

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
Albany Division**

JAMES GAMINDE, individually and on behalf of all others similarly situated,

Plaintiff,

v.

LANG PHARMA NUTRITION, INC., CVS HEALTH CORPORATION and CVS PHARMACY, INC.,

Defendant.

Civil Action No. 1:18-CV-0300 (GLS/DEP)

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff James Gaminde (“Plaintiff”) brings this action on behalf of himself and all others similarly situated against Defendants Lang Pharma Nutrition, Inc., CVS Health Corporation, and CVS Pharmacy, Inc. (“Defendants”). Plaintiff makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to the allegations specifically pertaining to himself, which are based on personal knowledge.

NATURE OF THE ACTION

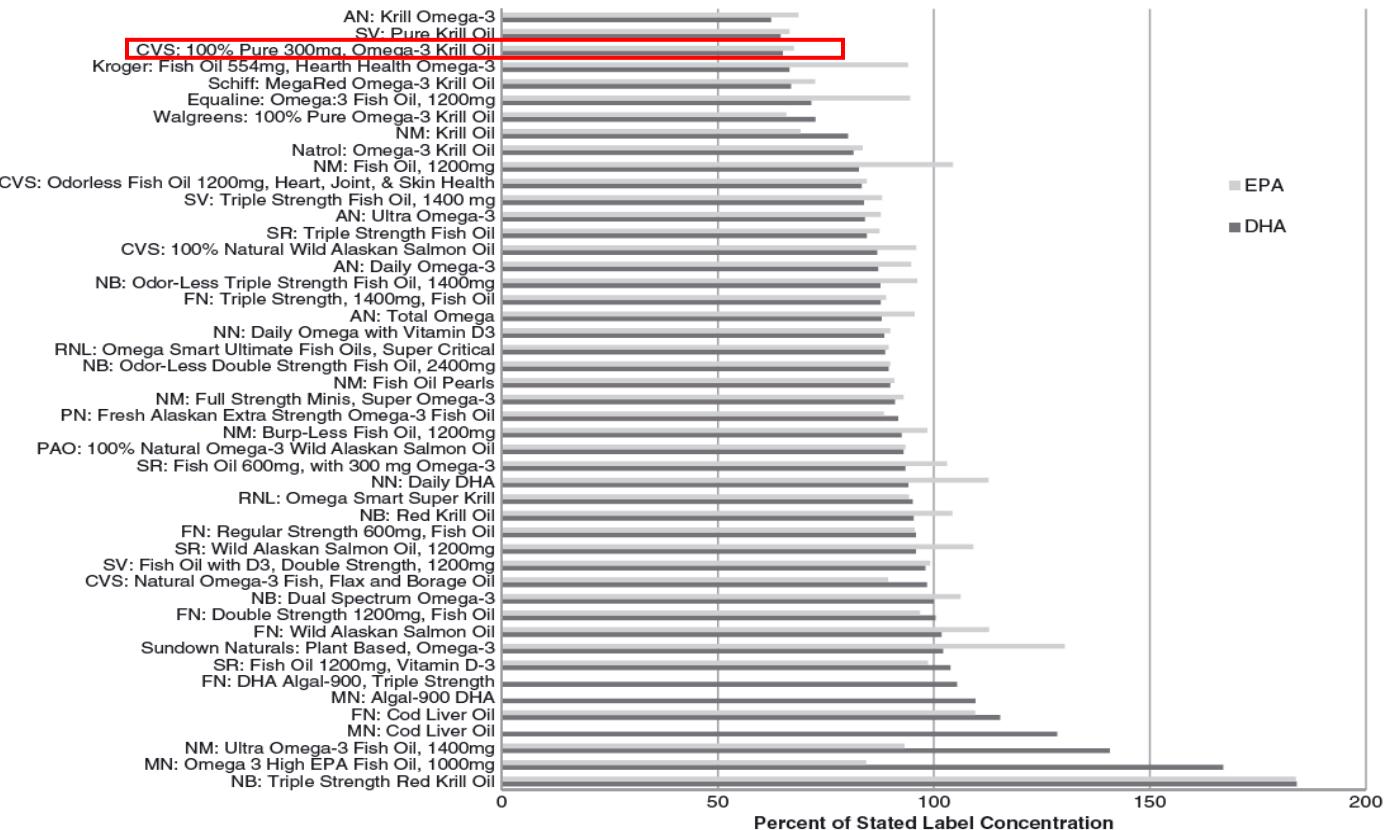
1. This is a class action lawsuit on behalf of purchasers of CVS 100% Pure 300mg Omega-3 Krill Oil (“CVS Krill Oil” or the “Product”).
 2. Krill oil is a type of fish oil prepared from a species of Antarctic krill. Fish oil supplements are the primary dietary sources of long-chain omega-3 polyunsaturated fatty acids, including eicosapentaenoic (“EPA”) and docosahexaenoic acid (“DHA”). *See Alison C. Kleiner, et al., A Comparison of Actual Versus Stated Label Amounts of EPA and DHA In Commercial Omega-3 Dietary Supplements in the United States*, 95 J. Sci. Food & Agric. 1260 (2015).
- EPA and DHA have been associated with many health benefits throughout life, including the

development of cognition and photoreceptors during fetal and infant development, healthier pregnancies and breast milk composition, and, in aging populations, improved cardiovascular health, maintenance of cognitive function, retention of visual abilities, and a decreased inflammatory response to injury. *Id.*

3. According to independent research funded by the United States Department of Agriculture, and published in the *Journal of the Science of Food and Agriculture*, each bottle of CVS Krill Oil only contains approximately 60% of the 300mg of Omega-3 Krill Oil represented. *See id.* at 1260-67.

EPA and DHA in dietary supplements

www.soci.org



Id. at 1265.

4. The objective of the study was to assess EPA and DHA label declarations of fish, krill, and algal oil dietary supplements in the USA. *Id.* at 1260.

5. The researchers concluded that “the quality of fish oil supplements is not being adequately monitored by manufacturers or government agencies.” *Id.*

6. The researchers’ findings were similar to previously published studies. *Id.* at 1266.

7. Plaintiff asserts claims on behalf of himself and a nationwide class of purchasers of CVS Krill Oil for violation of New York General Business Law §§ 349 and 350, breach of express warranty, breach of the implied warranty of merchantability, unjust enrichment, and fraud.

THE PARTIES

8. Plaintiff James Gaminde is a citizen of New York who resides in Schenectady, New York. In the winter of 2015, Plaintiff purchased a bottle CVS 100% Pure 300mg Omega-3 Krill Oil at a CVS retail store in or around Schenectady, New York. The CVS Krill Oil he purchased prominently displayed on the package that the Product contained 300mg of Omega-3 Krill Oil. He saw this representation prior to and at the time of purchase, and understood it as a representation and warranty that the product did, in fact, contain 300mg of Omega-3 Krill Oil. He relied on this representation and warranty in deciding to purchase CVS Krill Oil, and this representation and warranty was part of the basis of the bargain in that he would not have purchased CVS Krill Oil, or would have only been willing to pay a reduced price for CVS Krill Oil, if he had known that the Product did not, in fact, contain 300mg of Omega-3 Krill Oil. However, the CVS Krill Oil purchased by Plaintiff was mislabeled in that it did not contain 300mg of Omega-3 Krill Oil.

9. Defendant Lang Pharma Nutrition, Inc. is a Rhode Island corporation with its principal place of business at 20 Silva Lane, Newport, Rhode Island 02842. Lang Pharma Nutrition is engaged in the manufacturing, processing, packaging, and distribution of CVS Krill Oil. Lang Pharma Nutrition sells CVS Krill Oil throughout New York and the entire United States.

10. Defendant CVS Health Corporation is a Rhode Island corporation with its principal place of business at One CVS Drive, Woonsocket, Rhode Island 02895. CVS Health Corporation is engaged in the processing, packaging, and distribution of CVS Krill Oil. CVS Health Corporation sells CVS Krill Oil throughout New York and the entire United States

11. Defendant CVS Pharmacy, Inc. is a Rhode Island corporation with its principal place of business at One CVS Drive, Woonsocket, Rhode Island 02895. CVS Pharmacy, Inc. is a subsidiary of Defendant CVS Health Corporation. CVS Pharmacy, Inc. is engaged in the processing, packaging, and distribution of CVS Krill Oil. CVS Pharmacy, Inc. sells CVS Krill Oil throughout New York and the entire United States.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, and Plaintiff, as well as most members of the proposed class, are citizens of states different from Defendants. This Court also has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1337.

13. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District. Plaintiff is a citizen of New York, resides in this District, and

purchased CVS Krill Oil from Defendants in this District. Moreover, Defendants distributed, advertised, and sold CVS Krill Oil, which is the subject of the present complaint, in this District.

FACTUAL BACKGROUND

14. Defendants uniformly represent on the front of CVS Krill Oil's packaging that the Product contains 300mg of 100% Pure Omega-3 Krill Oil.



15. But this is not true. Independent research funded by the United States Department of Agriculture, and published in the *Journal of the Science of Food and Agriculture*, confirms

that CVS Krill Oil only contains approximately 60% (or approximately 180mg) of the 300mg of Omega-3 Krill Oil represented on the packaging.

16. Thus, consumers are only receiving approximately 60% of the very essence of the Product they purchased.

CLASS REPRESENTATION ALLEGATIONS

17. Plaintiff seeks to represent a class defined as all persons in the United States who purchased CVS 100% Pure 300mg Omega-3 Krill Oil (the “Class”). Excluded from the Class are persons who made such purchase for purpose of resale.

18. Plaintiff also seeks to represent a subclass of all Class members who purchased CVS 100% Pure 300mg Omega-3 Krill Oil in New York (the “New York Subclass”).

19. Members of the Class and Subclass are so numerous that their individual joinder herein is impracticable. Upon information and belief, Defendants’ annual sales of CVS 100% Pure 300mg Omega-3 Krill Oil are in the tens or hundreds of millions of dollars; thus members of the Class number in the millions and members of the New York Subclass number in the hundreds of thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendants and third party retailers and vendors.

20. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to: whether CVS 100% Pure 300mg Omega-3 Krill Oil actually contains 300mg of Omega-3 Krill Oil.

21. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff purchased one or more bottles of CVS 100% Pure 300mg Omega-3 Krill Oil.

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

23. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class and Subclass members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendants' liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I
(Deceptive Acts Or Practices, New York Gen. Bus. Law § 349)

24. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

25. Plaintiff brings this claim individually and on behalf of the members of the proposed New York Subclass against Defendant.

26. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts and practices by misrepresenting that CVS Krill Oil contained 300mg of Omega-3 Krill Oil.

27. The foregoing deceptive acts and practices were directed at consumers.
28. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics of CVS Krill Oil to induce consumers to purchase same.
29. Plaintiff and members of the Class and New York Subclass were injured because (a) they would not have purchased CVS Krill Oil had they known that it did not contain the amount of Krill Oil as represented, (b) they overpaid for CVS Krill Oil because it is sold at a price premium, and (c) CVS Krill Oil did not have the characteristics, uses, or benefits as promised, namely that it contained 300mg of Omega-3 Krill Oil. As a result, Plaintiff and members of the New York Subclass have been damaged either in the full amount of the purchase price of the CVS Krill Oil or in the difference in value between CVS Krill Oil as warranted and CVS Krill Oil as actually sold.

30. On behalf of themselves and other members of the Class and New York Subclass, Plaintiff seeks to enjoin the unlawful acts and practices described herein, to recover his actual damages or fifty dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

Count II
(False Advertising, New York Gen. Bus. Law § 350)

31. Plaintiff hereby incorporate by reference the allegations contained in all preceding paragraphs of this Complaint.

32. Plaintiff brings this claim individually and on behalf of the members of the proposed New York Subclass.

33. Based on the foregoing, Defendants have engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation

of Section 350 of the New York General Business Law by misrepresenting the amount of Omega-3 Krill Oil contained in CVS Krill Oil.

34. The foregoing advertising was directed at consumers and was likely to mislead a reasonable consumer acting reasonably under the circumstances.

35. This misrepresentation has resulted in consumer injury or harm to the public interest.

36. Plaintiff and New York Subclass members were injured as a direct and proximate result of Defendants' violation because (a) they would not have purchased CVS Krill Oil had they known that it did not contain the amount of Omega-3 Krill Oil as represented, (b) they overpaid for CVS Krill Oil because it is sold at a price premium, and (c) CVS Krill Oil did not have the characteristics, uses, or benefits as promised, namely that it contained 300mg of Omega-3 Krill Oil. As a result, Plaintiff and members of the New York Subclass have been damaged either in the full amount of the purchase price of the CVS Krill Oil or in the difference in value between CVS Krill Oil as warranted and CVS Krill Oil as actually sold.

37. On behalf of himself and other members of the New York Subclass, Plaintiff seeks to enjoin the unlawful acts and practices described herein, to recover actual damages or five hundred dollars per violation, whichever is greater, three times actual damages and reasonable attorneys' fees.

COUNT III
(Breach Of Express Warranty)

38. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

39. Plaintiff brings this claim individually and on behalf of the members of the proposed Class and New York Subclass against Defendants.

40. On February 6, 2018, Plaintiff provided Defendants with notice of this claim by letter that complied in all respects with U.C.C. § 2-607(3)(a).

41. Defendants, as the designers, manufacturers, marketers, distributors, and/or sellers, expressly warranted that CVS 100% Pure 300mg Omega-3 Krill Oil contained 300mg of Omega-3 Krill Oil.

42. In fact, CVS 100% Pure 300mg Omega-3 Krill Oil only contains approximately 60% (or approximately 180mg) of the 300mg of Omega-3 Krill Oil represented.

43. As a direct and proximate cause of Defendants' breach of express warranty, Plaintiff and Class members have been injured and harmed because (a) they would not have purchased CVS 100% Pure 300mg Omega-3 Krill Oil had they known the Product did not contain 300mg of Omega-3 Krill Oil, and (b) they were shorted on the amount of CVS 100% Pure 300mg Omega-3 Krill Oil they received because the bottles did not contain 300mg of Krill Oil. As a result, Plaintiff and members of the Class have been damaged either in the full amount of the purchase price of the CVS Krill Oil or in the difference in value between CVS Krill Oil as warranted and CVS Krill Oil as actually sold.

COUNT IV
(Breach Of Implied Warranty Of Merchantability)

44. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

45. Plaintiff brings this claim individually and on behalf of the members of the proposed Class and New York Subclass against Defendants.

46. On February 6, 2018, Plaintiff provided Defendants with notice of this claim by letter that complied in all respects with U.C.C. § 2-607(3)(a).

47. Defendants, as the designers, manufacturers, marketers, distributors, and/or sellers, impliedly warranted that CVS 100% Pure 300mg Omega-3 Krill Oil contained 300mg of Krill Oil.

48. Defendants breached the warranty implied in the contract for the sale of CVS 100% Pure 300mg Omega-3 Krill Oil because it could not pass without objection in the trade under the contract description, the goods were not of fair average quality within the description, and the goods were unfit for their intended and ordinary purpose because the CVS Krill Oil did not in fact contain 300mg of Krill Oil. As a result, Plaintiff and Class members did not receive the goods as impliedly warranted by Defendants to be merchantable.

49. Plaintiff and Class members purchased CVS Krill Oil in reliance upon Defendants' skill and judgment and the implied warranties of fitness for the purpose.

50. CVS Krill Oil was not altered by Plaintiff or Class members.

51. CVS Krill Oil was defective when it left the exclusive control of Defendants.

52. Defendants knew that CVS Krill Oil would be purchased and used without additional testing by Plaintiff and Class members.

53. CVS Krill Oil was defectively designed and unfit for its intended purpose, and Plaintiff and Class members did not receive the goods as warranted.

54. As a direct and proximate cause of Defendants' breach of warranty, Plaintiff and Class members have been injured and harmed because (a) they would not have purchased CVS 100% Pure 300mg Omega-3 Krill Oil had they known the Product did not contain 300mg of Omega-3 Krill Oil, and (b) they were shorted on the amount of CVS 100% Pure 300mg Omega-3 Krill Oil they received because the bottles did not contain 300mg of Krill Oil.

COUNT V
(Unjust Enrichment)

55. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

56. Plaintiff brings this claim individually and on behalf of the members of the proposed Class and New York Subclass against Defendants.

57. Plaintiff and Class members conferred benefits on Defendants by purchasing CVS Krill Oil.

58. Defendants have been unjustly enriched in retaining the revenues derived from Plaintiff and Class members' purchases of CVS Krill Oil. Retention of those monies under these circumstances is unjust and inequitable because Defendants' sale of CVS Krill Oil resulted in purchasers being denied the full benefit of their purchase because they were shorted on the amount of Krill Oil they received.

59. Because Defendants' retention of the non-gratuitous benefits conferred on them by Plaintiff and Class members is unjust and inequitable, Defendants must pay restitution to Plaintiff and Class members for its unjust enrichment, as ordered by the Court.

COUNT VI
(Fraud)

60. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this Complaint.

61. Plaintiff bring this claim individually and on behalf of the members of the proposed Class and New York Subclass against Defendants.

62. As discussed above, Defendants provided Plaintiff and Class members with false or misleading material information and failed to disclose material facts about CVS Krill Oil,

including but not limited to the fact that it contains less Omega-3 Krill Oil than what is represented on the Product's packaging. These misrepresentations and omissions were made with knowledge of their falsehood.

63. The misrepresentations and omissions made by Defendants, upon which Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class members to purchase CVS Krill Oil.

64. The fraudulent actions of Defendants caused damage to Plaintiff and Class members, who are entitled to damages and other legal and equitable relief as a result.

RELIEF DEMANDED

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seek judgment against Defendants, as follows:

- A. For an order certifying the nationwide Class and the Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representatives of the Class and Subclasses and Plaintiff's attorneys as Class Counsel to represent the Class and Subclass members;
- B. For an order declaring the Defendants' conduct violates the statutes referenced herein;
- C. For an order finding in favor of Plaintiff, the nationwide Class, and the Subclass on all counts asserted herein;
- D. For compensatory, punitive, and statutory damages in amounts to be determined by the Court and/or jury;
- E. For prejudgment interest on all amounts awarded;
- F. For an order of restitution and all other forms of equitable monetary relief;
- G. For injunctive relief as pleaded or as the Court may deem proper; and

H. For an order awarding Plaintiff and the Class and Subclass their reasonable attorneys' fees and expenses and costs of suit.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action and issues so triable.

Dated: March 9, 2018

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Philip L. Fraietta

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New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
Email: pfraietta@burson.com

Attorneys for Plaintiffs

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

James Gaminde

(b) County of Residence of First Listed Plaintiff Schenectady
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorneys (Firm Name, Address, and Telephone Number)
Bursor & Fisher, P.A.
888 Seventh Avenue, New York, NY 10019
646-837-7150**DEFENDANTS**Lang Pharma Nutrition, Inc.
CVS Health Corporation
CVS Pharmacy, Inc.County of Residence of First Listed Defendant Newport

(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)

- | | |
|------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question
(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input 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)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		
	<input type="checkbox"/> 448 Education	<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 SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 465 Other Immigration Actions	

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 |
|-----------------------------------------------------------|-----------------------------------------------------|----------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(d)**VI. CAUSE OF ACTION**Brief description of cause:
Deceptive business practices**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.

DEMAND \$

5,000,001.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

03/09/2018

/s Philip L. Fraietta

FOR OFFICE USE ONLYANYNDC-4316195
RECEIPT # _____

AMOUNT

\$400.00

APPLYING IFP

JUDGE GLS

MAG. JUDGE

DEP

Print**Save As...**

Case No.: 1:18-CV-0300

Reset

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.