

Sheehan & Associates, P.C.
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(516) 303-0552

United States District Court
Eastern District of New York

2:19-cv-01875

Oscar Lopez individually and on behalf of
all others similarly situated

Plaintiff

- against -

SPC Management Co., Inc.

Defendant

Complaint

Plaintiff by attorneys alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. SPC Management Co., Inc. (“Swander Pace Capital” or “defendant”) manufactures, distributes, imports, markets, labels and sells wafers and cookies (the “Products”) through its ownership, control, and authority over Voortman Cookies Limited, a Canadian enterprise.

2. The Voortman Cookies are available in numerous flavors and as sugar free, sold to consumers from third-party brick and mortar stores and websites.

3. The Products highlight certain ingredients or components on the front labels such as “Baked With Real Cocoa” (“Cocoa Products”), “Baked With Real Fruit” or a particular type of fruit, i.e., “Baked With Real Bananas,” (“Fruit Products”) and “Baked With Real Vanilla” (“Vanilla Products”).

4. The Cocoa Products include Chocolate & Caramel Wafers, Chocolate & Raspberry Wafers, Chocolate Mint Wafers, Chocolate Wafers, Chocolate Wafers Sugar Free, Cookies 'N

Crème Wafers, Fudge Brownie Chocolate Chip Cookies, Sugar Free Fudge Coated Chocolate Wafers, Fudge Coated Peanut Butter Wafers, Fudge Coated Salted Caramel Wafers, Sugar Free Fudge Coated Vanilla Wafers, Fudge Striped Shortbread Cookies Sugar Free and S'mores Wafers.

Baked With
Real Cocoa



5. The Fruit Products include Apple Crisp Wafers, Banana Wafers, Chocolate & Raspberry Wafers, Strawberry Wafers, and Strawberry Banana Wafers.

Baked With
Real Fruit



6. The Vanilla Products include Vanilla Shortbread Cookies and Vanilla Wafers.

Baked With
Real Vanilla



7. Defendant has tapped into consumer demand for “real ingredients” by promoting the products as “baked with” “real cocoa,” “real vanilla” and “real fruit,” as “nearly three-quarters of U.S. consumers find it important to recognize the ingredients in the products they buy.”¹

8. An industry survey confirmed “recognition of ingredients to be one of the biggest drivers of product choice, with more than half of respondents (52 percent) considering it to be an important factor.”²


9. The Products’ representations are misleading because despite the front-label claims of “real cocoa,” “real vanilla” and “real fruit,” they do not contain these components in the amount, type and/or form which a reasonable consumer would expect based on the claims.

I. Cocoa

10. Cocoa powder (“cocoa”) is the “core of a chocolate's flavor, without any extra fat, sugar, or milk to get in the way.”

11. The “Baked with Real Cocoa” representations are false, misleading and deceptive because the ingredient lists disclose they actually contain “Cocoa Processed with Alkali.”

Cocoa Processed
with Alkali
 (“Cocoa”)



INGREDIENTS: SUGAR, ENRICHED WHEAT FLOUR (WHEAT FLOUR, MALTED BARLEY FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID), VEGETABLE OIL (CANOLA, SOYBEAN, PALM AND PALM KERNEL), CORN STARCH, COCOA PROCESSED WITH ALKALI, SOY LECITHIN, SALT, NATURAL FLAVORS, BAKING SODA, AMMONIUM BICARBONATE. CONTAINS WHEAT, SOY.

12. No reasonable consumer would expect cookies and wafers promoted as “baked with real cocoa” to contain or be made with alkalis, because “real” modifies “cocoa,” indicating the

¹<https://www.snackandbakery.com/articles/88762-clean-label-snacks-and-bakery-move-from-novelty-to-mainstream>

² <https://www.foodinsiderjournal.com/clean-label/75-consumers-will-pay-extra-clean-label-ingredients>

cocoa powder is included in its most simplified and bare form, *without* alkalis, which is readily available.

13. Cocoa powder results from crushing the edible portions of the cocoa bean – “nibs” – into a fine paste, releasing and melting the nibs’ fat content (cocoa butter).

14. the combination of crushed, ground nibs and cocoa butter produces chocolate liquor.

15. The chocolate liquor is pressed between hydraulic plates to form hard-cocoa “press cakes” and the excess cocoa butter is removed.

16. The cocoa cakes are grated into fine powders.

17. The types of powders produced are based on the amount of cocoa butter, or fat, remaining in the powder: high or “breakfast cocoa” (22% +), medium or “cocoa” (10-12%) and lowfat cocoa (less than 10%).

18. The cocoa powder can be further treated through alkalization (“Dutch-process” or alkalized) or sold for use in its non-alkalized state.

19. The use and presence of alkalis reduces the acidity of cocoa powder, giving it a noticeably darker hue but detracting from the “real cocoa” taste.



20. The claim of “baked with real cocoa” is intended to differentiate the cocoa in the

Products from other cocoa ingredients bearing the standard cocoa designation, i.e., “cocoa” or “cocoa processed with alkali,” and imply *this* cocoa is nutritionally and organoleptically superior.³

21. Because cocoa is a commonly used and valued product, consumers have certain expectations based on experience when it comes to how “cocoa” is declared on a label.

22. It is false, deceptive and misleading to conspicuously promote “real cocoa” without any reference to the presence and use of alkalis either preceding or following.

23. The Products’ use of the optional alkali ingredients significantly distinguishes its cocoa component from cocoa powder which does not contain alkali.

24. The presence or absence of alkalis effect the taste and color of the cocoa powder to such an extent that they are a characterizing feature and effect whether it will be purchased.

25. Though it may be duplicative and unnecessary to indicate the presence of all optional ingredients used in standardized foods wherever the affected ingredient is declared, other than the ingredient list, this is not the case where an optional ingredient (alkali) is characterizing towards the affected ingredient (cocoa).

26. The representation “real cocoa” is false, deceptive and misleading because consumers expect “real cocoa” to indicate a higher quality cocoa than had the ingredient merely been accurately identified as “cocoa,” the term for when it’s between 10 and 22 percent.

27. By misrepresenting medium fat cocoa as “real cocoa,” consumers will expect the cocoa powder component to be nutritionally and organoleptically superior than it actually is.

28. Such a type of higher fat cocoa – above 22 percent – is referred to as breakfast cocoa, which has a more intense “chocolate-y” flavor.

³ 21 C.F.R. §130.11 Label designations of ingredients for standardized foods.

II. Real Vanilla

29. The representation “baked with real vanilla” is false and misleading because the ingredient list indicates the Vanilla Products contains “natural flavor” which does not include vanilla, vanillin or vanilla flavor.

Natural Flavors
 (“Vanilla”)

INGREDIENTS

Vegetable oil (canola, soybean, palm and palm kernel), sorbitol, enriched wheat flour (wheat flour, malted barley flour, niacin, reduced iron, thiamine mononitrate, riboflavin, folic acid), maltodextrin, corn starch, salt, soy lecithin, natural flavor, aspartame (Phenylketonurics: contains phenylalanine), baking soda, ammonium bicarbonate

30. Consumers value the representation "Baked With Real Vanilla" because studies have found that real vanilla simulates a creamy texture, satisfying consumers' needs for consumption of fat-rich foods, without the actual fat and calories.

31. Consumers value vanilla because it is the ideal combination of spice and sweet – contrary to its dictionary definition of “plain.”

III. Real Fruit

32. The “baked with real fruit” representations are false and misleading because their ingredient lists disclose the presence of “dried fruit,” whether strawberries, bananas, lemons, etc.

