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Attorneys for Plaintiff and the Class
[Additional counsel on signature page]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

NORMAN LEIBOWITZ, individually and on behalf of all others similarly situated, Plaintiff, v. COSTCO WHOLESALE CORPORATION, and TRIDENT SEAFOODS CORPORATION, Defendants.	Case No: **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiff Norman Leibowitz ("Plaintiff"), individually and on behalf of all others similarly situated, brings this Class Action Complaint against Defendants Costco Wholesale Corporation ("Costco") and Trident Seafoods Corporation ("Trident") (collectively, "Defendants"), and alleges as follows, upon personal knowledge and based upon the investigation conducted by his attorneys:

NATURE OF THE ACTION

1. Defendant Costco advertises and sells its own line of "fish oil" products, including Wild Alaskan Fish Oil, under its Kirkland Signature brand name. Defendant Trident manufactures the Kirkland Wild Alaskan Fish Oil (the "Product").

2. Costco promises consumers on its website that Kirkland products "mean quality" and that the Kirkland signature brand "allows the company to control the quality of the Kirkland Signature product[s]" which are "equal to or better than the national brands."

3. Defendants however, have broken that promise and violated federal and state law by misrepresenting the nature and quality of the Product.

4. Specifically, Defendants market and sell the Product as a "whole-food alternative to highly processed fish oils," which contain 1,050 mg Omega unsaturated fatty acids.

5. In reality, testing done by Consumer Labs, as well as testing commissioned by Plaintiff through his counsel, has revealed, among other misrepresentations and omissions, that the Product contains a substantially lower amount of Omega fatty acids than advertised. Defendants therefore have made false and misleading claims on the labels of the Product, including, without limitation, statements relating to the omega content contained in the Product.

6. Plaintiff, like all reasonable consumers of the Product, would not have purchased the Product had Defendants disclosed that it contained mislabeled quantities of ingredients.

7. Plaintiff thus brings this suit on behalf of herself and similarly situated consumers who resided in New York and purchased Kirkland Wild Alaskan Fish Oil. Defendants engaged in unfair and/or deceptive business practices by misrepresenting the nature and quality of the Product on the Product's labels, and therefore violated state consumer protection law, committed common law fraud, breached express and implied product warranties, violated New York

General Business Law § 349 and violate the New York False Advertising Act, New York General Business Law § 350 (collectively, "New York Consumer Protection Laws" or "NYCPL"), and unjustly enriched themselves to the detriment of consumers. For the reasons set forth herein, Plaintiff and the Class seek compensatory damages, treble damages, injunctive relief, fees, costs, and all other appropriate relief.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332(d) because the combined claims of the proposed Class members exceed $5,000,000 and because Defendants are citizens of a different state than Plaintiff and most Class Members.

9. This Court has personal jurisdiction over Defendants because Defendants are authorized to conduct and do business in New York, including this District. Defendants marketed, promoted, distributed, and sold the Product in New York, and Defendants have sufficient minimum contacts with this State and/or sufficiently availed themselves of the markets in this State through their promotion, sales, distribution, and marketing of the Product within this State, including this District, to render the exercise of jurisdiction by this Court permissible.

10. Venue is proper in this District pursuant to: (a) 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District while Plaintiff resided in this District; and (b) 28 U.S.C. § 1391(b)(3) because Defendants are subject to personal jurisdiction in this District.

PARTIES

11. Plaintiff Norman Leibowitz is a resident of Glendale, New York and purchased Kirkland Wild Alaskan Fish Oil on several occasions over the last year from a Costco store

located in Westbury, New York. Prior to purchase, Plaintiff read and relied on the false claims made by Defendants set forth in this Complaint regarding the Product.

12. Defendant Costco is a Washington corporation with a principal place of business located at 999 Lake Drive, Issaquah, WA 98027. Costco, a publicly traded corporation, owns and operates over 400 warehouses throughout the United States and Puerto Rico.

13. Defendant Trident is a Washington corporation with a principal place of business located at 5303 Shilshole Avenue NW, Seattle, WA 98107.

14. Plaintiff reasonably relied on Defendants' labeling, marketing and advertising in purchasing the Product. Plaintiff and all reasonable consumers of the Product purchased and used the Product in reliance on Defendants' representations. If Plaintiff and reasonable consumers had known that the Product did not contain the promised ingredients as advertised and/or was not potent, they would not have purchased the Product.

15. As a result of Defendants' actions, Plaintiff did not receive the benefit of the bargain, suffered out-of-pocket losses, and is entitled to restitution. Plaintiff has suffered injury-in-fact, damages and ascertainable losses of money by paying the purchase price for Defendants' Product, for which he is entitled to monetary damages.

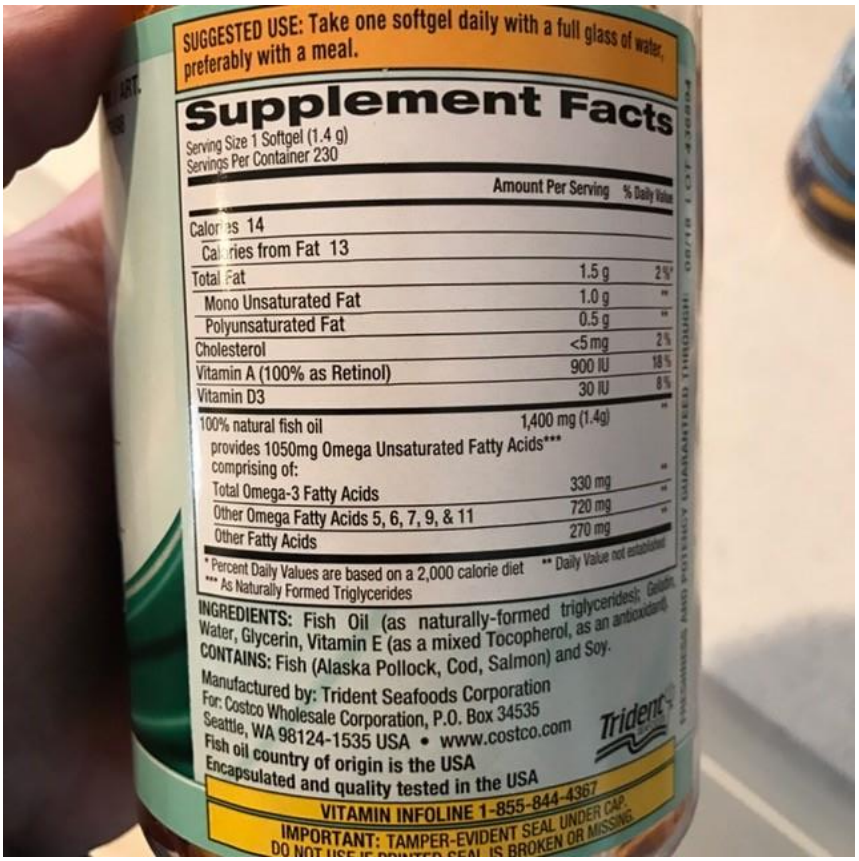
FACTUAL ALLEGATIONS

16. The sale of fish oil is over a billion-dollar industry. A piece of this industry is the sale and use of fish oil as a dietary supplement through fish oil pills.

17. Fish oil is FDA approved to lower triglyceride levels and is typically used for conditions related to the heart and blood system, such as to lower blood pressure, triglycerides, and cholesterol levels; to prevent heart disease and stroke; and for clogged arteries, chest pain, irregular heartbeat, heart failure, rapid heartbeat, and blood clots.

Defendants' False and Misleading Claims

18. Defendants make numerous representations on the labels of Kirkland Wild Alaskan Fish Oil, including the claim that the Product contains 1050 mg of Unsaturated Fatty Acids, consisting of 330 mg of Total Omega-3 Fatty acids and 720 milligrams of Omega Fatty Acids 5,6,7,9, & 11 per serving:



19. A reasonable consumer such as Plaintiff would expect that the label statements regarding the quantity of ingredients in and purity of the Product would be truthful and not deceptive or misleading.

20. Testing of Kirkland Wild Alaskan Fish Oil performed by Consumer Lab, LLC, a provider of independent testing of products, including herbal products, supplements, vitamins, and minerals, revealed that the Product contained substantially less than the promised 1050 mg of Whole Omega Fatty Acids (*i.e.*, the integral component of the Product). Specifically, Consumer Lab found that the Product contained only 346.1 mg total omega-5s, 6s, 7s, 9s, and 11s, which is only 48.1 percent of the promised amount of such omegas:

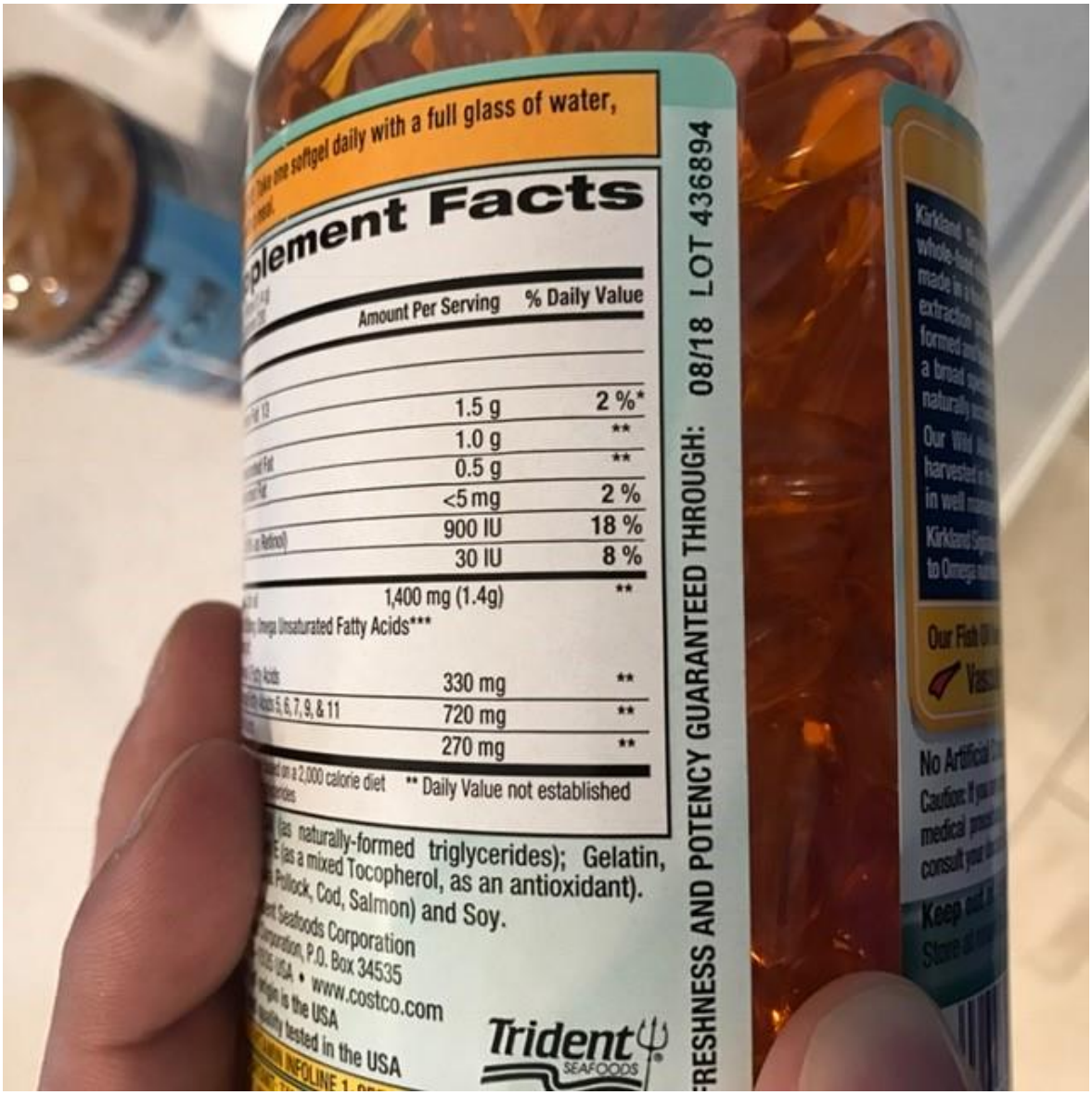
Kirkland Signature™ [Costco] Wild Alaskan Fish Oil (1 softgel daily)16  Mfd. by Trident Seafoods Corporation Ingredients	**Total Omega-3:** 330 mg **Total Omega-5s, 6s, 7s, 9s & 11s:** 720 mg Very Large softgel Low concentration9 Triglyceride	***NOT APPROVED***	✓ **Total Omega-3** Found only 346.1 mg total omega-5s, 6s, 7s, 9s & 11s (48.1% of listed amount) per softgel Found: EPA: 134 mg per softgel DHA: 101 mg per softgel (Total omega-7s: 116 mg per softgel [61.2% palmitoleic acid])	✓	✓	NA	$0.09 [$0.04 based on amount *found*] Vitamins A & D3 *Gluten free, yeast free* $21.49/230 softgels

21. Plaintiff's counsel also commissioned its own independent analysis of Kirkland Wild Alaskan Fish Oil. The testing facility found that the Product contained only 40% of the promised amount of omega-3 fatty acids, and only 21% of the promised amount of the remaining fatty acids.

22. Thus, Defendants failed to disclose the true quantity of the Omega Fatty Acids contained in the Product.

23. As a result of Defendants' practices, Plaintiff and Class members purchased a product that they would otherwise not have purchased and paid more for a fish oil product than they otherwise would have paid.

24. Defendants' Kirkland Wild Alaskan Fish Oil also falsely claims to guarantee the potency of the Product:


Take one softgel daily with a full glass of water,
plement Facts
Amount Per Serving
% Daily Value
1.5 g
2 %*
1.0 g
**
0.5 g
**
<5 mg
2 %
900 IU
18 %
30 IU
8 %
1,400 mg (1.4g)
**
Omega Unsaturated Fatty Acids***
330 mg
**
720 mg
**
270 mg
**
on a 2,000 calorie diet
** Daily Value not established
(as naturally-formed triglycerides); Gelatin,
E (as a mixed Tocopherol, as an antioxidant).
Pollock, Cod, Salmon) and Soy.
Seafoods Corporation
Corporation, P.O. Box 34535
USA • www.costco.com
gin is the USA
tested in the USA
Trident
SEAFOODS
FRESHNESS AND POTENCY GUARANTEED THROUGH: 08/18 LOT 436894
Our Fish
No Artificial
Caution: If you
medical
consult your
Keep
Store


Quality Purity Potency
Kirkland Signature 1400 mg Wild Alaskan Fish Oil offers a whole-food alternative to highly processed fish oils. Our edible oil is made in a food grade facility, using a state of the art cold pressed extraction process which retains Omega-3's in their naturally formed and balanced triglyceride state. This insures our oil delivers a broad spectrum of whole Omega's 3, 5, 6, 7, 9 & 11 as well as naturally occurring vitamins A & D.
Our Wild Alaskan Fish Oil is made with free swimming fish, harvested in the cold, clean waters of Alaska and the north Pacific in well managed and sustainably certified fisheries.
Kirkland Signature Wild Alaskan Fish Oil provides a balanced approach to Omega nutrition. It is as close to eating fish as you can get.
Our Fish Oil helps to maintain and support:††
Vascular Health
Heart Health
USA
No Artificial Color • No Artificial Flavors • No Yeast or Gluten
Caution: If you are pregnant, nursing, taking any medications or planning any medical procedure, consult your doctor before use. Discontinue use and consult your doctor if adverse reactions occur.
Keep out of reach of children.
Store at room temperature, tightly closed. Avoid excessive heat.

25. Because Kirkland Wild Alaskan Fish Oil does not contain the promised quantity of omega unsaturated fatty acids, Defendants' claim regarding the potency of the Product is false and misleading.

26. Pursuant to 21 U.S.C. § 321(ff), the Product constitutes a "food" regulated by the FDCA, 21 U.S.C. § 301, *et seq.*, and other FDCA regulations.

27. Defendants' false, deceptive and misleading label statements violate 21 U.S.C. § 343(a)(1) and the so-called "little FDCA" statutes adopted by many states, which deem food misbranded when "its labeling is false or misleading in any particular."

28. Defendants' false, deceptive and misleading label statements are unlawful under the New York Consumer Protection Laws, which prohibits unfair, deceptive or unconscionable acts in the conduct of trade or commerce.

29. New York prohibits the misbranding of food in a way that parallels the FDCA through N.Y. Agric. & Mkts. Law § 199-a (Consol., Lexis Advance through 2018 Chapter 1), which provides that "[n]o person or persons, firm, association or corporation shall within this state manufacture, compound, brew, distill, produce, process, pack, transport, possess, sell, offer or expose for sale, or serve in any hotel, restaurant, eating house or other place of public entertainment any article of food which is adulterated or misbranded within the meaning of this article." *Id.*

30. The above laws, and all regulations enacted pursuant thereto, are incorporated into New York law. Thus, a violation of federal food labeling laws is an independent violation of New York law and actionable as such.

31. The introduction of misbranded food into interstate commerce is prohibited under the FDCA and New York law.

32. Plaintiff and Class members would not have purchased Kirkland Wild Alaskan Fish Oil, or would not have paid as much for the Product, had they known the truth about the mislabeled and falsely advertised Product.

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this class action on behalf of herself and all others similarly situated as Class Members pursuant to Rule 23 of the Federal Rules of Civil Procedure.

34. Plaintiff seeks to represent a Class defined as follows:

> All persons residing in the State of New York who purchased Defendants' Product.

Excluded from the Class are Defendants and any person, firm, trust, corporation, or other entity related to or affiliated with Defendants, and any judge, justice or judicial officer presiding over this matter and members of their immediate families and judicial staff.

35. Certification of the Plaintiff's claims for class wide treatment is appropriate because Plaintiff can prove the elements of his claims on a class wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

36. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The Members of the Class are so numerous that individual joinder of all Class Members in impracticable. On information and belief, there are thousands of consumers who have been affected by the Defendants' wrongful conduct. The precise number of the Class Members and their addresses is presently unknown to Plaintiff, but may be ascertained from the Defendants' books and records. Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

37. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** Defendants have acted with respect to the Class members in a manner generally applicable to each Class member. Common questions of law and/or fact exist as to all Class

members and predominate over any questions affecting individual Class members. There is a well-defined community of interest in the questions of law and fact involved in the action, which uniformly affect all Class members. Among the questions of law and fact common to the Class are:

a) The true nature and characteristics of the Product;

b) Whether Defendants violated express and/or implied warranties concerning the Product;

c) Whether Defendants' marketing, advertising, packaging, labeling, and other promotional materials for the Product are false, deceptive, or misleading;

d) Whether Defendants' actions and omissions violated the NYCPL;

e) Whether Defendants' are liable to Plaintiff and the Class Members under Common Law fraud for their actions and omissions;

f) Whether Defendants are liable to Plaintiff and the Class members for damages, and the amount of such damages;

g) Whether Defendants should be enjoined from engaging in such conduct in the future; and

h) Whether Plaintiff and Class Members are entitled to any other remedy.

38. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of the claims of each Class member. All Class members have been and/or continue to be similarly affected by Defendants' wrongful conduct as complained of herein. Plaintiff is unaware of any interests that conflict with or are antagonistic to the interests of the Class members.

39. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4)**. Plaintiff will fairly and adequately protect the Class members' interests and has retained counsel competent and experienced in consumer class action lawsuits. Plaintiff and his counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and his counsel are aware of their duties and responsibilities to the Class.

40. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Defendants have acted or refused to act on grounds generally applicable to Plaintiff and the other Class Members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to Class Members as a whole.

41. **Superiority – Federal Rule of Civil Procedure 23(b)(3)**. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all Class members is impracticable. Further, as the damages suffered by each Class member are relatively small, the expense and burden of individual litigation makes it virtually impossible for Class members to individually redress the wrongs done to them by Defendants. There will be no difficulty in managing this case as a class action.

CAUSES OF ACTION

COUNT I
VIOLATIONS OF THE NEW YORK CONSUMER PROTECTION FROM DECEPTIVE ACTS AND PRACTICES, GEN. BUS. § 349, AND NEW YORK FALSE ADVERTISING ACT, GEN. BUS. § 350
On Behalf Of the Class

42. Plaintiff realleges all allegations above as if fully set forth herein.

43. Defendant's actions complained of herein constitute unlawful deceptive trade practices under New York General Business Law § 349 and violate the New York False Advertising Act, New York General Business Law § 350. These acts protect consumers from deceptive acts or practices and false advertising in the conduct of any business trade, or commerce in the State of New York.

44. Plaintiff Leibowitz and the Class are consumers and the end users and intended beneficiaries of the Product.

45. At all times relevant to this Complaint, Defendants have been engaged in consumer-oriented conduct within the intended ambit of the NYCPL, and their conduct affects similarly situated consumers and has a broad impact on consumers at large.

46. The NYCPL is, by its terms, a cumulative remedy, such that remedies under its

provisions can be awarded in addition to those provided under separate statutory schemes.

47. Defendants' practices violated the NYCPL for, *inter alia*, one or more of the following reasons:

a. Defendants represented to Plaintiff and the Class that the Product had approval or characteristics that it did not have;

b. Defendants represented to Plaintiff and the Class that the Product was of a particular standard, quality, or grade when it was actually of another;

c. Defendants advertised to Plaintiff and the Class goods with intent not to sell them as advertised;

d. Defendants engaged in other fraudulent or deceptive conduct creating a likelihood of confusion or misunderstanding; and

e. Defendants represented that consumers' purchases of the Product conferred or involved rights that the transactions did not have or involve.

48. Defendants knowingly misrepresented and intentionally omitted and concealed material information regarding the Product to Plaintiff and the Class.

49. Defendants intended that Plaintiff and Class rely on their acts of concealment and omissions and misrepresentations, so that Plaintiff and the Class would purchase the Product.

50. Had Defendants disclosed all material information regarding the Product to Plaintiff and the Class, they would not have purchased the Product, or would have paid less for the Product.

51. Defendants' actions constitute unconscionable commercial practices, deception, fraud, false presents, misrepresentation, and/or the knowing concealment, suppression, or omission of material facts, with the intent that others rely on such concealment, suppression, or omission, in connection with the sales and use of the Product, in violation of NYCPL § 349.

52. Furthermore, Defendants' actions constitute the materially misleading advertising—which encompasses advertising, including labeling, that is false, deceptive, or fails to reveal material facts—of commodities, in violation of NYCPL § 350.

53. Defendants' deceptive and misleading advertising and representations are material, in that they are likely to mislead a reasonable consumer acting reasonably under the circumstances. Potential purchasers might reasonably rely on Defendants' statements with respect to the particular standard, quality, or grade of the Product, as the falsity of these statements cannot be ascertained absent complex scientific knowledge.

54. Had Defendant refrained from the actions complained of herein, Plaintiff Leibowitz would not have purchased (or would have paid less for) the Product.

55. Defendants' deceptive and misleading actions and omissions as set forth herein have caused and continue to cause injury to Plaintiff Leibowitz, Class Members, and the broader public and public interest.

56. As a direct and proximate result of Defendants' violations of the NYCPL, Plaintiff Leibowitz and the Class have suffered and continue to suffer damages. Plaintiff Leibowitz and Class Members are entitled to compensatory damages, equitable and declaratory relief, costs, and reasonable attorney's fees.

COUNT II
COMMON LAW FRAUD
On Behalf Of the Class

57. Plaintiff realleges all allegations above as if fully set forth herein.

58. The above described conduct and actions constitute common law fraud by way of misrepresentations, concealment and omissions of material facts made by Defendants in inducing Plaintiff and Class Members to purchase the Product.

59. Defendants, upon information and belief, made the above-described misrepresentations, concealment and omissions of material facts to all Class Members concerning the nature and benefits of the Product, which were material to Plaintiff and Class Members' purchase of the Product.

60. Defendants intended that the Plaintiff and the other members of the Class rely upon the above-described misrepresentations, concealment and omissions.

61. Had Defendants disclosed all material information regarding the Product to Plaintiff and the Class, they would not have purchased the Product, or would have paid less for the Product.

