

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

DIANE BUHLER and ERIC LIEBERMAN,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

MONA VIE, INC., a Utah corporation, and  
MONAVIE, LLC, a Delaware limited liability  
company,

Defendants.

**CLASS ACTION COMPLAINT AND DEMAND FOR TRIAL BY JURY**

Plaintiffs Diane Buhler and Eric Lieberman (“Plaintiffs”) bring this action against Defendants Mona Vie, Inc., and MonaVie, LLC (collectively, “Defendants” or “MonaVie”), on behalf of themselves and all others similarly situated, and make the following allegations upon information and belief, except as to their own actions, the investigation of their counsel, and the facts that are a matter of public record:

**PRELIMINARY STATEMENT**

1. Plaintiffs bring this class action to enjoin Defendants from their false and deceptive advertising of the health benefits of their juice products sold throughout the United States, to cause Defendants to disclose the presence of dangerous substances in these juice products, to cause Defendants to conduct corrective advertising regarding the lack of any health benefits of their juice products, and to restore monies to the consumers who purchased the products during the time that Defendants made these affirmative misrepresentations and material omissions.

2. Defendants manufacture, market, distribute, and sell purportedly high-end “super juice” products, including, without limitation: MonaVie Active, MonaVie Essential, MonaVie

Kosher, MonaVie (M)mun, MonaVie Mx, and MonaVie Pulse (the “Contaminated Juices”).

Defendants sell the Contaminated Juices through their website that exposes every purchaser to the same advertising – in sum, that the Contaminated Juices are miracle health products that promote health and fight against aging. In fact, there is no scientific substantiation to support Defendants’ claims.

3. In addition, the Contaminated Juices contain material and significant levels of arsenic and lead, which are carcinogens and developmental toxins known to cause health problems to consumers, especially children. Exposure to arsenic and lead in food or liquids over time, unlike many other poisons, causes cumulative build up of these toxins in the body. Build up can and has been scientifically demonstrated to lead to the development of chronic poisoning, cancer, developmental and reproductive disorders, as well as serious injuries to the nervous system, and other organs and body systems.

4. Defendants have advertised and sold the Contaminated Juices without any label or warning indicating to consumers that these products contain arsenic and lead, or that one or both of these toxins can over time accumulate in the drinker’s body to the point where lead and/or arsenic poisoning, injury, and disease, including cancer, will occur. Instead, Defendants affirmatively represented that the Contaminated Juices provide health benefits and fight against aging.

5. Defendants’ omissions are false, misleading, and reasonably likely to deceive the public, especially in the light of Defendants’ affirmative representations that indicate that the Contaminated Juices will cure health problems and even fight against aging.

6. Consumers, in purchasing Contaminated Juices, for themselves and their families, reasonably expect and anticipate that these products do what Defendants advertise and that they are healthy and safe. Affirmative deceptive advertising and non-disclosure and concealment of lead and arsenic in Contaminated Juices by Defendants are intended to and do in fact cause consumers to purchase a product Plaintiffs and the Class would not have bought had the misrepresentations not

been made or had disclosures been made. As a result of their misrepresentations and omissions, Defendants have generated substantial sales of the Contaminated Juices.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction in this action under 28 U.S.C. § 1332(d)(2) because this is a class action in which the matter in controversy exceeds \$5,000,000, there are in excess of 100 class members, and some members of the Class are citizens of states different from Defendants.

8. This Court has personal jurisdiction over Defendants because Defendants are authorized to conduct, have conducted, and do conduct business within the State of Florida and within this judicial district.

9. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred within this judicial district.

### **PARTIES**

10. Plaintiffs Diane Buhler and Eric Lieberman reside in West Palm Beach, Florida. Plaintiffs purchased the Contaminated Juices in reliance on Defendants' affirmative health representations, as well as the concealment of warnings regarding the presence and levels of arsenic and lead. Specifically, Plaintiffs purchased bottles of MonaVie Active and MonaVie Essential through Defendants' monthly auto-shipment program in 2011 and 2012. Defendants charged Plaintiffs \$439 for their initial purchase on May 26, 2011, and the subsequent monthly charges between June 2011 and January 2012 ranged from \$130 to \$380, depending on the amount of product shipped. In total, Plaintiffs spent over \$2,000 on the Contaminated Juices before canceling their monthly auto-shipments in early 2012. The affirmative health representations and omissions regarding the arsenic and lead levels in the Contaminated Juices was material to Plaintiffs' decision to purchase the Contaminated Juices. Plaintiffs were willing to pay for the Contaminated Juices because of Defendants' affirmative misrepresentations and material omissions and would not have

purchased the Contaminated Juices, would not have paid as much for the Contaminated Juices, or would have purchased alternative products in absence of the misrepresentations and omissions. As a result of purchasing a product in reliance on these misrepresentations and material omissions, Plaintiffs have suffered injury in fact and lost money as a result of the unfair business practiced alleged here.

11. Defendant Mona Vie, Inc., is incorporated in the State of Utah and is headquartered in South Jordan, Utah. Defendant MonaVie, LLC, is incorporated in the State of Delaware and is also headquartered in South Jordan, Utah. Defendants are both registered to do business in the State of Florida, and both do business in the State of Florida. Defendants sell the Contaminated Juices to consumers in Florida and throughout the United States.

### **SUBSTANTIVE ALLEGATIONS**

#### **I. Arsenic and Lead are Hazardous Carcinogens and Developmental Toxins Which Cause Severe Health Problems.**

12. Arsenic is a metallic substance used in agricultural insecticides. Use in United States agriculture for human consumption has been banned. Arsenic and many of its compounds are poisonous to humans. Arsenic, unlike many other poisons, builds up in the body over time as the person is exposed to and ingests it, resulting in a cumulative exposure which can, over time, become toxic and seriously injurious to health. Metabolic interferences caused by acute or chronic exposure to arsenic can lead to death from multi-system organ failure.

13. The United States Food and Drug Administration (“FDA”) has set standards that regulate the maximum parts per billion (“ppb”) or arsenic permissible in water: bottled water cannot contain more than 10 ppb of total arsenic. *See* 21 C.F.R. 165.110(b)(4)(iii)(A).

14. Arsenic and arsenic compounds are classified as Group 1 Carcinogens by the International Agency for Research on Cancer (“IARC”). Florida law classifies arsenic as an inorganic contaminant and sets the same drinking 10 ppb water limit as the FDA. The Florida

Department of Environmental Protection links arsenic exposure to skin thickening and discoloration, stomach pain, nausea, vomiting, diarrhea, numbness in hands and feet, partial paralysis, and blindness, as well as cancer of the bladder, lungs, skin, kidney, nasal passages, liver and prostate.

15. Lead is a metallic substance formerly used as a pesticide in fruit orchards, but the use of such pesticides is now prohibited in the United States. Lead, unlike many other poisons, builds up in the body over time as the person is exposed to and ingests it, resulting in a cumulative exposure which can, over time, become toxic and seriously injurious to health. Lead is an especially poisonous metal for children, as exposure can cause severe nervous system damage. Lead exposure can also cause blood and brain disorders. Lead poisoning can occur from ingestion of food or water containing lead. Acute or chronic exposure to material amounts of lead can lead to severe brain and kidney damage in adults and children, miscarriages, as well as reduced fertility in males, and ultimately cause death.

16. The FDA has set standards that regulate the maximum parts per billion (“ppb”) of lead permissible in water: bottled water cannot contain more than 5 ppb of total lead. *See* 21 C.F.R. 165.110(b)(4)(iii)(A).

17. The Florida Department of Environmental Protection links lead exposure to interference with red blood cell chemistry, delays in normal physical and mental development in babies and young children, slight deficits in the attention span, hearing, and learning abilities of children, and slight increases in the blood pressure of some adults.

18. In early 2012, in response to alarming reports regarding the levels of arsenic and lead in apple juice sold in the United States for human consumption, New Jersey Congressman Frank Pallone, Jr. introduced the Arsenic Prevention and Protection from Lead Exposure in Juice Act of 2012 (the “APPLE Juice Act of 2012”; H.R. 3984), which sought to make it unlawful to sell apple juice for human consumption that exceeded 10 ppb of inorganic arsenic and 5 ppb of lead, matching bottled water regulations under 21 C.F.R. 165.110(b)(4)(iii)(A).

19. In July of 2013, the FDA responded to the growing concerns over the presence of arsenic in apple juice by issuing guidance for the apple juice industry. *See* Draft Guidance for Industry: Arsenic in Apple Juice – Action Level, *available at* <<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ChemicalContaminantsMetalsNaturalToxinsPesticides/ucm360020.htm>> (last visited April 14, 2014) (the “FDA’s Arsenic in Apple Juice Industry Guidance”). This guidance set an action level of 10 ppb for inorganic arsenic in apple juice, paralleling the APPLE Juice Act of 2012 and bottled water regulations.

## **II. Defendants’ Juice Products Contain Dangerously High Levels of Arsenic and Lead.**

20. Based on independent test results of the Contaminated Juices purchased by Plaintiffs, the Contaminated Juices contain up to 31.0 ppb of inorganic arsenic, and up to 5.2 ppb of lead.

21. The Contaminated Juices’ inorganic arsenic levels are significantly higher than the current FDA action level for apple juice. *See* the FDA’s Arsenic in Apple Juice Industry Guidance, *supra*. These levels also are significantly higher than the FDA limits for bottled water: 10 ppb of inorganic arsenic and 5 ppb of lead. *See* 21 C.F.R. 165.110(b)(4)(iii)(A).

22. Plaintiffs’ consumption of the Contaminated Juices produced adverse health effects due to the Contaminated Juices’ arsenic and lead content. Plaintiff Lieberman fell extremely ill after only two months of consuming the Contaminated Juices. Plaintiff Lieberman began experiencing severe headaches, dizziness, lowered stamina, fatigue, weight loss, irritability, depression, anxiety, balance difficulties, among other health problems. The headaches persisted for months, becoming debilitating and causing insomnia. After seven months of medical evaluations and hospital visits, Plaintiff Lieberman’s doctor determined that his arsenic levels were ten times that of a normal adult. Plaintiff Lieberman’s medical expenses are over \$140,000 to date and ongoing.

23. After consuming the Contaminated Juices for six months, Plaintiff Buhler developed a severe acne rash on her face. Plaintiff Buhler had never had acne problems before in her life, and

after seeking multiple medical opinions, doctors believed her acne was caused by high arsenic and lead levels as the result of consuming the Contaminated Juices. Plaintiff Buhler's acne still has not gone away and may cause permanent facial scarring.

24. Plaintiffs also fed some of the Contaminated Juices to their daughter, who is now five, because Defendants' salesperson told them that the MonaVie Essential flavor was "fine" for children to consume.

25. Despite the significant bodily harm they have suffered as a result of consuming the Contaminated Juices, Plaintiffs are not seeking personal injury damages and, instead, seek to recover damages for the false advertising described below on behalf of the Class.

### **III. Defendants' Deceptive Marketing and Material Omissions.**

26. Defendants manufacture, market, distribute, and sell the Contaminated Juices with labeling that fails to disclose and omits the presence of lead or arsenic, or the serious health concerns associated with arsenic or lead ingestion. Instead, Defendants market the Contaminated Juices as containing many allegedly healthy ingredients, including antioxidants and vitamins.

27. According to Defendants, the Contaminated Juices are comprised of a blend of nearly twenty different fruit juices, including, without limitation, acai berry, acerola, apple, aronia, bilberry, blackberry, blueberry, camu camu, cherry, concord grape, cranberry, cupuacu, elderberry, pineapple, pomegranate, prickly pear, raspberry, strawberry, and yumberry. The Contaminated Juices also allegedly contain apple phtyo-phenolics, plant sterols, and omega-3.

28. Defendants market the Contaminated Juices as "products with a purpose," making the following claims:

From powerful antioxidant support to joint, heart, and immune health, MonaVie body-beneficial products provide the nutrition you need for a healthy and active lifestyle.

Delivering a wide array of antioxidants, vitamins, and phytonutrients, as well as other beneficial ingredients like Wellmune®, plant-derived glucosamine, and plant sterols, every serving is as efficacious as it is delicious.

See <http://www.monavie.com/products/health-juices> (last visited April 11, 2014).

29. Defendants market their entire product line as “premier” or “premium” products, with the Contaminated Juices marketed as “health juices”:



30. Defendants claim scientific support from clinical research and other sources for the Contaminated Juices purported health benefits, even going as far to say the Contaminated Juices possess anti-aging properties:

#### YOUR HEALTH, OUR COMMITMENT

MonaVie’s dedication to your overall health extends far beyond the first sip. Combining the best of science and nature, we draw on millions of dollars of clinical research to develop our premium health products.

By unlocking, sharing, and protecting the most valuable resources our planet has to offer, we are able to deliver powerful, health-giving benefits in every bottle. Our rigorous testing standards ensure the highest possible



quality products and demonstrate our commitment to science and—most importantly—your health.

#### POWERFUL NUTRIENTS FIGHT AGAINST AGING

The MonaVie premier juice blends contain powerful nutrients that aid your body in the fight against aging and other symptoms of oxidative stress.

*See* <http://www.monavie.com/products/health-juices#!SCIENCE> (last visited April 11, 2014).

31. Defendants omit from their labeling and online advertising that material and significantly high levels of arsenic and lead are present in the Contaminated Juices. At the same time, Defendants utilize health-driven marketing and advertising, including, without limitation, “increase energy,” “relieve headaches,” “improve sleep quality,” “improve your memory,” “strengthen your heart,” “improve joint, heart, and immune health,” “improve fertility,” “enhance sexual function,” “support healthy liver function,” “improve digestion,” and “fight against aging,” to imply that the Contaminated Juices are safe and extremely healthy.

32. Defendants’ affirmative representations regarding the Contaminated Juices’ purported health benefits lack any scientific support and are completely unfounded.

33. As a result of Defendants’ affirmative misrepresentations and material omissions, a reasonable consumer would have no reason to suspect the presence of arsenic and lead in the Contaminated Juices without conducting his or her own scientific tests, or reviewing third party scientific testing of these products.

34. Defendants have reaped millions of dollars in profits by failing to disclose to consumers that the Contaminated Juices contain arsenic and lead, and leading consumers to believe that the Contaminated Juices support health and prevent aging. Consumers would not have purchased the Contaminated Juices had they known the truth: that there is no sound scientific substantiation for Defendants healthful claims, and that Contaminated Juices contain the material levels of arsenic and lead that they do.

### CLASS ACTION ALLEGATIONS

35. Plaintiffs bring this class action on behalf of themselves and a class of all Florida purchasers who purchased the Contaminated Juices (the “Class”). Excluded from the Class are Defendants, officers, directors, and employees of Defendants, any entity in which Defendants have a controlling interest, the affiliates, legal representatives, attorneys, heirs, and assigns of Defendants, any federal, state or local government entity, and any judge, justice, or judicial officer presiding over this matter, and the members of their immediate families and judicial staffs.

36. The members of the Class are so numerous that joinder of all members would be impracticable. Plaintiffs reasonably estimate that there are thousands, if not millions, of purchasers of the products at issue.

37. This action satisfies the requirements of Federal Rule of Civil Procedure 23(b)(3) because it involves questions of law or fact common to members of the Class that predominate over any questions affecting only individual members, including:

- a. Whether Defendants initiated and thereafter maintained a deceptive marketing campaign by advertising the Contaminated Juices as having healthful effects;
- b. Whether Defendants initiated and thereafter maintained a deceptive marketing campaign by failing to notify consumers of the arsenic and lead content in the Contaminated Juices;
- c. Whether Defendants have engaged in unfair or unlawful trade practices by their advertising of the Contaminated Juices;
- d. Whether Defendants have engaged in unfair, deceptive, untrue, or misleading advertising;
- e. Whether Defendants violated Florida’s Deceptive and Unfair Trade Practices Act, Florida Statute § 501.201, *et seq.* (the “FDUTPA”);
- f. Whether Defendants breached their implied warranties;

- g. Whether Defendants have been unjustly enriched;
- h. Whether the members of the Class have been injured by Defendants' conduct;
- i. Whether Plaintiffs and the Class are entitled to relief, and the amount and nature of such relief; and
- j. Whether Plaintiffs and Class members are entitled to declaratory and injunctive relief.

38. The claims of the Plaintiff class representatives are typical of the claims of the members of the Class. Plaintiffs have no interests antagonistic to those of the Class and Defendants have no defenses unique to Plaintiffs.

39. Plaintiffs will fairly and adequately protect the interest of the Class and have retained attorneys experienced in class and complex litigation.

40. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because it is economically impractical for members of the Class to prosecute individual actions, the Class is readily definable, and prosecution as a class action will eliminate the possibility of repetitious litigation.

41. A class action will cause an orderly and expeditious administration of the claims of the Class. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

42. Plaintiffs do not anticipate any undue difficulty in the management of this litigation.

43. Plaintiffs and the Class expressly exclude any claims for bodily harm or personal injury arising from Defendants' conduct.

#### **FIRST CAUSE OF ACTION**

##### **(Violation of Florida Deceptive and Unfair Trade Practices Act)**

44. Plaintiffs incorporate by reference each former paragraph of this Complaint.

45. Plaintiffs bring this claim individually and on behalf of the Class.

46. The FDUPTA was enacted to protect the consuming public and legitimate business

enterprises from those who engage in “unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.204.

47. Plaintiffs and Class members are “consumers” as defined by Florida Statute §501.203(7), and the subject transactions are “trade or commerce” as defined by Florida Statute §501.203(8).

48. Defendants violated and continue to violate the FDUPTA by engaging in the described unconscionable, deceptive, unfair acts or practices proscribed by Florida Statute §501.201, *et seq.* Defendants’ described affirmative misrepresentations, omissions, and practices were likely to, and did in fact, deceive and mislead members of the public, including consumers acting reasonably under the circumstances, to their detriment.

49. Defendants have engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of its trade and commerce by their affirmative deceptive representations (claiming that the Contaminated Juices promote health and prevent aging) and deceptive omissions (failing to disclose the high levels of arsenic and lead in the Contaminated Juices).

50. Defendants’ conduct is unethical, violates public policy, and has caused and may continue to cause substantial consumer injury.

51. Plaintiffs and the Class reserve the right to allege other violations of the FDUPTA, as Defendants’ conduct is ongoing.

52. As a direct and proximate result of the unconscionable, unfair, and deceptive acts or practices alleged herein, Plaintiffs and the Class members have been damaged and are entitled to recover actual damages to the extent permitted by law, including class action rules, in an amount to be proven at trial. Plaintiffs and the Class also seek equitable relief and to enjoin Defendants on the terms that the Court considers reasonable. In addition, Plaintiffs and the Class seek reasonable attorneys’ fees and costs incurred in bringing this action.

## SECOND CAUSE OF ACTION

### (Breach of Implied Warranties)

53. Plaintiffs incorporate by reference each former paragraph of this Complaint.

54. Plaintiffs bring this claim individually and on behalf of the Class.

55. Plaintiffs, and each member of the Class, formed a contract with Defendants at the time Plaintiffs and Class members purchased the Contaminated Juices.

56. The terms of that contract included the implied promises of merchantability that (1) the product was fit for the ordinary purpose for which it was intended, *i.e.*, human consumption, and (2) the product was adequately contained, packaged, and/or labeled.

57. The terms of the contract also included an implied promise of fitness for a particular purpose, *i.e.*, human consumption, in which Defendants had reason to know the particular purpose for which Plaintiffs and Class members required the juice products and Plaintiffs and Class members relied on Defendants' skill and judgment to select and furnish suitable products that were fit for that purpose.

58. These implied warranties became part of the basis of the bargain, and were part of a standardized contract between Plaintiffs and the members of the Class on the one hand, and Defendants on the other.

59. All conditions precedent to Defendants' liability under these contracts have been performed by Plaintiffs and the Class.

60. Defendants breached the terms of these contracts with Plaintiffs and the Class, including the implied warranties of merchantability and fitness for a particular purpose, by not providing juice products that were fit for the purpose of human consumption and were inadequately labeled and advertised due to Defendants' failure to disclose the Contaminated Juices' arsenic and lead content.

61. As a result of Defendants' breach of its implied warranties, Plaintiffs and the Class

have been damaged in the amount of the purchase price of the Contaminated Juices they purchased.

### **THIRD CAUSE OF ACTION**

#### **(Unjust Enrichment)**

62. Plaintiffs incorporate by reference each former paragraph of this Complaint.

63. Plaintiffs bring this claim individually and on behalf of the Class.

64. Defendants sold the Contaminated Juices based on false and misleading advertising, including failure to disclose material facts, as stated more fully above.

65. Defendants have been unjustly enriched by collecting the price of the Contaminated Juices, which Plaintiffs and Class members paid in reliance on Defendants' false and misleading advertising.

66. Plaintiffs, on behalf of themselves and the Class, seek restitution of the full price of all Contaminated Juices they purchased.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of the other members of the Class proposed in this Complaint, respectfully request that the Court enter judgment in his favor and against Defendants, as follows:

A. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiffs as Class Representatives and appointing the undersigned counsel as Class Counsel;

B. Ordering Defendants to pay actual damages and equitable monetary relief to Plaintiffs and the other members of the Class;

C. Ordering Defendants to pay punitive damages, as allowable by law, to Plaintiffs and the other members of the Class;

D. Awarding injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, and ordering Defendants to

engage in a corrective advertising campaign;

E. Ordering Defendants to pay attorneys' fees and litigation costs to Plaintiffs and the other members of the Class;

F. Ordering Defendants to pay both pre- and post-judgment interest on any amounts awarded; and

G. Ordering such other and further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial of their claims to the extent authorized by law.

Dated: May 29, 2014

/s/ John A. Yanchunis  
John A. Yanchunis, FBN: 0324681  
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Counsel for Plaintiffs,  
Eric Lieberman and Diane Buhler

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.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

**I. (a) PLAINTIFFS** Diane Buhler and Eric Lieberman, individually and on behalf of all others similarly situated  
**DEFENDANTS** Mona Vie, Inc., a Utah Corporation, and Mona Vie, LLC, a Delaware limited liability company

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

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
 John A. Yanchunis and Tamra C. Givens, Morgan & Morgan Complex Litigation Group, 201 N. Franklin Street, 7th Floor, Tampa, FL 33602

**(d)** Check County Where Action Arose:  MIAMI-DADE  MONROE  BROWARD  PALM BEACH  MARTIN  ST. LUCIE  INDIAN RIVER  OKEECHOBEE  HIGHLANDS

**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)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | Plf                                   | Def                        |   | Plf                        | 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)

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 (Excl. 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	<b>PERSONAL INJURY</b> <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 - Med. Malpractice	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. 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 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <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 Influence and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" 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	CIVIL RIGHTS	PRISONER PETITIONS			
<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	<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	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Other:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <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			

**V. ORIGIN** (Place an "X" in One Box Only)  
 1 Original Proceeding  2 Removed from State Court  3 Re-filed (See VI below)  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment  8 Remanded from Appellate Court

**VI. RELATED/RE-FILED CASE(S)** (See instructions):  
 a) Re-filed Case  YES  NO   
 b) Related Cases  YES  NO

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

**VII. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):  
 28 U.S.C. 1332(d)(2); Fla. Stat. 501.201 et seq.; Implied Warranty; and Unjust Enrichment  
 LENGTH OF TRIAL Via \_\_\_\_\_ days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE  
 DATE: May 29, 2014 SIGNATURE OF ATTORNEY OF RECORD: 

**FOR OFFICE USE ONLY**  
 RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ LFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VIII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**Date and Attorney Signature.** Date and sign the civil cover sheet.



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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Diane Buhler and Eric Lieberman, individually, and on behalf of all others similarly situated,

Plaintiff(s)

v.

MONA VIE, INC., a Utah corporation, and MONAVIE, LLC, a Delaware limited liability company,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MONAVIE, LLC, a Delaware limited liability company c/o NRAI SERVICES, INC. 1200 South Pine Island Road Plantation, FL 33324

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:

John A. Yanchunis Morgan & Morgan, Complex Litigation Group 201 N. Franklin Street, 7th Floor Tampa, Florida 33602

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: 05/29/2014

Signature of Clerk or Deputy Clerk