

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION**

BEULAH PREWITT,	:	
	:	
Plaintiff,	:	Case No.
	:	
	:	
v.	:	Judge
	:	
GERBER LIFE INSURANCE	:	
COMPANY,	:	
	:	
Defendant.	:	
	:	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453, Defendant Gerber Life Insurance Company (“Gerber”) hereby gives notice of removal of this action from the Laurel County Circuit Court to the United States District Court for the Eastern District of Kentucky, London Division. In support of this Notice of Removal, Gerber states as follows:

Background

1. Beulah Prewitt, the Plaintiff and putative class representative (“Prewitt” or “Plaintiff”), holds life insurance policies with Gerber.
2. On January 6, 2020, Prewitt filed a purported class action lawsuit against Gerber captioned *Beulah Prewitt v. Gerber Life Insurance Company*, Case No. 20-CI-00011, in the Circuit Court for Laurel County, Kentucky. A copy of the Complaint and Summons served on Gerber is attached as Exhibit A. A docket sheet with remaining documents, including Courtesy Financial Transaction Report and Summons Return of Service are attached as Exhibit C.

3. Prewitt filed this putative class action lawsuit against Gerber seeking monetary damages, restitution, and injunctive and declaratory relief. In her Complaint, Prewitt claims a violation of KRS 304.12 and fraud in the inducement. (Ex. A [Compl.] at ¶¶ 80-93, 94-101.)

4. Prewitt's lawsuit is based on her allegation that two of the life insurance policies offered by Gerber—namely, the Grow Up Plan and Gerber Life College Plan—are deceptively named and marketed. Prewitt seeks to represent a class of all consumers in the state of Kentucky who purchased a Gerber Life College Plan or Grow Up Plan. (*Id.* at ¶ 80.)

Grounds for Removal

5. This case is properly removed because this Court has subject matter jurisdiction over the case pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), *et seq.*

6. Gerber was served with the Summons and Complaint on January 14, 2020. (*See* Declaration of Luci A. Moore ("Moore Decl."), ¶ 3 (attached as Exhibit B).) Accordingly, pursuant to 28 U.S.C. § 1446(b)(1), Gerber's Notice of Removal is timely because it is being filed within 30 days of the date on which Gerber was served.

7. Prewitt purports to bring this action as a class action, on behalf of the following putative class:

All consumers in the state of Kentucky who, within the applicable statute of limitations preceding the filing of this action to the date of class certification, purchased a Gerber [Life] College Plan or Grow Up Plan.

(Ex. A [Compl.] at ¶ 80.)

8. This Court has original subject matter jurisdiction over this removed action pursuant to CAFA, 28 U.S.C. § 1332(d). The removed action is brought as a putative class action and, thus meets the requirements under 28 U.S.C. §§ 1332(d)(1)(B) and 1453(a). Further, the removed action meets the other jurisdictional requirements of Sections 1332(d) and 1453, as

demonstrated below. In particular, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) because (a) the putative class would include 100 or more members, (b) at least one member of the putative plaintiff class is a citizen of a state different from Gerber, and (c) the aggregate amount-in-controversy exceeds \$5,000,000.

Size of the Putative Class

9. The putative class significantly exceeds CAFA’s requirement of 100 or more members. (*See* 28 U.S.C. § 1332(d)(5)(B).) Prewitt alleges that this action is brought for the benefit of herself and “thousands” of Class members, and that the Class is so numerous that joinder is impracticable. (Ex. A [Compl.] at ¶ 84.)

10. Gerber has issued a variety of Grow Up Plans and Gerber Life College Plans to Kentucky consumers. (Ex. B [Moore Decl.] at ¶ 4.)

11. As of January 22, 2020, Gerber has thousands of policyholders in Kentucky who hold a Grow Up Plan and/or Gerber Life College Plan policy—far more than the minimum number of class members required under CAFA. (Ex. B [Moore Decl.] at ¶ 5.) Indeed, Prewitt herself alleges that “hundreds of individual lawsuits” would be required if this matter did not proceed as a class action and that “[t]he Class consists of thousands of members.” (Ex. A [Compl.] at ¶¶ 84, 90.) Thus, far more than 100 life insurance policyholders meet Prewitt’s putative class definition. (*See id.*) CAFA’s numerosity requirement is therefore satisfied.

Diversity of Citizenship

12. For purposes of CAFA removal jurisdiction, there need only be minimal diversity of citizenship—that is, only one member of the putative plaintiff class needs to be a citizen of a state different from the Defendant. (*See* 28 U.S.C. § 1332(d)(2)(A).)

13. Gerber Life Insurance Company is a New York corporation that has its principal place of business in White Plains, New York. (Ex. B [Moore Decl.] at ¶ 6; *see also* Ex. A. [Compl.] at ¶ 7 (alleging that Gerber is a New York citizen).)

14. The requirement of minimal diversity is satisfied because Gerber is incorporated under the laws of New York and, thus, is a citizen of New York and the putative class is limited to citizens of Kentucky. (Ex. A. [Compl.] at ¶ 80; Ex. B [Moore Decl.] at ¶ 6.) As such, members of the putative class are citizens of states different from Gerber, within the meaning of 28 U.S.C. § 1332(d)(2)(A).

Amount-In-Controversy

15. Prewitt does not specify the amount of damages she seeks on behalf of herself or the putative class as a whole. (Ex. A. [Compl.] at p. 27, Prayer for Relief.) When a plaintiff seeks to recover an unspecified amount that is not self-evidently greater or less than the amount-in-controversy requirement, the defendant seeking removal must demonstrate that the matter in controversy “more likely than not” exceeds the jurisdictional amount. (*Heyman v. Lincoln Natl. Life Ins. Co.*, 781 F.App'x 463, 470 (6th Cir.2019); *see also Williamson v. Aetna Life Ins. Co.*, 481 F.3d 369, 377 (6th Cir. 2007) (explaining that “the object of the litigation[] cannot be determined without reference to the potential cost of the state claim to the insurance company.”))

16. Under CAFA, “the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs.” (28 U.S.C. § 1332(d)(6).)

17. Although Prewitt does not specify the amount of class-wide damages she seeks on her claims, Gerber submits that the claims asserted by Prewitt, the scope of the class defined by Prewitt, and the period for which Prewitt seeks damages demonstrate by a preponderance of the

evidence that the aggregate “matter in controversy” exceeds the “sum or value of \$5,000,000.” (28 U.S.C. §§ 1332(d)(2), 1332(d)(6); (*See also* (Ex. B [Moore Decl.] at ¶¶ 7, 8).)

18. As noted above, Prewitt alleges that the class includes “thousands” of Class members (Ex. A. [Compl.] at ¶ 84), and that the lawsuit seeks damages that include a disgorgement of all policy premiums paid by Kentucky consumers for any Grow Up Plan or Gerber Life College Plan, restitution of those and any other amounts paid, and additional, unspecified “compensatory damages” incurred as a result of Gerber’s alleged actions. (*Id.* at p. 27, Prayer for Relief, ¶¶ (c)-(d); *see also id.* at ¶ 2.) Prewitt also seeks declaratory and injunctive relief, punitive damages and attorney fees. (*Id.* at ¶¶ (a)-(b), (e)-(f).)

19. Prewitt further alleges that the class consists of “[a]ll consumers in the state of Kentucky who, *within the applicable statute of limitations* preceding the filing of this action to the date of class certification, purchased a Gerber [Life] College Plan or Grow Up Plan.” (Ex. A [Compl.] at ¶ 81 (emphasis added).)

20. The statute of limitations for Prewitt’s first claim—for violation of KRS 304.12—is likely five years under Kentucky law. (*See* Ex. A [Compl.] at ¶ 80; *see also Sanderson v. Reassure Am. Life Ins. Co.*, Civil Action No. 97-276, 1997 U.S. Dist. LEXIS 18250, at *12-13 (E.D.Ky. Oct. 31, 1997) (finding KRS 413.120(2) and KRS 446.070 “do not contain specific statutory periods of limitation, but the parties agree that an action upon a liability created by such statutes shall be commenced within five years after the cause of action accrued”).) The statute of limitations for Prewitt’s second claim—for fraudulent inducement—is also likely to be five years (*i.e.*, back to January 2015). (*See Newbold v. Cent. Bank*, App. Nos. 2007-CA-002544-MR, 2008-CA-000003-MR, 2010 Ky. App. Unpub. LEXIS 97, at *10 (Jan. 29, 2010) (finding fraud in the inducement is “subject to the limitations period set out in KRS 413.120 [and] [t]he claims

enumerated under KRS 413.120 must be brought within five (5) years after the cause of action accrued”).)

21. Prewitt seeks damages that include a disgorgement of all policy premiums paid by Kentucky consumers for any Grow Up Plan or Gerber Life College Plan. The premiums paid by Kentucky-resident policyholders on Grow Up Plan and Gerber Life College Plan policies in the last five years exceed \$4,500,000. (Ex. B [Moore Decl.] at ¶ 7.)

22. In addition to this amount, Prewitt also seeks an unspecified amount of punitive damages. (Ex. A. [Compl.], Prayer for Relief, at ¶ (e).) “When punitive damages are unknown, as they are here, a ratio multiplier may be applied to determine the amount-in controversy for jurisdictional purposes.” (*Knoppe v. Lincoln Natl. Life Ins. Co.*, Civil Action No. 3:18-CV-264-RGJ, 2020 U.S. Dist. LEXIS 3612, at *12-13 (W.D.Ky. Jan. 9, 2020) (finding the CAFA amount-in-controversy threshold met where the putative class alleged \$4,300,000 in actual damages and also sought punitive damages.) If accounting only for punitive damages and applying the minimum ratio multiplier of 1:1, the amount-in-controversy would exceed \$9,000,000.

23. If declaratory and injunctive relief, as well as attorneys’ fees, are also taken into account, it becomes even clearer that the amount in controversy is easily exceeded. (*See Mathes v. Burns*, No. 3:19-cv-00751, 2019 U.S. Dist. LEXIS 182602, at *11 (M.D.Tenn. Oct. 22, 2019), fn. 4 (finding that attorney’s fees and punitive damages should be taken into account in calculating the amount in controversy.) As part of the injunctive relief sought, Prewitt seeks to prevent Gerber from using the policy titles of “Gerber Life College Plan” and “Grow Up Plan,” as well as prevent Gerber from using its current advertising and marketing. (Ex. A [Compl.], at ¶¶ 83, 84, Prayer for Relief at ¶ (a).) In order to comply with such an injunction, Gerber presumably would be required

to rename its policies, revise its marketing and reissue policies with the new name, the cost of which would be at least hundreds of thousands of dollars. (*See* Ex. B [Moore Decl.] at ¶ 8.)

24. The total costs to Gerber—to implement these changes, and to repay all premiums on the Grow-Up Plan and Gerber Life College Plan that were paid by Kentucky policyholders in the last five years—would exceed \$5,000,000. (*See* Ex. B [Moore Decl.] at ¶¶ 7, 8.)

25. Accordingly, the amount in controversy exceeds the \$5,000,000 threshold established by 28 U.S.C. §§ 1332(d)(2) and 1332(d)(6).

Venue

26. Venue is proper in this district and in this division pursuant to 28 U.S.C. § 1441(a) and L.R. 3.2 because the Laurel County Circuit Court from which the removal is sought is within the London Division of the Eastern District of Kentucky.

Notice

27. Gerber represents that this Notice of Removal will be served on Plaintiff's counsel, and that a copy will be filed with the Clerk of the Laurel County Circuit Court. (28 U.S.C. § 1446(d).)

28. By filing this Notice of Removal, Gerber does not waive any defenses to the claims asserted by Prewitt that may be available to it, or concede that Prewitt has pleaded any claim upon which relief can be granted. Further, Gerber does not concede that Prewitt has adequately defined a class for certification purposes, that any members of such an alleged class are entitled to any relief, that any damages are properly awardable to any plaintiff or would in the aggregate exceed \$5,000,000, or that the Complaint states a cause of action. Gerber disputes Prewitt's individual and putative class claims, denies that it has acted improperly in its relations with consumers or failed to abide by applicable law and contends only that the nature and extent of Prewitt's putative

class claims demonstrate that this Court has jurisdiction under CAFA, 28 U.S.C. § 1332(d), and that removal is proper under 28 U.S.C. § 1453.

WHEREFORE, Gerber gives notice that the above-described action in the Laurel County Circuit Court is removed to this Court.

Respectfully submitted,

/s/ Eric W. Richardson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of February 2020, a copy of the foregoing was served via U.S. Postal Service upon the following:

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Rev. 9-14

Sum Code: CI

Commonwealth of Kentucky
Court of Justice Courts.ky.gov

Case #: 20-CI-00011

Court: CIRCUIT

County: LAUREL

CR 4.02; Cr Official Form 1

CIVIL SUMMONS*Plaintiff, PREWITT, BEULAH VS. GERBER LIFE INSURANCE COMPANY, Defendant***TO: GERBER LIFE INSURANCE COMPANY
C/O KEITH O'REILY, PRESIDENT
1311 MAMARONECK AVENUE
WHITE PLAINS, NY 10605**

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

/s/ Roger Schott, Laurel
Circuit Clerk
Date: 1/6/2020

Proof of Service

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

☐ Not Served because: _____

Date: _____, 20____

Served By _____

Title _____

Summons ID: @00000192302
CIRCUIT: 20-CI-00011 Return to Filer for Service
PREWITT, BEULAH VS. GERBER LIFE INSURANCE COMPANY

EXHIBIT A

**COMMONWEALTH OF KENTUCKY
 TWENTY-SEVENTH JUDICIAL CIRCUIT
 LAUREL COUNTY**

**CASE NO. _____
 DIV. _____
 ELECTRONICALLY FILED**

BEULAH PREWITT, on behalf of)	
herself and all others similarly)	
situated,)	
)	JURY DEMAND
Plaintiff,)	
)	
v.)	
)	
GERBER LIFE INSURANCE)	
COMPANY)	
c/o Keith O'Reily, President)	
1311 Mamaroneck Avenue)	
White Plains, New York 10605)	
)	
Defendant.)	

**CLASS ACTION COMPLAINT FOR DAMAGES
 AND INJUNCTIVE RELIEF**

1. This Complaint concerns one of America's most recognizable and trusted brands—Gerber. But this Complaint does not concern the Gerber Products Company's iconic baby food, whose quality Plaintiff has no reason to doubt. Rather, this complaint concerns the Gerber Life Insurance Company's consumer insurance products, which, although they share the trusted logo of the wholesome smiling baby, are the financial equivalent of junk food.

2. This proposed class action seeks monetary damages, restitution, and injunctive and declaratory relief from Defendant Gerber Life Insurance Company ("Defendant" or "Gerber Life"), arising from its deceptive naming and marketing of its so-called "Grow-Up Plan and "College Plan." Gerber promotes these plans as an affordable way for a parent or grandparent to build a nest egg for a beloved child or grandchild. However, these supposed savings plans actually lock

consumers into a guaranteed loss at best and total loss of their investment at worst.

3. Gerber Life misrepresents the nature of both plans by the products' very names. The so-called "College Plan" is not a college savings plan at all. It has no specific attributes designed to tailor it to the needs of college savers, and is quantifiably a worse college savings vehicle than other common college savings devices. The "Grow-Up Plan" has zero value—and indeed produces a loss—if a child actually "grows up." Indeed, the product only arguably has any net value if the covered child dies. For obvious reasons, Gerber Life did not name this product the more accurate "Never Grow-Up Plan."

4. Instead, Gerber Life misrepresents the nature of both products by issuing marketing materials that fail to correct reasonable understandings of the products' names, and that affirmatively misrepresent the actual functioning and features of the products. By doing so, Gerber Life has convinced hundreds of thousands of well-meaning but unsophisticated parents and grandparents to pour their often meager savings into risky plans that provide little if any value, putting all their eggs into the wrong basket.

5. Plaintiff seeks, among other remedies, injunctive relief that requires Gerber Life to correct these misrepresentations so that consumers can determine whether these products truly are suitable savings vehicles.

THE PARTIES

6. Plaintiff, Beulah Prewitt, is a citizen of the Commonwealth of Kentucky who is a citizen and resident of Laurel County, Kentucky, and has policies with Gerber Life Insurance Company.

7. Defendant, Gerber Life Insurance Company, is incorporated and maintains its principal business offices in New York.

JURISDICTION AND VENUE

8. This Court has personal jurisdiction over Defendant under the Kentucky Long-Arm Statute, Ky. Rev. Stat. § 454.210 (2)(a)(7), as Gerber Life has contracted to insure any person, property, or risk located within the Commonwealth of Kentucky at the time of contracting.

9. Venue is proper in Laurel County under Ky. Rev. Stat. § 452.445 as the transactions at issue, plaintiff's purchase of insurance policies, occurred in Laurel County.

10. Jurisdiction is proper in Circuit Court under Ky. Rev. Stat. §§ 23A.010(1) and 24A.120(1) because this suit seeks relief in equity.

COMMON FACTUAL ALLEGATIONS

I. THE GERBER GROW-UP PLAN IS DECEPTIVELY NAMED AND MARKETING

11. Gerber Products Company, owned by parent company Nestlé, is well-known for its baby food, accounting for over 80% of total sales in the U.S. The food brand is synonymous with a safe and healthy child. In 1967, Gerber Products Company began selling insurance products as Gerber Life Insurance Company. In September 2018, Nestlé sold Gerber Life Insurance Company to Western & Southern Financial Group for \$1.55 billion. Gerber Products Company licenses its trademark to Gerber Life Insurance Company, which offers a handful of financial products prominently featuring the iconic baby face logo.

12. One of those products is the "Gerber Life Grow-Up Plan," which it aggressively markets to cover young children. The plan is popular; by Gerber Life's own account, as of 2011 Gerber Life claimed to have "received more than 500,000 Grow-Up applications 'in the last year

alone.”¹

13. Consumers like Plaintiff Prewitt sign up for monthly deductions from their checking accounts from less than \$5 to more than \$100, in order to provide a “head start” for their grandchildren of savings, a “cash value,” or a “nest egg” that they can have when they turn 18.

14. While Gerber Life markets it as a savings product, the Gerber Grow-Up Plan is not a savings plan; it is actually a life insurance policy. It provides no meaningful savings benefits—and actually, when accounting for inflation, operates at a loss for consumers.

15. The Gerber Life Grow-Up Plan is whole life insurance. The major benefits touted by Gerber Life in uniform and incessant marketing are two-fold, and they are both false.

16. First, Gerber Life claims that the product helps “protect” the child as he/she grows up, when in fact the protection is for parents or grandparents of dead children. Second, Gerber Life claims that the Grow-Up Plan is a good savings vehicle to provide children and grandchildren with a “nest egg” and “cash value” they can use when they “Grow-Up.”

17. Based on Gerber Life’s marketing, parents and grandparent imagine their kids using their plans for a first car, their first home, or any other major expense they might need. They jump at the chance to cheaply save for their child’s future. But it is false to tout the product as a savings vehicle. After twenty years of their parent or grandparent paying the premiums, a child may get \$ 700. Even before accounting for taxes and inflation, that is a net loss, not a gain. Indeed, Gerber Life’s guaranteed “cash values” or “nest eggs” would lock people into a loss for nearly 20 years.

18. Gerber Life never discloses this information in its marketing.

A. The Gerber Grow-Up Plan Is Not a Nest Egg and Offers no Meaningful Savings Benefits

¹ Chuck Jaffe, *Grow-up insurance for kids makes little sense*, MARKETWATCH (Mar. 4, 2011) <https://www.marketwatch.com/story/grow-up-insurance-is-stupid-investment-of-the-week-2011-03-04>

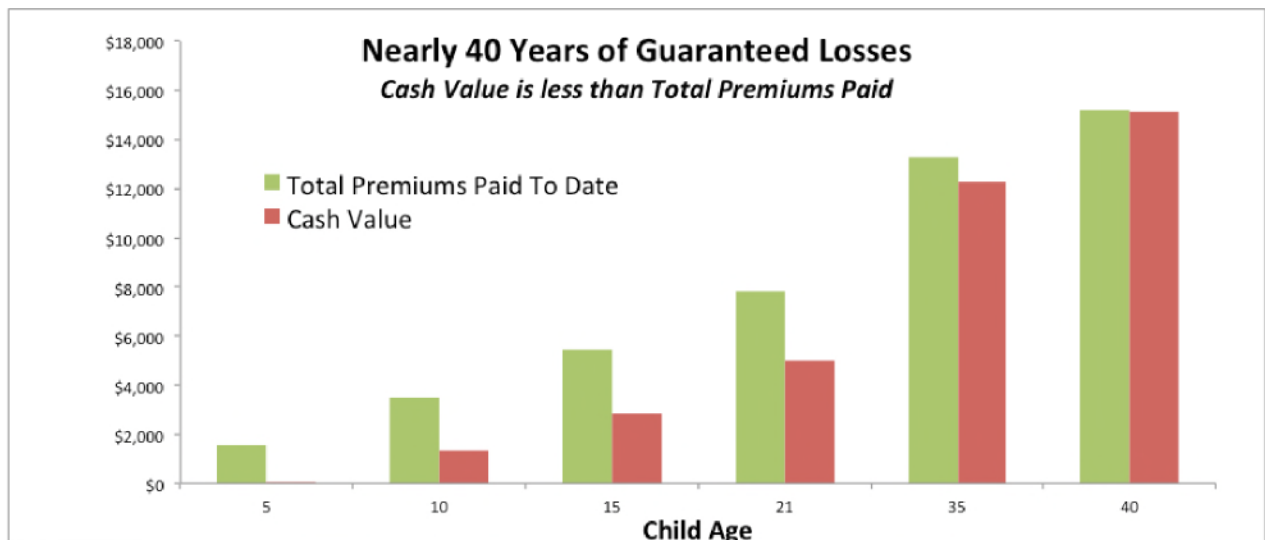
19. For a Kentucky consumer, it currently costs \$7.22 a month to insure a 3-year-old child with a \$10,000 Grow-Up Plan.

20. Despite extensive marketing regarding the cash value and nest egg provided by the Grow-Up Plan, Gerber Life never discloses what the actual value of these are. That is because the truth is staggering.

21. In the example above, the Grow-Up Plan would provide zero “cash value” until the fourth year of premiums. The amount of the “nest egg” at that point would be \$27—after the consumer has paid \$259.92 in premiums. That is a massive net loss.

22. Assuming all premiums were paid, by the time the child turned 18, the “nest egg” would have grown to \$705.60. By that point, the parent or the grandparent would have paid \$1,299.60. Again, a massive loss.

23. AboveBoard Financial found that not only is the cash value less than premiums paid early on, it remains so *for almost 40 years*.



Gerber Life's refusal to provide these honest numbers during marketing and sign-up for the Grow-Up Plan is an intentional effort to ensure consumers do not learn the truth: the Grow-Up Plan is a terrible savings vehicle.

24. Gerber Life not only omits these key facts, it also misrepresents the savings potential of the Grow-Up Plan. It deceives consumers with testimonials that say “you stick pennies in a change jar, put ‘em in a policy!”³—even though the return (zero) on the change jar would be far superior to the negative return provided by the Grow-Up Plan, not to mention the risk of losing all value if a premium payment is missed. Gerber Life misleads consumers when it urges them to “Give your child a head start.” This is not a financial head-start for a growing child; at most, it is a benefit to a grieving parent or grandparent when that child dies.

25. Parents and grandparents pay dearly for entrusting their scarce savings funds to Gerber Life. While the Grow-Up Plan also provides a benefit to those same parents or grandparents if their children die, that benefit is not one that reasonable consumers seek out or are willing to pay for as a stand-alone product.

26. Reasonable consumers like Plaintiff are not willing to pay for stand-alone children's death insurance, and they certainly are not willing to pay for such insurance at the extreme cost of locking in guaranteed savings losses on funds they could otherwise invest for a positive return.

² Wallis Wilkinson Tsai, *5 Charts Gerber Life Insurance Doesn't Want You to See*, ABOVEBOARD FINANCIAL (last accessed Oct. 10, 2019) <https://www.aboveboardfinancial.com/blog/5-charts-gerber-life-insurance-doesnt-want-you-to-see>.

³ *Give Your Child a Head Start with the Gerber Life Grow-Up® Plan*, GERBER LIFE INSURANCE COMPANY (Jun. 1, 2016) <https://www.youtube.com/watch?v=g4tPJrUQGxY>.

B. The Gerber Grow-Up Plan is Children's Death Insurance, Which Reasonable Consumers Do Not Seek Out

27. As Gerber Life knows, consumers have little to no interest in buying insurance to protect themselves in the event of their child's death.

28. Juvenile life insurance is so unnecessary that even the insurance industry itself does not believe in it.

"The case for it is not very strong," admits Steven Weisbart, a senior vice president and chief economist at the Insurance Information Institute, an industry trade group.

So why does this product exist at all? Well, it's helpful to think of children's life insurance as something of a vestigial organ. According to sociologist Viviana Zelizer, juvenile insurance was introduced by the Prudential Life Insurance Company in 1875, emerging at a time when society was transitioning from viewing children as an economic contributor to the family to seeing them as a source of emotional sustenance worth spending money on.

Children's life insurance appealed to poverty-stricken moms and dads who might not otherwise be able to afford the elaborate Victorian customs surrounding death. Millions of people signed up for it. "It was not the hope of ready cash but the desire for a proper mourning ritual that prompted poor parents to invest their meager funds in premiums," Zelizer writes.

...

But as the children's mortality rate fell over the course of the 20th century, the insurance companies' pitches changed. By the 1930s, companies barely mentioned death. Instead, they talked about children's life insurance as a way of investing in their future, a line that continues to this day, even as better options—like 529s—are now available.⁴

29. Instead, Gerber Life now markets children's life insurance as a way of investing in their future. That is fundamentally misleading.

30. This is precisely the reason that Gerber Life promotes its children's death insurance

⁴ Helaine Olen, *The Yuckiness of Gerber Life Insurance*, SLATE (Jan. 26, 2016) <https://slate.com/business/2016/01/gerbers-life-insurance-for-kids-is-a-rip-off-yuck.html>.

with the idea of “savings” or providing a “nest egg”—because consumers like Plaintiff have no desire for children’s death insurance. They are seeking to protect their children and grandchildren, not pocket money if those children and grandchildren die.

C. Gerber Life Misrepresents Benefits of, and Omits and Conceals Material Facts About, the Gerber Grow-Up Plan

31. In light of the true nature of the product, described above, Gerber Life’s uniform marketing materials—including the very name of the product—for the Grow-Up Plan are revealed to be rife with misrepresentations.

32. The major benefits touted by Gerber Life in uniform and incessant marketing are two-fold, and they are both false: first, that the product helps “protect” the child as he/she grows up and “secure his future”, when in fact the protection is for parents or grandparents of dead children. Second, Gerber promises that the Grow-Up Plan is a good savings vehicle to provide children and grandchildren with a nest egg and cash value they can use when they Grow-Up.

33. Gerber Life consistently and ceaselessly touts the nest egg provided by the Gerber Grow-Up Plan in its marketing because it knows that reasonable consumers have little or no interest in children’s death insurance:



An extra boost for your resolutions

The Gerber Life Grow-Up® Plan automatically builds cash value each time you make a payment, building a nest egg for your child's future. The longer you own the policy, the more cash value the policy accumulates.

[Learn More](#)

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34. The Gerber Life website's explanation of "cash value" adds to this misrepresentation:

So what exactly is cash value?

It's a feature of **whole life insurance**. The cash value of your policy is the accumulated amount of money that Gerber Life sets aside each time you pay your premium. That means that the longer you hold your policy, the longer the cash value builds. Best of all, the cash value of your policy as well as the policy never expires.

How can cash value be used?

1. **You can borrow against the cash value of your policy.** Let's say that your car breaks down, or your child needs some extra cash for college costs, or maybe you're between jobs and need some extra cash flow. No matter the financial emergency, you can borrow money against your policy's cash value. It's a lot like taking out a loan, but it's more like borrowing from yourself rather than from another financial institution. However, the loan amount will reduce the policy's coverage amount until the loan is paid back. (Policy loan interest is 8%.)
2. **If you ever decide to turn in your policy, you would receive the accumulated cash value** that has been building over time, less any outstanding debt against the policy.

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35. As discussed above, though, the returns provided by the Grow-up Plan are de

⁵ *It's not too late for a New Year's Resolution*, Gerber Life Insurance Company (Jan. 2, 2019), <https://milled.com/gerber-life-insurance/its-not-too-late-for-a-new-years-resolution-6DeyJQJHWarH-BuQ>.

⁶ *How Cash Value Works*, GERBER LIFE INSURANCE COMPANY (last accessed Oct. 9, 2019) <https://www.gerberlife.com/understanding-life-insurance/life-insurance-101/how-cash-value-works>.

minimis and unlikely to be enough to cover a car repair—and in any event much worse than the returns if devoted parents and grandparents had simply placed the funds in a piggy bank.

36. Gerber Life produces legions of marketing videos for the Grow-Up Plan. One video shows two doting dads watching their babies in a hospital room. After one dad starts fretting about kindergarten and college, the other dad reassures him that “Gerber Life can help give your baby a good financial start... it’s easy and costs just pennies a day.”⁷ Another video focuses on the dedication of mothers. Over animation that resembles children’s drawings, a voiceover of a cherubic child’s voice explains all the ways her mommy takes care of her, like putting her in warm clothes and helping her ride her bike. Then, the pitch: “My mommy loves me. She wants to help protect me. That’s why she got me the Gerber Life Grow-Up Plan. It protects me now, and it’ll protect me when I’m big.”⁸

37. If a consumer shows interest in the Gerber Grow-Up Plan on the website and provides Gerber Life with his or her email address, Gerber Life then pummels the consumer with endless email marketing, which include subject lines and marketing that conveys two consistent, uniform messages to parents and grandparents. First, Gerber Life claims that the Grow-up Plan allows a parent or grandparent to do right by their children: protect them, look out for them financially, take care of them, etc. In other words, that the primary benefit of the product is to benefit the child. That is false; the product only provides a meaningful benefit if the child dies, not if the child “grows up.” Second, Gerber Life claims that the product provides a savings-based, rational way to provide a nest egg for their child. That is also false.

⁷ *Discover How the Gerber Life Grow-Up® Plan Builds Cash Value*, GERBER LIFE INSURANCE COMPANY (Nov. 12, 2015) <https://www.youtube.com/watch?v=75Wf9owrkzk>.

⁸ *Gerber Life Grow-Up® Plan: How a Mother Protects Her Child*, GERBER LIFE INSURANCE COMPANY (May 28, 2015) <https://www.youtube.com/watch?v=-yFp3Fw525A>.

38. Below is just one example of the constant stream of emails Gerber Life sends to consumers:



Subject: Ensure a lifetime of protection for your child

39. Each of these repeatedly, heartstring-tugging marketing messages misrepresent that the Grow-Up Plan is a benefit to the child (as opposed to the parents or grandparents of dead children); and that the Grow-Up Plan provides a smart savings program to give youngsters a head start on a “nest egg” they can use for meaningful expenses.

40. The Grow-Up Plan has been criticized by financial advisers for years. In 2016, Helaine Olen, a personal finance journalist, noted that:

[I]f you live in New York, it will cost \$7.22 a month to insure a 3-year-old child. That is, indeed, 23.7 pennies a day, or \$86.64 a year. Sounds inexpensive enough, especially for something that offers the promise of being not only life insurance but an investment, too. But what’s the value of that investment? When I called the advertised [Gerber Life] 800 number, I discovered the cash value would begin in the policy’s fourth year with—get this—\$27. By the time the insured child turned 18, it would have grown to \$705.60. By that point, the policyholder would have paid \$1,299.60. Parents would be better off putting that \$86.64 a year in an emergency savings account or, if they’re saving for college, turning to a more appropriate instrument like a state-sponsored college 529

account. Heck, parents would be better off sticking the money in a mattress. After 15 years, the cash value of the mattress would be larger than the cash value of the Gerber Life Grow-Up Plan.⁹

41. In sum, Gerber Life concealed from consumers (a) the guarantee that consumers would lose money on the “nest egg” they were supposedly saving for; and that (b) the primary benefit of the product was only in the event of the death of a child. As such, all representations that the program was to protect or benefit the child were false and misleading.

42. Gerber Life’s marketing materials never disclosed these risks and material facts, instead luring consumers to sign up for the Gerber Grow-Up Plan with misrepresentations and omissions.

D. Plaintiff’s Experience

43. Plaintiff Prewitt signed up for the Grow-Up Plan for all three of her grandchildren. She believed based on Gerber Life marketing materials that it was a nest egg/college fund that will provide cash value when each child turns 18. She purchased the first policy in March 2007 for her new granddaughter, Cambree. Since then, she has dutifully paid \$6.36 in premiums every month, for a total of \$966.72. Plaintiff Prewitt bought a second policy in September 2013 for her granddaughter Lorelai. Since 2013, she has paid \$3.52 in premiums every month, for a total of \$260.48. In December 2016, she bought a third policy for her grandson, Drakken, for which she pays \$3.63 per month, for a total of \$127.05. In total, over the last twelve years, Plaintiff has paid \$1,354.25 in premiums to Gerber Life for these Grow-Up Plans. Unlike a typical savings plan, should she miss payments, she risks losing all the premiums she has paid.

44. In 20 years, for Drakken alone, Ms. Prewitt will have paid \$871.20 in premiums. To

⁹ Helaine Olen, *The Yuckiness of Gerber Life Insurance*, SLATE (Jan. 26, 2016) <https://slate.com/business/2016/01/gerbers-life-insurance-for-kids-is-a-rip-off-yuck.html>.

be sure, if Drakken dies, his family will receive a payment— \$5,000 if he dies before he is 18, and \$10,000 if he dies after age 18— cold comfort for such a loss. Yet should Drakken live to age 20, as the vast majority of children do, and then try to actually use his nest egg, he would only receive a surrender value of \$478.35— *less than 55% of the value Ms. Prewitt paid.*

II. THE GERBER LIFE COLLEGE PLAN IS DECEPTIVELY NAMED AND MARKETING

45. In addition to the Gerber Life Grow-Up Plan, the company also offers the “Gerber Life College Plan,” which is aggressively marketed to cover young children.

46. Consumers sign up for monthly deductions from their checking accounts of \$10 or \$20, with the hope and expectation that they are saving for their children’s future education.

47. While Gerber Life markets it as a college savings product, the Gerber Life College Plan is *not* a college savings plan but an endowment life insurance policy in disguise.

48. Endowment life insurance pays out on the death of the insured. It also has a guaranteed payout at a set time – in this case 10 or 20 years. The guaranteed payout is tiny relative to the years-long contributions made by consumers. Because of this, the Gerber Life College Plan is a terrible college savings vehicle, and is designed primarily to increase the profits of Gerber Life by taking advantage of consumers who believe they are responsibly putting away money for their children and grandchildren.

A. The Gerber Life College Plan Is Not a College Savings Vehicle

1. The Gerber Life College Plan Provides No Specific College Savings Benefits

49. The Gerber Life College Plan is not a college savings plan. Indeed, this life insurance product has no unique characteristics that recommend it as a college savings product.

50. Many financial experts recognize this. According to one expert, Joseph Hurley, founder of SavingforCollege.com:

I see nothing inherently different about this company's insurance product that gives it special advantages for college purposes. I have never found a compelling reason to prefer insurance as a college investment vehicle because of the extra costs, the early surrender penalties, and — in the case of modified endowment contracts — the income-tax hit. A tax-free vehicle like a 529 or Coverdell [Education Savings Account] has many advantages over insurance.”¹⁰.

51. Gerber Life's marketing ceaselessly touts the product as a college savings vehicle, but the product is not designed for that purpose, fails to perform in a way that meets that purpose, and is demonstrably worse than the myriad other products available to consumers that actually are designed to further college savings goals. Gerber Life omits all these facts from its marketing.

52. Therefore, the name of the product, the Gerber Life College Plan, is *per se* deceptive.

2. The Gerber Life College Plan Has Substantial Undisclosed Downsides Compared to Other Common College Savings Vehicles

53. As discussed herein, the returns on the supposed college investments in the College Plan are tiny. But even those tiny returns would overstate the benefit to consumers like Plaintiff. That is because endowment life insurance policies that return capital are taxed as such, whereas other college common college savings plans are not. This key difference between the Gerber Life College Plan and other college savings vehicles is concealed and misrepresented by Gerber Life.

54. Gerber Life touts “growth” over time with charts in its marketing materials and on its website that show the payout at the end of the Plan period.

55. But these charts omit to tell consumers that they will be paying taxes on some of the “growth,” significantly reducing any returns over time.

56. 529 savings plans are one of the most common savings plans for those looking to

¹⁰ Chuck Jaffe, *This college savings plan flunks the test*, MARKETWATCH (Mar. 11, 2011) <https://www.marketwatch.com/story/this-college-savings-plan-flunks-the-test-2011-03-11>.

pay for college, and are specifically designed for that purpose. The Gerber Life College Plan, however, is not.

“Despite the name, the Gerber College Savings Plan doesn’t offer state tax-deductible contributions or the ability to withdraw and spend funds on college expenses tax-free, both of which the 529 savings plan offers, and therefore isn’t a college plan at all,” Alan Moore, founder and certified financial planner at Serenity Financial Consulting, explained to me when I asked for his professional opinion. “This plan is more of a forced savings account, as the actual payouts offer very little gains.”

The 529 savings plans Moore mentioned are remarkably flexible, state-sponsored savings accounts with tax benefits. They’re generally the default savings option recommended by financial planners, and according to Moore, they’re a better option than life insurance.

Plus, the guarantee of the Gerber plan’s cash value is contingent upon monthly payment of premiums, like any other insurance plan. In contrast, 529s do not regulate how much or how often you must contribute, beyond large-scale contribution limits, and they never expire. If you open a 529 savings plan and contribute to it once, the account’s beneficiary gets that money for college, no matter what.¹¹

Moreover, the Gerber Life College Plan it has a negative impact on financial aid eligibility. The Gerber Life College Plan is a form of life insurance, which is not reported as an asset on the Free Application for Federal Student Aid (FAFSA). However, the full plan payout amount must be reported as income on the FAFSA, reducing eligibility for need-based financial aid by as much as half of the distribution amount.

57. The Expected Family Contribution (“EFC”) is part of the financial aid formula used by the federal government to determine a student’s eligibility for financial aid. But a distribution from a Gerber Life College Plan counts against a student at 50%--meaning the Gerber Life College Plan funds will effectively *replace* financial aids funds a student would otherwise have been eligible

¹¹ Libby Kane, *Gerber Sells A College Savings Plan, But You Probably Shouldn’t Buy It*, JOURNAL STAR (Jun. 10, 2014) <https://www.pjstar.com/article/20140610/NEWS/306109990>.

for. This key difference between the Gerber Life College Plan and other college savings vehicles is concealed and misrepresented by Gerber.

58. There is yet another, key, undisclosed difference between the Gerber Life College Plan and other common college savings plans like 529 plans. Any guarantee of the Gerber Life plan's cash value is contingent upon monthly payment of premiums, like any other insurance policy. If a Gerber Life College Plan participant makes regular contributions, but then misses a payment, she will lose all or a significant portion of her investment.

59. Indeed, if a family cancels the Gerber Life College Plan, the refund value may be *less than* the contributions made by the family, since the plan payout is guaranteed only when the policy reaches maturity, if all plan premiums have been paid.

60. Remarkably, then, other common college savings plans like 529 plans easily outperform Gerber Life College Plans—even *before* accounting for the tax hit, financial aid eligibility harm and missed-payment penalties that are all unique to the Gerber Life College Plan. Indeed, a 529 plan currently yields more than double the earnings of the Gerber Life College Plan even before all these disadvantages are taken into account. As of August 2018, even a common Bank certificate of deposit easily outperformed the Gerber Life College Plan:

	Gerber Life College Plan	Long-term bank CDs	529 plans
Interest rate	2.7%	3.25%	6.0%
Payout on \$50.05/month at 17 years	\$13,000	\$13,644	\$17,768
Total earnings	\$2,790	\$3,434	\$7,558
Total taxes (24% Bracket)	(\$670)	(\$824)	None
Impact on financial aid	(\$6,500)	(\$102)	None
Total net of taxes and financial aid	\$5,830	\$12,718	\$17,768
Earnings net of taxes	\$2,120	\$2,610	\$7,558
Earnings net of taxes and financial aid	(\$4,380)	\$2,508	\$7,558

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61. Once financial aid and tax implications are accounted for, the Gerber Life College Plan is a losing college investment, and in fact has no characteristics that uniquely recommend it as a college savings vehicle.

3. The Gerber Life College Plan is an Aggregated (Bundled) Product whose Disaggregated Pieces Would Each Be Much Cheaper on Their Own

62. The College Plan provides life insurance to covered parents or grandparents. Such life insurance, on its own, is exceedingly inexpensive.

63. Parents and grandparents could simply buy a term life insurance policy for significantly less per month versus Gerber Life College Plan installment and place the rest of the money in a 529 college savings plan with a reasonable rate of return. If they did this, they'd have significantly more money to pass on in the event of their untimely death, and the 529 money would

¹² Mark Kantrowitz, *Is the Gerber Life College Plan a good investment?*, SAVING FOR COLLEGE (Aug. 30, 2018), <https://www.savingforcollege.com/article/is-the-gerber-life-college-plan-a-good-investment>.

return substantially more over any period of time measured against Gerber Life's plan.

64. As a specific example, a term life policy will cost \$20 per month or less for \$100,000 in coverage for healthy adults. (Indeed, Gerber Life itself offers life insurance coverage at or below this rate). In the context of the College Plan, though, Gerber Life charges \$150.00 per month for just \$25,000 in life insurance coverage, plus the college savings "payout" at the end of the term of the College Plan. This means consumers are paying approximately \$125.00 more per month for the supposed "college savings" benefits of the plan, while getting significantly less life insurance. As discussed herein, the miniscule payout at the end of the term is likely a net loss for college funding purposes.

65. Gerber Life fails to tell parents and grandparents that were they to purchase life insurance separately, then use the remaining funds to invest in other common college savings vehicles (such as a 529 plan), those parents and grandparents would benefit their children with *significantly more* saved college funds. In short, Gerber Life misrepresents and conceals the fact that the aggregation of two products—a life insurance product and a college savings product—means that purchasers of the Gerber Life College Plan are getting worse deals on *both*.

66. A simple example reveals just how ill-suited the Gerber Life College Plan is to save for college. According to the Gerber Life College Plan website, a 28-year old father of a 7-year old child would pay \$169.42 per month for 11 years to provide his child with a \$25,000 college savings benefit when the child turns 18, plus life insurance coverage if the parent were to die before then. The total premiums paid over 11 years would amount to \$22,363.44. That means the pre-tax "return" would be only \$2,636.56—and that amount doesn't even account for taxes, the financial aid hit discussed above, and the risk that the parent would receive no "return" at all if he missed even a single payment. When those costs and risks are accounted for, the parent will have far less

in college savings that if he had simply put \$169 per month under a mattress.

67. Again, financial advisers have recognized for years that the Gerber Life College Plan is a bad investment.

Insurance consultant David Bohannon of Louisville, Ky. noted that a 28-year-old parent in good health could get a \$100,000 10-year term life insurance policy for \$136 per year. So take the \$184.82 Gerber monthly premium, subtract \$11.50 — a month's payment on the term policy — and there's \$173.32 per month left over to put in a 529 plan. At an average annualized return of 4% per year for 11 years, that will grow into \$28,700 over 11 years, delivering more insurance in the event of a catastrophe and more money even if the worst never happens.¹³

B. Gerber Life Misrepresents Benefits of, and Omits and Conceals Material Facts About, the Gerber Life College Plan

68. In light of the true nature of the product, described above, Gerber Life's uniform marketing materials—including the very name of the product—for the College Plan are revealed to be rife with misrepresentations.

69. According to the Plan website: "The Gerber Life College Plan provides a safe, secure and easy way to help pay for college, with both guaranteed growth and the additional benefit of adult life insurance."¹⁴

70. As discussed above, the College Plan provides no unique benefits for college savings, and in fact harms consumers with unique liabilities that other common college savings vehicles do not have. Further, the claim of "guaranteed growth" is false in the context of college savings. It is more likely that the College Plan will result in a net loss for consumers.

¹³ Chuck Jaffe, *This college savings plan flunks the test*, MARKETWATCH (Mar. 11, 2011) <https://www.marketwatch.com/story/this-college-savings-plan-flunks-the-test-2011-03-11>.

¹⁴ *Gerber Life College Plan*, GERBER (last accessed Oct. 9, 2019) <https://www.gerberlife.com/saving-for-college/college-plan>.

71. Gerber Life similarly states: “When your policy reaches maturity, you’ll receive your full benefit payment — which is guaranteed to be greater than all the premiums you paid.” “There is no investment or interest rate risk!”

72. That is similarly misleading in the context of college savings.

73. The College Plan website has a benefits calculator that provides payment and end of plan benefits. Deceptively, all of these illustrations on the Gerber Life website assume the consumers will pay the taxes on that return from someplace else. The net return, after taxes, will always be lower than what’s shown—and even that does not account for adverse financial aid impacts, which are never warned about.

74. In its marketing, Gerber Life makes misleading and deceptive comparisons to 529 plans. According to the FAQ:

Q. What is the difference between the Gerber Life College Plan and a 529 plan?

A. There are three main differences between the Gerber Life College Plan and a 529 plan.

1. 529 plans must be used for college expenses — or else penalties will be incurred. The Gerber Life College Plan can be used to pay for college expenses or anything else, once the policy reaches maturity.
 2. The value of your 529 plan may be impacted by the ups and downs of the economy, which presents an element of risk. The Gerber Life College Plan offers stable growth that isn't impacted by economic fluctuations.
 3. The Gerber Life College Plan is the only College Plan that also offers the additional benefit of adult life insurance.
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75. Gerber Life barely mentions one of the most important differences between the Gerber Life College Plan and a 529 plan: that returns from the Gerber Life College Plan are taxable:

¹⁵ *College Plan Questions*, GERBER LIFE INSURANCE COMPANY (last accessed December 2, 2019) <https://www.gerberlife.com/saving-for-college/college-plan/questions>.

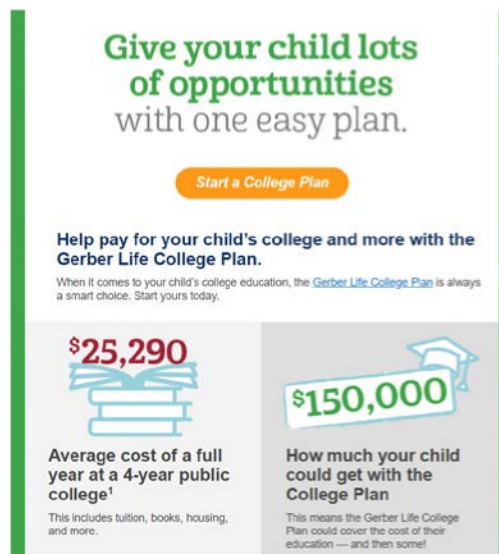
Q. What about taxes?

