

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

GREGORY RUSCITTI, individually
and on behalf of a Class of similarly
situated individuals,

Plaintiff,

vs.

ORECK CORPORATION,

Defendant.

Cause No.:

COMPLAINT AND JURY DEMAND

PUTATIVE CLASS ACTION

COMPLAINT – CLASS ACTION

COME NOW Plaintiff, by and through his attorneys of record, and for his
Complaint against Defendant, complain and allege as follows:

BACKGROUND

1. This action arises out of Defendant Oreck Corporation's false and
deceptive claims regarding the health benefits and "germ killing" powers of its
Halo vacuum.

2. During the relevant time period, Oreck deceptively marketed,
advertised, packaged, labeled and otherwise promoted its Oreck Halo vacuum as
effective, through normal use, in killing virtually all bacteria, germs, mold and
allergens that exist in households. In truth and fact, Oreck did not possess and rely
upon a reasonable basis that substantiated the representations it made.

3. Oreck's misrepresentations and omissions regarding the germ killing benefits of its Halo vacuum came to light when the Better Business Bureau's National Advertising Division referred the matter to the Federal Trade Commission, which in turn brought charges against Oreck for false and deceptive advertising. (The FTC complaint is attached hereto as Exhibit "1" and the allegations contained therein are incorporated by reference as if set forth verbatim herein.) The FTC's action was resolved in April of 2011 with Oreck agreeing to a consent order in which it agreed to cease making false and unsubstantiated claims about the efficacy of its Halo vacuum and pay a \$750,000 fine.

PARTIES AND JURISDICTION

2. Plaintiff, Gregory Ruscitti, resides in the Northern District of Illinois. On June 24, 2010, Mr. Ruscitti purchased a Oreck Halo vacuum from Oreck Floor Care Center #117.

3. Defendant Oreck Corporation ("Oreck") is a Delaware corporation with its principal place of business at 565 Marriott Drive, Suite 300, Nashville, TN 37214.

4. Jurisdiction over Plaintiff's claim is proper in this Court pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. Sections 1332(d), 1453, and 1711-1715, and 28 U.S.C. § 1337 because the class includes more than 100

individuals and the amount in controversy, in the aggregate, exceeds the sum of \$5,000,000, exclusive of interest and costs.

5. Venue is proper in this Division pursuant to 28 U.S.C. § 1391 because Oreck: (a) is authorized to conduct business in this District and has intentionally availed itself of the laws and markets within this District through the promotion, marketing, distribution and sales of its products in this District, (b) does substantial business in this District, and (c) is subject to personal jurisdiction in this District.

ALLEGATIONS

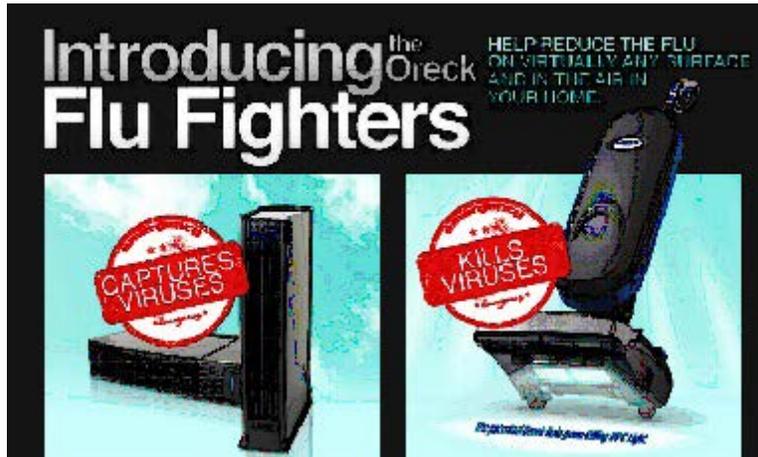
6. The Oreck Halo is an upright vacuum cleaner that has a built-in light chamber and a HEPA filter bag. The light chamber generates ultraviolet light in the C spectrum onto floor surfaces while vacuuming. At all times pertinent hereto, Oreck promoted the Oreck Halo as effective, through normal use, in killing virtually all bacteria, viruses, germs, mold, and allergens that exist on carpets and floor surfaces.

7. Whereas standard Oreck vacuum cleaners retailed at prices between \$189 and \$249, the Oreck Halo was sold at a retail price in excess of \$500.

8. Oreck disseminated or caused to be disseminated advertisements for the Oreck Halo in various forms including television, internet, and print claiming that the Halo product, through normal use, killed virtually all bacteria, viruses,

germs, mold, and allergens that exist on carpets and floor surfaces. Examples of Oreck's advertising in this regard include but are not limited to:

•**Website advertisement:**



•**Infomercial:**

[Announcer]: "Your floors look clean but are they really...even if it looks clean there can be germs, mold, bacteria, viruses, dust mite and flea eggs living right under your feet. Tracked in on your shoes or carried in by your pet. Did you know that you can find over 100,000 dust mites on one square yard of carpet and dust mites have been linked to indoor allergies and asthma. Plus there can be up to 2,500 bacteria, a common cause of infections on just one square inch of tile. But it gets worse! You could find up to 200,000 bacteria on just one square inch of carpet."

.....

[Announcer]: "Ordinary vacuums pick up dirt, but may leave germs behind and harsh chemicals like bleach can ruin carpet. But now you can kill and reduce many germs and bacteria on all your floors, while you vacuum. Introducing the revolutionary Oreck Halo-the only germ-killing UVC vacuum!"

.....

[Announcer]: "The light chamber in the Oreck Halo has killed up to 99.9% of bacteria exposed to its light in one second or less."

•**Print Advertisement:**

Introducing the powerful new Oreck Halo.™ The only UV-C germ-killing

vacuum.

There is a lot more that could be living in your home than just your family and pets. Dust-mites, fleas and their eggs, mold, bacteria, germs, and microorganisms that cause flu, diarrhea and upset stomachs could be living there, too. Now there's an amazingly powerful new vacuum that was designed to help protect your family from many of those microscopic, uninvited guests. It's the new Oreck Halo with exclusive germ-killing UV-C Technology.

Technology proven in hospitals. The new Oreck Halo can kill many bacteria, viruses, dust mite eggs, and even mold on any floor surface.* That's due to its powerful UV-C light. This is the same light used to disinfect hospital operating rooms and purify drinking water. You get a healthier clean.

....”

•Infomercial:

[David Oreck]: “Here are a couple of questions. Do you want to protect your family from exposure to colds and flu this season in your home? Do you have pets? Do you ever use aerosol cleaners? Does anyone in your family have allergies or asthma? Now, if you answered ‘yes’ to any of these questions, that’s where my new Pro Shield Plus Air Purifier comes in.”



[On-screen depiction of woman sneezing]

....

[Announcer]: “Our country is facing what some are calling the worst flu season in years. Now more than ever we should be aware of the airborne germs and viruses that could be in our home.”

....

[Host]: “Well, now you can fight back with this, the new Oreck ProShield Plus, the air purifier that circulates the air to capture and kill many of the potentially
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harmful things that may be in it. I know how harmful they can be because my health was severely affected for several years by indoor air pollution. So when the folks at Oreck asked me to host this show I told them I wanted to see proof that the ProShield Plus worked in real homes for real families, and not just in a laboratory. Their response? No problem.”

..

•Print Advertisement provided to franchisees:



9. Through Oreck’s advertisement of its Halo vacuum product, as described herein and in more detail in the FTC complaint, Oreck represented, expressly or by implication, that:

- A. The Oreck Halo substantially reduces the risk of or prevents the flu;
- B. The Oreck Halo substantially reduces the risk of or prevents other illnesses or ailments caused by bacteria, viruses, molds, and allergens, such as the common cold, diarrhea, upset stomachs, asthma, and allergy symptoms;

C. The Oreck Halo will eliminate all or virtually all common germs and allergens found on the floors in users' homes;

D. The Oreck Halo's UV-C light is effective against germs, bacteria, dust mites, mold and viruses embedded in carpets; and

E. Scientific tests prove that users of the Oreck Halo will eliminate or virtually eliminate many common germs and allergens found on the floors in their homes.

10. In truth and in fact, scientific tests do not prove that users of the Oreck Halo will eliminate or virtually eliminate many common germs and allergens found on the floors in their homes. Therefore, the representations set forth above were, and are, false or misleading.

11. Plaintiff was misled by Oreck's false and/or deceptive marketing, advertising, and other promotional materials touting the "germ killing" effects of its Halo product. Plaintiff purchased and used Oreck's Halo product during the class period and, in so doing, read, considered and based his decision to buy the products in substantial part on Oreck's false and/or misleading representations.

12. Oreck knew that Plaintiff would attach importance to the existence and truth of the representations it made in deciding whether to purchase its Halo product. The representations concerning the products' ability, through normal use,

to eliminate or virtually eliminate many common viruses, germs and allergens from a typical household room were material.

13. As a result of Oreck's misrepresentations and omissions of material fact, Plaintiff and the class either have or have likely been misled by Oreck into purchasing and paying for the Halo products. Plaintiff has thus suffered injury in fact and a loss of money or property in that he has been deprived of the benefit of the bargain and has spent money on Oreck products that lacked values, characteristics, uses or benefits they were led by Oreck to believe they had.

COUNT I

UNIFORM DECEPTIVE TRADE PRACTICES ACT

14. Plaintiff repeats and re-alleges here as if stated here *verbatim* all of the paragraphs stated above and below in this Complaint.

15. Plaintiff brings this class action on behalf of himself and all other members of the class asserting claims under the Illinois Deceptive Trade Practices Act, 815 Ill. Comp. Stat. Ann. 510/1 et. seq. ("UDTPA").

16. The UDTPA prohibits deceptive trade practices including:

- A. representing that goods or services have characteristics, uses or benefits, or quantities that they do not have;
- B. advertising goods or services with intent not to sell them as advertised; or

C. engaging in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

17. Oreck's acts and/or practices constitute deceptive practices in violation of the UDTPA because Oreck made false and/or deceptive representations and omissions that promoted its Halo products as being able to eliminate or virtually eliminate many common germs and allergens found in consumers' homes when, in fact, scientific tests did not prove that such products would actually eliminate or virtually eliminate such viruses, germs and allergens under normal conditions.

18. Oreck's misrepresentations and omissions regarding its Halo product damaged Plaintiff and the class who would not have purchased such products or paid as much for them absent Oreck's deceptive trade practices.

19. Plaintiff seeks all available remedies available under the UDTPA on behalf of himself and the class.

COUNT II

CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

20. Plaintiff repeats and re-alleges here as if stated here *verbatim* all of the paragraphs stated above and below in this Complaint.

21. Plaintiff brings this class action on behalf of himself and all other members of the class asserting claims under the Illinois Consumer Fraud and Deceptive Businesses Act, 815 Ill. Comp. Stat. Ann. 510/1 et. seq. (“ICFA”).

22. The ICFA broadly prohibits deceptive acts or practices including violations of the UDTPA as well as concealment or omission of any material fact with intent to cause reliance.

23. Oreck’s acts and/or practices constitute deceptive practices in violation of the ICFA because Oreck made false and/or deceptive representations and omissions that promoted its Halo product as being able to eliminate or virtually eliminate many common germs and allergens found in consumers’ homes when, in fact, scientific tests did not prove that such products would actually eliminate or virtually eliminate such viruses, germs and allergens under normal conditions.

24. Oreck’s misrepresentations and omissions regarding its Halo product damaged Plaintiff and the class who would not have purchased such product or paid as much for it absent Oreck’s deceptive business practices.

25. Plaintiff seeks all available remedies available under the ICFA on behalf of himself and the class.

COUNT III

VIOLATION OF STATE CONSUMER PROTECTION LAWS

26. Plaintiff repeats and re-alleges here as if stated here *verbatim* all of the paragraphs stated above and below in this Complaint.

27. Plaintiff and each member of the class are consumers entitled to the protection of the consumer protection laws of the state in which he or she purchased the Halo product.

28. The consumer protection laws of the state in which each member of the class purchased the Halo product declares, like Illinois, that unfair or deceptive acts or practices in the conduct of trade or commerce are unlawful. Forty seven states and the District of Columbia have enacted statutes substantially similar to Illinois's designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising and that allow consumers to bring private causes of action and/or class actions:

- a. Alaska Unfair Trade Practices Act, Ak. Code § 45.50.471 et. seq.;
- b. Arizona Consumer Fraud Act, A.R.S. § 44-1522 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.;

- e. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101 et seq.;
- f. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42011a 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 Trade Practices Act, Hawaii Rev. Stat. § 480 1 et. seq.;
- l. Idaho Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 et. seq.;
- m. Kansas Consumer Protection Act, Kan Stat. Ann. §§ 50.626 et. seq.;
- n. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110 et. seq.;
- o. Louisiana Unfair Trade Practices Act, La. Rev. Stat. Ann. §§ 51:1401 et. seq.;
- p. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A et. seq.;

- q. Maryland Consumer Protection Act, Md. Com. Law Code § 13-101 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 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 Act, Mont. Code Ann. § 30-14-101 et. seq.;
- x. Nebraska Consumer Protection Act, Neb Rev. Stat. § 59-1601 et. seq.;
- y. Nevada Trade Regulations 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. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751 et. seq.;
- ff. Oregon Unfair Trade Practices Act, Rev. Stat. § 646.605 et. seq.;
- gg. Rhode Island Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1 et. seq.;
- hh. South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10 et. seq.;
- ii. South Dakota Deceptive Trade Practices Act, S.D. Laws §§ 37-24-1 et. seq.;
- jj. Vermont Consumer Fraud Act, Vt. Stat. Ann. 9 § 2451 et. seq.;
- kk. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010 et. seq.;
- ll. West Virginia Consumer Credit and Protection Act, W.V. Code § 46A-6-101 et. seq.;

mm. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18 et. seq.

29. Oreck manufactured, advertised, marketed, promoted, labeled, distributed and sold the products to which these consumer laws apply.

30. In the conduct of trade or commerce, Oreck engaged in one or more unfair or deceptive acts or practices, including but not limited to disseminating or causing to disseminate deceptive representations regarding the “germ killing” efficacy of its Halo product.

31. Oreck’s marketing, advertising, labeling and other promotional materials were false, untrue, misleading, unfair, deceptive and/or likely to deceive.

32. Oreck used or employed such unfair, deceptive and/or unlawful acts or practices with the intent that Plaintiff and the class rely thereon, and, to the extent required by state consumer protection law, the class did so rely.

33. As a result of Oreck’s conduct, Plaintiff and the class suffered injury in fact, a loss of money or property and/or were damaged.

34. Oreck’s conduct showed indifference and/or conscious disregard for the rights and safety of others such that an award of punitive and/or statutory damages is appropriate to the extent permitted under the consumer protection laws cited above.

COUNT IV

BREACH OF EXPRESS WARRANTY

35. Plaintiff repeats and re-alleges here as if stated here *verbatim* all of the paragraphs stated above and below in this Complaint.

36. Oreck's represented that the Halo product could eliminate or virtually eliminate many common germs and allergens found in consumers' homes through normal use.

37. The Uniform Commercial Code § 2-313 provides that an affirmation of fact or promise, including a description of the goods, becomes part of the basis of the bargain and creates an express warranty that the good shall conform to the promise and the description.

38. Oreck's representations regarding the Halo product were made to Plaintiff and the class and are part of the bargain upon which they were offered for sale and purchased by Plaintiff and the class.

39. Oreck's representations were made to induce Plaintiff and the class to rely on such representations, and Plaintiff and the class did so rely as a material factor in his/her decision to purchase the Oreck product. Plaintiff and the class would not have purchased the product or paid so much for it but for the representations and warranties.

40. Oreck's Halo products did not, in fact, meet the descriptions made about their efficacy to eliminate or virtually eliminate many common germs and allergens found in consumers' homes through normal use.

41. At all times relevant to this action, Oreck falsely represented the characteristics of its Halo product in breach of these express warranties.

42. As a result of Oreck's conduct Plaintiff and the class were damaged, and are entitled to all damages available under Section 2-313 of the Uniform Commercial Code as codified under Illinois law (810 ILCS 5/2-313) and similar state laws.

COUNT V

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE

43. Plaintiff repeats and re-alleges here as if stated here *verbatim* all of the paragraphs stated above and below in this Complaint.

44. Plaintiff and the class purchased Oreck's Halo product for the ordinary and/or particular purpose for which they were marketed, advertised, and/or sold by Oreck, namely, to eliminate common germs and allergens found in their homes. Plaintiff and the class relied upon Oreck's skill and judgment to select and furnish suitable goods for that purpose.

45. Oreck held itself out as possessing, and did possess, expertise, skill and knowledge superior to consumers including Plaintiff and the class, who had a right to rely on Oreck.

46. By marketing the Halo for sale, Oreck impliedly warranted that these products were, in fact, fit for the ordinary purpose for which such products of that description are used. Plaintiff and the class bought these products relying on Oreck's judgment, skill and representations.

47. At the time of sales, Oreck had reason to know the particular purpose for which their goods were being offered and acquired, and that Plaintiff and the class were relying on its skill and judgment to select and furnish goods suitable for that purpose. Accordingly, an implied warranty that the goods were fit for that purpose was created.

48. Oreck breached this warranty by providing goods that were/are unsuitable for the purpose for which they were made.

49. Oreck's conduct constitutes a breach of Section 2-314 of the Uniform Commercial Code as codified under Illinois law (810 ILCS 5/2-314) and similar state laws.

50. As a result of Oreck's conduct Plaintiff and the class were damaged, and are entitled to all damages available under Section 2-314.

COUNT VI

UNJUST ENRICHMENT

51. Plaintiff repeats and re-alleges here as if stated here *verbatim* all of the paragraphs stated above and below in this Complaint.

52. Plaintiff and the class conferred benefits to Oreck by paying money for the Halo product.

53. Oreck accepted and retained the benefits conferred.

54. Under the circumstances, it would be inequitable for Oreck to retain the above-described benefits.

55. As a result of Oreck's unjust enrichment, Plaintiff and the class suffered losses in an amount to be determined at trial and seek full disgorgement, restitution and/or equitable relief.

**CLASS DEFINITIONS, ALLEGATIONS
AND INJURY TO THE CLASS**

56. Plaintiff brings this action on their own behalf and on behalf of all others similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff seeks certification of a class under Rule 23. Plaintiff alleges that thousands of consumers have been the victims of Oreck's false and/or deceptive advertising as alleged herein. Plaintiff seeks certification of the claims in this action on behalf of all person in the United States who purchased a Oreck Halo for personal, family or household use during the class period, and/or such

subclasses as the Court may deem appropriate. The class period is defined as the period between the date Oreck first used the representations described above, as well as those similar to them, in the marketing, advertising, sale and/or promotion of the Oreck Halo product, to the present.

57. Oreck's practices as detailed above were applied uniformly to all members of the class so that the questions of law and fact are common to all members of the class. All members of the class were or are similarly affected by having purchased and used the Oreck Halo product, and the relief sought herein is for the benefit of Plaintiff and the class.

58. Upon information and belief, the class is comprised of thousands of persons and is so numerous that joinder of all members is impracticable.

59. Plaintiff is adequate representatives of the class because his interests do not conflict with the interests of the class members they seeks to represent, and he are similarly situated with members of the class. Plaintiff, as representative party of the class, will fairly and adequately represent and protect the interests of the class. Furthermore, Plaintiff's interests are not antagonistic to the class. Plaintiff has retained counsel competent and experienced in the prosecution of consumer cases and class action litigation.

60. Common questions of fact or law predominate over individualized issues. The class is ascertainable. The injuries sustained by Plaintiff and the class

concern common facts- Oreck's deceptive advertising. In every case, Plaintiff and the class seek uniform damages caused by their purchase of Oreck's Halo product. In addition, common questions exist including: (a) whether Oreck's marketing or advertising were deceptive, (b) whether Oreck's marketing/advertising violated consumer protection laws, (c) whether Oreck breached express or implied warranties, (d) whether Oreck was unjustly enriched, (e) whether Oreck's conduct caused consumers, (e) whether Plaintiff and the class are entitled to damages, including punitive damages. The interest of members of the class in individually controlling the prosecution of separate actions is not great given the amount in controversy and the difficulty of prosecuting the case; it is desirable to concentrate this litigation in one forum and there are no known difficulties likely to be encountered in the management of a class action.

61. A class action is a fair and appropriate method for the adjudication of the controversy, it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that such individual actions would engender.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the putative class, respectfully request that judgment be entered against Defendant for the all damages to which they are entitled to under law as follows:

- a. Certification of the actions as a class action pursuant to Rule 23, Fed. R. Civ. P., and appointment of Plaintiff as class representatives and their counsel of record as class counsel;
- b. Damages in the amount of monies paid by Plaintiff and the class for the Oreck Halo vacuum products;
- c. Statutory damages, punitive or treble damages and such other relief as proscribed by the statutes cited herein;
- d. Costs and reasonable attorney's fees.
- e. Such other and further relief as the Court may deem just and proper, including a declaration that all contracts entered by class members are void.

Respectfully submitted,

Plaintiff
/s/ Keith J. Keogh
By his attorney

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DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury of all of the issues in this action.

Plaintiff
/s/ Keith J. Keogh
By his attorney