Dried Fruit
 (“Fruit”)

Ingredients

Sugar, Enriched Wheat Flour (Wheat Flour, Malted Barley Flour, Niacin, Reduced Iron, Thiamine Mononitrate, Riboflavin, Folic Acid), Vegetable Oil (Canola, Soybean, Palm And Palm Kernel), Corn Starch, Dried Strawberries, Dried Bananas, Soy Lecithin, Natural Flavor, Salt, Citric Acid, Baking Soda, Ammonium Bicarbonate.

33. Consumers value products purporting to contain fruit due to their many nutrients and health-promoting effects.

34. However, the dehydration of the fruits causes their sugar content – previously dispersed in a high-water content fruit – to be concentrated.

35. This provides the sugar from the fruit but because it is delivered to the body without the roughage and water which would accompany the consumption of that fruit if it were whole and in raw form, its nutritional benefits are greatly diminished.

36. The Products contain other representations which are misleading and deceptive.

37. As a result of the false and misleading labeling, defendant sold the Products at a premium price – no less than \$4.19 per 14.1 oz, excluding tax – compared to other similar products which are represented in a non-misleading way.

Jurisdiction and Venue

38. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2).

39. Upon information and belief, the aggregate amount in controversy is more than \$5,000,000.00, exclusive of interests and costs.

40. This court has personal jurisdiction over defendant because it conducts and transacts business, contracts to supply and supplies goods within New York.

41. Venue is proper because plaintiff and many class members reside in this District and defendant does business in this District and State.

42. A substantial part of events and omissions giving rise to the claims occurred in this District.

Parties

43. Plaintiff is a citizen of Suffolk County, New York.

44. John and Jane Doe plaintiffs are citizens of the other 49 states.

45. Defendant is a California corporation with a principal place of business in San Francisco, California.

46. During the class period, plaintiff purchased one or more Products for personal consumption with the representations described herein, for no less than the price indicated, *supra*, excluding tax, within this district and/or state.

47. Plaintiff paid this premium because prior to purchase, plaintiffs saw and relied on the misleading representations.

48. Plaintiff would consider purchasing the Products again if there were assurances that the Products' representations were no longer misleading.

Class Allegations

49. The classes consist of all consumers in the following states: all, New York who purchased any Products subject to the actionable representations during the statutes of limitation.

50. A class action is superior to other methods for fair and efficient adjudication.

51. The class is so numerous that joinder of all members, even if permitted, is impracticable, as there are likely hundreds of thousands of members.

52. Common questions of law or fact predominate and include whether the representations were likely to deceive reasonable consumers and if plaintiff(s) and class members are entitled to damages.

53. Plaintiff(s) claims and the basis for relief are typical to other members because all were subjected to the same representations.

54. Plaintiff(s) is/are an adequate representative because his/her/their interests do not conflict with other members.

55. No individual inquiry is necessary since the focus is only on defendant's practices and the class is definable and ascertainable.

56. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest.

57. Plaintiff(s) counsel is competent and experienced in complex class action litigation and intends to adequately and fairly protect class members' interests.

58. Plaintiff(s) seeks class-wide injunctive relief because the practices continue.

New York General Business Law ("GBL") §§ 349 & 350
and Consumer Protection Statutes of Other States and Territories

59. Plaintiff and John and Jane Doe plaintiffs, representing the forty-nine (49) other states where they reside and purchased the Products, incorporate by reference all preceding paragraphs and assert causes of action under the consumer protection statutes of all fifty (50) states.

- a. Alabama Deceptive Trade Practices Act, Ala. Code § 8-19-1, *et. seq.*;
- b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et. seq.*;
- c. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et. seq.*;
- d. California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* and Unfair Competition Law, Cal. Bus. Prof. Code §§ 17200- 17210 *et. seq.*;
- e. Colorado Consumer Protection Act, Colo Rev. Stat § 6-1-101, *et. seq.*;
- f. Connecticut Unfair Trade Practices Act, Conn. Gen Stat § 42-110a, *et. seq.*;
- g. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et. seq.*;

