

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

2012 FEB 29 AM 9:14

DAVID ECKSTEIN, individually, and on behalf of other members of the general public similarly situated,

Plaintiff,

v.

ALEXIA FOODS, INC., a Delaware Corporation,

Defendant.

Case No.

CV 12 - 976
CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

AMON, CH.J.

LEVY, M.J.

Plaintiff David Eckstein ("Plaintiff"), by his attorneys, alleges upon personal knowledge as to his own acts, and as to all other matters upon information and belief based upon, *inter alia*, the investigation made by and through his attorneys.

SUMMARY OF ACTION

1. This is a class action brought by Plaintiff against defendant Alexia Foods, Inc. ("Alexia" or "Defendant") for unfair, unlawful, deceptive, and misleading practices conducted in violation of New York state law, federal law, and common law. This action involves products made, distributed and marketed by Alexia that are labeled "All Natural" and contain the chemical disodium dihydrogen pyrophosphate (the "Products").

2. Alexia is headquartered in Queens, New York and maintains a website that can be accessed by the public by going to www.alexiafoods.com.

3. Prominently displayed on Alexia's website and on the Products' packaging, is the phrase, "All Natural." Indeed, Alexia misleads consumers into believing that the Products contain only the "finest all-natural ingredients."

4. Contrary to Alexia's "All Natural" claim, however, the Products contain a synthetic chemical preservative that may lead to imbalanced levels of minerals in the body and bone loss if used in excess.

5. By marketing its Products as "All Natural," Alexia is able to command a higher price for its Products and increase its profits because consumers pay a premium for products they believe are "All Natural." Therefore, Alexia deceives consumers, and deceived Plaintiff, by marketing the Products as "All Natural" when in fact they contain a synthetic chemical preservative.

6. Alexia knew, or should have known, that federal laws and regulations define "natural" as excluding synthetic chemicals, and that reasonable consumers understand the word "natural" to exclude synthetic substances like disodium dihydrogen pyrophosphate. Nevertheless, Alexia is knowingly and willfully representing the Products to be "All Natural."

7. Therefore, Plaintiff seeks relief and damages in this action individually and on behalf of the Class (defined below) pursuant to the Magnuson-Moss Act, 15 U.S.C. § 2301, *et seq.*, for unjust enrichment, breach of express warranty, fraudulent concealment, common law and New York's Deceptive Trade Practices Act.

THE PARTIES

8. Plaintiff, an individual, is a citizen of New York.

9. Defendant Alexia Foods, Inc. is a Delaware corporation, with its principal place of business located at 51 -02 21st Street, #3B, Long Island City, New York 11101, and therefore, Alexia is a citizen of Delaware and New York.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question). This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

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

12. Venue lies within this judicial district under 28 U.S.C. § 1391(a) and (c) because Defendant's contacts are sufficient to subject it to personal jurisdiction in this District, and therefore, Defendant resides in this District for purposes of venue.

FACTUAL BACKGROUND

A. Alexia and its Deceptive Marketing

13. Throughout Alexia's marketing materials, advertising, website, labeling, packaging and point of sale materials, Alexia represents that the Products are "All Natural."

14. The label for each of the Products prominently features in large type, the phrase "All Natural."

15. Alexia also maintains a website for the purposes of marketing the Products. Alexia proclaims on its website that its products are all natural:

We love food as much as you. That's why we make it exactly how you would: all-natural, gourmet-inspired, and absolutely delicious.

OUR BEGINNINGS: At Alexia, our creativity and passion for the highest quality side dishes runs deep in our roots. As a Manhattan chef, Alex always wondered why there weren't quality side dishes that achieved the same discerning standard as the main entrée. He knew others would agree, and believed he could create distinctive and inspired convenient everyday side dishes that lived up to what he

might create in his own Greenpoint kitchen. Alex started by hand selecting the finest all-natural ingredients and producing only small batches making Alexia a hard to find favorite. Whether seasoning his Beauregard Sweets and Yukon Gold Potatoes or baking the perfect artisan Ciabatta and Focaccia breads, Alex always used real ingredients and put quality and taste first.

16. Alexia touts, "Alexia Foods produces an all-natural, trans-fat free line of frozen products for the natural and specialty food consumer . . ." It further claims, "The Alexia Foods portfolio currently includes the No. 1 selling line of natural frozen potatoes ...".

17. Alexia's "All Natural" claim is incorporated into the company's primary branding, which appears on every product it makes.

B. Alexia's Products Are Not "All Natural"

18. Based on the investigation of Plaintiff's counsel, however, Alexia's products are not "All Natural." Contrary to Alexia's exhaustive and repeated "All Natural" claims, the Products contain the synthetic chemical preservative, disodium dihydrogen pyrophosphate.

19. Upon information and belief, Plaintiff alleges that disodium dihydrogen pyrophosphate, an odorless white crystalline powder, which is also known as disodium diphosphate, disodium dihydrogen pyrophosphate, disodium pyrophosphate, and sodium acid pyrophosphate (collectively referred to herein as "disodium dihydrogen pyrophosphate"), is an industrial chemical additive and food preservative. The chemical formula for disodium dihydrogen pyrophosphate is $H_2Na_2C_2O_7P_2$, and the CAS number for this chemical is 7758-16-9.

20. Upon information and belief, Plaintiff alleges that disodium dihydrogen pyrophosphate is used in the leather industry to remove iron stains on hides during processing, and that when added to the scalding water, disodium dihydrogen pyrophosphate is used to remove hair in hog slaughter and feathers in poultry slaughter. Additionally, upon information

and belief, Plaintiff alleges that in petroleum industry, disodium dihydrogen pyrophosphate can be used as a dispersant for oil production.

21. Upon information and belief, Plaintiff alleges that in the food industry, disodium dihydrogen pyrophosphate is used to color foods and to prevent discoloration in foods. For example, disodium dihydrogen pyrophosphate is used to color hot dogs in their packaging and it is used in commercially packaged hash browns to prevent potatoes from oxidizing and browning.

22. Plaintiff and other similarly situated reasonable consumers do not expect synthetic chemicals like disodium dihydrogen pyrophosphate to be in a food product that is labeled “All Natural.”

23. Alexia is well aware that foods containing synthetic chemicals are not “All Natural.” Indeed, the term “natural” is defined by federal government agencies which regulate companies that manufacture, market, and distribute food products.

24. For example, the United States Food and Drug Administration (“FDA”) has stated “its policy regarding the use of ‘natural,’ as meaning that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food.” 58 F.R. 2302 at 2407 (January 6, 1993).

25. Federal regulations define “synthetic” as follows:

Synthetic. A substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

7C.F.R. §205.2.

26. Additionally, the United States Department of Agriculture’s Food Safety and Inspection Service (“FSIS”) also defines a “natural” product as a product that does not contain

any artificial or synthetic ingredient and does not contain any ingredient that is more than “minimally processed,” stating that a product may be labeled as “natural” if:

(1) the product does not contain any artificial flavor or flavoring, coloring ingredient, or chemical preservative (as defined in 21 CFR 101.22), or any other artificial or synthetic ingredient; and (2) the product and its ingredients are not more than minimally processed. Minimal processing may include: (a) those traditional processes used to make food edible or to preserve it or to make it safe for human consumption, e.g., smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which do not fundamentally alter the raw product and/or which only separate a whole, intact food into component parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits to produce juices.

C. Plaintiff’s Claims Against Alexia

27. Plaintiff is a resident of New York who purchased and consumed Alexia’s “Mashed Potatoes Yukon Gold Potatoes & Sea Salt,” believing them to be all-natural.

28. Plaintiff relied upon and was misled by Alexia’s claim that the Products are “All Natural.”

29. Alexia’s “All Natural” representations were material to Plaintiff and members of the Class (as defined below) when they purchased the Products. Plaintiff and members of the Class did not receive the benefit of the bargain from their purchases, however, because they paid for “All Natural” products, but the products they actually received from Alexia contained synthetic chemical preservatives, and were not all-natural. Accordingly, Plaintiff and members of the Class suffered injury in fact and lost money as a result of Alexia having misrepresented the Products as being “All Natural.” But for Alexia’s misrepresentations, Plaintiff and members of the Class would not have purchased and consumed the Products, rather they would have purchased similar products from one of Alexia’s competitors, or they would have paid less for the Products.

CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action on behalf of himself and all others similarly situated, as a class action pursuant to Fed. R. Civ. P. 23.

31. The classes Plaintiff seeks to represent are as follows:

All persons who, within the State of New York, purchased an Alexia product marketed, advertised and promoted as "All Natural" and containing disodium dihydrogen pyrophosphate (the "New York Class")

All persons who, within the United States, purchased an Alexia product marketed, advertised and promoted as "All Natural" and containing disodium dihydrogen pyrophosphate (the "Class")

32. Members of the Class are so numerous that their individual joinder herein is impracticable. Members of each of these classes number in the 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 Alexia and third party retailers and vendors.

33. 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 Alexia violated the Magnuson-Moss Act, 15 U.S.C. § 201, *et seq.*,
- (b) whether Alexia was unjustly enriched by its conduct;
- (c) whether Alexia breached an express warranty made to Plaintiff and the

Class;

- (d) whether Alexia breached the implied warranty of merchantability made to Plaintiff and the Class;

(e) whether Alexia advertises, or markets the Products in a way that is false or misleading;

(f) whether the Products fail to conform to the representations, which were published, disseminated and advertised to Plaintiff and the Class;

(g) whether Alexia concealed from Plaintiff and the Class that the Products did not conform to its stated representations;

(h) whether, by the misconduct set forth in this Complaint, Alexia has engaged in unfair, fraudulent or unlawful business practices with respect to the advertising, marketing and sales of the Products;

(i) whether Alexia violated the New York Deceptive Trade Practice Act;

(j) whether Class members suffered an ascertainable loss as a result of the Alexia's misrepresentations; and

(k) whether, as a result of Alexia'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.

34. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Alexia'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 Alexia's violations of common and statutory law as alleged herein.

35. Plaintiff is an adequate representative of the Class because his interest does not conflict with the interests of the Class members he seeks to represent, he has retained counsel competent and experienced in prosecuting class actions, and they intend to prosecute this action

vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and his counsel.

36. 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 Alexia's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system that is 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 Alexia's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I

Violation of Magnuson-Moss Act (15 U.S.C. § 2301, *et seq.* (Brought on Behalf of the Class)

37. Plaintiff and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

38. Plaintiff brings this claim individually and on behalf of the members of the Class, against Defendant.

39. The Products are consumer products as defined in 15 U.S.C. §2301(1).

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

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

42. In connection with the sale of the Products, Alexia issued written warranties as defined in 15 U.S.C. §2301(6), which warranted that the products were “All Natural.”

43. By reason of Alexia’s breach of the express written warranties stating that the Products were “All Natural,” Alexia has violated the statutory rights due Plaintiff and Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §2301 *et seq.*, thereby damaging Plaintiff and Class members.

COUNT II

Unjust Enrichment (Brought on Behalf of the Class)

44. Plaintiff and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

45. Plaintiff brings this claim individually and on behalf of the members of the Class.

46. “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 Alexia was *unjustly* enriched. At the core of each state’s law are two fundamental elements – the Alexia received a benefit from the plaintiff and it would be inequitable for the Alexia to retain that benefit without compensating the plaintiff. The focus of the inquiry is the same in each state.” *In re Mercedes-Benz Tele Aid Contract Litig.*, 257 F.R.D. 46, 58 (D.N.J. Apr. 24, 2009), quoting *Powers v. Lycoming Engines*, 245 F.R.D. 226, 231 (E.D. Pa. 2007).

47. Plaintiff and Class members conferred a benefit on Alexia by purchasing Products.

48. Alexia has been unjustly enriched in retaining the revenues derived from Class members’ purchases of Products, which retention under these circumstances is unjust and inequitable because Alexia misrepresented that Products were “All Natural” when in fact they

were not, which caused injuries to Plaintiff and Class members because: (a) they would not have purchased the Products on the same terms if the true facts concerning their actual composition had been known; and (b) they paid a price premium due to the mislabeling of the Products.

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

COUNT III

For Breach of Express Warranty (Brought on Behalf of the Class)

50. Plaintiff and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

51. Plaintiff brings this claim individually and on behalf of the members of the Class.

52. Alexia, as the designer, manufacturer, marketer, distributor, or seller expressly warranted that the Products were "All Natural."

53. In fact, the Products contain synthetic chemical preservative disodium dihydrogen pyrophosphate.

54. Plaintiff and Class members were injured as a direct and proximate result of Alexia's breach because: (a) they would not have purchased the Products on the same terms if the true facts regarding the ingredients contained in the Products had been known; (b) they paid a price premium due to the mislabeling of Products; and (c) Products did not have the composition, attributes, characteristics, nutritional value, health qualities or value as promised.

COUNT IV

**Negligence
(Brought on Behalf of the Class)**

55. Plaintiff and Class members reallege and incorporate by reference each allegation set forth above and further allege as follows.

56. Plaintiff brings this claim individually and on behalf of the members of the Class.

57. Defendant had a duty to Plaintiff and the Class to exercise reasonable and ordinary care in making accurate representations about the Products.

58. Defendant breached its duty to Plaintiff and the Class, directly or through its agents and employees, by making false representations about the Products to Plaintiff and the Class. Further, Defendant failed to disclose all material information about the Products.

59. Defendant knew or should have known that the Products are not "All Natural" and intended Plaintiff and the Class to rely on said statements.

60. Plaintiff and Class relied upon Defendant's representations that the Products are "All Natural".

61. Plaintiff and members of the Class relied upon these false representations by Defendant when purchasing the products at issue herein, which reliance was justified.

62. As a direct and proximate cause of Defendant's negligence, Plaintiff and the Class have suffered actual damages.

COUNT V

**New York Deceptive Trade Practice Act
(Brought on Behalf of the New York Class)**

63. Defendant committed deceptive trade practices in connection with the misconduct herein alleged, including through its acts of fraudulent concealment. Such acts include Defendant's intentional concealment from Plaintiff and other consumers among the general

public that the Products are not "All Natural" and contain synthetic chemical preservative, disodium dihydrogen pyrophosphate.

64. Defendant's conduct herein described, including its violation of its duty to disclose and fraudulent concealment of defects in the Products, constitutes a deceptive trade practice in violation of N.Y.G.B.L. § 349.

65. Defendant's deceptive acts described herein were directed at consumers such as Plaintiff.

66. Defendant's deceptive acts described herein were misleading in a material way.

67. As a proximate result of Defendant's deceptive acts, Plaintiff and the public, including the Class, have been damaged.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself and all others similarly situated, requests that the Court enter judgment against Defendant, as follows:

68. For an order certifying the nationwide Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as Class Representative and his attorneys as Class Counsel to represent the Class members;

69. For an order declaring the Alexia's conduct violates the statutes referenced herein;

70. For an order finding in favor of the Plaintiff and the Class, on all counts asserted herein;

71. For an order awarding compensatory, treble, and punitive damages in amounts to be determined by the Court and/or jury;

72. For prejudgment interest on all amounts awarded;

73. For an order of restitution and all other forms of equitable monetary relief;

- 74. For injunctive relief as pleaded or as the Court may deem proper; and
- 75. For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit.
- 76. For such other and further relief as the Court deems just and proper.

JURY DEMAND

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

Dated: February 29, 2012

Respectfully submitted,

FARUQI & FARUQI, LLP

By: 

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JS 44 (Rev. 09/11)

CIVIL COVER SHEET

CV 12-976

SUMMONS ISSUED

The JS 44 civil cover sheet and the information contained hereon 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.)

U.S. DISTRICT COURT E.D.N.Y.

I. (a) PLAINTIFFS
DAVID ECKSTEIN

DEFENDANTS
ALEXIA FOODS, INC., a Delaware Corporation

★ FEB 29 2012

(b) County of Residence of First Listed Plaintiff New York
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant BROOKLYN OFFICE
(IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Faruqi & Faruqi, LLP, 369 Lexington Avenue, 10th Floor, New York, New York 10017, Tel: (212) 983-9330

Attorneys (If Known)
LEVY, M.J.

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

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

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

- | | | | | | |
|---|----------------------------|----------------------------|---|---------------------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Magnuson-Moss Act, 15 U.S.C. § 2301

Brief description of cause:
class action for unjust enrichment, breach of express warranty, fraudulent concealment and common law

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 02/29/2012
SIGNATURE OF ATTORNEY OF RECORD: *David Faruqi*

FOR OFFICE USE ONLY: RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ 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, _____, counsel for _____, 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:

N/A

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? No _____
 - b) Did the events of 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? No _____

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

BAR ADMISSION

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

- Yes
- No

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

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: 