

MARKS & KLEIN, LLP
Gerald A. Marks, Esq.
Louis D. Tambaro, Esq.
Kristen A. Curatolo, Esq.
63 Riverside Avenue
Red Bank, NJ 07701
Phone: (732) 747-7100
Facsimile: (732) 219-0625
Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JASON LESLIE, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

DOCTOR'S ASSOCIATES, INC. d/b/a
SUBWAY RESTAURANTS, JOHN DOES 1-
99, fictitious individuals, and ABC
CORPORATIONS 1-99, fictitious entities,

Defendant.

Civil Action No.:

VERIFIED COMPLAINT

CLASS ACTION

Plaintiff Jason Leslie ("Plaintiff"), individually and on behalf of all others similarly situated, allege, by and through their attorneys, Marks & Klein, LLP as follows:

INTRODUCTION

1. This is a class action lawsuit brought by and on behalf of Subway restaurant customers throughout the State of New Jersey and across the United States who were given *substandard* subs when they purchased \$5 FOOTLONG™ sandwiches at Subway restaurant locations.

2. This matter arises from the deceptive and misleading advertising campaign implemented by Defendant Doctor's Associates, Inc. d/b/a Subway Restaurants ("Subway" or "Defendant"), its agents, employees, servants and representatives, through which it has induced millions of individuals into purchasing Subway's \$5 FOOTLONG™ (or "foot-long") sandwiches. While there are currently thousands of Subway-brand locations that are operated by franchisees that sell the "foot-long" sandwiches, Subway (as the franchisor) mandates that its franchisees purchase its bread from certain designated bread vendor(s) via the terms of its franchise agreements. The individual franchise locations have no control over the bread that they purchase nor do they have the discretion to buy their product from an alternative vendor. Moreover, Subway collects a substantial amount of royalty fees (a designated percentage of each gross sale) from each franchise location in connection with the sale of each "foot-long" sandwich.

3. To induce consumers throughout the United States to purchase its \$5 FOOTLONG™ sandwiches, Subway claims in its national advertisements that in exchange for five dollars (\$5.00 USD), Subway would provide its customers with a sandwich that measures twelve (12) inches (or a "foot" long).

4. In Subway's nationwide and highly publicized marketing campaign, the company represents in various advertising channels including, but not limited to, radio, television, billboard and print advertisements across the country the alleged virtues of a Subway \$5 FOOTLONG™ sandwich. The Subway marketing campaign also infers that the value of the sandwich is inherent in its "foot-long" size and that the customer is receiving a bargain by purchasing a sandwich of this size at an economical and fair price point. In reality, however, Subway simply does not provide a "foot-long" sandwich. Instead, in place of the promised

twelve (12) inch sandwich, Subway is selling its customers sandwiches that less than a “foot-long”.

5. As alleged herein, Defendant Subway was fully aware of the deficiencies with the \$5 FOOTLONG™ sandwiches, to wit, the fact that the actual size of the sandwich was less than the advertised twelve (12) inches and were fully aware of that Subway’s national advertising campaign promoting the \$5 FOOTLONG™ was misleading, inaccurate and deceptive. Yet, Defendant Subway failed to disclose, and failed to correct, the deficiencies to Plaintiff, the Class and New Jersey Sub-Class when they purchased Subway’s \$5 FOOTLONG™ sandwiches.

6. Until recently, Plaintiff, the Class and New Jersey Sub-Class had no reason to believe that there were deficiencies with Defendant’s \$5 FOOTLONG™ promotion, as the size discrepancy in the sandwich was not readily perceptible to the naked eye. The Plaintiff, the Class and New Jersey Sub-Class have justifiably relied on the misrepresentations made by Defendant which were uncovered and publicly disclosed in the national news media in January 2013.

7. Had Plaintiff known that the Subway’s \$5 FOOTLONG™ was less than twelve (12) inches (that is, less than one foot-long), Plaintiff would not have purchased the \$5 FOOTLONG™ sandwiches regularly for the past several years, nor would Plaintiff have paid as much for the “foot-long” sandwiches if Subway had not concealed that Plaintiff was not receiving the benefit of his bargain, as advertised.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332(d)(2) in that the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which one or more of members of the putative class are citizens of a state different from the Defendant.