- h. District of Columbia Consumer Protection Procedures Act, D.C. Code §§ 28-3901, *et. seq.*;
- i. Florida Deceptive and Unfair Trade Practices, Act *Florida Statutes* § 501.201, *et. seq.*;
- j. Georgia Fair Business Practices Act, §10-1-390 *et. seq.*;
- k. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 1, *et. seq.* and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statute § 481A-1, *et. seq.*;
- l. Idaho Consumer Protection Act, Idaho Code § 48-601, *et. seq.*;
- m. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et. seq.*;
- n. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et. seq.*;
- o. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et. seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann § 365.020, *et. seq.*;
- p. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. §§ 51:1401, *et. seq.*;
- q. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et. seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et. seq.*;
- r. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen Laws ch. 93A;
- s. Michigan Consumer Protection Act, §§ 445.901, *et. seq.*;
- t. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et. seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn Stat. § 325D.43, *et. seq.*;
- u. Mississippi Consumer Protection Act, Miss. Code An. §§ 75-24-1, *et. seq.*;
- v. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et. seq.*;
- w. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code § 30-14-101, *et. seq.*;

- x. Nebraska Consumer Protection Act, neb. Rev. Stat. § 59 1601 *et. seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et. seq.*;
- y. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et. seq.*;
- z. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et. seq.*;
- aa. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et. seq.*;
- bb. New Mexico Unfair Practices Act, N.M. Sta. Ann. §§ 57 12 1, *et. seq.*;
- cc. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et. seq.*;
- dd. Ohio Rev. Code Ann. §§ 1345.02 and 1345.03; Ohio Admin. Code §§ 109;
- ee. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et. seq.*;
- ff. Oregon Unfair Trade Practices Act, Ore. Rev. Stat. § 646.608(e) & (g);
- gg. Rhode Island Unfair Trade Practices and Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1 *et. seq.*;
- hh. South Carolina Unfair Trade Practices Act, S.C. Code Law § 39-5-10, *et. seq.*;
- ii. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et. seq.*;
- jj. Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et. seq.*;
- kk. Vermont Consumer Fraud Act, Vt. Stat. Ann. Tit. 9, § 2451, *et. seq.*;
- ll. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86/0101, *et. seq.*;
- mm. West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et. seq.*;
- nn. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18, *et. seq.*

60. Defendant's representations and omissions are false, unfair, deceptive and

misleading and are not unique to the parties and have a broader impact on the public.

61. Defendant's acts, practices, advertising, labeling, packaging, representations and omissions are not unique to the parties and have a broader impact on the public.

62. Plaintiff desired to purchase products which were as described by defendant and expected by reasonable consumers, given the product type.

63. The representations and omissions were relied on by plaintiff and class members, who paid more than they would have, causing damages.

Negligent Misrepresentation

64. Plaintiff incorporates by references all preceding paragraphs.

65. Defendant misrepresented the substantive, health, quality and nutritional attributes of the Products' composition.

66. Defendant had a duty to disclose and/or provide non-deceptive labeling of the Products and knew or should have known same were false or misleading.

67. This duty is based on defendant's purported position as a self-designated learned intermediary and an entity which has held itself out as having special knowledge in the production, service and sale of the product type.

68. Defendant negligently misrepresented and/or negligently omitted material facts.

69. Plaintiff reasonably and justifiably relied on these negligent misrepresentations and omissions, which served to induce and did induce, the purchase of the Products.

70. Plaintiff and class members would not have purchased the Products or paid as much if the true facts had been known, thereby suffering damages.

Breach of Express Warranty and Implied Warranty of Merchantability

71. Plaintiff incorporates by references all preceding paragraphs.

72. Defendant sells cookies and wafers with characterizing “real” ingredients, purporting to be the ingredient type in its most basic form available such that it can be functionally included in the Products.

73. The Products warranted to plaintiff and class members that they possessed substantive, functional, nutritional, organoleptic, sensory, physical and other attributes which they did not.

74. The Products did not conform to their affirmations of fact and promises, wholly due to defendant’s actions.

75. The Products were not merchantable in their final sale form.

76. Plaintiff and class members relied on defendant’s claims, paying more than they would have.

Fraud

77. Plaintiff incorporates by references all preceding paragraphs.

78. Defendant’s purpose was to mislead consumers who seek products which feature “real” ingredients – “real” referring to the ingredient in its least modified form such that it can be incorporated into a final product.

79. Defendant’s intent was to secure economic advantage in the marketplace against competitors.

80. Plaintiff and class members observed and relied on defendant’s claims, causing them to pay more than they would have, entitling them to damages.

Unjust Enrichment

81. Plaintiff incorporates by references all preceding paragraphs.

82. Defendant obtained benefits and monies because the Products were not as represented and expected, to the detriment and impoverishment of plaintiff and class members, who seek restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, plaintiff prays for judgment:

1. Declaring this a proper class action, certifying plaintiff(s) as representative and the undersigned as counsel for the class;
2. Entering preliminary and permanent injunctive relief by directing defendant to correct such practices to comply with the law;
3. Awarding monetary damages and interest, including treble and punitive damages, pursuant to the common law, GBL and other statutory claims;
4. Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and
5. Such other and further relief as the Court deems just and proper.

Dated: April 1, 2019

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

Spencer Sheehan (SS-8533)

505 Northern Blvd., Suite 311

Great Neck, NY 11021

(516) 303-0552

spencer@spencersheehan.com

Joshua Levin-Epstein

2:19-cv-01875
United States District Court
Eastern District of New York

Oscar Lopez individually and on behalf of all others similarly situated

Plaintiff

- against -

SPC Management Co., Inc.

Defendant

Complaint

Sheehan & Associates, P.C.
505 Northern Blvd., #311
Great Neck, NY 11021
Tel: (516) 303-0052
Fax: (516) 234-7800

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, and belief, formed after an inquiry reasonable under the circumstances, the contentions contained in the annexed documents are not frivolous.

Dated: April 1, 2019

/s/ Spencer Sheehan
Spencer Sheehan

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
Oscar Lopez individually and on behalf of all others similarly situated
(b) County of Residence of First Listed Plaintiff Suffolk
(c) Attorneys (Firm Name, Address, and Telephone Number)
Sheehan & Associates, P.C., 505 Northern Boulevard, Suite 311, Great Neck, NY 11021, (516) 303-0552

DEFENDANTS
1. SPC Management Co., Inc.
County of Residence of First Listed Defendant
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)
Citizen of This State PTF 1 DEF 1
Citizen of Another State PTF 2 DEF 2
Citizen or Subject of a Foreign Country PTF 3 DEF 3
Incorporated or Principal Place of Business In This State PTF 4 DEF 4
Incorporated and Principal Place of Business In Another State PTF 5 DEF 5
Foreign Nation PTF 6 DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise.
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property.
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice. PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability. PRISONER PETITIONS: Habeas Corpus: 463 Alien Detainee, 510 Motions to Vacate Sentence, 530 General, 535 Death Penalty. Other: 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition, 560 Civil Detainee - Conditions of Confinement.
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other.
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act.
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions.
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157.
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark.
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g)).
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609.
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC § 1332
Brief description of cause: False advertising

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 04/01/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Spencer Sheehan

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

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

I, Spencer Sheehan, counsel for plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

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

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

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

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

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

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

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

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes
- No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: /s/ Spencer Sheehan

UNITED STATES DISTRICT COURT

for the
Eastern District of New York

Oscar Lopez individually and on behalf of all others similarly
situated

Plaintiff(s)

v.

SPC Management Co., Inc.

Defendant(s)

Civil Action No. 2:19-cv-01875

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

SPC Management Co., Inc.
C/O MARK R POFF
101 MISSION STREET, SUITE 1900
SAN FRANCISCO CA 94105

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: Sheehan & Associates, P.C. 505 Northern Blvd., #311, Great Neck, NY 11021

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