UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANCIS FENWICK Individually and on behalf of all others similarly situated, Plaintiffs, vs. RANBAXY PHARMACEUTICALS, INC., RANBAXY LABORATORIES, LTD., RANBAXY LABORATORIES, INC., RANBAXY, INC., RANBAXY USA, DAIICHI SANKYO COMPANY LTD., OHM LABORATORIES, ABC CORPORATIONS 1-10, AND JOHN DOES 1-10, Defendants.	Civil Action No.: **CLASS ACTION COMPLAINT AND JURY DEMAND**

Plaintiff, FRANCIS FENWICK, residing in New Jersey, by way of this Class Action Complaint against defendants, on behalf of himself and all others similarly situated, alleges upon information and belief, and in part on the investigation of counsel, as follows:

NATURE OF THE ACTION

1. This class action is brought on behalf of all persons in the United States who purchased certain bottles of the prescription drug Atorvastatin (the "product") manufactured and sold by the defendants. The product is a generic version of the cholesterol reducing drug, Lipitor. In or before November of 2012, the defendants determined that some of the product sold in the United States was tainted because it contained glass particles. The defendants conducted a limited, voluntary recall of the product on a retail level only. The defendant's limited recall did not include notice to consumers of the dangers and defects of the tainted product. The defendant's limited recall also did not inform consumers of what to do if they purchased the product or how to obtain a refund. In fact, the defendants have not

offered a refund to consumers who purchased the tainted product. As a result, the plaintiff and the class have been damaged by the defendant's improper and deceptive acts, including the failure to conduct a total product recall that properly informed consumers and refunded the money paid by consumers.

2. As a result, plaintiff seeks relief including, *inter alia*:

(a) An award of appropriate damages for all members of the class who have purchased the product;

(b) A total product recall that gives proper notice to consumers of the dangers of the tainted product, what to do if they ingested it, and how to obtain a refund.

(c) Disgorgement from Defendants of all monies wrongfully obtained as a result of defendants' improper, unfair, and deceptive business acts;

(d) An injunctive order prohibiting future sales of the tainted product;

(e) Treble damages and/or punitive damages;

(f) Certification of a Class as described herein or as the Court deems proper and just pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(g) Designation of plaintiff's counsel as Class Counsel pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(h) Designation of plaintiff, and/or other class members, as Class Representative(s) pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(i) An award of attorney's fees to Class Counsel; and

(j) Such other relief as the Court deems just and proper.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d), because this action is between citizens of different states, a class action has been pled, and the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

4. Venue is proper in this District under 28 U.S.C. § 1391. The plaintiff resides in this District. Further, defendants conduct business in New Jersey, receive substantial compensation and profits from the sale of the product in this District, and some of the defendants have offices and/or headquarters in this District, which subjects them to personal jurisdiction in this District.

5. This Court has personal jurisdiction over defendants to this action because defendants engage in substantial business in New Jersey and some of the wrongdoing alleged took place in this District.

PARTIES

6. The plaintiff resides in Bergen County, New Jersey. He purchased the tainted product at a CVS Pharmacy in Montvale, New Jersey. When he learned that the product was tainted, he spoke to CVS and was informed that the defendants conducted a recall on a retail level only.

7. The defendants, Ranbaxy Pharmaceuticals, Inc., Ranbaxy Laboratories, Ltd., Ranbaxy Laboratories, Inc., Ranbaxy, Inc., Ranbaxy USA, Daiichi Sankyo Company Ltd., and Ohm Laboratories, (hereinafter "defendants" or "the Ranbaxy entities"), are related corporate entities involved in various aspects of the pharmaceutical business.

8. The defendant, Ranbaxy Laboratories Limited ("RLL") is India's largest pharmaceutical company, is an international pharmaceutical company, and is the global parent of defendant, Ranbaxy, Inc.

9. Ranbaxy Inc. has been a Delaware Corporation since 1999, has offices at 600 College Road East, Princeton, New Jersey, and is the parent company to its wholly owned subsidiaries, defendants Ohm Laboratories, Inc., Ranbaxy Laboratories, Inc., Ranbaxy Pharmaceuticals, Inc., and Ranbaxy USA.

10. The defendant, Ranbaxy Pharmaceuticals, Inc. was established in the United States in 1994 and began marketing FDA approved generic products in the United States in 1998.

11. The defendant, Ranbaxy Laboratories, Inc. is also a wholly owned subsidiary of Ranbaxy Laboratories Limited and is the branded prescription division in the United States.

12. One or more of the Ranbaxy entities are a member of Daiichi Sankyo Company, which is a global pharmaceutical innovator headquartered in Tokyo, Japan. Daiichi acquired a majority stake in Ranbaxy in 2008 in a deal valued at $4.2 Billion.

13. The defendant, Ohm Laboratories, is a wholly owned subsidiary of Ranbaxy, Inc. with a facility in New Brunswick, New Jersey and/or Gloversville, New York.

14. In 2011, the Ranbaxy entities had $791 Million in sales in North America.

STATEMENT OF FACTS

15. In November, 2011, the Ranbaxy entities received approval from the U.S. Food & Drug Administration (FDA) to launch Atorvastatin in the United States, the generic version of the world's largest selling cholesterol reducing drug (Lipitor). The defendants described it as "bringing trusted, high quality, affordable medicines, within easy reach of all".

16. During the first six months on the market, when it had marketing exclusivity, the drug Atorvastatin generated sales of nearly $600 Million for the defendants.

17. The plaintiff purchased Atorvastatin at a CVS Pharmacy in Montvale, New Jersey, which had his prescription information and contact information. Plaintiff purchased the product with the intent to use it for his personal use, that being to ingest it for medical purposes. At no time was the plaintiff warned that the product was unsafe and dangerous or that it contained a foreign substance, to wit glass particles.

18. In November, 2012, media reports surfaced about certain batches and/or lots of Atorvastatin manufactured by the defendants being tainted. The reports were that the defendants admitted that the product was tainted because it contained glass particles. However, the defendants provided limited information and, upon information and belief, did not state publicly the amount of tainted product that was shipped to retail pharmacies to be purchased by consumers. The media coverage indicated that the defendants were conducting a voluntary recall at a retail level only. For instance, the Wall Street Journal article stated that Ranbaxy announced on November 23rd that it was conducting a retail-level

recall of certain lots of 90 and 500 pill bottles of Atorvastatin dosage strengths of 10 mg, 20 mg and 40 mg. A link was provided to a website of the defendants that simply listed lot numbers and product details. Upon information and belief, those lot numbers and product details are not available to consumers who purchased the defendants product.

19. Upon information and belief, the defendants' limited recall of the tainted product did not include notice to consumers who purchased the tainted product of the dangers of the tainted product, or what to do if they purchased the product or ingested it. In addition, the limited recall by the defendants on a retail level only did not include an offer to refund consumers' money or notice to consumers on how to obtain a refund for the purchase of the tainted product. In fact, none of the media coverage mentioned consumers being able to obtain a refund from the defendants.

20. Upon information and belief, there was no detailed information provided to pharmacies at the retail level as to what they should tell consumers who purchased the tainted product and/or ingested it. The plaintiff spoke to the CVS Pharmacy where he purchased the tainted product and was informed that the pharmacy knew of the limited recall as of November 9, 2012 and that the voluntary recall information did not instruct the pharmacy to contact their customers. The pharmacy also indicated that they were not provided any information for consumers about the health concerns related to the tainted product. Upon information and belief, the defendants limited, retail level only recall did not address the issue of a consumer refund.

21. The defendant's website contains a brief paragraph about the recall, which states as follows:

Atorvastatin recall:

> "Ranbaxy Pharmaceuticals Inc. is conducting a voluntary recall for Atorvastatin calcium tablets, in connection with its 10 mg, 20 mg, and 40 mg dosage strengths, packaged in 90's and 500 count bottles and only with respect to certain select lot numbers. The recall does not affect or relate to the 80 mg strength. The recall is being conducted at the retail level for such select batches that may contain a foreign substance (small glass particles approximately less than 1 mm in size). Ranbaxy is proactively recalling the drug product lots out of an abundance of caution, and in keeping the safety

> of our customers in mind. This recall is being conducted with the full knowledge of U.S. FDA. Click here to read the affected batches".

22. The notice on the defendants' website concerning the limited, retail level only recall did not offer a refund to consumers and did not provide any way for consumers to obtain information about the tainted product, the dangers involved with it, the dangers of ingestion of it, and other related issues.

23. On November 28th, plaintiff's counsel's investigation revealed a telephone number for "Ranbaxy's Customer Coordinator (Inmar of 866-266-7623)", which was reported in the Sacramento Bee. A call placed to that number revealed that there was no live attendant to speak to but instead there was a recording stating that the limited recall was "issued to retail level only [and] not to the consumer". The recording provided no information concerning the dangers of the tainted product and ingestion of it, what a consumer should do who purchased and/or ingested the product, and how a consumer could obtain a refund. In fact, the statement that the recall was on a retail level only and not to the consumer made it clear that no refund was available to consumers.

24. The defendants claim to employ rigorous quality assurance methods that follow the FDA Guidelines, but they are uncertain of how the dangerous glass particles ended up in their product.

25. The defendants have not offered refunds to buyers. The defendants have not taken any active steps to notify buyers of the defects and dangers or to otherwise institute a product recall and refund program for consumers.

26. The defendants' website notes the recall but fails to inform customers of the dangers of the product and how to get a full refund. In fact, the company website did not even include the telephone number with the recorded message that was reported in the Sacramento Bee (noted above). Plaintiff was damaged and sustained an ascertainable loss when he purchased the defendants' product.

27. At all times alleged herein, each and every defendant was an agent, employee, and/or otherwise acting on behalf of each and every other defendant. In doing the things alleged herein, each and

every defendant was acting within the course and scope of that agency or employment and was acting with the consent, permission and authorization of each of the remaining defendants.

CLASS ACTION ALLEGATIONS

Class Definition.

28. Plaintiff files this case in his individual capacity and as a class action on behalf of himself and all others similarly situated. He and/or other class member(s) who will be named as "class representative(s)" at the time a motion is filed to certify the proposed class will represent the class, which is composed of all persons in the United States (and/or a subclass of New Jersey residents) who purchased certain bottles of the prescription drug Atorvastatin that was part of the tainted batches and/or lots that the defendants voluntarily recalled on a retail level only.

Impracticable Joinder.

29. The class is composed of thousands of persons geographically dispersed throughout New Jersey and other parts of the United States, the joinder of whom in one action is impracticable. The disposition of their claims in a class action will provide substantial benefits to both parties and the Court. The class is sufficiently numerous since it is estimated that thousands, tens of thousands, or more, bottles of the product were sold in the United States.

Risk of Inconsistent or Varying Adjudications.

30. Prosecution of separate actions by Class members would risk inconsistent or varying adjudications, which would establish incompatible standards of conduct for the Defendants.

31. Adjudications by individual members of the Class would, as a practical matter, be potentially dispositive of the interests of other members of the Class and substantially impair or impede their ability to protect their interests. Class-wide adjudication of these claims, therefore, is appropriate.

32. Class-Wide Injunctive/Declaratory Relief. Defendants have acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and/or declaratory relief with

respect to the Class as a whole appropriate and rendering class-wide adjudication of these claims appropriate.

Common Questions of Law and Fact.

33. Class members have a common interest in the questions of law and fact involved in this matter and how they will be decided. These factual and legal questions common to the Class predominate over individual factual or legal questions. The common questions of law and fact include the following:

(a) Whether the defendants acted improperly towards the class, including their decision to limit the recall to the retail level only and not to notify consumers of the tainted product or how to get a refund;

(b) Whether the defendants' tainted product was unsafe and dangerous;

(c) Whether defendants knew, recklessly disregarded or reasonably should have known that the defendants' voluntary recall should have included notice to consumers of the dangers and of how to obtain a refund;

(d) Whether the acts and practices of Defendants violated New Jersey's Consumer Fraud Act and other laws and regulations;

(e) Whether defendants must conduct a total product recall, including notice to consumers of the dangers and of how to obtain a refund;

(f) Whether defendants, through their misconduct, have been unjustly enriched at the expense of plaintiff and other class members;

(g) Whether defendants must be enjoined from distributing and selling the product in question at any time in the future;

(h) Whether plaintiffs and the class are entitled to damages and/or restitution from the defendants; and

(i) Whether the class could suffer irreparable harm unless the defendants conduct a total product recall and, if, so, the nature of the equitable and injunctive relief that

is necessary to prevent that harm.

Typicality.

34. Class members purchased the product without knowledge of the dangerous and defective nature of it, despite the claims made by defendants as to the "products" purported quality and safeness. The individual plaintiff who will be named as the class representative is asserting claims that are typical of the claims of the entire class.

Fair and Adequate Representation.

35. The class representative will fairly and adequately represent and protect the interests of the class in that he has no interests that are antagonistic to those of the other members of the class. The plaintiff has retained counsel who is competent and experienced in the handling of litigation, including class action litigation.

Superiority of Class Action Procedure.

36. The plaintiff and the members of the class have all suffered damages as a result of defendants' tainted product and their improper and wrongful conduct relating thereto. Absent a class action, defendants will likely retain millions of dollars received as a result of defendants' wrongdoing. The improper conduct would go un-remedied and uncorrected. Absent a class action, the class members will not receive restitution. These violations of law will be allowed to stand without remedy and the defendants will retain the proceeds and ill-gotten gains.

37. Class certification of this matter will be appropriate under Rule 23.

CLAIMS

38. Pursuant to notice pleading, Plaintiffs hereby allege each and every cause of action and remedy at law or in equity supported by the facts alleged in this Complaint. Those causes of action and remedies at law or in equity include the following:

COUNT ONE
VIOLATIONS OF N.J.S.A. 56:8-2 ET SEQ. (CONSUMER FRAUD ACT)

39. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "38", inclusive with the same force and effect as though the same was more fully set forth at length herein.

40. The New Jersey Consumer Fraud Act (hereinafter "Act") states, in relevant part:

> **56:8-2. Fraud, etc., in connection with sale or advertisement of merchandise or real estate as unlawful practice.**
>
> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice; provided, however, that nothing herein contained shall apply to the owner or publisher of newspapers, magazines, publications or printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher, or operator has no knowledge of the intent, design or purpose of the advertiser.

41. Defendants violated the Act by failing to alert consumers that the product was dangerous and unsafe, was tainted, and contained glass particles, as well as through their other misrepresentations, failures and omissions.

42. Defendants conducted a limited, voluntary recall but only at the retail level. Defendants did not perform a total product recall and did not offer a refund to consumers. The defendants did not give notice to consumers of the dangers of the product and did not notify consumers of how to obtain a refund. The defendants' acts and omissions are in violation of the Act.

43. The individual plaintiff and class members were caused to suffer damages as a result of defendants' acts and omissions, including ascertainable losses.

COUNT TWO
FRAUD/INTENTIONAL MISREPRESENTATION

44. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "43", inclusive with the same force and effect as though the same was more fully set forth at length herein.

45. Defendants knowingly and intentionally made false statements of existing material facts in the "Atorvastatin Recall" statement posted on their website, in their recall statements to pharmacies, and/or elsewhere, including that there was no danger to consumers and that the defendants' limited recall on a retail level only was for the "safety of our customers".

46. Defendants intended for plaintiff, pharmacists and/or others to rely on their material misrepresentations of fact.

47. Plaintiff, pharmacists and/or others reasonably and justifiably relied on defendants' material misrepresentations, unaware of the falsity of defendants' representations, and had a right to rely on those representations.

48. The individual plaintiff and class members were caused to suffer damages as a result of defendants' acts and omissions.

COUNT THREE
NEGLIGENCE

49. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "48", inclusive with the same force and effect as though the same was more fully set forth at length herein.

50. Defendants owed a duty to Class members to fully and accurately disclose information about the product, including its dangers.

51. Defendants owed a duty to conduct a total product recall that was not limited to the retail level and to offer a refund to consumers.

52. Defendants owed a duty to notify consumers and/or pharmacists of the dangers of the tainted product, of what to do with the tainted product, and of how to obtain a refund and/or replacement product.

53. Defendants breached that duty by failing to fully and accurately disclose to the Class members the qualities of the product, the dangers of the tainted product and its other unsafe and unhealthy features, including the foreign substance it contained, which was particles of glass.

54. Defendants breached that duty by failing to conduct a total product recall of the tainted product, by failing to notify consumers and/or pharmacists of what to do with the tainted product, by failing to offer a refund, and by failing to notify consumers of how to get a refund.

55. Defendants' breach of their duty caused damage to the Class members.

COUNT FOUR
EQUITABLE RELIEF

56. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "55", inclusive with the same force and effect as though the same was more fully set forth at length herein.

57. The class has no complete, speedy, and adequate remedy at law with respect to the fraud, misrepresentations, and/or breach by the defendants. The class will suffer continuing, immediate, and irreparable injury as a proximate cause of defendants' actions and omissions absent injunctive and equitable relief by this Court. The defendant must be ordered to conduct a total and complete product recall, with notice to consumers, in order to prevent future harm.

58. In addition, based on the limited nature of the voluntary recall at the retail level only, defendants may sell the product in question in the future. Thus, a permanent injunction is required to make certain that the defendants will not sell the tainted product.

59. The defendants should be ordered to perform a full product recall, to notify its customers and the public at large of the product's defects and of the recall, and to refund all customers their money.

COUNT FIVE
UNJUST ENRICHMENT

60. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "59", inclusive with the same force and effect as though the same was more fully set forth at length herein.

61. The defendants' improper and unlawful activities, including misrepresentations, the sale of a defective and/or dangerous product, and the failure to conduct a total product recall, including notice to consumers of the dangers and how to obtain a refund, resulted in the unjust enrichment of the defendants. The defendants were unjustly enriched in the amount of money made by them through the sale of the tainted product.

62. The class has been damaged in the amount that the defendants were unjustly enriched and their damage was caused by the defendants' acts and omissions.

COUNT SIX
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

63. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "62", inclusive with the same force and effect as though the same was more fully set forth at length herein.

64. Defendants reasonably expected the Plaintiffs and Class members to use the product as intended, including ingesting it.

65. Defendants sold the product to the Class members through retailers (pharmacists).

66. Defendants breached an implied warranty as codified in N.J.S.A. 12A:2-314 as noted above.

67. Defendants either knew, recklessly disregarded, or reasonably should have known about the dangerous nature of its product at the time of the sale of the product and thereafter. Even when

defendants announced that its product was tainted, there was no notice to consumers concerning the dangers or how to obtain a refund.

68. As a result of defendants' breach of warranty, Class members' sustained damages.

COUNT SEVEN
BREACH OF IMPLIED WARRANTY OF FITNESS

69. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "68", inclusive with the same force and effect as though the same was more fully set forth at length herein.

70. Defendants reasonably expected the plaintiff and Class members to use the product, including ingesting it.

71. The product is not fit for the particular purpose claimed by defendants, as detailed above.

72. The plaintiff and Class members relied upon defendants specifications, promotional materials and/or advertising materials to select the product as being one to take for health reasons.

73. Defendants either knew, recklessly disregarded, or reasonably should have known about the dangerous nature of its product.

74. Defendants breached the warranty of merchantability as codified in N.J.S.A. 12A:2-315 in that the product was not as described and was dangerous, unsafe, and contained foreign substances.

75. As a result of defendants' breach of warranty, Class members sustained damages.

COUNT EIGHT
NEGLIGENTLY CAUSED ECONOMIC LOSS

76. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "75", inclusive with the same force and effect as though the same was more fully set forth at length herein.

77. Defendants knew or should have known that their tainted product would cause an identifiable class of persons to suffer economic harm.

78. Defendants failed to take reasonable measures to address the economic harm to Class members.

79. Defendants either knew, recklessly disregarded, or reasonably should have known about the dangerous nature of its product at the time of the sale of the product and/or at the time of its limited recall at the retail level only and yet did not give notice to consumers of how to obtain refunds and did not offer refunds.

80. The Class members suffered economic harm as a direct and proximate result of defendants' failure to take reasonable steps to address the economic harm.

COUNT NINE
NEGLIGENT MISREPRESENTATION

81. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "80", inclusive with the same force and effect as though the same was more fully set forth at length herein.

82. Defendants negligently provided false and/or misleading information to Class members concerning the qualities of the product and/or concerning the tainted product.

83. The Class members reasonably relied upon defendants false and/or misleading information in purchasing the product.

84. Defendants either knew, recklessly disregarded, or reasonably should have known about the dangerous nature of its product at the time of the sale of the product and at the time of their limited recall and yet did not give notice to consumers of how to obtain a refund.

85. The Class members suffered harm as a direct and proximate result of their reasonable reliance upon defendants' false and/or misleading statements.

86. As a direct result of the defendants' improper fraudulent and negligent actions, the plaintiff and all class members sustained an ascertainable loss as well as other damages. As a result, the plaintiff and the class members seek relief.

COUNT TEN
BREACH OF EXPRESS WARRANTY

87. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "86", inclusive with the same force and effect as though the same was more fully set forth at length herein.

88. Defendants reasonably expected the Plaintiff and Class members to use the product as intended, including ingesting it.

89. Defendants sold the product to the Class members through retailers (pharmacists).

90. Defendants breached an express warranty as codified in N.J.S.A. 12A:2-313 as noted above.

91. Defendants provided an express warranty and/or guarantee concerning the quality, safeness and integrity of its products. However, the product was not of the promised quality, safeness and integrity.

92. Defendants' claims are part of the basis of the bargain and enticed consumers to purchase the product.

93. Defendants breached their express warranties because the product is not as promised.

94. As a result of the defendants' breach, the plaintiff and class members have sustained monetary and non-monetary damages.

COUNT ELEVEN
UCC ARTICLE 2-313

95. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "94", inclusive with the same force and effect as though the same was more fully set forth at length herein.

96. The plaintiff and class members are "buyers" under the UCC Article 2.

97. The defendants are "sellers" under the UCC Article 2.

98. The defendants' product is "goods" under the UCC Article 2.

99. The defendants provided an express warranty and/or guarantee concerning the quality, safeness and integrity of its products. However, the product was not of the promised quality, safeness and integrity.

100. The defendants' claims are part of the basis of the bargain and enticed consumers to purchase the product.

101. The defendants breached their express warranties because the product is not as promised.

102. As a result of the defendants' breach, the plaintiff and class members have sustained monetary and non-monetary damages.

COUNT TWELVE
UCC ARTICLE 2-314

103. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "102", inclusive with the same force and effect as though the same was more fully set forth at length herein.

104. The plaintiffs and class members are "buyers" under the UCC Article 2.

105. The defendants are "sellers" under the UCC Article 2.

106. The defendants' product is "goods" under the UCC Article 2.

107. The defendants warranted, guaranteed, advertised, marketed and promoted the product as being of exceptional quality, safety and integrity. However, the claims were untrue.

108. The defendants' claims are part of the basis of the bargain and enticed consumers to purchase the product.

109. The product was not fit for the ordinary purposes for which it was to be used and does not conform to the promise or affirmations of fact. Thus, the product is not merchantable.

110. The defendants breached their implied warranties because the product is not as promised.

111. As a result of their breach, the plaintiff and class members have sustained monetary and non-monetary damages.

COUNT THIRTEEN
UCC ARTICLE 2-315

112. Plaintiff repeats and reiterates each and every allegation contained in the paragraphs of this Complaint marked and designated "1" through "111", inclusive with the same force and effect as though the same was more fully set forth at length herein.

113. The plaintiff and class members are "buyers" under the UCC Article.

114. The defendants are "sellers" under the UCC Article 2.

115. The defendants' product is "goods" under the UCC Article 2.

116. The defendants warranted, guaranteed, advertised, marketed and promoted the product as being fit for a particular purpose.

117. The defendants' claims and guarantee are part of the basis of the bargain and enticed consumers to purchase the product.

118. Thus, the product is not fit for its particular purpose.

119. The defendants breached their implied warranties of fitness for a particular purpose because the product is not as claimed by the defendants, as detailed above.

120. As a result of their breach, the plaintiff and class members have sustained monetary and non-monetary damages.

PRAYER FOR RELIEF

WHEREFORE, as a result of the forgoing, plaintiff on behalf of himself and his individual claims, as well as on behalf of all other persons similarly situated, prays for the following relief:

A. an Order certifying the class, appointing the named plaintiff as class representative, and appointing plaintiff's counsel as class counsel;

B. an Order providing for equitable and injunctive relief, including a total product recall, notice to consumers, refund to customers, and/or other relief;

C. an Order requiring disgorgement of defendants' ill-gotten gains to pay restitution to plaintiff and all members of the class, and to restore to the public all funds acquired by means of any act or practice declared by this Court to be unlawful, fraudulent or unfair business acts or practices, a violation of laws, statutes, or regulations, or constituting unfair competition or false, untrue or misleading advertising;

D. an Order awarding compensatory damages to plaintiff and all members of the class for all claims in the Complaint;

E. treble damages pursuant to the New Jersey Consumer Fraud Act in connection with defendants' illegal and improper actions;

F. that this Court award attorney's fees and costs of suit to the plaintiff and the Class including the mandatory attorney's fees under the New Jersey Consumer Fraud Act; and

G. such other and further relief as the Court may deem necessary or appropriate.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: November 28, 2102

GAINEY & McKENNA

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