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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**

-----x  
MIAO XIN HU nd JOHN DOES 1-100, :  
*on behalf of themselves and others similarly* :  
*situated,* :

Plaintiffs, :

- against - :

TRISTAR FOOD WHOLESALE CO INC. :  
and KINDLY KING FOODSTUFF :  
(ZHONGSHAN) CO., LTD., :

Defendants. :  
-----x

**CV 15**

**6954**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

**IRIZARRY, J.**

**KUO, M.J.**

Plaintiffs, MIAO XIN HU and JOHN DOES 1-100 (together, "Plaintiffs") individually, and on behalf of all other persons similarly situated, by their undersigned attorneys, as and for their Complaint against the Defendants, TRISTAR FOOD WHOLESALE CO INC., and KINDLY KING FOODSTUFF (ZHONGSHAN) CO., LTD., allege the following based upon personal knowledge as to themselves and their own action, and, as to all other matters, respectfully allege, upon information and belief, as follows (Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery):

### **NATURE OF THE ACTION**

1. This action seeks redress for a deceptive and otherwise improper business practice that Defendants, TRISTAR FOOD WHOLESALE CO INC., and KINDLY KING FOODSTUFF (ZHONGSHAN) CO., LTD. (hereinafter, “Defendants”), engage in with respect to the packaging of their “Hong Kong Sovereign Emperor” Luxury Egg Roll product (“Egg Roll Product” or “Product”). The Egg Roll Product is sold in a tin box with a net weight of 400 grams.

2. The Egg Roll Product is packaged in containers made, formed or filled as to be misleading and contain non-functional slack-fill in violation of the Federal Food Drug & Cosmetic Act (“FDCA”) Section 403(d) (21 U.S.C. 343(d)), the Code of Federal Regulations Title 21 part 100, *et. seq.*, various state laws with requirements mirroring the FDCA, and the consumer protection laws of the fifty states and the District of Columbia. The size of the box in comparison to the actual product makes it appear that the consumer is buying more than what is actually being sold.

3. The Egg Roll Product is sold in a tin box that is 5 inches in height, 7 inches in length and 7 inches in width. The non-transparent tin box packaging gives the impression that the entire box is filled with egg roll biscuits. However, due to the employment of an inch-high false bottom inside the tin box packaging, the egg rolls only fill through above the false bottom and do not fill to the tin box’s capacity. As such, the Product is packaged in such a way to give the false impression that consumers are buying more than they are actually receiving.

4. Plaintiffs and Class members viewed Defendants’ misleading Product packaging, reasonably relied in substantial part on the representations and were thereby deceived in deciding to purchase the Product for a premium price.

5. Plaintiffs bring this proposed consumer class action on behalf of themselves and all other persons nationwide, who from the applicable limitations period up to and including the present (the “Class Period”), purchased for consumption and not resale of the Egg Roll Product.

6. During the Class Period, Defendants manufactured, marketed and sold the Product throughout the United States. Defendants purposefully sold the Product in containers made, formed or filled as to be misleading and with non-functional slack-fill.

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

- a. Alabama Deceptive Trade Practices Act, Ala. Statutes Ann. §§ 8-19-1, *et seq.*;
- b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak\_ Code § 45.50.471, *et seq.*;
- c. Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;
- d. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- e. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- f. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
- g. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
- h. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- i. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
- j. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- k. Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
- l. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
- m. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
- n. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
- o. Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;
- p. Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
- q. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.*;
- r. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;
- s. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.*;
- t. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
- u. Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- v. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;

- w. Michigan Consumer Protection Act, § § 445.901, *et seq.*;
- x. Minnesota Prevention of Consumer Fraud Act, Minn. Stat § § 325F.68, *et seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
- y. Mississippi Consumer Protection Act, Miss. Code Ann. § § 75-24-1, *et seq.*;
- z. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- aa. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.*;
- bb. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- cc. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. § § 598.0903, *et seq.*;
- dd. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*;
- ee. New Jersey Consumer Fraud Act, N.J. Stat. Ann. § § 56:8 1, *et seq.*;
- ff. New Mexico Unfair Practices Act, N.M. Stat. Ann. § § 57 12 1, *et seq.*;
- gg. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law § § 349, *et seq.*;
- hh. North Dakota Consumer Fraud Act, N.D. Cent. Code § § 51 15 01, *et seq.*;
- ii. North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes § § 75-1, *et seq.*;
- jj. Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. § § 4165.01. *et seq.*;
- kk. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- ll. Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- mm. Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.*;
- nn. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- oo. South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;
- pp. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws § § 37 24 1, *et seq.*;
- qq. Tennessee Trade Practices Act, Tennessee Code Annotated § § 47-25-101, *et seq.*;
- rr. Texas Stat. Ann. § § 17.41, *et seq.*, Texas Deceptive Trade Practices Act, *et seq.*;
- ss. Utah Unfair Practices Act, Utah Code Ann. § § 13-5-1, *et seq.*;
- tt. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;
- uu. Virginia Consumer Protection Act, Virginia Code Ann. § §59.1-196, *et seq.*;
- vv. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;
- ww. West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*;
- xx. Wisconsin Deceptive Trade Practices Act, Wis. Stat. § § 100. 18, *et seq.*;
- yy. Wyoming Consumer Protection Act, Wyoming Stat. Ann. § §40-12-101, *et seq.*

8. Defendants' misbranding is intentional. Defendants have been unjustly enriched as a result of their conduct. Through these unfair and deceptive practices, Defendants have collected millions of dollars from the sale of their Product that they would not have otherwise earned.

9. Plaintiffs' claims are not barred by the doctrine of preemption because courts routinely recognize that state law causes of action are not preempted by the Nutritional Labeling

and Education Act (codified as the FDCA, 21 U.S.C. 343 *et seq.*) if they “seek to impose requirements that are identical to those imposed by the FDCA.” *Ackerman v. Coca-Cola Co.*, No. 09-0395, 2010 WL 2925955, at \*6 (E.D.N.Y. July 21, 2010) (citing *Bates v. Dow Agrosciences L.L.C.*, 544 U.S. 431, 432 (2005)).

10. Plaintiffs’ claims are not barred by the doctrine of primary jurisdiction. Courts routinely refuse to apply the doctrine of primary jurisdiction to consumer cases. The primary jurisdiction doctrine does not apply when “the issue at stake is legal in nature and lies within the traditional realm of judicial competence.” *In re Frito-Lay N. Am., Inc. All Natural Litig.*, No. 12-MD-2413 RRM RLM, 2013 WL 4647512, at \*8 (E.D.N.Y. Aug. 29, 2013) (citing *Goya Foods, Inc. v. Tropicana Products, Inc.*, 846 F.2d 848, 851 (2d Cir.1988)). The claims alleged herein are “far less about science than [they are] about whether a label is misleading ... and the reasonable-consumer inquiry upon which some of the claims in this case depends is one to which courts are eminently well suited, even well versed.” *In re Frito-Lay N. Am.*, 2013 WL 4647512 at \*8.

#### **JURISDICTION AND VENUE**

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

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

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

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

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

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

### **PARTIES**

#### ***Plaintiffs***

17. Plaintiff MIAO XIN HU is, and at all times relevant hereto has been, a citizen of the State of New York and resides in Kings County. Plaintiff HU has purchased the Egg Roll Product for personal consumption in Queens County. In or about December 2015, Plaintiff HU purchased a box of the Egg Roll Product from an Asian supermarket in the Flushing area in Queens County. Plaintiff HU purchased the Product in reliance on Defendants' packaging in containers made, formed or filled as to be misleading and contained non-functional slack-fill.

Specifically, the tin box packaging of the Product contains approximately 20% slack-fill. Had Plaintiff HU known the truth about Defendants' misrepresentations, she would not have purchased the premium priced Product but would have purchased less expensive biscuit products. Further, should Plaintiff HU encounter the Product in the future, she could not rely on the truthfulness of the packaging, absent corrective changes to the packaging. However, Plaintiff HU would still be willing to purchase the current formulation of the Product, absent the price premium, so long as Defendants engage in corrective advertising.

18. Plaintiffs JOHN DOES 1-100 are, and at all times relevant hereto has been, citizens of the any of the fifty states and the District of Columbia. During the Class Period, Plaintiffs JOHN DOES 1-100 purchased the Product for personal consumption or household use within the United States. Plaintiffs purchased the Product at a premium price and were financially injured as a result of Defendants' deceptive conduct as alleged herein.

*Defendants*

19. Defendant TRISTAR FOOD WHOLESALE CO INC. ("Defendant TRISTAR") is a business corporation incorporated under the laws of the state of New Jersey and with its headquarters and address for service of process at 115 Amity St, Jersey City, NJ 07304. Defendant TRISTAR imported, distributed and sold the Egg Roll Product and other food products from China to millions of consumers nationwide, including in New York.

20. Defendant KINDLY KING FOODSTUFF (ZHONGSHAN) CO., LTD. ("Defendant KINDLY KING") is a Chinese food product manufacturer with an address at Changmingshui Industrial Zone, Wuguishan, Zhongshan, Guangdong, China. Defendant manufactured, advertised, marketed and sold the Egg Roll Product and other food products to millions of consumers worldwide, including in New York.

## **FACTUAL ALLEGATIONS**

### **Federal & State Laws and Regulations Regarding Misbranded Food**

21. Under the Federal Food Drug and Cosmetic Act (herein “FDCA”), Section 403(d) (codified as 21 U.S.C. § 343(d)), a food shall be deemed misbranded “[i]f its container is so made, formed, or filled as to be misleading.” Consumer protection laws of the fifty states and the District of Columbia correspond to the requirements of the FDCA, 21 U.S.C. §§ 343 *et seq.*

22. Defendants’ packaging and advertising of the Product also violate various state laws against misbranding which mirror federal law. New York state law broadly prohibit the misbranding of food in language identical to that found in regulations promulgated pursuant to the FDCA, 21 U.S.C. §§ 343 *et seq.*:

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

23. Additionally, pursuant to 21 C.F.R. 100.100:

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

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

- (1) Protection of the contents of the package;
- (2) The requirements of the machines used for enclosing the contents in such package;
- (3) Unavoidable product settling during shipping and handling;
- (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;



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

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

However, none of the above safe-harbor provisions applies to the Product. Defendants intentionally incorporated non-functional slack-fill in its packaging of the Product in order to mislead the consumers, including Plaintiffs and members of the Class. *Waldman v. New Chapter, Inc.*, 714 F. Supp. 2d 398, 405 (E.D.N.Y. 2010) (“Misleading consumers is not a valid reason to package a product with slack-fill. *See* 21 C.F.R. § 100.100(a)(1–6).”).

**Defendants’ Product Contains Non-Functional Slack-Fill**

24. Defendants manufacture and distribute snack products under the brand Hong Kong Sovereign Emperor, including the Egg Roll Product.

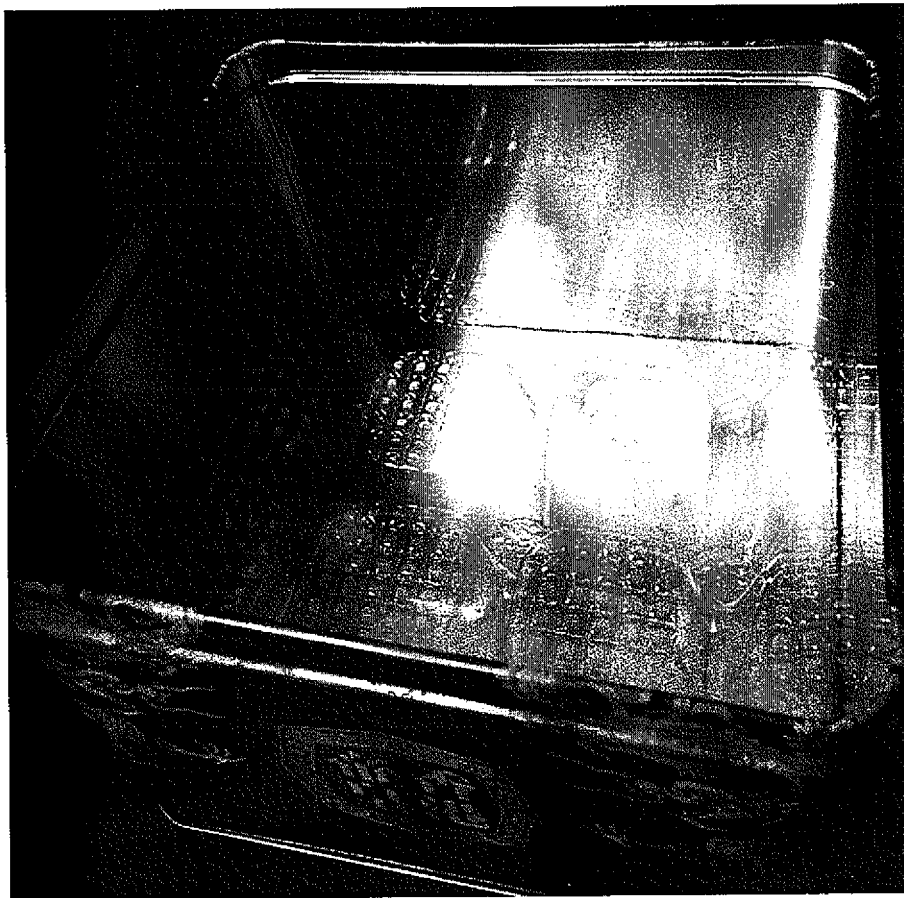
25. Defendants sell their Product at Asian grocery stores throughout the United States.

26. Defendants have routinely employed slack-filled packaging containing non-functional slack-fill to mislead consumers into believing that they were receiving more than they actually were.

27. Defendants lacked any lawful justification for doing so.

28. The packaging of the Egg Roll Product that Plaintiffs purchased was approximately 5 inches in height, 7 inches in length and 7 inches wide.

29. Pictures of the Product and packaging are shown below:





30. The Egg Roll Product is sold in a tin box that is approximately 5 inches in height, 7 inches in length and 7 inches in width. The non-transparent tin box packaging gives the impression that the entire box is filled with egg roll biscuits. However, due to the employment of an inch-high plastic bed as a false bottom inside the tin box packaging, the egg rolls only fill through above the plastic bed and do not fill to the tin box's capacity. As such, the Product is packaged in such a way to give the false impression that consumers are buying more than they are actually receiving.

31. The volume of the tin box packaging is approximately 245 cubic inches whereas the volume of the space above the plastic bed as shown above is approximately 196 cubic inches, leaving a difference of approximately 49 cubic inches or approximately 20% of non-functional slack-fill.

32. Non-functional “slack-fill is the difference between the actual capacity of a container and the volume of product contained within.” 21 C.F.R. 100.00. Plaintiffs and Class members were (and a consumer would reasonably be) misled about the volume of the product contained within the box in comparison to the size of the Egg Roll Product’s packaging. Plaintiffs paid the full price of the Egg Roll Product and only received 80% of what Defendants represented they would be getting due to the 20% non-functional slack-fill. In order for Plaintiffs and Class members to be made whole, they would have to have paid less for the Product, or, in the alternative, they would need to receive a refund of the purchase price of the Product equal to the percentage of non-functional slack-fill in the Product.

33. Defendants intentionally packaged the Egg Roll Product with a false bottom inside the tin box which does not serve any functional purpose other than to mislead Plaintiffs and Class members into believing that they were getting more of the Product than what was actually being sold. Plaintiffs and Class members viewed and reasonably relied on such misleading packaging in purchasing the Egg Roll Product.

34. Under the FDCA, 21 U.S.C. § 343(d), a food shall be deemed misbranded “[i]f its container is so made, formed, or filled as to be misleading.”

35. Under the Federal Food Drug and Cosmetic Act (herein “FDCA”), the term “false” has its usual meaning of “untruthful,” while the term “misleading” is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, but still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. “Misleading” is judged in reference to “the ignorant, the unthinking and the credulous who, when making a

purchase, do not stop to analyze.” *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled.

36. Defendants’ packaging and advertising of the Product violate various state laws against misbranding with requirements which mirror the FDCA, including N.Y. AGM. LAW § 201.

37. Defendants’ Product is misbranded under New York state law because they misled Plaintiffs and Class members about the volume of the Product contained within the Product packaging in comparison to the size of such packaging. The size of the Egg Roll box in relation to the actual amount of the Product contained therein gives the false impression that the consumer is buying more than they are actually receiving.

**Plaintiffs Relied on Defendants’ Misleading and Deceptive Conduct and Were Injured as a Result**

38. The types of misrepresentations made above were considered by Plaintiffs and Class members (as would be considered by a reasonable consumer) when deciding to purchase the Product. Reasonable consumers, including Plaintiffs and Class members, attached importance to whether Defendants’ Product was “misbranded,” *i.e.*, not legally salable, or capable of legal possession, and/or contain non-functional slack-fill.

39. Plaintiffs and Class members did not know, and had no reason to know, that the Egg Roll Product contained non-functional slack-fill.

40. Defendants’ Product packaging was a material factor in Plaintiffs’ and Class members’ decisions to purchase the Product. Based on Defendants’ Product packaging, Plaintiffs and Class members believed that they were getting more of the Egg Roll Product than was actually being sold. Had Plaintiffs known Defendants’ packaging was slack-filled, they would not have bought the slack-filled Product.

41. Defendants' Product packaging as alleged herein is deceptive and misleading and was designed to increase sales of the Egg Roll Product. Defendants' misrepresentations are part of its systematic Product packaging practice.

42. Plaintiffs and Class members paid the full price of the Product and received less of what Defendants represented they would be getting due to the non-functional slack-fill in the Product. In order for Plaintiffs and Class members to be made whole, Plaintiffs and Class members would have to have paid less for the Product. In the alternative, Plaintiffs and members of the Class are damaged by the percentage of non-functional slack-fill relative to the purchase price they paid.

43. There is no practical reason for the non-functional slack-fill used to package the Product other than to mislead consumers as to the actual volume of the Product being purchased by consumers.

44. In reliance on Defendants' deception, consumers – including Plaintiffs and members of the proposed Class – have purchased Product that contain non-functional slack-fill. Moreover, Class members have paid a premium equal to the percentage of non-functional slack-fill in the Product.

45. At the point of sale, Plaintiffs and Class members relied on Defendants' misbranded packaging in deciding to purchase the Egg Roll Product. Plaintiffs and Class members did not know, and had no reason to know, that the Egg Roll Product were misbranded as set forth herein, and would not have bought the Product had they known the truth about it.

46. Defendants' non-functional slack-fill packaging is misleading and in violation of FDCA and consumer protection laws of each of the fifty states and the District of Columbia, and the Product at issue is misbranded as a matter of law. Misbranded products cannot be legally

manufactured, advertised, distributed, held or sold in the United States. Plaintiffs and Class members would not have bought the Product had they known that it was misbranded and illegal to sell or possess.

47. As a result of Defendants' misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Product.

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

49. Plaintiffs have standing to sue in this case because Plaintiffs have "(1) a personal injury in fact, (2) which is caused by Defendants' misleading packaging and labeling practices alleged herein, and (3) which a favorable decision will likely redress." *Mahon v. Ticor Title Ins. Co.*, 683 F.3d 59, 62 (2d Cir.2012). Courts have routinely held that economic injury is sufficient for the standing requirement. *See, e.g., In re Frito-Lay N. Am.*, 2013 WL 4647512 at \*11.

#### **CLASS ACTION ALLEGATIONS**

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

All persons or entities in the United States who made retail purchases of Egg Roll Product in containers made, formed or filled as to be misleading and contain non-functional slack-fill, specifically Egg Roll Product packaged in tin boxes with a stated net weight of 400g, during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The proposed Classes exclude current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants' legal

representatives, heirs, successors, assigns, and any entity in which it has or has had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

51. Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

52. Numerosity: This action has been brought and may properly be maintained as a class action against Defendants under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are hundreds of thousands of members in the Class. Based on sales of the Product, it is estimated that each Class is composed of more than 10,000 persons. Furthermore, even if subclasses need to be created for these consumers, it is estimated that each subclass would have thousands of members. The members of the Class are so numerous that joinder of all members is impracticable and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the courts. Other members of the Class may be identified from records maintained by Defendants and may be notified of the pendency of this action by mail, or by advertisement, using the form of notice similar to that customarily used in class actions such as this.

53. Typicality: Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct, as detailed herein.

54. Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of the Class in that they have no interests antagonistic to those of the other members of the Class. Plaintiffs have retained experienced and competent counsel.



55. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages sustained by individual Class members may be relatively small, the expense and burden of individual litigation make it impracticable for the members of the Class to individually seek redress for the wrongful conduct alleged herein. 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. If Class treatment of these claims were not available, Defendants would likely unfairly receive thousands of dollars or more in improper charges.

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

- i. Whether Defendants labeled, packaged, marketed, advertised and/or sold the Egg Roll Product to Plaintiffs, and those similarly situated, using false, misleading and/or deceptive packaging and labeling;
- ii. Whether Defendants' action constitute violations of 21 C.F.R. 100, *et. seq.*;
- iii. Whether Defendants' actions constitute violations of food labeling laws in of the fifty states and the District of Columbia;
- iv. Whether Defendants' actions constitute violations of consumer protection laws of the fifty states and the District of Columbia;
- v. Whether Defendants omitted and/or misrepresented material facts in connection with the labeling, packaging, marketing, advertising and/or sale of the Egg Roll Product;

- vi. Whether Defendants' labeling, packaging, marketing, advertising and/or selling the Egg Roll Product constituted an unfair, unlawful or fraudulent practice;
- vii. Whether Defendants' packaging of the Egg Roll Product constituted non-functional slack-fill;
- viii. Whether, and to what extent, injunctive relief should be imposed on Defendants to prevent such conduct in the future;
- ix. Whether the members of the Class have sustained damages as a result of Defendants' wrongful conduct;
- x. The appropriate measure of damages and/or other relief;
- xi. Whether Defendants have been unjustly enriched by its scheme of using false, misleading and/or deceptive labeling, packaging or misrepresentations, and;
- xii. Whether Defendants should be enjoined from continuing its unlawful practices.

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

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

59. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class

predominate over any questions affecting only individual members; and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

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

61. Defendants' conduct is generally applicable to the Class as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendants' systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

### **CAUSES OF ACTION**

#### **COUNT I**

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

62. Plaintiff HU repeats and realleges each and every allegation contained above as if fully set forth herein, and further alleges as follows:

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

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

65. Any person who has been injured by reason of any violation of NY GBL § 349 may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in

its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

66. The practices employed by Defendants, whereby Defendants advertised, promoted, marketed and sold their Egg Roll Product in packages resulting in over 20% non-functional slack-fill are unfair, deceptive and misleading and are in violation of the NY GBL § 349 and 21 C.F.R. 100.100 in that said Egg Roll Product is misbranded. 21 C.F.R. 100.100 provides in part:

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

67. Defendants should be enjoined from packaging their Egg Roll Product with 20% non-functional slack-fill as described above pursuant to NY GBL § 349 and 21 C.F.R. 100.100.

68. The practices employed by Defendants, whereby Defendants advertised, promoted, marketed and sold their Egg Roll Product in packages containing a false bottom are unfair, deceptive and misleading and are in violation of the NY GBL § 349 in that said Egg Roll Product is misbranded.

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

70. Defendants should be enjoined from packaging their Egg Roll Product with a false bottom as described above pursuant to NY GBL § 349.

71. Plaintiff HU, on behalf of herself and all others similarly situated, respectfully demands a judgment enjoining Defendants' conduct, awarding costs of this proceeding and attorneys' fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

## **COUNT II**

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

72. Plaintiff HU repeats and realleges each and every allegation contained above as if fully set forth herein, and further alleges as follows:

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

74. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts and practices by misbranding their Egg Roll Product as seeming to contain more in the packaging than is actually included.

75. The practices employed by Defendants, whereby Defendants advertised, promoted, marketed and sold their Egg Roll Product in packages resulting in over 20% non-functional slack-fill are unfair, deceptive and misleading and are in violation of 21 CFR 100.100 in that said Egg Roll Product is misbranded.

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

77. Plaintiff HU and the other Class members suffered a loss as a result of Defendants' deceptive and unfair trade acts. Specifically, as a result of Defendants' deceptive and unfair acts and practices, Plaintiff HU and the other Class members suffered monetary losses

associated with the purchase of the Egg Roll Product, i.e., receiving only less than 80% of the capacity of the packaging due to over 20% non-functional slack-fill.

### **COUNT III**

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

78. Plaintiff HU repeats and realleges each and every allegation contained above as if fully set forth herein, and further alleges as follows:

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

80. 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.

81. 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.”

82. 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.

83. As fully alleged above, by advertising, marketing, distributing, labeling and selling the Egg Roll Product to Plaintiff HU and other members of the Class, Defendants engaged in, and continues to engage in, false advertising.

84. Defendants engaged in false advertising by advertising, marketing, distributing and selling the Egg Roll Product in containers made, formed or filled as to be misleading and contain approximately 20% non-functional slack-fill.

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

86. Defendants should be enjoined from packaging their Egg Roll Product in containers made, formed or filled as to be misleading and contain approximately 20% non-functional slack-fill and falsely advertising their Egg Roll Product as containing more product than is actually contained.

87. 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 HU and other members of the Class have suffered damages in an amount to be determined at trial.

#### **COUNT IV**

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

88. Plaintiff HU repeats and realleges each and every allegation contained above as if fully set forth herein, and further alleges as follows:

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

90. As fully alleged above, by advertising, marketing, distributing, labeling and selling the Egg Roll Product to Plaintiff HU and other members of the Class, Defendants engaged in, and continues to engage in, false advertising.

91. Defendants engaged in false advertising by advertising, marketing, distributing and selling the Egg Roll Product in containers made, formed or filled as to be misleading and contain approximately 20% non-functional slack-fill.

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

93. Plaintiff HU 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 HU and other Class members suffered monetary losses associated with the purchase of the Egg Roll Product in tin boxes, i.e., receiving less of the product than would be reasonably expected from such packaging size and as advertised as part of the box size.

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

#### **COUNT V**

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

95. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein, and further allege as follows:

96. Defendant, directly or through their agents and employees, made false representations, concealment and nondisclosures to Plaintiffs and members of the Class.



Defendants, through their deceptive packaging of the Product, makes uniform representations regarding the Product.

97. To state a claim for negligent misrepresentation, a plaintiff must allege that “(1) the parties stood in some special relationship imposing a duty of care on the defendant to render accurate information, (2) the defendant negligently provided incorrect information, and (3) the plaintiff reasonably relied upon the information.” *Amos v. Biogen Idec, Inc.*, No. 13-CV-6375T, 2014 WL 2882104, at \*5 (W.D.N.Y. June 25, 2014).

98. To determine the existence of a “special relationship” in a commercial transaction, a court examines three factors: “whether the person making the representation held or appeared to hold a unique or special expertise; whether a special relationship of trust or confidence existed between the parties; and whether the speaker was aware of the use to which the information would be put and supplied it for that purpose.” *Hughes v. Ester C Co.*, 930 F. Supp. 2d 439, 474–75 (E.D.N.Y. 2013).

99. Plaintiffs and Defendants had a special relationship. Defendants, as the manufacturer, packager, labeler and seller of the Product purchased by the Plaintiffs, had a duty to disclose the true nature of the Product and not sell the Product in misleading containers. Defendants had exclusive knowledge of material facts not known or reasonably accessible to the Plaintiffs; Defendants actively concealed material facts from the Plaintiffs and Defendants made partial representations that are misleading because some other material fact has not been disclosed. By packaging and distributing the Product in containers with a false bottom inside, Defendants created an impression that the product packaging was proportionate to the actual volume of product contained therein.

100. Defendants' failure to disclose the misleading nature of the Product packaging constitutes material misrepresentations and misleading omissions. Such misrepresentations and misleading omissions materially misled the Plaintiffs who relied on Defendants in this regard to disclose all material facts accurately and truthfully and fully.

101. Plaintiffs and members of the Class reasonably relied on Defendants' representation that their Product contain more product than actually packaged.

102. In making the representations of fact to Plaintiffs and members of the Class described herein, Defendants have failed to fulfill their duty to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendant's negligence and carelessness.

103. Defendants, 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. Defendants made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the Class.

104. Plaintiffs and members of the Class would have acted differently had they not been misled – i.e. they would not have paid money for the Product in the first place.

105. Defendants have a duty to correct the misinformation it disseminated through the deceptive packaging of the Product. By not informing Plaintiffs and members of the Class, Defendants breached their duty. Defendants also profited financially as a result of this breach.

106. Plaintiffs and members of the Class relied upon these false representations and nondisclosures by Defendants when purchasing the Product, upon which reliance was justified and reasonably foreseeable.

107. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs 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 all those monies, all in an amount to be determined according to proof at time of trial.

108. Defendants acted with intent to defraud, or with reckless or negligent disregard of the rights of Plaintiffs and members of the Class.

109. Plaintiffs and members of the Class are entitled to damages, including punitive damages.

## **COUNT VI**

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

110. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein, and further allege as follows:

111. Defendants intentionally made materially false and misleading representations regarding the size, amount and contents of the Egg Roll Product.

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

113. Defendants knew or should have known of their false and misleading packaging, misrepresentations and omissions. Defendants nevertheless continued to promote and encourage customers to purchase the Product in a misleading and deceptive manner.

114. Plaintiffs and the Class have been injured as a result of Defendants' fraudulent conduct.

115. Defendants are liable to Plaintiffs and the Class for damages sustained as a result of Defendants' fraud, in an amount to be determined at trial.

## **COUNT VII**

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

116. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein, and further allege as follows:

117. As a result of Defendants' deceptive, fraudulent and misleading labeling, packaging, advertising, marketing and sales of the Egg Roll Product, Defendants were enriched, at the expense of Plaintiffs and the Class, through the payment of the purchase price for Defendants' Egg Roll Product.

118. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits that it received from Plaintiffs, and all others similarly situated, in light of the fact that the quantity of the Egg Roll Product purchased by Plaintiffs and the Class, was not what Defendants purported it to be by its labeling and packaging. Thus, it would be unjust or inequitable for Defendants to retain the benefit without restitution to Plaintiff, and all others similarly situated, for 20% of the purchase price of the Egg Roll Product, which represents the percentage of the amount of product actually received (80%) to the size of the packaging.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

- (A) For an Order certifying the nationwide Class and under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representative of the Class and Plaintiffs' attorneys as Class Counsel to represent members of the Class;
- (B) For an Order declaring the Defendants' conduct violates the statutes referenced herein;
- (C) For an order finding in favor of Plaintiffs and the Class;
- (D) For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- (E) For prejudgment interest on all amounts awarded;
- (F) For an order of restitution and all other forms of equitable monetary relief;
- (G) For injunctive relief as pleaded or as the Court may deem proper;
- (H) For an Order awarding Plaintiffs and the Class their reasonable attorneys' fees and expenses and costs of suit; and
- (I) For such other and further relief as the Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

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

Dated: December 7, 2015

Respectfully submitted,

**LEE LITIGATION GROUP, PLLC**

C.K. Lee (CL 4086)

Anne Seelig (AS 3976)

Shanshan Zheng (SZ 3301)

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

New York, NY 10016

Tel.: 212-465-1188

Fax: 212-465-1181

*Attorney for Plaintiffs and the Class*



BY: C.K. Lee, Esq.

JS 44 (Rev. 1/2013)

## 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

MIAO XIN HU and JOHN DOES 1-100

## DEFENDANTS

TRISTAR FOOD WHOLESALE CO INC. and KINDLY KING FOODSTUFF (ZHONGSHAN) CO., LTD.

County of Residence of First Listed Defendant Hudson

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

(b) County of Residence of First Listed Plaintiff Kings

(EXCEPT IN U.S. PLAINTIFF CASES)

CV 15 6954

(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

## 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)

IRIZARRY, J.

KUO, M.J.

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

☐ PTF ☐ DEF Citizen of This State

☐ 2 ☐ 2 Citizen of Another State

☐ 3 ☐ 3 Citizen or Subject of a Foreign Country

☒ 1 ☐ 1 Incorporated or Principal Place of Business in This State

☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State

☐ 3 ☐ 3 Foreign Nation

## 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	<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 <b>LABOR</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 <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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>FEDERAL TAX SUITS</b> <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
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <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>PRISONER PETITIONS</b> <input type="checkbox"/> 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 <input type="checkbox"/> 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); 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

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

4653095723

**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 Plaintiffs, 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: 