62. Plaintiff and other Class Members justifiably relied upon Defendants' misrepresentations, concealment and omissions to their damage and detriment.

63. Plaintiff and the Class suffered the damage described in this complaint as a proximate result thereof.

64. Defendants' conduct was willful, wanton, and reckless. Based on the intentionally dishonest nature of Defendants' conduct, which was directed at the Class, Defendants should also be held liable to the Class for punitive damages in an amount to be determined at trial.

COUNT III
BREACH OF EXPRESS WARRANTY
On Behalf Of the Class

65. Plaintiff realleges all allegations above as if fully set forth herein.

66. Plaintiff, and each Member of the Class formed a contract with Defendants at the time Plaintiff and the other Class Members purchased the Product. The terms of the contract include the promises and affirmations of fact made by Defendants on the Product's packaging and through marketing and advertising, as described above. This labeling, marketing and advertising constitute express warranties and became part of the basis of bargain, and are part of the standardized contract between Plaintiff and the members of the Class and Defendants.

67. Defendants purport through their advertising, labeling, marketing and packaging to create an express warranty that the Product was effective at providing weight loss and appetite suppression.

68. Plaintiff and the Class Members performed all conditions precedent to Defendants' liability under this contract when they purchased the Product.

69. Defendants breached express warranties about the Product and its qualities

because Defendants' statements about the Product were false and the Product does not conform to Defendants' affirmations and promises described above. Plaintiff and the Class Members would not have purchased the Product had they known the true nature of the Product's ingredients and what the Product contained.

70. Defendants received timely notice regarding the problems at issue in this litigation and, notwithstanding such notice, have failed and refused to offer an effective remedy.

71. As a result of Defendants' breach of warranty, Plaintiff and Class Members have been damaged in the amount of the purchase price of the Product and any consequential damages resulting from the purchases.

COUNT IV
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(N.Y. U.C.C. § 2-314)
On Behalf Of the Class

72. Plaintiff realleges all allegations above as if fully set forth herein.

73. Defendants are and were at all relevant times merchants with respect to the Product.

74. A warranty that the Product was in merchantable quality and condition is implied by law pursuant to N.Y. U.C.C. § 2-314(1).

75. Defendants impliedly warranted that the Product was of good and merchantable condition and quality – fit and safe for their ordinary intended use.

76. The Product was defective at the time it left the possession of Defendants, as set forth above, and Defendants knew of this defect at the time these transactions occurred. Thus, the Product, when sold and at all times thereafter, was not in merchantable condition or quality and is not fit for its ordinary intended purpose.

77. By virtue of the conduct described herein and throughout this Complaint, Defendants breached the implied warranty of merchantability.

78. Plaintiff and Class Members have been damaged as a direct and proximate result of Defendants' breach of the implied warranty.

79. Plaintiff has used the Product in a manner consistent with its intended use and performed each and every duty required under the terms of the warranties, except as may have been excused or prevented by the conduct of Defendants or by operation of law in light of Defendants' conduct.

80. Defendants received timely notice regarding the problems at issue in this litigation and, notwithstanding such notice, have failed and refused to offer an effective remedy.

81. As a direct and proximate result of Defendants' breach of warranties, Plaintiff and the Class were caused to suffer damages.

COUNT V
UNJUST ENRICHMENT
On Behalf Of the Class

82. Plaintiff realleges all allegations above as if fully set forth herein.

83. Through their numerous misleading, unfair and deceptive claims and misrepresentations, Defendants made millions of dollars from the sale of the Product. The considerable profits were made at the expense of Plaintiff and each Member of the Class, who relied upon Defendants' material representations and omissions.

84. Plaintiff and Class Members conferred benefits on Defendants by purchasing the Product, which Defendants knowingly appreciated and accepted.

85. Defendants have been unjustly enriched in retaining the revenues derived from Plaintiff's and Class Members' purchase of the Product. Retention of those monies under these circumstances is unjust and inequitable because Defendants' labeling of the Product was misleading to consumers, which caused injuries to Plaintiff and Class Members because they would have not purchased the Product if the true facts had been known.

