

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 02-10689 PBS

HERBERT FRUH, VIRGINIA FRUH,  
Individually, and as Parent and  
Next Friend of TRACEY FRUH, and  
KEVIN FRUH,  
Plaintiffs

vs.

WELLBRIDGE CLUB MANAGEMENT, INC.,  
(F/K/A CLUB SPORTS INTERNATIONAL,  
INC.) D/B/A THE WELLBRIDGE COMPANY  
AND/OR WELLBRIDGE HEALTH and  
FITNESS CENTER and MONSANTO  
COMPANY,  
Defendants

COMPLAINT

The plaintiffs, Herbert Fruh, Virginia Fruh, Individually, and as Parent and Next Friend of Tracey Fruh, and Kevin Fruh, for their Complaint against defendants, WellBridge Club Management, Inc., (f/k/a Club Sports International, Inc.) d/b/a The WellBridge Company and/or WellBridge Health and Fitness Center and against Monsanto Company, state as follows:

JURISDICTION

This is a diversity action pursuant to 28 U.S.C. § 1332. There is complete diversity of citizenship among the plaintiffs and defendants and the amount in controversy exceeds \$75,000.

PARTIES

1. Herbert Fruh is an adult citizen of Newburyport, Massachusetts.
2. Virginia Fruh is an adult citizen of Newburyport, Massachusetts. She is the wife of Herbert Fruh. She brings this action on her own behalf and as Parent and Next Friend of her daughter, Tracey Fruh, a minor.
3. Tracy Fruh is a minor and the daughter of Herbert and Virginia Fruh. She brings this action through her mother and next friend, Virginia Fruh.
4. Kevin Fruh is the son of Herbert and Virginia Fruh. He is a resident of Newburyport, Massachusetts.

5. WellBridge Club Management, Inc., formerly known as Club Sports International, Inc., (hereinafter "Club Sports/WellBridge") and doing business as The WellBridge Company and/or WellBridge Health and Fitness Center, is a Delaware Corporation with a principal place of business in Denver, Colorado.

6. Monsanto Company (hereinafter "Monsanto") is a Delaware corporation with a principal place of business in St. Louis, Missouri.

7. At all times pertinent hereto, Monsanto was the parent company of a subsidiary, the NutraSweet Company (hereinafter "NutraSweet").

8. At all times pertinent hereto Monsanto Health Solutions was a division of Monsanto.

## FACTS

9. In or about 1989, Monsanto, through NutraSweet and/or Monsanto Health Solutions, founded the WellBridge Company ("WellBridge Company").

10. The stated goal of the WellBridge Company was to develop programs and services tailored specifically to older Americans by creating "scientifically-based health and fitness centers for mature adults." These centers were known as WellBridge Health & Fitness.

11. WellBridge Company advertised, among other things, Scientifically and Medically-Based Programs for:

- Diabetes;
- Heart Disease;
- Hypertension; and
- General Health and Well Being

12. WellBridge Company promised and warranted to its members, and contracted with them, among other things, that it would provide:

- Innovative, medically-based programs and seminars designed for your needs and lifestyle.
- Comfortable facilities
- First Class Amenities; and
- State-of-the-Art Equipment;
- A safe, comfortable and highly supportive environment for learning new skills.

13. WellBridge Company also promised and warranted to its members and contracted with them that it would conform to "...and in many areas surpass,..." the "standards of quality" of the International Health Racquet & Sports Club Association (IHRSA) including: ...

(5) Our club conforms to all relevant laws, regulations and published standards;

(6) Our club is able to respond in a timely manner to any reasonably foreseeable emergency event that threatens the health and safety of club users. Toward this

end, our club has an appropriate emergency plan that can be executed by qualified personnel in a timely manner.

(7) Our club posts appropriate signage alerting users to the risks involved in their use of those areas of our club that present potential increased risk(s).

14. Among the WellBridge Health & Fitness centers that Monsanto owned or operated through NutraSweet or Monsanto Health Solutions was a facility at 695 Atlantic Avenue in Boston, Massachusetts (the "Center").

15. In or about November, 1998, Monsanto decided to divest certain businesses that were "no longer critical to its Life Sciences Strategy," including the WellBridge Company and its Health & Fitness centers.

16. On or about March 1, 1999, Monsanto sold its WellBridge operations to Club Sports/WellBridge, which was by then the third-largest health club chain in the United States. This sale included ownership of all four of the WellBridge centers in Boston and Monsanto's 50% share of two WellBridge centers in St. Louis.

17. On information and belief, the sale price was \$15 million.

18. Club Sports/WellBridge announced its intention to incorporate the WellBridge programs, philosophy, and hospital relationships into its future operation of the WellBridge centers, including the Center.

19. Club Sports/WellBridge, as new owner of the WellBridge centers, continued to express the belief "...that a fitness facility is more than a building full of exercise equipment, aerobic studios and swimming pools. We believe that it's a commitment to the health and well-being of the people we serve."

20. On April 15, 1999, Herbert Fruh was a member of the WellBridge Health and Fitness Center facility on Atlantic Avenue in Boston, then under the ownership of Club Sports.

21. Mr. Fruh was 52 years old and was employed as a mechanical engineer at a nearby business. He had been a member of the Center since approximately 1997, when the Center had been owned by Monsanto.

22. In the morning, before going to work, Mr. Fruh was exercising at the Center and began to complain of discomfort. He discontinued his workout and was seen to collapse and become breathless, pulseless and unresponsive.

23. The employees of the Center initiated 911 procedures and began cardiopulmonary resuscitation (hereinafter "CPR"). Units from the Boston Police, Fire and EMS and Paramedic Departments responded to the 911 call.

24. After about nine minutes from the placement of the 911 call, an Automated External Defibrillator (hereinafter "AED") was deployed on Mr. Fruh by emergency personnel who arrived in response to the call. Mr. Fruh had remained breathless, pulseless and unresponsive throughout this period.

25. Eventually, Mr. Fruh's heart was restored to normal rhythm.

26. Because of the amount of time that had passed without adequate oxygen being provided by his heart, he suffered anoxic brain damage.
27. This brain damage has left him completely disabled. He suffers from profound anterior retrograde amnesia, anxiety and depression.
28. Sudden cardiac arrest kills over 300,000 people in the United States every year.
29. It is more likely to strike at places of excitement or exertion, such as casinos, stadiums, airline terminals and exercise facilities.
30. The single most important determinant of survival without neurological damage in people with sudden cardiac arrest is the time from collapse to defibrillation.
31. By 1992, organizations such as the American Heart Association and the American Red Cross had publicized information widely which indicated that the chances of a person being resuscitated without neurological damage decreased 7% to 10% for every minute defibrillation was delayed, despite CPR administration. It was widely recognized that CPR, alone, could only buy a limited amount of time for a victim of sudden cardiac arrest unless defibrillation took place within 5 minutes or less from the time of arrest.
32. As early as 1986, AEDs were available which were capable of being used by lay persons, including health club attendants, flight attendants, fire and police department employees and other persons who were likely to be early on the scene of a sudden cardiac arrest. AEDs, by definition, are computerized, fully automated, and will not deliver a shock unless the heart is in a rhythm that will respond to a shock.
33. By 1988, the efficacy of AEDs was being recognized in the medical community and in medical journals such as JAMA and The New England Journal of Medicine. From 1994 through 1999, numerous media, including newspapers, magazine and television, publicized the ease of use, and importance of widespread deployment, of AEDs.
34. By 1999, many organizations, including health clubs, had recognized that traditional responses to medical emergencies which did not employ immediate access to AEDs, were ineffective in resuscitating cardiac arrest victims and preventing neurological damage.
35. On information and belief, in 1999, the average response time in Boston for emergency medical services responders was seven minutes. For this and other reasons, including the effectiveness, ease-of-use, and relatively low cost of AEDs, the City of Boston Public Health Department had begun a campaign, as early as 1997, to persuade the owners and/or occupiers of buildings and businesses in the downtown area, such as the Center, to deploy AEDs.
36. In November, 1998, an employee of the City of Boston Public Health Department, who was himself a participant in the campaign to deploy AEDs more widely, was stricken by sudden cardiac arrest, while on an American Airlines flight from Boston to California. This man, Michael Tighe, was successfully resuscitated without neurological damage in-flight. His flight was diverted to Denver, where he recuperated. The news of his resuscitation was widely publicized nationally and in the Denver and Boston media.

37. By 1997, it was well known in the health club industry that moderate, strenuous, physical exertion could trigger sudden cardiac events. By January 1, 1998, random studies of health clubs had determined that at least 17 percent of them had reported sudden cardiac arrest or a heart attack by a member in a five year period. By January 1, 1999, one national health club chain had experienced at least 71 deaths of members from cardiac events in its facilities in the preceding two year period.

38. On information and belief, before January 1, 1999, members of the WellBridge centers and Club Sports centers had experienced cardiac emergencies while using the exercise facilities, which resulted in death or neurological damage.

39. On information and belief, several senior WellBridge Company employees had recommended purchase and deployment of AEDs as early as 1997.

40. On information and belief, the decision to purchase AEDs, and the actual purchase of AEDs for the WellBridge Health and Fitness Centers did not take place until late in 1999 or early in 2000.

41. Both Monsanto, acting through the WellBridge Company and Club Sports/WellBridge, knew or should have known of the facts alleged in Paragraphs 28 through 40.

COUNT I  
(Negligence - Herbert Fruh v. Monsanto)

42. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 41 of plaintiffs' complaint and incorporate them herein by reference.

43. As a business owner, Monsanto, acting through the WellBridge Company, had a duty to its customers to take reasonable precautions to insure their safety against all reasonably foreseeable risks of injury. This duty included assessing the likelihood of injuries to its customers, the seriousness of such potential injuries and the burden of avoiding the risk of such injuries.

44. Sudden cardiac arrest of a member was a reasonably foreseeable risk of operation of a health club business such as the WellBridge Health and Fitness Centers, including the Center.

45. The WellBridge Company recognized the foreseeability of sudden cardiac arrest and undertook a duty to provide emergency cardiac care, through training its employees in CPR. The training in CPR given to Center employees, for at least five years prior to April 15, 1999, emphasized the critical nature of early defibrillation and the limited value of CPR.

46. Despite this knowledge, the Center did not have an AED on its premises on April 15, 1999.

47. Because of this failure, Monsanto, acting through the WellBridge Company, breached its duty to Herbert Fruh.

48. Had an AED been present and readily accessible, Herbert Fruh would have been

resuscitated successfully without any neurological impairment.

49. Because an AED was not present and immediately accessible, Herbert Fruh lost a significant chance at being successfully resuscitated without neurologic impairment.

50. As a consequence of the breach of duty by Monsanto, acting through the WellBridge Company, Herbert Fruh suffered severe mental and physical injuries. He has incurred significant medical expenses, lost wages and lost earning capacity along with extreme emotional distress.

WHEREFORE, plaintiff, Herbert Fruh, requests that this Court enter judgment in his favor and against Monsanto and award damages for personal and mental injury and lost wages, medical expenses and lost earning capacity all as set forth above, together with his costs and expenses and such other relief as this Court deems just.

COUNT II  
(Breach of Warranty - Herbert Fruh v. Monsanto)

51. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 50 of plaintiffs' complaint and incorporate them herein by reference.

52. Monsanto, acting through WellBridge Company, warranted to Herbert Fruh that it would provide trained personnel and appropriate equipment to respond in a timely manner to any reasonably foreseeable medical emergency threatening his health or safety.

53. In consideration of such representations, Herbert Fruh entered into a contract as a member of the WellBridge Health & Fitness Center.

54. Monsanto, acting through WellBridge Company, breached this express warranty by failing to provide such equipment and/or personnel and by failing to warn Herbert Fruh that such equipment and personnel was lacking.

55. As a consequence of this breach of warranty, Herbert Fruh suffered severe mental and physical injuries. He has incurred significant medical expenses, lost wages and lost earning capacity along with extreme emotional distress.

WHEREFORE, plaintiff, Herbert Fruh, requests that this Court enter judgment in his favor and against Monsanto and award damages for personal and mental injury and lost wages, medical expenses and lost earning capacity all as set forth above, together with his costs and expenses and such other relief as this Court deems just.

COUNT III  
(Chapter 93A - Herbert Fruh v. Monsanto)

56. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 55 of plaintiffs' complaint and incorporate them herein by reference.

57. Pursuant to General Laws, Chapter 93A and 940 CMR 3.00, the Attorney General of the Commonwealth is empowered to promulgate regulations affecting consumers in the Commonwealth.

58. Pursuant to 940 CMR 3.01, the term "product" includes "...goods, whether tangible or intangible, real, personal, or mixed, services, or franchise or distribution systems of any nature whatsoever." (Emphasis supplied).

59. 940 CMR 3.05 prohibits any representations "...concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or perspective buyers in any material respect. This prohibition includes, but is not limited to:

representations or claims relating to the ...reliability, manner or time of performance, safety,...of such *product*... (Emphasis supplied).

60. General Laws c. 93, § 84 makes a violation of c. 93A any action by a health club to:

"(2) Misrepresent directly or indirectly, including in its advertising, promotional materials, or in any other manner, the nature of its courses, membership programs, training devices or methods, services...;

(3) Misrepresent directly or indirectly, including in its advertising, promotional material or in any other manner, the number, qualifications...training or experience of its personnel, agents, employees or other representatives, whether by means of endorsements or otherwise;

(6) Misrepresent directly or indirectly, including in its advertising, promotional material, or in any other manner, the nature extent or availability of any services, guidance, instruction, counseling, assistance, or other attention which the health club will provide to buyers;..."

61. Monsanto made misrepresentations to Herbert Fruh.

62. As a consequence of these misrepresentations, Herbert Fruh suffered severe bodily and mental injuries. He has incurred significant medical expenses, lost wages and lost earning capacity along with extreme emotional distress.

63. On March 6, 2002, plaintiff, Herbert Fruh, sent a demand letter to Monsanto, a copy of which is attached as Exhibit A.

64. The document was received on March 7, 2002. More than 30 days from the receipt of the demand have passed and Monsanto has failed to respond in any way or to make a reasonable tender or settlement to the demand.

65. Through its actions and failures to act, Monsanto has committed violations of c. 93A.

66. Such violations were willful.

WHEREFORE, the plaintiff, Herbert Fruh, demands judgment against Monsanto pursuant to M.G.L. c. 93A and requests that this Court award his actual damages and that they be trebled; he further requests that this Court award attorney's fees and costs and such other relief as this Court deems just.

COUNT IV  
(Loss of Consortium - Virginia Fruh v. Monsanto)

67. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 66 of their complaint and incorporate them herein by reference.
68. As a result of the conduct of Monsanto, acting through WellBridge Company, Virginia Fruh suffered the loss of the care, companionship, guidance, society, love and affection of her husband, Herbert Fruh. As a result of the conduct of Monsanto, acting through WellBridge Company, Virginia Fruh was and continues to be required to expend large sums of money and large amounts of time in caring and providing for her husband, Herbert Fruh.

WHEREFORE, the plaintiff, Virginia Fruh, requests that this Court enter judgment in her favor and against Monsanto and award damages for loss of consortium and for the value of services provided to Herbert Fruh, together with her costs and expenses and such other relief as this Court deems just.

COUNT V  
(Chapter 93A - Virginia Fruh v. Monsanto)

69. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 68 of their complaint and incorporate them herein by reference.
70. On March 6, 2002, plaintiff, Virginia Fruh, sent a demand letter to Monsanto, a copy of which is attached as Exhibit A.
71. The document was received on March 7, 2002. More than 30 days from the receipt of the demand have passed and Monsanto has failed to respond in any way or to make a reasonable tender or settlement to the demand.
72. Through its actions and failures to act, Monsanto has committed violations of c. 93A.
73. Such violations were willful.

WHEREFORE, plaintiff, Virginia Fruh, demands judgment against Monsanto pursuant to M.G.L. c. 93A and requests that this Court award her actual damages and that they be trebled; she further requests that this Court award attorney's fees and costs and such other relief as this Court deems just.

COUNT VI  
(Loss of Consortium - Virginia Fruh, As Parent and  
Next Friend of Tracey Fruh v. Monsanto)

74. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 73 of their complaint and incorporate them herein by reference.
75. As a result of the conduct of Monsanto, acting through WellBridge, Tracey Fruh has lost the care, companionship, society, love, affection and guidance of her father,

Herbert Fruh.

WHEREFORE, plaintiff, Virginia Fruh, as Parent and Next Friend of Tracey Fruh, requests that this Court enter judgment in her favor and against Monsanto and award damages for loss of consortium and for the value of services provided to Herbert Fruh, together with her costs and expenses and such other relief as this Court deems just.

COUNT VII  
(Chapter 93A - Virginia Fruh, As Parent and  
Next Friend of Tracey Fruh v. Monsanto)

76. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 75 of their complaint and incorporate them herein by reference.

77. On March 6, 2002, plaintiff, Virginia Fruh, As Parent and Next Friend of Tracey Fruh, sent a demand letter to Monsanto, a copy of which is attached as Exhibit A.

78. The document was received on March 7, 2002. More than 30 days from the receipt of the demand have passed and Monsanto has failed to respond in any way or to make a reasonable tender or settlement to the demand.

79. Through its actions and failures to act, Monsanto has committed violations of c. 93A.

80. Such violations were willful.

WHEREFORE, plaintiff, Virginia Fruh, As Parent and Next Friend of Tracey Fruh, demands judgment against Monsanto pursuant to M.G.L. c. 93A and requests that this Court award her actual damages and that they be trebled; she further requests that this Court award attorney's fees and costs and such other relief as this Court deems just.

COUNT VIII  
(Loss of Consortium - Kevin Fruh v. Monsanto)

81. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 80 of their complaint and incorporate them herein by reference.

82. As a result of the conduct of Monsanto, acting through WellBridge, Kevin Fruh has lost the care, companionship, society, love, affection and guidance of his father, Herbert Fruh.

WHEREFORE, plaintiff, Kevin Fruh, requests that this Court enter judgment in his favor against Monsanto and award damages for loss of consortium and for the value of services provided to Herbert Fruh, together with his costs and expenses and such other relief as this Court deems just.

COUNT IX  
(Chapter 93A - Kevin Fruh v. Monsanto)

83. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 82 of their complaint and incorporate them herein by reference.

84. On March 6, 2002, plaintiff, Kevin Fruh, sent a demand letter to Monsanto, a copy of which is attached as Exhibit A.

85. The document was received on March 7, 2002. More than 30 days from the receipt of the demand have passed and Monsanto has failed to respond in any way or to make a reasonable tender or settlement to the demand.

86. Through its actions and failures to act, Monsanto has committed violations of c. 93A.

87. Such violations were willful.

WHEREFORE, plaintiff, Kevin Fruh, demands judgment against Monsanto pursuant to M.G.L. c. 93A and requests that this Court award his actual damages and that they be trebled; he further requests that this Court award attorney's fees and costs and such other relief as this Court deems just.

COUNT X  
(Negligence - Herbert Fruh v. Club Sports/WellBridge)

88. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 87 of plaintiffs' complaint and incorporate them herein by reference.

89. As a business owner, Club Sports/WellBridge, had a duty to its customers to take reasonable precautions to insure their safety against all reasonably foreseeable risks of injury. This duty included assessing the likelihood of injuries to its customers, the seriousness of such potential injuries and the burden of avoiding the risk of such injuries.

90. Sudden cardiac arrest of a member was a reasonably foreseeable risk of operation of a health club business such as the WellBridge Health and Fitness Centers, including the Center.

91. The WellBridge Company recognized the foreseeability of sudden cardiac arrest and undertook a duty to provide emergency cardiac care, through training its employees in CPR. The training in CPR given to Club Sports/WellBridge employees, for at least five years prior to April 15, 1999, emphasized the critical nature of early defibrillation and the limited value of CPR.

92. Despite this knowledge, the Club Sports/WellBridge did not have an AED on its premises on April 15, 1999.

93. Because of this failure, Club Sports/WellBridge breached its duty to Herbert Fruh.

94. Had an AED been present and readily accessible, Herbert Fruh would have been resuscitated successfully without any neurological impairment.

95. Because an AED was not present and immediately accessible, Herbert Fruh lost a significant chance at being successfully resuscitated without neurologic impairment.

96. As a consequence of the breach of duty by Club Sports/WellBridge, Herbert Fruh suffered severe mental and physical injuries. He has incurred significant medical expenses, lost wages and lost earning capacity along with extreme emotional distress.

WHEREFORE, plaintiff, Herbert Fruh, requests that this Court enter judgment in his favor and against Club Sports/WellBridge and award damages for personal and mental injury and lost wages, medical expenses and lost earning capacity all as set forth above, together with his costs and expenses and such other relief as this Court deems just.

COUNT XI

(Breach of Warranty - Herbert Fruh v. Club Sports/WellBridge)

97. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 96 of plaintiffs' complaint and incorporate them herein by reference.

98. Club Sports/WellBridge warranted to Herbert Fruh that it would provide trained personnel and appropriate equipment to respond in a timely manner to any reasonably foreseeable medical emergency threatening his health or safety.

99. In consideration of such representations, Herbert Fruh entered into and continued a contract as a member of the WellBridge Health & Fitness Center.

100. Club Sports/WellBridge breached this express warranty by failing to provide such equipment and/or personnel and by failing to warn Herbert Fruh that such equipment and personnel was lacking.

101. As a consequence of this breach of warranty, Herbert Fruh suffered severe mental and physical injuries. He has incurred significant medical expenses, lost wages and lost earning capacity along with extreme emotional distress.

WHEREFORE, plaintiff, Herbert Fruh, requests that this Court enter judgment in his favor and against Club Sports/Wellbridge and award damages for personal and mental injury and lost wages, medical expenses and lost earning capacity all as set forth above, together with his costs and expenses and such other relief as this Court deems just.

COUNT XII

(Chapter 93A - Herbert Fruh v. Club Sports/WellBridge)

102. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 101 of plaintiffs' complaint and incorporate them herein by reference.

103. Pursuant to General Laws, Chapter 93A and 940 CMR 3.00, the Attorney General of the Commonwealth is empowered to promulgate regulations affecting consumers in the Commonwealth.

104. Pursuant to 940 CMR 3.01, the term "product" includes "...goods, whether tangible or intangible, real, personal, or mixed, services, or franchise or distribution systems of any nature whatsoever." (Emphasis supplied).

105. 940 CMR 3.05 prohibits any representations "...concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or perspective buyers in any material respect. This prohibition includes, but is not limited to:

representations or claims relating to the ...reliability, manner or time of performance, safety,...of such *product*... (Emphasis supplied).

106. General Laws c. 93, § 84 makes a violation of c. 93A any action by a health club to:

"(2) Misrepresent directly or indirectly, including in its advertising, promotional materials, or in any other manner, the nature of its courses, membership programs, training devices or methods, services...;

(3) Misrepresent directly or indirectly, including in its advertising, promotional material or in any other manner, the number, qualifications...training or experience of its personnel, agents, employees or other representatives, whether by means of endorsements or otherwise;

(6) Misrepresent directly or indirectly, including in its advertising, promotional material, or in any other manner, the nature extent or availability of any services, guidance, instruction, counseling, assistance, or other attention which the health club will provide to buyers; ..."

107. Club Sports/WellBridge made misrepresentations to Herbert Fruh.

108. As a consequence of these misrepresentations, Herbert Fruh suffered severe bodily and mental injuries. He has incurred significant medical expenses, lost wages and lost earning capacity along with extreme emotional distress.

109. On March 6, 2002, plaintiff, Herbert Fruh, sent a demand letter to Club Sports/WellBridge, a copy of which is attached as Exhibit B.

110. The document was received on March 7, 2002. Club Sports/WellBridge has, through counsel, provided a response which denies liability and makes no offer of settlement. A copy of that response is attached as Exhibit C.

111. Through its actions and failures to act, Club Sports/WellBridge has committed violations of c. 93A.

112. Such violations were willful.

WHEREFORE, the plaintiff, Herbert Fruh, demands judgment against Club Sports/WellBridge pursuant to M.G.L. c. 93A and requests that this Court award his actual damages and that they be trebled; he further requests that this Court award attorney's fees and costs and such other relief as this Court deems just.

COUNT XIII  
(Loss of Consortium - Virginia Fruh v. Club Sports/WellBridge)

113. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 112 of their complaint and incorporate them herein by reference.

114. As a result of the conduct of Club Sports/WellBridge, Virginia Fruh suffered the loss of the care, companionship, guidance, society, love and affection of her husband, Herbert Fruh. As a result of the conduct of Club Sports/WellBridge, Virginia Fruh was and continues to be required to expend large sums of money and large amounts of time in caring and providing for her husband, Herbert Fruh.

WHEREFORE, the plaintiff, Virginia Fruh, requests that this Court enter judgment in her favor and against Club Sports/WellBridge and award damages for loss of consortium and for the value of services provided to Herbert Fruh, together with her costs and expenses and such other relief as this Court deems just.

COUNT XIV  
(Chapter 93A - Virginia Fruh v. Club Sports/WellBridge)

115. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 114 of their complaint and incorporate them herein by reference.

116. On March 6, 2002, plaintiff, Virginia Fruh, sent a demand letter to Club Sports/WellBridge, a copy of which is attached as Exhibit B.

117. The document was received on March 7, 2002. Club Sports/WellBridge has, through counsel, provided a response which denies liability and makes no offer of settlement. A copy of that response is attached as Exhibit C.

118. Through its actions and failures to act, Club Sports/WellBridge has committed violations of c. 93A.

119. Such violations were willful.

WHEREFORE, plaintiff, Virginia Fruh, demands judgment against Club Sports/WellBridge pursuant to M.G.L. c. 93A and requests that this Court award her actual damages and that they be trebled; she further requests that this Court award attorney's fees and costs and such other relief as this Court deems just.

COUNT XV  
(Loss of Consortium - Virginia Fruh, As Parent and Next Friend of Tracey Fruh v. Club Sports/WellBridge)

120. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 119 of their complaint and incorporate them herein by reference.

121. As a result of the conduct of Club Sports/WellBridge, Tracey Fruh has lost the care, companionship, society, love, affection and guidance of her father, Herbert Fruh.

WHEREFORE, plaintiff, Virginia Fruh, as Parent and Next Friend of Tracey Fruh, requests that this Court enter judgment in her favor and against Club Sports/WellBridge and award damages for loss of consortium and for the value of services provided to Herbert Fruh, together with her costs and expenses and such other relief as this Court deems just.

COUNT XVI

(Chapter 93A - Virginia Fruh, As Parent and Next Friend of Tracey Fruh v. Club Sports/WellBridge)

121. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 120 of their complaint and incorporate them herein by reference.

122. On March 6, 2002, plaintiff, Virginia Fruh, As Parent and Next Friend of Tracey Fruh, sent a demand letter to Club Sports/WellBridge, a copy of which is attached as Exhibit B.

123. The document was received on March 7, 2002. Club Sports/WellBridge has, through counsel, provided a response which denies liability and makes no offer of settlement. A copy of that response is attached as Exhibit C.

124. Through its actions and failures to act, Club Sports/WellBridge has committed violations of c. 93A.

125. Such violations were willful.

WHEREFORE, plaintiff, Virginia Fruh, As Parent and Next Friend of Tracey Fruh, demands judgment against Club Sports/WellBridge pursuant to M.G.L. c. 93A and requests that this Court award her actual damages and that they be trebled; she further requests that this Court award attorney's fees and costs and such other relief as this Court deems just.

COUNT XVII

(Loss of Consortium - Kevin Fruh v. Club Sports/WellBridge)

126. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 125 of their complaint and incorporate them herein by reference.

127. As a result of the conduct of Club Sports/WellBridge, Kevin Fruh has lost the care, companionship, society, love, affection and guidance of his father, Herbert Fruh.

WHEREFORE, plaintiff, Kevin Fruh, requests that this Court enter judgment in his favor against Club Sports/WellBridge and award damages for loss of consortium and for the value of services provided to Herbert Fruh, together with his costs and expenses and such other relief as this Court deems just.

COUNT XVIII

(Chapter 93A - Kevin Fruh v. Club Sports/WellBridge)

127. The plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 126 of their complaint and incorporate them herein by reference.

128. On March 6, 2002, plaintiff, Kevin Fruh, sent a demand letter to Club Sports/WellBridge, a copy of which is attached as Exhibit B.

129. The document was received on March 7, 2002. Club Sports/WellBridge has, through counsel, provided a response which denies liability and makes no offer of settlement. A copy of that response is attached as Exhibit C.

130. Through its actions and failures to act, Club Sports/WellBridge has committed violations of c. 93A.

131. Such violations were willful.

WHEREFORE, plaintiff, Kevin Fruh, demands judgment against Club Sports/WellBridge pursuant to M.G.L. c. 93A and requests that this Court award his actual damages and that they be trebled; he further requests that this Court award attorney's fees and costs and such other relief as this Court deems just.

THE PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

THE PLAINTIFFS

HERBERT FRUH, VIRGINIA FRUH,  
Individually and as Parent and Next Friend  
of TRACEY FRUH and KEVIN FRUH

By

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