

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**Janet Makinen, Judith Renee Lasswell,
Christina Brothers, & Kathleen M. Callahan,
on behalf of themselves and others similarly
situated**

CASE NUMBER: 06civ1762

Plaintiff,

-against-

Sanofi-Synthelabo & Sanofi-Synthelabo, Inc.,

Plaintiffs demand trial by jury

**SUMMONS IN A CIVIL
ACTION**

Defendants.

To the above named Defendants:

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon the Plaintiff's Attorney *Susan Chana Lask, Esq.* Attorney for Plaintiff, 244 Fifth Avenue, Suite 2369 New York, NY 10001 (212) 358-5762 , an answer to the complaint which is herewith served upon you, within twenty (20) days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within New York State. If you fail to do so, judgment will be taken against you by default for the relief demanded in the complaint.

CLERK

DATE

BY DEPUTY CLERK

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**Janet Makinen, Judith Renee Lasswell,
Christina Brothers, & Kathleen M. Callahan,
on behalf of themselves and others similarly
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Plaintiffs,

-against-

**Sanofi-Synthelabo & Sanofi-Synthelabo, Inc.,
Defendants.**

Case No. 06civ1762

Filed 3/6/06

**CIVIL COMPLAINT
CLASS-ACTION**

Jury Trial Demanded

JURISDICTION & VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §1332, The Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4, wherein the class (1) has 100 or more class members; (2) seeks damages in excess of \$5 million in aggregate stakes; and (3) has at least one defendant who is a citizen of a different state than at least one member of the proposed class.
2. Venue is proper in this District pursuant to 28 U.S.C. §1391 as Defendant's Investor's Relations Office is located at 90 Park Avenue, New York, NY 10016 as well as Defendants' promotional and sales activities are transacted here.

PARTIES

3. Plaintiff, Janet Makinen, is a resident of the State of Florida, County of Pasco.
4. Plaintiff, Christina Brothers, is a resident of the State of Texas, City of Cedar Park.
5. Plaintiff, Lieutenant 03 Judith Renee Lasswell, is a resident of the State of Florida, Tampa, County of Hillsborough.
6. Plaintiff, Kathleen M. Callahan, is a resident of the State of New York, City of Shokan, Ulster County.
7. Sanofi-Synthelabo is a corporation organized and existing under the laws of France, having its principal place of business at 174 Avenue de France, Paris, France.
8. Sanofi-Synthelabo is a global health care company, which among its many core therapeutic areas are included diseases of the central nervous system and Ambien(R) is a drug that Defendants manufacture and promote with respect to this area.
9. Sanofi-Synthelabo Inc. is the U.S. subsidiary of Sanofi-Synthelabo, and is a Delaware corporation having commercial investor relations offices at 90 Park Avenue, New York,

New York 10016.

Defendants' Nationwide Activities Regarding Ambien

10. Defendants are a foreign corporation, company or other business entity which have been and/or is now engaged in the business of manufacturing, selling, distributing and engaging in promotional activities via television, radio and print media nationwide for Ambien(R).

11. Defendants maintain 14 geographical sites throughout the country to promote their product, Ambien. About 8,000 of those sites are field sales and medical affairs representatives, making the Defendants' sales force the second largest in the U.S. pharmaceutical industry.

12. Defendants have four U.S. based research and development ("R&D") sites employing approximately 2,300 scientists, physicians and support staff . There are Bridgewater, NJ and Great Valley, PA sites covering all aspects of R&D, a Tucson Center specializing in Combinatorial Chemistry and a Cambridge, MA site handling Genomics Research.

13. Defendants used the ports of New York or the roads and other means of transportation in the State of New York to transport their products, including Ambien, into the State of New York where they sold and/or distributed their products to New York residents or entities in New York.

14. Defendants are subject to the jurisdiction of this court in that they transacted and continue to transact business in this state, have committed and continue to commit tortious acts in whole or in part in this state, and/or have produced, manufactured or distributed goods with the reasonable expectation that those goods would be used in this state and the goods were used in this state.

CLASS ACTION ALLEGATIONS

15. The class of plaintiffs consists of and includes all persons in the United States that have ingested the drug Ambien from 2000 to date and experienced the side effects of amnestic nocturnal eating behavior (excessive eating while asleep) and somnambulism (sleepwalking) in which they were injured or damaged as a result of these side effects, as more fully described herein below.

16. The class does not include the defendants and/or their agents, subsidiaries or employees.

17. Defendant has caused or will cause, and all class members have suffered or will suffer, damage and/or personal injury as a result of the acts or omissions of Defendant.

18. The class is sufficiently numerous that joinder of all members is impracticable. Upon information and belief, more than 1000 persons have suffered injury or damage as a direct and proximate result of ingesting Ambien during this class period.

19. Plaintiffs will fairly and adequately protect the interests of the class. The interests of the class representatives are coincident with, and not antagonistic to, those of the other class members and Plaintiffs are represented by experienced and able counsel who has previously litigated class actions and similar types of cases.

20. Susan Chana Lask, Esq. is an experienced litigator who handled nationwide class actions, including multi-million dollar complex Federal Hazardous Waste and Products Liability Litigation because of her chemistry background. She was involved with numerous government agencies involving Comprehensive Environmental Response, Compensation, and Liability Act (**CERCLA**), the Superfund and the EPA starting with her work in 1986 with the preeminent national firm of Rivkin, Radler, Dunne and Bayh (working with New York's then Senators and partners Senators Dunne and Bayh). She was involved in the class-action case of the chemical warfare Agent Orange against Morton Thikol, the chemical creosote pollution case against James Graham Brown Foundation in Kentucky, Alabama and Florida, and class-action cases regarding the existence of PCB pollutants in the Hudson River. In 1994 she worked in Los Angeles with class action counsel against Taco Bell for laborers' wages, which was a success. Her successful work with attorney generals nationwide and other government agencies in 2002 helped effectuate a successful settlement of the class action RICO consumer fraud suit against Miss Cleo and the end of her \$8 Million Dollar Corporation that defrauded consumers nationwide. In 2003 she commenced and settled a class action for New York City drivers wherein the City of New York changed traffic violation laws upon Ms. Lask demonstrating class members were being ticketed under a law that did not exist. In 2006 she discovered a class of detainees in two New Jersey Counties that were illegally strip searched and her amended complaint to class action was granted based on her discoveries. Since 1995 she has been an expert in television, print and radio media on various legal issues, and in 1995 represented one of the most widely publicized international white collar criminal cases involving complicated air traffic laws leading the news media to follow Ms. Lask's work worldwide since then. She was also counsel to a Lloyd's of London agent in New York investigating and litigating worldwide multi-million dollar complex litigation freight losses. Her record has been stellar and she has not had as much as a sanction in any of the thousands of cases she has represented since 1989. Her mission is to adequately protect the class and to obtain a fair settlement for each member and a fair warning for future consumers of the product at issue in this case.

21. There are questions of law and fact common to the class. Common questions of law include the liability Defendants for manufacturing, producing, selling and/or distributing Ambien. Common questions of fact include, but are not limited to, the available scientific and

technical knowledge of amnestic nocturnal eating behavior and somnambulism when Ambien was manufactured and sold; Defendant's knowledge or reason to know of the health hazards or adverse side effects of Ambien; Defendant's failure to test or adequately test Ambien prior to marketing the drug; and Defendant's failure to warn consumers of such adverse side effects and hazards.

22. Plaintiffs' claims are typical of the class members' claims and derive from a common nucleus of operative facts in that the Defendant's Ambien was prescribed, ingested and caused harm to the Plaintiffs' by causing them to enter a hypnotic state where they functioned to their detriment by entering into an "auto-pilot" trance-like state and operating dangerous machinery, vehicles, binge eating and engaging in activities they have no memory of, resulting in damage to themselves, their careers, reputations and to others.

23. Plaintiffs and all similarly situated class members have suffered and will continue to suffer injury and damage as a result of Defendant's actions.

24. Upon information and belief, the named Plaintiffs not only represent a large number of class members who have been harmed, but also, due to Defendant's failure to adequately warn of the potential dangers of Ambien, Plaintiffs represent an even larger number of class members who have yet to discover that they have been or will be injured as for the most part the side effect of Ambien is amnesia when amnestic nocturnal eating behavior and somnambulism occur . For these reasons, a class action is especially appropriate to promote judicial efficiency and to protect class members' interests and rights.

24. Each class member has been or will be similarly injured by Defendant's acts and omissions in manufacturing, marketing, selling, designing, and/or supplying Ambien.

25. Class treatment is a superior method for the fair and efficient adjudication of the issues in dispute because it permits a large number of injured parties, joinder of whom is impracticable, to prosecute their common claims in a single forum simultaneously. In addition, it does not infringe upon the rights of those class members who wish to opt-out and litigate their claims separately. The class action provides an efficient method whereby the relative rights of the class members and Defendant can be fairly managed.

SUBSTANTIVE ALLEGATIONS

Plaintiff Makinen

26. Plaintiff Janet Makinen is a housewife and was first prescribed Ambien in about 1998 at 10 mg at before bedtime for her insomnia. She took it until about June, 2005. Plaintiff was a migraine sufferer who occasionally took Imitrex.

27. Plaintiff would take Ambien, turn the lights out and lay down.

28. Approximately two weeks after taking Ambien as prescribed, Plaintiff experienced adverse effects. After being asleep for about an hour to two hours, she experienced the

side effect of somnambulism and amnestic nocturnal eating behavior, and walk to her kitchen and eat hundreds of calories of food, including raw eggs, uncooked yellow rice, cans of vegetables, loaves of bread, bags of chips and bags of candy.

29. Plaintiff would wake up about an hour later vomiting from the amnestic nocturnal eating behavior.

30. Plaintiff become irate when her husband tried to stop her eating while sleeping.

31. Plaintiff experienced a substantial weight gain as a result of the Ambien side effects.

32. Plaintiff suffers from GERD, a food regurgitation, and other stomach problems, including an ulcer, as a result of the Ambien side effects.

33. Plaintiff never experienced the side effects of somnambulism and amnestic nocturnal eating behavior once she stopped taking Ambien in 2005.

Plaintiff Lieutenant 03 Lasswell

34. Plaintiff is a Lieutenant 03 in the US Navy stationed at USCENTCOM located in Tampa, Florida.

35. Plaintiff was prescribed 10 mg Ambien in February, 2005 for insomnia.

36. Plaintiff always took it at night as she was getting ready to go to bed.

37. In February, 2005 after taking Ambien for about a few days Plaintiff took Ambien one night at about 7 p.m., went to sleep and at about 9 p.m. entered into somnambulism.

Plaintiff dressed herself and walked to the intelligence center where she worked in a stumbling almost drunken state and talking nonsense with her coworkers. The coworkers walked her back to her barracks and put her back to bed and told her about the incident the next day.

Plaintiff has no memory of this incident.

38. The week of August 26, 2005 Plaintiff lost gaps of memory as a result of taking Ambien.

39. On September 3, 2006 Plaintiff was arrested by her Base Police for shoplifting on that same date at the Base Exchange.

40. Charges for August 27, 2005 were also levied upon Plaintiff for August 27, 2005 for off-base shoplifting where she drove to a Marshalls and other stores in the area.

41. Plaintiff has no memory of those events as a result of Ambien.

42. On September 3, 2005 at 6 a.m Plaintiff ingested her Ambien in bed to go to sleep for the rest of that day, which was a Saturday.

43. Plaintiff entered into somnambulism at about 9 a.m. and took another Ambien while in that state. Plaintiff never fell asleep but instead went to the Post Office and mailed packages, went to the Base library and returned overdue books and checked out two DVDs, then believes she went to the dry cleaners, then went to the Base Exchange with a DVD to return to the store for a refund and while there wandered around the store aimlessly.

44. Plaintiff does not recall these events and only remembers pieces of what happened that

day.

45. The Base Police handcuffed Plaintiff and charged her with shoplifting DVDs and a candle.

46. Plaintiff faces larceny charges and her top secret security clearance at the US Navy was revoked over this incident with DVDs. She also faces a possible dishonorable discharge from the Navy after 17 years and severance pay of over \$110,000 before taxes and a substantial pension.

Plaintiff Brothers

47. Plaintiff Brothers has worked as a financial analyst and is presently studying for her CPA.

48. She was prescribed 10mg of Ambien for transient insomnia in early May of 2005

49. On the third day after initially taking her prescription she took her prescribed dosage at around 1:57 a.m. after retiring to bed.

50. The next thing she recalls is waking up on the concrete floor of a jail cell.

51. She entered into somnambulism.

52. She discovered later from the police report that she got out of bed about 6 am, left her house, drove her mother's car into a parked vehicle and that scene. She subsequently ran into another vehicle and left that scene. She returned home as if nothing happened, had a conversation with her mother and was arrested in her bedroom that morning.

53. Plaintiff has no memory of the events that night and into the morning and leading to her arrest.

54. Plaintiff was severely bruised and injured and faces criminal charges for the occurrence while she was under the influence of Ambien.

Plaintiff Callahan

55. Plaintiff is a lab technician in hematology in a New York State office.

56. She was first prescribed Ambien at 10 mg for insomnia in about 2003

57. Plaintiff took Ambien intermittently from about 2003 through about January, 2005.

Plaintiff was taking daily during that period Xenical, a fat blocker and Selexa, an antidepressant.

58. Plaintiff always took the Ambien and went right to bed.

59. Plaintiff experienced both amnesic nocturnal eating behavior (excessive eating while asleep) and somnambulism (sleepwalking) as side effects of Ambien.

60. There were times when she found her refrigerator door open, crumbs on the floor and

her hands had chocolate icing on them and a ring of chocolate around her mouth. Another time she woke up in bed with her hand in a box potato chip box. Plaintiff would find the next morning dishes in her sink showing evidence of her eating. Another time she woke up with her telephone in her hand which was a result of a phone conversation she had with her doctor that she has no recollection of, which is one of multiple unrecalled phone conversations she had under the influence of Ambien.

61. The most egregious event that occurred was in or about September, 2004 when Plaintiff took her prescribed dose and was knocked out quickly where she fell asleep in her chair in front of the television. Plaintiff does not have a memory of anything past that.

What occurred that night was Plaintiff entered somnambulism and opened her door for a neighbor who sexually assaulted her.

62. The next most egregious event occurred January, 2005. After working a night shift, Plaintiff some time during the day was set to sleep and took her prescribed dose, went to bed and fell asleep. Plaintiff has no memory of anything except that she woke up some 10 hours later and discovered she was nude, had cuts and scrapes on her knees and bruises on her body. Her arms hurt and she was sore. She woke up confused, with five memories only. The memories were (1) being driven in her car by her neighbor, it was dark and she wanted to sleep, (2) the neighbor was pushing food at Plaintiff while she was in her chair, (3) being pulled backwards and trying to pull herself away, (4) trying to cover herself with her lab coat (5) her neighbor coming out of her bathroom.

63. Plaintiff discovered she was sexually assaulted again by the same neighbor who found her in her car. The matter is now in the hands of the District Attorney as a sexual assault. After that incident, Plaintiff never took Ambien again.

RESEARCH CONFIRMING ADVERSE SIDE EFFECTS OF AMBIEN AS EXPERIENCED BY PLAINTIFFS

64. Ambien, its chemical name being Zolpidem, has been linked by scientific studies with sleepwalking and sleep-eating, to wit: Mendelson WB. "Sleepwalking associated with zolpidem" (letter). J Clin Psychopharmacol 1994;14:150.; Harazin J, Berigan TR. "Zolpidem tartrate and somnambulism". Mil Med 1999;164:669-70.; Sauvanet JP, Maarek L, Roger M, Renaudin J, Louvel E, Orofiamma B. "Open longterm trials with zolpidem in insomnia." In: Sauvanet JP, Langer SZ, Morselli PL, eds. "Imidazopyridines in sleep disorders." New York: Raven Press, 1988:339- 49. Ganzoni E, Santoni JP, Chevillard V, Sebillle M, Mathy B. "Zolpidem in insomnia: a 3-year post-marketing surveillance study in Switzerland." J Int Med Res 1995;23:61-73. Iruela LM. "Zolpidem and sleepwalking (letter)". J Clin Psychopharmacol 1995;15:223. In the T.I. Morgenthaler, M.H. Silber, "Amnestic sleep-related eating disorder associated with zolpidem", Sleep Medicine 3 (2002) 323–327.

Additionally, The National Sleep Foundation Meeting Minutes of June 22, 2005 relates zolpidem as a cause of sleep-eating.

ACTS AND OMISSIONS OF DEFENDANTS

65. Defendants designed, manufactured, marketed, sold, marketed and/or placed into the stream of commerce Ambien knowing that it had side effects of amnestic nocturnal eating behavior and somnambulism.

66. Defendants suppressed, concealed, misrepresented and/or obscured data regarding the adverse side effects of Ambien.

67. Defendants were aware or should have been aware of studies and data linking Ambien and its side effects of sleep walking and sleep eating, but nevertheless continued to design, produce, manufacture, market, distribute and/or sell it without any warnings as to potential detrimental side effects associated with it.

68. Despite their actual knowledge of the detrimental side effects, Defendants failed to warn or adequately and sufficiently warn the Plaintiffs and other class members, the public, governmental bodies and the Medical community of the harmful and detrimental side effects.

69. Defendants failed to test or adequately test Ambien prior to manufacturing, marketing, distributing and/or selling it.

70. Defendants published false and/or misleading information about the safety and potential adverse side effects of Ambien.

COUNT I: NEGLIGENCE

71. Plaintiffs hereby incorporate by reference each paragraph of this Complaint, as if fully set forth herein.

72. At all times material hereto, Defendants designed, developed, manufactured, marketed, delivered and/or sold Ambien.

73. At all times material hereto, Defendants knew or should have known that Ambien would be used by Plaintiffs and class members who would suffer the adverse side effects of amnestic nocturnal eating behavior (excessive eating while asleep) and somnambulism (sleepwalking).

74. At all times material hereto, Defendants designed, developed, manufactured, marketed, distributed and/or sold Ambien knowing, or through the exercise of reasonable care, should have known that it was defective and would damage the Plaintiffs and class members.

75. Defendants failed to warn, or adequately or sufficiently warn, either directly or indirectly, the foreseeable users of the potential hazards and costs associated with the use of Ambien.

76. Defendants failed to test or adequately test Ambien.

77. Defendants systematically failed to represent accurately to the Plaintiffs and class members, either directly or indirectly, that Ambien and its constituents can pose a health

hazard and injure persons by its adverse side-effects or that Ambien was defective.

78. Defendants systematically failed to monitor and investigate reported instances of amnestic nocturnal eating behavior (excessive eating while asleep) and somnambulism (sleepwalking) resulting from the use of Ambien.

79. Defendants systematically failed to train, warn or educate, or inadequately trained, warned or educated the Plaintiff, class members or their Doctors of the signs and symptoms of adverse reactions of amnestic nocturnal eating behavior (excessive eating while asleep) and somnambulism (sleepwalking) to the use of Ambien or that users of Ambien should be carefully observed for signs or symptoms of adverse side effects, even though it had a duty to do so.

80. Defendants systematically failed to acknowledge responsibility for adverse side effects caused by Ambien, thereby contributing to the false impression cultivated by Defendants that Ambien is safe.

81. Defendants failed to represent accurately to Plaintiffs and class members, either directly or indirectly, that Ambien, used for its ordinary and intended purpose, can pose a health hazard and/or injure users, whereby class members were induced to purchase and utilize Ambien.

82. Defendants at all times failed and continue to fail to perform their duties to warn and recall.

83. Defendants' actions, as alleged, constitute violations of statutory and regulatory provisions.

84. Defendants' acts and omissions complained of in this count were committed by them with indifference to the rights of the Plaintiffs and other class members and were carried out to maximize the sale and use of Ambien.

As a direct and proximate result of Defendant's conduct, Plaintiffs and class members have suffered and will continue to suffer damage.

COUNT II: STRICT LIABILITY

85. Plaintiffs hereby incorporate by reference each paragraph of this Complaint, as if fully set forth herein.

86. Defendants have been and are engaged in the business of designing, manufacturing, marketing, distributing and/or selling Ambien.

87. Ambien, as used by Plaintiffs and class members was defective and unreasonably dangerous, unfit for its intended use because of the deleterious and highly harmful effects it causes to Plaintiffs and other class members'.

88. Defendants reasonably expected Ambien to be used by Plaintiffs and other class members.

89. Plaintiffs and other class members used Ambien in the manner in which was intended and expected by Defendants. At the time of such use, Ambien had not been changed from the time it was designed, manufactured, marketed, distributed or sold by Defendants.

90. As a direct and proximate cause of Plaintiffs and class members using Defendants defective and unreasonably dangerous product, Plaintiffs and other class members have suffered and will continue to suffer damages.

COUNT III: BREACH OF IMPLIED WARRANTIES

91. Plaintiffs hereby incorporate by reference each paragraph in this Complaint, as if fully set forth herein.

92. Defendants failed to represent accurately to class members, either directly or indirectly, that Ambien is unfit and unsafe to consumers with insomnia and other sleep related disorders.

93. Defendants intended Ambien to be used on persons suffering from insomnia, and impliedly warranted through the sale, advertising, and/or marketing of Ambien that it was fit for these normal and foreseeable uses.

94. Plaintiffs and class members, as foreseeable and intended users of Defendant's product, relied upon Defendant's representations, skill, expertise and judgment in assuming that Ambien would not only perform its basic functions as warranted, but was safe, and would not have adverse side effects of sleep walking, memory loss and sleep eating.

95. Defendants breached these implied warranties in that Ambien as designed, manufactured, marketed, distributed or sold is deleterious and highly harmful, and can and does injure persons and others as a result of their entering into a hypnotic state and sleep walking and sleep eating.

96. As a direct and proximate result of Defendants' breach of implied warranties of good and merchantable quality and fitness for a particular purpose and for their intended use, Plaintiffs and other class members have suffered and will continue to suffer direct and material harm and injury.

COUNT IV: FRAUD

97. Plaintiffs hereby incorporate by reference each paragraph in this Complaint, as if fully set forth herein.

98. Defendants at all times in designing, manufacturing, marketing, distributing and selling Ambien knew that this product was and is hazardous and/or potentially hazardous to consumers, and knew that it causes sleep walking and sleep eating.

99. At all times relevant in marketing their Ambien, Defendants falsely and fraudulently represented expressly or impliedly to Plaintiffs, class members, the public and the market that Ambien was safe. Defendants suppressed and concealed facts that Ambien could be

harmful, dangerous and deleterious to consumers. Defendants knew of these dangerous propensities when it designed, manufactured, marketed, distributed and sold Ambien.

100. Defendants at all times had a continuing duty to disclose the dangerous propensities of their product to Plaintiffs, class members, the public, and the market, and the suppression of these facts constituted misleading and fraudulent misrepresentations because Defendants published and disseminated information such as publications and televised commercials representing Ambien would put a person to sleep and was well-suited, safe and highly effective for its intended use, and which were likely to mislead for want of communication of suppressed facts, including the hazardous nature and dangerous propensities of Ambien's side effects.

101. The misrepresentations, suppressions, and failures to disclose information were made by Defendants with the intent to induce Plaintiffs, class members, the public and the market to purchase and use Ambien.

102. Plaintiffs and class members relied on Defendants misrepresentations as well as the absence of adverse information in purchasing and using Ambien.

103. Defendants continued at all times relevant to falsely and fraudulently misrepresent, suppress, and fail to disclose the dangerous propensities of Ambien, including the fact that Ambien causes sleep walking, memory loss and sleep eating.

104. Plaintiffs and class members, at the times these failures to disclose and suppressions of fact occurred, and at the time of purchase and use of the product, were ignorant of the existence of the facts that Defendants misrepresented, suppressed and failed to disclose. If Plaintiffs and class members had been aware of the existence of the facts misrepresented or not disclosed by Defendants, Plaintiffs and class members would not have purchased or used Ambien, and would have not suffered the damages and injuries alleged herein.

105. As a direct and proximate result of Defendants suppression of facts and failure to disclose, and the continued manufacture, sale and marketing of Ambien, Plaintiffs and class members were or will be directly and materially harmed and injured.

106. All Defendants acts and omissions complained of in this count were committed by them with indifference to the rights of Plaintiffs and other class members and were intentionally carried out to maximize the sale and use of Ambien.

COUNT V: UNFAIR TRADE PRACTICES

107. Plaintiffs hereby incorporate by reference each paragraph in this Complaint, as if fully set forth herein.

108. Defendants engaged in unlawful and deceptive trade practices that have injured Plaintiffs as described herein and upon information and belief, these unlawful and deceptive trade practices were committed willfully and knowingly by Defendants.

109. Defendants engaged, or have had the potential to engage in similar unlawful and deceptive trade practices that either have or potentially could have injured other persons or entities.

110. Defendants unlawful and deceptive trade practices committed during the operation of their business as described in this Count violated statutory law.

111. The unlawful and deceptive trade practices of Defendants impact the public interest in that they are capable of repetition, and upon information and belief, have been repeated against other persons or entities as alleged in this Complaint.

112. Because of the unlawful and deceptive trade practices of Defendants, Plaintiffs and class members have suffered and continue to suffer damages.

113. Defendants' willful and knowing commission of multiple unlawful unfair and deceptive acts in designing, manufacturing, marketing, distributing and/or selling Ambien, have caused injury to Plaintiffs and class members.

COUNT VI: EXPRESS WARRANTY

114. The Plaintiff hereby incorporate by reference each paragraph in this Complaint, as if fully set forth herein.

115. At all times relevant, Defendants, in order to induce the Plaintiff and class members to purchase and use Ambien, warranted and represented that its product was safe for its intended use for insomnia.

116. Plaintiffs and other class members purchased and used Ambien in reliance on the Defendant's above- mentioned warranties and representations.

117. The Ambien distributed, sold and/or delivered by Plaintiffs and class members were not of a character as stated by the Defendant, but on the contrary, were defective and deficient as it did not put Plaintiffs and class members to sleep but placed them into a hypnotic "auto-pilot" state.

118. Upon information and belief, Defendants received due and proper notice from Plaintiffs and other class members about the defective and deficient character in Ambien, and Plaintiffs herein provide Defendants with additional notice of the same.

119. As a result of the defective and deficient nature of Ambien, which is contrary to the warranties and representations of Defendants, the Plaintiff and class members have suffered and continue to suffer damage to their pets and animals.

120. Plaintiffs hereby demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class of others similarly situated, request that this Honorable Court grant the following relief:

- A. An order certifying the cause of action number three of this complaint as a class action pursuant to Fed. R.Civ.P. 23 with Plaintiffs as Class Representatives.
- B. A judgment against all Defendants, jointly and severally, awarding Compensatory Damages to Plaintiffs and each member of the proposed Class in an amount to be determined by a Jury and/or the Court on both an individual and a class wide basis.
- C. A judgment against Defendants for punitive damages in an amount to be determined at Trial.
- D. A monetary award for attorney's fees and the costs of this action, pursuant to Fed. R.Civ.P. 23. And
- E. such other and further relief as the court may deem appropriate.

Dated: New York, NY
March 2, 2006

BY: Susan Chana Lask, Esq.

Attorneys for Plaintiffs
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Case No. 06civ1762

Year 2006

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

**Janet Makenen, Judith Renee Lasswell,
Christina Brothers, & Kathleen M. Callahan,
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CIVIL COMPLAINT

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