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FILED

JUN 23 2023

Clerk of the Napa Superior Court
By AA Collins
Deputy

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11 Attorneys for Plaintiff

12 *(For list of additional Plaintiff's counsel,*
13 *see Appendix)*

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 IN AND FOR THE COUNTY OF NAPA

16 THE PEOPLE OF THE STATE OF
17 CALIFORNIA,

18 Plaintiff,

19 vs.

20 EVIG, LLC, a Nevada Limited Liability
21 Company; and DOES 1-10.

22 Defendants.

Case No.: 21CV000242

FINAL JUDGMENT PURSUANT TO
STIPULATION

23 Plaintiff, the People of the State of California, appears in this matter through its attorneys: Allison
24 Haley, District Attorney of Napa County, by Patrick Collins, Deputy District Attorney; Pamela Y. Price,
25 District Attorney of Alameda County, by Alexandra Grayner, Deputy District Attorney; Lori E. Frugoli,
26 District Attorney of Marin County, by Andres H. Perez, Deputy District Attorney; Jeannine M. Pacioni,
27 District Attorney of Monterey County, by Emily Hickok, Deputy District Attorney; Todd Spitzer, District
28 Attorney of Orange County, by Alicia Berry, Deputy District Attorney; Jeffrey F. Rosen, District
Attorney of Santa Clara County, by Jennifer Deng and Christopher Judge, Deputy District Attorneys;
Jeffrey S. Rosell, District Attorney of Santa Cruz County, by Douglas Allen, Assistant District Attorney;
Stephanie A. Bridgett, District Attorney of Shasta County, by Anand "Lucky" Jesrani, Senior Deputy

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1 District Attorney; Krishna A. Abrams, District Attorney of Solano County, by Diane M. Newman,
2 Deputy District Attorney; and Carla Rodriguez, District Attorney of Sonoma County, by Matthew
3 Cheever, Chief Deputy District Attorney.

4 Defendant Evig, LLC (“Defendant”), a Nevada Limited Liability company, appears through its
5 attorneys, Yosef Peretz, Esq. and Shane Howarter, Esq. of Peretz & Associates, and Kurt Harris, Esq. of
6 Kurt Harris, Esq., P.C.

7 Plaintiff and Defendant (the “Parties”) having stipulated that this proposed Final Judgment
8 Pursuant to Stipulation (“Judgment”) may be entered without trial or adjudication of any issue of fact or
9 law, and without any admission or denial of liability or wrongdoing, and good cause appearing,

10 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

11 1. The Judgment has been reviewed by this Court and is found to have been entered in good
12 faith and to be, in all respects, just, reasonable, equitable, and adequate to protect the California public
13 from the occurrence in the future of the conduct alleged in the Complaint.

14 2. Nothing in this Judgment shall be construed as an admission by Defendant of any fact,
15 issue of law, or violation of law alleged generally or specifically in the Complaint..

16 3. Unless otherwise stated, all obligations imposed upon Defendant by the terms of this
17 Judgment are ordered pursuant to sections 17200, et seq., and 17500, et seq., of the California Business
18 and Professions Code, including sections 17203, 17206, 17535, and 17536.

19 4. The Parties waive the right to appeal this Judgment both as to form and content.

20 **JURISDICTION AND VENUE**

21 5. This civil enforcement action is brought in the public interest under the laws of the State
22 of California. As Defendant has offered for sale and/or sold products throughout the State of California,
23 including Napa County, the Napa County Superior Court (“Court”) has jurisdiction of the subject matter
24 hereof and of the Parties hereto, and is a proper venue for this action.

25 **APPLICABILITY**

26 6. This Judgment is applicable to Defendant and to its agents, servants, employees,
27 representatives, officers, directors, members, managers, subsidiaries, successors, and assigns acting within
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1 the course and scope of their agency or employment, and to any and all persons, employees, corporations,
2 and other entities, with actual or constructive notice of this Judgment, who are acting in concert or
3 participating with Defendant as it relates to the State of California.

4 7. Nothing in this Judgment shall excuse the Defendant from meeting any more stringent
5 requirements which may be imposed hereinafter by changes in applicable and legally binding legislation,
6 regulations, ordinances, and/or permits, or shall be construed as authorizing or permitting any violation of
7 law existing at the time of entry of judgment or thereafter, including any violation of law not discussed or
8 mentioned herein or in the Complaint.

9 **DEFINITIONS**

10 8. The following phrases in this Judgment have the meaning set forth below:

11 A. "AUTOMATIC RENEWAL CONTRACT" shall specifically include, without
12 limitation, the "Preferred Customer Program", as offered by Defendant as of the EFFECTIVE DATE OF
13 JUDGMENT.

14 B. "AUTOMATIC RENEWAL OFFER" shall have the same meaning as that phrase
15 is used in California Business and Professions Code section 17601(a), as amended from time to time, i.e.,
16 a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at
17 the end of a definite term for a subsequent term.

18 C. "AUTOMATIC RENEWAL OFFER TERMS" and/or CONTINUOUS SERVICE
19 OFFER TERMS shall mean and include all the required CLEAR AND CONSPICUOUS disclosures set
20 forth in California Business and Professions Code section 17601(b), as amended from time to time.

21 D. "CALIFORNIA CONSUMER" shall mean any purchaser of any product or
22 service offered by Defendant who provided a billing zip code located in the State of California as
23 referenced below.

24 E. "CLEAR AND CONSPICUOUS" shall have the meaning set forth in California
25 Business and Professions Code Section 17601(c), as amended from time to time, i.e., in larger type than
26 the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set
27 off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls
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1 attention to the language.

2 F. "COMPETENT AND RELIABLE SCIENTIFIC EVIDENCE" means tests,
3 analyses, research, studies, or other evidence based upon the expertise of professionals in the relevant
4 area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using
5 procedures generally accepted in the scientific community to yield accurate and reliable results.

6 G. "CONTINUOUS SERVICE OFFER" shall have the same meaning as that phrase
7 is used in California Business and Professions Code section 17601(e), as amended from time to time, i.e.,
8 a plan or arrangement in which a subscription or purchasing agreement continues until the
9 CALIFORNIA CONSUMER cancels the service.

10 H. "CONTINUOUS SERVICE CONTRACT" shall specifically include, without
11 limitation, the "Preferred Customer Program", as offered by Defendant in the State of California as of the
12 EFFECTIVE DATE OF JUDGMENT.

13 I. "DISEASE" has the same meaning as set forth in 21 Code of Federal Regulations
14 ("C.F.R.") section 101.93(g)(1), as amended from time to time.

15 J. "EFFECTIVE DATE OF JUDGMENT" means the date this judgment is file-
16 endorsed by the Clerk of Court, following approval and signature by a Judge of the Superior Court.

17 K. "ENDORSEMENT" has the same meaning as set forth in 16 C.F.R. section
18 255.0(b), as amended from time to time.

19 L. "EXPERT" has the same meaning as set forth in 16 C.F.R. section 255.0(e), as
20 amended from time to time.

21 M. "NUTRITIONAL SUPPLEMENT" means a food or dietary supplement (as
22 defined in 21 United States Code ("U.S.C.") section 321(ff)) sold, offered for sale or distributed, directly
23 or indirectly, to consumers in the State of California, including, but not limited to, Defendant's Fruits,
24 Veggies, and Fiber & Spice products.

25 **INJUNCTIVE RELIEF**

26 9. As of the EFFECTIVE DATE OF JUDGMENT, pursuant to California Business and
27 Professions Code sections 17203 and 17535, Defendant shall be and is hereby permanently enjoined and
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1 restrained from doing, directly or indirectly, any of the following within California in connection with the
2 manufacture, labeling, advertisement, marketing, promotion, sale, offer for sale, distribution, or giving
3 away of any NUTRITIONAL SUPPLEMENT:

- 4 A. Making and/or disseminating any statement regarding any NUTRITIONAL SUPPLEMENT
5 that is untrue or misleading in violation of Business and Professions Code sections 17200
6 and/or 17500 within California;
- 7 B. Representing, expressly or by implication, that any NUTRITIONAL SUPPLEMENT can
8 diagnose, mitigate, treat, cure, or prevent any DISEASE condition, including but not limited
9 to diabetes, arthritis, cancer, influenza, conditions of the heart or liver, fibromyalgia, high
10 cholesterol, or other life-threatening conditions, or that it aids in post-surgery recovery, unless
11 the representation is non-misleading and such product within California:
- 12 i. Is subject to a final over-the-counter (“OTC”) drug monograph promulgated by the
13 Federal Food and Drug Administration (“FDA”) for such use and conforms to the
14 conditions of such use;
 - 15 ii. Remains covered by a tentative final OTC drug monograph for such use and
16 adopts the conditions of such use; or
 - 17 iii. Is the subject of a new drug application for such use approved by the FDA and
18 conforms to the conditions of such use.
- 19 C. Making and/or disseminating any representation, expressly or by implication, about the
20 nature, attributes, effects, efficacy, benefits, results, or safety of any NUTRITIONAL
21 SUPPLEMENT or its ingredients, including that the product(s) is more easily absorbed than,
22 or has the nutritional equivalent of, a certain quantity of servings of fruits or vegetables,
23 unless, at the time of making and/or disseminating such representation, it is true, not
24 misleading, and Defendant already has in its possession and relies upon COMPETENT AND
25 RELIABLE SCIENTIFIC EVIDENCE that substantiates such representation, within
26 California;
- 27 D. Making and/or disseminating any claim or representation, either directly or indirectly, that
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1 misrepresents the existence, contents, validity, results, conclusions, or interpretations of any
2 test, study, or research, within California;

3 E. Making and/or disseminating any claim or representation in the form of an ENDORSEMENT,
4 including an ENDORSEMENT by an EXPERT, in violation of any of the provisions of 16
5 C.F.R. sections 255.1-255.4, within California;

6 F. Making and/or disseminating any ENDORSEMENT, including an ENDORSEMENT by an
7 EXPERT, without clearly and conspicuously disclosing any connection between the endorser
8 and Defendant that might materially affect the weight or credibility of the ENDORSEMENT
9 (*i.e.*, the connection is not reasonably expected by the audience), in violation of 16 C.F.R.
10 section 255.5, in California; or

11 G. Making and/or disseminating claims which are unapproved by the FDA or in violation of
12 California Business and Professions Code 17200 in California.

13 H. For avoidance of doubt, any republication by a third party unrelated to Defendant of a
14 statement made by Defendant prior to the EFFECTIVE DATE OF JUDGMENT shall not
15 constitute a violation of this Judgment by Defendant.

16 10. Pursuant to California Business and Professions Code sections 17203 and 17535,
17 Defendant shall be and is hereby permanently enjoined and restrained from doing, directly or indirectly,
18 any of the following within California:

19 A. Violating the provisions of any of the following statutes:

- 20 i. California Health and Safety Code section 110390, by disseminating any false
21 advertisement of any food, drug, device, or cosmetic. An advertisement is false if it is
22 false or misleading in any particular;
- 23 ii. California Health and Safety Code section 110395, by manufacturing, selling,
24 delivering, holding, or offering for sale and food, drug, device, or cosmetic that is falsely
25 advertised;
- 26 iii. California Health and Safety Code section 110398, by advertising any food, drug,
27 device, or cosmetic that is misbranded;
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- iv. California Health and Safety Code section 110400, by receiving in commerce any food, drug, device, or cosmetic that is falsely advertised, or delivering or proffering for delivery any such food, drug, device, or cosmetic;
 - v. California Health and Safety Code section 110403, by advertising a drug represented to have an effect on the conditions, disorders, or diseases listed therein, including but not limited to, bone or joint diseases, cancer, diabetes, heart and vascular diseases, high blood pressure, and diseases, disorders, or conditions of the immune system;
 - vi. California Health and Safety Code section 111440, by manufacturing, selling, delivering, holding, or offering for sale any drug or device that is misbranded;
 - vii. California Health and Safety Code section 111445, by misbranding any drug or device;
 - viii. California Health and Safety Code section 111450, by receiving in commerce any drug or device that is misbranded or delivering or proffering for delivery any such drug or device; or
 - ix. California Health and Safety Code section 111550 by selling, delivering or giving away any unapproved new drug or device.

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B. Violating the provisions of California Civil Code section 1770(a)(5), by representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, or benefits which they do not have.

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11. In connection with any product or service offered to CALIFORNIA CONSUMERS, Defendant is hereby enjoined and restrained from making an AUTOMATIC RENEWAL OFFER or CONTINUOUS SERVICE OFFER without complying with the provisions of the Automatic Purchase Renewal Law (Bus. & Prof. Code, §§ 17600 – 17606), including the following non-exclusive list of requirements set forth in section 17602:

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A. Subdivision (a)(1) which states, in part, that it is unlawful to “[f]ail to present the [AUTOMATIC RENEWAL OFFER TERMS] in a [CLEAR AND CONSPICUOUS] manner to [CALIFORNIA CONSUMERS] before the subscription or purchasing agreement is fulfilled and in visual proximity, or, in the case of an offer conveyed by voice, in temporal

1 proximity, to the request for consent to the offer”;

2 B. Subdivision (a)(2) which states, in part, that is unlawful to “[c]harge the consumer’s credit or
3 debit card ... without first obtaining the customer’s affirmative consent to the agreement
4 containing the [AUTOMATIC RENEWAL OFFER TERMS or CONTINUOUS SERVICE
5 OFFER TERMS]” to CALIFORNIA CONSUMERS;

6 i. The consent required under this subparagraph shall be obtained by an express act by the
7 CALIFORNIA CONSUMER through a check-box, signature, express consent button, or
8 other substantially-similar mechanism that the CALIFORNIA CONSUMER must
9 affirmatively select to give consent to the AUTOMATIC RENEWAL OFFER TERMS
10 or CONTINUOUS SERVICE OFFER TERMS. This mechanism cannot relate to
11 consent for anything other than the AUTOMATIC RENEWAL OFFER TERMS (such
12 as final payment or completion of the transaction).

13 ii. Immediately adjacent to the consent mechanism referred to in the preceding
14 subparagraph, the AUTOMATIC RENEWAL OFFER TERMS shall be disclosed to
15 CALIFORNIA CONSUMERS. This disclosure shall contain no additional information
16 and shall be CLEAR AND CONSPICUOUS.

17 C. Subdivision (a)(3) which states, in part, that it is unlawful to “fail to provide an
18 acknowledgment that includes the [AUTOMATIC RENEWAL OFFER TERMS] or
19 [CONTINUOUS SERVICE OFFER TERMS], cancellation policy, and information regarding
20 how to cancel in a manner that is capable of being retained by the [CALIFORNIA
21 CONSUMER]. If the [AUTOMATIC RENEWAL OFFER or CONTINUOUS SERVICE
22 OFFER] includes a free trial, [Defendant] shall also disclose in the acknowledgment how to
23 cancel, and allow the [CALIFORNIA CONSUMER] to cancel ... before the consumer pays
24 for the goods or services”;

25 D. Subdivision (c) which mandates “a cost-effective, timely, and easy-to-use mechanism for
26 cancellation that shall be described in the acknowledgment” referenced in subparagraph (c)
27 above.
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- 1 E. Subdivision (d) which states, in part, that “a business that allows a consumer to accept an
2 [AUTOMATIC RENEWAL OFFER or CONTINUOUS SERVICE OFFER] online shall allow
3 a [CALIFORNIA CONSUMER] to terminate the automatic renewal or continuous service
4 exclusively online, at will, and without engaging any further steps that obstruct or delay the
5 consumer’s ability to terminate the automatic renewal or continuous service immediately.”
6 Defendant shall provide a method of termination that is online in the form of either of the
7 following:
8 1. A prominently located direct link or button which may be located within either a
9 customer account or profile, or within either device or user settings.
10 2. By an immediately accessible termination email formatted and provided by the
11 business that a consumer can send to the business without additional information.
12 F. Subdivision (e) which requires, in part, that a business provide “a clear and conspicuous
13 notice” of any “material change” in the terms of an automatic renewal or continuous service,
14 including “information regarding how to cancel in a manner that is capable of being retained
15 by the consumer.”

16 **MONETARY RELIEF**

17 **Restitution**

- 18 12. Defendant is hereby ordered, pursuant to Business and Professions Code sections 17203
19 and 17535, to pay restitution, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), by
20 doing all of the following:
21 A. The maximum total amount that Defendant shall have to pay pursuant to the provisions of this
22 paragraph is Two Hundred Fifty Thousand Dollars (\$250,000.00), inclusive of all costs and
23 fees to administer the restitution (hereinafter the “Total Restitution Amount”). Once
24 Defendant has paid out the Total Restitution Amount, its consumer restitution obligations
25 under this paragraph shall cease.
26 B. Within twenty (20) days of the EFFECTIVE DATE OF JUDGMENT, Defendant shall
27 transfer \$250,000.00 to a third-party professional administrator (“Administrator”), chosen by
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1 the People, for disbursement of funds as restitution. The Administrator shall perform the
2 administration of the Total Restitution Amount to California consumers who purchased of
3 Defendant's *Fruits, Veggies, and/or Fiber & Spice* products between February 23, 2017, and
4 the EFFECTIVE DATE OF JUDGMENT, and who have not already received a full refund
5 ("Eligible Consumers"). As a result of this Judgment, all such Eligible Consumers are entitled
6 to a refund of the purchase price of their first purchase of any of the above-listed products. If
7 the Eligible Consumer purchased multiple different products, he or she is eligible for a refund
8 of the first purchase of each different product. The cost and fees of the Administrator shall be
9 deducted from the Total Restitution Amount.

10 C. Within thirty (30) days of the EFFECTIVE DATE OF JUDGMENT, Defendant shall provide
11 the Administrator with the email or mailing address of each Eligible Consumer, and shall
12 further provide the People and the Administrator with a declaration under penalty of perjury
13 that it has exercised reasonable diligence in so doing. Within thirty (30) days of that time, or
14 any additional time agreed to by the parties, the Administrator shall send the Eligible
15 Consumers a notice about claim for refund in the form agreed upon by the Parties. In the
16 event the parties cannot reach agreement on the form of the notice, the Court retains
17 jurisdiction to resolve any disagreement.

18 D. Each Eligible Consumer so notified who wishes to claim a refund shall return by email or
19 mail a written request for refund form provided with the notice within thirty (30) days of
20 receiving the notice and such refund request must be received by the Administrator within
21 forty-five (45) days of sending notice. The request for refund form will be substantially in the
22 form and manner set forth in "Exhibit 1".

23 E. Each Eligible Consumer who submits a timely request for refund form shall receive a pro rata
24 refund, in an amount up to the full price paid by that consumer for the product(s), of the Total
25 Restitution Amount, after fees and costs of the Administrator are deducted from that amount.
26 Each such Eligible Consumer shall within 30 days of the close of the refund request period
27 receive a refund in the form of a check.
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- 1 F. Within one-hundred and eighty (180) days after the close of the refund request period, the
2 Administrator shall prepare a report stating the following:
3 a. the name and contact information of each Eligible Consumer who timely provided
4 Defendant a request for refund form;
5 b. the amount of any refund paid to each Eligible Consumer;
6 c. the date of the refund payment;
7 d. the total amount of all refund payments;
8 e. the total amount of refund payments that have gone uncashed or uncollected; and
9 f. the remaining amount, if any, of the Total Restitution Amount.
- 10 G. The described about shall be delivered to the Napa County District Attorney's Office, 1127
11 First Street, Suite C, Napa, CA 94559, to the attention of Deputy District Attorney Patrick
12 Collins.
- 13 H. At the end of two hundred seventy days (270) days following the EFFECTIVE DATE OF
14 JUDGMENT, any portion of the Total Restitution Amount that was not paid directly to
15 Eligible Consumers, or that was paid by that remains uncashed or uncollected, shall be paid to
16 the California Consumer Protection Prosecution Trust Fund, previously created by the
17 Judgment and Permanent Injunction, filed on September 21, 1989, in the case of *People v. ITT*
18 *Consumer Financial Corporation* (Alameda County Superior Court Case No. 656038-0) for
19 the purpose of enhancing the investigation, prosecution, and enforcement of consumer
20 protection actions brought pursuant to the unfair competition statutes of the State of
21 California. Such payment shall be delivered to the Napa County District Attorney's Office,
22 1127 First Street, Suite C, Napa, CA 94559, to the attention of Deputy District Attorney
23 Patrick Collins.
- 24 I. The parties shall work in good faith to address any disputes that may arise in the
25 administration of the restitution program described above, the Court retaining jurisdiction to
26 resolve any such disputes.

27 Civil Penalties and Investigative Costs

1 personnel, agents, and representatives having primary authority over sales, advertising, or
2 policy responsibility with respect to the subject matter of this Final Judgment;

3 C. For a period of three (3) years after the EFFECTIVE DATE OF JUDGMENT, Defendant
4 shall provide a copy of this Final Judgment to each of its future as well as all future personnel,
5 agents, and representatives having primary authority over sales, advertising, or policy
6 responsibility with respect to the subject matter of this judgment within ten (10) days after the
7 person commences his or her responsibilities.

8 D. For a period of three (3) years after the EFFECTIVE DATE OF JUDGMENT, Defendant
9 shall obtain from each person who is provided a copy of this Final Judgment pursuant to the
10 terms of subparagraph B or C above, a written acknowledgment indicating that such person
11 received a copy of this Final Judgment, that he or she read it, understood its terms, and agreed
12 to fully abide by all of its terms; and

13 E. For a period of three (3) years after the EFFECTIVE DATE OF JUDGMENT, Defendant
14 shall maintain the acknowledgments required by subparagraph D. Such acknowledgements
15 shall be provided to counsel for the People upon a reasonable request and no more than once a
16 year.

17 **JURISDICTION RETAINED**

18 16. Jurisdiction is retained for the purposes of enabling any Party to this Final Judgment to
19 apply to the Court at any time for such order or directions as may be necessary or appropriate for the
20 construction of or carrying out of this Final Judgment, for the modification or termination of any of the
21 injunctive provisions thereof, for the enforcement of compliance therewith, or for the punishment of
22 violations thereunder.

23 **EFFECT AND ENTRY**

24 17. This Final Judgment shall take effect immediately upon entry hereof.

25
26 DATED: 06/23/23

By: 

Judge of the Superior Court

APPENDIX

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Exhibit 1

PEOPLE OF THE STATE OF CALIFORNIA V. EVIG, LLC
Napa County Superior Court, Case No. 21CV000242

CLAIM FORM

To request a refund, please complete this form and return it by _____, 2023.

CONTACT INFORMATION

(Please type or print the following information): Fill in the following blanks with complete information.

Name: _____
First Name MI Last Name

Address: _____
Address 1

_____ Address 2

_____ City State Zipcode Zip4 (optional)

Email Address: _____ @ _____ . _____

CERTIFICATION

I swear under penalty of perjury that I purchased at least one of the following products - *Fruits, Veggies, and/or Fiber & Spice* - from Evig, LLC dba Balance of Nature between February 23, 2017 and [Effective Date of Judgment], that I did not receive a full refund for this purchase, and that all the information on this form is true and correct to the best of my knowledge.

Signature Date

INSTRUCTIONS

- Complete the contact information above.
- Sign and date the Claim Form.
- Email this completed and signed Claim Form to [Claims Administrator Email Address] or mail it to:

[Claims Administrator]
[Address]