

1 E. Elliot Adler (SBN #229030)
 2 *EAdler@theadlerfirm.com*
 3 Brittany S. Zummer (SBN # 299808)
 4 *BZummer@theadlerfirm.com*
 5 **ADLER LAW GROUP, APLC**
 6 402 W. Broadway, Suite 860
 San Diego, CA 92101
 Telephone: (619) 531-8700

7 *Attorneys for Plaintiff Yossi Tiefenbrun*
 8 *on behalf of himself and others similarly situated*

9 **UNITED STATES DISTRICT COURT**
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

11		)	Case No.: <u>'15CV2842 CAB KSC</u>
12)	
13	YOSSI TIEFENBRUN,	)	CLASS ACTION COMPLAINT
14	individually and on behalf	)	1. Violation of Consumer Legal
15	of all others similarly	)	Remedies Act – Cal. Civ. Code
16	situated,	)	§§ 1750 <i>et seq.</i>;
17		)	2. Violation of Unfair
18	Plaintiff,	)	Competition Law – Cal. Bus. &
19	v.	)	Prof. Code §§ 17200 <i>et seq.</i>;
20	EAGLE EYE MARKETING	)	3. Violation of False Advertising
21	GROUP, INC.	)	Law – Cal. Bus. & Prof. Code
22		)	§§ 17500 <i>et seq.</i>
23	Defendants.	)	4. Breach of Express Warranty
24		)	5. Breach of Implied Warranty of
25		)	Merchantability
26)	
27)	
28)	

JURY DEMANDED

1 Plaintiff Yossi Tiefenbrun (**“Plaintiff”**), by and through his undersigned
2 counsel, individually and on behalf of all others similarly situated (the **“Class”**),
3 allege the following facts and claims upon personal knowledge and upon
4 information and belief as to all other matters as follows.

5 **NATURE OF THE ACTION**

6 1. Eagle Eye Marketing Group, Inc. (**“Eagle Eye”** or **“Defendant”**)
7 designed, marketed, and sold a “liquid lawn seeder” to Plaintiff and Class
8 members called “Hydro Mousse”. Hydro Mousse is comprised of a “high quality”
9 seed mixture and a “spray n’ stay” technology purportedly designed to attach seed
10 to the soil and reduce the seeds water surface tension. Hydro Mousse is advertised
11 as a “quick and easy” way to grow grass. According to the product’s packaging,
12 “the grass grows where you spray it.”

13 2. At the time of sale to Plaintiff and the Class, Hydro Mousse contained an
14 inherent defect in that it did not and could not perform as advertised.

15 3. Defendant’s marketing and packaging of Hydro Mousse leads consumers
16 to believe that they are purchasing a professional level do-it-yourself
17 hydroseeding product that is “quick and easy” to use and grows grass where you
18 spray it, in hot or cold weather.

19 4. Plaintiff purchased Hydro Mousse, and paid a substantial price premium
20 over comparable grass seed products, in reliance on Defendant’s promises that
21 Hydro Mousse is a “quick and easy” lawn seeder that “eliminates guesswork by
22 clearly showing [the customer] where [he or she] is planting” and allows the
23 customer to go “from seed to sod just like the pros.”

24 5. Hydro Mousse is advertised as “perfect for: dog spots, large areas, high
25 traffic areas, and shaded areas.” According to the label and advertising, “the grass
26 grows where you spray it!”
27
28

1 6. The Internet is replete with consumer complaints that describe Hydro
2 Mousse’s failure to grow grass or perform as otherwise advertised. For example,
3 one customer wrote:

4 Purchased this, followed direction to a T – it is junk. Came out of
5 spray bottle, hit the ground, absorbed and nothing! This is a total
6 scam waste of money....I would highly suggest buying something
else. Do not waste your money.

7 Another customer wrote:

8 This product is worthless. I’m sorry I ever spent the money. I would
9 never recommend this product to anyone.

10 Another customer wrote:

11 I did as instructed. I put it on the front & back lawn. Nothing came
12 up, most seed were in bottom of container. A total waste of money.

