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Golden State Greens, LLC, Far West Management, LLC
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Attorneys for Defendants Adam Knopf,
Justus Henkes IV, and 419 Consulting, Inc.

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

KARL BECK, individually and on behalf of all other similarly situated California residents,

Plaintiff,

vs.

POINT LOMA PATIENTS CONSUMER COOPERATIVE CORPORATION, a California corporation, ADAM KNOPF, an individual, JUSTUS H. HENKES IV, an individual, 419 CONSULTING INC, a California corporation, GOLDEN STATE GREENS LLC, a California LLC, FAR WEST MANAGEMENT LLC, a California LLC, FAR WEST OPERATING, LLC, a California LLC, FAR WEST STAFFING LLC, a California LLC, and DOES 1-50;

Defendants.

CASE NO. 37-2017-00037524-CU-BT-CTL

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' JOINT DEMURRER TO COMPLAINT

Judge: Hon. Joel Wohlfeil
Dept.: 73
Date: January 19, 2018
Time: 9:00 a.m.

Complaint Filed: October 6, 2017
Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT defendants Point Loma Patients Consumer Cooperative Corporation, Adam Knopf, Justus H. Henkes IV, 419 Consulting, Inc., Golden State Greens, LLC, Far West Management, LLC, Far West Operating, LLC, and Far West Staffing, LLC, pursuant to California Evidence Code sections 452(d) and 452(h) request that the Court take judicial notice as follows true and correct copies of:

A. Conditional Use Permit No. 1377388; Dated March 19, 2016 and Recorded April 3, 2015; Document No. 2015-0157638;

B. Report to the Hearing Officer – Report # HO 16-058 Dated September 14, 2016; Owner/Applicant SINNER BROTHERS, INC./Point Loma Patients Consumer Cooperative, Adam Knopf; Regarding Amendment to the Conditional Use Permit to increase its square footage;

C. Conditional Use Permit No. 1655718; Amendment to Conditional Use Permit No. 1377388 – Project No. 368344;

D. Complaint for *Omari Bobo vs. Point Loma Patients Consumer Cooperative Corporation*, et al., San Diego Superior Court Case No. 37-2017-00037348-CU-NP-CTL;

E. Complaint for *Omari Bobo v. Optimum Nutrition, Inc*., United States District Court for the Southern District of California, Case No. 14-cv-002408-BEN-KSC;

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AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

F. Complaint for *Omari Bobo v. Woodbolt Distribution, LLC d/b/a Cellucor and Nutrabolt*, United States District Court for the Southern District of California, Case No. 16-cv-000328-BEN-DHB.

DATED: December 7, 2017

AUSTIN LEGAL GROUP, APC

By: _____
Gina Austin/Tamara Leetham
Attorneys for PLPCC; Golden State Greens, LLC, Far West Management, LLC Far West Operating, LLC, and Far West Staffing, LLC

DATED: December 7, 2017

DART LAW

By: _____
MATTHEW B. DART
Attorney for Defendants Adam Knopf, Justus Henkes, and 419 Consulting, Inc.

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

EXHIBIT 1

DOC# 2015-0157638

Apr 03, 2015 11:19 AM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: $72.00

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

12P
1C

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24004654

CONDITONAL USE PERMIT NO. 1377388
3452 HANCOCK - MMCC PROJECT NO. 368344
PLANNING COMMISSION

This Conditional Use Permit No. 1377388 is granted by the Planning Commission of the City of San Diego to SINNER BROTHERS, INC, Owner and POINT LOMA PATIENTS CONSUMER COOPERATIVE, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0305. The 0.15-acre site is located at 3452 Hancock Street in the IS-1-1 Zone, Airport Influence Area (San Diego International Airport) and Coastal Height Limitation Overlay Zone within the Midway/Pacific Highway Corridor Community Plan Area. The project site is legally described as: Lots 37 and 38, Block 1 of the Resubdivision of Pueblo Lot 277, commonly known as Ascoff and Kelly's Subdivision, Map No. 578, January 12, 1889.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to operate a Medical Marijuana Consumer Cooperative (MMCC) and subject to the City's land use regulations described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated March 19, 2015, on file in the Development Services Department.

The project shall include:

a. Operation of a Medical Marijuana Consumer Cooperative (MMCC) in an 832 square foot tenant space within an existing, 1,503 square foot, one-story building on a 0.15-acre site;

b. Existing landscaping (planting, irrigation and landscape related improvements);

c. Existing off-street parking;

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d. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by March 19, 2018.

2. This Conditional Use Permit [CUP] and corresponding use of this MMCC shall expire on March 19, 2020.

3. In addition to the provisions of the law, the MMCC must comply with; Chapter 4, Article 2, Division 15 and Chapter 14, Article 1, Division 6 of the San Diego Municipal Code.

4. No construction, occupancy, or operation of any facility or improvement described herein shall commence, nor shall any activity authorized by this Permit be conducted on the premises until:

a. The Owner/Permittee signs and returns the Permit to the Development Services Department.

b. The Permit is recorded in the Office of the San Diego County Recorder.

c. A MMCC Permit issued by the Development Services Department is approved for all responsible persons in accordance with SDMC, Section 42.1504.

5. While this Permit is in effect, the MMCC shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

6. This Permit is a covenant running with the MMCC and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.

7. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

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8. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

10. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

11. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

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PLANNING/DESIGN REQUIREMENTS:

13. The use within the 832 square foot tenant space shall be limited to the MMCC and any use permitted in the IS-1-1 Zone.

14. Consultations by medical professionals shall not be a permitted accessory use at the MMCC.

15. Lighting shall be provided to illuminate the interior of the MMCC, facade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.

16. Security shall include operable cameras and a metal detector to the satisfaction of Development Services Department. This facility shall also include alarms and two armed security guards to the extent the possession of a firearm is not in conflict with 18 U.S.C. § 922(g) and 27 C.F.R § 478.11. Nothing herein shall be interpreted to require or allow a violation of federal firearms laws. The security guard shall be licensed by the State of California. One security guard must be on the premises 24 hours a day, seven days a week, the other must be present during business hours. The security guard should only be engaged in activities related to providing security for the facility, except on an incidental basis. The cameras shall have and use a recording device that maintains the records for a minimum of 30 days.

17. The Owner/Permittee shall install bullet resistant glass, plastic, or laminate shield at the reception area to protect employees.

18. The Owner/Permittee shall install bullet resistant armor panels in walls around the safe room and adjoining walls with other tenants.

19. The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the MMCC in character size at least two inches in height.

20. The MMCC shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.

21. The use of vending machines which allow access to medical marijuana except by a responsible person, as defined in San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this section and condition, a vending machine is any device which allows access to medical marijuana without a human intermediary.

22. The Owner/Permittee or operator shall maintain the MMCC, adjacent public sidewalks, and areas under the control of the owner or operator, free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris. Graffiti shall be removed within 24 hours.

23. Medical marijuana shall not be consumed anywhere within the 0.15-acre site.

ORIGINAL

24. The Owner/Permittee or operator shall post anti-loitering signs near all entrances of the MMCC.

25. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations and shall further be restricted by this permit. Sign colors and typefaces are limited to two. Ground signs shall not be pole signs. A sign is required to be posted on the outside of the MMCC and shall only contain the name of the business.

TRANSPORTATION REQUIREMENTS:

26. No fewer than 8 parking spaces (including 1 van accessible space) shall be maintained on the property at all times in the approximate locations shown on Exhibit "A". All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the Development Services Department.

POLICE DEPARTMENT RECOMMENDATION:

27. The San Diego Police Department recommends that a Crime Prevention Through Environmental Design (CPTED) review be requested by their department and implemented for the MMCC.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.

- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on March 19, 2015 and Resolution No. PC-4667.

ORIGINAL

Conditional Use Permit No.1377388/PTS No. 368344
Date of Approval: March 19, 2015

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Edith Gutierrez
Development Project Manager

NOTE: Notary acknowledgment must be attached per Civil Code section 1189 et seq.

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

SINNER BROTHERS, INC
Owner

By _____
John Rickards
President

POINT LOMA PATIENTS CONSUMER COOPERATIVE
Permittee

By _____
Adam Knopf
Permittee

NOTE: Notary acknowledgments must be attached per Civil Code section 1189 et seq.

ORIGINAL

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of *San Diego*)

On *April 3, 2015* (*Date*) before me, *Vivian M. Gies, Notary Public* (*Here Insert Name and Title of the Officer*),

personally appeared *~~~~~~~~~~~~Edith Gutierrez~~~~~~~~~~~~* (*Name(s) of Signer(s)*),

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~e~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~e~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

VIVIAN M. GIES
Commission # 2046017
Notary Public - California
San Diego County
My Comm. Expires Oct 18, 2017

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Vivian M. Gies*
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: *PTS 368344/3452 Hancock/CUP* Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney In Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney In Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

ORIGINAL

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Diego)

On 4.2.15 (Date) before me, Quinlin R. Holmes, Notary Public (Here Insert Name and Title of the Officer)

personally appeared John Rickards And Adam Knopf (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

OFFICIAL SEAL
QUINLIN R. HOLMES
NOTARY PUBLIC-CALIFORNIA
COMM. NO. 2096215
SAN DIEGO COUNTY
MY COMM. EXP. JAN. 30, 2019

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: Conditional Use Permit Document Date: Date of Approval 3.19.15
Number of Pages: 6 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: As Above	Signer's Name: N/A
☐ Corporate Officer — Title(s):	☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☒ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other:	☐ Other:
Signer Is Representing: N/A	Signer Is Representing:

ORIGINAL

EXHIBIT 2

THE CITY OF SAN DIEGO

Report to the Hearing Officer

HEARING DATE: September 14, 2016 REPORT NO. HO 16-058

SUBJECT: 3452 HANCOCK MMCC AMENDMENT, PROCESS THREE

PROJECT NUMBER: 470362

OWNER/APPLICANT: SINNER BROTHERS, INC. / Point Loma Patients Consumer Cooperative, Adam Knopf

SUMMARY:

Issue: Should the Hearing Officer approve an amendment to Conditional Use Permit No. 1377388 to allow an approved Medical Marijuana Consumer Cooperative (MMCC) to increase its square footage from 832 square feet to 1,503 square feet within an existing building located at 3452 Hancock Street within the Midway-Pacific Highway Corridor Community area?

Staff Recommendation: APPROVE Conditional Use Permit No. 1655718, an amendment to Conditional Use Permit No. 1377388.

Community Planning Group Recommendation: On April 20, 2016, the Midway Community Planning Group voted 6-1-2 to approve the project with no conditions.

Environmental Review: The project was determined to be exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15303 (New Construction or Conversion of Small Structures) and an appeal of the CEQA determination was filed on May 23, 2016 (Attachment 6). The City Council denied the CEQA appeal on July 26, 2016.

BACKGROUND

The 0.15-acre site is located at 3452 Hancock Street in the IS-1-1 Zone, Airport Influence Area (San Diego International Airport), and Coastal Height Limitation Overlay Zone within the Midway-Pacific Highway Corridor Community Plan and Local Coastal Program Land Use Plan. The site is designated Light Industrial within the Midway/Pacific Highway Corridor Community Plan (Attachments 1-3). MMCCs, classified as commercial services, are consistent with the community plan.

On March 19, 2015, the Planning Commission approved Conditional Use Permit No. 1377388 to allow the operation of an 832-square-foot MMCC within an existing 1,503-square-foot building (Attachment 10). Point Loma Patients Consumer Cooperative opened in August 2015.

DISCUSSION

The existing 832-square-foot MMCC is proposing to expand into the adjacent 671-square-foot tenant space, currently used as an office, occupying the entire 1,503-square-foot building. The 1,503-square-foot MMCC would require two off-street parking spaces based on the rate of one space per 1,000 square feet of building per San Diego Municipal Code Section 142.0530. The proposed MMCC is providing eight on-site parking spaces, which includes one accessible space.

The project is in compliance with San Diego Municipal Code (SDMC) Section 141.0614 which requires a 1,000-foot separation, measured between property lines, from: public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. Additionally the site is more than 100 feet from a residential zone (Attachments 11-12).

The existing MMCC is required to provide interior and exterior lighting, security cameras, alarms and two security guards and these conditions remain and are included in the proposed amended permit. The hours of operation are limited 7:00 a.m. to 9:00 p.m. seven days a week. The MMCCs must also comply with SDMC Chapter 4, Article 2, Division 15 which includes background checks on responsible persons for the MMCC and guidelines for lawful operation.

