

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

DONALD BLAIR and DEBBIE HOLLAND, on
behalf of themselves, and all others similarly
situated,

Plaintiffs,

v.

BED BATH & BEYOND, INC.,

Defendant.

CLASS ACTION COMPLAINT -- JURY TRIAL DEMANDED

I. INTRODUCTION

1. This case involves the marketing and sale of bed linens falsely labeled as “100% Egyptian Cotton” by retailer Bed Bath & Beyond, Inc. (“BB&B”). For years, under the label Perfect Touch and Crowning Touch, BB&B sold bed linens, manufactured by Welspun India, Ltd. (“Welspun”), labeled as “100% Egyptian Cotton.” Egyptian cotton, due to its quality and scarcity, commands a premium in the market.

2. Welspun, a large home textile manufacturer based in India and with offices in the United States, manufactures and distributes bed linens and other home textiles to BB&B and other retailers. BB&B is Welspun’s largest customer.

3. In August 2016, BB&B’s competitor, Target announced that its investigation showed that Welspun uses inferior and less expensive cottons in many of its bed linens labeled “100% Egyptian Cotton.” Target ended its relationship with Welspun, and Welspun admitted, “Without any ambiguity, the fault is on our side.”

4. In response to Target's announcement, BB&B ordered an external audit of textiles from Welspun but has continued to sell its products. Because of BB&B's conduct, consumers who purchased Welspun bed linens at BB&B overpaid for an inferior product. This action seeks full recompense for consumers.

II. PARTIES

A. Plaintiffs

5. Plaintiff, Donald Blair, at all times relevant to this action is a citizen and domiciliary of Pima County, Arizona, and purchased Crowning Touch bed linens manufactured by Welspun from a BB&B store located in Tucson, Arizona.

6. Plaintiff, Debbie Holland, at all times relevant to this action is a citizen and domiciliary of Cumberland County, North Carolina, and purchased Perfect Touch bed linens manufactured by Welspun from a BB&B store located in Fayetteville, North Carolina.

B. Defendant

7. Defendant Bed Bath & Beyond, Inc. is incorporated in New York, and has its principal place of business at 650 Liberty Avenue, Union, New Jersey. BB&B is a large chain of retail stores selling housewares and home furnishings. BB&B is also the parent company of several entities, including: World Market, Cost Plus World Market, Cost Plus, Christmas Tree Shops, Christmas Tree Shops and That! or and That!, Harmon, Harmon Face Values and buybuy BABY. The company also includes Harbor Linen and T-Y Group, a business-to-business distributor of a variety of textile products, amenities, and other goods to customers in the hospitality, cruise line, healthcare, and other industries.

III. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) because Plaintiffs and Defendant are citizens of different states and because, upon

information and belief, the aggregate amount in controversy exceeds \$5,000,000.00 exclusive of costs and interest.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), (c), and (d). Venue is proper in this District because Defendant resides, transacts business, is found and/or has agents in this District, and part of the affected interstate trade and commerce, as described below, was carried out in this District. BB&B has also submitted to this venue by litigating other substantively similar cases in this District.

10. This Court has personal jurisdiction over Defendant Bed Bath & Beyond. BB&B has conducted and continues to conduct business, including operating numerous retail stores in the State of Florida and within this District that have sold Welspun's products that were falsely labeled and marketed as 100% Egyptian Cotton. BB&B has also submitted to this Court's jurisdiction by litigating other substantively similar cases in this District.

IV. FACTS

A. The Egyptian Cotton Market

11. Commercial cotton production for export began in Egypt in the 1820s when a Frenchman discovered a species of cotton growing in a fine garden in Cairo. This cotton species, *Gossypium barbadense*, was characterized by unusually fine, long silky fibers or "staples." The fibers of *Gossypium barbadense*, or Egyptian cotton, had the unique property of being strong enough to withstand the new cotton gin while at the same time being fine enough to create very high thread count textiles.