13 7. Hydro Mousse’s design renders the product completely worthless.
14 Nevertheless, Hydro Mousse is labeled and sold as a professional-quality product,
15 and it commands a substantial price premium over other grass seed products.

16 8. At all times relevant, Defendant knew that Hydro Mousse was inherently
17 defective and not fit for its intended purpose of growing a professional quality
18 lawn with minimal effort and at a fraction of the cost. Nonetheless, Defendant
19 actively concealed and failed to disclose this fact to Plaintiff and the Class
20 members at the time of their purchases.

21 9. As a result of the inherent defect in the Hydro Mousse product and
22 Defendant’s failure to disclose the defect to consumers, Plaintiff and Class
23 members have suffered damages.

24 10. Accordingly, on behalf of himself and the proposed Class, Plaintiff brings
25 this lawsuit against Defendant for violations of California Civil Code §§ 1750 *et*
26 *seq.* (“CLRA”), Business & Professions Code §§ 17200 *et seq.* (“UCL”),
27
28

1 California Business & Professions Code §§ 17500 *et seq.* (“FAL”), breach of
2 express warranty, and breach of implied warranty of merchantability.

3 **Parties**

4 11. Plaintiff Yossi Tiefenbrun is a California citizen who resides in San
5 Diego County, California. Plaintiff purchased Hydro Mousse from Home Depot
6 in San Diego County during the class period. Plaintiff reasonably expected that
7 Hydro Mousse would perform as advertised, i.e. as a professional-quality, quick
8 and easy liquid lawn seeder that would grow grass in hard-to-grow areas. Plaintiff
9 reasonably expected the grass to grow where he sprayed Hydro Mousse, as
10 promised by the packaging, label and advertisements.

11 12. On information and belief, Defendant Eagle Eye Marketing Group, Inc.
12 is a Canadian corporation, with its corporate headquarters located at 119-600
13 Eglinton Ave. E., Suite 412, Toronto, ON M4G 2K2. Defendant operates from
14 one or more locations in the United States, including 400 Returns Road,
15 Wallingford, Connecticut 06494.

16 **Jurisdiction and Venue**

17 13. This Court has subject matter jurisdiction pursuant to the Class Action
18 Fairness Act (CAFA) because the matter in controversy in this matter exceeds the
19 sum or value of \$5,000,000 as to all putative Class members, exclusive of
20 attorney’s fees and costs. 28 U.S.C. §§ 1332(d), 1453, and 1711-1715.

21 14. This Court also has diversity jurisdiction over this matter pursuant to 28
22 U.S.C. § 1332 in that Plaintiff is a resident and citizen of the State of California
23 while Defendant is a Canadian corporation headquartered in Toronto, Ontario,
24 Canada.

25 15. This Court has personal jurisdiction over Defendant because Defendant
26 conducts business in the County of San Diego, State of California. Therefore,
27 Defendant has sufficient minimum contacts with this state, and otherwise
28

1 purposely avails itself of the markets in this state through the promotion, sale, and
2 marketing of its product Hydro Mousse in this state, to render the exercise of
3 jurisdiction by this Court permissible under traditional notions of fair play and
4 substantial justice.

5 16. Venue is proper in the United States District Court for the Southern
6 District of California pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
7 Plaintiff resides in the County of San Diego, State of California which is within
8 this judicial district; (ii) Plaintiff purchased the product in San Diego County,
9 State of California, within this judicial district; and (iii) many of the acts and
10 transactions giving rise to this action occurred in this district, including Plaintiff's
11 purchase and use of Hydro Mousse and Plaintiff's resulting harm.

12
13 **Factual Background**

14 ***Hydro Mousse Product and Marketing***

15 17. Defendant claims that Hydro Mousse is a quick and easy liquid lawn
16 seeder that "eliminates guesswork by clearly showing you where you're planting."

17 18. Defendant marketed and distributed Hydro Mousse both online and
18 through retail outlets in California and across the country.

19 19. Defendant's Hydro Mousse packaging, television advertisements, and
20 internet site are replete with false and misleading statements about the nature,
21 characteristics, and qualities of Hydro Mousse. Among these false claims is that
22 Hydro Mousse is "Perfect For: Dog Spots, Large Areas, High Traffic Areas, and
23 Shaded Areas;" "The grass grows where you spray it!;" and that the consumer can
24 go "From Seed to Sod Just like the Pros!"

25 20. Thousands of purchasers have experienced problems with Hydro Mousse
26 in that the product does not perform as advertised, if at all. Common complaints
27 include: the container does not spray properly, and that most of the seeds will still
28

1 be left in the bottom after all of the green mousse has been sprayed out; if you are
2 able to get all the seed out, there is only enough in the bottle to cover about 20
3 square feet as opposed to the 100 square feet promised; the trigger shown on the
4 bottle in the commercial isn't actually functional – instead, once you turn on the
5 water, everything in the bottle comes out all at once, which means that there isn't
6 an ability to spot treat; failure to experience any growth, despite following all of
7 the manufacturer's recommendations for soil preparation. Complaints posted on
8 the internet demonstrate that the defect is widespread and that Defendant has had
9 knowledge of the defect for quite some time.

10 21. Defendant's false and misleading claims are in willful and wanton
11 disregard of the interests of the consuming public, and they constitute a knowing
12 attempt to deceive consumers.

13 22. Defendant has caused Plaintiff and members of the Class to expend
14 money for a product that does not perform as advertised and is effectively
15 worthless.

16 ***Plaintiff's Facts***

17 23. On August 20, 2015, Plaintiff purchased a Hydro Mousse Liquid Lawn
18 Kit from The Home Depot at 3555 Sports Arena Boulevard, San Diego, CA
19 92110, in San Diego County, State of California, for \$19.98, excluding sales tax.

20 24. Plaintiff purchased Hydro Mousse in reliance on Defendant's
21 misrepresentations about the product's fundamental qualities, including those
22 found on the product labeling and in various advertisements and promotional
23 materials. Specifically, he chose to purchase Hydro Mousse instead of a less
24 expensive grass seed because of promises that use of Hydro Mousse would make
25 his lawn go "From Seed to Sod Just like the Pros," and that "The grass grows
26 where you spray it!" and is "Perfect for: dog sports, high traffic areas, shaded
27 areas."
28

1 25. Plaintiff paid a tangible increased cost for Hydro Mousse because of the
2 false claims that he read on the product packaging and saw in various
3 advertisements and promotional materials, on which he relied. Ultimately, Hydro
4 Mousse was worthless, and Plaintiff would not have purchased Hydro Mousse if
5 he had known that the claims on the label and in the advertisements and
6 promotional materials were false.

7 26. On or around August 20, 2015, Plaintiff seeded his lawn with the Hydro
8 Mousse product, and he carefully followed Hydro Mousse's directions for use and
9 care on the product package. However, Hydro Mousse did not perform as
10 advertised. In fact, it did not grow at all.

11
12 **CLASS ACTION ALLEGATIONS**

13 27. Plaintiff brings this action on behalf of himself and other members of the
14 Class defined as:

15 All California residents who, during the applicable statute of
16 limitations period, purchased Hydro Mousse in the United States.

17 28. Members of the Class are so numerous that their individual joinder herein
18 is impracticable. The precise number of Class members and their identities are
19 unknown to Plaintiff at this time but may be readily determined from Defendant's
20 records and other discovery.

21 29. Common questions of law and fact exist as to all Class members and
22 predominate over questions affecting only individual Class members. Common
23 legal and factual questions include, but are not limited to:

- 24 a. Whether Defendant's labeling, marketing and promotion of Hydro Mousse
25 is false and misleading;
- 26 b. Whether Defendant knew of the inherent defect in its Hydro Mousse
27 product;
- 28

- 1 c. Whether Defendant's conduct in marketing, selling, and distributing Hydro
2 Mousse constitutes a violation of the California Consumers Legal
3 Remedies Act, California Civil Code §§ 1750 *et seq.*;
- 4 d. Whether Defendant's conduct in marketing, selling, and distributing Hydro
5 Mousse constitutes a violation of California's Unfair Business Practices
6 Act, California Business & Professions Code §§ 17200 *et seq.*;
- 7 e. Whether Defendant's conduct in marketing, selling, and distributing Hydro
8 Mousse constitutes a violation of California's False Advertising Law,
9 California Business & Professions Code §§ 17500 *et seq.*;
- 10 f. Whether Defendant breached any express warranties;
- 11 g. Whether Defendant breached the implied warranty of merchantability;
- 12 h. Whether members of the Class have sustained damages as a result of
13 Defendant's conduct and, if so, what is the proper measure and appropriate
14 formula to be applied in determining such damages; and
- 15 i. Whether Defendant should be ordered to disgorge, for the benefit of the
16 Class, all or part of the ill-gotten profits it received from the sale of
17 defective Hydro Mousse, or make full restitution to Plaintiff and the
18 members of the Class.

19 30. The claims of the named Plaintiff are typical of the claims of the Class in
20 that Plaintiff was exposed to and relied on Defendant's false and misleading
21 marketing of Hydro Mousse and suffered a loss as a result of his Hydro Mousse
22 purchase.

23 31. Plaintiff is an adequate representative of the Class because his interests
24 do not conflict with the interests of the Class members he seeks to represent, he
25 has retained competent counsel experienced in prosecuting class actions, and he
26 intends to prosecute this action vigorously. The interests of the Class members
27 will be fairly and adequately protected by Plaintiff and his counsel.
28

1 36. CLRA § 1770(a)(7) prohibits “[r]epresenting that goods or services are of
2 a particular standard, quality, or grade, or that goods are of a particular style or
3 model, if they are of another.” Defendant violated this provision by making the
4 misrepresentations described more fully above.

5 37. CLRA § 1770(a)(9) prohibits “advertising goods or services with intent
6 not to sell them as advertised.” Defendant violated this provision by making the
7 misrepresentations described more fully above.

8 38. CLRA § 1770(a)(16) prohibits “[r]epresenting the subject of a transaction
9 has been supplied in accordance with a previous representation when it has not.”
10 Defendant violated this provision by making the misrepresentations described
11 more fully above.

12 39. Plaintiff and the Class members suffered injuries caused by Defendant’s
13 misrepresentations because they would not have purchased Hydro Mousse if they
14 knew the truth about the product.

15 40. Pursuant to California Civil Code § 1782(a), on or about September 17,
16 2015, Plaintiff, on behalf of himself and other similarly situated consumers, sent
17 a certified letter, through his counsel, to Defendant notifying Defendant of its
18 violations of the CLRA and complying in all respects with California Civil Code
19 § 1782(a).

20 41. Plaintiff, on behalf of himself and the Class, seeks all remedies authorized
21 by the CLRA, including actual damages, injunctive relief, restitution, punitive
22 damages, any other relief that the Court deems proper, attorneys’ fees, and costs
23 of suit.

24 ///

25 ///

26 ///

27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE OF ACTION

(Violation of California’s Unfair Business Practice Act, California Business and Professions Code §§ 17200 *et seq.*)

42. Plaintiff hereby incorporates by reference each of the preceding paragraphs as though fully set forth herein.

43. California’s Unfair Competition Law (“UCL”), codified in California Business & Professions Code §§ 17200 *et seq.*, makes actionable “any unlawful, unfair *or* fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” *See* Cal. Bus. & Prof. Code § 17200 (*emphasis added*).

44. Defendant’s conduct, described herein, violated the “unlawful” prong of the UCL by violating the CLRA and the FAL.

45. Defendant’s conduct is also “unfair” because it is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct.

46. Defendant’s conduct, described herein, violated the “fraudulent” prong of the UCL by making the misrepresentations described more fully above.

47. As a direct and proximate result of Defendant’s unfair and deceptive practices, Plaintiff and the Class have suffered and will continue to suffer actual damages.

THIRD CAUSE OF ACTION

(Violation of California’s False Advertising Law, California Business and Professions Code §§ 17500 *et seq.*)

48. Plaintiff hereby incorporates by reference each of the preceding paragraphs as though fully set forth herein.

49. California’s False Advertising Law, Bus. & Prof. Code §§ 17500 *et seq.*, makes it “unlawful for any person...to make or disseminate or cause to be made

1 or disseminated before the public in this state, ... in...any advertising device... or
2 in any other manner or means whatever, including over the Internet, any
3 statement, concerning...personal property or those services, professional or
4 otherwise,...or performance or disposition thereof, which is untrue or misleading
5 and which is known, or which by the exercise of reasonable care should be known,
6 to be untrue or misleading.”

7 50. Defendant committed acts of false advertising, as defined by § 17500, by
8 making the misrepresentations described more fully above.

9 51. Defendant knew or should have known, through the exercise of
10 reasonable care, that the misrepresentations were untrue and misleading.

11 52. Defendant’s actions in violation of § 17500 were false and misleading
12 such that the general public is and was likely to be deceived.

13 53. As a direct and proximate result of Defendant’s FAL violations, Plaintiff
14 and the Class members suffered lost money or property because they would not
15 have purchased Hydro Mousse if they knew the truth about the product.

16 **FOURTH CAUSE OF ACTION**

17 **(Breach of Express Warranty)**

18 54. Plaintiff hereby incorporates by reference each of the preceding
19 paragraphs as though fully set forth herein.

20 55. Defendant affirmed the fact, promised, and/or described that the Hydro
21 Mousse product would grow grass where it was sprayed, in “hot or cold weather”
22 and in difficult conditions including “dry spots, dog spots, high traffic areas and
23 shade,” and that with Hydro Mousse, the consumer could “go from seed to sod
24 just like the pros!” Defendant’s affirmations of fact, promises and/or descriptions
25 became part of the basis of the bargain. Thus, Defendant’s affirmations of fact,
26 promises and/or descriptions of Hydro mousse created express warranties to
27 Plaintiff and each of the members of the Class.

28

1 56. In fact, Hydro Mousse products were not fit for such purpose because
2 each of the express warranties were false and misleading.

3 57. As a direct and proximate result of Defendant's breach, Plaintiff and the
4 Class members were injured because they would not have purchased Hydro
5 Mousse if they knew the truth about the product.

6 **FIFTH CAUSE OF ACTION**

7 **(Breach of Implied Warranty of Merchantability)**

8 58. Plaintiff hereby incorporates by reference each of the preceding
9 paragraphs as though fully set forth herein.

10 59. Plaintiff and the Class bought Hydro Mousse, a consumer good,
11 manufactured, marketed, distributed and/or sold by Defendant.

12 60. Defendant as the designer, manufacturer, marketers, distributor, and/or
13 seller impliedly warranted that Hydro Mousse was fit for its intended purpose that
14 it would grow grass where it was sprayed even in difficult to grow areas and would
15 produce professional quality grass.

16 61. Defendant breached the warranty implied in the contract for the sale of
17 the Hydro Mousse product in that Hydro Mousse could not pass without objection
18 in the trade under the contract description, the goods were not of fair average
19 quality within the description, and the goods were unfit for their intended and
20 ordinary purpose. As a result, Plaintiff and the Class members did not receive the
21 goods as impliedly warranted by Defendant to be merchantable.

22 62. As a result of Defendant's breach, Plaintiff and the Class sustained
23 damages.

24 **PRAAYER FOR RELIEF**

25 WHEREFORE, the Representative Plaintiff, on behalf of herself and all
26 persons and consumers similarly situated, pray for judgment against Defendant as
27 follows:
28

1 63. That an order certifying the Class defined herein be entered designating
2 Plaintiff and her counsel as representatives of said Class;

3 64. For a preliminary injunction enjoining Defendant, its successors and
4 assigns and all others, known and unknown, from continuing to deceive
5 consumers in the manner set forth in this complaint;

6 65. For permanent injunctive relief against Defendant under the CLRA and
7 UCL;

8 66. An order requiring Defendant to make corrective disclosures;

9 67. That Defendant be ordered to make restitution to Plaintiff and each member
10 of the Plaintiff Class under each cause of action in an amount according to proof at
11 trial;

12 68. A judgment awarding Plaintiff and the Class compensatory, exemplary and
13 punitive damages;

14 69. For other equitable relief;

15 70. For attorney's fees as provided by law;

16 71. For prejudgment interest as provided by law;

17 72. For costs of suit; and

18 73. For such other relief as this Court deems to be just and equitable.

19

20 **JURY TRIAL DEMAND**

21 Plaintiff hereby demands a trial by jury.

22

23 Dated: December 17, 2015

By: /s/ Elliot Adler

24

E. Elliot Adler, Esq.

25

Brittany S. Zummer, Esq.

26

*Attorneys for Plaintiff Yossi Tiefenbrun on
behalf of himself and others similarly situated*

27

28

JS 44 (Rev 12/12)

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.)*

<p>I. (a) PLAINTIFFS</p> <p>YOSSI TIEFENBRUN</p> <p>(b) County of Residence of First Listed Plaintiff SAN DIEGO <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) ADLER LAW GROUP, APLC 401 W BROADWAY, STE 860, SAN DIEGO, CA 92101 T: (619) 531-8700</p>	<p>DEFENDANTS</p> <p>EAGLE EYE MARKETING GROUP, INC</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p style="text-align: right;">'15CV2842 CAB KSC</p> <p>Attorneys (If Known) LAW OFFICE OF DELAROSA & ASSOCIATES 300 EAST 77TH STREET, STE 24C, NEW YORK, NY 10075 T: (212) 570-6597</p>
--	---

<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Label & 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	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat TV <input type="checkbox"/> 850 Securities Commodities Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act-Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<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 Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>Habeas Corpus:</p> <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 <p>Other:</p> <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"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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)

Brief description of cause:
 Consumer class action - violation of several state consumer laws, and common law breach of contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions)*

JUDGE _____ DOCKET NUMBER _____

DATE: 12/17/2015

SIGNATURE OF ATTORNEY OF RECORD: s/ Elliot Adler

FOR OFFICE USE ONLY

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

1 E. Elliot Adler (SBN #229030)
 2 *EAdler@theadlerfirm.com*
 3 Brittany S. Zummer (SBN # 299808)
 4 *BZummer@theadlerfirm.com*
 5 **ADLER LAW GROUP, APLC**
 6 402 W. Broadway, Suite 860
 San Diego, CA 92101
 Telephone: (619) 531-8700

7 *Attorneys for Plaintiff Yossi Tiefenbrun*
 8 *on behalf of himself and others similarly situated*

9 **UNITED STATES DISTRICT COURT**
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

11		) Case No.: <u>'15CV2842 CAB KSC</u>
12)
13	YOSSI TIEFENBRUN, individually and on behalf of all others similarly situated,	) CLASS ACTION COMPLAINT
14)
15	Plaintiff,	) DECLARATION OF YOSS
16	v.	) TIEFENBRUN RE: CAL. CIVIL
17	EAGLE EYE MARKETING	) CODE § 1780(d)
18	GROUP, INC.)
19	Defendants.)
20)
21)
22)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Yossi Tiefenbrun, declare as follows:

1. I am a Plaintiff in this action. I have personal knowledge of the facts herein, and if called as a witness, I could and would testify competently thereto.

2. My Complaint filed in this matter contains causes of action for violation of the California Consumer Legal Remedies Act against Defendants.

3. The Complaint filed in this action is filed in the proper place for trial under California Civil Code Section 1780(d) in that a substantial portion of the transaction alleged occurred in San Diego County and because the Defendant does business in San Diego County, which is within the Southern District of California.

4. I purchased Defendant's product in San Diego County, which is within the Southern District of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on December 17, 2015 in San Diego County, California.

s/ Yossi Tiefenbrun

Yossi Tiefenbrun