Since opening one year ago, Code Enforcement Division has had no active enforcement cases for 3452 Hancock Street.

CONCLUSION

Staff is recommending approval of the proposed expansion of the exiting MMCC. The project meets all applicable MMCC development regulations and is consistent with the recommended land use.

ALTERNATIVES

1. Approve Conditional Use Permit No. 1655718, an amendment to Conditional Use Permit No. 1377388, PTS No. 470362, with modifications.

2. Deny Conditional Use Permit No. 1655718, an amendment to Conditional Use Permit No. 1377388, PTS No. 470362, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

Edith Gutierrez, Development Project Manager

Attachments:

1. Aerial Photograph
2. Project Location Map
3. Community Plan Land Use Map
4. Draft Permit with Conditions
5. Draft Resolution with Findings
6. Environmental Exemption
7. Community Planning Group Recommendation
8. Ownership Disclosure Statement
9. Project Plans
10. Condition Use Permit No. 1377388, PTS 368344
11. 1000 Foot Radius Map
12. 1000 Foot Radium Map Spreadsheet

EXHIBIT 3

ATTACHMENT 4

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

INTERNAL ORDER NUMBER: 24006474

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL USE PERMIT NO. 1655718
AMENDMENT TO CONDITIONAL USE PERMIT NO. 1377388 - PROJECT NO. 368344
3452 HANCOCK STREET MMCC AMENDMENT - PROJECT NO. 470362
HEARING OFFICER

This Conditional Use Permit No. 1655718, amendment to Conditional Use Permit No. 1377388 is granted by the Hearing Officer of the City of San Diego to SINNER BROTHERS, INC, Owner, and Point Loma Patients Consumer Cooperative, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0305. The 0.15-acre site is located at 3452 Hancock Street in the IS-1-1 Zone, Airport Influence Area (San Diego International Airport), and Coastal Height Limitation Overlay Zone within the Midway/Pacific Highway Corridor Community Plan area. The project site is legally described as: Lots 37-40, Block 1 of the Resubdivision of Pueblo Lot 277, commonly known as Ascoff and Kelly's Subdivision, Map No. 578, January 12, 1889.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to operate a Medical Marijuana Consumer Cooperative and subject to the City's land use regulations described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated September 14, 2016, on file in the Development Services Department.

The project shall include:

a. Operation of a Medical Marijuana Consumer Cooperative (MMCC) in a 1,503-square-foot, one-story building;

b. Existing landscaping (planting, irrigation and landscape related improvements);

c. Existing off-street parking;

d. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act

[CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by September 29, 2016.

2. This Conditional Use Permit [CUP] and corresponding use of this site shall expire on September 29, 2021.

3. In addition to the provisions of the law, the MMCC must comply with; Chapter 4, Article 2, Division 15 and Chapter 14, Article 1, Division 6 of the San Diego Municipal Code.

4. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:

   a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and

   b. The Permit is recorded in the Office of the San Diego County Recorder.

5. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

6. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.

7. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

8. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements

may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

10. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

11. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

PLANNING/DESIGN REQUIREMENTS:

13. The use within the 1,503-square-foot building shall be limited to the MMCC and any use permitted in the IS-1-1 Zone.

14. Consultations by medical professionals shall not be a permitted accessory use at the MMCC.

15. Lighting shall be provided to illuminate the interior of the MMCC, facade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.

16. Security shall include operable cameras and a metal detector to the satisfaction of Development Services Department. This facility shall also include alarms and two armed security guards to the extent the possession of a firearm is not in conflict with 18 U.S.C. § 922(g) and 27 C.F.R § 478.11. Nothing herein shall be interpreted to require or allow a violation of federal firearms laws. The security guards shall be licensed by the State of California. One security guard must be on the premises 24 hours a day, seven days a week, the other must be present during business hours. The security guards should only be engaged in activities related to providing security for the facility, except on an incidental basis. The cameras shall have and use a recording device that maintains the records for a minimum of 30 days.

17. The Owner/Permittee shall install bullet resistant glass, plastic, or laminate shield at the reception area to protect employees.

18. The Owner/Permittee shall install bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, in the reception area and vault room.

19. The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the MMCC in character size at least two inches in height.

20. The MMCC shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.

21. The use of vending machines which allow access to medical marijuana except by a responsible person, as defined in San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this section and condition, a vending machine is any device which allows access to medical marijuana without a human intermediary.

22. The Owner/Permittee or operator shall maintain the MMCC, adjacent public sidewalks, and areas under the control of the owner or operator, free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris. Graffiti shall be removed within 24 hours.

23. Medical marijuana shall not be consumed anywhere within the 0.15-acre site.

24. The Owner/Permittee or operator shall post anti-loitering signs near all entrances of the MMCC.

25. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations and shall further be restricted by this permit. Sign colors and typefaces are limited to two. Ground signs shall not be pole signs. A sign is required to be posted on the outside of the MMCC and shall only contain the name of the business.

TRANSPORTATION REQUIREMENTS:

26. No fewer than eight (8) parking spaces, including one (1) accessible space shall be maintained on the property at all times in the approximate locations shown on Exhibit "A". All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the Development Services Department.

POLICE DEPARTMENT RECOMMENDATION:

27. The San Diego Police Department recommends that a Crime Prevention Through Environmental Design (CPTED) review be requested by their department and implemented for the MMCC.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement to expand operation of the adjacent site. The expansion allowed by this discretionary use permit may only begin after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.

- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Hearing Officer of the City of San Diego on September 14, 2016 and HO-XXXX.

ATTACHMENT 4

Conditional Use Permit No. 1655718/PTS Approval No.: 470362
Date of Approval: September 14, 2016

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

_____
Edith Gutierrez
Development Project Manager

NOTE: Notary acknowledgment must be attached per Civil Code section 1189 et seq.

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

SINNER BROTHERS, INC.
Owner

By _____
John Rickards
President

POINT LOMA PATIENTS CONSUMER COOPERATIVE
Permittee

By _____
Adam Knopf
President

NOTE: Notary acknowledgments must be attached per Civil Code section 1189 et seq.

EXHIBIT 4

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Attorney for Plaintiff

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

OMARI BOBO, an Individual,

Plaintiff,

v.

POINT LOMA PATIENTS CONSUMER COOPERATIVE CORPORATION, A California Corporation, **ADAM KNOPF**, an Individual, **JUSTUS H. HENKES IV**, an Individual, and **DOES 1-50**,

Defendants.

Case No: **37-2017-00037348-CU-PO-CTL**

COMPLAINT FOR:

1. **BREACH OF FIDUCIARY DUTY**
2. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
3. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

JURY TRIAL DEMANDED

Plaintiff Omari Bobo ("Plaintiff") alleges as to himself based on his own experience, and as to all other allegations, based on investigation of counsel, which included, *inter alia*, a review of defendant Point Loma Patients Consumer Cooperative Corporation's (the "PLPCCC") public records and membership documentation, public records related to defendants Adam Knopf ("Knopf") and Justus H. Henkes IV ("Henkes", collectively the "Individual Defendants"), as well as *non-party* entities wholly controlled by the Individual Defendants, including 419 Consulting Inc., Golden State Greens LLC, Far West Management, LLC, Far West Operating, LLC, and Far West Staffing, LLC (the "Shell Companies").

I. INTRODUCTION

1. The PLPCCC is the largest and most successful medical marijuana dispensary in San Diego county. Plaintiff estimates the cooperative has approximately one thousand patrons daily, and generates millions in monthly revenue through a single storefront (and delivery service) located in Point Loma.

2. Plaintiff is a member patron of the PLPCCC who became concerned with the sheer volume of marijuana business being transacted there. Aren't medical marijuana cooperatives required to be non-profit? If Plaintiff is a member of the "*Patients' Consumer Cooperative Corporation*" why hasn't he received any dividends? Where is all the money going? And would it be illegal to buy medical marijuana through a for-profit dispensary?

3. Plaintiff learned that the Individual Defendants personally own and control not only the PLPCCC, but five Shell Companies. These Shell Companies were created by the Individual Defendants within months after the PLPCCC was formed in December 2014, and as the PLPCCC's marijuana business expanded. The Shell Companies have no public or visible business presence, except at the

PLPCCC's location and the mailing address listed at Defendant Henkes' accountancy office in La Jolla California.

4. Defendant Knopf is a director, and holds the executive offices at the PLPCCC and each of the Shell Companies. Defendant Henkes is an accountant. He serves as the PLPCCC's Chief Financial Officer and the Shell Companies' agent for service. Mr. Henkes appears to represent a single enterprise - the PLPCCC and the Shell Companies - since he does not visibly advertise his availability for hire.

5. It became clear based on these facts and others described in a related class action complaint against Defendants and the Shell Companies, *Beck v. Point Loma Patients' Consumer Cooperative Corporation, et al*, which Plaintiff incorporates by reference, that Defendants were and are operating an illegal for-profit medical marijuana business that violates California criminal law and puts Plaintiff in potential legal jeopardy.

6. Accordingly, Plaintiff seeks redress for his exposure to legal jeopardy and extreme emotional distress as a result of Defendants' secret operation of the PLPCCC as an illegal for-profit medical marijuana business in complete disregard for Plaintiff's legal wellbeing. Plaintiff brings claims against the Defendants for breach of fiduciary duty, intentional and reckless infliction of emotional distress, and breach of the implied covenant of good faith and fair dealing. Under these theories, Plaintiff seeks compensatory, exemplary, and punitive damages as well as injunctive, declaratory, and other or further relief as this Court may deem just and proper.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to Article 6, § 10 of the California Constitution, California Business and Professions Code § 17203, Civil Code § 1780(d) and Code of Civil Procedure §§ 88, 382 and 410.10.

8. Venue is proper in this Court pursuant to Code of Civil Procedure § 395 because Plaintiff transacted with the PLPCCC in San Diego County, and because Defendants businesses and residences are located in this County, and because many of the acts and transactions giving rise to the violations of law complained of herein occurred in this County.

III. PARTIES

A. PLAINTIFF'S EXPERIENCE WITH DEFENDANTS

9. Plaintiff Omari Bobo ("Bobo") is, and at all times relevant hereto was, a resident of San Diego County California. Plaintiff Bobo has been a patron of the PLPCCC since approximately January 2016, making purchases from the PLPCCC approximately 3-4 times per month.

10. Plaintiff stopped purchasing products from the PLPCCC once he learned of Defendants' illegal for-profit medical marijuana scheme as described herein.

11. Plaintiff was charged with felony illegal possession of marijuana in 2010. Thereafter, and at great effort, cost and expense, Plaintiff had the conviction expunged. As a result, Plaintiff is highly vigilant about using medical marijuana only in compliance with California law, to help alleviate Plaintiff's chronic hip and back pain.

12. Plaintiff would not have become a patron of the PLPCCC, let alone a frequent patron thereof, had he known about Defendants' unlawful conduct as complained of herein.

13. Plaintiff has a very strong interest in ensuring he and other PLPCCC members are not violating California's medical marijuana laws by engaging in transactions with an illegally operating dispensary.

B. DEFENDANTS' INFORMATION

14. Defendant Point Loma Patients Consumer Cooperative Corporation ("PLPCCC") is a California corporation organized under the California Consumer Cooperative Corporation Law. The PLPCCC operates a medical marijuana storefront dispensary, as well as a medical marijuana delivery service out of 3452 Hancock Street, San Diego, CA 92110.

15. The PLPCCC was formed on or about April 24, 2014, and received a conditional use permit from the City of San Diego, for operation of a Medical Marijuana Consumer Cooperative on or about December 3, 2014. The PLPCCC began selling medical marijuana shortly thereafter. The PLPCCC received an amended conditional use permit on or about September 16, 2016 to double the size of its storefront dispensary to handle increased traffic.

16. Defendant Adam Knopf ("Knopf") is an individual residing within the County of San Diego. Knopf is the principal shareholder, Director, CEO, and corporate Secretary of the PLPCCC. Defendant Knopf is the CEO, CFO, Corporate Secretary, and sole Director of defendant 419 Consulting, Inc. Defendant Knopf is also the managing member of defendants Golden State Greens LLC, Far West Management, LLC, Far West Operating, LLC, and Far West Staffing, LLC.

17. Defendant Justus H. Henkes IV ("Henkes") is a certified public accountant, and CFO of the PLPCCC. However, Henkes is not an "independent accountant" pursuant to Corporations Code § 12218 because he is not independent of the PLPCCC or the Shell Companies. Henkes is the agent for service of process for each of the Shell Companies at his CPA office: 7734 Herschel Avenue, Suite L, La Jolla, CA 92037.

18. Non-party 419 Consulting Inc. ("419 Consulting"), is a California Corporation with its principal place of business at *La Jolla Mailbox Rentals*, 5666 La

Jolla Blvd, Suite (*i.e.*, mailbox) 155, La Jolla, CA 92037. 419 Consulting was formed on or about August 18, 2015. 419 Consulting's Statement of Information filed with the Secretary of State describes its business as "consulting – marketing, m[a]n[a]gm[e]nt." 419 Consulting is wholly owned and operated by the Individual Defendants.

19. Non-Party Golden State Greens LLC ("GS Greens") is a California limited liability company with its principal place of business in the same office park as PLPCCC,446 Hancock Street, San Diego, CA 92110. GS Greens was formed on or about September 8, 2016, and is owned and operated by the Individual Defendants. GS Greens' Statement of Information filed with the California Secretary of State describes its business as "real estate development."

20. Non-parties Far West Management, LLC ("Far West Management"), Far West Operating, LLC ("Far West Operating"), and Far West Staffing, LLC ("Far West Staffing") each are California limited liability companies with their principal place of business at 7734 Herschel Avenue, Suite L, La Jolla CA, 92037 (Defendant Henkes' CPA office). Each of the "Far West" entities was formed on or about May 27, 2015. And each are owned and operated by the Individual Defendants. And each of their Statements of Information filed with the California Secretary of State describes their business as "business to business management services."

21. None of the Shell Companies has any discernable business presence, products or services for sale to the general public, any marketing materials or website, or business office other than at the PLPCCC's office and/or Defendant Henkes' CPA office.

22. Plaintiff does not know the true names of defendants DOES 1 through 50, and therefore sues them by those fictitious names. Plaintiff is informed and believes, and on the basis of that information and belief alleges, that each of those

defendants was in some manner proximately responsible for the events and happenings alleged in this complaint and for Plaintiff's injuries, damages, restitution and equitable remedies prayed for herein.

IV. SUBSTANTIVE ALLEGATIONS

A. CALIFORNIA'S MEDICAL MARIJUANA LAWS

23. In 1996, voters passed Proposition 215, also known as the Compassionate Use Act (the "CUA"), making California the first state to legalize the use of medical marijuana for qualified patients. Subsequent legislation included the Medical Marijuana Program Act ("MMPA") in 2003, which created a framework for monitoring medical marijuana usage. The MMPA bars individuals and any collective, cooperative, or other group from transforming medical marijuana projects authorized under the MMPA into for-profit enterprises.[1]

24. In 2008, the California Attorney General and Department of Justice issued their *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* (the "Guidelines"), which had the stated purpose of helping patients and law enforcement understand their rights and duties for the cultivation, sale and use of medical marijuana under California law.

25. California Health and Safety Code § 11362.765(a) provides that neither the CUA or MMPA "authorize any individual or group to cultivate or distribute cannabis for profit." According to the Guidelines, cooperative corporations are to be "*democratically controlled* and are *not organized to make a profit* for themselves, as such, or for their members, as such, *but primarily for their members as patrons*." Further, "[c]ooperatives must follow strict rules on ... *distribution of earnings*, and

[1] On November 9, 2016, California passed Proposition 64, making it legal for adults over the age of 21 to possess marijuana for recreational use. However, the sale of marijuana for profit is not permitted until the California Bureau of Marijuana Control issues the necessary licenses, which will be issued no sooner than January 1, 2018.

must report individual transactions from individual members each year." The Guidelines note that a medical marijuana cooperative may have earnings, but these "must be used *for the general welfare of its members or equitably distributed to members in the form of cash, property, credits or services.*" Guidelines at p. 8.

26. The Guidelines provide that medical marijuana may be "[a]llocated based on fees that are reasonably calculated to cover overhead costs and operating expenses." In other words, "[a]ny monetary reimbursement that members provide to the ... cooperative should only be an amount necessary to cover overhead costs and operating expenses." Guidelines at p. 10. This includes payments to individuals for "reasonable compensation... for services provided as well as out-of-pocket expenses."

27. Under California case law, relevant considerations to determine whether a medical marijuana business is illegally operating for profit include, *inter alia*, a high volume of customers and transactions, the absence of participation by customers in the operation or governance of the cooperative, information reflected in financial records, and any processes or procedures by which the cooperative makes itself accountable to its member patrons.

B. DEFENDANTS' MEDICAL MARIJUANA BUSINESS

28. Individual Defendants Knopf and Henkes are the principals and executive officers of the PLPCCC. The PLPCCC received approval from the City of San Diego in December 2014 to operate a Medical Marijuana Consumer Cooperative at 3452 Hancock Street, San Diego, 92110. Shortly thereafter, the PLPCC opened its doors selling medical marijuana to the public.

29. Within six months after the PLPCCC opened for business, the Individual Defendants formed the Shell Companies as their officers, directors, and principal shareholders. None of the five (known) Shell Companies have any discernable

business presence, no websites, and no products or services on offer to the public. All five Shell Companies share addresses in the same office complex in La Jolla, California where Defendant Henkes works as a Certified Public Accountant, or in the same building as the PLPCCC.

30. The PLPCCC is the largest and most successful medical marijuana dispensary in San Diego County. The PLPCC averages over a thousand patrons daily, generating millions of dollars in monthly revenue through a single store-front and delivery service with approximately a dozen employees.

31. Despite its huge revenues relative to such a small operation, the PLPCCC has never made a "patronage distribution" to Plaintiff or any other member of the PLPCCC. Nor does the PLPCCC seek or allow participation by Plaintiff or any other member patron in the operation or governance of the cooperative.

32. Instead, based on the above and on information and belief, the Individual Defendants use the Shell Companies as entities contracted by the PLPCC to unlawfully divert funds out of the PLPCCC. This allows the Individual Defendants to hide substantial revenues from the (illegal for-profit) sale of medical marijuana in the Shell Companies, avoid showing a profit in the cooperative itself, and avoid paying out patronage distributions.

33. Based on the tremendous revenue generated by Defendants medical marijuana business, Plaintiff is informed and believes that funds distributed by the PLPCCC to the Shell Companies and Individual Defendants are far in excess of any reasonable compensation for services provided and out-of-pocket expenses.

34. The PLPCCC has absolved itself of any accountability whatsoever to Plaintiff. According to the PLPCCC bylaws,[2] there is one class of "member", *and it*

[2] Plaintiff qualifies all allegations related to PLPCCC bylaws because he cannot verify that the PLPCCC bylaws received from Defendants' counsel was not drafted in response to Plaintiff Beck's July 25, 2017 demand letter. The meta-data on the file

is not Plaintiff or other member patrons. On information and belief, the only (or principal) "members" of the PLPCCC are the Individual Defendants themselves. These "members" are the only persons that have voting rights or a "proprietary interest" in the PLPCCC. Thus, instead of operating a "democratically" controlled cooperative, "for the benefit of members *as patrons*", the Individual Defendants operate the PLPCCC primarily for their own benefit as shareholders.

35. The Individual Defendants have caused the PLPCC to strip Plaintiff of his rights through the PLPCCC bylaws. The bylaws purport to divest Plaintiff of all voting rights and "proprietary interests" in the PLPCCC by labelling him as a mere "associate member." However, such bylaw covenants violate the requirements of California's medical marijuana laws as expressed in, *at least*, the Guidelines. As such, the bylaws are "in conflict with law," pursuant to Corporations Code § 12331(c), and are therefore void. In other words, California's medical marijuana laws control the interaction between Plaintiff and Defendants, not Defendants' bylaws drafted to avoid those laws.

C. CIVIL CONSPIRACY ALLEGATIONS

36. The Individual Defendants and the Shell Companies are responsible for the harm to Plaintiff because each of them agreed to conceal operation of a for-profit marijuana business.

37. The Individual Defendants, themselves, and as owners and operators of the Shell Companies were aware of the requirements of California's medical marijuana laws, and were in agreement with the PLPCCC and each other to divert

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indicates that it was created on September 19, 2017. Plaintiff reserves the right to withdraw, change or amend allegations concerning the PLPCCC bylaws after a reasonable opportunity for discovery.

revenues from the PLPCC in a manner calculated to avoid detection of their for-profit enterprise.

38. The Individual Defendants, themselves, and as owners and operators of the Shell Companies materially assisted the PLPCCC in operating a for-profit medical marijuana business in violation of California law.

39. As a direct and proximate result of Defendants' conspiracy, Plaintiff has experienced loss, cost, damage and expense in an amount to be proved at trial.

D. ALTER EGO / CORPORATE PIERCING ALLEGATIONS

40. The PLPCCC is merely a conduit for funneling revenue from the sale of medical marijuana to the Shell Companies and ultimately the Individual Defendants.

41. In fact, the PLPCCC, its particular corporate form, and its bylaws that prevent accountability to Plaintiff as a member, are all mere instrumentalities set up to avoid the non-profit requirements of California's medical marijuana statutes.

42. The Individual Defendants govern the PLPCCC, as well as the Shell Companies such that a unity of ownership exists between them. The Shell Companies and the PLPCCC use the same officers and/or employees in the operation of their medical marijuana business. Thus, the Shell Corporations and the PLPCCC are mere conduits for the affairs of each other.

FIRST CAUSE OF ACTION

Breach of Fiduciary Duty Against the Individual Defendants

43. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

44. As Directors and officers of a cooperative corporation, the Individual Defendants owe fiduciary duties of honesty and loyalty to cooperative members, and/or cooperative members *as patrons,* such as Plaintiff and other members of the PLPCCC.

45. There is a strong public interest that corporate officers and directors of a medical marijuana cooperative are faithful to their fiduciary roles to member patrons. Failure by the majority members and directors of a medical marijuana cooperative corporation to act in the best interests of member patrons, such as operating an illegal for-profit medical marijuana business, can have serious consequences for member patrons and even expose them to potential criminal liability.

46. As owners and operators of a medical marijuana cooperative, the Individual Defendants are in a relationship of trust and confidence with Plaintiff due to the unequal power between the Individual Defendants and Plaintiff in the details and operation of a medical marijuana dispensary, as well as the severe potential consequences to Plaintiff for making purchases through an illegally operating dispensary. Plaintiff is entitled to reasonably rely, and did reasonably rely on the Individual Defendants to only sell medical marijuana in compliance with California law.

47. As a member patron, Plaintiff is entitled to rely on the assumption that the Individual Defendants, as majority members, officers and directors of the PLPCCC will use their knowledge, skill and ability for the benefit of cooperative members.

48. The Individual Defendants breached their fiduciary duties to Plaintiff, individually, as a member patron by operating, and concealing from Plaintiff, a self-dealing for-profit medical marijuana enterprise, solely for the personal financial benefit of the Individual Defendants, that violates key components of California medical marijuana laws as described herein, and puts Plaintiff in legal jeopardy.

49. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary duties, Plaintiff has suffered loss, cost, damage and expense in an amount to be proven at the trial of this matter. Plaintiff suffered nominal damages in

the amount of monies he paid to the PLPCCC for products purchased there, and is entitled to exemplary and punitive damages for Defendants' intentional, wanton, reckless, and extreme disregard for Plaintiff's legal rights as a person purchasing an otherwise highly illegal substance from the PLPCCC.

SECOND CAUSE OF ACTION

Intentional Infliction of Emotional Distress Against All Defendants

50. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

51. The PLPCCC is a licensed and/or permitted medical marijuana dispensary. As such, Defendants had a duty to sell medical marijuana to Plaintiff ONLY in compliance with California law to ensure that Plaintiff and other patrons of the PLPCCC would not be engaging in illegal purchases of a prohibited substance.

52. In a scheme to illegally profit from the PLPCCC's medical marijuana business, Defendants knowingly engaged in extreme and outrageous conduct, solely for the personal financial benefit of the Individual Defendants, by violating key components of California medical marijuana laws as described herein. Because Defendants' conduct has the possibility to put Plaintiff in serious legal jeopardy, Defendants acted knowingly, with the intention of causing, or with extreme reckless disregard for indifference to the legal wellbeing of Plaintiff, and the probability of causing severe emotional distress to Plaintiff or any reasonable person doing business with a medical marijuana dispensary.

53. Given the considerable criminal risks from engaging in illegal drug sales, Defendants' complete disregard for the legal wellbeing of Plaintiff and other members of the PLPCCC is outrageous. Defendant's illegal for-profit enterprise, and subsequent attempt to conceal it, is so extreme it exceeds all bounds of legal behavior

tolerated by the State of California and puts Plaintiff at risk of legal jeopardy, despite his best attempts to act in compliance with the law.

54. It was reasonably foreseeable that Plaintiff would suffer emotional injury and distress from Defendants' secret operation of a for-profit medical marijuana business in violation of California law.

55. As a direct, actual and proximate result of Defendants' conduct as complained of herein, Plaintiff now suffers from a constant fear he will be subject to criminal liability, may suffer employment and other social consequences as a result. Plaintiff has suffered, and continues to suffer, extreme emotional distress in a manner and amount to be proved at the trial of this matter.

56. As a direct and proximate result of Defendants' complete and outrageous disregard for the legal wellbeing of Plaintiff through an illegal for-profit medical marijuana enterprise, Plaintiff has suffered loss, cost, damage and expense in an amount to be proven at the trial of this matter. Plaintiff is entitled to compensatory, exemplary and punitive damages for Defendants' intentional, wanton, reckless, and extreme disregard for Plaintiff's legal rights as a person purchasing an otherwise highly illegal substance from the PLPCCC.

THIRD CAUSE OF ACTION

Breach of the Implied Covenant of Good Faith and Fair Dealing Against the PLPCCC

57. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

58. Plaintiff entered into a membership agreement with the PLPCCC, which contains as a matter of law an implied covenant of good faith and fair dealing to deal honestly, and incorporates by reference all laws applicable to the agreement and transaction.

59. Pursuant to California's medical marijuana laws and the California Corporations Code, the PLPCCC is ONLY permitted to sell medical marijuana on a non-profit basis. Under the Corporations Code, the PLPCCC is required to be "*democratically controlled* and are *not organized to make a profit* for themselves, as such, or for their members, as such, *but primarily for their members as patrons*." Further, a medical marijuana cooperative may have earnings, but these "must be used *for the general welfare of its members or equitably distributed to members in the form of cash, property, credits or services.*"

60. Under California law, medical marijuana may be "[a]llocated based on fees that are reasonably calculated to cover overhead costs and operating expenses," which includes payments to individuals for "reasonable compensation... for services provided as well as out-of-pocket expenses."

61. The PLPCCC violated California's medical marijuana laws by secretly operating a for-profit medical marijuana business and paying the Shell Companies and Individual Defendants far in excess of "reasonable compensation" and reimbursement for out of pocket expenses. The PLPCCC had no good faith reason to operate its medical marijuana dispensary in such a manner, and as such, breached the implied covenant of good faith and fair dealing with Plaintiff.

62. No additional conditions besides payment of fees to the PLPCCC for products purchased there is required of Plaintiff.

63. By operating Defendants' for-profit medical marijuana enterprise as described herein, the PLPCCC frustrates and interferes with Plaintiff's rights to purchase and use medical marijuana as allowed by California law.

64. As a direct and proximate result of Defendants' breach of the implied covenant of good faith and fair dealing through an illegal for-profit medical marijuana enterprise, Plaintiff has suffered loss, cost, damage and expense in an

amount to be proven at the trial of this matter. Plaintiff is entitled to compensatory, exemplary and punitive damages for Defendants' intentional, wanton, reckless, and extreme disregard for Plaintiff's legal rights as a person purchasing an otherwise highly illegal substance from the PLPCCC.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. For an order awarding Plaintiff compensatory, exemplary and punitive damages according to proof;

B. For an order enjoining Defendants from continuing to engage in the unlawful business acts and practices as alleged herein;

C. For an order awarding Plaintiff pre- and post-judgment interest;

D. For an order awarding attorneys' fees and costs of suit, including expert's witnesses fees and electronic discovery fees as permitted by law, including reimbursement for reasonable costs and expenses; and

E. Such other and further relief as this Court may deem just and proper.

VI. JURY TRIAL DEMAND

Plaintiff demands a trial by jury for all of the claims asserted in this Complaint so triable.

DATED: October 6, 2017

Respectfully submitted,

THE RESTIS LAW FIRM, P.C.

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

OMARI BOBO, individually and on behalf of all other similarly situated,

Plaintiff,

v.

OPTIMUM NUTRITION, INC., a Delaware Corporation,

Defendant.

Case No: **'14CV2408 BEN KSC**

CLASS ACTION COMPLAINT FOR:

1. **BREACH OF EXPRESS WARRANTY;**
2. **VIOLATION OF 15 U.S.C. §§ 2301 *et seq.*;**
3. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17500, *et seq.*;**
4. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR "UNLAWFUL" BUSINESS PRACTICES;**
5. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR "UNFAIR" BUSINESS PRACTICES;**
6. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR "FRAUDULENT" BUSINESS PRACTICES; and**
7. **VIOLATION OF CAL. CIV. CODE §§ 1750, *et seq.***

JURY TRIAL DEMANDED

Omari Bobo ("Plaintiff"), individually and on behalf of all others similarly situated, based on the investigation of counsel as to the actions and omissions of defendant herein, and by their own individual knowledge as to Plaintiff's own circumstances, hereby complains against defendant Optimum Nutrition, Inc. ("Defendant" or "Optimum") as follows:

INTRODUCTION

1. Defendant Optimum formulates, manufactures, advertises and sells the popular "Gold Standard," along with other other, specialty branded powdered protein supplements. The protein supplements of Optimum are marketed and sold throughout the United States, including in California. Optimum is part of a growing and extremely competitive protein supplement industry. New competitive entrants jumping into the marketplace and the increasing cost of production place incredible competitive pressure on experienced companies within this market. Accordingly, protein supplement manufacturers are continually searching for means to both reduce their manufacturing cost and differentiate their product(s) from competitors in order to remain profitable.

2. Optimum markets its products as premium protein supplements suitable for elite athletes, bodybuilders, and others having more moderate athletic and weight management goals. Optimum understands that its target market highly values the amount and quality of certain protein ingredients in its products, including whey protein, casein proteins, egg proteins, and soy proteins (collectively the "Primary Protein Ingredients"). As such, it markets and labels its sports protein supplements in a manner highlighting the high level of Primary Protein Ingredients contained within each of its products.

3. By way of example, Defendant names, markets, and labels its "Gold Standard Natural 100% Whey Protein" and "Gold Standard 100% Whey Protein" powders (collectively the "Whey Protein Products"), in a fashion both implies and warrants that these products are comprised of "100% Whey Protein." The same is true

of Defendant's "Gold Standard 100% Natural Casein Protein" and "Gold Standard 100% Casein Protein" powders (collectively the "Casein Protein Products"), which are similarly labeled to expressly assert that they contain "100% Casein Protein." Defendant also markets, labels and names its "Gold Standard 100% Egg Protein" (the "Egg Protein Product") and "100% Soy Protein" (the "Soy Protein Product") powders in a manner in which Defendant specifically declares that these Products exclusively comprised of egg protein and soy protein, respectively. However, these representations is false.[1]

4. Defendant's representations regarding its Class Protein Products' protein contents are deceptive and misleading to an average consumer. The Class Protein Products do not in fact exclusively contain protein derived from the Primary Protein Ingredients, as communicated by the names and labeling of each of Defendant's Products. Instead, each of the above Optimum products contains other ingredients that are not protein. As a result of Defendant's practices, a consumer purchases a product, at a premium price, that contains approximately 68 to 79 percent protein - substantially less than what Defendant states on its labeling and represents in the title of each of the Class Protein Products ("100%"). Simply put, Plaintiff and the Class are not getting the protein promised and for which they paid.

5. By labeling and marketing its Class Protein Products as "100% Whey Protein," "100% Casein Protein," "100% Soy Protein," and "100% Egg Protein" while not properly disclosing that the Optimum Products contain non-protein ingredients, Defendant violates specific federal regulations and California law intended to prevent deceptive food labeling. These actions violate a number of state consumer protections laws, including the California Unfair Competition Law ("UCL"), the California False Advertising Law ("FAL"), and the California Consumer Legal Remedies Act ("CLRA"). Additionally, Defendant's labeling practices are a

[1] Collectively, the Whey Protein Products, the Casein Protein Products, the Soy Protein Product and the Egg Protein Product will be referred to as the "Class Protein Products."

breach of express warranty and a violation of the Magnuson–Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*

6. Defendant's business practices, as alleged herein, have injured Plaintiff and members of the Class. Plaintiff thus seeks damages, restitution, and injunctive or equitable relief deemed proper by the Court. Plaintiff may amend this complaint to seek actual, punitive, and statutory damages pursuant to the CLRA.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to the Class Action Fairness Act, 28 U.S.C. §§1332(d), 1446, and 1453(b). Plaintiff allege that Plaintiff and Class members are citizens of different states as Defendant, and the cumulative amount in controversy for Plaintiff and the Class exceed $5 million, exclusive of interest and costs.

8. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because many of the acts and transactions giving rise to the violations of law complained of herein occurred in this District, and because Defendant:

(a) conducts business itself or through agent(s) in this District by advertising, marketing, distributing and/or manufacturing the Class Protein Products in this District; and/or

(b) is licensed or registered to conduct business in this District; and/or

(c) otherwise has sufficient contacts with this District to justify Defendant being fairly brought into court in this District.

PARTIES

9. Plaintiff Omari Bobo ("Bobo") is, and at all times relevant hereto was, a resident of San Diego, California, and a citizen of California. Plaintiff Bobo has purchased Defendant's Class Protein Products during the last four years. He most recently purchased Defendant's "Gold Standard 100% Whey Protein" powder at Vitamin Shop, an authorized distributor and/or retailer of Optimum products, located in San Diego, California on or about September 29, 2013.

10. Defendant Optimum Nutrition, Inc. is a Delaware corporation with its headquarters in Aurora, Illinois. Optimum manufactures sports-oriented nutritional products. Optimum manufactures, markets, advertises, distributes and sells the Class Protein Products throughout the United States, including in California.

SUBSTANTIVE ALLEGATIONS

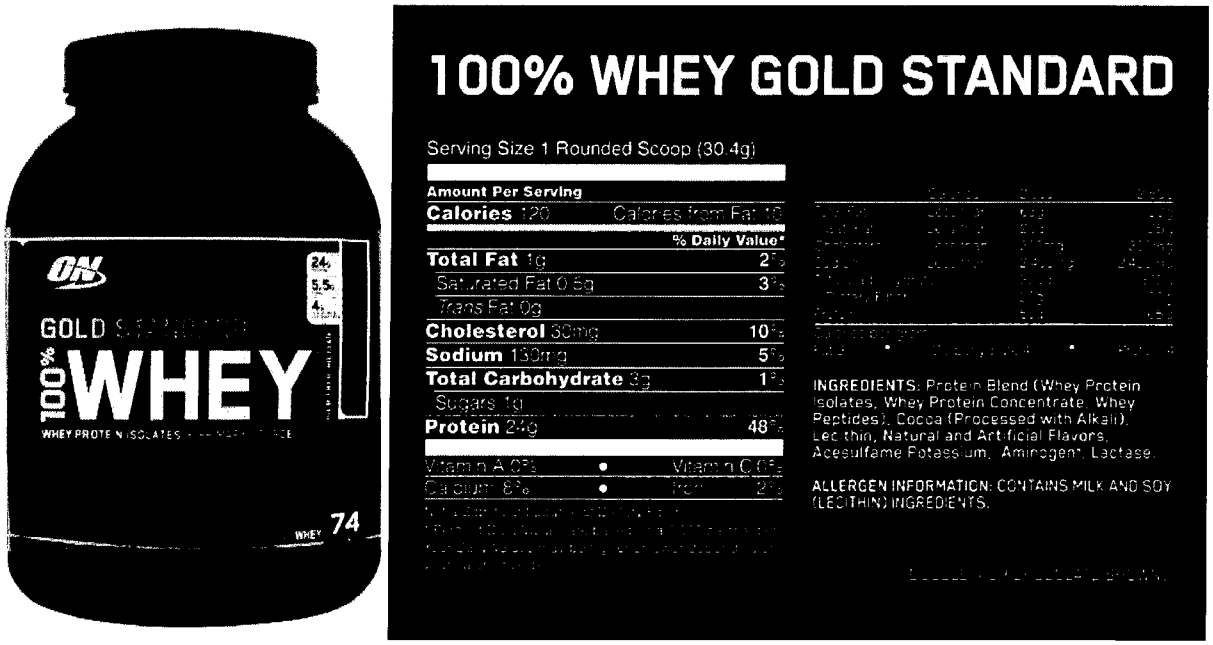
11. Powdered protein supplements have become increasingly popular during the past decade; protein being seen as important for the development of muscle mass, a key goal of many athletes. Additionally, protein may increase weight-loss when eaten at relatively higher ratios when compared to carbohydrates and fats. Accordingly, athletes, such as bodybuilders, and those who are following protein-rich diets often attempt to ingest at least 100 grams of protein daily. This is difficult to achieve without protein supplementation.

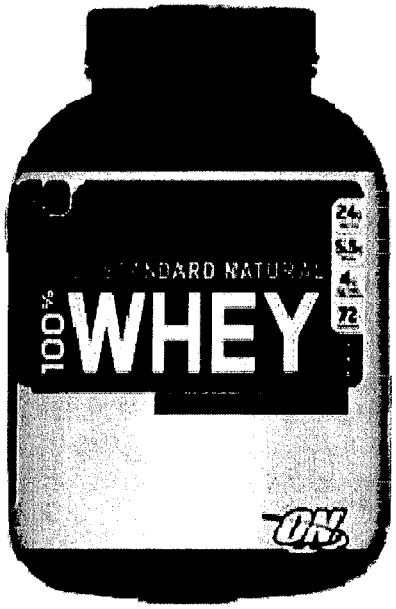
12. Defendant is aware that its consumers prize particular sources of protein over others. The proteins most valued by supplement consumers are known as "complete" protein sources. A "Complete protein" source is a product that contains all the essential amino acids humans required to build protein-based compounds such as muscle tissue. The major proteins in milk - casein and whey - are complete protein sources. Both also score the highest rating on the Protein Digestibility Corrected Amino Acid Score (PDCAAS), a measure of protein quality based on both the amino acid requirements of humans and the digestibility of same. Egg-based proteins are another animal derived complete protein that scores high on the PDCAAS. For vegans (and others unable to consume animal-based proteins) soy protein is an excellent complete protein source that scores highly on the PDCAAS. Indeed, casein, egg and soy proteins (like whey protein) each score the highest possible value on the PDCAAS.

13. Aware of the above hierarchy, Defendant markets the Class Protein Products primarily as "**protein** powders" for athletes, emphasizing the Class Protein Products' protein quality and quantity in its advertisements and labeling. In order to

impress on the consuming public the enhanced value of the Class Protein Products, Defendant names each in a manner suggesting to a reasonable customer that the Products contain protein(s) of an undiluted purity ("**100% Whey Protein**," "**100% Casein Protein**," "**100% Soy Protein**," and "**100% Egg Protein**.") Defendant conspicuously places and thus repeats its affirmations of fact regarding its Products' purity in the Class Protein Products' labeling - creating a warranty that its Products contain no agents or fillers other than whey, casein, soy and egg protein, respectively - as evidenced below:

THE WHEY PROTEIN PRODUCTS*





NATURALLY FLAVORED

100% WHEY

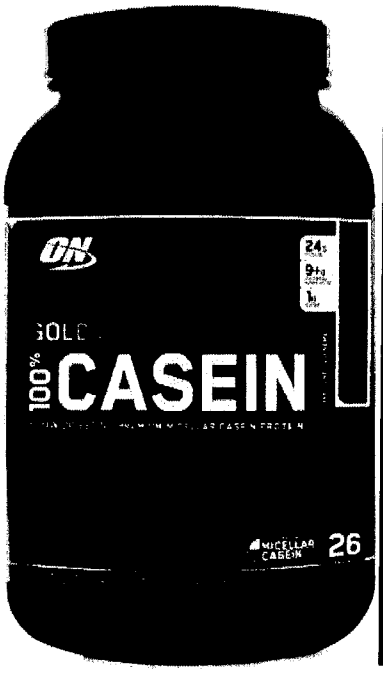
Serving Size 1 Rounded Scoop (32g)

Amount Per Serving	
Calories	
	% Daily Value*
Total Fat	2
	3
Cholesterol	10
Sodium	3
Total Carbohydrate	2
Protein	

INGREDIENTS: Protein Blend (Whey Protein Isolates, Whey Protein Concentrate, Whey Peptides), Sugar, Natural Flavor, Lecithin, Xanthan Gum, Beet Powder, Citric Acid, Rebaudioside A, Amnogen®, Lactase.

ALLERGEN INFORMATION: CONTAINS MILK AND SOY (LECITHIN) INGREDIENTS.

THE CASEIN PROTEIN PRODUCTS*



100% CASEIN

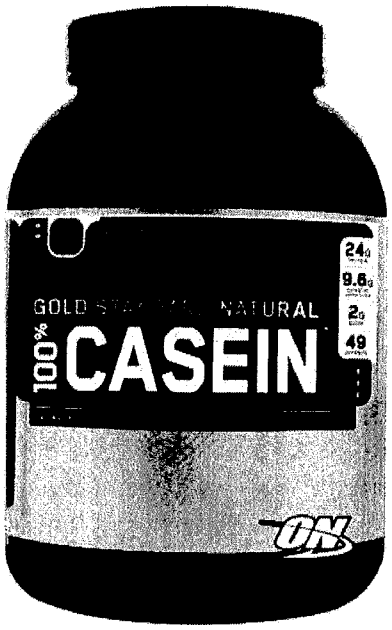
Serving Size 1 Heaping Scoop (34g)

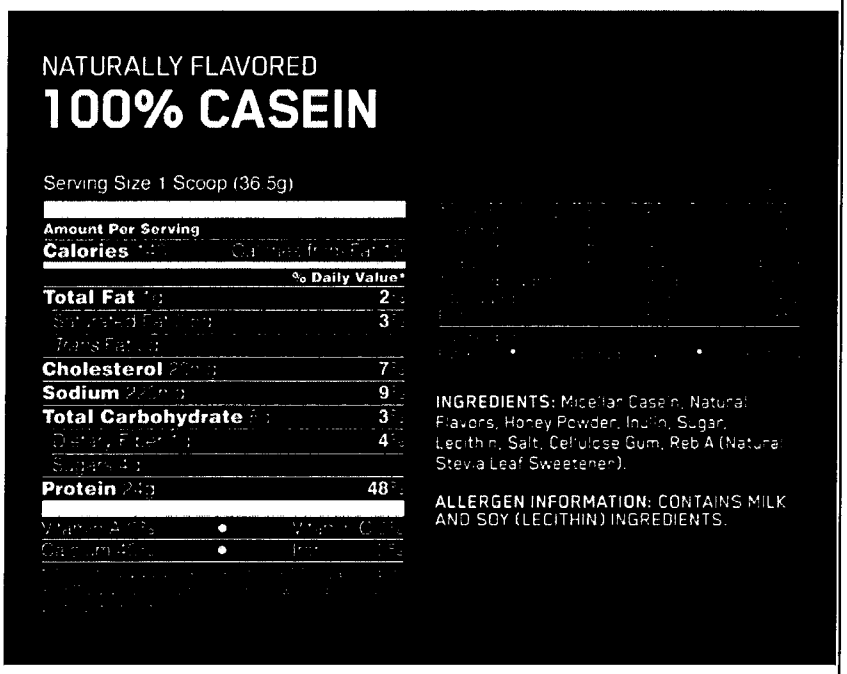
Amount Per Serving	
Calories 120	Calories from Fat 10
	% Daily Value*
Total Fat 1g	2%
Saturated Fat 0.5g	3%
Trans Fat 0g	
Cholesterol 15mg	5%
Sodium 280mg	12%
Total Carbohydrate 3g	1%
Dietary Fiber 1g	4%
Sugars 1g	
Protein 24g	48%
Vitamin A 0%	• Vitamin C 0%
Calcium 50%	• Iron 4%

INGREDIENTS: Micellar Casein, Cocoa (Processed with Alkali), Natural and Artificial Flavors, Salt, Gum Blend (Cellulose Gum, Xanthan Gum, Carrageenan), Lecithin, Acesulfame Potassium, Sucralose, Amnogen®.

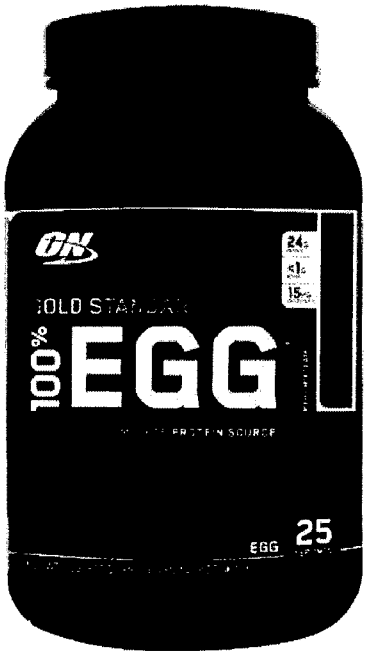
ALLERGEN INFORMATION: CONTAINS MILK AND SOY (LECITHIN) INGREDIENTS.

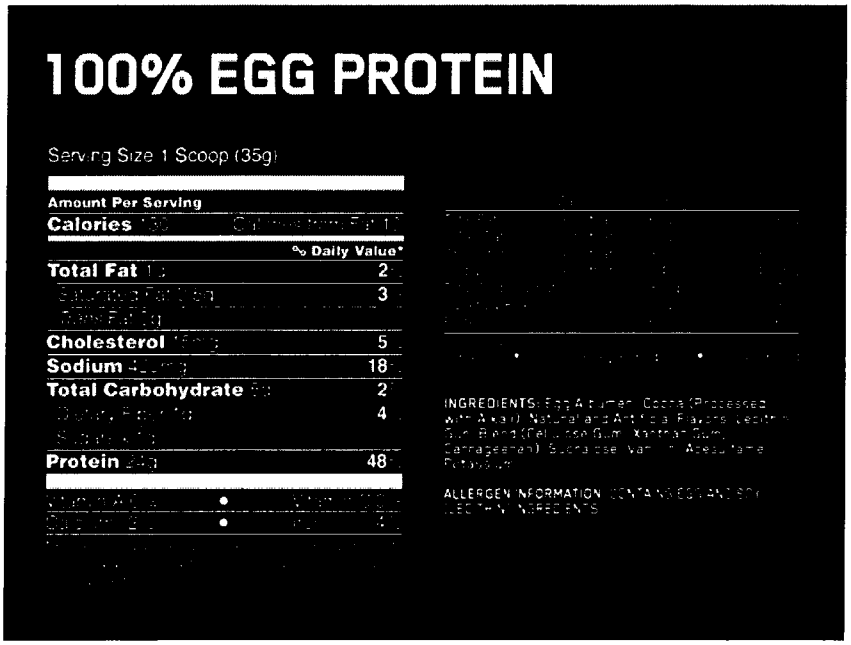
(CHOCOLATE SUPREME SHOWN)





THE EGG PROTEIN PRODUCT*





THE SOY PROTEIN PRODUCT*

Each of the above referenced Products is available in different sizes and flavors, however the substantive claims on each Product's labeling remains the same. To appreciate the scope of Defendant injurious business practices, it charges over 10 dollars per pound of protein for each of the Class Protein Products.

14. Defendant's nutritional information contradicts the protein content claims made by Defendant in identifying, marketing, selling and/or promoting the Class Protein Products. The Class Protein Products are comprised of far less than "100%" of their respective Primary Protein Ingredient:

- Defendant's Gold Standard 100% Whey Protein only contains 24 grams of reported protein per serving, when the suggested serving size is 30.4 grams. Thus, Defendant's Gold Standard 100% Whey Protein is only 78% percent whey protein per serving, not 100%;

* The nutritional labels displayed next to each Class Protein Products were taken from Defendant's website. It may differ by insubstantially from the label nutritional displayed above. However, the label on each Class Protein Products repeats Defendant's nutritional mantra of the product being "100% [Primary Protein Ingredient] Protein."

- Defendant's Gold Standard Natural 100% Whey Protein contains 24 grams of reported protein per serving, when the suggested serving size is 32 grams. Thus, Defendant's Gold Standard Natural 100% Whey Protein powder is only 75% percent whey protein per serving, not 100%;
- Defendant's Gold Standard 100% Casein Protein contains 24 grams of reported protein per serving, when the suggested serving size is 34 grams. Thus, Defendant's Gold Standard 100% Casein Protein powder is only 71% percent casein protein per serving, not 100%;
- Defendant's Gold Standard Natural 100% Casein Protein contains 24 grams of reported protein per serving, when the suggested serving size is 36.5 grams. Thus, Gold Standard Natural 100% Casein Protein powder is only 68% percent casein protein per serving, not 100%;
- Defendant's Gold Standard 100% Egg Protein contains 24 grams of reported protein per serving, when the suggested serving size is 35 grams. Thus, Defendant's Gold Standard 100% Egg Protein powder is only 69% percent egg protein per serving, not 100%; and
- Defendant's 100% Soy Protein contains 24 grams of reported protein per serving, when the suggested serving size is 31.5 grams. Thus, Defendant's 100% Soy Protein powder is only 79% percent soy protein per serving, not 100%.

