

purchased for a full refund.”¹¹ This recall was deliberately designed to preclude the vast majority of consumers from receiving a recall.

18. Defendant is well aware that any consumer who was made aware of the recall would be predisposed to throwing the Products away. Defendant is also aware that consumers shop in multiple locations and may or may not purchase the Products at the same location each time. Also, most consumers do not maintain receipts and therefore cannot obtain a refund at the purchase location for the recalled Products.

19. Accordingly, Defendant’s recall is designed to reach very few people and designed to benefit very few of the consumers who purchased the Products.

20. The class action remedy is superior to Defendant’s failed recall in every conceivable fashion.

21. Defendant is using a marketing and advertising campaign that omits from the packaging that the Products contain *Listeria monocytogenes*. This omission leads a reasonable consumer to believe they are not purchasing a product that contains *Listeria monocytogenes* when in fact they are purchasing a product contaminated with *Listeria monocytogenes*.

22. Defendant’s marketing and advertising campaign includes the one place that every consumer looks when purchasing a product – the packaging and labels themselves. As such, a reasonable consumer reviewing Defendant’s labels reasonably believes that they are purchasing products that are safe for oral ingestion and do not contain any harmful ingredients. Indeed, consumers expect the packaging and labels to accurately disclose the presence of such bacteria within the Products. Thus, reasonable consumers would not think that Defendant is omitting that the Products contain, or are at risk of containing, *Listeria monocytogenes*.

¹¹ *Id.*

23. Defendant's advertising and marketing campaign is false, deceptive, and misleading because the Products do contain, or risk containing, *Listeria monocytogenes*, which is dangerous to one's health and well-being. Nevertheless, Defendant does not list or mention *Listeria monocytogenes* anywhere on the Products' packaging or labeling.

24. Defendant's misrepresentations and omissions of the safety of the Products and what is in the Products was material to Plaintiff and Class Members. Consequently, Plaintiff and Class Members bought and consumed the Products as a food product contaminated with

25. The Products contain *Listeria monocytogenes*, which can cause significant harm, including death. Plaintiff and Class Members paid more for the Products because they were advertised as safe, but they contain—or possibly contain—*Listeria monocytogenes*.

26. As a result of Defendant's misrepresentations and omissions, Plaintiff and Class Members are in no way safe to consume the Products.

27. As a result of Defendant's misrepresentations and omissions, Plaintiff and Class Members are in no way safe to consume the Products. Plaintiff and Class Members paid a premium for the Products, and Plaintiff and Class Members suffered an injury in the amount of the premium paid.

28. Accordingly, Defendant's conduct violated and continues to violate, *inter alia*, New York General Business Law §§ 349 and 350. Defendant also breached and continues to breach its warranties regarding the Products.



