

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

CASE NO. 1:18-cv-23072

BRANDON OPALKA, an individual,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

AMALIE AOC, LTD.,
a Florida limited partnership,

Defendant.

NOTICE OF REMOVAL

1. Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant Amalie AOC, Ltd., a Florida Limited Partnership (“Amalie AOC”) hereby removes this action from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County to the United States District Court for the Southern District of Florida, being the federal district embracing the place where the case is pending. In support of this Notice of Removal, Amalie AOC states the following:

TIMELINESS OF THE REMOVAL

2. On June 14, 2018, Brandon Opalka commenced this action by filing a Complaint in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, entitled *Brandon Opalka v. Amalie AOC, Ltd.*, No. 18-19664-CA-44.¹

¹ Pursuant to 28 U.S.C. § 1446(a), the Complaint is attached hereto as Exhibit A, and copies of all other process, pleadings, and orders served upon Amalie AOC in this action, along
(footnote continued on next page)

3. Amalie AOC's counsel agreed to accept service of the Complaint, effective June 28, 2018. In return, plaintiffs' agreed to an enlargement of Amalie AOC's time to serve a responsive pleading through August 13, 2018. Amalie AOC filed its Answer and Defenses to the Complaint on July 27, 2018.

4. This Notice is timely because it was filed within thirty days of service of process on Amalie AOC. 28 U.S.C. § 1446(b); *see also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) (holding "that a named defendant's time to remove is triggered by simultaneous service of the summons and complaint, or receipt of the complaint, 'through service or otherwise,' after and apart from the service of the summons, but not by mere receipt of the complaint unattended by any formal service").

5. Written notice of the filing of this Notice of Removal and the removal of the state court action is being served on plaintiff through his counsel of record. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being promptly filed with the Clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County.

THE PARTIES

6. Plaintiff Brandon Opalka ("plaintiff") is a citizen of the State of Florida.

7. Amalie AOC is a Florida limited partnership with five members, including one general partner, Packers Acquisition Company ("Packers"), and four limited partners which are Florida revocable trusts (the "Trust Members"). Packers is incorporated and has its principal place of business in Florida. The Trust Members of Amalie AOC are traditional revocable trusts, whose trustees possess the power to hold, manage, and dispose of the trust assets for the benefit of themselves and others. The Trust Members of Amalie AOC include the Harry J. Barkett with other documents in the state court file, are attached as Exhibit B.

Trust, whose trustee is Harry J. Barkett; the Anthony J. Barkett Living Trust, whose trustee is Anthony J. Barkett; the Richard A. Barkett Revocable Trust, whose trustee is Richard A. Barkett; and the Kenneth D. Barkett Revocable Trust, whose trustee is Kenneth D. Barkett. Harry J. Barkett, Anthony J. Barkett, Richard A. Barkett, and Kenneth D. Barkett are all citizens of Florida. Because Amalie AOC's members are all citizens of the State of Florida, Amalie AOC is a citizen of the State of Florida. Moreover, because Amalie AOC is an unincorporated association organized under the laws of the State of Florida and with its principal place of business in Florida, Amalie AOC is a citizen of the State of Florida pursuant to 28 U.S.C. § 1332(d)(10).

NATURE OF THE ACTION

8. Plaintiff alleges that he is an individual consumer who “purchased a bottle of XCEL Premium SAE 10W30” motor oil (the “Product”) at a gas station in Miami-Dade County, Florida. Compl. ¶ 7. According to the Complaint, Amalie AOC “manufactures, markets, advertises, and/or sells” the Product, the Product is “obsolete,” and it is “harmful and ineffective as a motor oil for automotive engines manufactured after 1930.” Compl. ¶ 2.² Plaintiff contends that the label on the motor oil container led him to believe that the Product “offered engine protection for his vehicle.” Compl. ¶ 7. Plaintiff acknowledges in the Complaint that the Product includes a “CAUTION” label on the back panel which discloses the API SA rating of the oil about which plaintiff complains. Compl. ¶ 46. Plaintiff also acknowledges that the label states that the motor oil “contains no additives,” and that it is “not suitable for use in most

² While Mr. Opalka names Amalie AOC as the defendant in this case, and contends that Amalie AOC manufactures, markets, advertises, and/or sells the motor oil he purchased, this is incorrect. Amalie AOC, Ltd. does not manufacture, market, advertise, or sell the Product. The Product is manufactured and sold by an affiliate, referred to herein as “Amalie”.

gasoline powered automobiles built after 1930.” *Id.* Plaintiff alleges he did not read this part of the Product’s label, and that “no reasonable person” would have done so. Compl. ¶ 49.

9. Although the Complaint includes no mention of plaintiff’s intended use for the motor oil, or the make or vintage of his automobile, plaintiff contends that the Product is “worthless,” and that he was damaged in the entire amount of the unidentified purchase price that he paid for it. Compl. ¶¶ 60-61. Plaintiff does not allege that he used the motor oil or made any attempt to return it.

10. Based on his allegation that the Product is worthless, and that its label is deceptive, plaintiff asserts claims for violations of the Florida Deceptive and Unfair Trade Practices Act, violations of the Florida’s Misleading Advertising Law, and Unjust Enrichment. Compl. ¶¶ 77-130.

11. In addition to his own claims, plaintiff seeks to represent a “class” of “[a]ll persons in Florida who have a post-1930 automobile, and have purchased, an ‘XCEL Premium Motor Oil’ Product in Florida for use in their automobile.” Compl. ¶ 64. The putative class is not limited to citizens of Florida, but includes all persons in Florida. *Id.* Plaintiff alleges that the putative class consists of “thousands of members.” Compl. ¶ 67.

12. Plaintiff also alleges that the statute of limitations has been tolled for all members of the putative class, some of whom may have purchased the Product more than four years prior to the filing of the Complaint (Compl. ¶ 132-33), and plaintiff does not place any temporal limits on the class definition. Compl. ¶ 64.

13. Plaintiff seeks to recover – individually and on behalf of the alleged class – actual damages, in the “amount of the purchase price” of all oil sold to the putative class (Compl. ¶ 60), equitable relief in the form of restitution and/or “restitutionary disgorgement,” an injunction that

would prohibit the future sale of the Product, “compensatory damages,” interest, attorneys’ fees, and costs, and “[s]uch other and further relief as the Court may deem necessary and appropriate.” Compl. at Prayer for Relief.

BASIS FOR FEDERAL JURISDICTION

14. This action is removable to this Court because federal jurisdiction exists over plaintiff’s claims pursuant to the Class Action Fairness Act.

CLASS ACTION FAIRNESS ACT

15. Federal diversity jurisdiction exists over plaintiff’s claims pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (2005) (“CAFA”) codified in various sections of Title 28 of the United States Code, including 28 U.S.C. §§ 1332(d) & 1453.

16. CAFA became effective on February 18, 2005, and applies to civil actions commenced on or after that date, including this action.

17. CAFA was enacted to enlarge federal jurisdiction over proposed class actions. CAFA provides that a class action against a non-governmental entity may be removed if: (a) the number of proposed class members is not less than 100; (b) there is requisite “minimal” diversity of citizenship among the parties; and (c) the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5) & 1453(b). As demonstrated below, all of CAFA’s removal requirements are satisfied in this case.

18. Further, it is clear from both Supreme Court precedent and CAFA’s legislative history that any doubts should be resolved in favor of federal jurisdiction. *See, e.g., Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014) (holding that “no anti-removal presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court”); S. Rep. 109-14, at 43 (2005) (“Overall,

[CAFA] is intended to expand substantially federal court jurisdiction over class actions. Its provisions should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant.”); *id.* at 35 (explaining that the intent of CAFA “is to strongly favor the exercise of federal diversity jurisdiction over class actions with interstate ramifications”). Indeed, the Eleventh Circuit has recognized that, in light of the Supreme Court’s holding in *Dart*, courts can “no longer rely on any presumption in favor of remand in deciding CAFA jurisdictional questions.” *Dudley v. Eli Lilly & Co.*, 778 F.3d 909, 912 (11th Cir. 2014) (citation omitted).

Class Size

19. Although Amalie AOC does not concede that plaintiff has defined a proper class or that a class can be certified, the number of members of the class proposed by plaintiff is not less than 100. Plaintiff’s Complaint alleges that “[p]laintiff reasonably estimates that there are thousands of members of the class.” Compl. ¶ 67.

20. The Product has been sold in Florida for more than 20 years. The volume of sales is substantial. On average, Amalie has sold more than 730,000 gallons of the Product in Florida each year over the last six years.

21. Amalie is not a retailer and does not sell the product directly to consumers. Amalie prices the product for sale to wholesalers and retailers by the gallon, but the Product is packaged for sale to consumers in quart and gallon-sized containers. Consumers generally purchase the Product from retailers in small quantities. For example, Mr. Opalka alleges he bought a single “bottle” of the Product from a gas station shelf. The Complaint includes a picture of a quart bottle of XCEL Premium Motor Oil. Many consumers purchase the Product by the quart or gallon in this manner. Others may purchase several containers at one time.

22. Accordingly, the proposed class of all consumer purchasers of the Product in Florida exceeds 100 members.

Minimal Diversity of Citizenship

23. CAFA's requirement of minimal diversity is satisfied because, although plaintiff is a citizen of Florida, the putative class includes citizens of states other than Florida, and Amalie AOC is a citizen of Florida. 28 U.S.C. § 1332(d)(2)(A).

24. No exception to CAFA jurisdiction applies here, because plaintiffs have not alleged and cannot establish that any particular percentage of the members of the proposed class are Florida residents. *See* 28 U.S.C. § 1332(d)(4). The proposed class includes all persons "in Florida" who purchased the Product, regardless of their residency. *See Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1164, 1166 (11th Cir. 2006) (party seeking remand of removed case bears burden of establishing exception to jurisdiction, and local controversy exception did not apply to class action litigation removed from Alabama state court where court had "no way of knowing what percentage of the plaintiff class are Alabama citizens").

Aggregate Amount in Controversy

25. CAFA's third requirement is satisfied because "the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs." 28 U.S.C. § 1332(d)(2). Although Amalie AOC disputes liability and damages as well as the propriety of class certification in this case, plaintiff's allegations and prayer for relief, irrespective of their merits, place in controversy an aggregate amount greater than \$5 million.

26. The Complaint does not include a demand for any specific sum of monetary relief, but asserts that the amount in controversy "exceeds \$750,000, exclusive of attorneys' fees and costs." As set forth below, the sum or value of the monetary and equitable relief sought by

plaintiff for himself and the putative class members exceeds \$5 million, exclusive of interest and costs.

27. The United States Supreme Court has held that “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co.*, 135 S. Ct. at 554. The amount in controversy is not “the amount the plaintiff will recover,” but rather “an estimate of the amount that will be put at issue in the course of the litigation.” *Dudley*, 778 F.3d at 913 (citing *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir. 2010)); *see also S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1318 (11th Cir. 2014) (“[T]he pertinent question . . . is what is *in controversy* in the case, not how much the plaintiffs are ultimately likely to recover.”) (citations and internal quotation marks omitted).

28. Plaintiff claims that the Product is worthless and should not be available for sale to consumers in Florida. He asserts several claims for damages and equitable relief, and contends that all statutes of limitations have been tolled.

29. In the six years preceding the filing of the Complaint – from June 2012 through May 2018 – Amalie sold more than 4,000,000 gallons of the Product in Florida, to wholesale and retail business locations in Florida. The gross revenues from these sales were approximately \$20.5 million.

30. As compensatory damages, plaintiff seeks to recover the full retail price paid by class members for the Product. Amalie’s sales records reflect its revenue from sales of the Product to wholesalers and retailers in Florida, not the revenue paid by consumers. However, individual retailers determine the prices that consumers pay for the Product, typically by applying a markup over and above the wholesale prices that they paid for the Product.

Accordingly, the compensatory damages sought by plaintiff would be greater than the price wholesalers and retailers paid to Amalie for the Product because any such damages would include those markups.

31. “Estimating the amount in controversy is not nuclear science; it does not demand decimal-point precision.” *S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, 745 F.3d 1312, 1317 (11th Cir. 2014). The Eleventh Circuit has explained that determining the amount in controversy is an “undertaking . . . not to be defeated by unrealistic assumptions that run counter to common sense.” *Id.* (finding removal proper and rejecting plaintiffs’ characterization of amount in controversy as speculative given the “large number of medical bills at issue and the significant amount of money at stake”); *see also Scott v. Cricket Commc’ns, LLC*, 865 F.3d 189, 196 (4th Cir. 2017) (citing *S. Fla. Wellness, Inc.*, 745 F.3d at 1317, noting that “a removing defendant is somewhat constrained by the plaintiff,” and rejecting plaintiff’s contention that defendant’s evidence of the amount in controversy was over-inclusive; explaining it is appropriate for defendant’s allegations to rely on “reasonable estimates, inferences, and deductions”).

32. Given Amalie’s sales in Florida over the past six years alone, Plaintiff’s allegations put well over \$5,000,000 of controversy with respect to his claims for compensatory damages.

33. Plaintiff has also demanded that disgorgement of any money received through the sale of the Product in Florida as restitution for selling a product that is allegedly worthless. From June 2012 to May 2018, Amalie has collected approximately \$20.5 million of revenue from sales of the Product delivered to wholesalers and retailers in Florida. Even after deducting Amalie’s cost, that amount exceeds \$5,000,000.

34. In determining whether the amount in controversy is satisfied, the Court may also consider the amount of punitive damages in controversy. *Booker v. Doyon Sec. Servs., LLC*, 2017 WL 5202682, at *3 (S.D. Fla. Jan. 20, 2017) (citing *Holley Equip. Co. v. Credit Alliance Corp.*, 821 F.2d 1531, 1535 (11th Cir. 1987)). Although plaintiff's Complaint does not include an express demand for punitive damages, and although Amalie AOC disputes that plaintiff would be entitled to recover any such damages, the Complaint asserts a claim for Misleading Advertising under Fla. Stat. § 817.41, which provides for an award of punitive damages. *See* Fla. Stat. § 817.41(6); *see also* Fed. R. Civ. P. 54(c) (providing that every final judgment, except a default judgment, "should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings"). Subject to Amalie AOC's constitutional and other defenses, punitive damages under Florida law would be limited to a maximum award of three times the amount of compensatory damages. *See McDaniel v. Fifth Third Bank*, 568 F. App'x 729, 732 (11th Cir. 2014) (citing Fla. Stat. § 768.73(1)(a)). Given the gross sales of \$20.4 million in Florida over a limited six year period, the punitive damages in controversy exceed \$60 million.

35. Thus, plaintiff's allegations demonstrate that the aggregated value of the "claims of the individual class members . . . exceed the sum or value of \$5,000,000.00." 28 U.S.C. § 1332(d)(2).

CONCLUSION

For the reasons stated above, Amalie AOC hereby removes this action from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County to the United States District Court for the Southern District of Florida.

Dated: July 27, 2018

Respectfully submitted,

/s/ Julianna Thomas McCabe

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July, 2018, a true and correct copy of the foregoing document was served by First-Class United States Mail, postage prepaid, on all counsel of record on the Service List below:

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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 BRANDON OPALKA, an individual on behalf of himself and all others similarly situated, DEFENDANTS AMALIE AOC, LTD., a Florida limited partnership

(b) County of Residence of First Listed Plaintiff Broward County, Florida (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) See Attachment A Attorneys (If Known) Carlton Fields Jordan Burt, 100 S.E. Second Street, Suite 4200, Miami, Florida 33131, (305) 530-0050

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

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Grid for Basis of Jurisdiction and Citizenship of Principal Parties. Includes categories like U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF/DEF boxes for various citizenship and business incorporation options.

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

Grid for Nature of Suit. Categories include CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PERSONAL INJURY, TORTS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, and OTHER STATUTES. Includes specific codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, etc.

V. ORIGIN (Place an "X" in One Box Only)

Grid for Origin of Suit. Options include Original Proceeding, Removed from State Court, Re-filed, Reinstated or Reopened, Transferred from another district, Multidistrict Litigation Transfer, Appeal to District Judge from Magistrate Judgment, Multidistrict Litigation - Direct File, and Remanded from Appellate Court.

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] 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, 1441, 1446, and 1453; Putative class action alleging deceptive and unfair trade practices

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 \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE 7/27/18 SIGNATURE OF ATTORNEY OF RECORD /s/ Julianna Thomas McCabe

ATTACHMENT A

TO CIVIL COVER SHEET

Opalka v. Amalie AOC, Ltd.

I.(c) Attorneys for Plaintiff

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EXHIBIT A

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

BRANDON OPALKA, an individual,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

AMALIE AOC, LTD., a Florida
Limited Partnership,

Defendant.

CASE NO.:

CLASS REPRESENTATION

COMPLEX BUSINESS LITIGATION

CLASS ACTION COMPLAINT

Plaintiff Brandon Opalka (“Plaintiff”), individually and on behalf of all others similarly situated, makes the following class action allegations against Defendant Amalie AOC Ltd. (“Defendant”):

INTRODUCTION

1. Plaintiff brings this consumer class action on behalf of himself and on behalf of the class defined below to redress the deceptive and/or unfair trade practices, acts, and/or omissions employed by Defendant in the marketing and sale of its XCEL Premium line of (purported) passenger car motor oil (the “Product” or “XCEL Oil”).

2. Using deceptive and unfair tactics, Defendant manufactures, markets, advertises, and/or sells XCEL Oil, which is considered “obsolete” by the American Petroleum Institute (“API”), receiving an “API SA” rating. The Product is harmful and ineffective as a motor oil for automotive engines manufactured after 1930.

3. Despite the fact that it should not be used in automotive engines, Defendant continues to sell the Product, using product packaging conveying the impression that the Product is meant to be used in modern passenger car automotive engines. The label not only misleads reasonable consumers, but also contains flat-out falsehoods.

4. Defendant knows exactly what it is selling (“cancer”), and why (profit), as one of its executives admitted in a 2003 interview:¹

“We would rather not sell non-detergent oil,” said Amalie Senior Vice President of Sales and Marketing Dennis J. Madden. “There’s no question that it’s not good for today’s engines. I tell people, ‘It’s not going to give your car a heart attack. It’s more like cancer.’ But a lot of people are only concerned with price and they’ll buy that stuff because it’s 30 cents cheaper. And as long as people are going to buy non-detergent oils, and other companies are going to sell them, we feel like we have to compete.”

5. The Product is sold at major Florida gas station chains including, among others, Sunoco and Marathon, and upon information and belief, is also available at major retailers, such as Sam’s Club.

6. Defendant’s deceptive and/or unfair business practices violate Florida’s Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.* (“FDUTPA”); Florida’s Misleading Advertising Law, Fla. § Stat. 817.41; and have unjustly enriched Defendant.

PARTIES

7. Plaintiff Brandon Opalka is an individual consumer who, at all times material hereto, was a resident of Broward County, Florida. Plaintiff purchased a bottle of XCEL Premium SAE 10W-30 in the Summer or Fall of 2017 from a gas station in Miami-Dade County based on Defendant’s label, which led Mr. Opalka to purchase the product based on the belief that it offered

¹ T. Sullivan, *California Cracks Down on API SA, SB Oils*, Lube Report Mag. (July 9, 2003), available at http://www.synlube.com/LUBEREPORT_CA_SA_SB.htm.

engine protection for his vehicle. Mr. Opalka took Defendant's representations that the Product offered engine protection in passenger car automotive engines in making his purchase and would not have purchased the Product, or would not have paid a premium for it, had Defendant not made the misrepresentations and omissions set forth herein.

8. Defendant Amalie AOC, Ltd. is a Florida Limited Partnership based in Tampa, Florida, and can be served through its registered agent Kenneth Barkett, located at 1601 McCloskey Blvd., Tampa, Florida 33605.

JURISDICTION AND VENUE

9. This is a representative action for injunctive relief and damages, and the amount in controversy exceeds \$750,000, exclusive of attorneys' fees and costs.

10. Jurisdiction exists pursuant to Fla. Stat. § 48.194, because Defendant operates, conducts, engages in, and carries on its business in this State. Defendant further maintains its headquarters in this State.

11. Venue exists pursuant to Fla. Stat. §§ 47.011, and 47.041, because Plaintiff's causes of action accrued in this County.

FACTUAL ALLEGATIONS

A. The Evolution of Motor Oil and the API Rating System

12. Modern motor oils play a key role in the performance and health of automotive engines in cars and trucks. Their main function is to reduce wear and friction in an engine. For example, they improve piston ring sealing, long-term stability and fuel efficiency; as well as inhibit sludge buildup and corrosion.

13. Motor oil has evolved significantly over time. In the early 1900s, motor oils consisted of nothing more than “base oil”; meaning, they contained no additional ingredients (called “additives”).

14. Starting in the 1940s, the API service classification of motor oils was developed to ensure that consumers chose motor oils that met the performance specification of their engines. The classification, also known as “rating,” was typically performance based; meaning, the motor oil had to perform at a certain level in engine tests. These performance qualifications, coupled with the performance specifications of newer engines, in turn drove the development of motor oil through advances in additive technology.

15. As the ratings increased (from SA to the current SN Plus specification), API declared older motor oil ratings “obsolete”; and stated that they should not be used in newer automobiles due to a risk of engine harm. One reason for this is that API’s motor oil ratings are backwards compatible. In other words, while SA-rated oil will harm a modern engine, SN-rated oil will meet the needs of a vintage engine.

16. The first API rating, declared “obsolete” in 1947 when API first developed the rating system, is SA-rated motor oil, which was designated only for engines manufactured prior to 1931. As set forth above, SA-rated motor oil is base oil without any additives and thus cannot meet the demands of engines developed after 1930, much less modern engines. Further, the SA-rating is not required to meet *any* performance or chemical composition tests.

17. Over time, as the requirements of newer engines became more complex, motor oil similarly evolved. One of the ways by which the industry improved the performance of motor oil was through the inclusion of various additives in commercially available products. Additives play

many roles, such as shelf life enhancers, foam inhibitors, corrosion inhibitors, detergents, dispersants, viscosity modifiers, and friction and wear modifiers.

18. The evolution of motor oil was not only better, but also necessary to meet the needs of evolving automotive engines. Engine parts moving at much higher speeds under higher temperatures put additional demands and strains on motor oils. Further, the higher temperatures accelerated the oxidation and decomposition of the motor oil, requiring the use of various additives to compensate for these issues.

19. A number of factors led to the need for additives for post-1930 engines. In the early 1900s, the national road system (wherein less than 10% of roads were even surfaced) did not permit long periods of high-speed driving. Thus, automobile engines operated under relatively mild conditions, requiring less performance from the motor oil.

20. Further, early automobiles were not designed for year-round use, and most were stored indoors during bouts of cold weather. Thus, the ability of motor oils to start at low temperatures (lower viscosity oils) was not needed.

21. Improvements in engine design also required better motor oils. Early engines were poorly designed, and recommended service levels (the number of miles driven before an oil change is needed) could be as low as 16 miles. Engines constantly leaked oil, and car owners needed to add motor oil almost daily. Thus, the long-term stability of motor oil was less important since it was being changed so frequently.

22. A major impetus for the development of motor oil (and the move from an SA- to SB-rating) occurred between 1930 and 1950, when the petroleum industry introduced solvent refining technology for motor oil. This process improved the viscosity index of oils, but at the cost

of removing some of the naturally occurring anti-oxidation properties of the oil (which protected against deterioration). Thus, oxidation inhibitors were added to motor oils to compensate.

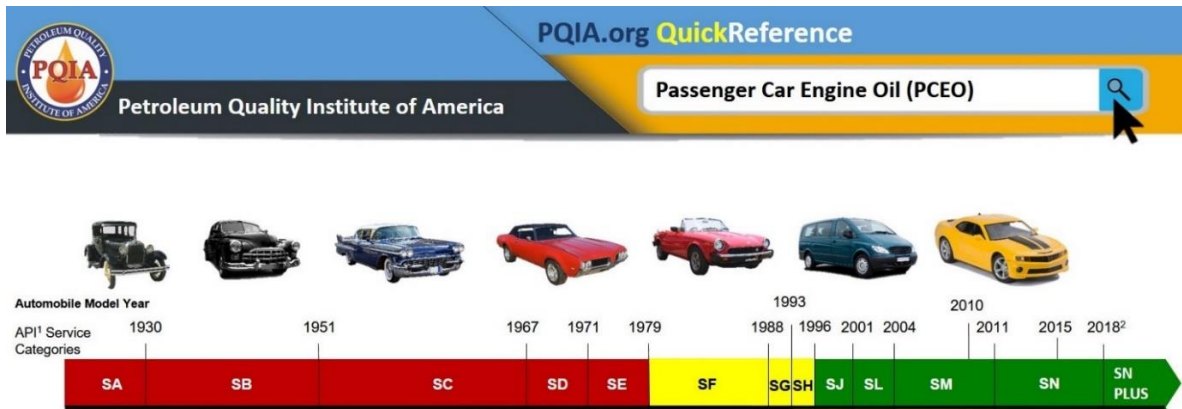
23. Other gasoline additives introduced during this time similarly increased the tendencies of engines to corrode and collect deposits. Thus, anti-corrosion and anti-sludge additives became commonplace. Before it was deemed obsolete, the SB-rating was appropriate for vehicles manufactured before 1951.

24. Engines evolved in the 1960s to require additional protections. New API performance standards were introduced (SC- and then SD-ratings), which led lubricant manufacturers to develop new additive packages. Additive treatments were added to control sludge, rust, corrosion and wear, and cleanliness for short trip, stop-and-go driving.

25. This continued into the 1970s and 1980s, when newer API performance standards led to even more sophisticated additive packages. This time period saw the API SE-rating (additive packages to meet emissions regulations and long-distance high-speed driving), SF-rating (higher speed additives due to increased speed limits and longer engine maintenance intervals), and SG-ratings (additional dispersants).

26. The performance standards have been updated numerous times in the last twenty years, leading to more sophisticated additive packages. The current specification is SN+, adopted in 2018.

27. As the rating evolved, older ratings continued to be declared “obsolete.” Indeed, API declared SA-rated oil “obsolete” on the first day they introduced the standards in the 1940s. The following timeline is illustrative:



28. To meet the newer API-rating performance tests, today's motor oils contain many additives serving several purposes. To create the motor oil, base oil is blended with the additives. Typical additives include calcium, magnesium, phosphorus, zinc, molybdenum, barium, boron, silicon, potassium, titanium, and sodium.

29. Anti-wear additives (such as phosphorus and zinc) coat the surfaces of engine components with thin solid films and help prevent the metal parts from coming into contact with one another. These are so important that the current API SN-rating, in addition to various performance tests, also requires between 600 and 800 ppm of phosphorus be present in the oil.

30. Friction reducers (such as molybdenum) help improve fuel economy. Friction consumes energy produced by the engine that would otherwise go toward propelling the vehicle.

31. Detergent additives (which may include calcium, sodium, and/or magnesium) clean oil deposits that would otherwise create sludge on important engine parts. Such sludge can block key oil passages, undermining the oil's ability to lubricate and protect the engine. Detergent additives also increase fuel efficiency for the same reasons.

32. These are a just a few examples of the roles of additives in modern motor oil; other additives serve a variety of other roles.

33. Typically, lubricant manufacturers purchase additive packages from additive suppliers and then blend the additive package with the base oil. Additive formulation science is a very rigorous and expensive undertaking (which increases each time a new performance test standard is adopted). Thus, additive packages are quite costly for lubricant manufacturers. Typically, the more current API specification for which an additive package has been improved, the more costly the additive package.

C. SA-Rated Motor Oil Such as XCEL Premium is Obsolete, Harmful and Ineffective as a Motor Oil in Post-1930 Engines

34. Simply put, SA-rated obsolete oils (such as Defendant's Product), developed nearly a century ago, are not suitable as automotive oils in cars with post-1930 engines. As noted by the Petroleum Quality Institute of America, a trade association, "SA engine oils...will do damage to nearly all cars currently on the road."²

35. This obsolescence is due primarily to the Product's lack of, and/or inadequate amount of, various additives. While Defendant's Product may be suitable to protect cars nearly a century old, it is wholly inadequate and harmful to almost every car currently on the road.

36. As set forth above, additive-enhanced motor oils are critical for the health, stability, and efficiency of modern automotive engines. Defendant's Product can lead to catastrophic engine failure, and will certainly affect the health, durability, and efficiency of a modern automotive engine over time. As Defendant's Senior Vice President of Sales and Marketing explained, "[t]here's no question that it's not good for today's engines...It's not going to give your car a heart attack. It's more like cancer."

² PQIA Website, *Are You Running Your Car on Cake and Cola* (2012), avail. at <http://www.pqiamerica.com/cakecola.html>.

37. Defendant's 'cancer in a bottle' Product serves no justifiable use in modern automotive engines, is by definition "obsolete," and is worthless. The financial costs incurred due to reduced fuel efficiency alone would deter any reasonable consumer who might otherwise be tempted by the prospect of saving less than a dollar. Simply put, Defendant's Product does not do what motor oil is supposed to do: protect an automotive engine.

D. Defendant's Deceptive, Unfair, and/or Illegal Practices

38. Defendant engages in the deceptive, unfair and illegal practice of marketing, selling, and causing to be manufactured, SA-rated obsolete motor oil without adequately disclosing that this product is unsuitable for (and can harm) modern automotive engines.

39. The Product's front label is shown below:³

³ Defendant makes this motor oil in different viscosity grades (e.g., 10W-40, 10W-30, 20W-50, 15W-40) and, upon information and belief, the product packaging for the different viscosity grades is identical except for the grade itself.



40. The omissions on the Product's front label (displayed to the consumer) are extensive. Among other omissions, there is nothing to indicate that the Product contains only base oil, without the additives necessary to perform as a functional motor oil in modern automobiles or that the product should not be used in automotive engines manufactured after 1930. There is also nothing to indicate that the Product is "obsolete" or harmful to post-1930 engines.

41. Instead, the front label deceives the reasonable consumer into thinking that the Product is an appropriate motor oil for passenger cars. For example, the front label:

- a. Uses the same or similar SAE nomenclature (10W-30, 10W-40, etc.) found on non-obsolete motor oil products, which comprise the overwhelming majority of motor oil products in the market.
- b. Describes the Product as “motor oil,” leading reasonable consumers to believe that it fulfills the role of motor oil in automotive engines.
- c. Describes the Product as “Premium” and “Special,” leading reasonable consumers to believe that it is better than average motor oil.
- d. Contains the phrase “Protects like no other,” leading reasonable consumers to believe that the Product not only protects automotive engines but is superior to all other motor oil products.
- e. Is called “XCEL” motor oil, in a font suggestive of “accelerating” or speed, leading reasonable consumers to believe in the Product’s quality and suitability for automotive engines.
- f. Contains a checkered flag similar to many current specification motor oil bottles, suggestive of auto racing which leads reasonable consumers to believe that the Product is appropriate for use in modern automobiles, and of a higher than ordinary quality.

42. Indeed, nothing on the front label indicates that the Product is any different than the current API-specification motor oil typically offered to consumers. The only apparent difference between the Product and other, non-harmful motor oils, is the price, as the Product is cheaper than current-specification motor oil.

43. A reasonable consumer would believe and expect that the Product is suitable for use in modern passenger car automotive engines, and would actually lubricate and protect such engines, when in fact the opposite is true. No reasonable consumer would choose to save a dollar (or less) on motor oil to risk harm to their automobile.

44. Defendant fails to adequately disclose to consumers the obsolete nature of the Product and the dangers the Product poses to the very automobiles its customers are trying to protect by purchasing it.

45. Defendant buries what purports to be a “caution” (which is insufficient even if it were placed on the front label) on the back of the Product label, below and in smaller font than other misleading and/or false statements, where no reasonable consumer would encounter them.

46. The following photograph illustrates the relative size of text between the front and back labels:



47. Buried at the bottom of the back label, in the smallest print anywhere on either label (front or back), is the statement: “CAUTION: This oil is rated API SA. It contains no additives. It is not suitable for use in most gasoline powered automotive engines built after 1930. Use in modern engines may cause unsatisfactory engine performance or equipment harm.”⁴

48. Defendant conceals this language by rendering it in small font and restricting it to the Product’s back label, which is not visible when the products are on store shelves.

49. Reasonable consumers, including Plaintiff, do not read this fine print — and even if they did, it is ambiguous (particularly when read in conjunction with the rest of the label’s representations), and fails to adequately disclose the dangers of Defendant’s Product.

50. Since motor oil is a basic commodity, reasonable consumers do not read the back label unless they are alerted to the risk of harm associated with a particular motor oil, and instead choose motor oil based on its viscosity grade (10W-30, 10W-40, etc.) and price. As noted by one oil company executive assessing the impact of other state laws requiring additional disclosures for “obsolete” oil: “I don’t think [the additional disclosures are] going to have an impact at all...How many people pick up a container and read the label on it?” *See supra* fn. 1. In the same interview, one of Defendant’s own executives similarly expressed skepticism that label disclosures will alter consumer behavior; rather, price was the determinative factor. *Id.*

51. The back label contains no adequate warning and uses none of the signals commonly understood to indicate a warning. It is intentionally misleading at best, and further directs a consumer’s attention away from the miniscule ‘Caution’ language buried at the label’s bottom. In addition to most of the omissions and representations applicable to the front label (*see*

⁴ Prior to 2016, Defendant’s product did not contain even this inadequate and hidden statement. Instead, the label contained a reference to the API Service category only (e.g., API Service SA).

supra ¶¶ 39-42), the back label contains additional misrepresentations. For example, the back label:

- a. Describes the Product as “multi-grade [and] highly refined” suggesting to reasonable consumers that the Product is not only of a quality suitable for use in customer’s automotive engines, but was designed for use in such engines, and is in fact superior to other motor oil products in the market.
- b. Describes the Product as a “general purpose automotive oil,” which is another false statement leading reasonable consumers to believe that the Product is suitable for use in typical (i.e., post-1930) automotive engines.
- c. Describes the Product as an “economical quality blended lubricant,” which is another false statement leading reasonable consumers to believe that the Product is of the same quality as other motor oils (that are suitable for use in automotive engines).
- d. Claims the Product is “formulated...to provide protection against oxidation,” leading reasonable consumers to believe that the Product was designed or supplemented in some way to provide anti-oxidation properties.
- e. Claims the Product is “formulated...to provide protection against...corrosion of engine parts,” which is another false statement leading reasonable consumers to believe that the Product was design or supplemented in some way to provide anti-corrosion properties.
- f. Claims the Product “provides excellent and durable lubrication for automobile and truck engines,” which is another false statement leaving reasonable consumers to believe that the Product does just that for automotive engines.

- g. Claims the Product is “[r]ecommended for older cars,” leading reasonable consumers to believe that the Product would not harm newer cars but is simply ‘recommended’ for older cars.
- h. Uses the phrase “older cars,” which reasonable consumers would not interpret to mean cars with engines manufactured prior to 1931.

52. Notably, the “multi-grade” claim is untrue and contradictory. By definition, API SA-rated oil (such as this Product) cannot be a “multi-grade” product. Multi-grade oil requires the use of viscosity modifier additives, and, as the tiny print on the bottom of the back label notes, Defendant’s Product is additive-free.

53. Thus, while the front label’s omissions and misrepresentations suffice to deceive reasonable consumers into buying the Product, even consumers who read the back label would be similarly misled. The back label uses bullet points, which not only draw attention away from the small “CAUTION” language but contain content directly at odds with the purported warning.

54. Thus, the small, ambiguous, and incomplete “caution” on the back label is further concealed by its placement below misleading and contradictory messages regarding the Product in larger font.

55. Defendant’s Product does not offer motor oil protection in Plaintiff and the Class Members’ automobiles. Defendant knows full well that its Product does not serve any market or segment of the consumer population.

56. As noted previously, Defendant admitted in 2003 that the Product was being purchased by consumers only due to the slight discount (“30 cents”) compared to products that would actually protect a modern engine. Of course, to market their worthless (or overpriced)

product, Defendant must dupe consumers into thinking they are actually buying a quality product, which is the purpose of the Product's deceptive, misleading, and false label.

57. Defendant's motivation is simple: greed. Given that the Product requires no additives, Defendant does not need to spend money on current technology additive packages, manufacturing, or testing. This allows Defendant to reap huge profits by enticing unknowing customers with the Product's slightly under-market price. However, this scheme only works if Defendant leads the Class to believe that the Product is suitable and non-obsolete oil which will not harm to consumers' automobiles.

E. Factual Allegations as to Plaintiff

58. In the Summer or Fall of 2017, Plaintiff purchased a bottle of XCEL Premium SAE 10W-30 from a gas station in Miami-Dade County.

59. Plaintiff purchased the Product based on the label's deceptive, unfair, and/or illegal omissions and misrepresentations detailed herein.

60. As a direct and proximate result of Defendant's deceptive, unfair, and/or illegal practices, Plaintiff (like all Class Members) suffered a loss of money and actual damages in the amount of the purchase price. In today's market, where modern API-rated oils are backwards compatible and nearly zero cars on the road were manufactured before 1931, Defendant's Product is worthless.

61. Plaintiff (like all Class Members) was thus injured in his property by purchasing a worthless product that he would not have paid for absent Defendant's deceptive and unfair acts and omissions.

62. Florida's consumer protection laws are designed to protect consumers such as Plaintiff and the Class from exactly these types of deceptive and unfair trade practices and/or false advertising.

63. Plaintiff therefore brings the claims alleged herein to halt Defendant's unfair and deceptive practices, false advertising, and unjust enrichment and to obtain compensation for the losses suffered by Plaintiff and all Class Members.

CLASS REPRESENTATION ALLEGATIONS

64. Plaintiff brings this class action pursuant to Rules 1.220(b)(2) and 1.220(b)(3) of the Florida Rules of Civil Procedure on behalf of himself and all members of a Class defined as:

**All persons in Florida who have a post-1930 automobile,
and have purchased, an 'XCEL Premium Motor Oil'
Product in Florida for use in their automobile.**

65. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint.

66. Specifically excluded from the Class are Defendant, its officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, successors, assigns, or other persons or entities related to or affiliated with Defendant and/or its officers or directors, or any of them. Also excluded from the proposed Class are the Court, the Court's immediate family, and Court staff.

Fla. R. Civ. P. 1.220(a) Factors

67. **Numerosity:** Membership in the Class is so numerous that separate joinder of each member is impracticable. The precise number of Class Members is unknown at this time but can

be readily determined from Defendant's records. Plaintiff reasonably estimates that there are thousands of members of the class.

68. **Existence and Predominance of Common Questions of Law and Fact:** Rule 1.220(a) is satisfied in that Plaintiff's claims raise questions of law or fact common to the questions of law or fact raised by the claims of each Class Member. Further, Rule 1.220(b)(3) is satisfied in that these common questions of law or fact predominate over those affecting only individual Class Members. Included within these common questions are:

- a. Whether Defendant's representations regarding the safety and suitability of its XCEL-branded motor oils are true;
- b. Whether Defendant failed to adequately disclose that the Product was not suitable for use in automotive engines manufactured after 1930;
- c. Whether the content of the front label (*see supra* ¶¶ 39-42) was likely to, and did, deceive reasonable consumers and lead them to believe that the Product was suitable for use in ordinary automotive engines;
- d. Whether the small print statements on the back label of the Product were sufficient to alert reasonable consumers to the true nature of the Product;
- e. Whether Defendant's uniform representations and omissions (on the Product label) constituted deceptive acts in violation of FDUTPA;
- f. Whether Defendant's sale and marketing of the Product constituted an unfair practice in violation of FDUTPA;
- g. Whether Defendant's uniform advertisements (on the Product label) violated Florida's Misleading Advertising Law, Fla. Stat. 817.41;

- h. Whether Defendant's purported violation of Florida's Misleading Advertising Law constitutes a *per se* violation of FDUTPA;
- i. Whether Defendant studied or tested its label and the effect of its labels on consumers' perceptions;
- j. Whether Defendant studied the susceptibility of consumers;
- k. The cost to Defendant to manufacture, distribute, market and sell its Product compared to the revenue it received from its sales;
- l. Whether Defendant was unjustly enriched by its sale of the Product;
- m. Whether Defendant's products are worthless;
- n. Whether Plaintiff and the Class Members are entitled to damages, and what is the proper measure of Plaintiff's and the Class Members' loss;
- o. Whether Plaintiff and Class Members are entitled to attorneys' fees and expenses, and in what amount; and
- p. Whether Plaintiff and the Class Members are entitled to declaratory, injunctive, and/or other equitable relief.

69. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class purchased obsolete, ineffective, harmful, and deceptively labeled Product manufactured and marketed by Defendant and were subjected to Defendant's common course of conduct (materially uniform product packaging).

70. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel highly experienced in complex consumer class action litigation (including litigation related to obsolete motor oil) and

intends to prosecute this action vigorously. Plaintiff is a member of the Class described herein and does not have interests antagonistic to, or in conflict with, the other members of the Class.

Fla. R. Civ. P. 1.220(b)(2) Factors

71. Defendant has acted on grounds generally applicable to the entire Class, thereby making final injunctive relief and/or corresponding declaratory relief appropriate with respect to the Class as a whole.

72. Injunctive relief is necessary to prevent further deceptive and unfair business practices by Defendant. Money damages alone will not afford adequate and complete relief, and injunctive relief is necessary to restrain Defendant from continuing to implement its deceptive and unfair policies.

Fla. R. Civ. P. 1.220(b)(3) Factors

73. **Common Issues Predominate:** As set forth in detail herein above (*see supra* ¶ 67), common issues of fact and law predominate because all of Plaintiff's FDUTPA, Misleading Advertising, and Unjust Enrichment claims are based on Defendant's deceptive and/or unfair common course of conduct. Whether Defendant's conduct is likely to deceive an objective consumer acting reasonably under the circumstances is common to all members of the Class and is the predominate issue, and Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as would be used to prove those elements in an individual action alleging the same claims.

74. **Superiority.** A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

- a. Given the size of the claims of individual Class Members, as well as the resources of Defendant, few Class Members, if any, could afford to seek legal redress individually for the wrongs alleged herein;
- b. This action will permit an orderly and expeditious administration of the claims of Class Members, will foster economies of time, effort, and expense and will ensure uniformity of decisions;
- c. Any interest of Class Members in individually controlling the prosecution of separate actions is not practical, creates the potential for inconsistent or contradictory judgments, and would create a burden on the court system;
- d. Upon information and belief, there is no current pending litigation against Defendant to which any Class Member is a party involving the subject matter of this suit;
- e. Concentration of the litigation within this forum is desirable, as the Class involves Florida purchases and (upon information and belief) a significant amount of the Defendant's statewide sales occurred in this forum;
- f. This action presents no difficulties that will impede its management by the Court as a class action;
- g. Without a class action, Class Members will continue to suffer damages, Defendant's violations of law will proceed without remedy, and Defendant will continue to reap and retain the substantial proceeds derived from its wrongful and unlawful conduct. Plaintiff and Class Members have suffered damages as a result of Defendant's deceptive, unfair, and unlawful conduct.

75. **Notice to the Class:** Notice can be accomplished by publication for most, if not all, Class Members.

76. The claims asserted herein are applicable to all Class Members throughout the State of Florida who purchased Defendant's obsolete, harmful, and deceptively marketed, advertised, and labeled Product.

CLAIMS FOR RELIEF

77. Based on the foregoing allegations, Plaintiff's claims for relief include the following:

COUNT I **Violations of the Florida Deceptive and Unfair Trade Practices Act** **Fla. Stat. § 501.201, *et seq.*** **(deceptive acts or practices)**

Plaintiff hereby incorporates by reference paragraphs 1 through 76 as though fully set forth herein.

78. Plaintiff and the Class are "consumers" within the meaning of Part II of Chapter 501, Florida Statutes, relating to Florida's Deceptive and Unfair Trade Practices Act.

79. Plaintiff and the Class are "aggrieved" persons under § 501.211, Fla. Stat., and so have standing to pursue this claim.

80. Defendant is a "person" or "entity" as used in FDUTPA.

81. Pursuant to FDUTPA, unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

82. Within four years prior to the filing of this complaint and continuing to the present, Defendant, in the course of trade and commerce, engaged in unconscionable, unfair, and/or deceptive acts or practices harming Plaintiff and the Class, as described herein.

83. Plaintiff and the Class Members purchased Defendant's Product as part of a consumer transaction.

84. Defendant engaged in deceptive conduct in violation of FDUTPA when it made representations and/or omissions regarding the quality and/or suitability of its Product that it markets and sells that are likely to mislead consumers acting reasonably under the circumstances, to the consumer's detriment.

85. Defendant further engaged in deceptive conduct by offering for sale a product that it knew had no suitable purpose for customers. In fact, Defendant knew that its Product would fail to adequately protect the automotive engines of all customers who purchased and used the Product.

86. Reasonable consumers would, as a result of Defendant's misrepresentations and omissions, be misled and believe that the Product was suitable for use in their automobiles.

87. Defendant's representations and omissions (as detailed in ¶¶ 38-57, *supra*) are likely to mislead reasonable consumers and cause them injury.

88. As a direct and proximate result of Defendant's deceptive conduct, Plaintiff and the Class Members have suffered damages by purchasing a worthless product that offered no 'motor oil' protection for their automotive engines. Alternatively, Plaintiff and the Class Members have suffered damages by paying a premium for Defendant's product that they would not have otherwise spent, and for which they did not receive value.

89. Plaintiff and the Class Members have been injured in their property due to Defendant's deceptive acts alleged herein. The injury consists of purchasing a worthless product for which they would not have paid in the absence of these deceptive acts. This injury is of the type Fla. Stat. § 501.201, *et seq.*, was designed to prevent and directly results from Defendant's deceptive and unlawful conduct.

90. In addition to actual damages, Plaintiff and the Class are entitled to declaratory and injunctive relief as well as reasonable attorney's fees and costs pursuant to Fla. Stat. § 501.201, *et seq.*

91. Specifically, Section 501.211(1), Florida Statutes, states:

Without regard to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of this part may bring an action to obtain a declaratory judgment that an act or practice violates this part and to enjoin a person who has violated, is violating, or is otherwise likely to violate this part.

COUNT II
Violations of the Florida Deceptive and Unfair Trade Practices Act
Fla. Stat. § 501.201, *et seq.*
(unfair acts or practices)

Plaintiff hereby incorporates by reference paragraphs 1 through 76 as though fully set forth herein.

92. Plaintiff and the Class are “consumers” within the meaning of Part II of Chapter 501, Florida Statutes, relating to Florida’s Deceptive and Unfair Trade Practices Act.

93. Plaintiff and the Class are “aggrieved” persons under § 501.211, Fla. Stat., and so have standing to pursue this claim.

94. Defendant is a “person” or “entity” as used in FDUTPA.

95. Defendant further violated FDUTPA by engaging in unfair practices against Plaintiff and the Class.

96. Given the unsuitability of Defendant’s Product for use in automobiles manufactured after 1930, Defendant’s sale of the Product, especially accompanied by the misrepresentations and/or omissions described herein, is a practice that is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers. Defendant has been preying

upon individuals with limited income offering a low-price product, by deceiving them into paying for an unsuitable product.

97. Indeed, Defendant's own executives admitted in interviews that the Product is dangerous to all their customers' engines, and that the only reason they sell the Product is that confused customers will purchase it due to its low price.

98. The practices described herein also offend established public policy regarding the protection of consumers against companies, like Defendant, who engage in unfair methods of competition.

99. Defendant's conduct, which caused substantial injury to Plaintiff and the Class could have been avoided and is not outweighed by countervailing benefits to any consumers or competition.

100. Defendant's business acts and practices are also unfair because they have caused harm and injury-in-fact to Plaintiff and Class Members and for which Defendant has no justification other than to increase, beyond what Defendant would have otherwise realized, its market share and revenue from sale of the Product.

101. Defendant's conduct lacks reasonable and legitimate justification. Defendant has benefited from such conduct and practices while Plaintiff and Class Members have been misled as to the nature and integrity of the Product and have lost money, including the purchase price of the Product.

102. In addition, Defendant's *modus operandi* constitutes an unfair practice in that it knew (or must have known) that consumers care about maintaining their vehicles and the performance of the vehicles, but are unlikely to be aware of and/or able to detect the means by

which Defendant was conducting itself in a manner adverse to its commitments and its customers' interests.

103. While Defendant conveyed the impression to reasonable consumers that its Product was safe and effective for use in consumers' automobiles, in actuality the Product is not suitable for use in the vehicles driven by its customers, and does not provide the protection that is expected of motor oils in modern automotive engines.

104. The practices complained of herein are not limited to a single instance but were rather done pervasively and uniformly at all times as against Plaintiff and the Class.

105. As a direct and proximate result of Defendant's unfair conduct, Plaintiff and the Class Members have suffered damages.

106. Plaintiff and the Class Members have been injured in their property by reason of Defendant's unfair acts alleged herein. The injury consists of purchasing a worthless product that they would not have paid for in the absence of these unfair acts. This injury is of the type Fla. Stat. § 501.201, *et seq.*, was designed to prevent and directly results from Defendant's unfair and unlawful conduct. Alternatively, Plaintiff and the Class Members have suffered damages by paying a premium for Defendant's product that they would not have otherwise spent and for which they did not receive value.

107. In addition to actual damages, Plaintiff and the Class are entitled to declaratory and injunctive relief as well as reasonable attorney's fees and costs pursuant to Fla. Stat. § 501.201, *et seq.*

108. Specifically, Section 501.211(1), Florida Statutes, states:

Without regard to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of this part may bring an action to obtain a declaratory judgment that an act or practice violates this part and to enjoin a person who has violated, is violating, or is otherwise likely to violate this part.

COUNT III
Violations of the Florida Deceptive and Unfair Trade Practices Act
Fla. Stat. § 501.201, et seq.
(unlawful misleading advertising)

Plaintiff hereby incorporates by reference paragraphs 1 through 76 and paragraphs 117 through 124 as if fully set forth herein.

109. Plaintiff and the Class are “consumers” within the meaning of Part II of Chapter 501, Florida Statutes, relating to Florida’s Deceptive and Unfair Trade Practices Act.

110. Plaintiff and the Class are “aggrieved” persons under § 501.211, Fla. Stat., and so have standing to pursue this claim.

111. Defendant is a “person” or “entity” as used in FDUTPA.

112. Defendant further violated FDUTPA by violating a “statute...which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.” Fla. Stat. 501.203(3)(c). Here, Defendant violated Florida’s Misleading Advertising Law (Fla. Stat. 817.41), as described in Count IV of this Complaint, *infra*.

113. Defendant’s misrepresentations, omissions, deceptive acts, unfair practices, and/or violations of other rules or statutes, as described herein as violating FDUTPA, would deceive an objectively reasonable consumer.

114. As a result of Defendant’s misrepresentations, omissions, deceptive acts, unfair practices, and/or violations of other rules or statutes, Plaintiff and the Class Members suffered actual damages by losing money. Defendant’s Product was worthless and thus the Plaintiff and Class Members’ damages are the purchase price of the Product. Alternatively, Plaintiff and the Class Members have suffered damages by paying a premium for Defendant’s product that they would not have otherwise spent and for which did not receive value.

115. In addition to actual damages, Plaintiff and the Class are entitled to declaratory and injunctive relief as well as reasonable attorney's fees and costs pursuant to Fla. Stat. § 501.201, *et seq.*

116. Specifically, Section 501.211(1), Florida Statutes, states:

Without regard to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of this part may bring an action to obtain a declaratory judgment that an act or practice violates this part and to enjoin a person who has violated, is violating, or is otherwise likely to violate this part.

COUNT IV
Violations of the Florida Misleading Advertising Law
Fla. Stat. § 817.41, *et seq.*

Plaintiff hereby incorporates by reference paragraphs 1 through 76 as if fully set forth herein.

117. Through the misrepresentations and omissions made on Defendant's Product packaging regarding the suitability of the Product's use in automobiles, Defendant unlawfully disseminated or caused to be made misleading advertisements in Florida, in violation of Fla. Stat. 817.41.

118. Though described above (*see supra* ¶¶ 38-57), Plaintiff reiterates the specific circumstances surrounding Defendant's misleading advertising:

- a. **Who:** Defendant made (or caused to be made) the material misrepresentations and omissions described herein. Plaintiff is unaware, and therefore unable to identify, the true names and identities of those individuals employed (or formerly employed) by Defendant who are responsible for drafting the language comprising the false and/or misleading advertisements.
- b. **What:** Defendant's product packaging made material misrepresentations and omissions, such as:

- i. the front and back labels⁵ use the same or similar SAE nomenclature (10W-30, 10W-40, etc.) found on non-obsolete motor oil products, which comprise the overwhelming majority of motor oil products in the market;
- ii. the front and back labels describe the Product as “motor oil,” when it in fact does not fulfill the role of motor oil in automotive engines, or that it meets the current definition of what is considered “motor oil”;
- iii. the front and back labels describe the Product as “Premium” and/or “Special,” whereas it is in fact far worse than average motor oil;
- iv. on the front and back label, the Product is called “XCEL” motor oil, in a font suggestive of “accelerating” or speed, implying the Product’s quality and suitability for automotive engines;
- v. the front label contains the phrase “Protects like no other,” whereas in fact the Product is far inferior to “other” motor oils and does not offer protection even remotely comparable to “other” motor oils. The Product is in fact not of a type equal to or greater than brand-name current API specification motor oil;
- vi. the front label contains a checkered flag similar to current specification motor oil bottles, suggestive of auto racing which indicates that the Product is appropriate for use in modern automobiles (when it is in fact not), and again indicating that the Product is comparable to brand name current API specification motor oil;

⁵ Label is synonymous with product packaging as used throughout this Complaint.

- vii. nothing on the front label indicates that the Product contains only base oil, that the Product does not contain additives necessary to perform as a functional motor oil in modern automobiles, that the Product should not be used in automotive engines manufactured after to 1930, or that the Product is “obsolete” or harmful to post-1930 engines;
- viii. the back label describes the Product as “multi-grade [and] highly refined,” falsely conveying that the Product is not only of a quality suitable for use in customer’s automotive engines, but was designed for use in such engines, and is in fact superior to other motor oil products in the market;
- ix. the back label describes the Product as a “general purpose automotive oil,” when it is in fact not suitable for use in automotive engines;
- x. the back label describes the Product as an “economical quality blended lubricant,” whereas the Product is actually not of the same “quality” as other motor oils, and is not suitable for use in automotive engines;
- xi. the back label claims the Product is “formulated...to provide protection against oxidation,” whereas the Product in was not designed or supplemented in some way to provide anti-oxidation properties;
- xii. the back label claims the Product is “formulated...to provide protection against...corrosion of engine parts,” whereas in fact the Product was not designed or supplemented in some way to provide anti-corrosion properties;
- xiii. the back label claims the Product “provides excellent and durable lubrication for automobile and truck engines,” whereas in fact the exact opposite is true;

- xiv. the back label claims the Product is merely “[r]ecommended” for older cars, whereas in fact the Product should not be used in post-1930 automobiles;
 - xv. the back label fails to disclose the lack of additives or SA specification in the oil; and
 - xvi. the back label uses the phrase “older cars,” which reasonable consumers would not interpret to mean cars with engines manufactured prior to 1931.
- c. **Where:** The false advertising occurred on Defendant’s product packaging which were transmitted, displayed, and/or occurred throughout the State of Florida.
 - d. **When:** Upon information and belief, Defendant engaged in the false advertising detailed herein continuously during the Class Period.
 - e. **Why:** Defendant made the false advertisements with the intent to induce Plaintiff and the Class to rely upon them and purchase the Product.

119. The misrepresentations and omissions as to the suitability of Product for use in automobiles are material to Plaintiff, the Class Members, and the average consumer.

120. Defendant knew or should have known (through the exercise of reasonable care or investigation) that the advertisements were false, untrue, and/or misleading. Indeed, Defendant (while carefully not naming their actual Product) admitted that SA-rated motor oils were harmful in a 2003 interview.

121. Defendant’s misrepresentations and omissions were designed and intended, either directly or indirectly, to obtain money from Plaintiff and the Class Members under false pretenses by inducing them to purchase Defendant’s Product. Defendant intended that the representations would induce Plaintiff and the Class Members to rely upon it and purchase Defendant’s Product.

122. Plaintiff and the Class Members relied to their detriment on Defendant's false advertising (namely, the content of the Product's label), by purchasing the Product that they would not otherwise have purchased.

123. Plaintiff and the Class Members suffered injury in justifiable reliance on Defendant's false advertising; namely they lost money by purchasing a product that they would not otherwise (but for the false advertising) have purchased.

124. Defendant obtained the benefits of its misleading advertising.

125. Pursuant to Fla. Stat. 817.41, Plaintiff and the Class Members are entitled to costs, reasonable attorney's fees, and actual damages.

COUNT V
Unjust Enrichment

Plaintiff incorporates paragraphs 1 through 76 as if fully set forth herein.

126. No contract existed between Plaintiff or Class Members and Defendant.

127. Defendant received certain monies as a result of its uniform deceptive marketing of the Product (by way of the product packaging / label).

128. Plaintiff and the Class conferred a benefit on Defendant by purchasing the Product, and Defendant has knowledge of this benefit and has voluntarily accepted and retained the benefit conferred upon it. It would be inequitable for Defendant to retain this benefit.

129. As noted above, Defendant in 2003 stated that the Product was harmful to its customers' automobiles and that Defendant merely sold it in order to obtain a financial gain at the expense of the harmed consumer.

130. Plaintiff and each Class Member are entitled to an amount equal to the amount they enriched Defendant and for which Defendant has been unjustly enriched, including but not limited

to the value of the additives Defendant retained by failing to include them in the Product such that the Product failed to offer engine protection in passenger car automotive engines.

TOLLING OF ANY APPLICABLE STATUTE OF LIMITATIONS

131. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

132. Plaintiff's purchase of the Product falls within FDUTPA's 4-year statute of limitations. However, some Class Members' last purchase of the Product may have occurred more than four years prior to the filing of this Complaint.

133. Any statute of limitations applicable to Plaintiff and/or Class Members' claims is tolled due to Defendant's fraudulent concealment of the Product's worthless and harmful nature; *i.e.*, that it is completely unsuitable as an automotive motor oil. The deceptive and/or unfair practices alleged above are all aimed at doing precisely that: to conceal from Plaintiff and the Class that the Product (which Defendant markets as "automotive oil") is not suitable for use in automotive engines.

134. Thus, the causes of action alleged herein were concealed from Plaintiff and the Class Members.

135. The fraudulent means to achieve that concealment are documented herein (*see supra* ¶¶ 38-57). As noted throughout, the actions of Defendant go beyond mere non-disclosure, but comprise an overall scheme to actively and willfully conceal the worthless and harmful nature of its Product.

136. Even though Defendant acknowledged as early as 2003 that non-additive oil was extremely harmful to automotive engines, it continued to sell the Product while misrepresenting to consumers its suitability for automotive engines.

137. Defendant's 2003 acknowledgment occurred in a niche trade publication not accessed by the general public. Nor did it identify the Product by name. Further, though the 2003 article identified "Amalie", the Product label disguises Amalie's involvement, stating instead that the Product is manufactured by "XCEL Lubricants".

138. Through its labeling, Defendant intentionally disguised its Product as that which it is not: automotive oil that protects automotive engines.

139. Plaintiff and Class Members exercised reasonable care and diligence in seeking to discover the facts that form the basis of their claims. Due to Defendant's acts and omissions (including affirmative misrepresentations on the Product's label, reasonable consumers (including Plaintiff and Class Members) believed that Defendant's Product was suitable for use in automotive engines.

DEMAND FOR JURY TRIAL

140. Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and Members of the Class defined herein, prays for judgment and relief as follows:

- A. An order certifying that this action may be maintained as a class action;
- B. That the acts and/or omissions alleged herein be adjudged and decreed to be a deceptive, unfair and/or fraudulent business practice violating FDUTPA;
- C. That judgment be entered against Defendant and in favor of Plaintiff and the Class on the Plaintiff's FDUTPA claims, for actual damages and equitable relief (including restitution and/or restitutionary disgorgement);

- D. That judgment be entered against Defendant and in favor of Plaintiff and the Class on Plaintiff's Misleading Advertising claim for actual damages;
- E. Restitution for Plaintiff and each Class Member in an amount equal to that in which they unjustly enriched Defendant;
- F. An order enjoining Defendant from engaging in the deceptive, unfair, and/or illegal acts or practices, as set forth in this Complaint, including but not limited to, an order enjoining Defendant from selling the Product given that it has no legitimate use in the market;
- G. Compensatory damages;
- H. Restitution and disgorgement of the unlawful profits collected by the Defendant;
- I. Prejudgment and post-judgment interest at the prevailing legal rate;
- J. Plaintiff's attorneys' fees and costs of suit; and
- K. Such other and further relief as the Court may deem necessary and appropriate.

DATED: June 14, 2018

Respectfully submitted,

**KOZYAK TROPIN &
THROCKMORTON, LLP**

By: Harley S. Tropin
Harley S. Tropin, Esq. (Fla. # 241253)
hst@kttlaw.com
Tal J. Lifshitz, Esq. (Fla. # 99519)
tjl@kttlaw.com
Robert Neary, Esq. (Fla. #81712)
rn@kttlaw.com
2525 Ponce de Leon Blvd., 9th Floor
Miami, Florida 33134
Tel: (305) 372-1800
Fax: (305) 372-3508

and

KANNER & WHITELEY, LLC

Allan Kanner, Esq. (*PHV forthcoming*)

a.kanner@kanner-law.com

Cynthia St. Amant, Esq. (*PHV forthcoming*)

c.stamant@kanner-law.com

701 Camp Street

New Orleans, Louisiana 70130

Tel: (504) 524-5777

Fax: (504) 524-5763

and

CASEY LAW FIRM, LLC

Ryan Casey, Esq. (*PHV forthcoming*)

ryan@rcaselaw.com

20 NE Thompson Street

Portland, Oregon 97212

Tel: (503) 928-7611

Fax: (503) 345-7470

EXHIBIT B

[Home](http://www.miami-dadeclerk.com/home.asp) (<http://www.miami-dadeclerk.com/home.asp>)
[Online Services](http://www.miami-dadeclerk.com/online_services.asp) (http://www.miami-dadeclerk.com/online_services.asp)
[About Us](http://www.miami-dadeclerk.com/about.asp) (<http://www.miami-dadeclerk.com/about.asp>)
[Contact Us](http://www.miami-dadeclerk.com/contact.asp) (<http://www.miami-dadeclerk.com/contact.asp>)
[My Account](https://www2.miami-dadeclerk.com/PremierServices/login.aspx) (<https://www2.miami-dadeclerk.com/PremierServices/login.aspx>)

HARVEY RUVIN
 CLERK *of the* COURTS
 MIAMI-DADE COUNTY, FLORIDA



Miami-Dade County Civil, Family and Probate Courts Online System

◀ Back to Search

BRANDON OPALKA VS AMALIE AOC, LTD.

Local Case Number: 2018-019664-CA-01

Filing Date: 06/14/2018

State Case Number: 132018CA019664000001

Case Type: Business Torts

Consolidated Case No.: N/A

Judicial Section: CA44

Case Status: OPEN

Parties

Number of Parties: 2

Export to ▾

Party Description	Party Name	Attorney Information	Other Attorney(s)
Plaintiff	Opalka, Brandon	B#: <i>(Bar Number)</i> 241253 <i>N:</i> <i>(Attorney Name)</i> Tropin, Harley Shepard	
Defendant	Amalie AOC, LTD.		







Hearing Details Number of Hearing: 0



No hearing information found

Dockets Dockets Retrieved: 16

Export to

Number	Date	Book/Page	Docket Entry	Event Type	Comments
12	07/12/2018		Receipt:	Event	RECEIPT#:3480050 AMT PAID:\$100.00 NAME:TROPIN, HARLEY SHEPARD 2525 PONCE DE LEON BLVD FL 9 MIAMI FL 33134-6037 COMMENT: ALLOCATION CODE QUANTITY UNIT AMOUNT 3176-NON-FLA ATTORNEY F 1 \$100.00 \$100.00 TENDER TYPE:E-FILING ACH TENDER A
11	07/12/2018		Receipt:	Event	RECEIPT#:3480045 AMT PAID:\$200.00 NAME:TROPIN, HARLEY SHEPARD 2525 PONCE DE LEON BLVD FL 9 MIAMI FL 33134-6037 COMMENT: ALLOCATION CODE QUANTITY UNIT AMOUNT 3176-NON-FLA ATTORNEY F 1 \$100.00 \$100.00 3176-NON-FLA ATTORNEY F 1 \$100.00 \$
15	07/10/2018		Notice of Appearance	Event	
14	07/10/2018		Order:	Event	ADMITTING RAYAN CASEY PRO HAC VICE.
13	07/10/2018		Order:	Event	ADMITTING ALLAN KANNER PRO HAC VICE

	Number	Date	Book/Page	Docket Entry	Event Type	Comments
	10	07/03/2018		Motion for Pro Hac Vice	Event	
	9	07/03/2018		Motion for Pro Hac Vice	Event	
	8	07/03/2018		Motion for Pro Hac Vice	Event	
	7	06/26/2018		Case Manager Email	Event	CBL44@JUD11.FLCOURTS.ORG
	6	06/26/2018		Receipt:	Event	RECEIPT#:3440267 AMT PAID:\$10.00 NAME:TROPIN, HARLEY SHEPARD 2525 PONCE DE LEON BLVD FL 9 MIAMI FL 33134-6037 COMMENT: ALLOCATION CODE QUANTITY UNIT AMOUNT 3139-SUMMONS ISSUE FEE 1 \$10.00 \$10.00 TENDER TYPE:E-FILING ACH TENDER AMT
		06/25/2018		20 Day Summons Issued	Service	
	5	06/25/2018		ESummons 20 Day Issued	Event	<i>Parties: Amalie AOC LTD.</i>
	4	06/19/2018		(M) 20 Day (C) Summons (Sub) Received	Event	

Number	Date	Book/Page	Docket Entry	Event Type	Comments
3	06/19/2018		Receipt:	Event	RECEIPT#:3370374 AMT PAID:\$401.00 NAME:TROPIN, HARLEY SHEPARD 2525 PONCE DE LEON BLVD FL 9 MIAMI FL 33134-6037 COMMENT: ALLOCATION CODE QUANTITY UNIT AMOUNT 3100- CIRCUIT FILING FEE 1 \$401.00 \$401.00 TENDER TYPE:E-FILING ACH TENDER A
 2	06/14/2018		Complaint	Event	
 1	06/14/2018		Civil Cover	Event	

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Email (https://miamidadecounty.co1.qualtrics.com/SE/?SID=SV_bDvccbiqJBvQ2LH)

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Home (<http://www.miami-dadeclerk.com/home.asp>)

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| Disclaimer (<http://www.miamidade.gov/info/disclaimer.asp>) (<http://www.miamidade.gov>)

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S0142976

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Case No.: _____
Judge: _____

Brandon Opalka
Plaintiff

vs.

Amalie AOC, LTD.
Defendant

II. TYPE OF CASE

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence – other
 - Business governance
 - Business torts
 - Environmental/Toxic tort
 - Third party indemnification
 - Construction defect
 - Mass tort
 - Negligent security
 - Nursing home negligence
 - Premises liability – commercial
 - Premises liability – residential
- Products liability
- Real Property/Mortgage foreclosure
 - Commercial foreclosure \$0 - \$50,000
 - Commercial foreclosure \$50,001 - \$249,999
 - Commercial foreclosure \$250,000 or more
 - Homestead residential foreclosure \$0 – 50,000
 - Homestead residential foreclosure \$50,001 - \$249,999
 - Homestead residential foreclosure \$250,000 or more
 - Non-homestead residential foreclosure \$0 - \$50,000
 - Non-homestead residential foreclosure \$50,001 - \$249,999

- Non-homestead residential foreclosure \$250,00 or more
- Other real property actions \$0 - \$50,000
- Other real property actions \$50,001 - \$249,999
- Other real property actions \$250,000 or more
- Professional malpractice
 - Malpractice – business
 - Malpractice – medical
 - Malpractice – other professional
- Other
 - Antitrust/Trade Regulation
 - Business Transaction
 - Circuit Civil - Not Applicable
 - Constitutional challenge-statute or ordinance
 - Constitutional challenge-proposed amendment
 - Corporate Trusts
 - Discrimination-employment or other
 - Insurance claims
 - Intellectual property
 - Libel/Slander
 - Shareholder derivative action
 - Securities litigation
 - Trade secrets
 - Trust litigation

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes No

III. REMEDIES SOUGHT (check all that apply):

- Monetary;
- Non-monetary declaratory or injunctive relief;
- Punitive

IV. NUMBER OF CAUSES OF ACTION: ()
(Specify)

5

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- Yes
- No

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- No
- Yes – If “yes” list all related cases by name, case number and court:

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- Yes
- No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature s/ Harley S. Tropin Esq. FL Bar No.: 241253
Attorney or party

(Bar number, if attorney)

Harley S. Tropin Esq. 06/14/2018
(Type or print name)

Date

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

BRANDON OPALKA, an individual,
on behalf of himself and all others
similarly situated,

CASE NO.: 2018-019664-CA-01

CLASS REPRESENTATION

Plaintiff,

COMPLEX BUSINESS LITIGATION

v.

AMALIE AOC, LTD., a Florida
Limited Partnership,

Defendant.


SUMMONS

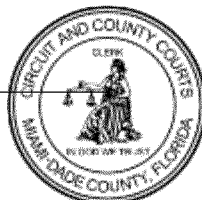
TO: AMALIE AOC, LTD
c/o Kenneth Barkett, Registered Agent
1601 McCloskey Blvd.
Tampa, FL 33605

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S
ATTORNEY:

Harley S. Tropin, Esq.
KOZYAK TROPIN & THROCKMORTON, P.A.
2525 Ponce de Leon Blvd., 9th Floor
Coral Gables, Florida 33134
Tel: (305) 372-1800
Fax: (305) 372-3508
E-mail: hst@kttlaw.com

an answer or other response to the Complaint which is served upon you, within 20 days after
service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment
by default will be taken against you for the relief demanded in the Complaint.

 32429
CLERK OF COURT
Harvey Ruvin,
Clerk of Courts



6/25/2018
DATE

RETURN OF SERVICE

Service of the Summons and Complaint was made by me

PRINT NAME & TITLE OF SERVER

DATE

Check one box below to indicate appropriate method of service:

Served personally upon the defendant. Place where served:

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name and physical description of person:

Returned unexecuted:

Other (specify):

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____, 2018
Date

Signature of Server

Address of Server

#1148943

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

BRANDON OPALKA, an individual,
on behalf of himself and all others
similarly situated,

CASE NO.: 2018-019664-CA-01

CLASS REPRESENTATION

Plaintiff,

COMPLEX BUSINESS LITIGATION

v.

AMALIE AOC, LTD., a Florida
Limited Partnership,

Defendant.

SUMMONS

TO: AMALIE AOC, LTD
c/o Kenneth Barkett, Registered Agent
1601 McCloskey Blvd.
Tampa, FL 33605

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S
ATTORNEY:

Harley S. Tropin, Esq.
KOZYAK TROPIN & THROCKMORTON, P.A.
2525 Ponce de Leon Blvd., 9th Floor
Coral Gables, Florida 33134
Tel: (305) 372-1800
Fax: (305) 372-3508
E-mail: hst@kttlaw.com

an answer or other response to the Complaint which is served upon you, within 20 days after
service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment
by default will be taken against you for the relief demanded in the Complaint.

CLERK OF COURT

DATE

RETURN OF SERVICE

Service of the Summons and Complaint was made by me

PRINT NAME & TITLE OF SERVER

DATE

Check one box below to indicate appropriate method of service:

Served personally upon the defendant. Place where served:

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name and physical description of person:

Returned unexecuted:

Other (specify):

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____, 2018
Date

Signature of Server

Address of Server

#1148943

**THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA**

BRANDON OPALKA, an individual,
on behalf of himself and all others
similarly situated,
Plaintiff,

CASE NO.: 2018-019664-CA-01

CLASS REPRESENTATION

v.
AMALIE AOC, LTD., a Florida
Limited Partnership,
Defendant.

**PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION OF DOCUMENTS AND/OR THINGS TO DEFENDANT**

Pursuant to Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure, Plaintiff hereby requests that Defendant AMALIE AOC, LTD., produce original documents and/or things responsive to these Requests within 45 days of service to Harley S. Tropin, Kozyak Tropin & Throckmorton, 2525 Ponce de Leon Blvd., 9th Floor, Miami, Florida 33134. The documents and responses to these requests shall be produced by You in accordance with Florida Rules of Civil Procedure 1.280 and 1.350.

DEFINITIONS

1. **“Amalie,” “You,”** and **“Your”** refers to Amalie AOC, LTD, and any of its present or former corporate parents, subsidiaries, divisions, subdivisions, affiliates, predecessors, successors, joint ventures, board of directors or committees thereof, present and former officers, directors, employees, representatives, agents (including but not limited to attorneys), and all other persons acting, purporting to act, or authorized to act on behalf of any of them, including, without limitation, all consultants, advisors and investigators.

2. The terms **“and”** and **“or”** shall be interpreted to mean **“and/or”** and shall not be interpreted to exclude any information otherwise within the scope of any Request for Production.

3. The term “**API**” refers to the American Petroleum Institute, including its predecessors, officers and employees thereof, committees thereof, agents (including but not limited to attorneys), and all other persons acting, purporting to act, or authorized to act on behalf of API.

4. The terms “**API Service Category**” or “**API Rated**” refers to the API service category of motor oil for gasoline automotive engines.

5. The term “**Complaint**” refers to the initial pleading in this matter.

6. The term “**Documents**” is used in the broadest possible sense and has the meaning set forth in Rule 1.350 of the Florida Rules of Civil Procedure and includes (but is not limited to) all non-privileged tangible objects or things, documents, including electronically stored information, e-mails, writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained. If a document exists in multiple copies, versions or drafts, you are requested to produce all such copies, versions or drafts.

7. The term “**Grade**” refers to the SAE viscosity grade of automotive motor oil.

8. The term “**label**” refers to the content on the front and back of the motor oil bottle as it is sold to consumers.

9. The term “**Non-Product Motor Oil**” refers to any passenger car motor oils manufactured, sold, and/or marketed by you other than the Product.

10. The term “**Obsolete Motor Oil**” refers to motor oils in the (at the time the Document was generated) non-current API Service Categories for gasoline engines. Conversely, “**Non-Obsolete Motor Oil**” refers to motor oils in the (at the time the Document was generated) current API Service Categories.

11. The term “**PQIA**” refers to the Petroleum Quality Institute of America, including its predecessors, officers and employees thereof, committees thereof, agents (including but not limited

to attorneys), and all other persons acting, purporting to act, or authorized to act on behalf of PQIA.

12. The term “**Product**” collectively refers to the (API Service Category SA) XCEL Premium line of products, including but not necessarily limited to XCEL Premium SAE 30, XCEL Premium SAE 40, XCEL Premium SAE 50, XCEL Premium SAE 10w-30, XCEL Premium SAE 10w-40, XCEL Premium SAE 15w-40, and/or XCEL Premium SAE 20w-50, unless specified otherwise in a specific Request.

13. The terms “**regards**” or “**regarding**” shall be interpreted broadly, and encompasses ‘comprises, considers, identifies, describes, discusses, demonstrates, references, relates to and/or involves.’

14. The term “**SAE**” refers to the Society of Automotive Engineers, including its predecessors, officers and employees thereof, committees thereof, agents (including but not limited to attorneys), and all other persons acting, purporting to act, or authorized to act on behalf of SAE.

15. The term “**this matter**” refers to the above-captioned case.

16. The use of the singular form of any word includes the plural and *vice versa*. The past tense includes the present tense and *vice versa*.

17. The relevant time period for each request is June 2008 until the present, unless another time period is stated in a specific request.

FORMAT OF PRODUCTION

I. COLLECTED DATA

1. Collected ESI shall be de-duplicated according to MD5 hash value at the family level. Attachments should not be eliminated as duplicates for purposes of production, unless the parent e-mail and all attachments are also duplicates. Parties agree that an email that includes content in the BCC or other blind copy field shall not be treated as a duplicate of an email that does not include content in those fields, even if all remaining content in the email is identical.

Removal of near-duplicate documents and e-mail thread suppression is not acceptable. De-duplication will be done across the entire collection (global de-duplication) and the CUSTODIAN field will list each custodian, separated by a semi-colon, who was a source of that document and the FILEPATH field will list each file path, separated by a semi-colon, that was a source of that document. Should the CUSTODIAN or FILEPATH metadata fields produced become outdated due to rolling productions, an overlay file providing all the custodians and file paths for the affected documents will be produced prior to substantial completion of the document production

II. ESI PRODUCTION FORMAT

2. **TIFFs.** Documents will be produced in the form of single-page, Group IV Tiffs at 300 dpi. Each TIFF image should be named as its corresponding Bates number. Bates numbers, confidentiality designations, and redactions should be burned into the TIFF image files. TIFF image files should be provided in a “self-identified Images” folder. TIFFs will show any and all text and images which would be visible to the reader using the native software that created the document. For example, TIFFs of e-mail messages should include the BCC line.

3. **System Files.** Common system and program files as defined by the NIST library (which is commonly used by e-discovery vendors to exclude system and program files from document review and production) need not be processed, reviewed or produced.

4. **Metadata Fields and Processing.** ESI production shall include a delimited, database load file that contains the metadata fields listed in Table 1 below. The metadata produced should have the correct encoding to enable preservation of the documents’ original language.

TABLE 1

Image bates number	Email To	Email From
Email CC	Email BCC	Email Subject
Header	Folder ID	Folder Name
Read	Date Created	Date Saved

Date Received	Time Received	Date Sent
Time Sent	Application	Attachment range
Attachment Title	Attachment Count	Custodian (s) of collection
Edoc, Email, Attachment	Attachment bates id	Parent bates id
Folder path	File Name	File Author
File Extension	MD5 Hash	Page count
Redacted	Source	

5. **Searchable Text:** ESI shall be produced with document-level searchable Extracted Text in the form of .txt files associated by links contained within the load file. For ESI that is redacted for attorney-client privilege or attorney work product, a new text file created using OCR shall be produced in lieu of extracted text, and a separate image load file shall contain a link to the TIFF image file(s) containing the redactions, rather than the native file. Text files should be provided in a self-identified “Text” folder.

6. **Database Load Files/Cross-Reference Files.** Documents will be provided with Concordance-compatible image and data load files (*i.e.*, .OPT and DAT files) using standard Concordance delimiters. Concordance-compatible image, text and data load files (*i.e.*, .OPT and DAT files) will be provided in a self-identified “Data” folder.

7. **Native Files.** PowerPoint presentations and similar presentation files, Excel files, CSV files, and other similar spreadsheet files shall be produced in native format (“Native Files”) instead of in TIFF. Such Native Files (if any) will be provided in a self-identified “Natives” directory. Each Native File will be produced with a corresponding single-page TIFF placeholder image, which will contain the bates number and language indicating that the document is being produced as a Native File. Native Files should be named with the beginning Bates number that is assigned to that specific record in the production. A Native “Link” entry for each spreadsheet will be included in the .DAT load file indicating the relative file path to each native file on the

production media. Native Files will be produced with extracted text and applicable metadata fields. If Native spreadsheet files require redactions, the parties will meet and confer regarding how to implement redactions while ensuring that proper formatting and usability are maintained. For presentation files that contain redacted text, You may either redact in the native form or produce TIFF image files with burned in redactions in lieu of a Native File and TIFF placeholder image. Presentation files produced as TIFFs shall be processed with hidden slides and all speaker notes unhidden, and shall be processed to show both the slide and the speaker's notes on the TIFF image.

8. **Hard Copies.** Hard copy documents are to be produced in Single page tiff with accompanying document-level full text and corresponding load files. Load files shall include document source.

9. **Color.** Documents containing color need not be produced in color in the first instance. However, if Plaintiffs would like production of certain documents in color, they may request production of such documents in color by providing (1) a list of the Bates numbers of documents they request to be produced in color format; and (2) a brief explanation of the need for production in color format. You shall not unreasonably deny such requests. Color documents should be produced as single-page, 300 DPI JPG images with JPG compression and a high quality setting as to not degrade the original image. You are under no obligation to enhance an image beyond how it was kept in the usual course of business.

Structured Data. To the extent a response to discovery requires production of electronic information stored in a database, including the production of text messages or similar communications, the parties will meet and confer regarding methods of production. Parties will consider whether all relevant information may be provided by querying the database for

discoverable information and generating a report in a reasonably usable and exportable electronic file

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1

Please produce any agreement under which any person or entity may be liable to satisfy part or all of a judgment that may be entered in this matter, or to indemnify or to reimburse You for payments made to satisfy the judgment.¹ If such an agreement exists, but is not within Your possession, custody or control, produce Documents sufficient to identify the agreement.

REQUEST FOR PRODUCTION NO. 2

Please produce all Documents You intend to introduce as exhibits at the trial of this matter.

REQUEST FOR PRODUCTION NO. 3

Please produce Your document retention and document destruction policy or policies, and any Documents describing, discussing or explaining such policies including but not limited to Documents sufficient to identify each website, electronic data source, data repository and/or other medium maintained by you or on your behalf that contains or has contained information relating to the Product.

REQUEST FOR PRODUCTION NO. 4

Please produce all Documents depicting, describing, and/or explaining Your organizational structure, including but not limited to internal divisions, parents, subsidiaries, affiliates and any other related entities.

¹ See Florida Rule of Civil Procedure 1.280(b)(2).

REQUEST FOR PRODUCTION NO. 5

Please produce all Documents regarding the manufacture, production, labeling, packaging, marketing, advertising, sale, testing and/or regulatory compliance efforts with respect to the Product, including without limitation Your code of conduct; Your operating procedures; any chemical composition or engine performance testing; and any marketing research, marketing studies, market surveys, reports or similar Documents considered by You in the marketing, advertising, sale, and/or distribution of the Product.

REQUEST FOR PRODUCTION NO. 6

Please produce Documents sufficient to identify all versions (e.g., viscosity) of the Product manufactured, distributed, marketed, and/or sold by You, including but not limited to information relating to the API Service Category for each version of the Product.

REQUEST FOR PRODUCTION NO. 7

Please produce all Documents regarding the chemical or composition of the Product or its ingredients (and/or similar Documents) of the Product, including but not limited to any changes in the same over time.

REQUEST FOR PRODUCTION NO. 8

Please produce all Documents sufficient to identify all API SN-Rated additive package (including the manufacturer and cost thereof) that You currently purchase or have purchased in the last three (3) years for any Non-Obsolete Motor Oil.

REQUEST FOR PRODUCTION NO. 9

Please produce all Documents that list, identify, describe, discuss or relate to any company, business, or other that had any role in the production, manufacture, packaging, labeling,

distribution, servicing, marketing, testing, regulatory compliance and/or sale of the Product or its ingredients.

REQUEST FOR PRODUCTION NO. 10

Please produce all Documents regarding the sale of the Product by You to Florida persons and entities.

REQUEST FOR PRODUCTION NO. 11

Please produce all Documents from the last twenty (20) years comprising and/or regarding any statements You have made to Your employees, officers, the press, and/or third parties about Obsolete Motor Oil and/or the Product including but not limited to the statements made by Dennis Madden in the article available at www.synlube.com/LUBEREPORT_CA_SA_SB.htm.

REQUEST FOR PRODUCTION NO. 12

Please produce all Documents from the last twenty (20) years regarding Your decision and/or reasons to sell or stop selling Obsolete Motor Oil (including but not limited to the Product), including but not limited to:

- a) any cost-benefit or other financial analyses;
- b) regulatory changes or oversight from regulatory agencies;
- c) potential damage to automobiles or their engines;
- d) potential or actual media coverage;
- e) communications, publications, feedback, statements (or similar Documents) by trade, industrial, and/or watchdog groups (including but not limited to API, SAE, and/or PQIA);
- f) communications, publications, feedback, statements (or similar Documents) by retailers;
- g) potential liability;
- h) consumer understanding of Obsolete Motor Oil and/or additive-free motor oil;

- i) consumer motivation for purchasing Obsolete Motor Oil and/or additive-free motor oil;
- j) consumer demographics analyses or similar Documents;
- k) the potential market for API Service Category SA oil;
- l) the profitability of selling Obsolete Motor Oil as compared to non-Obsolete Motor Oil;
- m) the cost to manufacture additive-free motor oil as opposed to motor oil containing additives;
- n) competition from other entities manufacturing, marketing, and/or selling Obsolete Motor Oil; and
- o) concerns raised by Your officers and/or employees.

REQUEST FOR PRODUCTION NO. 13

Please produce all Documents that list, identify, describe, discuss or relate to any sales projections, sales quotas, or sales targets for the Product.

REQUEST FOR PRODUCTION NO. 14

Please produce Documents sufficient to identify Your sales of the Product in Florida, including (for each year You sold the Product, starting with the first year the Product was sold): the number of units sold, the dollar amount in sales, and the profit.

REQUEST FOR PRODUCTION NO. 15

Please produce all Documents regarding the price for which You sell the Product to retailers and/or distributors.

REQUEST FOR PRODUCTION NO. 16

Please produce all Documents regarding the price for which the Product is sold to consumers, including but not limited to any analyses or similar Documents or how the Product's price compares to the price of other motor oil products.

REQUEST FOR PRODUCTION NO. 17

Please produce a copy of each and every label used on the Product or considered for use on the Product, along with Documents sufficient to identify the time frame and where each product package and/or label was actually used on Products for sale to consumers.

REQUEST FOR PRODUCTION NO. 18

Please produce all Documents regarding the content and/or design of the label that appears or has appeared on the Product, including but not limited to draft content / designs and content / designs considered but not ultimately utilized on the final label; Documents related to the veracity (or lack thereof) of any statements or graphics on the Product's label; and Documents regarding Your decisions about what information should be (or should not be) disclosed, provided, and/or conveyed to consumers or retailers with respect to the Product and/or API SA-Rated oil.

REQUEST FOR PRODUCTION NO. 19

Please produce all Documents regarding how consumers might interpret and/or understand the Product's label, including but not limited to consumers' actual or potential reading, reviewing, interpreting and/or understanding of motor oil labels (including but not limited to the Product's labels).

REQUEST FOR PRODUCTION NO. 20

Please produce all Documents regarding the suitability, efficacy and/or safety for use of API SA-Rated oil (including but not limited to the Product) in automotive engines, including but not limited to communications, research, studies, investigations, standards, legal requirements, and/or regulatory requirements.

REQUEST FOR PRODUCTION NO. 21

Please produce all Documents regarding any communications between or among You and any regulatory or industry agency or association, including but not limited to any state or government regulator, API, PQIA, SAE, the Federal Trade Commission, the Independent Lubricants Manufacturers Association, or the Private Label Manufacturers Association regarding Your sale of Obsolete Motor Oil (including but not limited to the Product), or their packaging and/or labeling.

REQUEST FOR PRODUCTION NO. 22

Please produce all Documents regarding consumer demand for the Product, API SA-Rated oils, and/or Obsolete Motor Oil.

REQUEST FOR PRODUCTION NO. 23

Please produce all Documents regarding any instructions, suggestions, guidance, marketing, or similar Documents provided by You to retailers selling the Product, which relate to the Product, API SA-Rated oils, and/or Obsolete Motor Oil.

REQUEST FOR PRODUCTION NO. 24

Please produce all Documents regarding consumer understanding (or lack thereof) of what “obsolete” motor oil is, and/or whether some motor oils are not suitable for automotive engines manufactured after a certain year.

REQUEST FOR PRODUCTION NO. 25

Please produce all Documents regarding any complaint, concern, statement or question by a consumer regarding the Product and/or any damage to a consumer’s vehicle after their use of the Product.

DATED: June 25, 2018

Respectfully submitted,

**KOZYAK TROPIN &
THROCKMORTON**

By: Harley S. Tropin

Harley S. Tropin, Esq. (Fla. # 241253)
hst@kttlaw.com

Tal J. Lifshitz, Esq. (Fla. # 99519)
tjl@kttlaw.com

Robert Neary, Esq. (Fla. #81712)
rn@kttlaw.com

2525 Ponce de Leon Blvd., 9th Floor
Miami, Florida 33134

Tel: (305) 372-1800
Fax: (305) 372-3508

and

KANNER & WHITELEY, LLC

Allan Kanner, Esq. (*PHV forthcoming*)
a.kanner@kanner-law.com

Cynthia St. Amant, Esq. (*PHV forthcoming*)
c.stamant@kanner-law.com

701 Camp Street
New Orleans, Louisiana 70130

Tel: (504) 524-5777
Fax: (504) 524-5763

and

CASEY LAW FIRM, LLC

Ryan Casey, Esq. (*PHV forthcoming*)
ryan@rcaseylaw.com

20 NE Thompson Street
Portland, Oregon 97212

Tel: (503) 928-7611
Fax: (503) 345-7470

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing requests will be served upon Defendant's registered agent together with the Complaint, in accordance with Florida Rule of Civil Procedure 1.350(b), on June 25, 2018.

/s/ Harley S. Tropin
Harley S. Tropin

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

BRANDON OPALKA,
Plaintiff(s),

vs.

CIRCUIT CIVIL DIVISION

Case Number: **18-19664-CA-44**

AMALIE AOC, LTD
Defendant(s).

NOTICE OF DESIGNATION OF EMAIL ADDRESS

NOTICE OF DESIGNATION OF EMAIL SERVICE ADDRESS OF COMPLEX BUSINESS LITIGATION SECTION
pursuant to F.R.Jud.Admin. 2.516

The Eleventh Judicial Circuit, by and through the Court, gives notice that consistent with the Complex Business Litigation Rules, all documents filed in this case are to be served on the CBL section by the filing party at time of filing.

The service email address for this case is:

CBL44@jud11.flcourts.org, **this email address has already been added to the service list in the E-portal system. Therefore, you do NOT have to email filings directly to the above mentioned email address.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail through the Florida Court's E-Portal System to all counsel/parties of record on this June 26, 2018.

/s/ Michelle Betancourt
Michelle Betancourt
Case Manager

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

BRANDON OPALKA, an individual,
on behalf of himself and all others
similarly situated,

CASE NO. 2018-019664-CA-01

Plaintiff,

COMPLEX BUSINESS LITIGATION DIV.

v.

AMALIE AOC, LTD., a Florida
Limited Partnership,

Defendant.

**VERIFIED MOTION FOR ADMISSION TO APPEAR PRO HAC VICE
PURSUANT TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.510**

Harley S. Tropin of Kozyak Tropin & Throckmorton LLP, counsel of record for Plaintiff in the above-styled action, moves for admission *pro hac vice* of Allan Kanner, Esq., of Kanner & Whiteley, LLC, 701 Camp Street, New Orleans, Louisiana 70130, Tel: (504) 524-5777, pursuant to Rule 2.510 of the Florida Rules of Judicial Administration. As grounds for this motion, undersigned counsel states as follows:

1. I am a partner at Kozyak Tropin & Throckmorton, LLP. I am a member in good standing of the Florida Bar, and the United States District Court for the Southern District of Florida, as well as other jurisdictions.
2. I respectfully request that this Court admit Allan Kanner, Esq. of New Orleans, Louisiana to appear in this state for the limited purpose of appearing and participating in the above-styled action.

3. Allan Kanner is an active member in good standing and currently eligible to practice law in:

<u>JURISDICTION</u>	<u>ATTORNEY/BAR NUMBER</u>
State of Louisiana	20580
State of California	109152
District of Columbia	292425
State of New Jersey	033981980
State of New York	4476024
State of Oklahoma	20948
State of Pennsylvania	31703
State of Texas	24068570
Puerto Rico (Federal)	214213

4. Mr. Kanner has never been subject to discipline in any jurisdiction.

5. Allan Kanner is not admitted to the Florida Bar and has not appeared in any other proceedings in Florida state courts on behalf of the Plaintiff.

6. Mr. Kanner has read the applicable provisions of Florida Rules of Judicial Administration 2.510 and Rule 1-3.10 of the Rules Regulating The Florida Bar and certifies that this verified motion complies with those rules.

7. Mr. Kanner agrees to comply with the provisions of the Florida Rules of Professional Conduct and consents to the jurisdiction of the courts and the Bar of the State of Florida.

8. The law firm of Kozyak Tropin & Throckmorton, LLP has been, and will continue to be, associated with this litigation as counsel for Plaintiff.

9. A copy of the proposed Order admitting Allan Kanner to appear Pro Hac Vice in this case is attached hereto as Exhibit A.

WHEREFORE, undersigned counsel respectfully requests this Court enter an Order allowing Allan Kanner to appear *Pro Hac Vice* for the Plaintiff in this action.

Respectfully submitted this 3rd day of July, 2018.

KOZYAK TROPIN THROCKMORTON, LLP
2525 Ponce de Leon Boulevard, 9th Floor
Miami, FL 33134
Tel: (305) 372-1800
Fax: (305) 372-3508

By: /s/ Harley S. Tropin
Harley S. Tropin, Esq.
Florida Bar No. 241253
hst@kttlaw.com

STATE OF LOUISIANA)
)
PARISH OF ORLEANS)

VERIFICATION

I, ALLAN KANNER, do hereby swear or affirm under penalty of perjury that I have read the foregoing Motion and know the contents thereof, and the contents are true of my own knowledge and belief.



ALLAN KANNER

I hereby consent to be associated as local counsel of record in this cause pursuant to Florida Rule of Judicial Administration 2.510.

DATED this 3rd day of July, 2018.

By: /s/ Harley S. Tropin
Harley S. Tropin, Esq. (Fla. Bar No. 241253)
hst@kttlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of July, 2018, a true and correct copy of the foregoing motion was served by mail to PHV Admissions, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2333 accompanied by payment of the \$250.00 filing fee made payable to The Florida Bar, and via email in accordance with Florida Rules of Judicial Administration 2.516(b)(1)(3); and automatic email generated by the State's e-portal.

By: /s/ Harley S. Tropin
Harley S. Tropin

EXHIBIT

“A”

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

BRANDON OPALKA, an individual,
on behalf of himself and all others
similarly situated,

CASE NO. 2018-019664-CA-01

Plaintiff,
v.

COMPLEX BUSINESS LITIGATION DIV.

AMALIE AOC, LTD., a Florida
Limited Partnership,

Defendant. _____ /

ORDER ADMITTING ALLAN KANNER PRO HAC VICE

THIS MATTER was considered without hearing upon the Verified Motion for Admission of Allan Kanner, as counsel for Plaintiff, Brandon Opalka, an individual, and on behalf of himself and all others similarly situated. The Court, having reviewed the Verified Motion and good cause appearing, it is

ORDERED AND ADJUDGED that Allan Kanner may appear before the Court *pro hac vice* as counsel for Brandon Opalka, an individual, and on behalf of himself and all others similarly situated, in this case, subject to the Local Rules of this court. The following attorney is the designated member of the trial bar of this Court with whom the Court and opposing counsel may readily communicate and upon whom papers may be served:

Harley S. Tropin, Esq. (Fla. Bar No. 241253)
KOZYAK TROPIN THROCKMORTON, LLP
2525 Ponce de Leon Boulevard, 9th Floor
Miami, FL 33134
Tel: (305) 372-1800 / Fax: (305) 372-3508
Email: hst@kttlaw.com

The Clerk shall provide electronic notification of all electronic filings to Allan Kanner at A.Kanner@kanner-law.com.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida on this day of _____, 2018.

CIRCUIT COURT JUDGE

Copies to:
1155544

{Cases; 00025409.DOCX}

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

BRANDON OPALKA, an individual,
on behalf of himself and all others
similarly situated,

CASE NO. 2018-019664-CA-01

Plaintiff,

COMPLEX BUSINESS LITIGATION DIV.

v.

AMALIE AOC, LTD., a Florida
Limited Partnership,

Defendant.

**VERIFIED MOTION FOR ADMISSION TO APPEAR PRO HAC VICE
PURSUANT TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.510**

Harley S. Tropin of Kozyak Tropin & Throckmorton LLP, counsel of record for Plaintiff in the above-styled action, moves for admission *pro hac vice* of Cynthia St. Amant, Esq., of Kanner & Whiteley, LLC, 701 Camp Street, New Orleans, Louisiana 70130, Tel: (504) 524-5777, pursuant to Rule 2.510 of the Florida Rules of Judicial Administration. As grounds for this motion, undersigned counsel states as follows:

1. I am a partner at Kozyak Tropin & Throckmorton, LLP. I am a member in good standing of the Florida Bar, and the United States District Court for the Southern District of Florida, as well as other jurisdictions.
2. I respectfully request that this Court admit Cynthia St. Amant, Esq. of New Orleans, Louisiana to appear in this state for the limited purpose of appearing and participating in the above-styled action.

3. Cynthia St. Amant is an active member in good standing and currently eligible to practice law in:

<u>JURISDICTION</u>	<u>ATTORNEY/BAR NUMBER</u>
State of Louisiana	24439
State of Texas	24002176

4. Ms. St. Amant has never been subject to discipline in any jurisdiction.

5. Cynthia St. Amant is not admitted to the Florida Bar and has not appeared in any other proceedings in Florida state courts on behalf of the Plaintiff.

6. Ms. St. Amant has read the applicable provisions of Florida Rules of Judicial Administration 2.510 and Rule 1-3.10 of the Rules Regulating The Florida Bar and certifies that this verified motion complies with those rules.

7. Ms. St. Amant agrees to comply with the provisions of the Florida Rules of Professional Conduct and consents to the jurisdiction of the courts and the Bar of the State of Florida.

8. The law firm of Kozyak Tropin & Throckmorton, LLP has been, and will continue to be, associated with this litigation as counsel for Plaintiff.

9. A copy of the proposed Order admitting Cynthia St. Amant to appear *Pro Hac Vice* in this case is attached hereto as Exhibit A.

WHEREFORE, undersigned counsel respectfully requests this Court enter an Order allowing Cynthia St. Amant to appear *Pro Hac Vice* for the Plaintiff in this action.

Respectfully submitted this 3rd day of July, 2018.

KOZYAK TROPIN THROCKMORTON, LLP
2525 Ponce de Leon Boulevard, 9th Floor
Miami, FL 33134
Tel: (305) 372-1800

Fax: (305) 372-3508

By: /s/ Harley S. Tropin
Harley S. Tropin, Esq.
Florida Bar No. 241253
hst@kttlaw.com

STATE OF LOUISIANA)
)
PARISH OF ORLEANS)

VERIFICATION

I, CYNTHIA ST. AMANT, do hereby swear or affirm under penalty of perjury that I have read the foregoing Motion and know the contents thereof, and the contents are true of my own knowledge and belief.



CYNTHIA ST. AMANT

I hereby consent to be associated as local counsel of record in this cause pursuant to Florida Rule of Judicial Administration 2.510.

DATED this 3rd day of July, 2018.

By: /s/ Harley S. Tropin
Harley S. Tropin, Esq. (Fla. Bar No. 241253)
hst@kttlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of July, 2018, a true and correct copy of the foregoing motion was served by mail to PHV Admissions, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2333 accompanied by payment of the \$250.00 filing fee made payable to The Florida Bar, and via email in accordance with Florida Rules of Judicial Administration 2.516(b)(1)(3); and automatic email generated by the State's e-portal.

By: /s/ Harley S. Tropin
Harley S. Tropin

EXHIBIT

“A”

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

BRANDON OPALKA, an individual,
on behalf of himself and all others
similarly situated,

CASE NO. 2018-019664-CA-01

Plaintiff,
v.

COMPLEX BUSINESS LITIGATION DIV.

AMALIE AOC, LTD., a Florida
Limited Partnership,

Defendant. _____ /

ORDER ADMITTING CYNTHIA ST. AMANT PRO HAC VICE

THIS MATTER was considered without hearing upon the Verified Motion for Admission of Cynthia St. Amant, as counsel for Plaintiff, Brandon Opalka, an individual, and on behalf of himself and all others similarly situated. The Court, having reviewed the Verified Motion and good cause appearing, it is

ORDERED AND ADJUDGED that Cynthia St. Amant may appear before the Court *pro hac vice* as counsel for Brandon Opalka, an individual, and on behalf of himself and all others similarly situated, in this case, subject to the Local Rules of this court. The following attorney is the designated member of the trial bar of this Court with whom the Court and opposing counsel may readily communicate and upon whom papers may be served:

Harley S. Tropin, Esq. (Fla. Bar No. 241253)
KOZYAK TROPIN THROCKMORTON, LLP
2525 Ponce de Leon Boulevard, 9th Floor
Miami, FL 33134
Tel: (305) 372-1800 / Fax: (305) 372-3508
Email: hst@kttlaw.com

The Clerk shall provide electronic notification of all electronic filings to Cynthia St. Amant at c.stamant@kanner-law.com.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida on this day of _____, 2018.

CIRCUIT COURT JUDGE

Copies to:
1155544

{Cases; 00025410.DOCX}

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

BRANDON OPALKA, an individual,
on behalf of himself and all others
similarly situated,

CASE NO. 2018-019664-CA-01

Plaintiff,

COMPLEX BUSINESS LITIGATION DIV.

v.

AMALIE AOC, LTD., a Florida
Limited Partnership,

Defendant.

**VERIFIED MOTION FOR ADMISSION TO APPEAR PRO HAC VICE
PURSUANT TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.510**

Harley S. Tropin of Kozyak Tropin & Throckmorton LLP, counsel of record for Plaintiff in the above-styled action, moves for admission *pro hac vice* of Ryan Casey, Esq., of the Casey Law Firm, LLC, 20 NE Thompson Street, Portland, Oregon 97212, Tel: (503) 928-7611, pursuant to Rule 2.510 of the Florida Rules of Judicial Administration. As grounds for this motion, undersigned counsel sates as follows:

1. I am a partner at Kozyak Tropin & Throckmorton, LLP. I am a member in good standing of the Florida Bar, and the United States District Court for the Southern District of Florida, as well as other jurisdictions.

2. I respectfully request that this Court admit Ryan Casey, Esq. of Portland, Oregon to appear in this state for the limited purpose of appearing and participating in the above-styled action.

3. Ryan Casey is an active member in good standing and currently eligible to practice law in:

<u>JURISDICTION</u>	<u>ATTORNEY/BAR NUMBER</u>
State of Colorado	45939
State of Louisiana	31092
State of Oregon	152824

4. Mr. Casey has never been subject to discipline in any jurisdiction.

5. Mr. Casey is not admitted to the Florida Bar and has not appeared in any other proceedings in Florida state courts on behalf of the Plaintiff.

6. Mr. Casey has read the applicable provisions of Florida Rules of Judicial Administration 2.510 and Rule 1-3.10 of the Rules Regulating The Florida Bar and certifies that this verified motion complies with those rules.

7. Mr. Casey agrees to comply with the provisions of the Florida Rules of Professional Conduct and consents to the jurisdiction of the courts and the Bar of the State of Florida.

8. The law firm of Kozyak Tropin & Throckmorton, LLP has been, and will continue to be, associated with this litigation as counsel for Plaintiff.

9. A copy of the proposed Order admitting Ryan Casey to appear Pro Hac Vice in this case is attached hereto as Exhibit A.

WHEREFORE, undersigned counsel respectfully requests this Court enter an Order allowing Ryan Casey to appear *Pro Hac Vice* for the Plaintiff in this action.

Respectfully submitted this 3rd day of July, 2018.

KOZYAK TROPIN THROCKMORTON, LLP
2525 Ponce de Leon Boulevard, 9th Floor

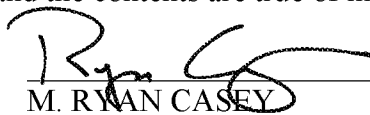
Miami, FL 33134
Tel: (305) 372-1800
Fax: (305) 372-3508

By: /s/ Harley S. Tropin
Harley S. Tropin, Esq.
Florida Bar No. 241253
hst@kttlaw.com

STATE OF OREGON)
)
COUNTY OF MULTNOMAH)

VERIFICATION

I, Ryan Casey, do hereby swear or affirm under penalty of perjury that I have read the foregoing Motion and know the contents thereof, and the contents are true of my own knowledge and belief.


M. RYAN CASEY

I hereby consent to be associated as local counsel of record in this cause pursuant to Florida Rule of Judicial Administration 2.510.

DATED this 3rd day of July, 2018.

By: /s/ Harley S. Tropin
Harley S. Tropin, Esq. (Fla. Bar No. 241253)
hst@kttlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of July, 2018, a true and correct copy of the foregoing motion was served by mail to PHV Admissions, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2333 accompanied by payment of the \$250.00 filing fee made payable to The Florida Bar, and via email in accordance with Florida Rules of Judicial Administration 2.516(b)(1)(3); and automatic email generated by the State's e-portal.

By: /s/ Harley S. Tropin
Harley S. Tropin

Dated: July 10, 2018

Respectfully submitted,

CARLTON FIELDS JORDEN BURT, P.A.
Miami Tower, Suite 4200
100 S.E. Second Street
Miami, Florida 33131
Telephone: (305) 530-0050
Facsimile: (305) 530-0055

By: /s/ Julianna Thomas McCabe
Julianna Thomas McCabe (FBN 355010)
jtmccabe@carltonfields.com
Irma Reboso Solares (FBN 797073)
isolares@carltonfields.com
Secondary emails:
cpratt@carltonfields.com
nthompson@carltonfields.com
dkatz@carltonfields.com

Attorneys for Defendant Amalie AOC, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of July, 2018, a true and correct copy of the foregoing document was filed electronically through the Florida Courts E-Filing Portal which electronically served all counsel of record including:

Complex Business Litigation Section
CBL44@jud11.flcourts.org

Harley S. Tropin, Esq.
Tal J. Lifshitz, Esq.
Robert Neary, Esq.
Kozyak Tropin & Throckmorton
2525 Ponce de Leon Boulevard, 9th Floor
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Facsimile: (305) 372-3508
hst@kttlaw.com
tjl@kttlaw.com
rn@kttlaw.com

Counsel for Plaintiff

Allan Kanner, Esq.
Cynthia St. Amant, Esq.
Kanner & Whiteley, LLC
701 Camp Street
New Orleans, Louisiana 70130
Telephone: (504) 524-5777
Facsimile: (504) 524-5763
a.kanner@kanner-law.com
c.stamant@kanner-law.com

Counsel for Plaintiff

Ryan Casey, Esq.
Casey Law Firm, LLC
20 NE Thompson Street
Portland, Oregon 97212
Telephone: (503) 928-7611
Facsimile: (503) 345-7470
ryan@rcaseylaw.com

Counsel for Plaintiff

/s/ Julianna Thomas McCabe

115162373

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

BRANDON OPALKA, an individual,
on behalf of himself and all others
similarly situated,

CASE NO. 2018-019664-CA-01

Plaintiff,
v.

COMPLEX BUSINESS LITIGATION DIV.

AMALIE AOC, LTD., a Florida
Limited Partnership,

Defendant. _____ /

ORDER ADMITTING ALLAN KANNER *PRO HAC VICE*

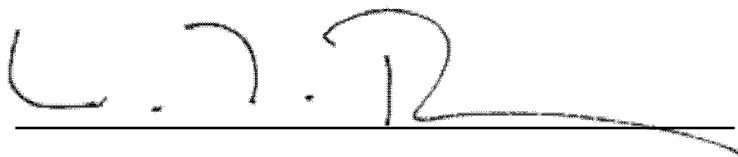
THIS MATTER was considered without hearing upon the Verified Motion for Admission of Allan Kanner, as counsel for Plaintiff, Brandon Opalka, an individual, and on behalf of himself and all others similarly situated. The Court, having reviewed the Verified Motion and good cause appearing, it is

ORDERED AND ADJUDGED that Allan Kanner may appear before the Court *pro hac vice* as counsel for Brandon Opalka, an individual, and on behalf of himself and all others similarly situated, in this case, subject to the Local Rules of this court. The following attorney is the designated member of the trial bar of this Court with whom the Court and opposing counsel may readily communicate and upon whom papers may be served:

Harley S. Tropin, Esq. (Fla. Bar No. 241253)
KOZYAK TROPIN THROCKMORTON, LLP
2525 Ponce de Leon Boulevard, 9th Floor
Miami, FL 33134
Tel: (305) 372-1800 / Fax: (305) 372-3508
Email: hst@kttlaw.com

The Clerk shall provide electronic notification of all electronic filings to Allan Kanner at A.Kanner@kanner-law.com.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on
07/10/18.



WILLIAM THOMAS
CIRCUIT COURT JUDGE

**No Further Judicial Action Required on THIS
MOTION
CLERK TO RECLOSE CASE IF POST
JUDGMENT**

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.
1155544

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

BRANDON OPALKA, an individual,
on behalf of himself and all others
similarly situated,

CASE NO. 2018-019664-CA-01

Plaintiff,
v.

COMPLEX BUSINESS LITIGATION DIV.

AMALIE AOC, LTD., a Florida
Limited Partnership,

Defendant. _____ /

ORDER ADMITTING RYAN CASEY PRO HAC VICE

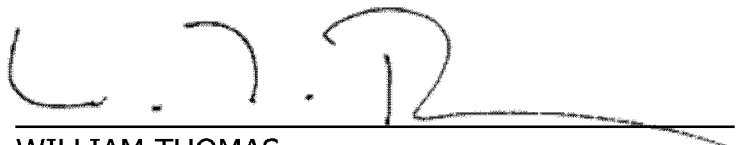
THIS MATTER was considered without hearing upon the Verified Motion for Admission of Ryan Casey, as counsel for Plaintiff, Brandon Opalka, an individual, and on behalf of himself and all others similarly situated. The Court, having reviewed the Verified Motion and good cause appearing, it is

ORDERED AND ADJUDGED that Ryan Casey may appear before the Court *pro hac vice* as counsel for Brandon Opalka, an individual, and on behalf of himself and all others similarly situated, in this case, subject to the Local Rules of this court. The following attorney is the designated member of the trial bar of this Court with whom the Court and opposing counsel may readily communicate and upon whom papers may be served:

Harley S. Tropin, Esq. (Fla. Bar No. 241253)
KOZYAK TROPIN THROCKMORTON, LLP
2525 Ponce de Leon Boulevard, 9th Floor
Miami, FL 33134
Tel: (305) 372-1800 / Fax: (305) 372-3508
Email: hst@kttlaw.com

The Clerk shall provide electronic notification of all electronic filings to Ryan Casey at ryan@rcaseylaw.com.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 07/10/18.



WILLIAM THOMAS
CIRCUIT COURT JUDGE

**No Further Judicial Action Required on THIS
MOTION
CLERK TO RECLOSE CASE IF POST
JUDGMENT**

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

1155544

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

COMPLEX BUSINESS LITIGATION

CASE NO. 2018-019664-CA-01 (44)

BRANDON OPALKA, an individual,
on behalf of himself and all others
similarly-situated,

Plaintiff,

vs.

AMALIE AOC, LTD., a Florida
Limited Partnership,

Defendant.

**DEFENDANT AMALIE AOC, LTD.'S
ANSWER AND DEFENSES TO CLASS ACTION COMPLAINT**

Defendant Amalie AOC, Ltd. (“Amalie AOC”) hereby answers the Class Action Complaint filed on June 14, 2018 (the “Complaint”), by denying each and every allegation contained in the Complaint that is not expressly admitted below, and by responding to the individually numbered paragraphs of the Complaint as follows:

ANSWER

INTRODUCTION

1. Amalie AOC admits that Plaintiff Brandon Opalka (“Plaintiff”) has filed what purports to be a class action related to XCEL Premium motor oil. To the extent the Complaint alleges that Amalie AOC manufactures, markets, advertises, or sells XCEL Premium motor oil,

Amalie AOC denies those allegations.¹ Amalie AOC further denies that class action treatment is appropriate and that Plaintiff or any putative class member is entitled to any of the relief requested in the Complaint.

2. Denied.

3. Denied.

4. Denied.

5. Amalie AOC admits that XCEL Premium motor oil products are sold at gas stations and retailers in Florida. Amalie AOC denies all other allegations of paragraph 5.

6. Denied.

PARTIES

7. To the extent paragraph 7 makes allegations regarding Plaintiff's residency and purchase of XCEL Premium motor oil, Amalie AOC lacks knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies those allegations. Amalie AOC denies all other allegations of paragraph 7.

8. To the extent paragraph 8 makes allegations regarding Amalie AOC's corporate information and registered agent, Amalie AOC does not contest those allegations. To the extent paragraph 8 states legal conclusions regarding service of process, no response is required.

JURISDICTION AND VENUE

9. Amalie AOC admits that Plaintiff has filed what purports to be a class action for injunctive relief and damages placing an amount in controversy in excess of \$750,000 exclusive of attorney's fees and costs. Amalie AOC denies that class action treatment is appropriate and that Plaintiff or any putative class member is entitled to any of the relief requested in the

¹ XCEL Premium motor oil is marketed and sold by an affiliate of Amalie AOC, Ltd. Amalie AOC expressly denies that Amalie AOC, Ltd. engaged in any of the conduct alleged in the Complaint, and reserves all of its defenses related to its inclusion as a party in this case.

Complaint.

10. Amalie AOC admits that it is a limited partnership based in Florida. To the extent paragraph 10 states legal conclusions regarding personal jurisdiction, no response is required. Amalie AOC denies all other allegations of paragraph 10.

11. To the extent paragraph 11 alleges the location in which Plaintiff's purported causes of action accrued, Amalie AOC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 and therefore denies those allegations. Amalie AOC denies all other allegations of paragraph 11.

FACTUAL ALLEGATIONS

12. Paragraph 12 fails to assert an allegation against Amalie AOC and therefore no response is required.

13. Paragraph 13 fails to assert an allegation against Amalie AOC and therefore no response is required.

14. Paragraph 14 fails to assert an allegation against Amalie AOC and therefore no response is required.

15. Paragraph 15 fails to assert an allegation against Amalie AOC and therefore no response is required.

16. Paragraph 16 fails to assert an allegation against Amalie AOC and therefore no response is required.

17. Paragraph 17 fails to assert an allegation against Amalie AOC and therefore no response is required.

18. Paragraph 18 fails to assert an allegation against Amalie AOC and therefore no response is required.

19. Paragraph 19 fails to assert an allegation against Amalie AOC and therefore no response is required.

20. Paragraph 20 fails to assert an allegation against Amalie AOC and therefore no response is required.

21. Paragraph 21 fails to assert an allegation against Amalie AOC and therefore no response is required.

22. Paragraph 22 fails to assert an allegation against Amalie AOC and therefore no response is required.

23. Paragraph 23 fails to assert an allegation against Amalie AOC and therefore no response is required.

24. Paragraph 24 fails to assert an allegation against Amalie AOC and therefore no response is required.

25. Paragraph 25 fails to assert an allegation against Amalie AOC and therefore no response is required.

26. Paragraph 26 fails to assert an allegation against Amalie AOC and therefore no response is required.

27. Paragraph 27 fails to assert an allegation against Amalie AOC and therefore no response is required.

28. Paragraph 28 fails to assert an allegation against Amalie AOC and therefore no response is required.

29. Paragraph 29 fails to assert an allegation against Amalie AOC and therefore no response is required.

30. Paragraph 30 fails to assert an allegation against Amalie AOC and therefore no

response is required.

31. Paragraph 31 fails to assert an allegation against Amalie AOC and therefore no response is required.

32. Paragraph 32 fails to assert an allegation against Amalie AOC and therefore no response is required.

33. Paragraph 33 fails to assert an allegation against Amalie AOC and therefore no response is required.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. To the extent paragraph 39 shows what purports to be the front label of a bottle of XCEL Premium motor oil, the label speaks for itself. Amalie AOC denies all other allegations of paragraph 39.

40. Denied.

41. Denied, including all subparts.

42. To the extent paragraph 42 purports to describe the content of the label of the XCEL Premium motor oil container, the label speaks for itself, and Amalie AOC denies all allegations of paragraph 42 that are not consistent with the label. Amalie AOC denies all other allegations of paragraph 42.

43. Denied.

44. Denied.

45. Denied.

46. Amalie AOC admits that paragraph 46 shows what purports to be the front and back labels of a bottle of XCEL Premium motor oil. The labels speak for themselves, and Amalie AOC denies all allegations of paragraph 46 that are not consistent with the labels.

47. To the extent paragraph 47 purports to describe the content of the label of the XCEL Premium motor oil container, the label speaks for itself, and Amalie AOC denies all allegations of paragraph 47 that are not consistent with the label. Amalie AOC denies all other allegations of paragraph 47, including footnote 4.

48. Denied.

49. Denied.

50. Denied.

51. Denied, including all subparts.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Amalie AOC lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 58 and therefore denies those allegations.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

CLASS REPRESENTATION ALLEGATIONS

64. Amalie AOC admits that Plaintiff has filed what purports to be a class action, but Amalie AOC denies that class action treatment is appropriate and that Plaintiff or any putative class member is entitled to any of the relief requested in the Complaint.

65. Denied.

66. Amalie AOC admits that Plaintiff purports to exclude various individuals from the putative class, but Amalie AOC denies that class action treatment is appropriate and that Plaintiff or any putative class member is entitled to any of the relief requested in the Complaint.

67. Denied.

68. Denied, including all subparts.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied, including all subparts.

75. Denied.

76. Denied.

CLAIMS FOR RELIEF

77. Amalie AOC admits that Plaintiff attempts to assert claims for relief, but denies that Plaintiff or any putative class member is entitled to any of the relief requested in the

Complaint.

COUNT I

Violations of the Florida Deceptive and Unfair Trade Practices Act
Fla. Stat. § 501.201, *et seq.*
(deceptive acts or practices)

Amalie AOC incorporates its responses to paragraphs 1 through 76 as if fully set forth herein.

78. Paragraph 78 consists of a legal conclusion to which no response is required.

79. To the extent paragraph 79 states a legal conclusion, no response is required.

Amalie AOC denies all other allegations of paragraph 79.

80. Paragraph 80 consists of legal conclusions to which no response is required.

81. Paragraph 81 fails to assert an allegation against Amalie AOC and therefore no response is required.

82. Denied.

83. To the extent paragraph 83 alleges that Plaintiff and putative class members purchased XCEL Premium motor oil, Amalie AOC lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83 and therefore denies those allegations. To the extent, paragraph 83 states a legal conclusion, no response is required.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. To the extent paragraph 91 fails to assert an allegation against Amalie AOC, no response is required. To the extent paragraph 91 alleges that Amalie AOC violated section 501.211(1), Florida Statutes, paragraph 91 is denied.

COUNT II

Violations of the Florida Deceptive and Unfair Trade Practices Act
Fla. Stat. § 501.201, *et seq.*
(unfair acts or practices)

Amalie AOC incorporates its responses to paragraphs 1 through 76 as if fully set forth herein.

92. Paragraph 92 consists of a legal conclusion to which no response is required.

93. To the extent paragraph 93 states a legal conclusion, no response is required.

Amalie AOC denies all other allegations of paragraph 93.

94. Paragraph 94 consists of legal conclusions to which no response is required.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. To the extent paragraph 108 fails to assert an allegation against Amalie AOC, no response is required. To the extent paragraph 108 alleges that Amalie AOC violated section 501.211(1), Florida Statutes, paragraph 108 is denied.

COUNT III

Violations of the Florida Deceptive and Unfair Trade Practices Act

Fla. Stat. § 501.201, *et seq.*

(unlawful misleading advertising)

Amalie AOC incorporates its responses to paragraphs 1 through 76 and paragraphs 117 through 124 as if fully set forth herein.

109. Paragraph 109 consists of a legal conclusion to which no response is required.

110. To the extent paragraph 110 states a legal conclusion, no response is required.

Amalie AOC denies all other allegations of paragraph 110.

111. Paragraph 111 consists of legal conclusions to which no response is required.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. To the extent paragraph 116 fails to assert an allegation against Amalie AOC, no response is required. To the extent paragraph 116 alleges that Amalie AOC violated section 501.211(1), Florida Statutes, paragraph 116 is denied.

COUNT IV

Violations of the Florida Misleading Advertising Law

Fla. Stat. § 817.41, *et seq.*

Amalie AOC incorporates its responses to paragraphs 1 through 76 as if fully set forth herein.

- 117. Denied.
- 118. Denied, including all subparts.
- 119. Denied.
- 120. Denied.
- 121. Denied.
- 122. Denied.
- 123. Denied.
- 124. Denied.
- 125. Denied.

COUNT V
Unjust Enrichment

Amalie AOC incorporates its responses to paragraphs 1 through 76 as if fully set forth herein.

126. Amalie AOC admits only that there was no contract between it and Plaintiff with respect to the purchase of XCEL Premium motor oil. Amalie AOC denies all other allegations of paragraph 126.

- 127. Denied.
- 128. Denied.
- 129. Denied.
- 130. Denied.

TOLLING OF ANY APPLICABLE STATE OF LIMITATIONS

131. Amalie AOC incorporates its responses to Plaintiff's allegations above as if fully set forth herein.

- 132. Denied.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

139. Denied.

DEMAND FOR JURY TRIAL

140. To the extent paragraph 140 consists of Plaintiff's demand for "a jury trial on all claims so triable," no response is required. To the extent Plaintiff alleges that he has asserted viable claims, Amalie AOC denies that Plaintiff or any putative class member is entitled to any of the relief requested in the Complaint.

PRAYER FOR RELIEF

Amalie AOC denies that Plaintiff is entitled to judgment against Amalie AOC or to any of the relief sought in the "WHEREFORE" clause, including all subparts, on pages 35 and 36 of the Complaint, or any other relief that may be requested elsewhere in the Complaint.

AFFIRMATIVE AND OTHER DEFENSES

First Defense

The Complaint fails to state a claim upon which relief may be granted because, *inter alia*: (1) the statements on the labels of XCEL Premium motor oil are accurate and conspicuous; (2) the Complaint fails to allege facts sufficient to support a conclusion that the labels are false or misleading or otherwise unlawful; and (3) the Complaint fails to allege facts sufficient to support a conclusion that Plaintiff and/or the putative class members suffered any damages caused by or

as a result of any alleged act or omission on the part of Amalie AOC.

Second Defense

Each claim alleged in the Complaint is expressly and/or impliedly preempted by federal and/or state law, by field and/or conflict preemption.

Third Defense

Each claim alleged in the Complaint is barred by the safe harbor doctrine.

Fourth Defense

Each claim asserted in the Complaint is barred by the primary jurisdiction doctrine because adjudication of each claim requires resolution of issues that lie within the specific expertise of state and/or federal regulatory bodies.

Fifth Defense

The claims asserted in the Complaint present non-justiciable political questions because Congress retains exclusive authority over weights and measures and Plaintiff's claims directly challenge Congress's authority.

Sixth Defense

Plaintiff and the putative class members have not suffered any cognizable injury due to any act or omission on the part of Amalie AOC. Plaintiff and the putative class lack standing to prosecute the claims alleged in the Complaint.

Seventh Defense

Plaintiff and the putative class members lack standing to pursue injunctive relief because they cannot show that they are likely to suffer future injury.

Eighth Defense

Each claim asserted in the Complaint is barred to the extent that Plaintiff and the putative

class seek relief based on acts or omissions by Amalie AOC that occurred, or by products that were purchased by Plaintiff or putative class members, beyond the applicable statute of limitations and/or statute of repose time periods.

Ninth Defense

To the extent the Complaint asserts claims sounding in fraud, deception and/or misrepresentation, those claims are barred by Plaintiff's failure to allege the circumstances constituting the alleged fraud, deception and/or misrepresentation with particularity.

Tenth Defense

The labels for XCEL Premium motor oil products do not contain any false or misleading statement or promises. As such, the product labels are not, deceptive, false, misleading, fraudulent, unlawful, or unfair, and are not intended to mislead or deceive consumers. This action is barred, in whole or in part, because the product labels at issue were in substantial compliance with the labeling regulations promulgated by the United States Department of Commerce and NIST, as incorporated by state law. Moreover, the labels and packaging at issue in the Complaint accurately portrayed the characteristics, uses, benefits, standard, quality, and grade of XCEL Premium motor oil products. To the extent the claims asserted in the Complaint rely on puffery or mere opinion, the claims are without merit because such statements are not actionable.

Eleventh Defense

The claims asserted in the Complaint are barred in whole and in part because XCEL Premium motor oil products were disseminated in good faith without knowledge that their labeling allegedly violated consumer protection laws.

Twelfth Defense

Amalie AOC has not breached any duty owed to Plaintiff or the putative class.

Thirteenth Defense

Plaintiff has failed to join an indispensable party or parties without whom this matter cannot proceed, including, but not limited to, any vendor, wholesaler, or manufacturer of the XCEL Premium motor oil at issue in the Complaint.

Fourteenth Defense

Each claim asserted in the Complaint is barred because Plaintiff and the putative class members had the opportunity to examine, and did or should have examined, the products at issue, and such an examination did, or should have under a reasonable examination, reveal the alleged deceptive and/or misleading conduct, the alleged omission, and/or the alleged defect. Moreover, Plaintiff and the putative class were on notice of the API SA rating, the alleged performance qualifications of that rating, and other information they contend was subject to deceptive or misleading advertising on XCEL Premium motor oil products.

Fifteenth Defense

Plaintiff and the putative class are precluded from recovery because the representations, actions or omissions alleged in the Complaint were not material to Plaintiff's and the putative class members' decisions to purchase or use XCEL Premium motor oil products. Plaintiff and the putative class did not rely on any alleged deceptive or misleading statements on the labeling of XCEL Premium motor oil.

Sixteenth Defense

Each claim asserted in the Complaint is barred by the voluntary payment doctrine to the extent Plaintiff and/or the putative class members voluntarily purchased the products at issue

knowingly and intelligently and without mistake of fact.

Seventeenth Defense

Amalie AOC is not liable to Plaintiff or to the putative class, in whole or in part, because the losses allegedly suffered in the Complaint were not proximately caused by any act or omission of Amalie AOC. The alleged injuries and damages were due to, and proximately caused by, in whole or in part, other events, conditions, instrumentalities, and/or acts or omissions of an independent individual or entity. The alleged injuries and damages were caused by an independent, intervening, or superseding cause.

Eighteenth Defense

The claims asserted in the Complaint fail because Plaintiff and the putative class did not suffer any damages. Additionally, there is no difference in the market value of the XCEL Premium motor oil in the condition it was delivered and the market value in the condition in which it allegedly should have been delivered. The XCEL Premium motor oil also was not rendered valueless as a result of any alleged defect.

Nineteenth Defense

Damages alleged in the Complaint are too remote from any alleged conduct by Amalie AOC to support any recovery or relief. Additionally, the alleged damages are impermissibly speculative.

Twentieth Defense

To the extent the Complaint seeks consequential damages, such damages are not available based on the claims asserted in the Complaint.

Twenty-First Defense

The monetary relief sought by Plaintiff and the putative class is barred to the extent that

they failed to make reasonable efforts to prevent or mitigate any alleged injury or loss.

Twenty-Second Defense

Any finding of compensatory liability under the consumer protection laws of Florida would violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and the Florida Constitution, because the standards of liability under these consumer protection laws are unduly vague and subjective, and permit retroactive, random, arbitrary, and capricious punishment.

Twenty-Third Defense

The claim for restitution and disgorgement in the Complaint is barred to the extent that it seeks a return of monies not in Amalie AOC's possession, and to the extent Plaintiff and the putative class have retained or failed to return the XCEL Premium motor oil to the vendor or the manufacturer.

Twenty-Fourth Defense

There is no basis for restitution and disgorgement in this case as Amalie AOC has not been unjustly enriched. Amalie AOC has not accepted or retained any benefit under inequitable circumstances. Moreover, Plaintiff and the putative class have not conferred any benefit on Amalie AOC, and Amalie AOC has not appreciated any benefit from Plaintiff and the Putative class.

Twenty-Fifth Defense

To the extent Plaintiff and the putative class have already received the benefit of their bargain, any relief to Plaintiff and the putative class members as requested in the Complaint would provide them with an inequitable windfall.

Twenty-Sixth Defense

The claims for restitution and disgorgement in the Complaint are precluded because such recovery would constitute an excessive penalty and forfeiture in violation of Amalie AOC's Eighth Amendment and federal and state due process rights, applicable statutory provisions, and rules of equity.

Twenty-Seventh Defense

The claims for restitution and disgorgement in the Complaint are barred because such recovery is unrelated to any measurable harm to consumers.

Twenty-Eighth Defense

The claims asserted in the Complaint are precluded or limited because Plaintiff and other putative class members failed to exhaust other available remedies.

Twenty-Ninth Defense

The equitable relief sought in the Complaint is barred by the existence of an adequate remedy at law. Additionally, in Florida, injunctive relief is not available where the movant's loss is compensable by money damages.

Thirtieth Defense

Each claim asserted in the Complaint is barred, in whole or in part, by the equitable doctrines of laches, estoppel and/or unclean hands.

Thirty-First Defense

Each claim asserted in the Complaint is barred, in whole or in part, by the doctrine of waiver.

Thirty-Second Defense

The claims asserted in the Complaint are barred in whole or in part by the doctrine of

accord and satisfaction.

Thirty-Third Defense

Amalie AOC is entitled to a setoff against any damages awarded in this case, for any and all payments made by any collateral source.

Thirty-Fourth Defense

Plaintiff's claims are limited or barred by the doctrines of comparative or contributory fault to the extent Plaintiff's own actions or the actions of others caused any alleged injury.

Thirty-Fifth Defense

The claims asserted in the Complaint are barred by the First Amendment to the Constitution of the United States and/or by free speech provisions of Florida's Constitution.

Thirty-Sixth Defense

The Complaint fails to allege a proper class action because, among other things, the members of the putative class are not so numerous that it would be impracticable and uneconomical to require joinder of each class member; there are no questions of law or fact sufficiently common to the putative class; Plaintiff's claims are not typical of the claims of other putative class members; Plaintiff is not an adequate representative of the putative class; common issues of law and fact do not predominate over individual issues; the putative class is not manageable or ascertainable; and a class action is not superior to other available methods for the fair and efficient adjudication of the purported claims for relief alleged in the Complaint. Plaintiff's proposed class definition is also improper, vague, ambiguous, overbroad, and not ascertainable. Amalie AOC reserves all available defenses to the class allegations under applicable rules and case law.

Thirty-Seventh Defense

As a matter of constitutional right and substantive due process, Amalie AOC would be entitled to contest by jury trial its liability to any particular individual plaintiff, even if the purported representative of the putative class prevails on his claims. Trying this case as a class action would violate the United States Constitution and the Florida Constitution.

Thirty-Eighth Defense

Punitive damages may not be awarded: (a) without proof of every element beyond a reasonable doubt, or in the alternate without proof by clear convincing evidence; (b) without bifurcating the trial of all punitive issues, including punitive liability; (c) with no limits, including the maximum amount that a jury may impose in this jurisdiction, and the single-digit multiplier of any compensatory damages award; (d) which improperly compensates Plaintiff for elements of damage not otherwise recognized under the laws of this jurisdiction; (e) without standards or sufficient clarity for determining the appropriateness or appropriate size of the award; (f) without consideration of the three constitutional guideposts of reprehensibility, ratio, and civil penalties as set forth by the U.S. Supreme Court (“Guideposts”); (g) without appropriate instructions on the limits of punitive damages imposed by the applicable principles of deterrence and punishment; (h) under a vague and arbitrary standard that does not define the necessary conduct or mental state required for punitive damages, and that is not rationally related to a legitimate government interest; and (i) without judicial review on the basis of the Guideposts.

Thirty-Ninth Defense

Plaintiff’s claims are limited by Florida’s cap on punitive damages.

Fortieth Defense

Any award of punitive damages to the Plaintiff would be in violation of the constitutional rights and safeguards provided to Amalie AOC under the United States Constitution and the Constitution of Florida, in that including punitive damages would lead to a verdict tainted by passion and prejudice.

Forty-First Defense

Any award of punitive damages to Plaintiff based in whole or in part upon Amalie AOC's alleged conduct toward non-parties is unconstitutional and constitutes a taking of Amalie AOC's property without due process.

Forty-Second Defense

Any award of punitive damages to Plaintiff would violate Amalie AOC's constitutional rights under the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and corresponding provisions of the Constitution of Florida. Punitive damages are penal in nature and, consequently, Amalie AOC is entitled to the same procedural and substantive safeguards afforded to criminal defendants.

Forty-Third Defense

Any award of punitive damages to Plaintiff, after having compelled Amalie AOC to disclose potentially incriminating documents and evidence in this case, would violate Amalie AOC's rights under the self-incrimination clause of the Fifth Amendment to the United States Constitution and the corresponding provision of the Constitution of Florida.

Forty-Fourth Defense

Any award of punitive damages to Plaintiff would violate the Eighth Amendment to the Constitution of the United States and the corresponding provision of the Constitution of Florida,

in that punitive damages would be an imposition of an excessive fine.

Forty-Fifth Defense

Any award of punitive damages to Plaintiff measured by the wealth of Amalie AOC would constitute an impermissible punishment of status and would violate United States Supreme Court precedent.

Forty-Sixth Defense

Any award of punitive damages to Plaintiff based on Amalie AOC's conduct outside of this jurisdiction would impose unreasonable state limitations on interstate commerce in violation of the Commerce Clause of the United States Constitution and would be in violation of U.S. Supreme Court precedent.

Amalie AOC reserves its rights to assert all available defenses and to add any other affirmative defenses as may be revealed by further investigation and discovery in this case.

WHEREFORE, Amalie AOC, having fully and completely responded to each and every allegation and claim in the Complaint, prays that Plaintiff takes nothing, that the claims against Amalie AOC be dismissed in their entirety, that Amalie AOC recovers its attorney's fees and costs for defending this action, and for such other and further relief as the Court deems just and proper.

Dated: July 27, 2018

Respectfully submitted,

/s/ Julianna Thomas McCabe
JULIANNA THOMAS MCCABE (Fla. Bar #355010)
jtmccabe@carltonfields.com
IRMA REBOSO SOLARES (Fla. Bar #797073)
isolares@carltonfields.com
MICHAEL N. WOLGIN (Fla. Bar #0042962)
mwolgin@carltonfields.com
CARLTON FIELDS JORDEN BURT, P.A.
Miami Tower, Suite 4200
100 S.E. Second Street

Miami, Florida 33131-2113
Telephone: (305) 530-0050
Facsimile: (305) 530-0055

Attorneys for Defendant Amalie AOC, Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July 2018, a true and correct copy of the foregoing document was filed electronically through the Florida Courts E-Filing Portal which electronically served all counsel of record, including:

Harley S. Tropin, Esq.
Tal J. Lifshitz, Esq.
Robert Neary, Esq.
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