

JUDGE OETKEN

13 CV 0150

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

JADE BARRETT,  
and all others similarly situated,

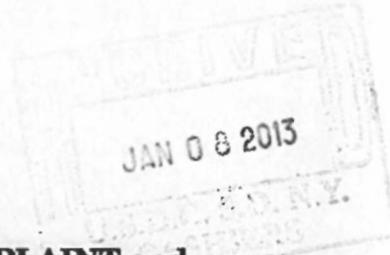
Plaintiff,

v.

AVON PRODUCTS, INC.

Defendant.

Civil Action No. \_\_\_\_\_



**CLASS ACTION COMPLAINT and  
DEMAND FOR JURY TRIAL**

Plaintiff, by her attorneys, on behalf of herself and all others similarly situated, makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to allegations specifically pertaining to herself and her counsel, which are based on personal knowledge.

**SUMMARY OF THE ACTION**

1. The search for eternal youth and beauty is hardly new. For centuries humans have attempted to forestall the inevitable aging process by cosmetic and surgical means. Indeed, throughout history there has been no shortage of products, including the infamous "snake oil" tonic from a bygone era, that purport to "cure" the "disease of old age."

2. Today, the search for a youth potion continues and, like a modern-day snake oil salesman, Avon Products, Inc. ("Avon" or "Defendant") preys on consumers' fundamental fear of aging and their eternal hope that products exist that can eliminate the signs of aging and effectively turn back time.

3. In fact, Avon profits handsomely by its false and misleading claims that its products, including those from the ANEW collection, specifically ANEW Reversalist Night Renewal Cream, ANEW Reversalist Renewal Day Cream, ANEW Reversalist Renewal Serum, ANEW Reversalist Illuminating Eye System (collectively "ANEW Reversalist Products"), ANEW Clinical Advanced Wrinkle Corrector, ANEW Clinical Luminosity Pro Brightening Serum, ANEW Clinical Resurfacing Expert Smoothing Fluid, ANEW Clinical Pro Line Eraser, ANEW Clinical Lift & Firm Pro Serum, and ANEW Clinical Thermafirm Face Lifting Cream (collectively "ANEW Clinical Products"), and ANEW Genics Night Treatment Cream, ANEW Genics Eye Treatment, and ANEW Genics Treatment Concentrate (collectively "ANEW Genics Products") (together, "ANEW Products") have specific age-negating effects on the human skin and body.

4. As explained more fully herein, Avon has made, and continues to make, deceptive, false or misleading claims and promises to consumers about the efficacy of its ANEW Products in a pervasive, nation-wide marketing scheme that confuses and misleads consumers about the true nature of the products. In reality, the ANEW Products do not live up to the efficacy claims made by Avon.

5. Avon knows this, yet designs its marketing and advertising campaign to include indicia of scientific research and discovery and promises of specific results for the sole purpose of misleading and deceiving consumers. As a result, Avon's marketing pitch is the same as that of the quintessential snake-oil salesman – Avon

dupes consumers with false and misleading promises of results it knows it cannot deliver, and does so with one goal in mind – reaping enormous profits.

6. Indeed, the only reason a consumer would purchase the ANEW Products sold by Avon instead of lower-priced moisturizers, which are readily available, is to obtain the unique results that Avon promises.

7. A direct effect of this pervasive and deceptive marketing campaign is that consumers across the country, including Plaintiff and the proposed Class, relied upon Avon's false and misleading misrepresentations and purchased skin-care products that do not, and cannot, provide the results promised.

8. Avon's false and misleading statements about the efficacy of a particular product are equally applicable to each of the products within that specific collection. For example, for each of the ANEW Reversalist Products (serum, night cream, eye cream and day cream) Avon specifically promises that its unique formula will "visibly reduce wrinkles" and/or "dramatically reduce visible wrinkles." According to Defendant, the ANEW Reversalist Products all include Avon's "groundbreaking . . . key to skin repair," a formula based on a new discovery Avon calls Activinol Technology. According to Avon, ANEW Reversalist's Activinol Technology "helps reactivate skin's repair process to recreate fresh skin & help dramatically reverse visible wrinkles."

9. Accordingly, because each of the ANEW Reversalist Products contains essentially the same efficacy promise, and because Avon repeats the same promises for each, the misleading claims touting the supposed benefits are equally applicable

to all of the ANEW Reversalist Products. The same holds true for the ANEW Clinical and ANEW Genics lines of products.

10. Avon's marketing campaign for each of the ANEW Products follows the same deceptive pattern and practice – Avon makes specific efficacy promises based on purported scientific research and new discoveries of specific ingredients that deceive and mislead consumers into believing that the ANEW Products they are purchasing will provide the promised and unique results. Such promises are deceptive and misleading.

11. Avon sells its products, including ANEW Products to consumers through Sales Representatives. To assist Sales Representatives, Avon generates sales brochures, which highlight the products' purported efficacy claims. Upon information and belief, sales brochures contain the same or essentially the same misleading and deceptive efficacy claims as appear on Avon's internet website.

12. Plaintiff and the Class were exposed to Avon's pervasive deceptive and misleading advertising messages and material omissions regarding the efficacy promises of the ANEW Products and relied on those material misstatements and omissions in deciding to purchase ANEW Products.

13. Plaintiff seeks relief in this action individually and as a class action on behalf of all purchasers in the United States of at least one of the ANEW Products ("the Class") at any time from the date of product launch for each of the ANEW Products to the present (the "Class Period") for unjust enrichment, breach of

express warranty, and consumer fraud. Pending completion of discovery, Plaintiff may seek leave to amend the Class definitions.

14. Plaintiff Jade Barrett seeks relief individually and on behalf of a subclass of residents of her home state of New York.

#### **THE PARTIES**

15. Plaintiff Jade Barrett is a citizen of the State of New York, residing in New York County. Plaintiff purchased ANEW Reversalist Renewal Serum from an Avon representative in New York during the Class Period for personal use. As set forth in greater detail below, in or about December 2011, Plaintiff Barrett saw, read, and received Avon's material misrepresentations as described more fully herein, including Avon's many false and misleading product claims, and relied on those material mis-statements in making her decision to purchase the ANEW Products. Plaintiff Barrett would not have purchased ANEW Reversalist Renewal Serum had Avon not made such false and deceptive claims and instead disclosed the true nature of its products.

16. Defendant Avon Products, Inc. is a New York corporation with its principal place of business in New York. Avon's global research and development headquarters, where its products are developed, is also located in New York.

#### **JURISDICTION AND VENUE**

17. 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 million exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Defendant.

18. Pursuant to 28 U.S.C. § 1391, venue is proper in this Court because Defendant conducts business in this District and a substantial part of the events, omissions and acts giving rise to the claims herein occurred in this District.

**GENERAL FACTUAL ALLEGATIONS COMMON  
TO ALL CAUSES OF ACTION**

**I. AVON'S MISLEADING EFFICACY CLAIMS**

19. A central theme of Avon's deceptive marketing campaign, which permeates throughout its print and web-based advertisements and sales brochures, is that its products, and the results promised by Avon, are supported by scientific research and resulting innovations. As described in more detail below, Avon's marketing campaign highlights the purported years of scientific research and study, clinical and consumer tests and other repeated references to scientific sounding terms that, according to Avon, prove the promised results.

20. For example, among other things, Avon makes the following specific promises in its sales and marketing materials, including but not limited to its on-line website and product sales brochures:

**ANEW CLINICAL Advanced Wrinkle Corrector:**

- "The at-home answer to wrinkle-filling injections. Start rebuilding collagen in just 48 hours."
- "4D WRINKLE-REVERSE TECHNOLOGY IS DESIGNED TO:  
Rebuild collagen to help plump out lines and wrinkles.  
Stimulate elastin to help improve elasticity and resilience.  
Regenerate hydroproteins to help visibly minimize creasing."

- “Formulated to boost shock-absorbing proteins to help strengthen skin’s support layers.”
- “Improve fine & deep wrinkles up to 50%. Immediately plumps out wrinkles and fine lines. Within 48 hours begins boosting collagen production.”

ANEW CLINICAL Thermafirm Face Lifting Cream

- “Our effective lifting treatment is formulated to fortify damaged tissue with new collagen. In just 3 days, see tighter, firmer, more lifted skin.\* . . . \*Based on a consumer-perception study.”
- “[H]elp tighten the connections between skin’s layers.”

ANEW CLINICAL Eye Lift Pro Dual Eye System

- “See more lifted eyes and visibly reduced dark circles. . . . See a dramatic lift in just 1 week.”

ANEW CLINICAL Pro Line Eraser Treatment

- “[P]atented A-F33 (Amino-Fill 33) works to deactivate collagen blocking and help effectively boost collagen production in just 3 days.\* . . . \*Based on testing on skin cells.”

ANEW CLINICAL Lift & Firm Pro Serum

- “This dual-formula serum contains injectable-grade ingredients\* and provides a dramatically lifted look. (\*This is a cosmetic product for external use only.)”
- “Lift & Firm Pro is formulated to help boost elastin production.”
- “ANTI-GRAVITY GEL: Uniquely designed with injectable-grade PVP,\* a skin-tightening polymer. PRO-FIRMING BEADS: Formulated with injectable-grade Arginine\* to help boost elastin production, critical for skin firmness.”

ANEW REVERSALIST Night Renewal Cream & ANEW REVERSALIST Renewal Serum

- “[W]rinkles are a result of micro-injuries to the skin, so AVON studied how skin heals. As part of the repair process, the body produces Activin . . . . [E]xhaustive research, testing & review have resulted in an unprecedented discovery by AVON scientists: how to activate this key repair molecule. . . . Designed to boost Activin, ANEW’s **Activinol** Technology helps reactivate skin’s repair process to recreate fresh skin & help dramatically reverse visible wrinkles.”

ANEW REVERSALIST Illuminating Eye System

- “Two-part eye system with Activinol Eye Technology. Helps reactivate skin’s repair processes and dramatically reverse visible wrinkles.”
- “[V]isibly repairs dark circles, fine lines and wrinkles over time.”

ANEW GENICS Night Treatment Cream

- “Now any woman can look five years younger with ANEW Genics with our patented YouthGen™ Technology.\* Now you can undo 5 years from the look of your skin.\* . . . \*Based on a consumer perception study of women 45-59.”

ANEW GENICS Treatment Concentrate

“See expression lines soften immediately. . . . Look 5.9/almost 6 years younger.\* . . . \*Based on a consumer perception study of women 45-59.”

ANEW GENICS Eye Treatment

- “Now eyes can look 5 years younger.\* Genics Eye Treatment with YouthGen™ Technology is designed to help skin cells act younger. Undo 5 years from the look of your eyes.\* . . . \*Based on a consumer perception study of women 45-59.”

21. Unfortunately, these efficacy claims (and the others detailed below) are false, deceptive or misleading.

22. In fact, while such science-based and clinical claims provide Avon with an increased level of credibility among unsuspecting consumers, and therefore increased sales, the purported scientific research and clinical “proof” is simply part and parcel of Avon’s deceptive and misleading advertising campaign.

23. One of the reasons Avon saturates its marketing campaigns with misleading scientific references is that it knows that such repeated and pervasive references to scientific terms and data makes it more likely that consumers will believe that its products are approved by the Food and Drug Administration (“FDA”), when in fact they are not. Avon knows that consumers who believe that

the ANEW Products have received FDA approval are more likely to believe Avon's false efficacy promises and therefore more likely to purchase the ANEW Products.

24. Indeed, Avon's misleading efficacy claims for the ANEW Products caught the attention of the FDA, and on October 5, 2012, the FDA sent a warning letter to Avon, which states in pertinent part, "Your products are not generally recognized among qualified experts as safe and effective for the above referenced uses . . . ."

25. Avon's specific claims of efficacy cannot be defended as mere puffery. Avon's claims of scientifically backed research and discoveries go beyond any mere sales puffery by claiming first that certain specific discoveries enable the ANEW Products to provide the unique benefits and then by providing specific results affirmations and promises of those benefits. Indeed, such specific scientific references are an integral part of its marketing campaign, as evidenced by Avon's reliance on such efficacy promises. By promising specific results, Avon's advertising transcends the realm of mere puffery and becomes actionable as deceptive, misleading or fraudulent.

26. Avon relies on such promises of scientific reliability and proven results because it knows that consumers are more likely to believe its empty promises, and therefore more likely to purchase its products, when the indicia of scientific reliability and study are present.

27. Even if one or more of Avon's claims is literally true, when viewed in their totality, the promises made by Avon regarding the efficacy of the ANEW

Products are nevertheless misleading to the average consumer and are therefore actionable regardless of their literal truthfulness.

28. Moreover, to the extent that the ANEW Products provide any of the promised results, such results are merely temporary. Avon knows this, yet fails to disclose it to consumers, leaving Plaintiff and the Class with the belief that the promised age-negating benefits will be permanent.

## **II. AVON'S MISLEADING AND DECEPTIVE REFERENCES TO STUDIES AND DATA**

29. Avon's product marketing strategy includes references to nonsensical "clinical" studies or trials and "consumer perception studies" that purport to "prove" that the promised results are real. However, Avon knows, or reasonably should know, that the purported "proof" is not reliable and does not translate to actual results for consumers. Despite this, Avon continues to convey its message of "proof" because it knows that average consumers are swayed by such indicia of credibility and Avon takes full advantage of this to profit on consumers' gullibility.

30. By way of example, Avon misleads consumers by claiming that many of its promised results are supported by "clinical tests" or "consumer-perception studies" which Avon knows sounds scientifically reliable to the average consumer.

31. In fact, Avon designs such "tests" to support the promised results knowing that the results are not reliable and are unlikely to translate to consumers. Evidence of this practice is reflected in Avon's use of a "consumer-perception study" to support its efficacy claims for its ANEW Clinical Thermafirm Face Lifting Cream. Avon touts that "Our effective lifting treating is formulated to fortify

damaged tissue with new collagen. In just 3 days, see tighter, firmer, more lifted skin.\*” The claim, however, is based upon nothing more than an empty, self-serving “consumer-perception study” which offers no details or support of any kind for the claim that the product will “fortify damaged tissue with new collagen.”

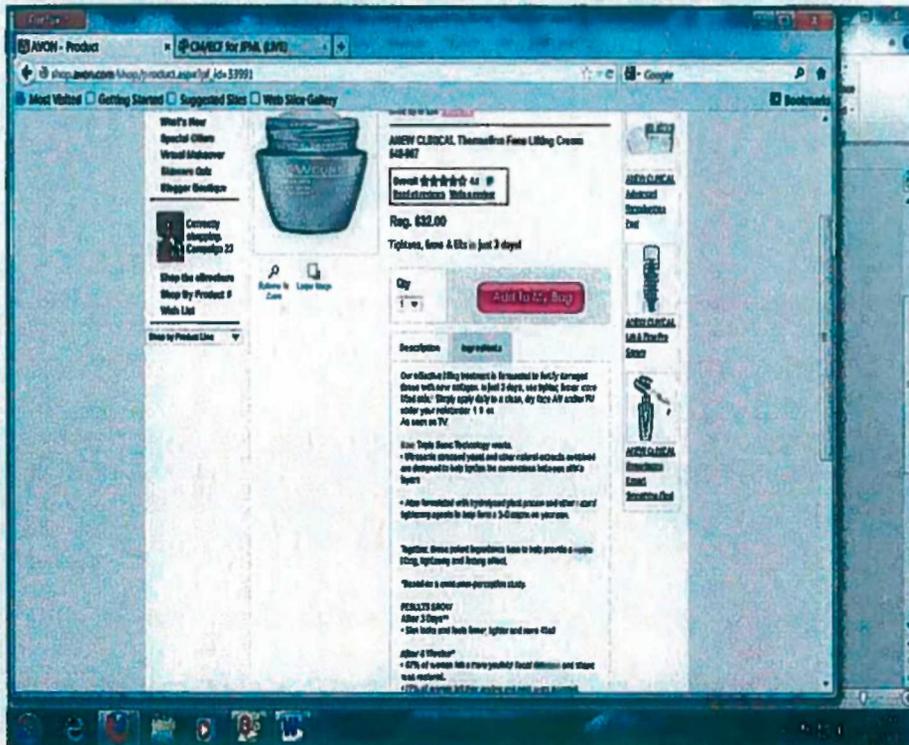
32. In addition to the foregoing claim, Avon contends that after 4 weeks of use of ANEW Clinical Thermafirm Face Lifting Cream, “87% of women felt a more youthful facial definition and shape was restored; and 77% of women felt their jawline and neck were sculpted.” These results are similarly “[b]ased on women who expressed an opinion in a consumer-perception study.” The use of statistics in this manner without supporting quantitative detail is misleading. Avon does not disclose how many women participated in the consumer-perception study, how many expressed an opinion and how many did not, or how many expressed a favorable opinion, or even what constitutes a favorable opinion.

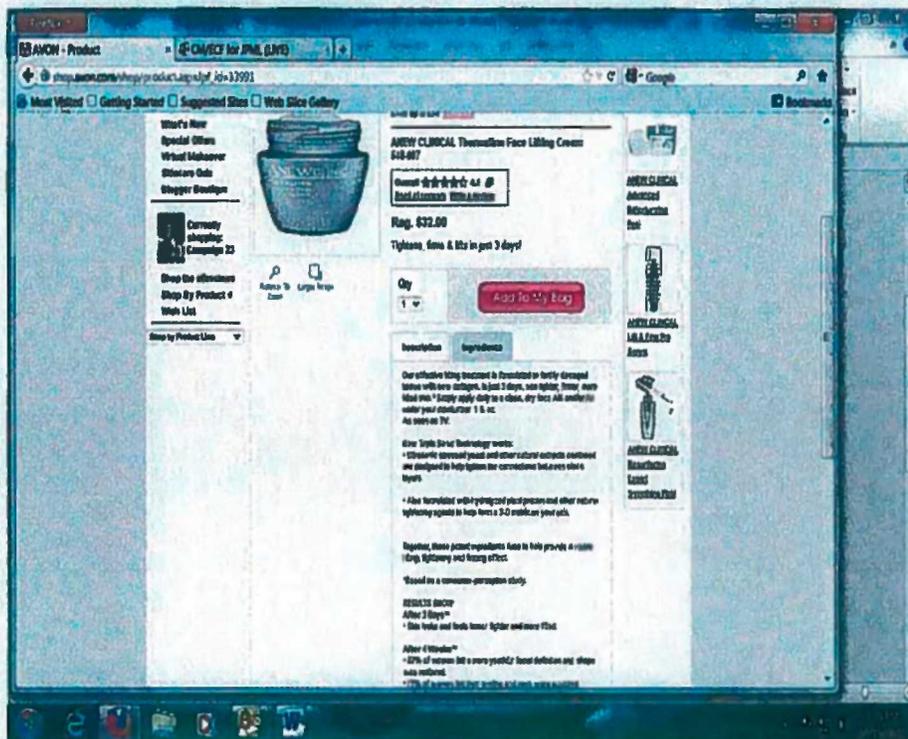
33. Upon information and belief, flaws in Avon’s studies and consumer perception tests include, but are not limited to (1) studies with too few participants to yield results that are scientifically or statistically significant such that Avon could reasonably believe that the results would translate to consumers, and (2) tests where participants are cherry picked and/or where results are selectively determined such that Avon is able to manipulate the results to support the purported benefits of the ANEW Products for use in its advertising materials.

### **III. AVON’S MISLEADING USE OF ASTERISKS ON ITS WEBSITE**

34. Another way that Avon misleads consumers is by its use of asterisks in combination with the design of its website that actually hides the text and the true meaning of the asterisks.

35. For example, as the screenshot below indicates, Avon claims that the ANEW Clinical Thermafirm Face Lifting Cream is “formulated to fortify damaged tissue with new collagen. In just 3 days, see tighter, firmer, more lifted skin.\* . . . Read More.” The information pertaining to the asterisks – that the claimed benefit is based on mere consumer perception – is hidden from view. Unless the consumer clicks the “Read More” link, she would not know that the result is supported by nothing more than subjective opinion.





36. By hiding the fact that such claims of miraculous results (“fortify damaged tissue with new collagen. In just 3 days, see tighter, firmer, more lifted skin”) are based upon nothing more than ambiguous and misleading subjective consumer perceptions, Avon deceives consumers into thinking that the results are better (and more believable) than they actually are.

37. Similarly, Avon makes the following claims for its ANEW Reversalist Renewal Serum: “75% of people felt like they had new skin overnight.\* In 2 weeks, skin looks & feels dramatically tighter.\* 60% improvement in discolorations.\*\* Over time, 88% of people agreed, skin looks dramatically younger.\*\*\*.... Read More.” Here again, the information pertaining to the multiple sets of asterisks is hidden from view. Unless the consumer clicks the “Read More” link, she would not

know that the claimed results are supported merely by consumer perception subjective opinion.

38. Avon intentionally obscures the consumer perception information throughout its ANEW Clinical, ANEW Reversalist and ANEW Genics product lines because Avon knows that the results are not likely to be representative, and yet Avon presents the statistical information in a misleading way so that the average consumer would expect similar results.

#### **IV. PRODUCT CYCLES**

39. To perpetuate its deceptive and misleading scheme, Avon has a short product cycle, releasing new products every few years based upon some new "research" or purported new ingredient. Avon does this in order to falsely tout its new products via a re-imagined marketing campaign in order to keep driving sales and profits that would otherwise stagnate once consumers used the products and realized that they do not perform as promised. This scheme is evidenced by the fact that Avon discontinues sales and production of its older products once new products are introduced to the market, despite the fact that the claims made on the discontinued products are seemingly amazing scientific breakthroughs.

#### **V. AVON'S PERVASIVE AND MISLEADING NATIONAL MARKETING CAMPAIGN**

40. Avon's pervasive false and misleading national marketing campaign includes the dissemination of deceptive advertising through a variety of mediums including, but not limited to, internet, television and print media, as well as in-person product presentations and demonstrations by Avon-trained beauty

consultants and sales representatives. Many of the same deceptive and misleading statements are also printed on the product boxes.

**A. INTERNET MARKETING**

41. Avon's internet marketing includes, among other things, video presentations, statistical data, ingredient benefits, how-to videos and question and answer information on its own website, Avon.com. Many of its commercials and promotional videos are also readily accessible on youtube.com. Each of these sources provides consumers access 24 hours a day, 7 days a week, to Avon's deceptive advertising.

**B. PRINT MEDIA AND SALES BROCHURES**

42. Avon also markets its ANEW Products in print media, including the placing of advertisements in such widely circulated magazines as Glamour, InStyle, The Oprah Magazine, Women's Day, Better Homes & Gardens, Good Housekeeping, and Ladies Home Journal, among others. Avon specifically targets the mature consumer market (ages 45 to 64) for its ANEW Products.

43. The specific dates and places of each of Avon's advertisements are in the possession of Defendant.

44. Plaintiff Barrett, in reliance upon information provided by Avon in its sales brochures, among other things, purchased ANEW products

45. Plaintiff Barrett saw, read and relied on product efficacy statements in making her decision to purchase ANEW products in or about December 2011. The efficacy statements relied on by Plaintiff Barrett included, for example, the purported, "scientific" benefits based upon discoveries, "clinical" data and new

technologies. In addition, Plaintiff Barrett relied upon statements by Avon that the ANEW Product would make skin look and feel dramatically tighter.

46. These false and misleading statements received by Plaintiff Barrett during the Class Period were material and influenced her decision to purchase Avon's products.

47. Despite consistent use, Plaintiff Barrett did not experience any of the promised results from the ANEW Products.

**C. SALES REPRESENTATIVES**

48. Upon information and belief, Avon also provides training and disseminates uniform information to sales persons regarding the ANEW Products. These sales representative are trained by Avon to parrot and reinforce the same purported benefits of using the ANEW Products as well as the pseudo-scientific data supporting such promised results as contained in Avon's other forms of advertising.

**D. USE OF CELEBRITY SPOKESPEOPLE**

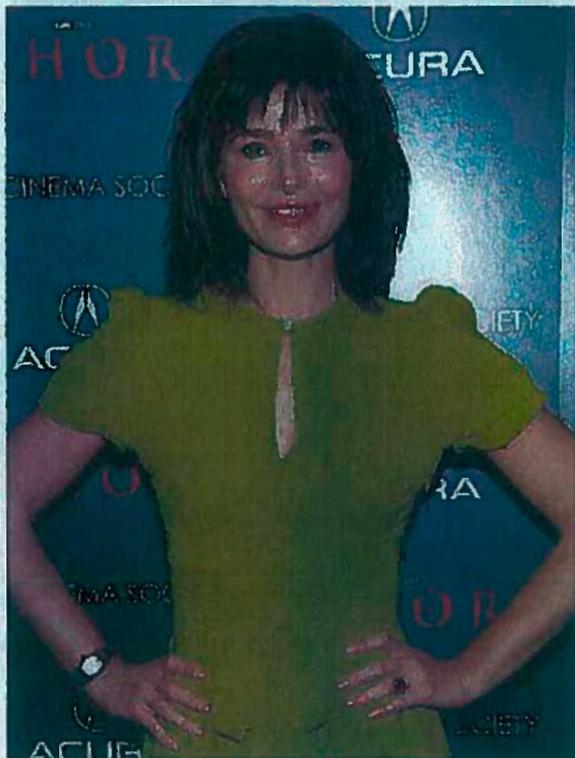
49. Avon makes further use of print, television and internet advertising, wherein Avon touts the benefits of its skin-care products using celebrity spokespersons who claim to exemplify the results of the products.

50. What Avon fails to disclose is that the images of the celebrities it uses are airbrushed, digitized, embellished, "Photo-shopped" or otherwise altered and, therefore, contrary to the claims made by Avon, cannot and do not illustrate the effectiveness of its products. In sum, the images used by Avon to sell its ANEW Products have nothing to do with the effectiveness of the products themselves.

51. Most recently, the National Advertising Division in the United States has taken a stance against the use of Photoshop in cosmetics advertising, noting that “[a]dvertising self-regulatory authorities recognize the need to avoid photoshopping in cosmetics advertisements where there is a clear exaggeration of potential product benefits.”

52. Despite this warning, and the increased scrutiny regarding the use of photo-shopped images in the marketing of skin care products, upon information and belief, Avon continues to use altered images in its cosmetic advertising, including this highly embellished image of model Paulina Porizkova as compared to her photo below.





53. Such deceptive use of celebrity spokespersons only further illustrates the lengths to which Avon will go to trick its consumers to make a profit.

## **VI. THE COLLECTIONS**

### **A. ANEW CLINICAL**

54. ANEW Clinical Advanced Wrinkle Corrector sells for \$32.00, ANEW Clinical Luminosity Pro Brightening Serum sells for \$39.99, ANEW Clinical Resurfacing Expert Smoothing Fluid sells for \$38.00, ANEW Clinical Pro Line Eraser sells for \$39.00, ANEW Clinical Eye Lift Pro Dual Eye System sells for \$30.00, ANEW Clinical Lift & Firm Pro Serum sells for \$39.99, and ANEW Clinical Thermafirm Face Lifting sells for \$32.00.

**B. ANEW REVERSALIST**

55. ANEW Reversalist Day Renewal Cream SPF 20 sells for \$32.00, ANEW Reversalist Night Renewal Cream sells for \$32.00, ANEW Reversalist Illuminating Eye System sells for \$30.00, and ANEW Reversalist Renewal Serum sells for \$34.99.

**C. ANEW GENICS**

56. ANEW Genics Night Treatment Cream sells for \$38.00, ANEW Genics Eye Treatment sells for \$36.00, and ANEW Genics Treatment Concentrate sells for \$39.99.

**VII. THE RESULTS OF AVON'S DECEPTIVE CONDUCT**

57. Ignoring the inability of the ANEW Products to provide the promised results, Avon's pervasive false and misleading marketing campaign leaves consumers with the impression that its products are uniquely able to provide certain permanent age-negating effects on human skin.

58. Avon compounds this deception by maintaining that the products and the promised results are based on years of research and scientific study and unique ingredients.

59. Avon hammers this point home with its repeated references to research, labs, and claims of scientific breakthroughs, among other things, as a way to bolster the credibility of the products in the eyes of the consumer and to bolster its own profits. In fact, these claims are merely part and parcel of Defendant's false and misleading advertising program for its ANEW Products.

60. In addition to the material misrepresentations as described herein, Defendant's actions are likewise actionable based on their material omissions, which similarly induced Plaintiff and the Class to purchase the ANEW Products. For example, Defendant has failed to disclose the following:

- That the referenced clinical or consumer tests were designed to be used in Avon's marketing efforts;
- That none of the ANEW Products provide unique benefits that cannot be found in other, less expensive products; and
- That any benefits actually provided by the use of the ANEW Products are only temporary.

61. Avon is in a position to actually know, or should know, that the promised results are not possible, *i.e.* its skin-care products cannot "regenerate hydroproteins to help visibly minimize creasing"; "help strengthen skin's support layers"; "improve fine & deep wrinkles up to 50%"; "deactivate collagen blocking"; "rebuild collagen to help plump out lines and wrinkles"; "fortify damaged tissue with new collagen"; "tighten the connections between skin's layers"; "reactivate skin's repair process to recreate fresh skin & help dramatically reverse visible wrinkles"; "help skin cells act younger" or provide the other promised age-negating results as described herein. Avon fails to disclose that its products do not perform as promised.

62. Until such time as Avon ceases to continue to engage in deceptive and misleading advertising of the ANEW Products, Plaintiff and the Class will continue to be harmed.

63. Avon's claims of efficacy based on scientific innovation are a material and important factor in its marketing campaign because Avon knows that consumers pay special attention to product claims that are science-oriented. Avon further knows that consumers can be duped into paying a higher price for products that purport to provide clinically proven skin-correcting and age-negating benefits.

64. Avon also is aware that, because of the aging population, consumers are increasingly susceptible to such deceptive marketing and advertising and that such marketing and advertising will continue to yield it ever-greater profits.

65. Indeed, it is for these precise reasons – increased sales and profits – that Avon intentionally engages in its deceptive marketing and advertising campaign.

66. Avon has succeeded in its deceit and has in fact enjoyed massive profits from its deceptive campaigns. Such enormous profits would not have occurred but for Avon's deceptive and misleading marketing and advertising campaign.

67. Avon charges a premium for its products. Plaintiff and the Class would not have paid premium Avon prices for the ANEW Products had they known the truth regarding the deceptive marketing promises.

68. Moreover, Plaintiff and the Class believed they were purchasing Avon products that would provide the promised age-negating benefits as detailed herein. In reality, although Plaintiff and the Class paid for these unique ANEW Product benefits, they did not get what they paid for. Instead, the products Plaintiff and the Class purchased did not provide the promised age-negating results.

69. As a result and because of Avon's deceptive marketing, Plaintiff and the Class have been harmed in their purchases of the ANEW Products.

70. Without knowing the truth as to the efficacy of the ANEW Products, Plaintiff and the Class paid premiums for Avon skin-care products and/or received totally worthless products.

#### **CLASS ACTION ALLEGATIONS**

71. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 (a), (b)(1), (b)(2), and (b)(3) on behalf of the following nationwide consumer class (the "Class"):

All purchasers of at least one of the ANEW Products in the United States from date of product launch to the present (the "Class Period"). Excluded from the Class are Defendant, its parent, subsidiaries and affiliates, their directors and officers and members of their immediate families; also excluded are any federal, state or local governmental entities, any judicial officers presiding over this action and the members of their immediate family and judicial staff, and any juror assigned to this action.

72. Plaintiff also seeks to represent a subclass defined as all members of the Class who purchased ANEW products in the State of New York (The "New York Subclass").

73. Members of the Class and the New York Subclass are so numerous that their individual joinder herein is impracticable. Members of each of these classes number in the tens of thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but will 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 sales people.

74. 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:

- (a) whether Defendant was unjustly enriched by its conduct;
- (b) whether Defendant breached an express warranty made to Plaintiff and the Class;
- (c) whether Defendant advertises or markets the ANEW Products in a way that is false or misleading;
- (d) whether Defendant concealed from Plaintiff and the Class that its ANEW Products do not provide the promised results;
- (e) whether, by the misconduct set forth in this Complaint, Defendant has engaged in unfair, fraudulent or unlawful business practices with respect to the advertising, marketing and sales of its ANEW Products;
- (f) whether, as a result of Defendant's misconduct as alleged herein, Plaintiff and Class members are entitled to restitution, injunctive and/or monetary relief and, if so, the amount and nature of such relief.

75. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's wrongful conduct.

Plaintiff has no interests antagonistic to the interests of the other members of the Class. Plaintiff and all members of the Class have sustained economic injury arising out of Defendant's violations of common and statutory law as alleged herein.

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

77. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and 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.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**  
**(Unjust Enrichment)**

78. Plaintiff repeats the allegations contained in the above paragraphs as if fully set forth herein.

79. Plaintiff brings this cause of action individually and on behalf of the members of the Nationwide Class and on behalf of the New York Subclass against Defendant.

80. Although there are numerous permutations of the elements of the unjust enrichment cause of action in the various states, there are few real differences. In all states, the focus of an unjust enrichment claim is whether the defendant was *unjustly* enriched. At the core of each state's law are two fundamental elements – the defendant received a benefit from the plaintiff and it would be inequitable for the defendant to retain that benefit without compensating the plaintiff. The focus of the inquiry is the same in each state. Since there is no material conflict relating to the elements of unjust enrichment between the different jurisdictions from which class members will be drawn, New York law applies to those claims.

81. Plaintiff and Class members conferred a benefit on Defendant by purchasing one or more of the ANEW Products.

82. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff and Class members' purchases of the ANEW Products, which retention under these circumstances is unjust and inequitable because Defendant

misrepresented the efficacy of the ANEW Products, which caused injuries to Plaintiff and Class members because either they paid a price premium due to the deceptive advertising and false promises of efficacy or they purchased products that did not perform as promised and were therefore of no value to Plaintiff and the Class members.

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

**SECOND CAUSE OF ACTION**  
**(For Breach of Express Warranty)**

84. Plaintiff repeats the allegations contained in the above paragraphs as if fully set forth herein.

85. Plaintiff brings this cause of action individually, on behalf of the Nationwide Class and on behalf of the New York Subclass.

86. Defendant, as the designers, manufacturers, marketers, distributors, or sellers expressly warranted that the ANEW Products would provide certain actual age-negating effects, including, but not limited to, "regenerate hydroproteins to help visibly minimize creasing"; "help strengthen skin's support layers"; "improve fine & deep wrinkles up to 50%"; "deactivate collagen blocking"; "rebuild collagen to help plump out lines and wrinkles"; "fortify damaged tissue with new collagen"; "tighten the connections between skin's layers"; "reactivate skin's repair process to

recreate fresh skin & help dramatically reverse visible wrinkles” ; and “help skin cells act younger” when in fact they do not.

87. The age-negating effects as described in detail herein were affirmations of fact and promises relating to the ANEW Products which became part of the basis for the bargain that the ANEW Products would conform to the affirmations of fact and promises.

88. Likewise, the age-negating effects as described in detail herein were descriptions of the ANEW Products which became part of the basis of the bargain that the ANEW Products would conform to the description.

89. Defendant knew or should have known that the ANEW Products could never provide the results promised.

90. Plaintiff and Class members were injured as a direct and proximate result of Defendant’s breach because they paid a price premium due to the deceptive advertising and false promises of Defendant. Alternatively, Plaintiff and Class members were injured as a direct and proximate result of Defendant’s breach because they paid for products that could never provide the promised results, rendering the products valueless to Plaintiff and Class members.

**THIRD CAUSE OF ACTION**  
**(Violation of Section 349 of the New York General Business Law)**

91. Plaintiff repeats the allegations contained in the above paragraphs as if fully set forth herein.

92. Plaintiff brings this cause of action individually and on behalf of the New York Subclass.

93. Defendant misrepresented that ANEW Products can “regenerate hydroproteins to help visibly minimize creasing”; “help strengthen skin’s support layers”; “improve fine & deep wrinkles up to 50%”; “deactivate collagen blocking”; “rebuild collagen to help plump out lines and wrinkles”; “fortify damaged tissue with new collagen”; “tighten the connections between skin’s layers”; “reactivate skin’s repair process to recreate fresh skin & help dramatically reverse visible wrinkles”; “help skin cells act younger” or provide the other promised age-negating results as described herein.

94. Defendant also failed to disclose material facts regarding the purported supporting scientific references and clinical tests as described herein.

95. Defendant’s misrepresentations and omissions constitute an unconscionable commercial practice, deception, fraud, false promise, misrepresentation and/or the knowing concealment, suppression, or omissions in connection with the sale or advertisement of merchandise, in violation of § 349 of New York’s General Business Law, which makes deceptive acts and practices illegal.

96. Plaintiff and the Class suffered an ascertainable loss directly, foreseeably and proximately caused by Avon’s misrepresentations and/or omissions because they were induced to purchase or paid a price premium due to the advertising, marketing, packaging, labeling and other promotion of ANEW Products. Because of Defendant’s misrepresentations and omissions, Plaintiff and the Class did not receive the products they thought they were paying for.

**FOURTH CAUSE OF ACTION**

**(Violation of Section 350 of the New York General Business Law)**

97. Plaintiff repeats the allegations contained in the above paragraphs as if fully set forth herein.

98. Plaintiff brings this cause of action individually and on behalf of the New York Subclass.

99. Defendant materially misled consumers through the specific promises that ANEW Products “regenerate hydroproteins to help visibly minimize creasing”; “help strengthen skin’s support layers”; “improve fine & deep wrinkles up to 50%”; “deactivate collagen blocking”; “rebuild collagen to help plump out lines and wrinkles”; “fortify damaged tissue with new collagen”; “tighten the connections between skin’s layers”; “reactivate skin’s repair process to recreate fresh skin & help dramatically reverse visible wrinkles”; “help skin cells act younger” and provide the other promised age-negating results as described herein.

100. Defendant also failed to disclose material facts regarding the purported supporting scientific references and clinical tests as described herein.

101. Defendant’s misleading actions are consumer-oriented conduct and constitute false advertising in violation of § 350 of New York’s General Business Law, which makes false advertising illegal.

102. Plaintiff and Class members suffered injury as a result of Avon’s false advertising because they were induced to purchase or paid a price premium due to the misleading advertising, marketing, packaging, labeling and other promotion of

ANEW Products. Because of Defendant's false advertising, Plaintiff and the Class did not receive the products they thought they were paying for.

**FIFTH CAUSE OF ACTION**  
**(Violation of the Consumer Fraud Laws of the Various States)**

103. Plaintiffs incorporate by reference the preceding paragraphs as if they were fully set forth herein.

104. Plaintiff brings this cause of action individually and on behalf of the Nationwide Class.

105. In addition to and/or in the alternative to the foregoing causes of action, Plaintiff brings this cause of action on her own behalf under the law of the State in which she purchased ANEW Products and on behalf of: (a) all other persons who purchased ANEW Products produced by Avon in the State where Plaintiff purchased ANEW Products; and (b) all other persons who purchased ANEW Products in States with similar consumer protection laws.

106. Each Plaintiff and members of the Class are consumers, purchasers or other persons entitled to the protection of the consumer protection laws of the State in which he or she purchased the ANEW Products produced by Avon.

107. The consumer protection laws of the State in which each Plaintiff and member of the Class purchased the ANEW Products declares that unfair or deceptive acts or practices in the conduct of trade or commerce are unlawful.

108. Forty States and the District of Columbia have enacted statutes designed to protect consumers against unfair, deceptive, fraudulent and

unconscionable trade and business practices and false advertising and that allow consumers to bring private and/or class actions. These statutes are found at:

- 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 Consumer Legal Remedies Act, Cal. Civ. Code § 1750, et seq., and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, 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, Fla. Stat. Ann. § 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 Statutes §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 Ann. §§ 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. Stat. Ann. §§ 57 12 1, et seq.;**
- cc. **New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, et seq.;**

- dd. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, et seq.;
- ee. Ohio Rev. Code Ann. §§ 1345.02 and 1345.03; Ohio Admin. Code §§ 109:4-3-02, 109:4-3-03, and 109:4-3-10;
- ff. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, et seq.;
- gg. Oregon Unfair Trade Practices Act, Ore. Rev. Stat § 646.608(e) & (g);
- hh. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, et seq.;
- ii. South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, et seq.;
- jj. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, et seq.;
- kk. Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 et seq.;
- ll. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, et seq.;
- mm. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, et seq.;
- nn. West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, et seq.;
- oo. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18, et seq.

109. The ANEW Products produced by Avon constitute products to which these consumer protection laws apply.

110. In the conduct of trade or commerce regarding its production, marketing and sale of the ANEW Products, Avon engaged in one or more unfair or deceptive acts or practices, including but not limited to uniformly representing to

Plaintiff and each Class member by means of its advertising, marketing and other promotional materials, and on the packaging and labeling of the ANEW products, that the ANEW Products would “regenerate hydroproteins to help visibly minimize creasing”; “help strengthen skin’s support layers”; “improve fine & deep wrinkles up to 50%”; “deactivate collagen blocking”; “rebuild collagen to help plump out lines and wrinkles”; “fortify damaged tissue with new collagen”; “tighten the connections between skin’s layers”; “reactivate skin’s repair process to recreate fresh skin & help dramatically reverse visible wrinkles”; “help skin cells act younger” and have certain other age-negating effects as described herein.

111. Avon’s representations and omissions were false, untrue, misleading, deceptive and/or likely to deceive.

112. Avon knew or should have known that their representations and omissions were false, untrue, misleading, deceptive and/or likely to deceive.

113. Avon used or employed such deceptive and unlawful acts or practices with the intent that Plaintiff and members of the Class rely thereon.

114. Plaintiff and the other members of the Class did so rely.

115. Each Plaintiff and member of the Class purchased ANEW Products produced by Avon which misrepresented the characteristics and nature of the ANEW Products. Plaintiff and members of the Class would not have purchased ANEW Products but for the deceptive and unlawful acts of Avon.

116. As a result of Avon’s conduct, Plaintiff and members of the Class were damaged.

117. Avon's conduct showed complete indifference to or conscious disregard for the rights and safety of others such that an award of punitive and/or statutory damages is appropriate.

**PRAYER FOR RELIEF**

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 Class Representative and her attorneys as Class Counsel to represent the Class members;

B. For an order declaring that Defendant's conduct violates the statutes referenced herein;

C. For an order finding in favor of the Plaintiff, the Nationwide Class, and the New York Subclass on all counts asserted herein;

D. For an order awarding compensatory, treble, 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 injunctive relief as pleaded or as the Court may deem proper; and

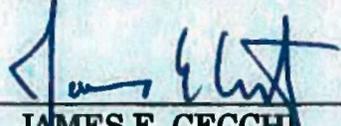
H. For an order awarding Plaintiff, the Nationwide Class and the New York Subclass their reasonable attorneys' fees and expenses and costs of suit.

**JURY TRIAL DEMAND**

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

Dated: January 7, 2013

**CARELLA, BYRNE, CECCHI,  
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By: 

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