

Sheehan & Associates, P.C.
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United States District Court
Eastern District of New York

1:20-cv-04583

Aileen Goldstein, individually and on behalf
of all others similarly situated,

Plaintiff,

- against -

Sally Beauty Supply LLC,

Defendant

Complaint

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

1. Sally Beauty Supply LLC (“defendant”) operates four thousand “Sally Beauty Supply” stores (“Sally’s”) worldwide with at least half in the United States.
2. Sally’s sells professional beauty products for hair, skin, and nails through third-party brands and exclusive-label professional product lines.
3. At least twice a year, Defendant has a “Liter Sale,” where many of the previously full price items that are purportedly one liter, are placed on sale.
4. Defendant markets and promotes its liter sales through in-store advertising.



5. Defendant promotes its liter sales online.



LITER SALE

SAVE ON ALL YOUR FAVES

The image displays five 1-liter bottles of hair care products. From left to right: 1. ZOTOS 180PRO, a pink bottle with a black pump dispenser. 2. SHINY SILVER Ultra, a purple bottle with a white cap. 3. Generic Value Products TEA TREE OIL SHAMPOO, a white bottle with a black cap. 4. BIOTERA, a white bottle with a white cap. 5. Silk Elements MegaSilk Olive CONDITIONER, a dark brown bottle with a yellow cap. Each bottle has detailed text on its label describing its benefits and ingredients.

SALLY BEAUTY

ALL LITERS. ALL BRANDS.

LITER SALE

The image shows a diverse collection of hair care products from various brands, all in 1-liter sizes. Brands visible include one 'n only, hairtrition, Apple Puffs, One n Tail, SHINY SILVER Ultra, Quantum, and shim lights. The products are arranged in a cluster, showcasing a wide variety of colors and bottle shapes.

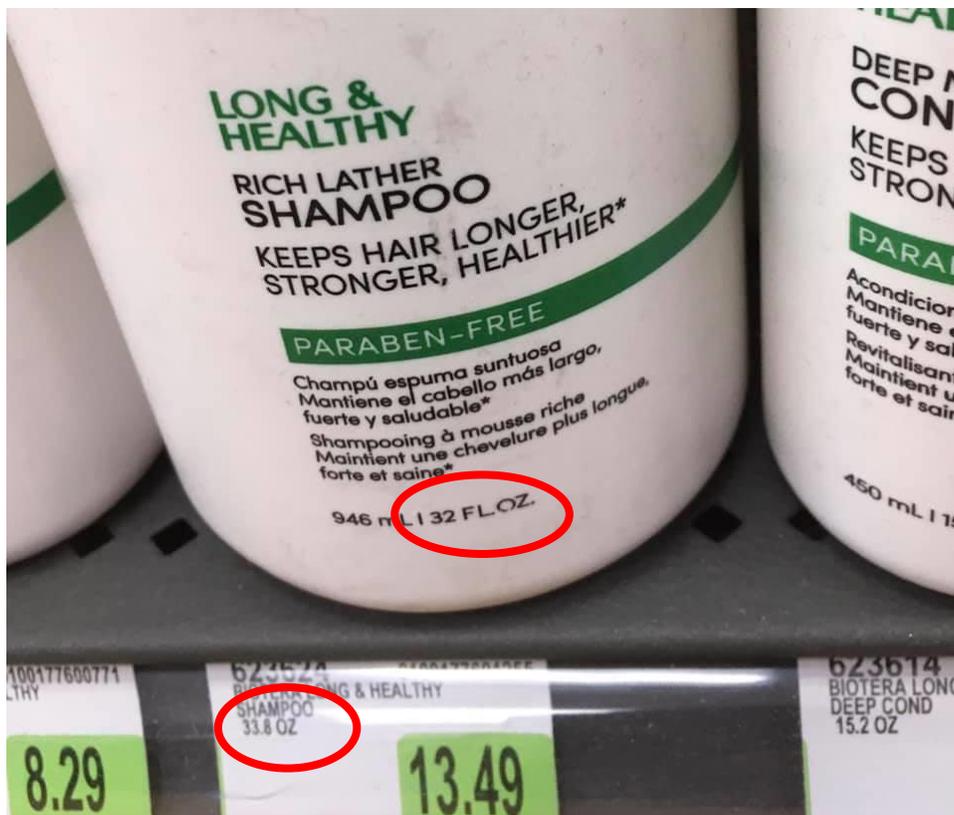
6. Defendant offers discounts and promotions for the liter sales, such as “By One Get One 50% OFF All Haircare Liters” and “Bioterra and Quantum Hair Care Liters...\$9.99,” a discount from their regular price.



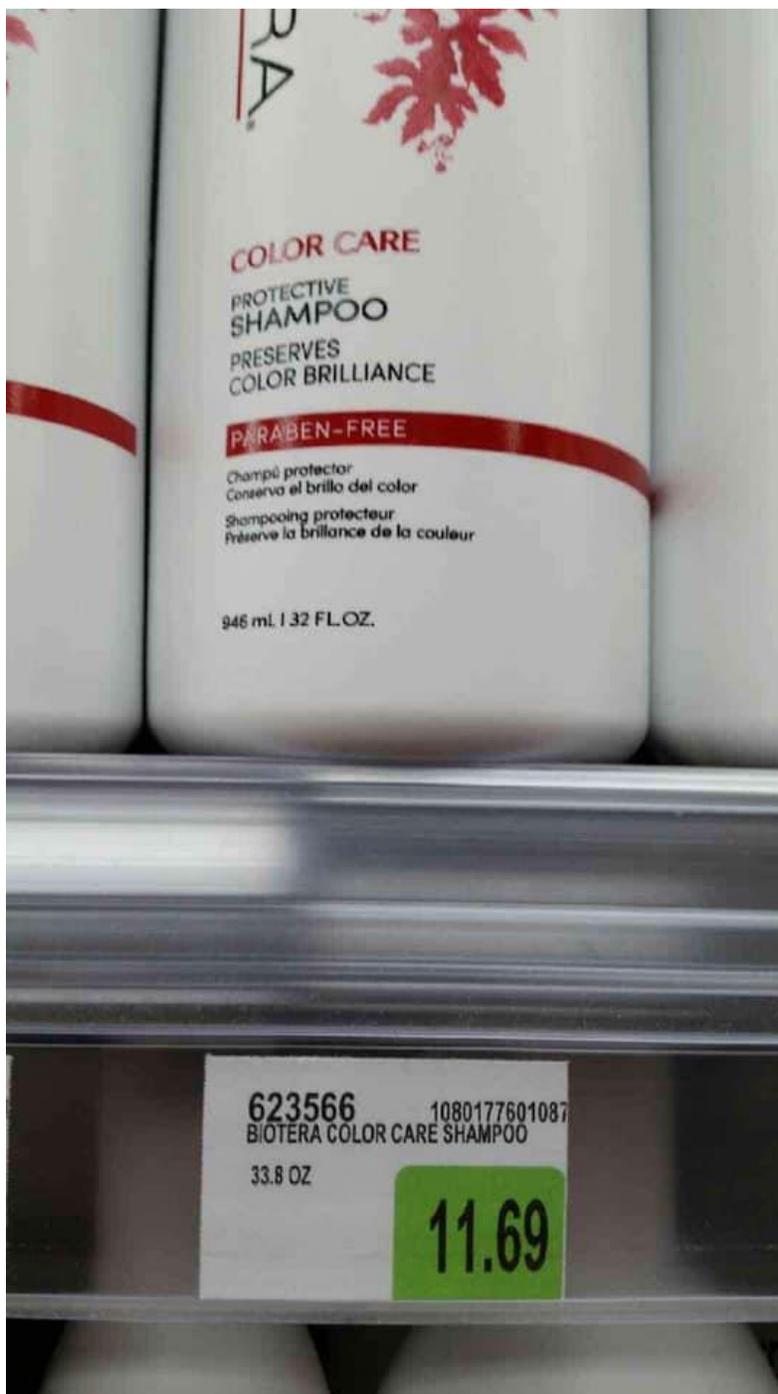


7. Unfortunately for consumers, many, or even most of the items offered in the “Liter Sale” are less than a liter.
8. A liter is the equivalent of 33.8 ounces (“OZ”).
9. The Products sold as a “liter” are actually thirty-two (32) ounces or 0.9463529 liters.
10. By advertising and selling Products purporting to be a “liter,” consumers are being misled and taken advantage of.
11. Defendant appears to be aware that the Products are not 1 liter, because the shelf tag states “33.8 OZ” even though the bottles indicate “32 OZ.”

13. For example, the Long & Healthy Rich Lather Shampoo and Deep Moisture Conditioner are promoted in the Liter Sale, yet admittedly contain only 32 ounces or 946 mL.



14. The Color Care Protective Shampoo is promoted in the Liter Sale, yet admittedly contain only 32 ounces or 946 mL.



15. The Ultra Thick & Full Sheer Volume Conditioner is promoted in the Liter Sale, yet admittedly contain only 32 ounces or 946 mL.



16. The Anti Frizz Sheer Volume Conditioner is promoted in the Liter Sale, yet admittedly contain only 32 ounces or 946 mL.



17. The Styling Alcohol-Free Defining Gel is promoted in the Liter Sale, yet admittedly contain only 32 ounces or 946 mL.



18. Though Defendant may not manufacture and label all of the Products promoted in its liter sales that are less than one liter, it is responsible for promoting them as “liters” to capitalize on consumers’ desire for a bargain.

19. Consumers will not scrutinize the difference between the ounces listed on the shelf tags with the ounces on the Products because there is no reason to, since a liter is a defined amount and is not expected that a company would cut corners on the definition of a liter.

20. Defendant’s failure to correctly represent the size of the items sold in the “liter sales” is deceptive and misleading.

21. Plaintiff and consumers were induced to purchase more of the Products than they otherwise would had the representations been accurate.

22. Plaintiff and consumers paid for one liter of the Products yet received less than one liter.

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

24. The Products are sold Productsis an sold at a premium price, compared to other similar products represented in a non-misleading way, and higher than the price of the Product if it were represented in a non-misleading way.

Jurisdiction and Venue

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

26. 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).

27. Plaintiff Aileen Goldstein is a citizen of New York.

28. Defendant Sally Beauty Supply LLC, is a Virginia corporation with a principal place of business in Denton, Denton County, Texas and is a citizen of Texas and upon information and belief no member of defendant is a citizen of New York.

29. “Minimal diversity” exists because plaintiff Aileen Goldstein and defendant are citizens of different states.

30. Upon information and belief, sales of the Products in New York and other states exceed \$5 million per year, exclusive of interest and costs, and the aggregate amount in controversy exceeds \$5 million per year.

31. Venue is proper in this judicial district because a substantial part of the events or omissions giving rise to the claim occurred in this District, *viz*, the decision of plaintiff to purchase the Products and the misleading representations and/or their recognition as such.

32. This court has personal jurisdiction over defendant because it conducts and transacts business, contracts to supply and supplies goods within New York.

Parties

33. Plaintiff Aileen Goldstein is a citizen of New York, Rego Park, Queens County,

34. Defendant Sally Beauty Supply LLC is a Virginia limited liability company with a principal place of business in Denton, Texas, Denton County and is a citizen of Texas and no member of defendant is a citizen of New York.

35. During the relevant statutes of limitations, plaintiff purchased numerous items at the liter sales in various Sally Beauty stores in New York State for personal and household use in reliance on the representations she was purchasing items that were one liter.

36. Plaintiff bought the Products at or exceeding the above-referenced price because she liked the “liter” products for their intended use and expected she was getting a full liter, not less.

37. Plaintiff was deceived by and relied upon the Defendant's deceptive advertising.

38. Plaintiff would not have purchased the Products in the absence of Defendant's misrepresentations and omissions.

39. The Products were worth less than what Plaintiff paid for it and she would not have paid as much absent Defendant's false and misleading advertising.

40. Plaintiff intends to, seeks to, and will purchase the Products again when she can do so with the assurance that Products' labels are consistent with the Product's components.

Class Allegations

41. The class will consist of all purchasers of the Products who reside in New York and all other states during the applicable statutes of limitations.

42. Plaintiff will seek class-wide injunctive relief based on Rule 23(b) in addition to a monetary relief class.

43. 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.

44. 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.

45. Plaintiff is an adequate representatives because her interests do not conflict with other members.

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

47. 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.

48. Plaintiff's counsel is competent and experienced in complex class action litigation

and intends to protect class members' interests adequately and fairly.

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

New York General Business Law (“GBL”) §§ 349 & 350,
(Consumer Protection Statute)

50. Plaintiff incorporates by reference all preceding paragraphs.

51. Plaintiff and class members desired to purchase and consume products which were as described and marketed by defendant and expected by reasonable consumers, given the product type.

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

53. Defendant misrepresented the substantive, quality, compositional and/or environmental attributes of the Products by promoting them as one liter when they were materially less than this size.

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

55. 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

56. Plaintiff incorporates by reference all preceding paragraphs.

57. Defendant misrepresented the substantive, quality, compositional and/or environmental attributes of the Products by promoting them as one liter.

58. Defendant had a duty to accurately market the Products and knew or should have known same were false or misleading.

59. This duty is based on defendant's position as an entity which has held itself out as

having special knowledge and experience in the production, service and/or sale of the product type.

60. The representations took advantage of consumers' cognitive shortcuts made at the point-of-sale and their trust in defendant, a well-known and respected brand or entity in this sector.

61. 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.

62. 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.

63. Plaintiff incorporates by reference all preceding paragraphs.

64. The Products was manufactured, labeled and sold by defendant or at its express directions and instructions, and warranted to plaintiff and class members that they possessed substantive, quality, compositional and/or environmental which they did not.

65. Defendant had a duty to disclose and/or provide non-deceptive descriptions and marketing of the Products.

66. This duty is based, in part, on defendant's position as one of the most recognized companies in the nation in this sector.

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

68. 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 regarding the Products, of the type described here.

69. The Products did not conform to their affirmations of fact and promises due to

defendant's actions and were not merchantable.

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

Fraud

71. Plaintiff incorporates by reference all preceding paragraphs.

72. Defendant misrepresented the substantive, quality, compositional and/or environmental attributes of the Product.

73. Defendant's fraudulent intent is evinced by its failure to accurately identify the Products on their labels and in its promotions for the Products, when it knew its statements were neither true nor accurate and misled consumers.

74. 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

75. Plaintiff incorporates by reference all preceding paragraphs.

76. Defendant obtained benefits and monies because the Products were 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 the 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, and restitution and disgorgement for members of the class pursuant to the applicable laws;
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: September 26, 2020

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

Spencer Sheehan

60 Cuttermill Rd Ste 409

Great Neck NY 11021-3104

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

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

1:20-cv-04583
United States District Court
Eastern District of New York

Aileen Goldstein, individually and on behalf of all others similarly situated,

Plaintiff,

- against -

Sally Beauty Supply LLC,

Defendant

Complaint

Sheehan & Associates, P.C.
60 Cuttermill Rd Ste 409
Great Neck NY 11021-3104
Tel: (516) 303-0552
Fax: (516) 234-7800

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: September 26, 2020

/s/ Spencer Sheehan
Spencer Sheehan

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

Aileen Goldstein, individually and on behalf of all others similarly situated

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

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

Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-3104 (516) 303-0552

DEFENDANTS

Sally Beauty Supply LLC

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)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 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 checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input 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)

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 <hr/> PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<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
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	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	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))
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	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)

- | | | | | | |
|---|---|--|---|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 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 9/26/2020 SIGNATURE OF ATTORNEY OF RECORD

/s/ Spencer Sheehan

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

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

UNITED STATES DISTRICT COURT

for the Eastern District of New York

Aileen Goldstein, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

Sally Beauty Supply LLC,

Defendant(s)

Civil Action No. 1:20-cv-04583

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Sally Beauty Supply LLC
c/o Corporate Creations Network Inc.
425 W Washington St Ste 4
Suffolk VA 23434-5320

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., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-3104 (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