

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ROBERT CRESPO, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

S.C. JOHNSON & SON, INC.,

Defendant.

Civil Action No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Robert Crespo (“Plaintiff”), by and through his attorneys, makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to allegations specifically pertaining to himself and his counsel, which are based on personal knowledge, against Defendant S.C. Johnson & Son, Inc. (“S.C. Johnson” or “Defendant”).

NATURE OF THE ACTION

1. This is a class action lawsuit on behalf of purchasers of Raid Concentrated Deep Reach Fogger (“Raid”) in the United States.

2. Defendant represents that Raid “kills ants, roaches, & spiders,” “penetrates into cracks & crevices to kill bugs where they live & breed,” and “keeps killing for up to 2 months” as shown in the image below:



3. Unfortunately for consumers however, Raid is a complete sham. As explained below, Raid is ineffective for pest control because it cannot reach into hiding spots where pests dwell and because the pests it targets are resistant to cypermethrin, the product's active ingredient. The product is ineffective and worthless.

4. The draw to consumers for using insect foggers, such as Raid (also sometimes referred to as "bug bombs"), is easily understood. Many consumers are desperate to alleviate pest problems in their homes, but do not wish to incur the expense of hiring a pest control professional. So they purchase Raid in the hopes of an easy fix. As the New York Times has noted, "in the battle against bugs, it is often low-income neighborhoods that suffer the most. After all, when the choice comes down to a \$175 visit from an exterminator of a \$3 fogger, the fogger will most often win out."¹

¹ Marc Santora, *Explosion in Apartment Highlights Risks of Using Chemical Foggers to Kill Insects*, NY Times, July 12, 2013, available at <https://www.nytimes.com/2013/07/13/nyregion/a-risky-weapon-in-the-fight-against-insects.html>.

5. It is therefore unsurprising that insect foggers, such as Raid, are so popular. The U.S. Environmental Protection Agency (“EPA”) has estimated that approximately 50 million foggers are used annually.²

6. Unfortunately for consumers, these foggers are too good to be true. As Dr. Michael Potter, an entomology professor at the University of Kentucky, has explained, “[w]hile foggers require little effort to use, they seldom resolve, and can exacerbate, indoor pest problems.”³ As explained below, this is true for two reasons.

7. First, when foggers are activated, “[t]he entire contents are released upwards, into the airspace, where the aerosol droplets remain suspended for a period of time and then gradually settle onto floors, counter tops and other surfaces.” However, “[w]hen applied in this manner, very little insecticide actually penetrates into cracks, voids, and other secluded locations where cockroaches, ants, bed bugs, and most other household pests congregate and spend most of their time.”⁴

8. This is a big problem because, as Defendant’s own product packaging acknowledges, the “cracks and crevices” is where the insects “live and breed.” Simply put, the product cannot be effective if it cannot reach the pests.

9. Second, the active ingredient in Raid, cypermethrin, is a form of pyrethrin, which is theoretically supposed to act as an insecticide. However, pyrethrins “are seldom lethal to roaches, ants, ... spiders ... and other crawling pets.”⁵ That is because these insects quickly build up a resistance to this chemical. As an article in the Journal of Pesticide Reform noted:

² Susan C. Jones, *Ineffectiveness of Over-the-Counter Total-Release Foggers Against the Bed Bug (Heteroptera: Cimicidae)*, 105 J. of Econ. Entomology 3 at pp. 957-963 (June 2012), available at <https://academic.oup.com/jee/article/105/3/957/913369>.

³ Michael F. Potter, *Limitations of Home Insect Foggers (“Bug Bombs”)*, College of Agriculture Food and Environ. at University of Kentucky, available at <https://entomology.ca.uky.edu/ef643>.

⁴ *Id.*

⁵ *Id.*

“Resistance to cypermethrin has developed quickly in insects exposed frequently. Both agricultural and household pest species have developed resistance. The degree of resistance is usually measured with a resistance ratio, the ratio between the amount of a pesticide required to kill a resistant insect and the amount required to kill average (non-resistant) insects. ... Among household pests, resistance ratios have ranged from 5 to 100. (The resistance ratio of 5 was enough to render synthetic pyrethroids ineffective.).”⁶

10. Upon information and belief, Defendant has sold millions of units of Raid through its false promises of effectiveness to consumers

11. Plaintiff is a purchaser of Raid who asserts claims on behalf of himself and similarly situated purchasers of Raid for violations of the consumer protection laws of New York, unjust enrichment, breach of express warranty and fraud.

PARTIES

12. Plaintiff Robert Crespo is a citizen of New York who resides in Brooklyn, New York. Mr. Crespo purchased Raid from a Lowe’s store located in Brooklyn, New York, in November 2016 for approximately \$8. Prior to purchase, Mr. Crespo carefully read the Raid labeling, including the representations that it “kills ants, roaches, & spiders,” “penetrates into cracks & crevices to kill bugs where they live & breed,” and “keeps killing for up to 2 months.” Mr. Crespo believed these statements to mean that Raid would kill ants, roaches, and spiders, and that it would effectively control and prevent these insects from home infestations. Mr. Crespo relied on these representations in that he would not have purchased Raid at all, or would have only been willing to pay a substantially reduced price for Raid, had he known that these

⁶ Caroline Cox, *Cypermethrin*, 16 J. of Pesticide Reform 2 (Summer 1996), available at <https://d3n8a8pro7vhmx.cloudfront.net/ncap/pages/26/attachments/original/1428423343/cypermethrin.pdf?1428423343>.

representations were false and misleading. Plaintiff Crespo used the product as directed, but it did not provide effective insect control, as advertised.

13. Defendant S.C. Johnson & Son is a Wisconsin corporation with its principal place of business in Racine, Wisconsin. Defendant distributes Raid throughout the United States.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendant.

15. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant does business throughout this District.

16. All conditions precedent necessary for filing this Complaint have been satisfied and/or such conditions have been waived by the conduct of the Defendant.

CLASS REPRESENTATION ALLEGATIONS

17. Mr. Crespo seeks to represent a class defined as all persons in the United States who purchased Raid (the “Class”). Excluded from the Class are persons who made such purchase for purpose of resale.

18. Mr. Crespo also seeks to represent a subclass defined as all Class members who purchased Raid in New York (the “New York Subclass”).

19. Members of the Class and New York Subclass are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class and New York Subclass number in the millions. 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 Defendant 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 Defendant's labeling, marketing and promotion of Raid is false and misleading.

21. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff was exposed to Defendant's false and misleading marketing and promotional materials and representations, purchased Raid, and suffered a loss as a result of that purchase.

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 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 Defendant's 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

Defendant's 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 incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

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

26. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts and practices by making false representations on the label of Raid.

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 ability of Raid to prevent, control, and kill ants, spiders, and roaches, and to penetrate into cracks and crevices where these pests live and breed.

29. Plaintiff and members of the New York Subclass were injured as a result because (a) they would not have purchased Raid if they had known that Raid was ineffective for its stated purposes, and (b) they overpaid for Raid on account of its misrepresentations that it "kills ants, roaches, & spiders," "penetrates into cracks & crevices to kill bugs where they live & breed," and "keeps killing for up to 2 months."

30. 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 their 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 incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

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

33. Based on the foregoing, Defendant has 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 because it fundamentally misrepresents the ability of Raid to prevent, control, and kill ants, spiders, and roaches, and to penetrate into cracks and crevices where these pests live and breed.

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

35. These misrepresentations have resulted in consumer injury or harm to the public interest.

36. As a result of these misrepresentations, Plaintiff and members of the New York Subclass have suffered economic injury because (a) they would not have purchased Raid if they had known that Raid was ineffective for its stated purposes, and (b) they overpaid for Raid on account of its misrepresentations that it “kills ants, roaches, & spiders,” “penetrates into cracks & crevices to kill bugs where they live & breed,” and “keeps killing for up to 2 months.”

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 their actual damages or five hundred dollars, whichever is greater, three times actual damages, and reasonable attorneys’ fees.

COUNT III

Unjust Enrichment

38. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

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

40. Plaintiff and Class members conferred benefits on Defendant by purchasing Raid.

41. Defendant has knowledge of such benefits.

42. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff's and Class members' purchases of Raid. Retention of those moneys under these circumstances is unjust and inequitable because Defendant misrepresented that Raid "kills ants, roaches, & spiders," "penetrates into cracks & crevices to kill bugs where they live & breed," and "keeps killing for up to 2 months."

43. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiff and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiff and the Class members for their unjust enrichment, as ordered by the Court.

COUNT IV

Breach of Express Warranty

44. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

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

46. In connection with the sale of Raid, Defendant, as the designer, manufacturer, marketer, distributor, and/or seller issued written warranties by representing that Raid "kills ants,

roaches, & spiders,” “penetrates into cracks & crevices to kill bugs where they live & breed,” and “keeps killing for up to 2 months”

47. In fact, Raid does not conform to the above-referenced representations because Raid is ineffective for its stated purposes.

48. Plaintiff and Class members were injured as a direct and proximate result of Defendant’s breach because (a) they would not have purchased Raid if they had known that Raid was ineffective for its stated purposes, and (b) they overpaid for Raid on account of its misrepresentations that it “kills ants, roaches, & spiders,” “penetrates into cracks & crevices to kill bugs where they live & breed,” and “keeps killing for up to 2 months.”

COUNT V

Fraud

49. Plaintiff hereby incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

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

51. As discussed above, Defendant misrepresented on Raid’s labeling that it “kills ants, roaches, & spiders,” “penetrates into cracks & crevices to kill bugs where they live & breed,” and “keeps killing for up to 2 months.”

52. The false and misleading representations and omissions were made with knowledge of their falsehood. Defendant is a top distributor of pest control products in the United States who is undoubtedly aware of the studies finding that its product does not work. Nonetheless, Defendant continues to sell its ineffective and worthless Raid to unsuspecting consumers.

53. The false and misleading representations and omissions were made by Defendant, upon which Plaintiff and members of the proposed Class and New York Subclass reasonably and

justifiably relied, and were intended to induce and actually induced Plaintiff and members of the proposed Class and New York Subclass to purchase Raid.

54. The fraudulent actions of Defendant caused damage to Plaintiff and members of the proposed Class and Subclass, who are entitled to damages and other legal and equitable relief as a result.

COUNT VI

Magnuson-Moss Warranty Act

55. Plaintiff hereby incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

56. Plaintiff brings this case individually and on behalf of the members of the proposed Class against Defendant.

57. Raid is a consumer product as defined in 15 U.S.C. § 2301(1).

58. Plaintiff and Class members are consumers as defined in 15 U.S.C. § 2301(3).

59. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

60. In connection with the sale of Raid, Defendant issued written warranties as defined in 15 U.S.C. § 2301(6), which warranted that it “kills ants, roaches, & spiders,” “penetrates into cracks & crevices to kill bugs where they live & breed,” and “keeps killing for up to 2 months.”

61. In fact, Raid is ineffective to prevent, control, and kill these insects.

62. By reason of Defendant’s breach of warranty, Defendant violated the statutory rights due to Plaintiff and Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, et seq., thereby damaging Plaintiff and Class members.

63. Plaintiff and Class members were injured as a direct and proximate result of Defendant’s violation because (a) they would not have purchased Raid if they had known that

Raid was ineffective for its stated purposes, and (b) they overpaid for Raid on account of its misrepresentations that it “kills ants, roaches, & spiders,” “penetrates into cracks & crevices to kill bugs where they live & breed,” and “keeps killing for up to 2 months.”

RELIEF DEMANDED

64. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- a. For an order certifying the nationwide Class and the New York Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and New York Subclass and Plaintiff’s attorneys as Class Counsel to represent the Class and New York Subclass members;
- b. For an order declaring that Defendant’s conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiff, the nationwide Class, and the New York Subclass on all counts asserted herein;
- d. For compensatory, statutory, and punitive 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 an order enjoining Defendant from continuing the illegal practices detailed herein and compelling Defendant to undertake a corrective advertising campaign; and
- h. For an order awarding Plaintiff and the Class and New York Subclass their reasonable attorneys’ fees and expenses and costs of suit.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all claims so triable.

Dated: December 3, 2018

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Yitzchak Kopel

Yitzchak Kopel

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Attorneys for Plaintiff

JS 44 (Rev. 11/15)

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

ROBERT CRESPO, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff **Kings**

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Yitzchak Kopel, Bursor & Fisher, P.A.
888 Seventh Avenue, New York, NY 10019
646-837-7150

DEFENDANTS

S.C. Johnson & Son, Inc.

County of Residence of First Listed Defendant **Racine County**

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

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

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input 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 checked="" 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 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)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(d)

Brief description of cause:
Unfair or deceptive business practices

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$
5,000,000.00

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

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.

Case is Eligible for Arbitration ☐

I, Yitzhak Kopel, counsel for Robert Crespo, 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:

None.

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? ☐ Yes ☒ 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 ☒ No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☒ Yes ☐ No
- c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

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? ☐ Yes ☐ No

(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: 

____ District of _____

Plaintiff(s)

V.

Civil Action No.

Defendant(s)

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: