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

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| <p>RICARLOS GUZMAN, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>TRIDENT SEAFOODS CORPORATION and COSTCO WHOLESALE CORPORATION,</p> <p style="text-align: center;">Defendants.</p> | <p>Case No.</p> <p>CLASS ACTION COMPLAINT</p> <p><u>DEMAND FOR JURY TRIAL</u></p> |
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Plaintiff, Ricarlos Guzman ("Plaintiff" or "Guzman"), a resident of New York, individually and on behalf of other similarly situated individuals, by and through his counsel, upon personal knowledge as to his own acts and status, and upon information and belief based upon the investigation of counsel as to the remaining allegations, alleges as follows:

I. INTRODUCTION

1. This is a nationwide consumer class action brought by Plaintiff on behalf of all individuals ("Class Members") who purchased the product, Kirkland Signature Wild Alaskan Fish Oil (the "Product"), for personal use and not for resale.

2. Trident Seafoods Corporation and Costco Wholesale Corporation ("Defendants" or "Trident" or "Costco") advertise, market, sell and distribute the Product in 1400 mg soft gel pills. According to the Product label, each soft gel provides 1050 mg Omega Unsaturated Fatty Acids comprising of:

Total Omega-3 Fatty Acids

330 mg

| | |
|---|--------|
| Other Omega Fatty Acids 5, 6, 7, 9 & 11 | 720 mg |
| Other Fatty Acids | 270 mg |

See, Product photos, annexed hereto as **Exhibit 1**.

3. In reality, however, and according to independent lab tests, Defendants' Product does not contain the listed amount of Other Omega Fatty Acids (omega-5, 6, 7, 9 and 11). Moreover, there is no scientific literature available to support the contention that omega-11 fatty acids are typically found in fish oil.

4. As such, the Product label is false, deceptive and misleading, and in violation of almost every state warranty, consumer protection, and product labeling law in the United States.

II. PARTIES

5. This is a nationwide consumer class action brought by Plaintiff on behalf of all individuals ("Class Members") who purchased the product, Kirkland Signature Wild Alaskan Fish Oil (the "Product"), for personal use and not for resale.

6. During the relevant period, Class Members in New York and throughout the United States purchased the Product through numerous Costco retail locations. Plaintiff and Class Members suffered an injury in fact caused by the false, fraudulent, unfair, deceptive, and misleading practices set forth in this Complaint.

7. Plaintiff, Ricarlos Guzman, is a resident of Oceanside, New York. He purchased the Product in New York for his own use during the three years preceding the filing of this Complaint, most recently at a Costco located in Westbury, New York.

8. Defendant, Trident, is a Washington corporation, with a principal place of business at 5303 Shilshole Avenue N.W., Seattle, Washington. Trident was, at all relevant times, engaged in commercial transactions throughout the United States and the State of New York, including this judicial District.

9. Defendant, Costco, is a Washington corporation, with a principal place of business at 999 Lake Drive, Issaquah, Washington. Costco was, at all relevant times, engaged in commercial transactions throughout the United States and the State of New York, including this judicial District.

III. JURISDICTION AND VENUE

10. The Court has subject matter jurisdiction over Plaintiff's class claims pursuant to 28 U.S.C. § 1332(d) because the combined claims of the proposed Class Members exceed \$5,000,000 and because Defendants are citizens of a different state than Plaintiff and most Class Members.

11. This Court has personal jurisdiction over Defendants because they regularly conduct business in this District.

12. Venue is proper in this District pursuant to: (1) 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District; and: (2) 28 U.S.C. § 1391(b)(3) in that Defendants are subject to personal jurisdiction in this District.

IV. FACTUAL ALLEGATIONS

13. Fish oil is the fat or oil that's extracted from fish tissue. It is one of the most commonly consumed dietary supplements.

14. Fish oil has been shown to have numerous benefits, including, but not limited to: (i) reducing triglycerides, (ii) reducing blood pressure levels in people with high blood pressure, (iii) reducing insulin resistance, (iv) reducing chronic inflammation, (v) helping to fight several autoimmune diseases, including type I diabetes, rheumatoid arthritis, ulcerative colitis, Crohn's disease and psoriasis, and (vi) potentially decreasing the risk of some types of cancer, including colon, prostate and breast cancer.¹

15. Naturally, these findings have sparked interest in fish oil products.

16. In fact, the global market for fish oil is projected to reach \$1.7 billion by 2018.²

17. The back label of the Product clearly states that the product contains 1050 mg Omega Unsaturated Fatty Acids comprising of:

¹ See, e.g., <http://www.drwhitaker.com/the-benefits-of-fish-oil-supplements/> (last visited February 27, 2017)

² <http://www.iffi.net/node/735> (last visited February 27, 2017)

| | |
|---|--------|
| Total Omega-3 Fatty Acids | 330 mg |
| Other Omega Fatty Acids 5, 6, 7, 9 & 11 | 720 mg |
| Other Fatty Acids | 270 mg |

See, Exhibit 1.

18. Defendants, however, are fully aware that their Product does not contain the listed amount of omega fatty acids 5, 6, 7, 9 & 11 and that their Product label is thus misleading. Moreover, there is no scientific literature available to support the contention that omega-11 fatty acids are typically found in fish oil.

18. Plaintiff's counsel had the Product tested which showed that it does not contain the listed amount of omega fatty acids 5, 6, 7, 9 & 11.

19. Based on these test results, Defendants' claim that their Product contains 720 mg of omega fatty acids 5, 6, 7, 9 & 11 is false.

20. Here, the difference between the Product promised and the Product sold is significant. The lack of the promised omega fatty acids 5, 6, 7, 9 & 11 in the Product fully diminishes the value of the Product. Consumers, including Plaintiff and Class Members, would not have purchased the Product had they known it did not contain the listed amount of omega fatty acids 5, 6, 7, 9 & 11.

21. At all relevant times, Defendant directed the above-referenced statements and claims to consumers in general and Class Members in particular, as evidenced by their eventual purchases of the Product.

22. The above facts all add up to a single conclusion: Defendants developed and knowingly employ a marketing strategy designed to deceive consumers. The only conceivable purpose of this scheme is to stimulate sales and enhance Defendants' profits.

23. Plaintiff and Class Members were in fact misled by Defendants' representations and marketing of its Product. The absence of the listed amounts of omega fatty acids 5, 6, 7, 9 & 11 leaves little reason to purchase the Product at all, since countless other proven and less-expensive fish oil supplements exist.

24. Plaintiff and Class Members would not have purchased the Product had they known the truth about the Product or Defendants' scheme to sell the Product as a misbranded supplement.

25. As an immediate, direct, and proximate result of Defendants' false, misleading, and deceptive representations and omissions, Defendants injured Plaintiff and the Class members in that they:

- (i) paid a sum of money for a product that was falsely represented;
- (ii) paid more for a product that was falsely represented than they would have paid had the product not been falsely represented;
- (iii) were deprived the benefit of the bargain because the Product they purchased was different from what the Defendants warranted;
- (iv) were deprived the benefit of the bargain because the Product they purchased had less value than what was represented;
- (v) did not receive a product that measured up to their expectations as created by Defendants;
- (vi) ingested a substance that was other than what was represented; and
- (vii) ingested a substance that was of a lower quality than what Defendants promised.

26. Had Defendants not made the false, misleading, and deceptive representations and omissions, Plaintiff and the Class members would not have been injured as listed above. Accordingly, Plaintiff and the Class members have suffered "injury in fact" as a result of Defendants' wrongful conduct.

27. Plaintiff and the Class members all paid money for the Product but did not obtain the full value of the advertised products due to Defendants' misrepresentations and omissions. Plaintiff and the Class members purchased, purchased more of, or paid more for, the Product than they would have had they known the truth about the Product. Accordingly, Plaintiff and the Class members have suffered "injury in fact" and lost money or property as a result of Defendants' wrongful conduct.

28. Nonetheless, Plaintiff would continue to purchase the Product again in the future if it were reformulated so that it did, in fact, contain the listed amount of omega fatty acids.

29. Plaintiff contends that the Product was sold pursuant to unfair and unconscionable trade practices because the sale of the Product offends public policy and is immoral, unethical, oppressive, unscrupulous, and caused substantial economic injuries to Plaintiff and Class Members.

30. Therefore, the Product is valueless, and not worth the purchase price that Plaintiff and Class Members paid for it, and/or is not what Plaintiff and Class Members reasonably intended to receive.

31. Accordingly, Plaintiff seeks, individually and on behalf of all other similarly situated purchasers of the Product during the Class Period, actual economic damages equaling the aggregate purchase price paid for the Product by Plaintiff and Class Members during the Class Period.

32. Plaintiff also seeks declaratory relief in the form of an order declaring Defendants' conduct to be unlawful, as well as injunctive and equitable relief putting an end to Defendants' misleading and unfair business practices and/or a reformulation of the Product so that it does, in fact, contain the listed amount of omega fatty acids.

V. CLASS ALLEGATIONS

33. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

34. This action is maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure.

35. The class definition(s) may depend on the information obtained throughout discovery. Notwithstanding, at this time, Plaintiff brings this action and seeks certification of the claims and certain issues in this action on behalf of a Class of individuals defined as:

All persons who purchased the Product within the United States from the beginning of any applicable limitations period through the date of class certification (the "National Class" or "the Class").

36. Additionally, Plaintiff brings this action on behalf of himself and all other similarly situated New York residents (the "New York Sub-Class"), defined as follows:

All persons who purchased the Product within the State of New York from the beginning of any applicable limitations period through the date of class certification (the “New York Class Period”).

37. Excluded from the Class and the New York Sub-Class are (1) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; and (2) the judge to whom this case is assigned and the judge’s staff.

38. Plaintiff brings the Class and the New York Sub-Class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), and 23(b)(3).

39. Plaintiff reserves the right to amend the Class definitions if further information and discovery indicate that the Class definitions should be narrowed, expanded, or otherwise modified.

40. All members of the Class and New York Sub-Class were and are similarly affected by the deceptive advertising of the Defendants, and the relief sought herein is for the benefit of Plaintiff and members of the Class and New York Sub-Class.

41. Certification of Plaintiff’s claims for class-wide treatment is appropriate because Plaintiff can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

42. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** At this time, Plaintiff does not know the exact number of the Class and New York Sub-Class members. Based on the annual sales and popularity of the Product, it is readily apparent that the number of consumers in the Class and New York Sub-Class is so large as to make joinder impracticable, if not impossible. Class and New York Sub-Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

43. **Commonality and Predominance –Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class and New York Sub-Class that predominate over questions that may affect individual Class and New York Sub-Class members include:

- a. Whether the marketing, advertising, packaging, labeling and other promotional materials for the Product are deceptive;
- b. Whether Defendants' practices and representations related to the marketing, labeling and sales of the Product were unfair, deceptive, fraudulent, and/or unlawful in any respect, thereby violating New York law;
- c. Whether Defendants' actions violated various State consumer fraud and protection statutes;
- d. Whether Defendants breached a warranty created through the labeling and marketing of the Product; and
- e. Whether Defendants were unjustly enriched at the expense of the Plaintiff and Class Members.

44. Defendants engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiff, on behalf of himself and the other Class members. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action.

45. **Typicality - Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of those of the Class and New York Sub-Class, as the claims arise from the same course of conduct by Defendants, and the relief sought within the Class and New York Sub-Class is common to the Class and New York Sub-Class members. Plaintiff, like all members of the Class and New York Sub-Class, relied on Defendants' false and misleading representations and purchased the Product, or paid more for the Product, than Plaintiff would have paid if the Product had been properly labeled, and sustained injury from Defendants' wrongful conduct. Further, there are no defenses available to Defendants that are unique to Plaintiff.

46. **Adequacy of Representation - Federal Rule of Civil Procedure 23(a)(4).** Plaintiff will fairly and adequately protect the interests of the Class and New York Sub-Class. Plaintiff is an adequate representative of the Class and New York Sub-Class because his interests do not conflict with the interests of the Class and New York Sub-Class members he seeks to represent, and he has retained counsel competent and experienced in both consumer protection and class action litigation. Plaintiff and his counsel will fairly and adequately protect the interests of the members of the Class and New York Sub-Class. Undersigned counsel has represented consumers in a variety of actions where they have sought to protect consumers from fraudulent and deceptive practices.

47. **Insufficiency of Separate Actions - Federal Rule of Civil Procedure 23(b)(1).** Absent a representative class action, members of the Classes would continue to suffer the harm described herein, for which they would have no remedy. Even if separate actions could be brought by individual consumers, the resulting multiplicity of lawsuits would cause undue burden and expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated purchasers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for Defendants. The proposed Classes thus satisfy the requirements of Fed. R. Civ. P. 23(b)(1).

48. **Predominance and Superiority of Class Action.** The prerequisites to maintaining a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) are met because questions of law and fact common to each Class and New York Sub-Class Member 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.

49. Individual joinder of the Class and New York Sub-Class Members is not practicable, and questions of law and fact common to the Class and New York Sub-Class predominate over any questions affecting only individual Class and New York Sub-Class Members. Each Class and New York Sub-Class Member has been damaged and is entitled to recovery as a result of the violations alleged herein.

50. Moreover, because the damages suffered by individual members of the Class and New York Sub-Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual Class and New York Sub-Class Members to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

51. Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

52. **Declaratory and Injunctive Relief.** Certification also is appropriate under Rule 23(b)(2) because Defendants acted, or refused to act, on grounds generally applicable to the Class and New York Sub-Class, thereby making appropriate the injunctive relief sought on behalf of the

Class and New York Sub-Class. Further, given the large number of consumers of the Product, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

CAUSES OF ACTION

COUNT I

**(Violation of New York General Business Law § 349: Mislabeling)
On Behalf of the New York Sub-Class**

53. The acts of Defendants, as described above, and each of them, constitute unlawful, deceptive, and fraudulent business acts and practices.

54. Defendants have labeled the Product as containing 720 mg of omega fatty acids 5, 6, 7, 9 & 11. In reality, however, and according to independent lab tests, Defendants' Product does not contain the listed amount of omega fatty acids 5, 6, 7, 9 & 11. Moreover, there is no scientific literature available to support the contention that omega-11 fatty acids are typically found in fish oil.

55. Defendants have violated, and continue to violate, § 349 of the New York General Business Law, which makes deceptive acts and practices unlawful. As a direct and proximate result of Defendants' violation of § 349, Plaintiff and other members of the Class and New York Sub-Class have suffered damages in an amount to be determined at trial.

56. Pursuant to New York General Business Law § 349, Plaintiff seeks an order of this Court that includes, but is not limited to, enjoining Defendants from continuing to engage in unlawful, unfair, or fraudulent business practices or any other act prohibited by law.

57. Plaintiff and the other members of the Class and New York Sub-Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

58. The unfair and deceptive acts and practices of Defendants, as described above, present a serious threat to Plaintiff and the other members of the Class and New York Sub-Class.

THEREFORE, Plaintiff prays for relief as set forth below.

COUNT II

**(Violation of the New York General Business Law §
350) On Behalf of the New York Sub-Class**

59. The acts of Defendants, as described above, and each of them, constitute unlawful, deceptive, and fraudulent business acts and practices.

60. New York General Business Law § 350 provides: “False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.”

61. GBL § 350-a defines “false advertising,” in relevant part, as “advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect.”

62. Plaintiff and the members of the Class and New York Sub-Class are consumers who purchased the Product in New York.

63. As sellers of goods to the consuming public, Defendants are engaged in the conduct of business, trade, or commerce within the intended ambit of GBL § 350.

64. Defendants’ representations made by statement, word, design, device, sound, or any combination thereof, and also the extent to which Defendants’ advertising fails to reveal material facts with respect to the Product, as described above, constitute false advertising in violation of the New York General Business Law.

65. Defendants’ false advertising was knowing and intentional.

66. Defendants’ actions led to direct, foreseeable, and proximate injury to Plaintiff and the Class and New York Sub-Class.

67. As a consequence of Defendants’ deceptive marketing scheme, Plaintiff and the other members of the Class and New York Sub-Class suffered an ascertainable loss, insofar as they would not have purchased the Product had the truth been known, or would have purchased the Product on different terms, and as a result of Defendants’ conduct, they received a product of less value than what they paid for.

68. By reason of the foregoing, Defendants are liable to Plaintiff and the other members of the Class and New York Sub-Class for actual damages or five hundred dollars (\$500) for each sale of the Product (whichever is greater), injunctive relief, attorneys' fees, and the costs of this suit.

69. Plaintiff and the other members of the Class and New York Sub-Class further seek to enjoin the false advertising described above.

70. Absent injunctive relief, Defendants will continue to deceptively market the Product.

THEREFORE, Plaintiff prays for relief as set forth below.

COUNT III

Breach of Express Warranty (On Behalf of the National Class and New York Sub-Class)

71. Plaintiff incorporates paragraphs 1 through 70 as if fully set forth herein.

72. Plaintiff, and each member of the National Class, formed a contract with Defendants when Plaintiff and the other members of the National Class purchased the Product. The terms of the contract included the promises and affirmations of fact made by Defendants on the Product's packaging and through marketing and advertising, as described above. This labeling, marketing and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between Plaintiff and the members of the National Class and Defendants.

73. Plaintiff and the members of the National Class performed all conditions precedent to Defendants' liability under this contract when they purchased the Product.

74. On January 24, 2017, Plaintiff, on behalf of himself and the National Class, provided Defendants with sufficient notice of their breach of the express warranties provided on the label of the Product. *See, Exhibit 2*, annexed hereto.

75. By providing pre-suit notice, Plaintiff has effectively notified the Defendants of the troublesome nature of his transaction within a reasonable time of discovering the breach.

76. Despite providing the above notice to the Defendants that the Product does not meet Defendant's warranties and in fact fails in many respects to perform consistent with the Product's representations, Defendants continue to hide the facts from consumers and fails to correct the

material misrepresentations regarding defects of the Product. Rather, Defendants continue to market and sell the Product in a misleading and deceptive manner.

77. Actual and/or constructive notice was duly given to Defendants of the breaches of these warranties, and Defendants have yet failed to cure.

78. Defendants breached express warranties about the Product and its qualities because Defendants' statements about the Product were false and the Product does not conform to Defendants' affirmations and promises described above.

79. Plaintiff and the members of the National Class would not have purchased the Product had they known the true nature of the Product.

80. As a result of Defendants' breach of warranty, Plaintiff and each member of the National Class has been damaged in the amount of the purchase price of the Product and any consequential damages resulting from their purchases.

COUNT IV

Breach of Implied Warranty (On Behalf of the National Class and New York Sub-Class)

81. Plaintiff incorporates paragraphs 1 through 80 as if fully set forth herein.

82. Defendants knew and intended that the members of the National Class would be the ultimate consumers of the Product.

83. Defendants sold the Product into the stream of commerce and the Defendants are merchants with respect to goods such as the Product at issue.

84. The Product was not merchantable at the time of sale, because it did not, nor could not, have any impact related to the representations as alleged herein.

85. Plaintiff and the other members of the National Class did not receive the benefit of their bargain in purchasing the Product.

86. Because of Defendants' breach of the implied warranty, the Plaintiff and the other members of the National Class were injured.

87. As a result of Defendants' breach, Plaintiff and the other members of the National Class have sustained damages.

COUNT V

**(Unjust Enrichment)
On Behalf of the Class and New York Sub-Class**

88. Plaintiff incorporates paragraphs 1 through 87 as if fully set forth herein.

89. Plaintiff and the other members of the National Class and New York Sub-Class conferred benefits on Defendants by purchasing the Product.

90. Defendants have been unjustly enriched in retaining the revenues derived from the purchases by Plaintiff and the other members of the National Class and New York Sub-Class of the Product. Retention of those monies under these circumstances is unjust and inequitable because Defendants' labeling of the Product was misleading to consumers, which caused injuries to Plaintiff and the other members of the National Class and New York Sub-Class because they would have not purchased the Product if the true facts would have been known.

91. Because Defendants' retention of the non-gratuitous benefits conferred on them by Plaintiff and the other members of the National Class and New York Sub-Class is unjust and inequitable, Defendants must pay restitution to Plaintiff and the other members of the National Class and New York Sub-Class for their unjust enrichment, as ordered by the Court.

COUNT VI

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

92. Plaintiff incorporates paragraphs 1 through 91 as if fully set forth herein.

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

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

a. **Alaska:** Defendants' practices were and are in violation of Alaska's Unfair Trade Practices and Consumer Protection Act, Alaska Stat. § 45.50.471, *et seq.*

b. **Arizona:** Defendants' practices were and are in violation of Arizona's Consumer Fraud Act, Ariz. Rev. Stat. Ann. §§ 44-1521, *et seq.*

c. **California:** Defendants' practices were and are in violation of California Consumer Legal Remedies Act, Civil Code § 1750, *et seq.*, and California's Unfair Competition Law, California Business and Professions Code § 17200, *et seq.*

d. **Colorado:** Defendants' practices were and are in violation of Colorado's Consumer Protection Act, Colo. Rev. Stat. §§ 61-1-101, *et seq.*

e. **Connecticut:** Defendants' practices were and are in violation of Connecticut's Gen. Stat. § 42-110a, *et seq.*

f. **Delaware:** Defendants' practices were and are in violation of Delaware's Consumer Fraud Act, Del. Code Ann. tit. 6, § 2511, *et seq.* and the Deceptive Trade Practices Act, Del. Code Ann. tit. 6, § 2531, *et seq.*

g. **District of Columbia:** Defendants' practices were and are in violation of the District of Columbia's Consumer Protection Act, D.C. Code § 28-3901, *et seq.*

h. **Florida:** Defendants' practices were and are in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*

i. **Hawaii:** Defendants' practices were and are in violation of the Hawaii's Uniform Deceptive Trade Practices Act, Haw. Rev. Stat. § 481A-1, *et seq.* and Haw. Rev. Stat. § 480-2.

j. **Idaho:** Defendants' practices were and are in violation of Idaho's Consumer Protection Act, Idaho Code Ann. § 48-601, *et seq.*

k. **Illinois:** Defendants' acts and practices were and are in violation of Illinois' Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/2; and Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/2.

l. **Indiana:** Defendants' practices were and are in violation of Indiana's Deceptive Consumer Sales Act, Ind. Code Ann. § 24-5-0.5-1, *et seq.*

m. **Kansas:** Defendants' practices were and are in violation of Kansas's Consumer Protection Act, Kat. Stat. Ann. § 50-623, *et seq.*

n. **Kentucky:** Defendants' practices were and are in violation of Kentucky's Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*

o. **Maryland:** Defendants' practices were and are in violation of Maryland's

Consumer Protection Act, Md. Code Ann. Com. Law § 13-101, *et seq.*

p. **Massachusetts:** Defendants' practices were unfair and deceptive acts and practices in violation of Massachusetts' Consumer Protection Act, Mass. Gen. Laws Ch. 93A, § 2.

q. **Michigan:** Defendants' practices were and are in violation of Michigan's Consumer Protection Act, Mich. Comp. Laws Ann. § 445.901, *et seq.*

r. **Minnesota:** Defendants' practices were and are in violation of Minnesota's Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.* and the Unlawful Trade Practices law, Minn. Stat. § 325D.09, *et seq.*

s. **Missouri:** Defendants' practices were and are in violation of Missouri's Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*

t. **Nebraska:** Defendants' practices were and are in violation of Nebraska's Consumer Protection Act, Neb. Rev. Stat. § 59-1601, *et seq.* and the Uniform Deceptive Trade Practices Act, § 87-302, *et seq.*

u. **Nevada:** Defendants' practices were and are in violation of Nevada's Deceptive Trade Practices Act, Nev. Rev. Stat. Ann. §§ 598.0903 and 41.600.

v. **New Hampshire:** Defendants' practices were and are in violation of New Hampshire's Regulation of Business Practices for Consumer Protection, N.H. Rev. Stat. Ann. § 358-A:1, *et seq.*

w. **New Jersey:** Defendants' practices were and are in violation of New Jersey's Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.*

x. **New Mexico:** Defendants' practices were and are in violation of New Mexico's Unfair Practices Act, N.M. Stat. Ann. § 57-12-1, *et seq.*

y. **New York:** Defendants' practices were in and are in violation of New York's Gen. Bus. Law §§ 349 and 350, *et seq.*

z. **North Carolina:** Defendants' practices were and are in violation of North Carolina's Unfair Deceptive Trade Practices Act, N.C. Gen. Stat. Ann. § 75-1, *et seq.*

aa. **North Dakota:** Defendants' practices were and are in violation of North Dakota's Unlawful Sales or Advertising Practices law, N.D. Cent. Code § 51-15-01, *et seq.*

bb. **Ohio:** Defendants' practices were and are in violation of Ohio's Consumer Sales Practices Act, Ohio Rev. Code Ann. § 1345.01, *et seq.* and Ohio's Deceptive Trade Practices Act, Ohio Rev. Code Ann. § 4165.01, *et seq.*

cc. **Oregon:** Defendants' practices were and are in violation of Oregon's Unlawful Trade Practices law, Or. Rev. Stat. § 646.605, *et seq.*

dd. **Pennsylvania:** Defendants' practices were and are in violation of Pennsylvania's Unfair Trade Practice and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-1, *et seq.*

ee. **Texas:** Defendants' practices were and are in violation of Texas' Deceptive Trade Practices Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.41, *et seq.*

ff. **Utah:** Defendants' practices were and are in violation of Utah's Consumer Sales Practices Act, Utah Code Ann. § 13-11-1, *et seq.*, and Utah's Truth in Advertising Law, Utah Code Ann. § 13-11a-1, *et seq.*

gg. **Vermont:** Defendants' practices were and are in violation of Vermont's Consumer Fraud Act, Vt. Stat. Ann. tit. 9 § 2451, *et seq.*

hh. **Washington:** Defendants' practices were and are in violation of Washington Consumer Protection Act, Wash. Rev. Code Ann. § 19.86, *et seq.*

ii. **Wisconsin:** Defendants' practices were and are in violation of Wisconsin's Consumer Act, Wis. Stat. § 421.101, *et seq.*

95. Defendants violated the aforementioned states' unfair and deceptive acts and practices laws by representing that the Product contains containing 720 mg of omega fatty acids 5, 6, 7, 9 & 11 when, in reality, Defendants' Product does not contain the listed amount of omega fatty acids and, in addition, there is no scientific literature available to support the contention that omega-11 fatty acids are typically found in fish oil.

96. Defendants' misrepresentations were material to Plaintiff's and Class Members' decision to pay a significant premium for the Product.

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

98. As a result of Defendants' violations of the aforementioned states' unfair and deceptive practices laws, Plaintiff and Class Members paid a significant premium for the Product as compared to products serving the same purpose.

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

100. Pursuant to the aforementioned states' unfair and deceptive practices laws, Plaintiff and Class Members are entitled to recover compensatory damages, restitution, punitive and special

damages including but not limited to treble damages, reasonable attorneys' fees and costs and other injunctive or declaratory relief as deemed appropriate or permitted pursuant to the relevant law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment on behalf of himself and the proposed Class and New York Sub-Class providing such relief as follows:

A. Certification of the Class and New York Sub-Class proposed herein under Federal Rule of Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3); appointment of Plaintiff as representative of the Class and New York Sub-Class; and appointment of his undersigned counsel as counsel for the Class and New York Sub-Class;

B. A declaration that Defendants are financially responsible for notifying members of the Class and New York Sub-Class of the pendency of this suit;

C. An order requiring an accounting for, and imposition of a constructive trust upon, all monies received by Defendants as a result of the unfair, misleading, fraudulent and unlawful conduct alleged herein;

D. Restitution, disgorgement, refund, and/or other monetary damages, together with costs and disbursements, including reasonable attorneys' fees pursuant to the applicable statutes and prejudgment and post-judgment interest at the maximum rate allowable by law;

E. Injunctive relief and statutory or actual damages pursuant to New York General Business Law § 349 and common law, enjoining Defendants' unlawful and deceptive acts;

F. Injunctive relief and statutory or actual damages pursuant to New York General Business Law § 350;

G. Punitive damages in accordance with proof and in an amount consistent with applicable precedent; and

H. Such further relief as this Court may deem just and proper.

JURY TRIAL
DEMANDED

Plaintiff hereby demands a trial by jury. Plaintiff also respectfully requests leave to amend this Complaint to conform to the evidence, if such amendment is needed for trial.

DATED: February 27, 2017

GABRIELLI LEVITT LLP

A handwritten signature in black ink, appearing to read 'Michael J. Gabrielli', is written over a horizontal line.

Michael J. Gabrielli (MG-2421)
michael@gabriellilaw.com
2426 Eastchester Rd., Ste. 103
Bronx, New York 10469
Telephone: (718) 708-5322
Facsimile: (718) 708-5966

Attorneys for Plaintiff and Proposed Classes

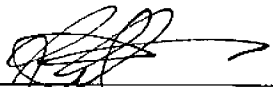
VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

RICARLOS GUZMAN, being duly sworn, deposes and says that I am a Plaintiff herein, have read this lawsuit and am familiar with the allegations, which are true to my own knowledge, except as to those matters stated therein to be alleged on information and belief, and as to those matters, I believe them to be true.

Attached hereto as Exhibit 1 are a true and correct photographs of the challenged advertising statement, which appears on Defendant's labels in New York and, upon information and belief, throughout the United States.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is both true and correct.


Ricardos Guzman

Sworn to before me
this 27th day of February, 2017.


Notary Public

IRIS M. GABRIELLI, ESQ.
Notary Public, State of New York
No. 02GA6171652
Qualified in Nassau County
Commission Expires July 30, 2017



EXHIBIT 1

**WILD
PRESSED
EXTRA
VIRGIN**

KIRKLAND

SUSTAINABLY SOURCED

**Wild Alaskan
Fish Oil**

1400 mg *As Naturally
Formed Triglycerides*

Natural Source
1050 mg of Whole Omega
3 • 5 • 6 • 7 • 9 • 11 Fatty Acids

May **REDUCE** the **RISK** of **Coronary Heart Disease**
SUPPORTS healthy **TRIGLYCERIDES** within the *normal range*

**230
SOFTGELS**



preferably with a meal

Document 1-1 Filed 02/27/17 Page 3 of 3

Supplement Facts

Serving Size 1 Softgel (1.4 g)
Servings Per Container 230

| | Amount Per Serving | % Daily Value |
|--|--------------------|---------------|
| Calories 14 | | |
| Calories from Fat 13 | | |
| Total Fat | | |
| Mono Unsaturated Fat | 1.5 g | 2% |
| Polyunsaturated Fat | 1.0 g | - |
| Cholesterol | 0.5 g | - |
| Vitamin A (100% as Retinol) | <5 mg | 2% |
| Vitamin D3 | 900 IU | 18% |
| | 30 IU | 6% |
| 100% natural fish oil | 1,400 mg (1.4g) | - |
| provides 1050mg Omega Unsaturated Fatty Acids*** | | |
| comprising of: | | |
| Total Omega-3 Fatty Acids | 330 mg | - |
| Other Omega Fatty Acids 5, 6, 7, 9, & 11 | 720 mg | - |
| Other Fatty Acids | 270 mg | - |

* Percent Daily Values are based on a 2,000 calorie diet

** Daily Value not established

*** As Naturally Formed Triglycerides

INGREDIENTS: Fish Oil (as naturally-formed triglycerides), Water, Glycerin, Vitamin E (as a mixed Tocopherol, as an antioxidant)

CONTAINS: Fish (Alaska Pollock, Cod, Salmon) and Soy.

Manufactured by Trident Seafoods Corporation

For: Costco Wholesale Corporation, P.O. Box 34535

Seattle, WA 98124-1535 USA • www.costco.com

Fish oil country of origin is the USA

Encapsulated and quality tested in the USA

MIN INFOLINE 1-865-365-3653

TAMPER-EVIDENT SEAL

PRINTED SEAL IS BROKEN

Trident

Quality Purity Potency

Kirkland Signature 1400 mg Wild Alaskan Fish Oil offers a whole-food alternative to highly processed fish oils. Our edible oil is made in a food grade facility, using a state of the art cold pressed extraction process which retains Omega-3's in their naturally formed and balanced triglyceride state. This insures our oil delivers a broad spectrum of whole Omega's 3, 5, 6, 7, 9 & 11 as well as naturally occurring vitamins A & D.

Our Wild Alaskan Fish Oil is made with free swimming fish harvested in the cold, clean waters of Alaska and the north Pacific in well managed and sustainably certified fisheries.

Kirkland Signature Wild Alaskan Fish Oil provides a balanced approach to Omega nutrition. It is as close to eating fish as you can get.

Our Fish Oil helps to maintain and support:^{††}

➤ **Vascular Health** ➤ **Heart Health**



No Artificial Color • No Artificial Flavors • No Yeast or Gluten

Caution: If you are pregnant, nursing, taking any medications or planning a medical procedure, consult your doctor before use. Discontinue use and consult your doctor if adverse reactions occur.

Keep out of reach of children



EXHIBIT 2

GABRIELLI LEVITT LLP

Attorneys & Counselors at Law

January 24, 2017

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Trident Seafoods Corporation
5303 Shilshole Ave. N.W.
Seattle, WA 98107

Costco Wholesale Corporation
999 Lake Drive
Issaquah, WA 98027

Re: *Kirkland Signature [Costco] Wild Alaskan Fish Oil*

To Whom It May Concern:

We represent Mr. Rick Guzman. Mr. Guzman has retained our firm in connection with potential claims against Trident Seafoods Corporation ("Trident") and Costco Wholesale Corporation ("Costco") for violations of various state consumer protection laws, including, but not limited to, GBL §§ 349 and 350.

Pursuant to N.Y. U.C.C. § 2-607(3)(a), this letter is to provide notice to your companies that it has been and is currently in violation of the foregoing laws.

Specifically, Mr. Guzman is an unsatisfied purchaser of your Kirkland Signature [Costco] Wild Alaskan Fish Oil, which she purchased at a Costco location in Westbury, New York. Specifically, the package of the product indicated that it contained 720 milligrams of certain omega fatty acids (omega-5,6,7,9 & 11). However, independent lab analysis has indicated that the product only contains about half of the listed amount of these omega fatty acids.


As such, the foregoing representation on the label as to the amount of omega fatty acids in the product was, at a minimum, deceptive and misleading.


But for the deceptive and misleading labeling as described above, our client would not have purchased the Kirkland Signature [Costco] Wild Alaskan Fish Oil. As such, we are demanding that Trident and Costco cease their unlawful activity and take corrective steps within 30 days of receipt of this letter, including, but not limited to, removing from any statements suggesting that the product at issue contains 720 milligrams of omega fatty acids 5,6,7,9 & 11.

If no action is taken, we will consider all available options, including the pursuit of a class action lawsuit. We hope, of course, that litigation will not be necessary.

Very Truly Yours,
Gabrielli Levitt LLP

By: 
Michael J. Gabrielli, Esq.

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|--|--|---|--|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> | | <p>A. Signature X <i>WRC</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> | |
| <p>1. Article Addressed to:</p> <p>Trident Seafoods Corp. 5303 Shilshole Ave. N.W. Seattle, WA 98107</p>  <p>9590 9402 2439 6249 0014 57</p> | | <p>B. Received by (Printed Name) C. Date of Delivery <i>Wil Ramirez</i> <i>1/27/17</i></p> | |
| <p>2. Article Number (Transfer from service label) 7016 1970 0000 9522 5231</p> | | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | |
| <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail (over \$500)</p> | | | |
| PS Form 3811, July 2015 PSN 7530-02-000-9053 | | Domestic Return Receipt | |

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|--|--|---|--|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> | | <p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> | |
| <p>1. Article Addressed to:</p> <p>Costco Wholesale Corp. 999 Lake Drive Issaquah, WA 98027</p>  <p>9590 9402 2439 6249 0014 40</p> | | <p>B. Received by (Printed Name) C. Date of Delivery <i>Garcia</i> <i>1-27-17</i></p> | |
| <p>2. Article Number (Transfer from service label) 7016 1970 0000 9522 5248</p> | | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | |
| <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail (over \$500)</p> | | | |
| PS Form 3811, July 2015 PSN 7530-02-000-9053 | | Domestic Return Receipt | |

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

UNITED STATES DISTRICT COURT

____ District of _____

V.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

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:

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

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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

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

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

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

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

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

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

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:

JS 44 (Rev. 07/16)

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

Ricardos Guzman, on behalf of himself and all others similarly situated

DEFENDANTS

Trident Seafoods Corporation and Costco Wholesale Corporation

(b) County of Residence of First Listed Plaintiff Nassau

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Foreign

(IN U.S. PLAINTIFF CASES ONLY)

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

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

Gabielli Levitt LLP (718) 708-5322

2426 Eastchester Rd., Ste 103

Bronx, NY 10469

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in one box only)☐ 1 U.S. Government Plaintiff☐ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☒ 4 Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in one box for Plaintiff and one box for Defendant)

(For Diversity Cases Only)

| | | | | | |
|-----------------------|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
|-----------------------|---------------------------------------|----------------------------|---|----------------------------|----------------------------|

| | | | | | |
|--------------------------|----------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
|--------------------------|----------------------------|----------------------------|---|----------------------------|---------------------------------------|

| | | | | | |
|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|

IV. NATURE OF SUIT (Place an "X" in one box only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|--|---|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 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 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 <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in one box only)

| | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332(d)(2)Brief description of cause:
Consumer Fraud, Breach of Warranty, Unjust Enrichment**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
02/27/2017SIGNATURE OF ATTORNEY OF RECORD
s/Michael J. Gabielli

FOR OFFICE USE ONLY

| | | | | |
|-----------|--------|--------------|-------|------------|
| RECEIPT # | AMOUNT | APPLYING IFP | JUDGE | MAG. JUDGE |
|-----------|--------|--------------|-------|------------|

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Michael J. Gabrielli, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

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

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

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

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

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

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

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