12. When the Civil War broke out in the United States in 1861 and disrupted cotton supplies from southern states, Egyptian cotton production skyrocketed. Egyptian cotton soon became synonymous with premium cotton because textiles produced with it were both stronger and softer than textiles produced with other cottons. Indeed, the phrase "Egyptian cotton" has

become synonymous in the consuming public's mind with luxurious high-end extra-long staple cotton, which trades on commodity markets for a premium of 100% or more over regular cotton of low or middle staple length.

13. For much of the modern era, the production of Egyptian cotton was highly subsidized by the Egyptian government. Beginning in the 1990's; however, protectionist policies were gradually relaxed under the influence of economic policies advocated by the International Monetary Fund. The result has been a slow decline in Egyptian cotton production, which has been exacerbated by political and economic instability. The U.S. Department of Agriculture predicts that in 2016, Egypt will produce only one-third of the cotton produced in 2006.

14. Because of falling production, obtaining genuine Egyptian cotton has become increasingly difficult. Because only *Gossypium barbadense* grown in Egypt can be called Egyptian Cotton, the predictable result has been rampant fraud. Indeed, the Cotton Egypt Association estimates that approximately 90% of cotton marketed as "Egyptian cotton" is not, in fact, Egyptian cotton.

B. Bed Bath & Beyond Markets and Sold Welspun bed Linens Falsely Labeled as "100% Egyptian Cotton."

15. In corporate presentations, Welspun India claims: "Your comfort is our commitment." Welspun manufactured and distributed bed linens and other home textiles to U.S. retailers, including, but not limited to, Defendant BB&B, Target, JC Penney and Wal-Mart.

16. In the mid-2000s, Welspun determined that one way to increase those profits was to "move[] up the value chain" in the U.S. market by manufacturing and selling purportedly higher end products. As part of that strategy, Welspun began a concerted campaign to distribute

home textiles, including bed linens, purportedly made from “100% Egyptian Cotton,” which would be perceived as “softer and finer” with “higher counts of yarn” *i.e.*, higher thread counts.

17. On information and belief, BB&B entered into contracts with Welspun to sell its “100% Egyptian Cotton” bed linens and other home textiles at BB&B stores nationwide and online. BB&B sold the “100% Egyptian Cotton” bed linens under the labels, Perfect Touch and Crowning Touch.

18. On information and belief, BB&B is Welspun’s largest retail customer in the United States.

19. By marketing certain bed linens as “100% Egyptian Cotton,” BB&B could sell the bed linens at a premium to bed linens not labeled as “100% Egyptian Cotton.”

20. Sometime prior to August 2016, BB&B’s competitor, Target, became aware that Welspun might be substituting cheaper non-Egyptian cotton in its Fieldcrest label bed linens.

21. On August 19, 2016, after “extensive investigation,” Target confirmed that “Welspun substituted another type of non-Egyptian cotton when producing bed linens between August 2014 and July 2016.” On the same day, Target terminated its relationship with Welspun.

22. After Target’s announcement, Welspun admitted to its conduct, stating: “Without any ambiguity, the fault is on our side.”

23. Reportedly, BB&B and other retailers, such as JC Penney and Wal-Mart, started investigations.

24. On or about August 24, 2016, BB&B said that it had ordered an external audit of textiles from Welspun.

25. In November 2016, BB&B announced that it would continue to do business with Welspun but would no longer sell its bed linens labeled “100% Egyptian Cotton” because

Welspun could not guarantee that the fibers were 100% Egyptian Cotton. A spokesperson for BB&B stated that the company was “extremely disappointed in these findings.”

C. Bed Bath & Beyond’s Conduct Violates the U.S. Textile Fiber Products Identification Act

26. The Textile Fiber Products Identification Act (“Textile Act”), 15 U.S.C. § 70, *et seq.*, and the Rules and Regulations governing it (found at 16 C.F.R. Part 303) apply to the labeling and advertising of textile fiber products, including bed linens, which are manufactured, sold, advertised, or offered for sale in commerce.

27. Textile fiber products covered by the Textile Act are required to have a label listing the fiber content, country of origin, and identifying the manufacturer or another business responsible for marketing or handling the item.

28. The fiber disclosure for cotton products may include the name of a type of cotton, such as Egyptian cotton, as long the name is truthful and not deceptive.

29. Under Federal Trade Commission (FTC) guidelines, if the type of cotton is included in the product label and the product is made from various kinds of cotton, the label must give the cotton’s percentage by weight and make clear that other types of cotton were used to make the product. The FTC gives the following example, “a sheet that contains 65% Pima Cotton and 35% Upland Cotton may be labeled “100% Cotton,” “100% Cotton (65% Pima Cotton),” “65% Pima Cotton, 35% Upland Cotton,” or “65% Pima Cotton, 35% Other Cotton.”

30. The FTC cotton labeling guidelines go on to say: “If your product contains more than one kind of cotton, a content statement that claims the product is made of only one type of cotton is not acceptable. For example, **when a sheet contains 50% Egyptian Cotton and 50% Upland Cotton, a fiber content label that reads, “100% Egyptian Cotton,” is**

unacceptable.” See <https://www.ftc.gov/tips-advice/business-center/guidance/calling-it-cotton-labeling-advertising-cotton-products> (emphasis added).

31. Pursuant to the Textile Act, the sale, offering for sale, and/or advertising, of “any textile fiber product which has been advertised or offered for sale in commerce, and which is misbranded or falsely or deceptively advertised” ... “is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act.” See 15 U.S.C. § 70a.

32. “A textile fiber product shall be misbranded if it is falsely or deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.” 15 U.S.C. § 70b.

33. Both manufactures and sellers of textile fiber products, such as BB&B, must comply with the Textile Act. In fact, in 2015, the FTC filed a complaint against BB&B alleging that it marketed and sold rayon textile products falsely described as bamboo. See *U.S. v. Bed Bath & Beyond, Inc.*, No. 15-cv-2129 (D.C.). BB&B entered into a stipulated judgment with the FTC and was enjoined from violating any provision of the Textile Act. *Id.*, Stipulated Judgment and Order, Dkt. No. 3.

34. BB&B’s partner, Welspun, is also covered by the Act and is required to maintain records showing compliance with the Textile Act for at least three years. 15 U.S.C.A. §§ 70d(a)-(b). Upon information and belief, such records are located at Welspun’s headquarters.

35. BB&B’s conduct, as detailed in this Complaint, violates the Textile Act. BB&B sold, offered for sale, and/or advertised bed linens labeled as “100% Egyptian Cotton” when they were not.

D. Injury to Plaintiffs

1. Donald Blair

36. In October 2015, Plaintiff Blair visited a BB&B store located at 4811 E. Grant Road in Tucson, Arizona and purchased a set of bed linens.

37. Plaintiff purchased a set of queen-size Crowning Touch sheets.

38. In purchasing the bed linens, Plaintiff relied on the fact that the bed linens were labeled “100% Egyptian Cotton.” Plaintiff believed that the bed linens were indeed 100% Egyptian cotton, and, because of this, he purchased them because he believed the bed linens were higher quality, softer, and more durable bed linens than other cotton bed linens not made from Egyptian cotton.

39. BB&B charges more for sheets labeled 100% Egyptian Cotton than comparable sheets made from lesser cotton. As a result, Plaintiff paid a premium for the bed linens.

40. On information and belief, these bed linens are among the Welspun bed linens not containing “100% Egyptian Cotton” as labeled. As a result of BB&B’s misrepresentation, Plaintiff was damaged and seeks full reimbursement of all monies paid.

2. Debbie Holland

41. In 2015, Plaintiff Holland visited a BB&B store located at 5075 Morganton Road in Fayetteville, North Carolina and purchased a set of bed linens.

42. Plaintiff purchased a set of king-size Perfect Touch sheets.

43. In purchasing the bed linens, Plaintiff relied on the fact that the bed linens were labeled “100% Egyptian Cotton.” Plaintiff believed that the bed linens were indeed 100% Egyptian cotton, and, because of this, she purchased them because she believed the bed linens were higher quality, softer, and more durable bed linens than other cotton bed linens not made from Egyptian cotton.

44. BB&B charges more for sheets labeled 100% Egyptian Cotton than comparable sheets made from lesser cotton. As a result, Plaintiff paid a premium for the bed linens.

45. On information and belief, these bed linens are among the Welspun bed linens not containing “100% Egyptian Cotton” as labeled. As a result of BB&B’s misrepresentation, Plaintiff was damaged and seeks full reimbursement of all monies paid.

V. CLASS ALLEGATIONS

46. This action has been brought, and may be properly maintained, under Federal Rules of Civil Procedure 23(a) (1)-(4), 23(b)(3).

47. Plaintiffs bring this action as a Class Action on behalf of himself and all others similarly situated as a member of a Nationwide Class, defined as follows:

All persons who purchased bed linens from Bed Bath & Beyond which were manufactured by Welspun and labeled “100% Egyptian Cotton.”

48. Upon further investigation and discovery, other products may be discovered to be falsely labeled “100% Egyptian Cotton,” and Plaintiffs reserve the right to amend the class definition.

49. Excluded from the Class are Defendants; any entity in which Defendants have a controlling interest; any of the officers, directors, or employees of Defendants; and the legal representatives, heirs, successors and assigns of Defendants.

50. The members of the Class are so numerous and widely dispersed that joinder of them in one action is impractical. On information and belief, there are thousands of class members who have purchased bed linens at BB&B falsely advertised as “100% Egyptian Cotton.”

51. There are common questions of law and fact as to all members of the Class that predominate over any questions affecting individual class members, including but not limited to:

- a. Whether Defendant represented the bed linens as 100% Egyptian cotton when they were not;
- b. Whether Defendant knew that the bed linens were not 100% Egyptian cotton;
- c. Whether Defendant knew it had insufficient evidence upon which to represent the bed linens were made from 100% Egyptian cotton.
- d. Whether Defendant marketed or sold the bed linens as made from 100% Egyptian cotton when in fact they were not.
- e. Whether Defendant charged higher prices for the bed linens that they otherwise would have by labeling them as 100% Egyptian cotton;
- f. Whether Defendant negligently misrepresented the fiber content of its bed linens;
- g. Whether Defendant breached express and implied warranties under state law;
- h. Whether Defendant was unjustly enriched;
- i. Whether Defendant violated state consumer protection statutes; and
- j. Whether Plaintiffs and class members are entitled to damages, including punitive damages, restitution, injunctive relief, and declaratory relief.

52. Plaintiffs' claims are typical of the Class they seek to represent. Both Plaintiffs and the Class claims arise out of the same course of conduct and same legal theories. Plaintiffs challenge the practices and course of conduct engaged in by Defendant with respect to the Class as a whole.

53. Plaintiffs are adequate representatives of the Class because Plaintiffs' interests do not conflict with the interests of class members Plaintiffs seek to represent. Plaintiffs have retained counsel competent and experienced in class action litigation who intend to vigorously prosecute this action.

54. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all the class members is impracticable. Furthermore, no individual class member can justify the commitment of the large financial resources to vigorously prosecute a lawsuit against Defendant and the adjudication of this

controversy through a class action will avoid the possibility of inconsistent and potentially conflicting adjudication of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

VI. CAUSES OF ACTION

COUNT I

VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT

15 U.S.C. § 2301, et seq.

55. Plaintiffs reallege Paragraphs 5 through 45 and incorporate each allegation as if set forth at length in its entirety.

56. Plaintiffs are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3), as persons entitled to enforce against the warrantor the obligations of its warranties.

57. BB&B is a “supplier” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4), because it is “engaged in the business of making a consumer product directly or indirectly available to consumers.”

58. BB&B is a “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(5), because it offered a written warranty regarding the nature of the material used to make the linens.

59. The representations described herein are “written warranties” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6), because they are a written promises made in connection with the sale of a consumer product by a supplier relating to material used to manufacture the linens and affirms that such material is defect free.

60. In the alternative, the representations described herein are ~~an~~ implied warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(7), because the written promises relating to the material used to manufacture the linens are implied warranties under state law, as described herein, and were made in connection with the sale of the product by a supplier.

61. The Magnuson-Moss Warranty Act sets forth rules governing warranties “to improve the adequacy of information available to consumers” and to “prevent deception.” 15 U.S.C. § 2302(a).

62. The Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer damaged by the failure of a warrantor to comply with a warranty.

63. BB&B warranted that the products were 100% Egyptian cotton when in fact they were not 100% Egyptian cotton in violation of the express and/or implied warranties made by Defendant.

64. A reasonable consumer would believe that the representation made by BB&B regarding the type of cotton used in the product was a true and accurate statement.

65. The representation that the products were made from 100% Egyptian cotton was deceptive.

66. BB&B breached its warranties, as described in more detail above, and is therefore liable to Plaintiffs and the Class under 15 U.S.C. § 2310(d)(1).

67. Under 15 U.S.C. § 2310(e), Plaintiffs may bring this class action and need not give Defendant notice or an opportunity to cure until the Court determines the representative capacity of Plaintiff under Rule 23 of the Federal Rules of Civil Procedure.

68. The amount in controversy of Plaintiffs’ individual claims meets or exceeds \$25.00. The amount in controversy exceeds \$50,000.00, exclusive of interest and costs, computed on the basis of all claims to be determined. Plaintiffs, individually and on behalf of the class members, seek all damages permitted by law, including a full refund of the purchase price. In addition, under 15 U.S.C. § 2310(d)(2), Plaintiffs and the other class members may recover the aggregate costs and expenses (including attorneys’ fees based on actual time expended) determined by the Court to have reasonably been incurred by Plaintiffs and the other class members in the prosecution of this action.

69. Further, Plaintiffs and the Class are also entitled to equitable relief under 15 U.S.C. § 2310(d)(1). Plaintiffs seek a declaration that BB&B cannot sell linens labeled “100% Egyptian Cotton that are less than 100% Egyptian Cotton.”

COUNT II
BREACH OF EXPRESS WARRANTY
New Jersey Law
N.J. Stat. Ann. § 12A:2-313

70. Plaintiffs reallege Paragraphs 5 through 45 and incorporate each allegation as if set forth at length in its entirety.

71. Plaintiffs and class members are “buyers” of goods within the meaning of N.J. Stat. Ann. § 12A:2-103.

72. BB&B is a “seller” of goods within the meaning of N.J. Stat. Ann. § 12A:2-103.

73. The bed linens are “goods” within the meaning of N.J. Stat. Ann. § 12A:2-105.

74. BB&B made an affirmation of fact and described the bed linens as “100% Egyptian Cotton.” This affirmation of fact and description became part of the basis of the bargain with Plaintiffs and consumers.

75. Therefore, the affirmation of fact and description of the bed linens as “100% Egyptian Cotton” created an express warranty.

76. BB&B breached the express warranty because the bed linens were not 100% Egyptian cotton.

77. As a result of BB&B’s breach of the express warranty, Plaintiffs and class members were damaged. Specifically, they paid a premium for the bed linens labeled “100% Egyptian Cotton” but received bed linens that were not 100% Egyptian cotton.

Plaintiffs have provided notice to Defendants as required by N.J. Stat. Ann. § 12A:2-607.

78. WHEREFORE, Plaintiffs demand judgment against Defendant, Bed Bath & Beyond, Inc., for damages, costs, and attorneys' fees and request trial by jury of all issues so triable.

COUNT III
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
New Jersey Law
N.J. Stat. Ann. § 12A:2-314

79. Plaintiffs reallege Paragraphs 5 through 45 and incorporate each allegation as if set forth at length in its entirety.

80. Plaintiffs and class members are "buyers" of goods within the meaning of N.J. Stat. Ann. § 12A:2-103.

81. BB&B is a "seller" of goods within the meaning of N.J. Stat. Ann. § 12A:2-103.

82. The bed linens are "goods" within the meaning of N.J. Stat. Ann. § 12A:2-105.

83. The contract for the sale of the bed linens included an implied warranty that they were merchantable, extending to Plaintiffs and class members.

84. The bed linens were labeled "100% Egyptian Cotton" but were not in fact 100% Egyptian cotton. Pursuant to N.J. Stat. Ann. § 12A:2-314, the bed linens, as labeled, did not pass without objection in the trade under the contract description; conform to the promises or affirmations of fact made on the container or label; and are not fit for the ordinary purposes for which such goods are used.

85. As a result of BB&B's breach of the implied warranty of merchantability, Plaintiffs and class members were damaged. Specifically, they paid a premium for the bed linens labeled "100% Egyptian Cotton" but received bed linens that were not 100% Egyptian cotton.

86. Plaintiffs have provided notice to Defendants as required by N.J. Stat. Ann. § 12A:2-607.

87. WHEREFORE, Plaintiffs demand judgment against Defendant, Bed Bath & Beyond, Inc., for damages, costs, and attorneys' fees and request trial by jury of all issues so triable.

**COUNT IV
NEGLIGENT MISREPRESENTATION**

88. Plaintiffs reallege Paragraphs 5 through 45 and incorporate each allegation as if set forth at length in its entirety.

89. BB&B represented that the bed linens purchased by Plaintiffs and class members were 100% Egyptian cotton.

90. There is privity of contract between BB&B and Plaintiffs and class members, and BB&B had a duty to give Plaintiffs and class members correct information about its home textile products.

91. BB&B had a duty under the Textile Act to not sell, offer for sale, or advertise home textile products containing false information regarding their fiber content.

92. BB&B was aware that Plaintiffs and other consumers would view their labeling of home textile products as "100% Egyptian Cotton" as a guarantee of superior quality and softness.

93. BB&B intended Plaintiffs and consumers to rely on those representations and pay a premium for the purportedly premium "100% Egyptian Cotton" bed linens. Indeed, the sole purpose of the misrepresentation was to induce Plaintiffs and class members to purchase BB&B's bed linens.

94. Plaintiffs and class members reasonably relied on the representation that the bed linens were "100% Egyptian Cotton" when purchasing the bed linens.

95. The bed linens purchased by Plaintiffs and class members were not, in fact, 100% Egyptian cotton.

96. As a result of this misrepresentation, Plaintiffs and class members were injured. Specifically, they paid a premium for “100% Egyptian Cotton” bed linens but received bed linens that were not “100% Egyptian Cotton.”

97. WHEREFORE, Plaintiffs demand judgment against Defendant, Bed Bath & Beyond, Inc., for damages, costs, and attorneys’ fees and request trial by jury of all issues so triable.

**COUNT V
UNJUST ENRICHMENT**

98. Plaintiffs reallege Paragraphs 5 through 45 and incorporate each allegation as if set forth at length in its.

99. BB&B falsely represented that the bed linens purchased by Plaintiffs and class members were 100% Egyptian cotton. BB&B intended for Plaintiffs and class members to rely on its representation.

100. Plaintiffs and class members reasonably relied on BB&B’s representation and suffered a detriment. They paid a premium for the bed linens labeled “100% Egyptian Cotton” but received bed linens that were not 100% Egyptian cotton.

101. BB&B received money, in the form of the premium Plaintiffs and class members paid for the bed linens, to which it was not entitled because the bed linens were not made from 100% Egyptian cotton.

102. It would be unjust for BB&B to retain the money it was unjustly enriched, specifically premium Plaintiffs and class members paid for the bed linens.

103. WHEREFORE, Plaintiffs demand judgment against Defendant, Bed Bath & Beyond, Inc., for damages, costs, and attorneys' fees and request trial by jury of all issues so triable.

COUNT VI
VIOLATION OF NEW JERSEY CONSUMER FRAUD ACT
N.J.S.A. 56:8-1 et seq.

104. Plaintiffs reallege Paragraphs 5 through 45 and incorporate each allegation as if set forth at length in its entirety.

105. Plaintiffs and class members are "persons" within the meaning of N.J. Stat. Ann. § 56:8-1.

106. BB&B is a person within the meaning of N.J. Stat. Ann. § 56:8-1.

107. The bed linens are "merchandise" within the meaning of N.J. Stat. Ann. § 56:8-1.

108. In connection with the advertisement and sale of bed linens labeled "100% Egyptian Cotton," BB&B misrepresented a material fact. The bed linens were not in fact 100% Egyptian cotton.

109. BB&B intended that Plaintiffs and class members would rely on its misrepresentation that the bed linens were 100% Egyptian cotton and pay a premium for the bed linens.

110. Plaintiffs and class members reasonably relied on BB&B's representation and suffered a loss. They paid a premium for the bed linens labeled "100% Egyptian Cotton" but received bed linens that were not 100% Egyptian cotton.

111. WHEREFORE, Plaintiffs demand judgment against Defendant, Bed Bath & Beyond, Inc., for damages, costs, and attorneys' fees and request trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and for members of the Class, respectfully request that the Court enter judgment in their favor and against Defendant, as follows:

- a) Certification of the proposed Class, including appointment of Plaintiffs' counsel as Class Counsel and Plaintiffs as Class Representatives;
- b) Costs, restitution, damages, including statutory and punitive damages, and disgorgement in an amount to be determined at trial;
- c) An order requiring Defendant to pay both pre- and post-judgment interest on any amounts awarded;
- d) An award of costs and attorneys' fees; and
- e) Such other or further relief as may be appropriate.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all the claims asserted in this Complaint.

Dated: January 24, 2017.

Respectfully submitted,

s/Edward H. Zebersky

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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
 DONALD BLAIR and DEBBIE HOLLAND, on behalf of themselves, and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Pima County, AZ
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Zebersky Payne, LLP
 110 S.E. 6th Street, Suite 2150
 Ft. Lauderdale, FL 33301 - Tel.: (954) 989-6333

DEFENDANTS
 BED BATH & BEYOND, INC.

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

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

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

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

| | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" 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 type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

| CONTRACT | PERSONAL INJURY | PERSONAL INJURY | PROPERTY | 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 checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <input type="checkbox"/> 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 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | FEDERAL TAX SUIT <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 - Transfer 8 Multidistrict Litigation - Direct File

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

Brief description of cause:
 False labeling and marketing of products

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 Federico A. Moreno DOCKET NUMBER 0:16-cv-62573

DATE 1/24/2017 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

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

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint. Class Action.** Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

DONALD BLAIR and DEBBIE HOLLAND, on behalf of themselves, and all others similarly situated,

Plaintiff(s)

v.

BED BATH & BEYOND, INC.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) BED BATH & BEYOND, INC. By serving its Registered Agent: The Prentice-Hall Corporation System, Inc. 1201 Hayes Street, Suite 105 Tallahassee, FL 32301

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Edward H. Zebersky, Esq. Zebersky Payne, LLP 110 S.E. 6th Street, Suite 2150 Ft. Lauderdale, FL 33301 ezebersky@zpllp.com

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

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: