

**Fill in this information to identify the case:**

Debtor Sequential Brands Group, Inc.

United States Bankruptcy Court for the: \_\_\_\_\_ District of Delaware  
(State)

Case number 21-11194

Official Form 410  
**Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>BEN ARIE</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>BEN ARIE</u> <u>Michael J. Kapin, Esq.</u> <u>KAPIN PLLC</u> <u>1133 Broadway Suite 1001</u> <u>New York, NY 10010, United States</u>	
	Contact phone <u>2125130500</u>	Contact phone _____
	Contact email <u>mikekapin@gmail.com</u>	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
<b>4. Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_ \_

7. How much is the claim? \$ 5,000,000.00. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Personal Injury / Products Liability -Complaint Attached

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

*Check the appropriate box:*

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 11/29/2021  
MM / DD / YYYY

/s/Michael J Kapin  
Signature

**Print the name of the person who is completing and signing this claim:**

Name Michael J Kapin  
First name Middle name Last name

Title Attorney at Law

Company KAPIN PLLC  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



# KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 556-7696 | International 001-310-823-9000

<b>Debtor:</b> 21-11194 - Sequential Brands Group, Inc.		
<b>District:</b> District of Delaware		
<b>Creditor:</b> BEN ARIE Michael J. Kapin, Esq. KAPIN PLLC 1133 Broadway Suite 1001 New York, NY, 10010 United States <b>Phone:</b> 2125130500 <b>Phone 2:</b>  <b>Fax:</b> 8665755019 <b>Email:</b> mikekapin@gmail.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> Personal Injury / Products Liability -Complaint Attached	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 5,000,000.00	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael J Kapin on 29-Nov-2021 5:09:24 p.m. Eastern Time <b>Title:</b> Attorney at Law <b>Company:</b> KAPIN PLLC		

ID: 25705577

PIN: FRJBMIIIG

United States Bankruptcy Court for the District of Delaware

Indicate Debtor against which you assert a claim by checking the appropriate box below. **(Check only one Debtor per claim form.)**

- |   |   |   |
|---|---|---|
| <input checked="" type="checkbox"/> Sequential Brands Group, Inc. (Case No. 21-11194) | <input type="checkbox"/> Brand Matter, LLC (Case No. 21-11199)                      | <input type="checkbox"/> Joe's Holdings, LLC (Case No. 21-11205)      |
| <input type="checkbox"/> SQBG, Inc. (Case No. 21-11195)                               | <input type="checkbox"/> SBG FM, LLC (Case No. 21-11200)                            | <input type="checkbox"/> Gaiam Brand Holdco, LLC (Case No. 21-11206)  |
| <input type="checkbox"/> Sequential Licensing, Inc. (Case No. 21-11196)               | <input type="checkbox"/> Galaxy Brands, LLC (Case No. 21-11201)                     | <input type="checkbox"/> Gaiam Americas, Inc. (Case No. 21-11207)     |
| <input type="checkbox"/> William Rast Licensing, LLC (Case No. 21-11197)              | <input type="checkbox"/> The Basketball Marketing Company, Inc. (Case No. 21-11202) | <input type="checkbox"/> SBG-Gaiam Holdings, LLC (Case No. 21-11208)  |
| <input type="checkbox"/> Heeling Sports Limited (Case No. 21-11198)                   | <input type="checkbox"/> American Sporting Goods Corp. (Case No. 21-11203)          | <input type="checkbox"/> SBG Universe Brands, LLC (Case No. 21-11209) |
|   | <input type="checkbox"/> LNT Brands, LLC (Case No. 21-11204)                        | <input type="checkbox"/> GBT Promotions LLC (Case No. 21-11210)       |

The Debtor has listed your claim as Unliquidated and Disputed on Schedule F (E/F Part 2) as a General Unsecured claim. If you believe that you have a claim against the Debtor, please complete and return this form accordingly.

## Official Form 410 Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for an administrative expense arising after the commencement of the case.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed.

### Part 1: Identify the Claim

NameID: 15020097

1. Who is the current creditor?	Ben Arie Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? Ben Arie Michael J. Kapin, Esq. Kapin PLLC 1133 Broadway <del>Suite 1000</del> Suite 1001 New York, NY 10010 Address _____ Contact phone _____ Contact email _____	Where should payments to the creditor be sent? (if different) Name _____ Number Street _____ City State ZIP Code _____ Country _____ Contact phone _____ Contact email _____ Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$5,000,000.00 Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.

Personal Injury / Product Liability, see attached Complaint  
Health Care Records Have Been Omitted.

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature of property:**  
 Real estate: If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

- No  
 Yes. Check all that apply.

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- |   |                             |
|---|-----------------------------|
| <input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).  | Amount entitled to priority |
|   | \$ _____                    |
| <input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).  | \$ _____                    |
| <input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). | \$ _____                    |
| <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).  | \$ _____                    |
| <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).  | \$ _____                    |
| <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.  | \$ _____                    |

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

- No  
 Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.  
 I am the creditor's attorney or authorized agent.  
 I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.  
 I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 11/29/2021  
MM / DD / YYYY

Signature 

Print the name of the person who is completing and signing this claim:

Name Michael J. Kapin  
First name Middle name Last name

Title Attorney At Law

Company KAPIN PLLC  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 1133 Broadway, Suite 1001  
Number Street

New York, New York 10010 USA  
City State ZIP Code Country

Contact phone 212-513-0500 Email mikekapin@gmail.com



Mr. Ben Arie's personal injury claim is supported by his medical records which have been omitted for purposes of filing this claim, but can be provided by contacting his counsel:

KAPIN PLLC

1133 Broadway, Suite 1001

New York, NY 10010

[mikekapin@gmail.com](mailto:mikekapin@gmail.com)



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X		
BEN ARIE,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	<b><u>SUMMONS</u></b>
	:	
SEQUENTIAL BRANDS GROUP, INC.,	:	
	:	
Defendant.	:	
-----X		


**To the above named Defendant:**

**You are hereby summoned** to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion or service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: March 24, 2021  
New York, New York

Yours, etc.,

**KAPIN PLLC**  
*Attorneys for Plaintiff*



MICHAEL J. KAPIN, ESQ.  
1133 Broadway, Suite 1001  
New York, NY 10010  
(212) 513-0500

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X		
BEN ARIE,	:	Index No.
	:	
Plaintiff,	:	
	:	
- against -	:	<b><u>COMPLAINT</u></b>
	:	
SEQUENTIAL BRANDS GROUP, INC.,	:	
	:	
Defendant.	:	
-----X		

Plaintiff Ben Arie (“Plaintiff” or “Arie”), by and through his attorneys, KAPIN PLLC, as and for his Complaint alleges upon knowledge as to himself and his own actions and upon information and belief as to all other matters alleged below as follows:

**BACKGROUND**

1. Plaintiff resides in the County of Queens, State of New York.
2. That at all times hereinafter mentioned the Defendant SEQUENTIAL BRANDS GROUP, INC. (“Sequential” or “Defendant”) is and was a domestic business corporation licensed in the State of Delaware with a principal place of business at 1407 Broadway, 38th Floor, New York, New York 10018.
3. Upon information and belief, Sequential, since its formation, has been engaged in and has conducted business in New York State.
4. Upon information and belief and at all times relevant to this action, Sequential transacted business and/or sold, marketed, supplied and distributed fitness and weightlifting equipment including but not limited to rubber resistance bands within the State of New York.
5. Upon information and belief, Sequential sold, marketed, and supplied exercise equipment using the brand name ‘SPRI’.

6. Upon information and belief and at all times relevant to this action, Sequential manufactured, marketed, supplied, distributed and/or sold exercise equipment on a regular basis.

7. Upon information and belief and at all times relevant to this action, Sequential either directly or through a subsidiary and/or related entity engineered, designed, manufactured, sold, marketed and/or distributed exercise equipment including but not limited to rubber resistance bands hereinafter “resistance bands”).

8. Upon information and belief and at all times relevant to this action, Defendant either directly or through a subsidiary and/or related entity engineered, designed, manufactured, sold, marketed and/or distributed the resistance band involved in the accident described below (hereinafter “the product”).

9. Upon information and belief and at all times relevant to this action, Sequential contracted to design, inspect, test, market, manufacture, build, ship, sell, distribute and/or supply exercise equipment including but not limited to resistance bands and/or provided related services and/or provided customer support to customers and end users within the State of New York.

10. Upon information and belief and at all times relevant to this action, Sequential engaged in a regular course of business which involved the design, manufacturing, building, shipping, selling, distribution and/or supplying of exercise equipment including but not limited to resistance bands sold to purchasers within the State of New York.

11. Upon information and belief and at all times relevant to this action, Sequential regularly did and/or solicited business in the State of New York and otherwise engaged in a persistent course of conduct and/or derived substantial revenue from marketing, distributing and/or selling exercise equipment including but not limited to resistance bands in interstate commerce and/or within the State of New York.

12. Sequential committed a tortious act within the State of New York which proximately caused the accident described below and caused Plaintiff's injuries as described below.

13. At all times relevant to this action, Sequential expected or should have reasonably expected its tortious actions as more fully set forth below to have consequences within the State of New York.

### **THE ACCIDENT**

14. On or about January 31, 2018, Plaintiff was exercising with Defendant's band when the product suddenly and unexpectedly failed, and struck him in the eyes and face (hereafter "the accident").

15. In the moments before the accident, Plaintiff was using the product in reasonable, prudent, careful, appropriate and foreseeable manner and for the purpose for which it was designed, engineered, tested, marketed, manufactured, built, assembled, shipped, sold, distributed, and/or intended.

16. As a result of the accident, Plaintiff suffered serious, grave, disabling and permanent injuries including but not limited to eye damage which has required surgery, permanent vision problems, headaches, nausea and a slew of related injuries.

17. Plaintiff's claims herein fall within one or more of the exceptions set forth in Article 16 of the CPLR.

### **AS AND FOR A FIRST CAUSE OF ACTION (Strict Product Liability - Design Defect)**

18. Plaintiff repeats and re-alleges all prior paragraphs above as though fully set forth herein at length.

19. At all times relevant to this action, the product was dangerous, defective, did not function as intended, was not reasonably safe and was otherwise unfit for its intended purpose and/or for use as a resistance band.

20. At the times relevant to this action, Defendant designed, engineered, tested, inspected, marketed, manufactured, built, assembled, shipped, sold and/or distributed the product.

21. The product was defectively designed.

22. At the times relevant to this action, Defendant designed, engineered, tested, inspected, marketed, manufactured, built, assembled, shipped, sold and/or distributed the product, Defendant knew or in the exercise of reasonable care should have known of the product's potential for causing injury.

23. At the times relevant to this action, Defendant designed, engineered, tested, inspected, marketed, manufactured, built, assembled, shipped, sold and/or distributed the product, Defendant knew or in the exercise of reasonable care should have known that the product should not have been designed, marketed, manufactured, built, shipped, sold, distributed in that condition.

24. At the times relevant to this action, Defendant designed, engineered, tested, inspected, marketed, manufactured, built, assembled, shipped, sold and/or distributed the product, Defendant knew or in the exercise of reasonable care should have known that there were feasible, cost effective and safer alternative designs.

25. At all times relevant to this action, the risks, shortcomings, limitations and safety issues inherent in the design of the product significantly outweighed the benefits of such design.

26. At the time the product was designed, engineered, tested, inspected, marketed, manufactured, built, assembled, shipped, sold and/or distributed, safer alternative designs existed that would have prevented the accident and/or significantly reduced and/or eliminated the

product's risks, limitations, shortcomings and safety issues without substantially impairing the product's utility and intended function as a resistance band. Safer alternative designs were also economically and technologically feasible at the time the product left the control of Defendant.

27. The defective design of the product was a proximate cause of the accident without any comparative negligence on the part of Plaintiff contributing thereto.

28. Defendant is therefore liable to Plaintiff under the doctrine of strict product liability due to the defective design of the product.

29. As a result of the foregoing and as a result of the accident, Plaintiff suffered serious, grave, disabling and permanent injuries including but not limited to severe eye injuries and permanent vision damage.

30. As a result of the accident, as a result of the defective design of the product and as a result of the negligence, recklessness and carelessness of Defendant, Plaintiff suffered and will continue to suffer damages in an amount which exceeds the jurisdictional limitations of all courts lower than New York State Supreme Court.

**AS AND FOR A SECOND CAUSE OF ACTION  
(Strict Product Liability - Manufacturing Defect)**

31. Plaintiff repeats and re-alleges all prior paragraphs above as though fully set forth herein at length.

32. At all times relevant to this action, the product was dangerous, defective, did not function as intended, was not reasonably safe and was otherwise unfit for use as a resistance band.

33. Due to a manufacturing defect, the product was not reasonably safe when it left the care, custody and control of Defendant.

34. The product was defectively manufactured by Defendant and as a result, the product was not reasonably safe when it left the care, custody and control of Defendant.

35. At the time Defendant manufactured, built, assembled, supplied, shipped, sold and/or distributed the product, the product was defective and/or the product did not and/or would not perform as intended.

36. At the time Defendant manufactured, built, assembled, supplied, shipped, sold and/or distributed the product, Defendant knew or in the exercise of reasonable care should have known of the product's potential for failing and/or causing injury.

37. At the time Defendant manufactured, built, assembled, supplied, shipped, sold and/or distributed the product, Defendant knew or in the exercise of reasonable care should have known that the product should not have been manufactured, built, assembled, supplied, shipped, sold and/or distributed in that condition and/or knew or in the exercise of reasonable care should have known that the product did not and/or would not perform as intended.

38. The product's manufacturing defects was/were a proximate cause of the accident without any comparative negligence on the part of Plaintiff contributing thereto.

39. Defendant is therefore liable to Plaintiff under the doctrine of strict product liability due to manufacturing defects.

40. As a result of the foregoing, and as a result of the accident, Plaintiff suffered serious, grave, disabling and permanent injuries including but not limited to eye injuries and permanent vision problems.

41. As a result of the accident, as a result of manufacturing defects in the product and as a result of the negligence, recklessness and carelessness of Defendant, Plaintiff suffered and

will continue to suffer damages in an amount which exceeds the jurisdictional limitations of all courts lower than New York State Supreme Court.

**AS AND FOR A THIRD CAUSE OF ACTION  
(Strict Product Liability - Failure to Warn)**

42. Plaintiff repeats and re-alleges all prior paragraphs above as though fully set forth herein at length.

43. At all times relevant to this action, the product was dangerous, defective, did not function as intended, was not reasonably safe and was otherwise unfit for use as a resistance band.

44. The product did not have, did not contain, did not come with and/or did not bear adequate and necessary warnings, labeling, and/or instructions with respect to usage, assembly, installation, known and/or reasonably foreseeable limitations, safety problems, design problems, defects, shortcomings, failure modes and/or risks.

45. At all times relevant to this action, Defendant had a continuing duty to warn customers, the public and/or end users of resistance bands and/or warn purchasers and/or end users of the product (including but not limited to Plaintiff) of the known and/or reasonably foreseeable risks, limitations, shortcomings, failure modes, defects, dangers and hazards associated with the design, manufacturing and use of the product.

46. Defendant knew or in the exercise of reasonable care should have known that the product would be used without testing and/or inspection for design and/or manufacturing defects and/or knew or in the exercise of reasonable care should have known that end users (including but not limited to Plaintiff) would not ordinarily discover the product's design defects, manufacturing defects, risks, limitations, safety problems, design problems, shortcomings, failure modes, dangers, hazards and potential for causing injury.



47. The absence of adequate and/or any warnings, labeling and/or instructions regarding assembly, use and/or installation of the product, the product's design defects, manufacturing defects, reasonably foreseeable risks, limitations, safety problems, design problems, shortcomings, failure modes, dangers, hazards and/or potential for causing injury was a proximate cause of the accident without any comparative negligence on the part of Plaintiff contributing thereto.

48. Defendant is therefore liable to Plaintiff under the doctrine of strict product liability for failure to warn.

49. As a result of the foregoing and as a result of the accident, Plaintiff suffered serious, grave, disabling and permanent injuries including but not limited to eye injuries and permanent vision damage.

50. As a result of the accident, as a result of Defendant's failure to warn as described above and as a result of the negligence, recklessness and carelessness of Defendant, Plaintiff suffered and will continue to suffer damages in an amount which exceeds the jurisdictional limitations of all courts lower than New York State Supreme Court.

**AS AND FOR A FOURTH CAUSE OF ACTION  
(Strict Product Liability - Breach of Continuing Duty to Warn)**

51. Plaintiff repeats and re-alleges all prior paragraphs above as though fully set forth herein at length.

52. At all times relevant to this action, the product was dangerous, defective, did not function as intended, was not reasonably safe and was otherwise unfit for use as a resistance band.

53. At all times relevant herein and subsequent to the date of manufacture and sale of the product, Defendant knew or in the exercise of reasonable care should have known that the product was likely to be used by consumers and end users as a resistance band.

54. Defendant failed to discharge and/or failed to timely discharge its continuing duty to warn, publish, inform and/or report known, reasonably foreseeable, discovered and/or reported problems, risks, safety hazards, design defects, manufacturing defects, shortcomings, failure modes and limitations concerning resistance bands and/or the product.

55. Defendant's failure to discharge its continuing duty to warn as described above was a proximate cause of the accident without any comparative negligence on the part of Plaintiff contributing thereto.

56. Defendant is therefore liable to Plaintiff under the theory of strict product liability for breach of a continuing duty to warn.

57. As a result of the foregoing and as a result of the accident, Plaintiff suffered serious, grave, disabling and permanent injuries including but not limited to eye injuries and permanent vision damage.

58. As a result of the accident, as a result of Defendant's failure to discharge its continuing duty to warn and as a result of the negligence, recklessness and carelessness of Defendant, Plaintiff suffered and will continue to suffer damages in an amount which exceeds the jurisdictional limitations of all courts lower than New York State Supreme Court,

**AS AND FOR A FIFTH CAUSE OF ACTION  
(Breach of Express Warranty and/or Implied Warranties of Merchantability and Fitness  
for Particular Purpose)**

59. Plaintiff repeats and re-alleges all prior paragraphs above as though fully set forth herein at length.

60. At the time of the accident, the product was defective, was not of merchantable quality and was not safe and suitable for the particular use for which it was intended, designed,

engineered, tested, inspected, marketed, manufactured, built, assembled, shipped, sold and/or distributed by Defendant - namely a resistance band.

61. At all times relevant to this action, Defendant expressly and/or impliedly warranted and/or represented to the general public and Plaintiff that the product was of merchantable quality and was reasonably safe and suitable for the particular use for which it was intended, designed, engineered, tested, inspected, marketed, manufactured, built, assembled, shipped, sold and/or distributed by Defendant - namely a resistance band.

62. Plaintiff justifiably relied upon the skill, representations, judgment and reputation of Defendant when he used the product prior to and at the time of the accident.

63. Prior to and at the time of the accident, Plaintiff was not, in the exercise of reasonable care, able to discover Defendant's breach of said warranties and was not able to realize and/or appreciate the product's design defects, manufacturing defects, risks, limitations, safety problems, design problems, shortcomings, failure modes, dangers, hazards and potential for causing injury.

64. The defective design, defective manufacture and inadequate warnings, labeling and instructions as alleged above constituted a breach of an express warranty and/or breach of an implied warranty of merchantability and/or breach of an implied warranty of fitness for a particular purpose by Defendant in connection with the design, marketing, manufacturing, assembly, shipping, sale and distribution of the product.

65. Defendant's breach of an express warranty, breach of the implied warranty of merchantability and/or breach of an implied warranty of fitness for a particular purpose were a proximate cause of the accident without any comparative negligence on the part of Plaintiff contributing thereto.

66. Defendant is therefore liable to Plaintiff as a result thereof.

67. As a result of the foregoing and as a result of the accident, Plaintiff suffered serious, grave, disabling and permanent injuries including but not limited to eye injuries and permanent vision damage.

68. As a result of the accident, as a result of Defendant's Breach of Express Warranty and/or Implied Warranties of Merchantability and Fitness for Particular Purpose and as a result of the negligence, recklessness and carelessness of Defendant, Plaintiff suffered and will continue to suffer damages in an amount which exceeds the jurisdictional limitations of all courts lower than New York State Supreme Court.

**AS AND FOR A SIXTH CAUSE OF ACTION  
(Negligence)**

69. Plaintiff repeats and re-alleges all prior paragraphs above as though fully set forth herein at length.

70. At all times relevant to this action, the product was dangerous, defective, did not function as intended, was not reasonably safe and was otherwise unfit for use as a resistance band.

71. Defendant failed to use reasonable care in the design, labeling, engineering, inspection, testing, marketing, manufacture, building, assembly, shipping, sale and/or distribution of the product.

72. Defendant failed to ensure that the product was and/or continued to be reasonably safe and suitable for its intended and/or foreseeable purpose namely a resistance band.

73. Defendant was careless, negligent, grossly negligent and/or reckless in the design, engineering, labeling, inspection, testing, marketing, manufacture, building, assembly, shipping, sale and/or distribution of the product.

74. Defendant failed to take reasonable precautions in the design, labeling, engineering, inspection, testing, marketing, manufacture, building, shipping, sale and/or distribution of the product to prevent and/or reduce the possibility of accidents and end user injuries when using the product as intended.

75. Defendant failed to utilize appropriate materials and/or components in the design, labeling, engineering, inspection, testing, marketing, manufacture, assembly, building, shipping, sale and/or distribution of the product.

76. Defendant negligently designed, negligently manufactured and/or negligently labeled and/or negligently failed to label the product.

77. Defendant utilized insufficient, inadequate, unsafe, inappropriate and/or defective materials and/or component parts in the design, labeling, manufacture, fabrication, production and assembly of the product.

78. Defendant failed to advise and/or warn Plaintiff and other end users of the product of the known and/or reasonably foreseeable defects, shortcomings, failure modes, risks, safety hazards, limitations and potential for causing injury.

79. Defendant failed to conduct and/or failed to timely conduct adequate tests, inspections, investigations and reviews to ensure that the product and similar resistance bands were reasonably safe for their intended and reasonably foreseeable use and/or to discover the defects in the product and similar resistance bands and/or, upon such testing, inspection and investigation, negligently failed to report, warn, advise and instruct end users of the product including but not limited to Plaintiff with respect to such testing results and otherwise failed to take appropriate remedial and/or post sale actions to prevent and/or reduce the possibility of accidents and end user injuries when using the product as intended.

80. As a result of the foregoing and as a result of the accident, Plaintiff suffered serious, grave, disabling and permanent injuries including but not limited to eye injuries and permanent vision damage.

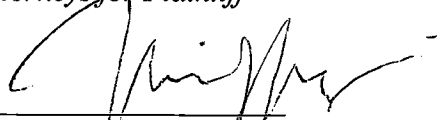
81. As a result of the accident and as a result of the negligence, recklessness and carelessness of Defendant, Plaintiff suffered and will continue to suffer damages in an amount which exceeds the jurisdictional limitations of all courts lower than New York State Supreme Court.

**WHEREFORE**, Plaintiff Ben Arie demands judgment against the Defendant Sequential Brand Groups, Inc. in the amount in excess of this Court's jurisdictional limits, together with interest, as well as costs and disbursements.

Dated: March 24, 2021  
New York, New York

Yours, etc.,

KAPIN PLLC  
*Attorneys for Plaintiff*



MICHAEL J. KAPIN, ESQ.  
1133 Broadway, Suite 1001  
New York, NY 10010  
(212) 513-0500

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
BEN ARIE,

Index No.: 706856/2021

Plaintiff,

**VERIFIED ANSWER**

-against-

SEQUENTIAL BRANDS GROUP, INC.,

Defendant.

-----X  
Answering Defendant, SEQUENTIAL BRANDS GROUP, INC., by their attorneys, Rebar Kelly, as and for its Verified Answer to Plaintiff’s March 24, 2021 Verified Complaint, respectfully states and alleges as follows:

**AS TO BACKGROUND**

1. Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the instant paragraph of Plaintiff’s Verified Complaint.

2. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff’s Verified Complaint, except admits that SEQUENTIAL BRANDS GROUP, INC., was and is a foreign corporation incorporated in the State of Delaware with offices at 1407 Broadway, 38<sup>th</sup> Floor, New York, New York 10018.

3. Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the instant paragraph of Plaintiff’s Verified Complaint, and respectfully refers all questions of law to this Honorable Court.

4. Deny.

- 5. Deny.
- 6. Deny.
- 7. Deny.
- 8. Deny.
- 9. Deny.
- 10. Deny.
- 11. Deny.
- 12. Deny.
- 13. Deny.

**AS TO THE ACCIDENT**

14. Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint.

15. Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint.

16. Answering Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint

17. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint, and respectfully refers all questions of law to this Honorable Court.

**ANSWERING THE FIRST CAUSE OF ACTION**



18. Answering Defendant repeats and reiterates each and every answer to paragraphs “1” through “17” of Plaintiff’s Complaint, as set forth above, as if fully set forth herein.

19. Deny.

20. Deny.

21. Deny.

22. Deny.

23. Deny.

24. Deny.

25. Deny.

26. Denied to the extent that the allegations contained in paragraph 26 of Plaintiff’s Verified Complaint are directed at Answering Defendant, and respectfully refers all questions of law to this Honorable Court.

27. Denied to the extent that the allegations contained in paragraph 27 of Plaintiff’s Verified Complaint are directed at Answering Defendant, and respectfully refers all questions of law to this Honorable Court.

28. Denied to the extent that the allegations contained in paragraph 28 of Plaintiff’s Verified Complaint are directed at Answering Defendant, and respectfully refers all questions of law to this Honorable Court.

29. Denied to the extent that the allegations contained in paragraph 29 of Plaintiff’s Verified Complaint are directed at Answering Defendant, and respectfully refers all questions of law to this Honorable Court.

30. Denied to the extent that the allegations contained in paragraph 30 of Plaintiff's Verified Complaint are directed at Answering Defendant, and respectfully refers all questions of law to this Honorable Court.

**ANSWERING THE SECOND CAUSE OF ACTION**

31. Answering Defendant repeats and reiterates each and every answer to paragraphs "1" through "30" of Plaintiff's Complaint, as set forth above, as if fully set forth herein.

32. Deny.

33. Deny.

34. Deny.

35. Deny.

36. Deny.

37. Deny.

38. Denied to the extent that the allegations contained in paragraph 38 of Plaintiff's Verified Complaint are directed at Answering Defendant, and respectfully refers all questions of law to this Honorable Court.

39. Denied to the extent that the allegations contained in paragraph 39 of Plaintiff's Verified Complaint are directed at Answering Defendant, and respectfully refers all questions of law to this Honorable Court.

40. Denied to the extent that the allegations contained in paragraph 40 of Plaintiff's Verified Complaint are directed at Answering Defendant.

41. Denied to the extent that the allegations contained in paragraph 41 of Plaintiff's Verified Complaint are directed at Answering Defendant, and respectfully refers all questions of law to this Honorable Court.

**ANSWERING THE THIRD CAUSE OF ACTION**

42. Answering Defendant repeats and reiterates each and every answer to paragraphs “1” through “42” of Plaintiff’s Complaint, as set forth above, as if fully set forth herein.

43. Deny.

44. Deny.

45. Deny.

46. Deny.

47. Denied to the extent that the allegations contained in paragraph 47 of Plaintiff’s Verified Complaint are directed at Answering Defendant, and respectfully refers all questions of law to this Honorable Court.

48. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff’s Verified Complaint and respectfully refers all questions of law to this Honorable Court.

49. Denied to the extent that the allegations contained in paragraph 49 of Plaintiff’s Verified Complaint are directed at Answering Defendant.

50. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff’s Verified Complaint and respectfully refers all questions of law to this Honorable Court.

**ANSWERING THE FOURTH CAUSE OF ACTION**

51. Answering Defendant repeats and reiterates each and every answer to paragraphs “1” through “50” of Plaintiff’s Complaint, as set forth above, as if fully set forth herein.

52. Deny.

53. Deny.

54. Deny.

55. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint, and respectfully refers all questions of law to this Honorable Court.

56. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint, and respectfully refers all questions of law to this Honorable Court.

57. Denied to the extent that the allegations contained in paragraph 57 of Plaintiff's Verified Complaint are directed at Answering Defendant.

58. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint, and respectfully refers all questions of law to this Honorable Court.

**ANSWERING THE FIFTH CAUSE OF ACTION**

59. Answering Defendant repeats and reiterates each and every answer to paragraphs "1" through "58" of Plaintiff's Complaint, as set forth above, as if fully set forth herein.

60. Deny.

61. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint, and respectfully refers all questions of law to this Honorable Court.

62. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint, and respectfully refers all questions of law to this Honorable Court.

63. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint, and respectfully refers all questions of law to this Honorable Court.

64. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint, and respectfully refers all questions of law to this Honorable Court.

65. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint, and respectfully refers all questions of law to this Honorable Court.

66. Deny.

67. Denied to the extent that the allegations contained in paragraph 38 of Plaintiff's Verified Complaint are directed at Answering Defendant.

68. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint, and respectfully refers all questions of law to this Honorable Court.

**ANSWERING THE SIXTH CAUSE OF ACTION**

69. Answering Defendant repeats and reiterates each and every answer to paragraphs "1" through "68" of Plaintiff's Complaint, as set forth above, as if fully set forth herein.

70. Deny.

71. Deny.

72. Deny.

73. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint, and respectfully refers all questions of law to this Honorable Court.

74. Deny.

75. Deny.

76. Deny.

77. Deny.

78. Deny.

79. Deny.

80. Denied to the extent that the allegations contained in paragraph 80 of Plaintiff's Verified Complaint are directed at Answering Defendant.

81. Answering Defendant denies the truth of each and every allegation contained in the instant paragraph of Plaintiff's Verified Complaint, and respectfully refers all questions of law to this Honorable Court.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

82. The Complaint, in whole or part, fails to state a claim or cause of action against the Answering Defendant upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

83. Applicable statutes of limitations, statutes of repose, and the doctrine of laches bar Plaintiff's claims in whole or in part.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

84. The doctrine of spoliation and the failure to properly preserve evidence necessary to the determination of the alleged claims bar claims against this Answering Defendant.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

85. If Plaintiff sustained the injuries alleged in the Complaint, such injuries were the proximate result of Plaintiff's misuse or abuse of the product at issue herein.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

86. Plaintiff knowingly and intentionally assumed any and all risks inherent in the use of the product at issue herein, which is a complete bar to any recovery.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

87. That upon information and belief, the methods, standards, and techniques of designing, manufacturing, selling, and distributing the product at issue herein was determined by and applied in conformity with the generally recognized state of the art existing at the time that the product was designed, manufactured, sold, and distributed.

**AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE**

88. Any alleged negligent or culpable conduct of this Answering Defendant, none being admitted, was so insubstantial as to be insufficient to be a proximate or substantial contributing cause of Plaintiff's alleged injuries.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

89. If Plaintiff's sustained any damages or injuries, which this Answering Defendant denies, then such damages and injuries were caused or contributed to by the acts, omissions or fault of Plaintiff's, including contributory negligence, contributory fault, comparative fault, assumption of the risk, or failure to mitigate damages.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

90. Plaintiff's claims are barred, in whole or in part, as upon information and belief the product at issue was designed, manufactured, marketed and labeled with proper warnings, information, cautions and instructions, in accordance with the state of the art and the state of scientific and technological knowledge.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

91. Upon information and belief the product at issue herein was not unreasonably dangerous, it was suitable for the purposes for which it was intended, and it was sold and distributed with adequate warnings and/or instructions.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

92. Plaintiff's claims are barred, in whole or in part, because Plaintiff's injuries, if any, were the result of conduct of Plaintiffs, independent third parties, and/or events that were extraordinary under the circumstances, not foreseeable in the normal course of events, and/or independent, intervening and superseding causes of the alleged injuries, including but not limited to Plaintiff's pre-existing medical conditions.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

93. If Plaintiff suffered injuries or damages as alleged, which is denied, such injuries or damages resulted from acts or omissions of persons or entities for which the Answering Defendant is neither liable nor responsible or resulted from causes that are not related or connected with any product sold, distributed, or manufactured by this Answering Defendant. Such acts or omissions on the part of other persons or entities constitute an independent, intervening and sole proximate cause of Plaintiff's alleged injury or damages.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**



94. Answering Defendant states that if Plaintiff sustained any damages or injuries, which is specifically denied, such damages or injuries were caused by the acts, omissions or fault of Plaintiff or others, for whose conduct this Answering Defendant is not responsible; accordingly, it is entitled to an assessment of the relative degree of fault for all such persons and entities.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

95. Plaintiff's Complaint must be dismissed because Plaintiff failed to name as defendants indispensable parties without whom this action should not proceed.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

96. Answering Defendant has no legal relationship or privity with Plaintiff and owes no duty to Plaintiff by which liability could be attributed to them.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

97. Answering Defendant made no warranties of any kind, express or implied, or any representations of any nature whatsoever to Plaintiff. If any such warranties were made, whether express or implied, which Answering Defendant specifically denies, then Plaintiff failed to give notice of any breach thereof. Moreover, Answering Defendant effectively and fully disclaimed any warranty, express or implied, in the sale of any product for which they are responsible in this matter.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

98. Upon information and belief, Answering Defendant is not strictly liable to Plaintiffs because the product at issue herein was not defective when it was manufactured or at any other relevant time.

**AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE**

99. Plaintiff's medical condition or injuries, if any, were not caused by the negligence or wrongful acts or omissions of Answering Defendant.

**AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE**

100. Answering Defendant hereby invokes the provisions of Article 16 of the CPLR and requests that the jury be charged accordingly.

**AS AND FOR A TWENTY AFFIRMATIVE DEFENSE**

101. Answering Defendant hereby invokes the provisions of CPLR § 4545(c) and requests that a damage award in Plaintiffs' favor, if any, be reduced accordingly.

**AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE**

102. Answering Defendant hereby invokes the provisions of Article 50-B of the CPLR.

**AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE**

103. Any judgment, verdict or award which Plaintiff may obtain against this Answering Defendant must be reduced in accordance with General Obligations Law 15-108(a).

**AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE**

104. If Plaintiff has been injured or damaged, no injury or damages being admitted, such injuries were not caused by a product designed, manufacture or sold by this Answering Defendant.

**AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE**

105. Prior to and at the time of the occurrence of which Plaintiff complains, Plaintiff was not using the product at issue herein in a safe or proper manner or in a manner in which such product was intended to be used.

**AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE**

106. Prior to and at the time of the occurrence of which Plaintiff complains, the product at issue herein was not in the same condition it was in at the time it was manufactured, such product having been independently and materially changed, altered, and/or modified by others over whom Answering Defendant has no control and with whom Answering Defendant has no legal relationship.

**AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE**

107. Answering Defendant is not strictly liable to Plaintiffs because the product at issue herein was not designed, manufactured, tested, inspected, distributed, or sold by the Answering Defendant.

**AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

108. Answering Defendant hereby gives notice that they intend to rely upon such other defenses as may become available or apparent during the course of discovery and thus reserve their right to amend this Answer to assert such defenses.

**AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

109. Plaintiff's injuries, if any, were caused by pre-existing and/or unrelated medical, environmental, and other conditions, diseases or illness of the Plaintiff.

**AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE**

110. Any injuries and/or damages sustained by Plaintiff, as alleged in the Verified Complaint herein, were caused in whole or in part by the contributory negligence and/or culpable conduct of said Plaintiff.

**AS AND FOR A THIRTIETH AFFIRMATIVE DEFENSE**

111. To the extent the damages set forth in the Complaint could have been wholly or in part avoided by reasonable effort of the Plaintiff, her agents, servants and/or employers and without undue burden, risk or expense, said damages were the result of Plaintiff's failure to mitigate and may not be recovered from this Answering Defendant.

**AS AND FOR AN THIRTY-FIRST AFFIRMATIVE DEFENSE**

112. The liability of this Answering Defendant, if any, is limited to the percentage of culpability found against it by virtue of the fault of the other parties (unnamed at this time) and in accordance with the laws of the State of New York.

**AS AND FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE**

113. The liability of Answering Defendant, if any, to the Plaintiff for non-economic loss is limited to its equitable share, determined in accordance with the relative culpability of all persons or entities contributing to the total liability for non-economic loss, including others over whom Plaintiffs could have obtained personal jurisdiction with due diligence.

**AS AND FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE**

114. Some or all of Plaintiff's alleged economic loss was or will be replaced or indemnified from collateral sources and, therefore, any award for economic loss should be reduced thereby, pursuant to CPLR 4545.

**AS AND FOR A THIRTY-FOURTH AFFIRMATIVE DEFENSE**

115. In the event of any judgment or verdict on behalf of Plaintiff, this Answering Defendant is entitled to a set-off or verdict with respect to the amount of any payments made to the Plaintiffs for medical and other expenses prior thereto.

**RESERVATION OF DEFENSES**

116. The Answering Defendant hereby reserves the right to assert any of the defenses, objections and/or claims that are, or may in the future be, warranted against any and all parties presently named and/or in the future to be named in this action.

WHEREFORE, this Answering Defendant, SEQUENTIAL BRANDS GROUP, INC., hereby demands judgment dismissing the Plaintiff's Verified Complaint in the entirety, together with the costs, disbursements, and attorneys' fees incurred in this action, and such other and further relief as this Court deems just, equitable and proper.

Dated: New York, New York,  
May 12, 2021



---

Cathleen Kelly Rebar, Esq.  
Wesley C. Glass, Esq.  
REBAR KELLY  
Attorneys for Defendant  
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TO:

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New York, New York 10010  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
BEN ARIE,

Index No.: 706856/2021

Plaintiff,

**VERIFICATION**

-against-

SEQUENTIAL BRANDS GROUP, INC.,

Defendant.

-----X

Cathleen Rebar Kelly, Esq., an attorney duly licensed to practice law before the courts of this state affirms the following under the penalty of perjury:

1. I am Partner at Rebar Kelly, attorney for the Defendant in this action.
2. I have read the foregoing Answer to Plaintiff's Verified Complaint and know the contents thereof; that the same is true to affirmant's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters affirmant believes them to be true; based upon file materials, investigation and records contained in the file developed in the action.
3. This verification is made by affirmant instead of the Defendant because the Defendant is not within the county where affirmant maintains her office.

Dated: New York, New York  
May 12, 2021

  
\_\_\_\_\_  
Cathleen Kelly Rebar, Esq