A. The Gerber Life College Plan will generate some taxable income, Gerber Life Insurance will send you a statement (Form 1099) to file with your taxes.

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76. If a consumer shows interest in the Gerber Life College Plan on the website and provides Gerber Life with his or her email address, Gerber Life then pummels the consumer with endless email marketing, which include subject lines and marketing that conveys a consistent, uniform message to parents and grandparents: if you want to do the right, smart thing for your child and help them pay for college, buy the Gerber Life College Plan. But that is false.

77. Below is just one example of the constant stream of emails Gerber Life sends to consumers:



The graphic is a vertical rectangular advertisement for the Gerber Life College Plan. It features a green header with the text "Give your child lots of opportunities with one easy plan." and a yellow button that says "Start a College Plan". Below this, it states "Help pay for your child's college and more with the Gerber Life College Plan." and "When it comes to your child's college education, the Gerber Life College Plan is always a smart choice. Start yours today." The bottom section is divided into two columns. The left column shows a stack of books with the text "\$25,290 Average cost of a full year at a 4-year public college¹" and "This includes tuition, books, housing, and more." The right column shows a graduation cap with the text "\$150,000 How much your child could get with the College Plan" and "This means the Gerber Life College Plan could cover the cost of their education — and then some!"

¹⁶ *College Plan Questions*, GERBER LIFE INSURANCE COMPANY (last accessed December 2, 2019) <https://www.gerberlife.com/saving-for-college/college-plan/questions>.

*Subject: Plan for college the right way*¹⁷

78. Each of these misrepresentations furthers the misrepresentation contained in the very name of the product: that the Gerber Life College Plan is a product with unique advantages that recommend it for the purpose of saving for college. That is false.

79. In sum, Gerber Life concealed from consumers (a) the extreme risk that use of the Gerber Life College Plan would result in a net loss of scarce college savings funds; (b) that the product has unique disadvantages vis a vis other common college savings products; and that (c) the Gerber Life College Plan has no unique benefits that tailor it to performing the unique task of college savings. Gerber Life's marketing materials never disclosed these risks and material facts, instead luring consumers to sign up for the Gerber Life College Plan with misrepresentations and omissions.

CLASS ALLEGATIONS

80. Plaintiff brings this action on behalf of herself and as a class action on behalf of the following proposed Class:

All consumers in the state of Kentucky who, within the applicable statute of limitations preceding the filing of this action to the date of class certification, purchased a Gerber College Plan or Grow Up Plan (the "Class").

81. Plaintiff reserves the right to modify or amend the definitions of the Class as this litigation proceeds.

82. Excluded from the Class are Gerber Life, its parents, subsidiaries, affiliates, officers and directors, any entity in which Gerber Life has a controlling interest, all customers who make a

¹⁷ All Gerber Life email advertisements sourced from <https://milled.com/gerber-life-insurance>.

timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

83. This action is properly maintainable as a class action pursuant to Kentucky Rule of Civil Procedure 23.01 and 23.02(c).

84. The Class consists of thousands of members, such that joinder of all Class members is impracticable.

85. There are questions of law and fact that are common to the Class members that relate to Gerber Life's practice of misrepresenting life insurance plans as savings vehicles.

86. The claims of the Plaintiff are typical of the claims of the proposed Class because they are based on the same legal theories, and Plaintiff has no interests that are antagonistic to the interests of the Class members.

87. The Plaintiff is an adequate representative of the Class and has retained competent legal counsel experienced in class actions and complex litigation.

88. The questions of law and fact common to the Class predominate over any questions affecting only individual Class members, particularly because the focus of the litigation will be on Gerber Life's conduct. The predominant questions of law and fact in this litigation include, but are not limited to:

- Whether Gerber Life's marketing and labeling of the Plans is deceptive;
- Whether Gerber Life misrepresented to Plaintiff and the Class how the Plans worked and what benefits were provided;
- Whether Plaintiff and members of the Class were harmed by Defendant's misrepresentations; and

- Whether Plaintiff and the Class have been damaged, and if so, the proper measure of damages.

89. Other questions of law and fact common to the Class include the proper method or methods by which to measure damages.

90. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, as the pursuit of hundreds of individual lawsuits would not be economically feasible for individual Class members, and certification as a class action will preserve judicial resources by allowing the common issues of the Class members to be adjudicated in a single forum, avoiding the need for duplicative hearings and discovery in individual actions that are based on an identical set of facts. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, and due to the financial resources of Gerber Life, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and Gerber Life's misconduct will proceed without remedy. In addition, without a class action, it is likely that many members of the Class will remain unaware of Gerber Life's conduct and the claims they may possess.

91. It appears that other persons who fall within the Class definition set forth above are not pursuing similar litigation, such that individual Class members do not wish to control the prosecution of separate actions.

92. This proposed class action does not present any unique management difficulties.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

**False and Misleading Insurance Advertising Under Ky. Rev. St. § 304.12 Action for
Statutory Violations Under Ky. Rev. St. § 446.070
Asserted on Behalf of the Class**

80. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth in this paragraph.

81. Ky. Rev. St. § 304.12-010 provides that “No person shall engage in this state in . . . any unfair or deceptive act or practice in the business of insurance.”

82. Ky. Rev. St. § 304.12-020(1) prohibits any person from disseminating advertisements or statements “[m]isrepresenting the terms of any policy or the benefits or advantages thereof.”

83. Ky. Rev. St. § 304.12-020(2) prohibits any person from disseminating advertisements or statements “[u]sing any name or title of any policy or class of policies misrepresenting the true nature thereof.”

84. Ky. Rev. St. § 304.12-020(4) prohibits any person from disseminating advertisements or statements “[c]ontaining any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.”

85. Gerber Life’s actions regarding the Plans, as described herein, are unfair or deceptive acts or practices in the business of insurance.

86. Gerber Life’s advertisements, as described herein, misrepresent the benefits or advantages of its insurance policies.

87. Gerber Life’s advertisements, as described herein, use names or titles of its policies that misrepresent the true nature of those policies.

88. Gerber Life's advertisements, as described herein, contain statements with respect to the business of insurance that are untrue, deceptive, or misleading.

89. Ky. Rev. St. § 446.070 provides that "A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation."

90. Plaintiffs have been injured by Gerber Life's violations of Ky. Rev. St. §§ 304.12-010, 304.12-020(1); 304.12-020(2); and 304.12-020(4)

91. Gerber Life's misleading and deceptive conduct occurred, and continues to occur, in the business of insurance and in the course of Gerber Life's business.

92. As an actual and proximate result of Defendant's misconduct, Plaintiff and the Class were injured and suffered damages.

93. Gerber Life is liable to Plaintiff and the Class for damages in amounts to be proven at trial.

SECOND CLAIM FOR RELIEF

Fraud in the Inducement Asserted on Behalf of the Class

94. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth below.

95. Gerber Life's marketing and representation of the Plans constitutes fraud in the inducement. Under Kentucky law, "a party claiming harm resulting from fraud in the inducement must establish six elements of fraud by clear and convincing evidence as follows a) material representation b) which is false c) known to be false or made recklessly d) made with inducement to be acted upon e) acted in reliance thereon and f) causing injury." *Halle v. Banner Indus. of N.E., Inc.*, 453 S.W.3d 179, 188 (Ky. Ct. App. 2014).

96. Gerber Life made material misrepresentations regarding the attributes and benefits of the Plans which were false.

97. Gerber Life made these representations knowing them to be false or with recklessness regarding their accuracy.

98. Gerber Life made these representations intending that consumers be induced to purchase the Plans.

99. Plaintiff and the proposed class relied upon these representations when purchasing the Plans.

100. As an actual and proximate result of Defendant's misconduct, Plaintiff and the Class were injured and suffered damages.

101. Gerber Life is liable to Plaintiff and the Class for damages in amounts to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself and the Class seeks judgment in an amount to be determined at trial, as follows:

- (a) For an order enjoining Defendant from continuing the unlawful practices set forth above;
- (b) For declaratory and injunctive relief as set forth above;
- (c) For an order requiring Defendant to disgorge and make restitution of all monies it acquired by means of the unlawful practices set forth above;
- (d) For compensatory damages according to proof;
- (e) For punitive damages according to proof;
- (f) For reasonable attorneys' fees and costs of suit;

- (g) For pre-judgment interest; and
- (h) Awarding such other and further relief as this Court deems just, proper and equitable.

JURY DEMAND

Plaintiff hereby demands a jury trial on all claims so triable.

Dated: January 6, 2019

Respectfully submitted,

/s/ David O'Brien Suetholz
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Attorneys for Plaintiff and the Putative Class

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION**

BEULAH PREWITT,

Plaintiff,

v.

**GERBER LIFE INSURANCE
COMPANY,**

Defendant.

:
:
: **Case No.**
:
:
:
: **Judge**
:
:
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:
:
:
:

DECLARATION OF LUCI A. MOORE

I, Luci A. Moore, hereby declare as follows on the basis of my personal knowledge:

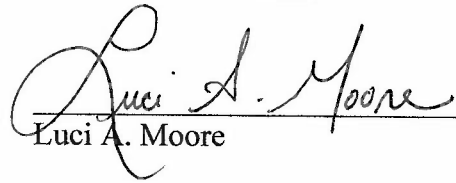
1. I am over eighteen years of age, and I am competent to testify about the matters set forth herein.
2. I am currently employed by Gerber Life Insurance Company ("Gerber") as Vice President of Operations. In this role, I oversee new business administration, underwriting processing, and policy owner services.
3. Gerber was served with the Summons and Complaint on January 14, 2020.
4. Gerber has issued a variety of Grow Up Plans and Gerber Life College Plans to Kentucky consumers.
5. As of January 22, 2020, Gerber has thousands of policyholders in Kentucky who hold a Grow Up Plan and/or Gerber Life College Plan policy.
6. Gerber Life Insurance Company is a New York corporation that has its principal place of business in White Plains, New York.

7. The premiums paid by Kentucky policyholders on Grow-Up Plan and Gerber Life College Plan policies issued in the last five years exceed \$4,500,000.

8. The cost of complying with the injunctive relief requested in the Complaint would be at least hundreds of thousands of dollars.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 31 day of January, 2020.



Luci A. Moore



KENTUCKY
COURT OF JUSTICE

20-CI-00011

**PREWITT, BEULAH VS. GERBER LIFE INSURANCE
COMPANY**

LAUREL CIRCUIT COURT

Filed on **01/06/2020** as **CONTRACT** with **HON. MICHAEL CAPERTON**

**** NOT AN OFFICIAL COURT RECORD ****

Parties	20-CI-00011
GERBER LIFE INSURANCE COMPANY as DEFENDANT / RESPONDENT	
Address C/O KEITH O'REILY, PRESIDENT 1311 MAMARONECK AVENUE WHITE PLAINS NY 10605	
Summons CIVIL SUMMONS issued on 01/06/2020 served on 01/13/2020 by way of RETURNED TO ATTORNEY/PETITIONER <i>Successful</i>	
PREWITT, BEULAH as PLAINTIFF / PETITIONER	
SUETHOLZ, DAVID O'BRIEN as ATTORNEY FOR PLAINTIFF	
Address 515 PARK AVENUE LOUISVILLE KY 40208	
Documents	20-CI-00011
COMPLAINT / PETITION filed on 01/06/2020	
Images	20-CI-00011
COMPLAINT / PETITION filed on 01/06/2020 Page(s): 28	
SUMMONS filed on 01/06/2020 Page(s): 1	
COURTESY FINANCIAL TRANSACTION REPORT filed on 01/06/2020 Page(s): 1	
SUMMONS - RETURN OF SERVICE filed on 01/23/2020 Page(s): 3	

**** End of Case Number : 20-CI-00011 ****

EXHIBIT C



Case #: 20-CI-00011

Envelope #: 2144236

Received From: DAVID O'BRIEN SUETHOLZ

Account Of: DAVID O'BRIEN SUETHOLZ

Case Title: PREWITT, BEULAH VS. GERBER LIFE

Confirmation Number: 103323462

INSURANCE COMPANY
Filed On 1/7/2020 6:47:36PM

#	Item Description	Amount
1	Access To Justice Fee	\$20.00
2	Civil Filing Fee	\$150.00
3	Money Collected For Others(Court Tech. Fee)	\$20.00
4	Library Fee	\$1.00
5	Court Facilities Fee	\$25.00
6	Money Collected For Others(Attorney Tax Fee)	\$5.00
7	Charges For Services(Jury Demand / 12)	\$70.00
TOTAL:		\$291.00

AOC-E-105 Sum Code: CI
Rev. 9-14



02/03/2020 11:16:04 AM
Case #: 20-CI-00011
Court: CIRCUIT
County: LAUREL

Commonwealth of Kentucky
Court of Justice Courts.ky.gov

CR 4.02; Cr Official Form 1

CIVIL SUMMONS

Plaintiff, **PREWITT, BEULAH VS. GERBER LIFE INSURANCE COMPANY**, Defendant

TO: **GERBER LIFE INSURANCE COMPANY**
C/O KEITH O'REILY, PRESIDENT
1311 MAMARONECK AVENUE
WHITE PLAINS, NY 10605

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

/s/ Roger Schott, Laurel
Circuit Clerk
Date: 1/6/2020

Proof of Service

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: Gerber Life Insurance Company c/o Keith O'Reily, President, on 1/13/20

☐ Not Served because: _____

Date: January 23, 2020

Leisa Nelson - Leisa Nelson
Served By
Paralegal
Title


Summons ID: @00000192302

CIRCUIT: 20-CI-00011 Return to Filer for Service

PREWITT, BEULAH VS. GERBER LIFE INSURANCE COMPANY

Roger Schott, Laurel Circuit Clerk



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>X <i>K-S.</i></p>	
<p>1. Article Addressed to:</p> <p><i>Gerber Life Insurance Co.</i> <i>40 Keith O'Reilly, Pres.</i> <i>1311 Mamaroneck Ave.</i> <i>White Plains NY 10605</i></p>  <p>9590 9402 4828 9032 2489 41</p>		<p>B. Received by (Printed Name) <input type="checkbox"/> C. Date of Delivery</p> <p><i>Reception</i></p>	
<p>2. Article Number (Transfer from service label)</p> <p>7019 1120 0000 6416 2604</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery</p>		<p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>Restricted Delivery Domestic Return Receipt</p>	

USPS Tracking®

FAQs >

Track Another Package +

Tracking Number: 70191120000064162604

Remove X

Your item was delivered to an individual at the address at 2:11 pm on January 13, 2020 in WHITE PLAINS, NY 10605.

Delivered

January 13, 2020 at 2:11 pm
Delivered, Left with Individual
WHITE PLAINS, NY 10605

Feedback

Text & Email Updates



Tracking History



January 13, 2020, 2:11 pm

Delivered, Left with Individual
WHITE PLAINS, NY 10605

Your item was delivered to an individual at the address at 2:11 pm on January 13, 2020 in WHITE PLAINS, NY 10605.

January 13, 2020

In Transit to Next Facility

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

Beulah Prewitt

(b) County of Residence of First Listed Plaintiff Laurel

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

David O'Brien Suetholz

Branstetter, Stranch & Jennings PLLC, 515 Park Avenue
Louisville, KY 40208; 502-636-4333**DEFENDANTS**

Gerber Life Insurance Company

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)

Eric W. Richardson

Vorys Sater Seymour and Pease LLP, 301 East 4th Street, Suite 3500
Cincinnati, OH 45202; 513-723-4019**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 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 checked="" 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"/> 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))	<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 (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input 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	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		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		

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 ACTIONCite 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:
False advertising**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/03/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Eric W. Richardson

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE