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United States District Court
Eastern District of New York

2:20-cv-02571

Paul Lepore, individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

Complaint

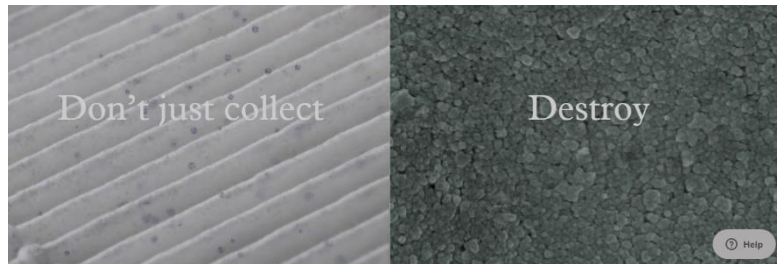
Molekule, Inc.,

Defendant

Plaintiff by attorneys allege upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Molekule Inc. (“defendant”) manufactures, distributes, markets, labels and sells air purifiers under its “Air” brand (“Products”).
2. Defendant markets several Products with conspicuous claims that the air purifiers will “destroy” germs and “eliminate” indoor air pollution.
3. Defendant claims that its air purifiers eliminate dust, pollen and other contaminants.
4. Defendant also claims that its air purifiers are superior to HEPA (High Efficiency

Particulate Arresting) air purifiers for removing allergens from the home.



5. Indoor air pollution and air quality are a major concern for many consumers, particularly those with severe allergies or asthma.

6. There are a wide range of non-medical devices marketed directly to these consumers, including air purifiers.

7. Defendant markets and sells the Products as being highly effective at combating indoor air pollution and improving indoor air quality, claiming that the air purifiers will completely eliminate indoor air pollution.

8. Defendant's website advertises to consumers, "Until now, purifiers have attempted to collect pollutants on filters where they can multiply and release back into the air. Forget the

past. Destroy pollutants instead.”¹

9. Defendant’s website has also claimed, “Finally, an air purifier that actually works ... Until now, air purifiers have attempted to collect pollutants on filters where they can multiply and be released back into the air. Molekule’s revolutionary nanotechnology destroys pollutants at the molecular level.”²

10. Additionally, defendant sought to quantify the number of pollutants “destroyed:”

- “Destroys 3.4 million black mold spores in 50 minutes;”
- “Destroys 1 million allergens in 4 minutes;”
- “Destroys 3.4 million ms2 viruses in 2 minutes;” and
- “Destroys 3.7 million bacteria in 5 minutes.”³

11. Defendant has also claimed its filter technology, PECO (photoelectrochemical oxidation), is superior to HEPA technology,

12. For example, defendant claimed, “Our scientifically proven nanotechnology outperforms HEPA filters in every category of pollutant from well-known allergens like dust, pollen, and pet dander to microscopic pollutants like mold, viruses, bacteria and gaseous chemicals.”⁴

13. Defendant’s Products do not remove impurities from the air to the extent advertised and fail to perform as represented.

14. Defendant’s branding, advertising and packaging of the Product is designed to – and does – deceive, mislead, and defraud consumers.

¹ <https://www.nytimes.com/wirecutter/wp-content/uploads/2020/02/Molekule-Case-Report-6314.pdf>

² *Id.*

³ *Id.*

⁴ *Id.*

15. Defendant has sold more of the Products and at higher prices per unit than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

16. The marketing of the Product as being able to e.g. “destroy” pollutants and being of a higher quality than HEPA air purifiers has a material bearing on price or consumer acceptance of the Products because consumers are willing to pay more for such Products.

17. The value of the Product that plaintiff purchased and used was materially less than its value as represented by defendant.

18. Had plaintiff and class members known the truth, they would not have bought the Products or would have paid less for them.

19. The Product contains other representations which are misleading and deceptive.

20. As a result of the false and misleading labeling, the Product is sold at a premium price, approximately no less than \$799 for the Molekule Air Purifier, excluding tax, compared to other similar products represented in a non-misleading way.

Jurisdiction and Venue

21. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2) (Class Action Fairness Act of 2005 or “CAFA”).

22. Under CAFA, district courts have “original federal jurisdiction over class actions involving (1) an aggregate amount in controversy of at least \$5,000,000; and (2) minimal diversity[.]” *Gold v. New York Life Ins. Co.*, 730 F.3d 137, 141 (2d Cir. 2013).

23. The aggregate amount in controversy is more than \$5,000,000.00, exclusive of interests and costs.

24. This is a reasonable assumption because defendant’s Products are sold across the country at a high price and the claims at issue have been made for several years.

25. Plaintiff Paul Lepore is a citizen of New York.

26. Defendant is a Delaware corporation with a principal place of business in San Francisco, San Francisco County, California and is a citizen of California and upon information and belief, at least one member of defendant is not a citizen of New York.

27. This court has personal jurisdiction over defendant because it conducts and transacts business, contracts to provide and/or supply and provides and/or supplies services and/or goods within New York.

28. Venue is proper because plaintiff and many class members reside in this District and defendant does business in this District and State.

29. A substantial part of events and omissions giving rise to the claims occurred in this District.

Parties

30. Plaintiff Paul Lepore is a resident of Suffolk County, New York and a citizen of New York.

31. Defendant Molekule, Inc. is a Delaware corporation with a principal place of business in San Francisco, California, San Francisco County and at least one of its members reside in states other than New York.

32. During the relevant statutes of limitations, plaintiff purchased the Product in his district and States for personal use in reliance on the representations.

33. Plaintiff would not have purchased the Product had he been aware that some or all of the claims were not true and were misleading and inaccurate.

Class Allegations

34. The classes will consist of all purchasers of the Product in New York and the other

forty-nine (49) states during the applicable statutes of limitations and a national class where applicable.

35. Plaintiff will also seek a class under Rule 23(b)(2) for injunctive relief.

36. Common questions of law or fact predominate and include whether defendant's representations were and are misleading and if plaintiff and class members are entitled to damages.

37. Plaintiff's claims and basis for relief are typical to other members because all were subjected to the same unfair and deceptive representations and actions.

38. Plaintiff is an adequate representative because his interests do not conflict with other members.

39. No individual inquiry is necessary since the focus is only on defendant's practices and the class is definable and ascertainable.

40. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

41. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to adequately and fairly protect class members' interests.

42. Plaintiff seeks class-wide injunctive relief because the practices continue.

New York General Business Law ("GBL") §§ 349 & 350
(Consumer Protection Statute)

43. Plaintiff incorporates by reference all preceding paragraphs.

44. Plaintiff and class members desired to purchase and use indoor air purifiers which possessed the capabilities described by defendant.

45. Defendant's acts and omissions are not unique to the parties and have a broader impact on the public.

46. Defendant advertised and represented to consumers that the Products were more

effective at eliminating airborne pollutants and allergens than the Products were, among other claims.

47. Plaintiff relied on the statements, omissions and representations of defendant, and defendant knew or should have known the falsity of same.

48. Plaintiff and class members would not have purchased the Products or paid as much if the true facts had been known, suffering damages.

Negligent Misrepresentation

49. Plaintiff incorporates by reference all preceding paragraphs.

50. Defendant advertised and represented to consumers that the Products were more effective at eliminating airborne pollutants and allergens than the Products were, among other claims.

51. Defendant had a duty to disclose and/or provide non-deceptive marketing of the Product and knew or should have known same were false or misleading.

52. Defendant is as a company which consumers placed great trust in, reinforced by the company name, "Molekule."

53. The representations took advantage of consumers' unflinching belief in "scientific" claims and their inability to cut through "data" to get to the truth.

54. Plaintiff and class members reasonably and justifiably relied on these negligent misrepresentations and omissions, which served to induce and did induce, the purchase of the Products.

55. Plaintiff and class members would not have purchased the Products or paid as much if the true facts had been known, suffering damages.

Breaches of Express Warranty, Implied Warranty of Merchantability and Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.

56. Plaintiff incorporates by reference all preceding paragraphs.

57. The Products were manufactured, marketed, promoted and sold by defendant and warranted to Plaintiff and class members that they were capable of performing all of the functions they advertised, when they could not.

58. Defendant breached its duty to disclose and/or provide non-deceptive statements about the Products' capabilities.

59. This duty is based, in part, on defendant's outsized role in the market for indoor air purifiers.

60. Plaintiff provided or will provide notice to defendant, and to its agents, representatives and their employees.

61. Defendant received notice and should have been aware of these misrepresentations due to numerous complaints by consumers to its main office over the past several years.

62. The Products did not conform to their affirmations of fact and promises due to defendant's actions and were not merchantable.

63. Plaintiff and class members would not have purchased the Products or paid as much if the true facts had been known, suffering damages.

Fraud

64. Plaintiff incorporates by reference all preceding paragraphs.

65. Defendant advertised and represented to consumers that the Products were more effective at eliminating airborne pollutants and allergens than the Products were.

66. Defendant's fraudulent intent is evinced by its knowledge that some or all of the claims it made were not supported.

67. Plaintiff and class members would not have purchased the Products or paid as much if the true facts had been known, suffering damages.

Unjust Enrichment

68. Plaintiff incorporates by reference all preceding paragraphs.

69. Defendant obtained benefits and monies because the Product was not as represented and expected, to the detriment and impoverishment of plaintiff and class members, who seek restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying Plaintiff as representative and undersigned as counsel for the class;
2. Entering preliminary and permanent injunctive relief by directing defendant to correct the challenged practices to comply with the law;
3. Injunctive relief to remove, correct and/or refrain from the challenged practices and representations, restitution and disgorgement for members of the State Subclasses pursuant to the applicable laws of their States;
4. Awarding monetary damages and interest pursuant to the common law and other statutory claims;
5. Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and
6. Other and further relief as the Court deems just and proper.

Dated: June 9, 2020

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

Spencer Sheehan

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Great Neck NY 11021-5101

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E.D.N.Y. # SS-8533

S.D.N.Y. # SS-2056

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Plaintiff,

- against -

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Complaint

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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, and belief, formed after an inquiry reasonable under the circumstances, the contentions contained in the annexed documents are not frivolous.

Dated: June 9, 2020

/s/ Spencer Sheehan
Spencer Sheehan

JS 44 (Rev. 02/19)

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
 Paul Lepore, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Sheehan & Associates, P.C., 505 Northern Blvd Ste 311, Great Neck, NY 11021-5101, (516) 303-0552

DEFENDANTS
 Molekule, Inc.

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

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

Attorneys (If Known)

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

1 U.S. Government Plaintiff

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"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business In This State	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input 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
<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	PERSONAL INJURY <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	<input type="checkbox"/> 424 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
	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	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	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC § 1332

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 \$ 5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 6/9/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Spencer Sheehan

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, Spencer Sheehan, counsel for plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

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

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

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

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

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

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

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

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

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

BAR ADMISSION

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

Yes No

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

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s/Spencer Sheehan

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

UNITED STATES DISTRICT COURT
for the
Eastern District of New York

Paul Lepore, individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

Molekule, Inc.,

Defendant(s)

Civil Action No. 2:20-cv-02571

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Molekule, Inc.
c/o INCORPORATING SERVICES, LTD.
3500 S DUPONT HWY
DOVER DE 19901

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Sheehan & Associates, P.C., 505 Northern Blvd Ste 311, Great Neck, NY 11021-5101, (516) 303-0552

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

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk