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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WILLIAM HORAN, on behalf of himself
and all others similarly situated,

Plaintiff,

-against-

INVICTA WATCH COMPANY OF AMERICA,
INC. and EVINE LIVE INC.,

Defendants.

Civil Action No. 2:17-cv-3820

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff William Horan, by and through his counsel, Denlea & Carton LLP, respectfully files this Class Action Complaint on behalf of himself and a class of similarly-situated individuals and alleges as follows:

NATURE OF THE CASE

1. This action seeks to redress the unfair and deceptive marketing practice by which Defendants are conspiring with one another to entice consumers to purchase inferior, low-quality watches with the promise of a “free,” comprehensive and multiyear warranty. In reality, however, the “protection” offered by Defendants’ “warranty” is illusory, as it amounts to little more than a hidden repair fee, masquerading as an

alleged “warranty.”

2. Defendants perpetrate their fraud by imposing a \$28 fee (in some instances nearly 50% of the cost of the watch) on consumers who seek to avail themselves of the “free” warranty, and by deceptively describing the fee as somehow necessary to cover the costs of either (i) “shipping and handling,” (ii) “insured return shipping” or (iii) “service evaluation and return shipping.” Regardless of the oblique (and conflicting) explanations offered by Defendants, the imposition of such fees renders the “warranty” worthless and violates both New York and Federal law.

3. By this action, Plaintiff and his fellow Class members seek to recover their actual damages, treble damages, attorney’s fees and costs, and injunctive relief, to redress the unfair and deceptive business practices being conducted by Defendants.

THE PARTIES

4. Plaintiff is a natural person of full age of majority who is domiciled and resides in Carle Place, New York. On January 16, 2017, Plaintiff purchased an Invicta Pro Diver Scuba Quartz Chronograph Watch from Defendants.

5. Defendant Invicta Watch Company of America, Inc. (“Invicta”) is a corporation organized and existing under the laws of the State of Florida, with its principal place of business located at 3069 Taft Street, Hollywood, Florida.

6. Defendant EVINE Live Inc. (“Evine”) is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business located at 6740 Shady Oak Road, Eden Prairie, Minnesota.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to §1331 and the

Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). Jurisdiction is proper because the action is brought under the Magnuson-Moss Warranty Act and because (1) the matter in controversy exceeds the sum or value of \$5,000,000.00, exclusive of interest and costs and (2) the named Plaintiff and the Defendants are citizens of different states. 28 U.S.C. §2301, *et seq.*; 28 U.S.C. §1332(d)(2)(A).

8. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) because a substantial part of the events giving rise to the claim occurred within this judicial district and because Defendants have marketed and sold the products at issue in this action within this judicial district and have done business within this judicial district.

CHOICE OF LAW

9. New York law governs the state law claims asserted herein by Plaintiff and the sub-class of New York residents who purchased the Invicta products at issue because Defendants' acts and omissions occurred in the State of New York through Defendants' marketing and sales of its products within the State of New York.

10. New York has a substantial interest in protecting the rights and interests of New York State residents against wrongdoing by companies which market and distribute their products within the State of New York.

GENERAL ALLEGATIONS

11. Evine is a cable, satellite and broadcast television network which offers consumers the convenience of shopping from home. Over the past 20+ years, it has evolved through a series of acquisitions and name changes, including ValueVision, ShopNBC, ShopHQ, and EVINELive, to its current iteration "Evine." Evine describes itself as a "digital commerce company that offers a compelling mix of proprietary and

name brands directly to consumers in an engaging and informative shopping experience via television, on-line and on mobile.” Evine competes with other home-shopping networks like QVC and HSN, and reaches approximately 87 million cable and satellite television homes 24 hours a day.

12. Invicta is a watch manufacturer which traces its roots back to the nineteenth century and the watchmaker Raphael Picard. Over time, Invicta’s business strategy has evolved from offering high-end, curated time pieces to offering low price, high volume products which are capable of being mass-produced.

13. For more than a decade, Invicta and Evine have enjoyed a strong partnership in which Evine has aggressively featured Invicta as one of its most prominent merchants. As Evine’s Chief Executive Officer Bob Rosenblatt declared in December 2016, “For more than 15 years, Invicta has been a valued partner of Evine’s and has played a crucial role in making [Evine] the watch destination we are today.”

14. Evine features Invicta products through a variety of aggressive sales and marketing tactics including prominent placement on the home page of Evine’s website, through paid on-line advertising campaigns, and through dedicated programming on the Evine cable channel on which Invicta watches are often featured to the exclusion of any other products. In addition, Invicta products are often featured with limited, time-sensitive pricing offers, in an effort to create a false sense of urgency among consumers to purchase an Invicta watch at allegedly substantial savings.

15. In addition, and of greater significance to this action, Evine and Invicta have colluded to offer an alleged “warranty” in connection with the sale of Invicta’s products to provide consumers with the peace of mind and reassurance that

Defendants stand behind the Invicta products and will repair (or replace) free of charge any failure or breakdown that may occur with the watches' performance.

The Bogus Warranty

16. Specifically, Evine has marketed the Invicta watches with a "standard" no-cost warranty ranging in length from three to five years. However, to exercise one's rights under the warranty, a consumer must incur the cost of shipping the watch to an "Invicta Service Center" and enclose a \$28 check or money order to cover what Evine has alternatively described as either the costs of "return shipping and handling" or the costs of "insured return shipping."

17. Similarly, the watch itself is packaged by Invicta to include a multi-page document denoted "Invicta Invincible in Detail Warranty" which states:

Your Invicta Timepiece is backed by a 3-year Warranty.

Invicta manufactures timepieces of superior quality. This quality is reflected in the accuracy of the watches, attention to detail in the case and movement assembly, and the life expectancy of each timepiece. The Warranty covers the movement and all of the movement's components; crown, dial, markers, hands, and water pressure. The warranty does not cover scratches to the crystal, case, metal band, straps, or any other damages as a result of normal wear.

Should you discover your watch is not functioning properly during the warranty period, send your timepiece directly to our service center.

Invicta Watch

1 Invicta Way
Hollywood, Florida 33021

Please note: We DO NOT ship to P.O. Box addresses.

A flat rate of \$28 will be charged **to cover service evaluation and return shipping** (emphasis added).

The 3-year Invicta Warranty

Each genuine Invicta timepiece purchased from an authorized

Invicta retailer is in its original and tested condition and should only be serviced through the Invicta Service Center during the warranty period in accordance with the terms of the **standard** 3-year Invicta Warranty. (emphasis added.)

18. The Invicta Warranty goes on to state:

We offer **comprehensive coverage** to repair any failure or breakdown that may occur with the watch movement. **We warrant** that the movement will be free of defects in material and workmanship.

In the case of a covered defect, at our discretion, we may repair or replace your timepiece. This warranty does not cover normal wear and tear, such as scratches that may be caused by daily use on the metal band, case, or crystal. The warranty will be voided if this watch has been mishandled, or used under extraordinary conditions. Opening the watch by an unauthorized third party automatically voids this warranty. Under this warranty, **your watch is also protected** for the indicated water resistance... (emphasis added.)

19. Notably, the printed Invicta warranty refers to “comprehensive coverage,” “warranty,” “standard warranty,” or “we warrant” over 15 times throughout the body of the document. And nowhere does the Invicta warranty contain language limiting its scope, other than for time, exotic straps, and normal wear and tear. The Invicta warranty is never referred to as a “limited warranty,” nor does any tense or derivation of the words “limited” or “limitation” appear in the document.

20. In contrast to Evine’s description of the \$28 fee associated with the warranty as representing the cost of “shipping and handling” or “insured return shipping,” Invicta obtusely describes the \$28 fee as necessary “for service evaluation and return shipping,” thereby offering the additional pretext of the fee being associated with a previously undisclosed “service evaluation.”

Mr. Horan’s Purchase

21. On or about January 16, 2017, in response to Evine’s programming on Mr.

Horan's cable provider (Verizon Fios), and in reliance upon Defendants' representations that they were offering a 5 year standard, free of charge warranty on all new Invicta watches, Mr. Horan purchased an Invicta Pro Diver Scuba Quartz Chronograph Watch (48MM) (Item # 630-404).

22. Mr. Horan paid \$66.80 for the watch, plus \$3.99 in shipping and handling, and \$8.11 in tax, for a total price of \$76.90. This "Scuba" edition watch, in addition to showing the time and date, also contained multiple "sub dials," displaying the seconds, days of the week, and a "30-minute" timer.

23. Shortly after Mr. Horan received the watch, it did not function properly, including the "day of the week" function, which did not work, and the 30 minute timer, which stopped at the 28-minute mark. By May 2017, the shoddy nature of the watch was plainly (and painfully) obvious, when the "day of the week" dial hand fell off the watch face.

24. Fed up with the poor workmanship of the product, Mr. Horan contacted Evine to avail himself of the "free of charge" 5 year warranty on the purchase of his Invicta watch. Evine refused to uphold its obligations under the warranty, telling Mr. Horan that Evine did not provide a warranty on its Invicta products.

25. Rather, Evine informed Mr. Horan that his warranty would be serviced through Invicta, and that it would be Invicta's "choice" as to the price they charge in connection with the warranty. When Mr. Horan made further investigation of Invicta, he discovered a myriad of consumer complaints regarding Invicta's warranty service and learned for the first time of the purported "service evaluation" fee. Given that Mr. Horan was asked to pay a \$28 fee on a watch that only cost him \$66.80, he suspected a ruse.

Mr. Horan's Experience Is Common and Widespread

26. Mr. Horan's experience is widespread, as reflected by a growing, on-line community that is expressing its upset and dissatisfaction with the illusory warranty.

27. On February 1, 2017, "Bob P." wrote "the watch is well under warranty and Invicta will fix it free of charge, right? WRONG! Invicta imposes a \$28 . . . fee for ALL warranty returns." (<https://www.bbb.org/south-east-florida/business-reviews/watches-dealers/invicta-watch-company-of-america-in-hollywood-fl-27002445/reviews-and-complaints>, last visited June 14, 2017.)

28. On February 16, 2017, David from Tallahassee, FL complained that "my full warranty was not what it was cracked up to be. I was told I had to pay \$28.00 to have someone inspect the watch before any repairs would be done. Well, in my case, it was the battery. I just received the bill \$49.00 to replace the battery. All total my battery replacement cost over \$80.00. Invicta just lost a loyal customer. Buyer beware." (<https://www.consumeraffairs.com/retail/invicta-watches.html>, last visited June 20, 2017.)

29. Lanny from Aubrey, TX bemoaned on February 27, 2017 that Invicta's "warranty is a total joke when it comes to the bands. They want \$144.00 plus the cost to evaluate what is wrong . . . The watch does not even cost that much new . . . I will never purchase another Invicta again. . . . Stay away from Invicta." (<https://www.consumeraffairs.com/retail/invicta-watches.html>, last visited June 20, 2017.)

30. Ran from Port Jefferson, NY protested on February 27, 2017 that "to pay

\$28 for shipping . . . [a] watch that cost \$75, in my opinion . . . [is] not worth it. This is how they get you. Never again.” (<https://www.consumeraffairs.com/retail/invicta-watches.html>, last visited June 20, 2017.)

31. Robert from Fayetteville, NC complained on March 10, 2017 that “I sent . . . [the watch] to customer service, they want to charge \$185 for repair plus shipping back even though it is under warranty, they can keep it. It is more than I paid for the watch. (<https://www.consumeraffairs.com/retail/invicta-watches.html>, last visited June 20, 2017.)

32. Finally, on April 9, 2017, Mike from Riverside, RI wrote: “I have been in contact with Both EVINE and Invicta for months and still no resolve (sic) with many issues. At this point I want to take legal action and [it] seems like I am not alone in this matter. 1. False warranty or no warranty provided. 2. Non contact within the company to resolve issues in timely manner. 3. False claims on charging for non-issues related to warranty.” (<https://www.consumeraffairs.com/retail/invicta-watches.html>, last visited June 14, 2017.)

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action on behalf of himself and all other similarly situated consumers pursuant to Rule 23 of the Federal Rules of Civil Procedure, and seeks certification of the following class and subclass:

All consumers who, within the applicable statute of limitations period, purchased an Invicta timepiece from Evine with a warranty that requires a \$28 fee to exercise the warranty.

Subclass: All consumers who, within the applicable statute of limitations period, purchased in the State of New York an Invicta timepiece from Evine with a warranty that requires a \$28 fee to exercise the warranty.

Excluded from the class and subclass are Defendants, their parents, subsidiaries, affiliates, officers and directors, judicial officers and their immediate family members and associated court staff assigned to this case.

34. **Numerosity**. This action is appropriately suited for a class action. The members of the class are so numerous that joinder of all members of the class is impracticable. Plaintiff is informed, believes, and thereon alleges, that the proposed class contains thousands of purchasers who have been damaged by Defendants' conduct as alleged herein. The precise number of class members is unknown to Plaintiff.

35. **Existence and Predominance of Common Questions of Law and Fact**. This action involves questions of law and fact common to the class. The common legal and factual questions include, but are not limited to, the following:

- Whether Defendants made false or misleading representations or failed to disclose material information regarding the warranties;
- Whether the claims made by Defendants regarding the warranties discussed above are true, or are misleading, or objectively are reasonably likely to deceive;
- Whether the alleged conduct constitutes violations of the law asserted;
- Whether Defendants omitted and concealed material information regarding the warranties;
- Whether Defendants had and/or have a duty to disclose information about the warranties to Plaintiff and Class members;
- Whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and
- Whether, as a result of Defendants' misconduct, the class is entitled to monetary and statutory damages, as well as equitable and injunctive relief.

36. **Typicality**. Plaintiff's claims are typical of the claims of the members of

the class, because, *inter alia*, all class members have been injured through the uniform misconduct described above, and were subject to Defendants' deceptive representations, including the representations that accompany the sale of each and every watch (described in detail above) and were made on Defendants' websites and other advertising media. Moreover, the named Plaintiff's claims are typical of the class members' claims. Plaintiff is advancing the same claims and legal theories on behalf of himself and all members of the class.

37. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the members of the class. Plaintiff purchased an Invicta watch from Evine; was a victim of Defendants' unfair and deceptive practices and suffered an injury in fact as a result of Defendants' conduct. Plaintiff has retained counsel experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the class.

38. **Superiority.** A class action is superior to other methods for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendants. It would be virtually impossible for a member of the class, on an individual basis, to obtain effective redress for the wrongs done to him or her. Furthermore, even if the class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues

raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no management difficulties under the circumstances here.

39. Plaintiff seeks monetary damages, including statutory damages on behalf of the entire class, and other equitable relief on grounds generally applicable to the entire class, to enjoin and prevent Defendants from engaging in the acts described. Unless a Class is certified, Defendants will be allowed to profit from their deceptive practices, while Plaintiff and the members of the Class (and Sub-Class) will have suffered damages. Unless an injunction is issued, Defendants will continue to commit the violations alleged, and the members of the Class (and Sub-Class) and the general public will continue to be deceived.

40. Defendants have acted and refused to act on grounds generally applicable to the Class (and Sub-Class), making final injunctive relief appropriate with respect to the Class (and Sub-Class) as a whole.

**FIRST CAUSE OF ACTION
(Violation of Magnuson-Moss Warranty Act)**

41. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

42. This action shall serve as notice that Plaintiff is acting on behalf of the Class and Sub-Class and that Defendants shall have a reasonable opportunity to cure the breaches alleged herein.

43. The Invicta watches are “consumer” products within the meaning of the Magnuson-Moss Act, 15 U.S.C. § 2301, *et seq.* (the “Act”)

44. Plaintiff and the class members are “consumers” within the meaning of the Act. 15 U.S.C. § 2301(3).

45. Defendants are both a “supplier” and a “warrantor” under the Act. 15 U.S.C. § 2301(4) & (5).

46. Defendants’ representations about the Invicta watches fall within the definition of “written warranty” provided in the Act. 15 U.S.C. § 2301(6)(A) & (B).

47. Defendants’ representations are express warranties provided to Mr. Horan and all other consumers and are the basis of the bargain between Plaintiff, class members, and the Defendant.

48. Warranties under the Act fall into one of two categories: full or limited.

49. A “full warranty” requires, *inter alia*, the warrantor to remedy defects in a product within a reasonable time *without charge*.

50. Any warranty designation that does not contain either a full or a limited designation, must be interpreted in a manner most favorable to the consumer.

51. Defendants’ warranties were not designated a full or a limited warranty, but were described as a “standard” warranty.

52. Because Defendants’ warranties were not designated either full or limited, they must be interpreted as full warranties.

53. Defendants breached their warranties by charging a \$28 fee to exercise the warranty.

54. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff and class members are entitled to recover the damages caused to them by Defendants’ breaches of its written warranty, which damages constitute the full purchase price of the watches, plus any out-

of-pocket expenses incurred.

55. Pursuant to 15 U.S.C. §2310(d)(2), Plaintiff and the class members are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorney's fees) determined by the Court to have been reasonably incurred by Plaintiff and the class for and in connection with the commencement and prosecution of this action.

56. As a direct and proximate result of Defendants' breach of their written warranty, Plaintiff and class members have and will continue to suffer damages.

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

57. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

58. Defendants made false representations about the warranty, and/or failed to disclose material information about the warranty. These representations and omissions have the capacity, tendency, and effect of deceiving reasonable consumers who purchase the watches and believe the watch is covered by a warranty. In reality, the supposed warranty covering Defendants' watches is illusory.

59. Plaintiff and the class members have been aggrieved by and have suffered losses as a result of Defendants' violations of Section 349 of the New York General Business Law. By virtue of the foregoing unfair, unconscionable, and deceptive acts and omissions in the conduct of trade or commerce, Plaintiff and the members of the Class (and Sub-Class) have been substantially injured by having to incur out-of-pocket costs to repair the watches, or in the alternative, by overpaying for a product that has diminished value due to its illusory warranty.

60. By reason of the foregoing, Defendants' conduct, as alleged herein, constitutes deceptive acts and practices in violation of Section 349 of the New York General Business Law, and Defendant is liable to Plaintiff and the Class (and Sub-Class) for the actual damages that they have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial, plus statutory damages, treble damages, and attorneys' fees and costs.

61. Plaintiff further demands injunctive relief enjoining Defendants from continuing to engage in, use, or employ any act, including advertisements, packaging, or other representations, prohibited by Section 349 of the New York General Business Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against Defendants as follows:

- A. Certifying this action as a class action as soon as practicable, with the classes as defined above, designating Plaintiff as the named class representative, and designating the undersigned as Class Counsel.
- B. On Plaintiff's First Cause of Action, awarding against Defendants the damages that Plaintiff and the other members of the Class (and Sub-Class) have suffered as a result of Defendants' actions, the amount of such damages to be determined at trial.
- C. On Plaintiff's Second Cause of Action, awarding against Defendants the damages that Plaintiff and the other members of the Class (and Sub-Class) have suffered as a result of Defendants' actions, the amount of such damages

to be determined at trial, plus statutory and treble damages.

- D. Awarding Plaintiff and the class members interest, costs, and attorneys' fees.
- E. Enjoining Defendants from continuing to engage in, use, or employ any act, including advertisements, packaging, or other representations, prohibited by the Magnuson-Moss Warranty Act and Sections 349 of the New York General Business Law.
- F. Awarding Plaintiff and the class members such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure Rule 38, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: White Plains, New York
June 26, 2017

Respectfully Submitted,

/s/ Jeffrey I. Carton
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JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

WILLIAM HORAN

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
DENLEA & CARTON LLP, 2 Westchester Park Drive, Suite 410, White Plains, NY 10604, (914) 331-0100

DEFENDANTS

INVICTA WATCH COMPANY, INC., EVINE LIVE INC.

County of Residence of First Listed Defendant **Broward**
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff
- 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 checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input 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 checked="" 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)

Click here for: Nature of Suit Code Descriptions.

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 (Excludes 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 - Medical 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/Management 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 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <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"/> 835 Patent - Abbreviated New Drug Application <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"/> 376 Qui Tam (31 USC 3729(a)) <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
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 2301

Brief description of cause:

Consumer fraud under NY Gen. Bus. Law §§ 349, 350 and violation of Magnuson-Moss Warranty Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

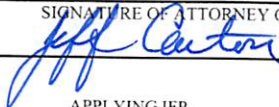
JUDGE

DOCKET NUMBER

DATE

06/26/2017

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

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

I, Jeffrey I. Carton, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

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

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

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

Not applicable

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

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

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

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

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

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

BAR ADMISSION

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

- Yes
- No

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

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: 

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

WILLIAM HORAN, on behalf of himself and all others
similarly situated,

Plaintiff(s)

v.

INVICTA WATCH COMPANY OF AMERICA, INC.
and EVINE LIVE INC.,

Defendant(s)

)
)
)
)
)
)
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Civil Action No. 2:17-cv-3820

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* EVINE Live Inc.
6740 Shady Oak Road
Eden Prairie, Minnesota 55344

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Denlea & Carton LLP
2 Westchester Park Drive, Suite 410
White Plains, NY 10604

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Invicta Watch Co. Entices Customers with Sham Warranties](#)