86. Because Defendants' retention of the non-gratuitous benefits conferred on them by Plaintiff and Class Members is unjust and inequitable, Defendants must pay restitution to Plaintiff and the Class Members for Defendants' unjust enrichment, as ordered by the Court.

COUNT VII
DECLARATORY RELIEF UNDER THE DECLARATORY JUDGMENT ACT
On Behalf Of the Class

87. Plaintiff realleges all allegations above as if fully set forth herein.

88. Declaratory relief is intended to minimize "the danger of avoidable loss and unnecessary accrual of damages." 10B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2751 (3d ed. 1998).

89. Pursuant to 28 U.S.C. § 2201, *et seq*., there is an actual controversy between Defendants and Plaintiff concerning whether:

a. Defendants have misrepresented the qualities and characteristics of the Product; and

b. Defendants knew or should have known of the misrepresentations regarding the qualities and characteristics of the Product.

90. Pursuant to 28 U.S.C. § 2201, the Court may "declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

91. Despite the studies which have proven Defendants' representations false, Defendants continue to represent the effectiveness of the Product, and has otherwise failed to correct those misrepresentations.

92. Accordingly, based on Defendants' repeated and continued misrepresentations, Plaintiff seeks a declaration that Defendants have misrepresented the efficacy of the Product and that its actions are unlawful.

93. The declaratory relief requested herein will generate common answers that will settle the controversy related to the misrepresented labeling of the Product. There is an economy to resolving these issues as they have the potential to eliminate the need for continued and repeated litigation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, respectfully requests the following relief:

A. Declaring that this action may be maintained as a class action, certifying the Class as requested herein, appointing Plaintiff as Class Representative, and appointing the undersigned as Class Counsel;

B. Enjoining Defendants from the unlawful practices and statutory violations asserted herein;

C. Declaring Defendants' practices to be unlawful;

D. A judgment awarding Plaintiff and each of the other Members of the Class their actual damages in an amount according to proof as to Defendants' unlawful conduct, as alleged herein;

E. A judgment awarding Plaintiff and each of the other Members of the Class compensatory, consequential, and special damages in amounts to be proven at trial, as well as statutory damages;

F. An award of punitive damages, to the maximum extent permitted by law;

G. A judgment awarding Plaintiff and the other members of the Class restitution, including, without limitation, disgorgement of all profits and unjust enrichment obtained by Defendants as a result of their wrongful conduct, as alleged herein;

H. An award of delay damages, to the maximum extent permitted by law;

I. Attorneys' fees, expenses, and the costs of this action to the maximum extent permitted by law;

J. An award of pre- and post-judgment interest; and

K. All other and further relief that the Court deems necessary, just, and proper.

JURY TRIAL DEMAND

Pursuant to Federal Rules of Civil Procedure 38(b), Plaintiff, Norman Leibowitz, hereby demands a trial by jury of all claims in this Class Action Complaint so triable.

Respectfully submitted,

Dated: February 27, 2018

By: /s/ Jason T. Brown

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Nicholas Conlon (NY Bar # 801616)
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Attorneys for Plaintiff and the Proposed Class

JS 44 (Rev. 01/29/2018)

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

NORMAN LEIBOWITZ, individually and on behalf of all others similarly situated,

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Jason T. Brown (NJ Bar # 4389854), JTB LAW GROUP, LLC
155 2nd Street, Suite 4, Jersey City, NJ 07302
Phone: (201) 630-0000

DEFENDANTS

COSTCO WHOLESALE CORPORATION, and TRIDENT SEAFOODS CORPORATION

County of Residence of First Listed Defendant
(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)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☒ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 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 - 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. §§ 1332(d)

Brief description of cause:
Deceptive and unconscionable consumer practices

VII. REQUESTED IN COMPLAINT:

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

DEMAND $ 5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 2/27/18

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, Jason T. Brown, counsel for NORMAN LEIBOWITZ, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- [x] monetary damages sought are in excess of $150,000, exclusive of interest and costs,
- [x] 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 or its stocks:

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? ☐ Yes ☑ 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 ☐ No

b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☑ Yes ☐ No

c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

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? ☐ Yes ☐ 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: 

Last Modified: 11/27/2017