makes clear that its LashFood Conditioning Lash Primer, which retails at \$20, will not actually cause eyelashes to grow longer or thicker and is purely cosmetic in nature.

39. However, with regard to the Product, which retails at \$78 (or more), Defendant claims that it actually causes eyelash growth or regrowth when used on a nightly basis for an extended period of time.

40. Defendant knew or should have known that the Product did not contain any ingredient that would actually cause lashes to grow or regrow, and thus, would not provide any of the warranted benefits as represented throughout Defendant’s advertising, including on the Products’ labels. In

fact, there is no scientifically valid study published in reputable peer-reviewed journals demonstrating that any ingredient in the Product, including the “phyto-medic complex,” actually causes eye lashes to grow “longer, thicker, [and] stronger” in “just 4 weeks.” To the contrary, the studies conducted for Latisse® confirm that not even prescription-strength ingredients (which are not present in the LashFood Eyelash Enhancer), will cause lashes to achieve such noticeable growth as Defendant advertised within 4 weeks.

### **The Impact of Defendant’s Misleading and Deceptive Advertising**

41. Even though the Product does not cause eyelashes to physically grow or become thicker, consumers pay a premium over other lash applications, which unlike the Product are not falsely advertised as growing and thickening eyelashes. Typically, non-growth mascara such as Maybelline® Define-A-Lash® Lengthening Mascara is \$6.99 per 0.22 ounce bottle. The only reason a consumer would pay the premium price of \$78 for the LashFood Eyelash Enhancer is to obtain the lash growth/regrowth benefits, which the Product does not provide.

42. As the manufacturers, sellers and/or distributors of the Product, Defendant possess specialized knowledge regarding the content and effects of the ingredients contained in the Product on eyelash growth.

43. Defendant knew or should have known, but failed to disclose that the Product does not cause eyelashes to physically grow in length or thickness, nor trigger the regrowth of lashes, and certainly not within the time frames advertised by Defendant and they do not have competent and reliable clinical tests to support their so-called “clinical results.”

44. As a result of Defendant’s deceptive lash growth/regrowth claims, Plaintiff and other members of the proposed Class have purchased the Product that does not perform as advertised. Defendant has reaped enormous profits from their false, misleading and deceptive marketing and

sale of the Product. Plaintiff and members of the proposed Class have been deceived and/misled by Defendant's deceptive lash growth claims. Defendant's lash growth claims were a material factor in influencing Plaintiff's decision to purchase and use the Product. Plaintiff would not have purchased the premium priced Product had she known that Defendant's lash growth claims were false and misleading.

### **CLASS ACTION ALLEGATIONS**

45. Plaintiff seeks relief in his individual capacity and as representative of all others who are similarly situated. Pursuant to Rule 23(a), 23(b)(2) and/or 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiff seeks certification of the following classes:

1. The Nationwide Class

All persons or entities who purchased for personal use the Product in the United States within the applicable statute of limitations, and/or such subclasses as the Court may deem appropriate, until the date notice is disseminated.

2. The New York Class

All persons or entities in New York who purchase for personal use the Product within the applicable statute of limitations, and/or such subclasses as the Court may deem appropriate, until the date of notice is disseminated.

46. Excluded from the Classes are Defendant's current and former officers, directors, and employees, and those who purchased the Product for the purpose of resale. Also excluded from the Classes is the judicial officer to whom this lawsuit is assigned.

47. Plaintiff reserves the right to revise the Class definitions based on facts learned in the course of litigating this matter.

48. *Numerosity*. While the exact number and identities of purchasers of the Product are unknown to Plaintiff at this time, Plaintiff is informed and believes that the Nationwide Class and

the Multi-State Subclass (collectively, the “Class” or “Class Members”) contain thousands of purchasers and are so numerous that individual joinder of all Class members is impracticable.

49. *Existence and Predominance of Common Questions of Law and Fact.* Questions of law and fact arise from Defendant’s conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members and include:

- a. Whether the claims discussed above are true, or are misleading, or objectively likely to deceive;
- b. Whether Defendant’s marketing and advertising of the Product is false, fraudulent, deceptive, unlawful, or misleading;
- c. Whether Defendant has breached warranties made to the consuming public about their Product;
- d. Whether Defendant’s marketing, promotion, advertising and sale of the Product is and was a deceptive act or practice in the conduct of business directed at consumers, giving rise to consumer law violations in all other jurisdictions;
- e. Whether Plaintiff and members of the Class sustained monetary loss and the proper measure of loss;
- f. Whether Defendant’s conduct constitutes unjust enrichment, and whether equity calls for disgorgement of unjustly obtained or retained funds, restitution to, or other remedies for the benefit of the Class;
- g. Whether Plaintiff and other members of the Class are entitled to other appropriate remedies, including equitable relief; and

- h. Whether Defendant's conduct rises to the level of reprehensibility under applicable law such that the imposition of punitive damages is necessary and appropriate to fulfill the societal interest in punishment and deterrence, and the amount of such damages and/or their ratio to the actual or potential harm to the Class.

50. **Typicality.** Plaintiff's claims are typical of those of the Class members because, *inter alia*, Plaintiff and the other Class members were all injured by same uniform conduct, as detailed herein, and were subject to Defendant's lash growth claims that accompanied each and every LashFood Eyelash Enhancer product that Defendant sold. Plaintiff is advancing the same claims and legal theories on behalf of herself and all members of the Class.

51. **Adequacy of Representation.** Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained competent counsel experienced in prosecuting nationwide class actions. Plaintiff understands the nature of his claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class.

52. **Superiority.** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by any individual Class member is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendant. Thus, it would not be economically feasible for an individual class member to prosecute a separate action on an individual basis, 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.

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

54. Plaintiff seeks preliminary and permanent equitable relief on behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent Defendant from engaging in the acts described, and requiring Defendant to provide full restitution to Plaintiff and Class members.

55. Unless a Class is certified, Defendant will retain monies received as a result of their conduct that were taken from Plaintiff and Class members.

## **CAUSES OF ACTION**

### **COUNT I**

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

##### **(On Behalf of New York Class)**

56. Plaintiff realleges and incorporates herein by reference all allegations contained above as if fully set forth herein and further alleges as follows:

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

58. Defendant's business acts and practices and/or omissions alleged herein constitute deceptive acts or practices under NY GBL § 349, which were enacted to protect the consuming

public from those who engage in unconscionable, deceptive or unfair acts or practices in the conduct of any business, trade or commerce.

59. The practices of Defendant described throughout this Complaint, were specifically directed to consumers and violate the NY GBL § 349 for, inter alia, one or more of the following reasons:

- a. Defendant engaged in deceptive, unfair and unconscionable commercial practices in failing to reveal material facts and information about the Product, which did, or tended to, mislead Plaintiff and the Class about facts that could not reasonably be known by them;
- b. Defendant failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;
- c. Defendant caused Plaintiff and the Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations and/or remedies by and through its conduct;
- d. Defendant failed to reveal material facts to Plaintiff and the Class with the intent that Plaintiff and the Class members rely upon the omission;
- e. Defendant made material representations and statements of fact to Plaintiff and the Class that resulted in Plaintiff and the Class reasonably believing the represented or suggested state of affairs to be other than what they actually were;
- f. Defendant intended that Plaintiff and the members of the Class rely on their misrepresentations and omissions, so that Plaintiff and Class members would purchase the Product; and
- g. Defendant knowingly and falsely represented and advertised that the Product was fit to be used for the purpose for which it was intended, to grow longer and

thicker eyelashes or trigger the regrowth of eyelashes, when Defendant knew that the Product did not work as promised.

60. Under all of the circumstances, Defendant's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

61. Defendant's actions impact the public interest because Plaintiff and members of the Class were injured in exactly the same way as thousands of others purchasing the Product as a result of and pursuant to Defendant's generalized course of deception.

62. By committing the acts alleged in this Complaint, Defendant has misled Plaintiff and the Class into purchasing the Product, in part or in whole, due to an erroneous belief that the Product will physically cause lashes to grow longer and thicker or will trigger the regrowth of lashes in as little as four to eight weeks. This is a deceptive business practice that violates NY GBL § 349.

63. Defendant's lash growth/regrowth claims misled Plaintiff, and are likely in the future to mislead reasonable consumers. Had Plaintiff and members of the Class known of the true facts about the Product's failure to work as promised, they would not have purchased the Product and/or paid substantially less for another product.

64. The foregoing deceptive acts, omissions and practices were directed at consumers.

65. The foregoing deceptive acts, omissions and practices set forth in connection with Defendant's violations of NY GBL § 349 proximately caused Plaintiff and other members of the Classes to suffer actual damages in the form of, inter alia, monies spent to purchase the Product, and are entitled to recover such damages, injunctive relief, together with equitable and declaratory relief, appropriate damages, including punitive damages, attorneys' fees and costs.

**COUNT II**

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

**(On Behalf of New York Class)**

66. Plaintiff realleges and incorporates herein by reference all allegations contained above as if fully set forth herein and further alleges as follows:

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

68. 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.

69. 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.”

70. 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.

71. As fully alleged above, by advertising, marketing, distributing, labeling and selling LashFood Eyelash Enhancer to Plaintiff and other members of the Class, Defendants engaged in, and continues to engage in, false advertising.

72. Defendants engaged in false advertising by advertising, marketing, distributing and selling the LashFood Eyelash Enhancer as fit to be used for the purpose for which it was intended, to grow

longer and thicker eyelashes or trigger the regrowth of eyelashes, when Defendant knew that the Product did not work as promised.

73. Plaintiff and other members of the Class further seeks to enjoin such unlawful deceptive acts and practices as described above. Each of the members of the Class will be irreparably harmed unless Defendants are enjoined from falsely advertising its LashFood Eyelash Enhancers with the lash growth/regrowth claims as described herein.

74. Plaintiff and other members of the Class suffered a loss as a result of Defendants' false advertising. Specifically, as a result of Defendants' false advertising, Plaintiff and other Class members suffered monetary losses associated with the purchase of the LashFood Eyelash Enhancer, because they would not have purchased the Product had they known the truth about the Product, or at least would not have purchased the Product at the premium price.

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

### **COUNT III**

#### **NEGLIGENT MISREPRESENTATION**

##### **(On Behalf of the Nationwide Class)**

76. Plaintiff realleges and incorporates herein by reference all allegations contained above as if fully set forth herein and further alleges as follows:

77. Defendant, directly or through their agents and employees, made false representations, concealments, and nondisclosures to Plaintiff and members of the Class.

78. In making the representations of fact to Plaintiff and members of the Class described herein, Defendant has failed to fulfill their 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.

79. 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.

80. Plaintiff and members of the Class relied upon these false representations and nondisclosures by Defendant when purchasing the Product, which reliance was justified and reasonably foreseeable.

81. 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 the Product, and any interest that would have been accrued on those monies, all in an amount to be determined according to proof at time of trial.

#### **COUNT IV**

#### **BREACH OF EXPRESS WARRANTIES**

#### **(On Behalf of the Nationwide Class)**

82. Plaintiff realleges and incorporates herein by reference all allegations contained above as if fully set forth herein and further alleges as follows:

83. The Uniform Commercial Code section 2-313 provides that an affirmation of fact or promise, including a description of the goods, becomes part of the basis of the bargain and creates an express warranty that the goods shall conform to the promise and to the description.

84. At all times, New York and other states have codified and adopted the provisions of the Uniform Commercial Code governing the express warranty of merchantability.

85. Plaintiff, and each member of the Class, formed a contract with Defendant at the time Plaintiff and the other members of the Class purchased the LashFood Eyelash Enhancer. The terms of that contract include the lash growth promises and affirmations of fact made by Defendant on the Product's labels and packages as described above. The lash growth/regrowth claims made by Defendant constitute express warranties that became part of the basis of the bargain, and are part of a standardized contract between Plaintiff and the members of the Class on the one hand, and Defendant on the other. Plaintiff and the Class members placed importance on Defendant's lash growth claims.

86. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiff and the Class.

87. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing a Product that grows or thickens eyelashes, let alone in the time frames represented, as described above.

88. As a proximate result of Defendant's breach of their warranties, Plaintiff and Class members have suffered damages in an amount of the purchase price of the LashFood Eyelash Enhancer products they purchased.

### **COUNT V**

#### **UNJUST ENRICHMENT**

#### **(On Behalf of the Nationwide Class)**

89. Plaintiff realleges and incorporates herein by reference all allegations contained above as if fully set forth herein and further alleges as follows:

90. Defendant received certain monies as a result of their uniform deceptive marketing of the Product that are excessive and unreasonable.

91. Plaintiff and the Class conferred a benefit on Defendant through purchasing the Product, and Defendant has knowledge of this benefit and have voluntarily accepted and retained the benefits conferred on them.

92. Defendant will be unjustly enriched if they are allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Defendant and for which Defendant has been unjustly enriched.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the Class, seeks judgment against Defendant, as follows:

- a. An Order that this action be maintained as a class action and appointing Plaintiff as representative of the Class;
- b. An Order appointing the undersigned attorney as class counsel in this action;
- c. Awarding restitution and disgorgement of all amounts obtained by Defendant as a result of their misconduct, together with interest thereon from the date of payment, to Plaintiff and the proposed Class members;
- d. Awarding declaratory relief as permitted by law or equity, including: enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with Court supervision, victims of their conduct and pay them all money they are required to pay;
- e. Statutory pre-judgment and post-judgment interest on any amounts;
- f. Awarding attorneys' fees and costs; and



g. Such other relief as the Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff, on behalf of herself and the Class, demands a trial by jury on all questions of fact raised by the Complaint.

Dated: November 16, 2015

Respectfully submitted,

**LEE LITIGATION GROUP, PLLC**

C.K. Lee (CL 4086)

Anne Seelig (AS 3976)

Shanshan Zheng (SZ 3301)

30 East 39th 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



JS 44 (Rev. 1/2013)

**CIVIL COVER SHEET**

CV 15-6551

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 by the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

**I. (a) PLAINTIFFS**  
**MENG WANG, on behalf of herself and others similarly situated,**

(b) County of Residence of First Listed Plaintiff Queens  
 (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**  
**JB LINE, INC. d/b/a JB COSMETICS, BRODIE, J.**

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

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

Attorneys (If Known) **ORENSTEIN, M.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)

Citizen of This State	PTF DEF	<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF DEF	<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)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<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 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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			<b>PROPERTY RIGHTS</b>	
			<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<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
			<b>LABOR</b>	<b>SOCIAL SECURITY</b>
		<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"/> 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))	
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>		<b>FEDERAL TAX SUITS</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"/> 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"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<b>IMMIGRATION</b>	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

**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); New York General Business Law Section 349**

Brief description of cause:  
**Deceptive and Unfair Trade Practices**

**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 Nov 16, 2015 SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

FOR OFFICE USE ONLY    RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

4653094989

U.S. DISTRICT COURT EASTERN DISTRICT OF NEW YORK  
 2015 NOV 16 PM 2:57  
 FILED CLERK

BRODIE, T.

ORENSTEIN, M.J.

~~CONFIDENTIAL~~

PROPOSED

**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 Plaintiff, 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 or 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 \_\_\_\_\_

