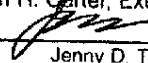


FILED
Superior Court of California
County of Los Angeles

APR 02 2018

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

10 IVAN FORONDA, on behalf of himself and
11 others similarly situated,

12 Plaintiffs

13 vs.

14 THE PROCTER & GAMBLE COMPANY,
15 a Delaware Corporation; PROCTER &
16 GAMBLE HEALTH PRODUCTS, INC., a
17 Delaware corporation; and DOES 1 through
18 50, inclusive

19 Defendants.

) Case No. **BC700535**

) **CLASS ACTION**

) **CLASS ACTION COMPLAINT FOR:**

-) 1. NEGLIGENCE
-) 2. NEGLIGENT MISREPRESENTATION
-) 3. STRICT PRODUCTS LIABILITY
-) 4. STRICT LIABILITY – DESIGN DEFECT
-) 5. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
-) 6. BREACH OF IMPLIED WARRANTY OF FITNESS
-) 7. UNFAIR BUSINESS PRACTICES
-) 8. FALSE ADVERTISING
-) 9. UNJUST ENRICHMENT
-) 10. VIOLATION OF CONSUMERS LEGAL REMEDIES ACT

22 **DEMAND FOR JURY TRIAL**

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24 Representative Plaintiff IVAN FORONDA on behalf of himself and all others similarly
25 situated, (hereinafter collectively referred to as “Plaintiffs”) complain as follows:

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1 **INTRODUCTION**

2 1. Plaintiff bring this action on his own behalf and on behalf of all persons similarly
3 situated nationwide against Defendant THE PROCTER & GAMBLE COMPANY and Defendant
4 PROCTER & GAMBLE HEALTH PRODUCTS, INC. (hereinafter collectively referred to as
5 “Defendants”). The class that Plaintiffs represent is composed of all persons that purchased
6 Defendants’ product, “Gillette® Fusion ProGlide Sensitive 2-in-1 Shave Gel” (the “Product”) for
7 consumption.

8 2. This action seeks redress on a class-wide basis for deceptive, unfair and otherwise
9 improper business practices in which Defendants engaged with respect to the advertising,
10 composition and packaging of their Product. By way of example, the Product comes in a 6-ounce
11 container and has non-functional slack-fill in violation of the federal Food Drug & Cosmetic Act
12 (“FDCA”) Section 403 (21 U.S.C. 343(d)), the Code of Federal Regulations Title 21 part 100, *et seq.*,
13 and Cal. Bus. & Prof. Code § 12606.2. The size of the container in comparison to the actual amount
14 of shaving gel released makes it appear to reasonable consumers that they are buying more than what
15 they are actually receiving.

16 **PARTIES, JURISDICTION AND VENUE**

17 3. At all times mentioned herein, Plaintiff IVAN FORONDA (“Plaintiff”) is an
18 individual residing in Los Angeles, California.

19 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant THE
20 PROCTER & GAMBLE COMPANY is now, and at all times mentioned in this complaint was, a
21 Delaware corporation organized under the laws of Ohio with headquarters at 1 Procter and Gamble
22 Plaza, Cincinnati, Ohio 45202 that wholly owns Defendant PROCTER & GAMBLE HEALTH
23 PRODUCTS, INC, who is authorized to do business in the State of California.

24 5. Defendant PROCTER & GAMBLE COMPANY owns the trademarks for “Gillette®
25 Fusion ProGlide Sensitive 2-in-1 Shave Gel” that appear on the Product.

26 6. The true names and capacities, whether individual, corporate, associate or otherwise,
27 of defendants named herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who
28 therefore sues said defendants by such fictitious names. Plaintiff is informed and believes that each

1 of these fictitiously named defendants is in some manner responsible for the events and damages
2 alleged herein and will seek leave of court to amend this Complaint to show the true names and
3 capacities when the same have been ascertained. Each reference in this complaint to "defendant,"
4 "defendants," or a specifically named defendant refers also to all defendants sued under fictitious
5 names.

6 7. Defendants are now, and at all times mentioned in this complaint were, in the business
7 of designing, manufacturing, constructing, assembling, inspecting, and selling various types of health
8 and hygiene products, including Gillette shaving gels.

9 8. Jurisdiction in this state is proper as Plaintiff is informed and believes that Defendants
10 have systematic and continuous contacts within the state of California. The Court has personal
11 jurisdiction over the Defendants because their defective Product is advertised, marketed, distributed,
12 and sold throughout the state of California; Defendants engaged in the wrongdoing alleged in this
13 Complaint throughout California; Defendants are authorized to do business in California, and
14 Defendants have sufficient minimum contacts with California and/or otherwise have intentionally
15 availed themselves of the markets in California, rendering the exercise of jurisdiction by the Court
16 permissible under traditional notions of fair play and substantial justice. Moreover, Defendants are
17 engaged in substantial and not isolated activity within California, having sold millions of their
18 products in this State.

19 9. Venue in Los Angeles is proper as Plaintiff purchased the subject can of shaving gel in
20 Los Angeles, and repeatedly used the product in Los Angeles. Accordingly, practically all of the
21 witnesses and evidence relevant to this action are located in Los Angeles.

22 **BACKGROUND FACTS**

23 **FALSE ADVERTISING AND SLACK-FILL**

24 10. The Product is sold in a container which is approximately eight (8) inches in height
25 and approximately two (2) inches wide. The Product is advertised as weighing six (6) ounces and
26 releases about 3.3 ounces of shaving gel on average. Thus, the volume of the containers has nearly
27 2.7 ounces of slack-fill, yet it is designed to give the false impression that there is more product than
28 actually packaged.

1 11. The volume of each Product is 6 ounces, leaving a difference of 2.7 ounces, or
2 approximately 45% of slack-fill.

3 12. Non-functional slack-fill is the difference between the actual capacity of a container
4 and the volume of product contained within. 21 C.F.R. 100.100. Plaintiffs were (and any consumer
5 would reasonably be) misled about the volume of the Product contained within the container in
6 comparison to the size of the Product’s packaging. Plaintiffs paid the full price of the Product and
7 only received 55% of what Defendants represented they would be getting due to the 45% of non-
8 functional slack-fill in the 6-ounce Product. In order for Plaintiffs and other similarly situated persons
9 to be made whole, Plaintiffs would have to receive enough of the shaving gel so that there is no
10 functional slack-fill, or have been reimbursed 45% of the purchase price of the Product.

11 13. The size of the container in relation to the volume of the product contained therein
12 gives the false impression that consumers are buying more than they are actually receiving.

13 14. Plaintiffs viewed Defendants’ misleading Product packaging and reasonably relied in
14 substantial part on the representations and were thereby deceived in deciding to purchase the Products
15 for a premium price.

16 15. Defendants manufactured, marketed, and sold the Product throughout the United
17 States. Defendants purposefully sold the Products with non-functional slack-fill.

18 16. Over the course of the past six months, Plaintiff has been purchasing the Product from
19 several drug stores in Orange County, California for the purchase price of approximately \$4.64 each.

20 17. Defendants sell their products at most supermarket chains, convenience stores, drug
21 stores, and major retail outlets throughout the United States, including but not limited to Costco,
22 Target, Wal-Mart, CVS, and Rite Aid.

23 **DEFECTIVE PRODUCT DESIGN**

24 18. The Product dispensary can is also defectively designed in that it only allows the
25 consumer to get a few uses out of the can before the can ceases to dispense. Despite repeated
26 attempts, the can simply stops dispensing the majority of the Product after a few uses. This, in
27 addition to the slack-fill, makes it such that the consumer not only receives less than the advertised
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1 amount of Product but is also unable to even access and use the lesser amount of Product that is
2 actually supplied.

3 19. On other occasions, the dispensary can dispenses gel on its own, which Plaintiff is
4 informed and believes is due to the same design defect.

5 20. Defendants' Product is also uniquely deceptive because consumers never actually see
6 the amount of shaving gel they have used until the Product no longer dispenses, despite the inclusion
7 of a non-functioning gel gauge on the side of the Product.

8 21. After repeated inspections, Plaintiff discovered, and is informed, believes, and thereon
9 alleges that Defendants manufactured the defective Product in a faulty manner rendering them
10 incapable of regulating the pressure inside the can.

11 22. Defendants have deceived Plaintiffs and other consumers nationwide by
12 mischaracterizing the size of their Product and selling defective dispensary cans. Defendants have
13 been unjustly enriched as a result of such conduct. Through these unfair and deceptive practices,
14 Defendants have collected millions of dollars from the sale of their Products that they would not have
15 otherwise earned.

16 23. As a result of Defendants' misrepresentations, Plaintiffs and thousands of others
17 throughout the state of California purchased the Product.

18 24. Plaintiffs have been damaged by Defendants' deceptive and unfair conduct in that they
19 purchased the Product with non-functional slack-fill that was dispensed through a defective can that
20 either did not allow the entirety of the Product to be dispensed or dispensed product on its own, and
21 paid prices they otherwise would not have paid had Defendants not misrepresented the Product's
22 actual size, and the actual amount of gel a consumer was purchasing.

23 **CLASS ALLEGATIONS**

24 25. This is a class action brought by Plaintiff and on behalf of all other persons similarly
25 situated who purchased the Product manufactured, distributed and sold by Defendants, and each of
26 them.

27 26. The plaintiff class is defined as follows: all persons wherever situated who purchased
28 the Product manufactured, distributed and sold by Defendants during the time period permitted under

1 applicable statute of limitations, excluding Defendants, and each of them, and any and all officers,
2 directors, employees and agents of the defendants, their affiliates and/or subsidiaries and excluding
3 those consumers who have sustained personal injury and/or property damage (other than damages
4 relative to the non-functional slack-fill dispensed through a defective can that either did not allow the
5 entirety of the Product to be dispensed or dispensed product on its own).

6 27. Plaintiff's claims are typical of the claims of the class because Plaintiff and all the
7 class members were harmed by their purchase of Defendants' manufacture, distribution and sale of
8 the Product. Issues regarding Defendants' manufacture, distribution and sale of the Product and the
9 purchase thereof are uniformly applicable to all plaintiffs. Moreover, the question of whether
10 Defendants' schemed to sell the defective can is typical of the claims of all members of the class.

11 28. Plaintiff is a representative party who will fully and adequately protect the interest of
12 the class members. Plaintiff has retained counsel who is competent in both class action and product
13 liability litigation. Plaintiff has no interests contrary to or in conflict with those of the class he seeks
14 to represent and has no defense unique to Plaintiff.

15 29. A class action provides a fair and efficient method for adjudication of the controversy
16 set forth herein and is superior to other available means for the fair and efficient adjudication of this
17 lawsuit. Even if any class member could afford individual litigation against a large business like that
18 of Defendants, it would be unduly burdensome to the court system. Individual litigation magnifies the
19 delay and expense to all parties. By contrast, a class action presents far fewer management difficulties
20 and affords the benefits of consistent court rulings, unitary adjudication, economies of scale and
21 comprehensive supervision by a single court. Concentrating this litigation in one forum will promote
22 judicial economy and parity among the claims of individual class members and judicial consistency.
23 Notice of the pendency of this action and of any resolution can be provided to class members by mail,
24 print, broadcast, internet, and/or multimedia publication.

25 30. A class action provides the following benefits:

26 a. The common and predominant questions as to whether or not Defendants
27 committed unfair or deceptive business practices could be answered for all class members after a
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1 short trial. The only individual question would be the amount of compensatory damages due each
2 class member;

3 b. The class is expected to number in the tens of thousands, if not hundreds of
4 thousands; thus, class relief will provide for the efficient use of scarce judicial resources;

5 c. Prosecution of separate actions by or against individual members of the class
6 would create a risk of both (i) inconsistent or varying adjudications with respect to different
7 individual members of the class, which would confront the Defendants with incompatible liabilities
8 and obligations, and (ii) adjudications governing individual members of the class, which would be
9 dispositive on other members not parties to the adjudications, or substantially impair or impede their
10 ability to protect their interests;

11 d. It would not be practical for individual members of the class to prosecute
12 separate suits because the damage sustained by each individual member (including the named
13 plaintiff class representative) is relatively small given the cost of the Product at issue. Therefore, in
14 view of the complexities of the issues and the expense of litigation, the separate claims of individual
15 class members are insufficient in amount to support a multitude of separate actions. On the other
16 hand, it is likely that the amounts which may be recovered by individual class members will be
17 adequate in relation to the expense and effort of administering the class action so as to justify a class
18 action.

19 31. There are many issues and questions of law or fact that are common to all class
20 members and they predominate over any individual issues and questions. These common issues and
21 questions include, but are not limited to, the following:

22 a. Whether Defendants and each of them manufacture, distribute and sell the Product;

23 b. Whether Defendants' labeling/packaging of the Product is untrue, misleading,
24 or reasonably likely to deceive;

25 c. Whether Defendants' conduct is an unlawful, deceptive, and/or unfair act or
26 practice within the meaning of California Business & Professions Code §17200, et. seq.;

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1 d. Whether Defendants’ advertising, marketing, promotions, and labeling is
2 untrue and/or misleading within the meaning of California Business & Professions Code §17500, et.
3 seq.;

4 e. Whether Defendants engaged in deceptive or unfair acts and practices in
5 violation of the California Civil Code §1750, et. seq.;

6 f. Whether Defendants conduct constitutes negligence;

7 g. Whether Defendants’ conduct constitutes negligent misrepresentation;

8 h. Whether Defendants, through their conduct alleged in this Complaint, received
9 money that belongs to members of the proposed Class;

10 i. Whether Plaintiff and the other members of the Class are entitled to equitable
11 relief, including but not limited to restitution and/or disgorgement of profits;

12 j. The appropriate measure of damages and/or restitution; and

13 k. Whether Plaintiff and members of the class are entitled to injunctive relief, and
14 if so, the appropriate injunctive relief;

15 32. Plaintiff’s claims are typical of the members of the Class because Plaintiff and each
16 member of the class purchased Defendants’ Product within the applicable statutory period prior to the
17 filing of this action to the present.

18 **FIRST CAUSE OF ACTION**

19 **NEGLIGENCE**

20 **(Against Defendants and DOES 1-50)**

21 33. Plaintiff refers to each of the foregoing paragraphs in their entirety, and hereby
22 incorporates them by reference as though fully set forth herein.

23 34. Defendants knew or reasonably should have known that the shaving gel can was
24 defective or was likely to be defective when used in a reasonably foreseeable manner.

25 35. Defendants knew or reasonably should have known that consumers like Plaintiff
26 would not realize the defective condition of the shaving gel cans.

27 36. Defendants failed to adequately warn of the shaving gel can’s defective condition,
28 which reasonable prudence would have required them to do.

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FOURTH CAUSE OF ACTION

STRICT LIABILITY – DESIGN DEFECT

(Against Defendants and DOES 1-50)

51. Plaintiff refers to each of the foregoing paragraphs in their entirety, and hereby incorporates them by reference as though fully set forth herein.

52. The dispensary mechanism of the shaving gel can did not perform as adequately as an ordinary consumer would have expected it to perform when used in an intended or reasonably foreseeable way. In particular, the dispensary can would either malfunction by failing to continue releasing gel after only a few uses, leaving most of the gel in the can without allowing the user to dispense it, or releasing the shaving gel on its own without application from the user.

53. As a result, the Plaintiff was harmed and the Product’s dispensary can’s failure to perform adequately, and its dispensary mechanism’s design, were substantial factors in causing Plaintiff’s harm.

FIFTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Against Defendants and DOES 1-50)

54. Plaintiff refers to each of the foregoing paragraphs in their entirety, and hereby incorporates them by reference as though fully set forth herein.

55. At the time of purchase, P&G was in the business of selling health and hygiene products to retail buyers.

56. For the reasons set forth above, the Product did not have the quality that a buyer would reasonably expect, particularly as to the faulty dispensary can that consistently prevents the user from accessing the full amount of gel actually provided.

57. As such, the Product dispensary can was not fit for the ordinary purpose for which it is used.

58. As a direct and proximate result of Defendant’s breach of implied warranty, Plaintiff has suffered general, special, and consequential damages in an amount according to proof at trial.

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SIXTH CAUSE OF ACTION

BREACH OF WARRANTY OF FITNESS

(Against Defendants and DOES 1-50)

59. Plaintiff refers to each of the foregoing paragraphs in their entirety, and hereby incorporates them by reference as though fully set forth herein.

60. Plaintiff is informed and believes and thereon alleges that at the time of purchase, Defendants knew or had reason to know that Plaintiff intended to fully use the Product as advertised for its particular purpose, and would have expected to use the entirety of the advertised amount of gel.

61. Plaintiff justifiably relied on Defendants’ expertise in the marketplace in coming to his decision to purchase Defendant’s specific brand of shaving gel.

62. The Product as packaged was not suitable for the particular purpose intended.

63. Plaintiff was harmed and the failure of the shaving gel can to be suitable was a substantial factor in causing Plaintiff’s harm.

SEVENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES (Cal. Bus. & Prof. Code 17200, *et seq.*)

(Against Defendants and DOES 1-50)

64. Plaintiff refers to each of the foregoing paragraphs in their entirety, and hereby incorporates them by reference as though fully set forth herein.

65. Under the Unfair Competition Law (“UCL”), unfair competition includes any “unlawful,” “unfair,” or “fraudulent” business act or practice. The law authorizes equitable relief for violations.

66. Defendants’ sale of a defective product is a business practice covered by the UCL. At all relevant times, Defendants acted, and continues to act, as alleged herein.

67. Plaintiff seeks equitable relief pursuant to the UCL, California Business and Professions Code § 17200, *et seq.*, requiring Defendants to inform customers and consumers – by automated register printouts, telephone calls, letters, e-mails and text messaging, and prominent statements in Defendant’s stores and on the home page (or another equally noticeable location) of its website – that Defendants sold the customers the faulty Product and that a recall is required.

1 74. As a direct and proximate result of Defendants' conduct, as set forth herein,
2 Defendants have received ill-gotten gains and/or profits, including but not limited to money.
3 Therefore, Defendants have been unjustly enriched. Pursuant to Cal. Bus. & Prof. Code §7535,
4 Plaintiff requests disgorgement of all sums obtained in violation of Cal. Bus. & Prof. Code § 17500,
5 *et seq.* Plaintiff seeks injunctive relief, restitution, and restitution disgorgement of Defendants' ill-
6 gotten gains as specifically provided in Cal. Bus. & Prof. Code § 17535.

7 75. Plaintiff and Class Members seek to enjoin Defendants from engaging in these
8 wrongful practices, as alleged herein, in the future: There is no adequate remedy at law and if an
9 injunction is not ordered, Plaintiff and the Class will suffer irreparable harm and/or injury.

10 **NINTH CAUSE OF ACTION**

11 **UNJUST ENRICHMENT**

12 **(Against Defendants and DOES 1-50)**

13 76. Plaintiff refers to each of the foregoing paragraphs in their entirety, and hereby
14 incorporates them by reference as though fully set forth herein.

15 77. As a result of Defendants' deceptive, fraudulent, and misleading labeling, packaging,
16 advertising, marketing, and sales of the Product, Defendants were enriched, at the expense of
17 Plaintiffs and members of the proposed class, through the payment of the purchase price for
18 Defendants' Product.

19 78. Plaintiffs and members of the proposed class conferred a benefit on Defendants
20 through purchasing the Product, and Defendants have knowledge of this benefit and have voluntarily
21 accepted and retained the benefits conferred upon them.

22 79. Defendants will be unjustly enriched if they are allowed to retain such funds, and each
23 member of the proposed class of Plaintiffs is entitled to an amount equal to the amount by which they
24 enriched Defendants and for which Defendants have been unjustly enriched.

25 80. Under the circumstances, it would be against equity and good conscience to permit
26 Defendants to retain the ill-gotten benefits that they received from Plaintiffs, and all other similarly
27 situated, in light of the fact that the volume of the Product purchased by Plaintiffs does not jibe with
28 what Defendants labeled and advertised. Thus, it would be unjust or inequitable for Defendants to

1 retain the benefit without restitution to Plaintiffs, and all others similarly situated, of 45% of the
2 purchase price of Product, which represent the percentage of the amounts of Product actually received
3 to the size of the packaging.

4 **TENTH CAUSE OF ACTION**

5 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT (Cal. Civ. Code 1750, et seq.)**

6 **(Against Defendants and DOES 1-50)**

7 81. Plaintiff refers to each of the foregoing paragraphs in their entirety, and hereby
8 incorporates them by reference as though fully set forth herein.

9 82. Defendants have represented that the defective product has characteristics, uses,
10 benefits, or qualities that the defective product does not have.

11 83. Plaintiff has directly and proximately been injured by the conduct of Defendants, and
12 such injury includes payment for the Product Plaintiff purchased.

13 84. The Court should enjoin the Defendants from any further sales, marketing, or
14 advertisement of the defective Product which contain misrepresentations detailed herein as to the
15 standard, characteristics, uses, benefits, and/or qualities of the Product. Plaintiffs request that this
16 Court enter a permanent injunction enjoining Defendants, and their agents, employees, and all other
17 persons acting under or in concert with them, to cease and desist from selling, marketing, or
18 advertising the defective Product in the manner currently being sold, marketed or advertised. Plaintiff
19 further requests that the Court Order Defendants to recall all mislabeled or misrepresented products
20 from store shelves, and the distribution chain in order to cease misleading consumers.

21 85. Defendants have failed to make or provide such appropriate corrections, repairs or
22 replacements.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:
25 **ON THE FIRST, SECOND, THIRD, FOURTH, FIFTH, AND SIXTH CAUSES OF ACTION**

- 26 1. For an award of general damages according to proof;
27 2. For an award of special damages according to proof;
28 3. For costs of suit incurred herein; and

1 4. For such other and further relief both legal and equitable, as the court may deem just
2 and proper.

3 **ON THE SEVENTH, EIGHTH, NINTH, AND TENTH CAUSES OF ACTION**

4 1. For an order of restitution, requiring Defendants to disgorge any and all funds or value
5 of services they received or derived, directly or indirectly, as a result of their unlawful, unfair or
6 fraudulent business acts and practices.

7 2. For a permanent injunction enjoining Defendants from engaging in the conduct
8 alleged; and

9 3. For recovery of costs and expenses of suit as allowed by law.

10 **ON ALL CAUSES OF ACTION**

11 1. For an Order certifying the statewide class and naming Plaintiffs as representatives of
12 class and Plaintiffs' attorneys as Class Counsel to represent members of the class;

13 2. For an Order declaring the Defendants' conduct violates the statutes referenced herein;

14 3. For injunctive relief to repackage the Product without non-functional slack-fill as
15 pleaded or as the Court may deem proper;

16 4. For injunctive relief to relabel the Product to not include the non-functional slack-fill
17 as pleaded or as the Court may deem proper;

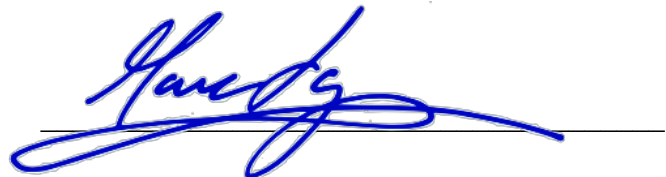
18 5. For prejudgment interest as provided by law; and

19 6. For such other and further relief as the Court deems just and proper.
20

21 **DEMAND FOR TRIAL BY JURY**

22 Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury trial
23 on all claims so triable.
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25 Dated: April 2, 2018

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28 MARC LAZO
Attorneys for Plaintiff