9. This Court has personal jurisdiction over Defendant because it each transacts extensive business in the State of New Jersey and has committed several tortious acts within this State. In addition, Defendant has purposefully directed its activities at residents of the State of New Jersey and this litigation results from injuries that arise out of and relate to those activities. Defendant also maintains continuous and systemic business contacts with the State of New Jersey. Defendant employed and relied upon agents and representatives throughout the United States who maintained purposeful, continuous and systemic contacts with the State of New Jersey to assist in the effectuation of the unlawful practices alleged in this Complaint. At all times material, individuals acted as the agents and representatives of Defendant, and therefore, their conduct is attributable to one or more of the Defendant.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district.

THE PARTIES

11. Plaintiff Jason Leslie is a citizen of the State of New Jersey who resides in Marlboro, New Jersey. He has been a Subway customer for at least seven (7) years. During that time, he has purchased mainly "foot-long" sandwiches at Subway locations in various Monmouth County locations, including, but not limited to, Freehold, Marlboro, Howell and

Middletown Townships. Mr. Leslie has also purchase \$5 FOOTLONG™ sandwiches at Subway stores located in the Counties of Middlesex and Ocean.

12. Defendant Doctor's Associates, Inc. d/b/a Subway Restaurants ("Subway") is a corporation having its world headquarters located at 325 Bic Drive, Milford, Connecticut. According to Subway's website, the Subway brand is the world's largest submarine sandwich chain with more than 37,000 locations around the world, over four hundred (400) locations in the State of New Jersey and over twenty-five thousand (25,000) locations throughout the United States. Subway's website touts that it is "the leading choice for people seeking quick, nutritious meals that the whole family can enjoy." Subway's several thousand locations are operated by franchisees that sell the "foot-long" sandwiches. As franchisor, Subway mandates that its franchisees purchase its bread from certain bread vendor(s) via its franchise agreements. The individual franchisees have no control over the bread that they purchase. In connection with the sale of each "foot-long" sandwich, Subway collects a substantial amount of royalty fees from each franchise location in the State of New Jersey and throughout the United States.

13. Defendants John Does 1-999, fictitious individuals, are, upon information and belief, certain other persons, the identity of which are currently unknown, who participated, encouraged and/or promoted Subway's deceptive \$5 FOOTLONG™ sandwich campaign, as discussed herein.

14. Defendants ABC Corporations 1-999, fictitious entities, are, upon information and belief, certain other business entities, the identity of which are currently unknown, who participated, encouraged and/or promoted Subway's deceptive \$5 FOOTLONG™ sandwich campaign, as discussed herein.

BACKGROUND

A. The Subway Franchise System

15. Subway sells foot-long and other sandwiches, salads and food items from a retail store. In 1974, Subway became a franchisor and began selling franchise locations.

16. According to Subway's website, the Subway brand is the world's largest submarine sandwich chain with more than 37,000 locations around the world, over four hundred (400) locations in the State of New Jersey and over twenty-five thousand (25,000) locations throughout the United States.

17. Subway's website touts that it is "the leading choice for people seeking quick, nutritious meals that the whole family can enjoy."

18. Subway's several thousand locations are operated by individual franchisees that sell its sandwiches.

19. As franchisor, Subway mandates that its franchisees purchase its bread from certain bread vendor(s) via its franchise agreements.

20. Subway's individual franchisees have no control over the bread that they purchase. In connection with the sale of each "foot-long" sandwich, Subway collects an estimated eight percent (8%) royalty fee from each franchise location in the State of New Jersey and throughout the United States.

B. Subway's \$5 FOOTLONG™ Campaign

21. Upon information and belief, the \$5 FOOTLONG™ advertising campaign began at least nine (9) years ago in 2004, and the "foot-long" sandwich has been sold in each of Subway's 25,638 restaurants located in the United States at a price of five dollars (\$5.00 USD) to eight dollars (\$8.00 USD) depending upon the type of sandwich being sold.

22. Contrary to the \$5 FOOTLONG™ sandwich that is touted by Subway, customers nationwide have been short changed since the inception of the “foot-long” campaign. That is, while Subway extensively advertises its twelve (12) inch sandwich in New Jersey and across the United States, Subway is actually selling its customers a sandwich that is less than twelve (12) inches (or a “foot-long”).

23. According to “QSR”, a 2012 franchise industry publication, Subway’s system-wide sales exceeded eleven million four hundred thousand dollars (\$11,400,000,000) at an average of (four hundred sixty-nine thousand dollars) \$469,000 in per-unit (per franchise location) sales. Attached as Exhibit B is a true and correct copy of the QSR publication.

24. Subway has damaged its consumers as a result of its deceptive advertising campaign that induced consumers to overpay for a “foot-long” sandwich that is less than twelve (12) inches.

C. Plaintiff Jason Leslie’s Discovery of Subway’s Deceptive Advertising of the “Foot-Long” Sandwich

25. Plaintiff has been a consistent and loyal “foot-long” customer of Subway for at least seven (7) years. He makes purchases at various Subway restaurants in Monmouth, Middlesex and Ocean Counties at least once every two weeks.

26. He, in fact, is such a good patron of Subway restaurants that he participates in Subway’s “Rewards Card” program. A true and correct photograph of Plaintiff’s Subway Rewards Card is pictured below:



27. Plaintiff was not aware that he had been “shorted” by Subway for the past seven (7) years until the following article appeared in the New York Post on January 17, 2013:

http://www.nypost.com/p/news/local/this_hero_is_coming_up_short_RzxQNoGFTSdY0AeooGxBiP

Attached as Exhibit A is a true and correct copy of the New York Post article dated January 17, 2013.

28. To convince himself that he had indeed been shorted all this time, on January 21, 2013 he purchased an eight dollar (\$8.00 USD) “foot-long” meatball sandwich at a Subway restaurant he frequents in Monmouth County, New Jersey. A true and correct photograph of Plaintiff’s Subway receipt is pictured below:



29. Plaintiff found, as indicated by the following photograph, that his eight dollar (\$8.00 USD) meatball sandwich was, in fact, almost one half inch short. A true and correct photograph of Plaintiff's Subway "foot-long" sandwich which was purchased on January 21, 2013 is pictured below:



30. Upon measuring the sandwich, Plaintiff confirmed that the size was nearly one-half an inch less than the advertised twelve (12) inch size.

31. The "foot long" deceptive shortage of at least one-half an inch equates to nearly five percent (5%) of the supposed sandwich size.

32. Five percent (5%) of \$2,850,000,000, or over \$285,000,000, upon information and belief, represents both the unfair and deceptive revenue obtained by Subway as a result of its deceptive advertising campaign and the overpayment by consumers for the less than 12-inch sandwich. *See Exhibit B.*

33. Subway fails to disclose and intentionally omits from its advertisements that its "foot-longs" are not twelve (12) inches long. As a result of its deceptive advertising, Subway has

cheated, and continues to cheat, its customers out of “foot-long” sandwich. In essence, Subway’s customers are not receiving what they bargained for when they purchase a “foot-long” sandwich.

34. Furthermore, in its advertisements, Subway fails to advise or make clear to consumers that they are not getting a twelve (12) inch sandwich, which is contrary to the use of the language “foot-long”.

35. Instead, in all its advertisements, Subway misrepresents that the sandwich is twelve (12) inches and abuses consumers’ trust by providing sandwiches that are less than a true foot-long.

36. Upon information and belief, as a result of its fraudulent \$5 FOOTLONG™ campaign, Subway has unjustly enriched itself by generating millions of dollars in revenue that it does not deserve at the expense of all of its patrons nationwide.

37. Thus, by virtue of Subway’s deceptive scheme, its customers have each suffered an ascertainable loss in the form of overpaying for each \$5 FOOTLONG™ that has been sold.

CLASS ALLEGATIONS

38. Pursuant to Federal Rules of Civil Procedure 23(a) and (b), Plaintiff brings this action on behalf of himself and the Class of similarly situated persons defined as:

Nationwide Class (“The Class”):

All citizens of the United States who are current and former customers of Subway who purchased a \$5 FOOTLONG™ sandwich from an authorized Subway store located in the United States (including persons and business entities) between 2004 and 2013.

39. Plaintiff also brings this action on behalf of the following Sub-Class:

New Jersey Sub-Class:

All citizens of the United States and residents of the State of New Jersey who are current and former customers of Subway who

purchased a \$5 FOOTLONG™ sandwich from an authorized Subway store located in the State of New Jersey (including persons and business entities) between 2004 and 2013.

Excluded from the Class and the New Jersey Sub-Class are the officers, directors, affiliates, and employees of Defendant and their respective legal representatives, heirs, successors and assigns. Plaintiff reserves the right to amend the definition of Class and New Jersey Sub-Class upon discovery and the receipt of further information.

Rule 23(a)

40. Numerosity: Members of the Class and the New Jersey Sub-Class are so numerous that their individual joinder is impractical. The precise identities, number and addresses of members of the Class and the New Jersey Sub-Class are unknown to Plaintiff, but may and should be known with proper and full discovery from Defendant, third parties, and their respective records.

41. Existence of Common Questions of Fact and Law: There is a well-defined commonality and community of interest in the questions of fact and law affecting the members of the Class and the New Jersey Sub-Class. Common questions of fact and law include but are not limited to:

- a. Whether Defendant employed a deceptive advertising campaign in connection with the promotion of its \$5 FOOTLONG™ sandwiches;
- b. Whether Defendant intentionally failed to disclose to Plaintiff, the Class and the New Jersey Sub-Class that its “foot-long” sandwiches were less than twelve (12) inches long;
- c. Whether Defendant engaged in unfair or unlawful business practices when selling its “foot-long” sandwiches to the general public;
- d. Whether Defendant breached its duty of good faith and fair dealing;

- e. Whether Defendant has been unjustly enriched;
- f. Whether Plaintiff, the Class, and the New Jersey Sub-Class are entitled to compensatory, trebled, statutory, and/or punitive damages based on Defendant's fraudulent and illegal conduct or practices;
- g. Whether Defendant should be obligated to disgorge the illegal profits obtained by the schemes alleged herein;
- h. Whether Plaintiff, the Class and the New Jersey Sub-Class are entitled to an award of reasonable attorneys' fees, prejudgment interest, and costs of suit; and
- i. Whether Plaintiff, the Class and the New Jersey Sub-Class are entitled to any other equitable relief.

42. Typicality: Plaintiff's claims are at all times typical and relevant to the claims of the Class and the New Jersey Sub-Class. Plaintiff's claims have a common origin and share common bases. Plaintiff's claims originate from the same illegal and wrongful practices of Defendant, and Defendant acted in the same way toward Plaintiff, the Class members, and the New Jersey Sub-Class members. If brought and prosecuted individually, the claims of each Class member and New Jersey Sub-Class member would necessarily require proof of the same material and substantive facts, rely upon the same remedial theories, and seek the same relief.

43. Adequacy: Plaintiff is an adequate representative of the Class and the New Jersey Sub-Class because Plaintiff's interests do not conflict with the interests of the members of the Classes Plaintiff seeks to represent. Plaintiff has retained competent counsel, and intends to prosecute this action vigorously. Plaintiff's counsel will fairly and adequately protect the interests of the members of the Class and the New Jersey Sub-Class.

Rule 23(b)(2) and (3)

44. This lawsuit may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) because Plaintiff, the Class, and the New Jersey Sub-Class seek declaratory and injunctive relief, and all of the above factors of numerosity, common questions of fact and law, typicality, and adequacy are present.

45. Superiority: This lawsuit may be maintained as a class action under Federal Rule of Civil Procedure 23(b)(3) because questions of fact and law common to the Class and the New Jersey Sub-Class predominate over the questions affecting only individual members of the classes, and a class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by each individual class member may be disproportionate to the burden and expense of individual prosecution of complex and extensive litigation to proscribe Defendant's conduct and practices. Additionally, effective redress for each and every Class member and New Jersey Sub-Class member against Defendant may be limited or even impossible where serial, duplicate, or concurrent litigation occurs arising from these disputes. Even if individual members of the classes could afford or justify the prosecution of their separate claims, such an approach would compound judicial inefficiencies, and could lead to incongruous and conflicting judgments against Defendant.

Notice to Attorneys General of Action

46. A copy of this Verified Complaint shall be mailed to the Attorneys General, Administrators, Commissioners, or other officers, as required by the laws of New Jersey, upon and at the time of the filing of the Complaint pursuant to N.J. STAT. ANN. § 56:8-20.

COUNT I

**VIOLATION OF NEW JERSEY CONSUMER FRAUD ACT
N.J. STAT. ANN. § 56:8-1 et seq.**

47. Plaintiff, the Class and New Jersey Sub-Class members repeat and reallege each of the foregoing paragraphs of this Complaint as though the same were fully set forth at below at length.

48. Plaintiff and New Jersey Sub-Class members are “persons” within the meaning of the New Jersey Consumer Fraud Act (the “CFA”).

49. Defendant’s \$5 FOOTLONG™ sandwiches are “merchandise” within the meaning of the CFA.

50. At all relevant times material hereto, Defendant conducted trade and commerce in New Jersey and elsewhere within the meaning of the CFA.

51. The CFA is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory schemes.

52. As alleged with specificity in this Complaint, Defendant engaged in the concealment, suppression and omission of material facts, with intent that Plaintiff, the Class and New Jersey Sub-Class rely upon such concealment, suppression or omission, in connection with the sale and advertisement of its \$5 FOOTLONG™ sandwiches. Subway’s advertisements have the capacity to mislead the average consumer.

53. The practices of Defendant violate the CFA for, *inter alia*, one or more of the following reasons:

- a. Defendant concealed from Plaintiff, the Class and the New Jersey Sub-Class the material fact that its \$5 FOOTLONG™ sandwiches were less than twelve (12) inches long;

- b. Defendant engaged in unconscionable commercial practices when it nationally promoted and advertised its \$5 FOOTLONG™ sandwiches; and
- c. Defendant engaged in fraudulent conduct when it sold Plaintiff, the Class and the New Jersey Sub-Class sandwiches that it advertised as \$5 FOOTLONG™ sandwiches when in fact the sandwiches were less than twelve (12) inches long.

54. Defendant consciously omitted to disclose material facts from Plaintiff and the New Jersey Sub-Class with respect to sale of \$5 FOOTLONG™ sandwiches that were less than one foot-long.

55. Defendants unconscionable conduct described herein included the omission and concealment of material facts concerning \$5 FOOTLONG™ sandwiches.

56. Defendant intended that Plaintiff and the New Jersey Sub-Class rely on Defendant's deceptive advertising and omissions, so that Plaintiff and other Sub-Class members would purchase \$5 FOOTLONG™ sandwiches.

57. The Plaintiff, the Class and New Jersey Sub-Class have justifiably relied on the misrepresentations made by Defendant.

58. Had Defendant disclosed all material information regarding the \$5 FOOTLONG™ sandwiches to Plaintiff and the New Jersey Sub-Class, they would not have purchased the \$5 FOOTLONG™ sandwiches, or would have paid less for the sandwiches.

59. The foregoing acts, omissions and practices proximately caused Plaintiff and the New Jersey Sub-Class members to suffer ascertainable loss in the form of, *inter alia*, monies spent to replace the Tires and/or diminution in value, and they are entitled to recover such damages, together with appropriate penalties, including treble damages, attorneys' fees and costs of suit.

COUNT II

FRAUD IN THE INDUCEMENT

60. Plaintiff, the Class and New Jersey Sub-Class members repeat and reallege each of the foregoing paragraphs of this Complaint as though the same were fully set forth at below at length.

61. As alleged with specificity in this Complaint, Defendant, through its deceptive marketing and advertising campaign, knowingly made false statements of past and present fact to, and omitted or concealed true statements of fact from, the Plaintiff, the Class and New Jersey Sub-Class.

62. Defendant's false statements created an untrue and misleading impression in the mind of the Plaintiff, the Class and New Jersey Sub-Class.

63. With respect to each such true statement alleged to have been omitted or concealed by Defendant, Defendant owed the Plaintiff, the Class and New Jersey Sub-Class a duty to disclose the truth of such omitted or concealed fact.

64. These facts were material in the Plaintiff, the Class and New Jersey Sub-Class's decision to purchase a Subway "foot-long" sandwich because a reasonable person under the circumstances would regard the facts misrepresented and otherwise omitted as important in deciding to purchase a Subway sandwich.

65. Defendant knew that the Plaintiff, the Class and New Jersey Sub-Class would find the misrepresented and omitted facts to be important in determining whether to purchase a sandwich.

66. Defendant concealed these facts with the intent of creating a false impression of the actual facts in the Plaintiff, the Class and New Jersey Sub-Class's mind and knowing

the Plaintiff, the Class and New Jersey Sub-Class would not have taken the course of action they did had they been told all of the facts.

67. The statements and omissions of Defendant as alleged herein were untrue.

68. Defendant knew or should have known at the time it made the representations and omissions that their affirmative statements as alleged herein were false, and that their omissions or concealments were deceptive by virtue of being incomplete.

69. Defendant made the false statements, and engaged in the omissions and concealments, with the intent to defraud the Plaintiff, the Class and New Jersey Sub-Class and in order to induce the Plaintiff, the Class and New Jersey Sub-Class to rely on the statements, omissions and concealments.

70. Each plaintiff believed the false statements made to him or her, or believed that no facts existed inconsistent with Defendant's omissions and concealments, and reasonably acted in reliance upon those beliefs to his or her detriment.

71. The Plaintiff, the Class and New Jersey Sub-Class have justifiably relied on the misrepresentations made by Defendant.

72. As a result of their detrimental reliance on Defendant's fraudulent statements and omissions, the Plaintiff, the Class and New Jersey Sub-Class have been damaged in the future in an amount to be proven at trial.

COUNT III

NEGLIGENT MISREPRESENTATION

73. Plaintiff, the Class and New Jersey Sub-Class members repeat and reallege each of the foregoing paragraphs of this Complaint as though the same were fully set forth at below at length.

74. Defendant has negligently made false statements, misrepresentations and omissions of material fact to the Plaintiff, the Class and New Jersey Sub-Class without regard for how those statements would affect them.

75. Those negligent misrepresentations have been more particularly described herein.

76. The Plaintiff, the Class and New Jersey Sub-Class have justifiably relied on the misrepresentations made by Defendant.

77. In relying on Defendant's misrepresentations, the Plaintiff, the Class and New Jersey Sub-Class decided to purchase "foot-long" sandwiches from Subway and in doing so, were caused to suffer the losses referred to herein.

78. As a result of their detrimental reliance on Defendant's negligent misrepresentations, the Plaintiff, the Class and New Jersey Sub-Class have been damaged in the future in an amount to be proven at trial.

COUNT IV

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

79. Plaintiff, the Class and New Jersey Sub-Class members repeat and reallege each of the foregoing paragraphs of this Complaint as though the same were fully set forth at below at length.

80. Plaintiff, the Class and New Jersey Sub-Class members entered into transactions with Defendant to purchase certain "foot-long" sandwiches.

81. These transactions were subject to the implied covenant that Defendant would conduct business with Plaintiff, the Class and New Jersey Sub-Class members in good faith and would deal fairly with Plaintiff, the Class and New Jersey Sub-Class members.

82. Moreover, regardless of whether Plaintiff, the Class and New Jersey Sub-Class members were in contractual privity with Defendant, Defendant still had a duty of good faith and fair dealing.

83. Defendant breached those implied covenants by selling Plaintiff and members of the Classes certain “foot-long” sandwiches that were less than twelve (12) inches long. Defendant failed to disclose the true nature of the “foot-long” sandwiches, and the fact that the Plaintiff, the Class and New Jersey Sub-Class members were not receiving what they bargained for. Defendant also breached those covenants by refusing to provide Plaintiff, the Class and New Jersey Sub-Class members with a remedy.

84. The Plaintiff, the Class and New Jersey Sub-Class have justifiably relied on the misrepresentations made by Defendant.

85. Defendant behaved inequitably. Defendant was unresponsive to Plaintiff’s complaints and unjustly enriched itself at the expense of Plaintiff, the Class and New Jersey Sub-Class members.

86. As a direct and proximate result of Defendant’s breach of its implied covenants, Plaintiffs and Class members have been damaged.

PRAYER FOR RELIEF

As a result of Defendant’s conduct, Plaintiff, the Class and New Jersey Sub-Class members have suffered ascertainable losses and are entitled to the remedies prayed for in the Prayer for Relief below.

WHEREFORE, Plaintiff, the Class and New Jersey Sub-Class members respectfully pray for the following relief:

A. An Order certifying the proposed Class and the proposed New Jersey Sub-Class herein and appointing Plaintiff and the undersigned counsel of record to represent the Class and the New Jersey Sub-Class;

B. A Judgment awarding Plaintiff, the Class and the New Jersey Sub-Class compensatory, consequential, and statutory damages on all applicable claims in an amount to be proven at trial;

C. A Judgment awarding Plaintiff, the Class and the New Jersey Sub-Class exemplary, punitive and treble damages on all applicable claims in an amount to be proven at trial; and

D. Such other relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff hereby demands trial by jury of all issues properly triable thereby.

Respectfully Submitted,

MARKS & KLEIN, LLP

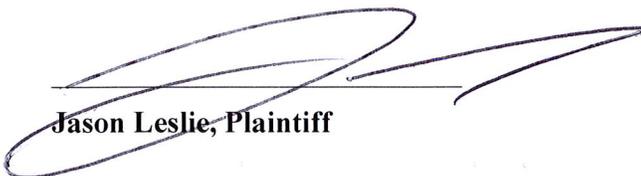
By: /s/ Gerald A. Marks
Gerald A. Marks, Esq.
63 Riverside Avenue
Red Bank, New Jersey 07701

ATTORNEYS FOR PLAINTIFF

Dated: January 23, 2013

CERTIFICATION OF JASON LESLIE

I hereby certify that the facts and circumstances relating to my cause of action are true to the best on my knowledge and I am aware of the penalty for making false statements.



Jason Leslie, Plaintiff