15. The above comparisons only represent the relationship between Defendant's reported protein content in each of the Class Protein Products when compared to their serving size. The actual amount of protein contained in each of the Class Protein Products may be less than reported on the Class Protein Products' nutritional labels.

16. Even if the reported protein contents in each of the Class Protein Products are accurate, each Product contains nothing approaching the advertised and warranted "100%" of each Primary Protein Ingredient. The reason for the disparity between the

"100%" used in the name of each Class Protein Products and the actual protein of each Product is that each Product invariably contains non-protein substances. For example, a close review of the Class Protein Products nutritional labels, including with the Products' ingredients list, reveals that many of the Products contain salts, carbohydrates, fats, natural and artificial flavors and other ingredients which are not proteins.

17. Furthermore, even without the above non-protein ingredients, the ingredients that Defendant lists as proteins for the Class Protein Products, such as protein isolates and concentrates, do not contain proteins exclusively. Instead, protein isolates and concentrates also contain fats and carbohydrates from the protein's original source (*i.e.*, milk, eggs or soy). Accordingly, Defendant's representations that any of the Class Protein Products is "100%" protein are demonstratively false.

18. The Class Protein Products' front label does not state, or even infer, that the Class Protein Products contain any, let alone substantial amounts of, non-protein ingredients. Naming each of the Class Products respectively "100% Whey Protein," "100% Casein Protein," "100% Soy Protein," "100% Egg Protein," or a similar variation is deceptive and misleading to a reasonable consumers who would properly assume that such Products contain exclusively protein. Defendant also has no basis to expressly warrant that its products exclusive contain the Primary Protein Ingredients, when admittedly they do not.

19. Defendant's business practices are unlawful under federal and California law. The Federal Food, Drug, and Cosmetic Act ("FDCA"), passed by Congress in 1938, grants the Food and Drug Administration ("FDA") power to ensure "foods are safe, wholesome, sanitary, and properly labeled." 21 U.S.C. § 393(b)(2). In 1990, Congress amended the FDCA with the Nutrition Labeling and Education Act ("NLEA"), which clarified and strengthened the Food and Drug Administration's authority to designate the proper nutrition labeling on foods, and to define circumstances under which claims can be made about nutrients in foods. 21 U.S.C. §§

343, *et seq*. The above laws, and regulations enacted pursuant thereto, are incorporated into California law. HEALTH & SAF. CODE § 110100.

20. Federal Regulations, enacted by the FDA pursuant to the FDCA, speaks directly to the misleading nature of Defendant's labeling and naming of the Class Products. Specially, 21 C.F.R. § 101.18(b) states:

> The labeling of a food which contains two or more ingredients may be misleading by reason (among other reasons) of the designation of such food in such labeling by a name which includes or suggests the name of one or more but not all such ingredients, even though the names of all such ingredients are stated elsewhere in the labeling.

In violation of 21 C.F.R. § 101.18(b), Defendant misrepresents, misleads, and deceives consumers by naming each Class Protein Products a variation of "100% [Primary Protein Ingredient] Protein" while repeatedly referencing "protein" in its labeling, but never disclaiming that its Products actually contain admittedly non-protein ingredients.

21. The difference between the Class Protein Products promised protein content and the content in the product actually sold is significant. The amount of actual protein provided and the measure of protein per serving have a significant impact on the benefits provided by ingesting the Products and the actual value of the Products themselves. Additionally, misbranded food products cannot legally be manufactured, held, advertised, distributed or sold. Thus, misbranded food has no economic value and is worthless.

22. Purchasers of misbranded food are entitled to restitution *via* a refund for the purchase price of the misbranded supplement. Plaintiff and members of the Class have suffered actual injuries. Had Plaintiff known that the Class Protein Products' protein content was significantly misstated, he would not have purchased Defendant's protein powders or, alternatively, paid significantly less for them.

CLASS ACTION ALLEGATIONS

23. Plaintiff bring this action as a class action pursuant to Federal Rule of Civil Procedure 23 for the following Classes of persons:

Nationwide Class: All persons in the United states who, within four

(4) years of the filing of this Complaint, purchased Gold Standard Natural 100% Whey Protein, Gold Standard 100% Whey Protein, Gold Standard 100% Natural Casein Protein, Gold Standard 100% Casein Protein, Gold Standard 100% Egg Protein, and/or 100% Soy Protein powders.

California Sub-Class: All persons residing in California who, within four (4) years of the filing of this Complaint, purchased Gold Standard Natural 100% Whey Protein, Gold Standard 100% Whey Protein, Gold Standard 100% Natural Casein Protein, Gold Standard 100% Casein Protein, Gold Standard 100% Egg Protein, and/or 100% Soy Protein powders.

Excluded from the Class and the California Sub-Class are all legal entities, Defendant herein and any person, firm, trust, corporation, or other entity related to or affiliated with Defendant, any entities that purchased the Class Products for resale, as well as any judge, justice or judicial officer presiding over this matter and members of their immediate families and judicial staff.

24. While the exact number of Class members is unknown to Plaintiff at this time, and will be approximately ascertained through discovery, Plaintiff is informed and believes that there are tens of thousands of members in the proposed Class, if not more. The number of individuals who comprise the Class are so numerous that joinder of all such persons is impracticable and the disposition of their claims in a class action, rather than in individual actions, will benefit both the parties and the courts.

25. Defendant has acted with respect to the Class in a manner generally applicable to each Class member. Common questions of law and fact exist as to all Class members and predominate over any questions wholly affecting individual Class members. There is a well-defined community of interest in the questions of law and fact involved in the action, which affect all Class members. Among the questions of law and fact common to the Class are, *inter alia*:

(a) Whether Defendant labels, markets, sells and/or otherwise advertises the Class Protein Products in a deceptive, false, or misleading manner;

(b) Whether the Class Protein Products contain less protein than what is represented in each Products' name and labeling;

(c) Whether Defendant's business practices relative to the Class Protein Products constitutes unfair methods of competition and unfair or deceptive acts or practices in violation of, *inter alia*, CAL. BUS. & PROF. CODE §§ 1770, *et seq.*, including:

(i) Whether Defendant misrepresents the source, sponsorship, approval, or certification of the Class Protein Products;

(ii) Whether Defendant misrepresents that the Class Protein Products have benefits or quantities which they do not have; and

(iii) Whether Defendant represents that the Class Protein Products is of a particular standard [or] quality... if it is of another;

(d) Whether Defendant's sale of the Class Protein Products constitutes misleading and deceptive advertising under, *inter alia*, CAL. BUS. & PROF. CODE §§ 17500.

(e) Whether Defendant's sale of the Class Protein Products constitutes "unlawful," "unfair," or "fraudulent" business acts or practices under, *inter alia*, CAL. BUS. & PROF. CODE §§ 17200, including:

(i) Whether Defendant's sale of the Class Protein Products constitutes "unlawful" or "unfair" business practices by violating the public policies set out in CAL. BUS. & PROF. CODE §§ 1770, *et seq.*, CAL. BUS. & PROF. CODE §§ 17500, HEALTH & SAF. CODE §§ 109875, *et seq.*, and other California and federal statutes and regulations;

(ii) Whether Defendant's sale of the Class Protein Products is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers;

(iii) Whether Defendant's sale of the Class Protein Products constitutes an "unfair" business practice because consumer injury outweighs any countervailing benefits to consumers or competition, and because such injury could not be reasonably avoided by consumers; and

(iv) Whether Defendant's mischaracterization of protein content in the Class Protein Products constitutes a "fraudulent" business practice because members of the public are likely to be deceived;

(f) Whether Defendant's inclusion of non-protein ingredients in the Class Protein Products constitutes a breach of expressed warranty;

(g) Whether Defendant's inclusion of non-protein ingredients in the Class Protein Products constitutes a violation of the Magnuson–Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*;

(h) The nature and extent of damages, restitution. equitable remedies, and declaratory and injunctive relief to which Plaintiff and the Class are entitled; and

(i) Whether Plaintiff and the Class should be awarded attorneys' fees and the costs of suit for Defendant's violations of the Magnuson–Moss Warranty Act, UCL and the CLRA.

26. Plaintiff's claims are typical of the claims of the other members of the Class. All members of the Class have been and/or continue to be similarly affected by Defendant's wrongful conduct as complained of herein, in violation of California law. Plaintiff is unaware of any interests that conflict with or are antagonistic to the interests of the Class.

27. Plaintiff will fairly and adequately protect the Class members' interests and have retained counsel competent and experienced in consumer class action lawsuits and complex litigation. Plaintiff and their counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff is aware of his duties and responsibilities to the Class.

28. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members to individually redress the wrongs done to them. There will be no

difficulty in managing this action as a class action.

29. Defendant has acted on grounds generally applicable to the entire Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

FIRST COUNT

BREACH OF EXPRESS WARRANTY
(On Behalf of the Nationwide Class)

30. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

31. Plaintiff and each member of the Class formed a contract with Defendant at the time Plaintiff and the other members of the Class purchased one or more of the Products. The terms of that contract include the promises and affirmations of fact made by Defendant on the packaging of the Class Protein Products.

32. The Class Protein Products' packaging constitutes express warranties, became part of the basis of the bargain, and are part of a standardized contract between Plaintiff and the members of the Class on the one hand and Defendant on the other.

33. All conditions precedent to Defendants' liability under this contract have been performed by Plaintiff and the Class.

34. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing the Class Protein Products that conformed with the promises made, *i.e.* that the Products contains "100%" of the Primary Protein Ingredient.

35. Plaintiff and members of the Class were injured by Defendant's failure to comply with its obligations under the written warranty, since Plaintiff and members of the Class paid for products that did not have the promised qualities and nature, did not receive the, defect-free food products that were promised to them and that they bargained for, paid a premium for the Class Protein Products when they could have instead purchase d other less expensive alternative protein supplements.

36. As a result of Defendant's breach of its warranty, Plaintiff and the Class have been damaged in the amount of the purchase price of any and all of the Products they purchased.

SECOND COUNT

VIOLATION OF 15 U.S.C. § 2301 *et seq.* - Breach of Written Warranty (On Behalf of the Nationwide Class)

37. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

38. This claim is brought by Plaintiff on behalf of themselves and the Class solely for breach of federal law. This claim is not based on any violation of state law.

39. The Magnuson–Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, creates a private federal cause of action for breach of a "written warranty" as defined by the Act. 15 U.S.C. § 2301(6) and § 2310(d)(1).

40. The Class Protein Products are "consumer products" as that term is defined by 15 U.S.C. § 2301(1), as they constitute tangible personal property which is distributed in commerce and which is normally used for personal, family or household purposes.

41. Plaintiff and members of the Class are "consumers" as defined by 15 U.S.C. § 2301(3), since they are buyers of Class Protein Products for purposes other than resale.

42. Defendant is an entity engaged in the business of making dietary supplements available, either directly or indirectly, to consumers such as Plaintiff and the Class. As such, Defendant is a "supplier" as defined in 15 U.S.C. § 2301(4).

43. Through its labeling, Defendant gave and offered a written warranty to consumers relating to the nature and quantity of protein ingredients in the Class Protein Products. As a result, Defendant is a "warrantor" within the meaning of 15 U.S.C. § 2301(5).

44. Defendant provided a "written warranty" within the meaning of 15 U.S.C.

2301(6) for the Class Protein Products by name each of the Class Protein Products a variation of "100% _____ Protein" These affirmations of fact regarding the nature and quantity of the ingredients in the Class Protein Products constituted, and were intended to convey to purchasers, a written promise that the ingredients/materials in the products were free of a particular type of defect (*i.e.*, that they did not contain any non-protein alterants). As such, these written promises and affirmations were part of the basis of Plaintiffs' and the Class's bargain with Defendant in purchasing the Class Protein Products.

45. Defendant breached the written warranty by failing to provide and supply the Class Protein Products as promised. Specifically, the Class Protein Products contained numerous non-protein ingredients.

46. Plaintiff and members of the Class were injured by Defendant's failure to comply with its obligations under the written warranty, since Plaintiff and members of the Class paid for products that did not have the promised qualities and nature, did not receive the, defect-free food products that were promised to them and that they bargained for, paid a premium for the Class Protein Products when they could have instead purchased other less expensive alternative protein supplements.

47. Plaintiffs and the Class therefore for this claim seek and are entitled to recover "damages and other legal and equitable relief" and "costs and expenses (including attorneys' fees based upon actual time expended)" as provided in 15 U.S.C. § 2310(d).

THIRD COUNT

Violation of CAL. BUS. & PROF. CODE §§ 17500, *et seq.* - Untrue, Misleading and Deceptive Advertising (On Behalf of the California Sub-Class)

48. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

49. At all material times, Defendant engaged in a scheme of offering the Class Protein Products for sale to Plaintiff, and other members of the Class by way of,

inter alia, commercial marketing, and advertising, internet content, product packaging and labeling, and other promotional materials.

50. These materials, advertisements and other inducements misrepresented and/or omitted the true contents and benefits of the Class Protein Products. Said materials, advertisement and other inducements were made to consumers located within the State of California, and come within the definition of advertising as contained in CAL. BUS. PROF. CODE §§ 17500, *et seq.*, in that such promotional materials were intended as inducements to purchase the Class Protein Products and are statements disseminated by Defendant to Plaintiff and other members of the California Sub-Class. Defendant knew, or in the exercise of reasonable care should have known, that the statements regarding the Class Protein Products and protein content were false, misleading and/or deceptive.

51. In furtherance of said plan and scheme, Defendant has prepared and distributed within the State of California, *via* commercial marketing, and advertising, internet content, product packaging and labeling, and other promotional materials statements that misleadingly, falsely, and deceptively represent the protein contents and ingredients contained in the Class Protein Products. Consumers, including Plaintiff and members of the California Sub-Class, necessarily and reasonably relied on Defendant's statements regarding the contents of its products. Consumers, including Plaintiff and members of the California Sub-Class, were among the intended targets of such representations.

52. The above acts of Defendant, in disseminating said misleading and deceptive statements throughout the State of California, including Plaintiff and members of the California Sub-Class, were and are likely to deceive reasonable consumers by obfuscating the true nature and amount of the ingredients in the Class Protein Products, thus were violations of CAL. BUS. PROF. CODE §§ 17500, *et seq.*

53. As a result of Defendant's conduct, Plaintiff and California Sub-Class members were harmed and suffered actual damages as a result of Defendant's

violations of the Cal. BUS. PROF. CODE §§ 17500, *et seq.* Defendant has been unjustly enriched at the expense of Plaintiff and the members of the California Sub-Class.

FOURTH COUNT

Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* - Unlawful Business Acts and Practices (On Behalf of the California Sub-Class)

54. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

55. California's Sherman Food, Drug, and Cosmetic Law (the "Sherman Law"), HEALTH & SAF. CODE §§ 109875, *et seq.*, broadly prohibits the misbranding of any food products. The Sherman Law provides that food is misbranded "if its labeling is false or misleading in any particular." HEALTH & SAF. CODE § 110660.

56. Defendant is a person within the meaning of HEALTH & SAF. CODE § 109995.

57. Additionally, California has adopted as its own, and as the Sherman Law expressly incorporates, "[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date" as "the food labeling regulations of this state." Federal regulations, including by not limited to 21 C.F.R. § 101.18(b), prohibit the mislabeling and misbranding of food products.

58. Federal regulations prohibit "[t]he labeling of a food which contains two or more ingredients that may be misleading by reason (among other reasons) of the designation of such food in such labeling by a name which includes or suggests the name of one or more but not all such ingredients, even though the names of all such ingredients are stated elsewhere in the labeling."

59. California Civil Code §1770(a)(2), (5) and (7) also prohibits mislabeling food, misrepresenting the standard, quality, sponsorship, approval, and/or certification of food products, as noted below.

60. The business practices alleged above are unlawful under Business and

Professional Code §§ 17500, *et seq.*, California Civil Code §1770(a)(2), (5) and (7) and the Sherman Law, each of which forbids the untrue, fraudulent, deceptive, and/or misleading marketing, advertisement, packaging and labeling.

61. As a result of Defendant's above unlawful, unfair and fraudulent acts and practices, Plaintiff, on behalf of himself and all others similarly situated, and as appropriate, on behalf of the general public, seeks injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Misbranded food products cannot legally be manufactured, held, advertised, distributed or sold. Thus misbranded food has no economic value and is worthless as a matter of law, and purchasers of misbranded food are entitled to a restitution refund of the purchase price of the misbrand food.

FIFTH COUNT

Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* - Unfair Business Acts and Practices (On Behalf of the California Sub-Class)

62. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

63. Plaintiff and other members of the California Sub-Class who purchased the Class Protein Products suffered a substantial injury by virtue of buying a product that misrepresented and/or omitted the true contents and benefits of its protein contents. Had Plaintiff and members of the California Sub-Class known that Defendant's materials, advertisement and other inducements misrepresented and/or omitted the true contents and benefits of the Class Protein Products, they would not have purchased said Products.

64. Defendant's actions alleged herein violate the laws and public policies of California and the federal government as set out preceding paragraphs of this Complaint.

65. There is no benefit to consumers or competition by allowing Defendant to deceptively market, advertise, package and label the Class Protein Products.

66. Plaintiff and California Sub-Class members who purchased the Class Protein Products had no way of reasonably knowing that these Products were deceptively marketed, advertised, packaged and labelled. Thus, Class members could not have reasonably avoided the injury they suffered.

67. The gravity of the harm suffered by Plaintiff and California Sub-Class members who purchased the Class Protein Products outweighs any legitimate justification, motive or reason for marketing, advertising, packaging and labeling the Class Protein Products in a deceptive and misleading manner. Accordingly, Defendant's actions are immoral, unethical, unscrupulous and offend the established public policies as set out in federal regulations and is substantially injurious to Plaintiff and members of the Class.

68. The above acts of Defendant, in disseminating said misleading and deceptive statements throughout the State of California to consumers, including Plaintiff and members of the Class, were and are likely to deceive reasonable consumers by obfuscating the true nature and amount of the ingredients in the Class Protein Products, and thus were violations of CAL. BUS. PROF. CODE §§ 17500, *et seq.*

69. As a result of Defendant's above unlawful, unfair and fraudulent acts and practices, Plaintiff, on behalf of himself and all others similarly situated, and as appropriate, on behalf of the general public, seeks injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Misbranded food products cannot legally be manufactured, held, advertised, distributed or sold. Thus misbranded food has no economic value and is worthless as a matter of law, and purchasers of misbranded food are entitled to a restitution refund of the purchase price of the misbrand food.

SIXTH COUNT

Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* - Fraudulent Business Acts and Practices (On Behalf of the California Sub-Class)

70. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

71. Such acts of Defendant as described above constitute a fraudulent business practice under CAL. BUS. & PROF. CODE §§ 17200, *et seq.*

72. As more fully described above, Defendant misleadingly markets, advertises, packages, and labels the Class Protein Products as containing "100%" protein when in fact the constituting ingredients are not all protein but instead contain unnecessary fillers and other ingredients. Defendant's misleading marketing, advertisements, packaging, and labeling are likely to, and do, deceive reasonable consumers. Indeed, Plaintiff and other members of the California Sub-Class were unquestionably deceived about the nutritional benefits of the Class Protein Products, as Defendants marketing, advertising, packaging, and labeling of the Class Protein Products misrepresents and/or omits the true nature of the Products nutritional contents and benefits. Said acts are fraudulent business practices and acts.

73. Defendant's misleading and deceptive practices caused Plaintiff and other members of the California Sub-Class to purchase the Class Protein Products and/or pay more than they would have otherwise had they know the true nature of said Products' contents.

74. As a result of Defendant's above unlawful, unfair and fraudulent acts and practices, Plaintiff, on behalf of himself and all others similarly situated, and as appropriate, on behalf of the general public, seeks injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Misbranded food products cannot legally be manufactured, held, advertised, distributed or sold. Thus

misbranded food has no economic value and is worthless as a matter of law, and purchasers of misbranded food are entitled to a restitution refund of the purchase price of the misbrand food.

SEVENTH COUNT

Violation of CAL. CIV. CODE §§ 1750 *et seq.*- Misrepresentation of a Product's standard, quality, sponsorship, approval, and/or certification (On Behalf of the California Sub-Class)

75. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

76. Defendant's Class Protein Products are a "good" as defined by California Civil Code §1761(a).

77. Defendant is a "person" as defined by California Civil Code §1761(c).

78. Plaintiff and California Sub-Class members are "consumers" within the meaning of California Civil Code §1761(d) because they purchased the Class Protein Products for personal, family or household use.

79. The sale of the Class Protein Products to Plaintiff and Class members is "transaction" as defined by California Civil Code §1761(e).

80. By failing to give notice to consumers regarding the true composition of the ingredients in the Class Protein Products and labeling said products in a misleading and deceptive manner, as alleged above, Defendant violated California Civil Code §1770(a)(2), (5) and (7), as it misrepresented the standard, quality, sponsorship, approval, and/or certification of the Class Protein Products.

81. As a result of Defendant's conduct, Plaintiff and California Sub-Class members were harmed and suffered actual damages as a result of Defendant's unfair competition and deceptive acts and practices. Had Defendant disclosed the true nature of the contents of the Class Protein Products' protein content, Plaintiff and the Class would not be misled into purchasing the Class Protein Products, or, alternatively, pay significantly less for them.

82. Additionally, misbranded food products cannot legally be manufactured, held, advertised, distributed or sold. Thus, misbranded food has no economic value and is worthless as a matter of law, and purchasers of misbranded food are entitled to a refund of the purchase price of the misbrand food.

83. Plaintiff, on behalf of himself and all other similarly situated California consumers, and as appropriate, on behalf of the general public of the state of California, seeks injunctive relief prohibiting Defendant continuing these unlawful practices pursuant to California Civil Code § 1782(a)(2).

84. Plaintiff provided Defendant with notice of its alleged violations of the CLRA pursuant to California Civil Code § 1782(a) *via* certified mail, demanding that Defendant correct such violations.

85. If Defendant's fail to respond to Plaintiff's CLRA notice within 30 days, Plaintiff may amend this Complaint to seek all available damages under the CLRA for all violations complained of herein, including, but not limited to, statutory damages, punitive damages and costs and any other relief that the Court deems proper. Additionally, Plaintiff will request that the Court award all members of the Class, who have attained the age of 65 at the time of the Defendant's wrongful acts and omissions as alleged herein, to receive a statutory trebling of their restitutionary award pursuant to California Civil Code § 3345.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class pray for relief and judgment as follows:

A. For an order declaring that this action is properly maintained as a class action and appointing Plaintiff as representative for the Class, and appointing Plaintiff's counsel as Class counsel;

B. For an order awarding Plaintiff and the members of the Class damages and restitution;

C. For an order enjoining Defendant from continuing to engage in the unlawful and unfair business acts and practices as alleged herein;

D. For restitution of the funds which were unjustly enriched by Defendant, at the expense of the Plaintiff and Class Members.

E. For an order awarding Plaintiff and the members of the Class pre- and post-judgment interest;

F. For an order awarding attorneys' fees and costs of suit, including experts' witness fees as permitted by law; and

G. Such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury for all of the claims asserted in this Complaint so triable.

Respectfully submitted,

FINKELSTEIN & KRINSK LLP

Dated: October 8, 2014

By: /s/ Mark L. Knutson

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CIVIL COVER SHEET

(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
OMARI , BOBO, individually and on behalf of all other similarly situated,

(b) San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) (Firm Name, Address, and Telephone Number)
Finkelstien & Krinsk LLP, Jeffery Krinsk, Mark Knutson, William Restis, Trenton R. Kashima (admission pending), 501 West Broadway, Ste. 1250, T: 619.238.1333, F: 619.238.5425

DEFENDANTS
OPTIMUM NUTRITION, INC. , a Delaware Corporation,

DuPage, IL
(IN U.S. PLAINTIFF CASES ONLY)

(If Known)

'14CV2408 BEN KSC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

(U.S. Government Not a Party)

(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
	X				
					X

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
	PERSONAL INJURY	PERSONAL INJURY			
				PROPERTY RIGHTS	
		PERSONAL PROPERTY	LABOR	SOCIAL SECURITY	
					X
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		FEDERAL TAX SUITS	
		Habeas Corpus:			
		Other:	IMMIGRATION		

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

X 1 Original Proceeding | 2 Removed from State Court | 3 Remanded from Appellate Court | 4 Reinstated or Reopened | 5 Transferred from another district (specify) | 6 Multi-District Litigation | 7 Appeal to District Judge from Magistrate Judge

VI. CAUSE OF ACTION (Do not cite jurisdictional statutes unless diversity)
28 U.S.C. 1446 (CAFA)
California State law claims based on alleged violation of federal food-labeling laws.

VII. REQUESTED IN COMPLAINT: X CLASS ACTION DEMAND $ JURY DEMAND: X

VIII. RELATED CASE(S) IF ANY (See instructions):

10/08/2014 /s/ Mark L. Knutson

FOR OFFICE USE ONLY

EXHIBIT 6

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Attorneys for Plaintiffs
and the Putative Classes

[Additional Counsel Listed On Signature Page]

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

OMARI BOBO, individually and on behalf of all others similarly situated,

Plaintiff,

v.

WOODBOLT DISTRIBUTION, LLC, d/b/a Cellucor and Nutrabolt, a Delaware limited liability company,

Defendant.

Case No: **'16CV0032 BEN DHB**

CLASS ACTION COMPLAINT FOR:

1. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17500, *et seq.*;**
2. **VIOLATION OF CAL. CIV. CODE §§ 1750, *et seq.*;**
3. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.***
4. **BREACH OF EXPRESS WARRANTY;**
5. **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY; AND**
6. **NEGLIGENT MISREPRESENTATION**

JURY TRIAL DEMANDED

Plaintiff Omari Bobo ("Plaintiff") individually and on behalf of all others similarly situated, based on the investigation of counsel and his own individual knowledge as to Plaintiff's own circumstances, hereby complains against defendant Woodbolt Distribution, LLC., doing business as Cellucor and Nutrabolt, ("Defendant" or "Woodbolt") as follows:

I. INTRODUCTION

1. Defendant Woodbolt sells the popular Cellucor branded dietary supplements, which include the Alpha Amino: Performance Aminos; Alpha Amino Extreme: Performance Aminos; NO3 Chrome: Nitric Oxide Pump Amplifier; CN3: Strength & Pump Amplifier; C4: Pre-Workout Explosive Energy; C4 Extreme: Pre-Workout; C4 Mass: Pre-Workout Explosive Energy; C4 Neuro: Pre-Workout Explosive Energy; C4 On The Go: Pre-Workout Explosive Energy; and C4 50X: Pre-Workout Supplements (collectively the "Class Products"). These supplements contain Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate, newly formulated ingredients that chemically fuse an amino or organic acid with a nitrate to purportedly increase these ingredients' effectiveness.

2. The safety of these ingredients, however, has not been established by any scientific measure. Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate are New Dietary Ingredients, not previously existing in the food supply, and federal law requires that Defendant provides the Food and Drug Administration ("FDA") with adequate evidence that such ingredients do not present a significant or unreasonable risk of illness or injury before these ingredients can be lawfully sold in any dietary supplement. Defendant has not provided this information to the FDA and has not conducted any studies to establish the innocuous nature of these new ingredients.

3. Additionally, the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained within Defendant's supplements are advertised as providing consumers substantial benefits, but ultimately do not deliver. Defendant advertises and labels that the Class Products, because of their use of unique and novel ingredients, will

increase strength, endurance, muscle mass, and overall performance, and/or will be better absorbed by the body. Industry research establishes that these "cutting-edge" ingredients do not provide the benefits advertised. Rather, the benefits of these new dietary ingredients are, at best, unknown or, alternatively, inferior to their traditional counterparts. Simply put, Defendant has not substantiated the Class Products are efficacious or even safe for consumption.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to the Class Action Fairness Act, 28 U.S.C. §§1332(d), 1446, and 1453(b). Plaintiff alleges that he and the Class members are citizens of different states from Defendant, and the cumulative amount in controversy for Plaintiff and the Class exceeds $5 million, exclusive of interest and costs.

5. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because many of the acts and transactions giving rise to the violations of law complained of herein occurred in this District, and because Defendant:

(a) conducts business itself or through agent(s) in this District, by advertising, marketing, distributing and/or manufacturing its products in this District; and/or

(b) is licensed or registered to conduct business in this District; and/or

(c) otherwise maintains sufficient contacts within this District to justify Defendant being fairly brought into Court in this District.

III. PARTIES

6. Plaintiff Omari Bobo is, and at all times relevant hereto was, a resident and a citizen of California. Plaintiff purchased Defendant's C4 Pre-Workout Explosive Energy in late 2013 at a 24 Hour Fitness Balboa Super Sport store located in San Diego, California. Plaintiff relied, in part, on the representations made on the Defendant's supplements' label when purchasing Defendant's products, and believe such representations to be true. Plaintiffs believed that by marketing, distributing, and

selling the Class Products as dietary supplements, Defendant had followed the legally required regulatory procedures and that the Products were established as effective and safe for human consumption. Had Plaintiff known that the Class Products were not safe or that Defendant's marketing and labeling statements were false, he would not have purchased Defendant's products.

7. Defendant Woodbolt Distribution, LLC., doing business as Cellucor, is a Delaware limited liability corporation having its headquarters in Bryan, Texas. Woodbolt manufactures, markets, advertises, distributes, and/or sells the Cellucor branded supplements, including the Class Products, throughout the United States, including California.

IV. SUBSTANTIVE ALLEGATIONS

8. As noted above, the Class Products contain New Dietary Ingredients – Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate. The term "New Dietary Ingredient" is a term of legal art and is any ingredient contained in, or for use in, a dietary supplement that was not previously marketed in a dietary supplement, in the United States, before October 15, 1994. *See* section 413(d) of the Federal Food, Drug, and Cosmetic Act (the "FDCA"), *codified at* 21 U.S.C. 350b(d). There is no authoritative list of dietary ingredients that were marketed in dietary supplements prior to October 15, 1994. Therefore, manufacturers and distributors are necessarily responsible for determining if an ingredient is a "New Dietary Ingredient."

9. The FDCA provides that a supplement containing a New Dietary Ingredient can only be marketed or sold if it meets one of two requirements:

> (1) The dietary supplement contains only dietary ingredients which have been present in the food supply as an article used for food in a form in which the food has not been chemically altered [or]
>
> (2) There is a history of use or other evidence of safety establishing that the dietary ingredient when used under the conditions recommended or suggested in the labeling of the dietary supplement will reasonably be expected to be safe and, at least 75 days before being introduced or delivered for introduction into interstate commerce, the manufacturer or distributor of the dietary ingredient or dietary supplement provides the FDA with information, including any citation to published articles, which

> is the basis on which the manufacturer or distributor has concluded that a dietary supplement containing such dietary ingredient will reasonably be expected to be safe.

21 U.S.C. § 350b(a). A producer or distributor of a dietary supplement cannot rely on a "75-Day Premarket Notification" from another manufacturer of a dietary supplement that contains the same dietary ingredient. Nonetheless, even if a 75-Day Premarket Notification of New Dietary Ingredient is provided to the FDA, the New Dietary Ingredient must still meet the requirements of 21 U.S.C. § 342(f) – that is the ingredient must be demonstrably established as safe for human consumption. If either the 75-Day Premarket Notification is not provided or the New Dietary Ingredient does not satisfy the requirements of 21 U.S.C. § 342(f), the product containing the New Dietary Ingredient is deemed adulterated and thus has no economic value as it cannot be sold in the United States.

10. The labeling adhered to each of the Class Products confirms that the Class Products are intended to be sold as a dietary supplements. The patent for creating Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate was only filed in 2007, and these ingredients were not used or marketed in dietary supplements before this date. Accordingly, Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate are New Dietary Ingredients as defined by federal regulations. Despite the fact that they are New Dietary Ingredients, Woodbolt has not provided the FDA with the required 75-Day Premarket Notification establishing Leucine Nitrate's, Creatine Nitrate's, and Arginine Nitrate's harmless use in food products/supplements or any other evidence of these New Dietary Ingredients' safety. This lack of compliance with the FDCA's clear requirements renders the Class Products adulterated.

11. There are significant and genuine concerns regarding the safety of these New Dietary Ingredients. The patent holder of these nitrate hybrids – ThermoLife International, LLC – filed a 75-Day Premarket Notification to the FDA for Creatine Nitrate but not for any of the amino acid nitrates. The 75-Day Premarket Notification for Creatine Nitrate was provided on February 3, 2011. The FDA responded on May

9, 2011 and voiced "significant concerns" about the evidence upon which ThermoLife relied when concluding that Creatine Nitrate was a safe additive. The FDA further stated that the product "may be adulterated under 21 U.S.C. § 342(f)(1)(B) as a dietary supplement that contains a new dietary ingredient for which there is inadequate information to provide reasonable assurance that such ingredient does not present a significant or unreasonable risk of illness or injury."

12. Concerns have also been raised about the other amino acid nitrates – such as Leucine Nitrate and Arginine Nitrate. Leucine Nitrate and Arginine Nitrate are chemically processed in the same manner as the Creatine Nitrate and has the same purported physiological properties. Accordingly, the FDA's stated reservations regarding Creatine Nitrate equally apply to Leucine Nitrate and Arginine Nitrate as no safety studies have ever been conducted on these ingredients to dispel the safety concerns. Nonetheless, the FDA's apprehensions remain unaddressed. The addition of Nitrates to Leucine, Creatine and Arginine, as understood by reference to Defendant's marketing and the relevant patent, should promote enhanced Nitric Oxide (NO) production in the human body and there by acting as a vasodilator – a substance that dilates blood vessels. Vasodilators, however, are within a powerful class of drugs known to decrease blood pressure and they are reported to have a number of side effects including chest pain, rapid heartbeat (tachycardia), heart palpitations, nausea, vomiting, dizziness, and headache. Thus, if Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate actually have the properties and characteristics claimed, then Defendant should have known that there is sufficient health risk that must be properly addressed and studied.

13. Indeed, Defendant recognizes the potential adverse effects of the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate in its products. The label on many of the Class Products, and Defendant' own website, contains the following disclaimer:

> Do not use this product if you are pregnant, nursing, or are currently taking nitrates for chest pain or if you are taking medication used to treat erectile dysfunction such as PDE-5 inhibitors. Before using this product,

> consult a licensed, qualified, healthcare professional, including but not limited to, if: you are taking antidepressants such as MAOI (Monoamine Oxidase Inhibitor) or SSRI, blood thinners, nonsteroidal anti-inflammatory drugs, pseudoephedrine, or you are taking any other dietary supplement, prescription drug or over-the-counter medication; or if, you suspect you have or have been treated for, diagnosed with or have a family history of, any medical condition, including but not limited to: high or low blood pressure, diabetes, glaucoma, anxiety, cardiovascular, psychiatric or seizure disorders, cardiac arrhythmia, stroke, heart, liver, kidney or thyroid disease, or difficulty urinating due to prostate enlargement.

This disclaimer acknowledges that vasodilators, including Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate, can seriously affect the human body and are not ingredients generally safe for human consumption – given the number of contraindications which covers a majority of the general consuming population.

14. Despite Defendant's actual knowledge of the potential dangers and side effects of the ingredients in its products, Defendant has failed to provide any evidence of the safety of the Class Products to the FDA. Accordingly, the Class Products are adulterated and may not be sold as dietary supplements. As adulterated supplements have no economic value and are worthless as a matter of law, consumer purchasers of the adulterated supplements are entitled to a restitution/refund of the purchase price of the Class Products.

15. Also, because of the lack of peer reviewed research, it is unknown if the addition of Nitrates to Leucine, Creatine, and Arginine provides any benefit over raw Leucine, Creatine, or Arginine. Defendant, nonetheless, advertises its use of "Creative Nitrate" because of its name is similar to Creatine Monohydrate (commonly known as "Creatine") – a popular supplement for those seeking to gain muscle mass and increase strength. Creatine Nitrate, however, is not the same as Creatine Monohydrate and it is unknown if Creatine Nitrate confers a single health benefit (let alone a substantial increase) over its more common Monohydrate cousin. Studies conducted on the effectiveness of Creatine Nitrate have been inconclusive, or show that the Creatine Nitrate is not as efficacious as Creatine Monohydrate.

16. Similarly, no scientific evidence supports that Defendant's inclusion of

Leucine Nitrate and Arginine Nitrate in the Class Products provides any additional benefit to consumers. A recent study suggests otherwise; "[t]hough raw arginine may significantly increase vessel diameter compared to placebo at 30 minutes post-exercise, arginine peptide induced significantly higher percent change values for blood flow volume compared to raw Arginine, placebo and arginine nitrate at specific time points, and therefore may be the best option for increased blood flow." Simply bonding a nitrate to Leucine, Creatine or Arginine has no effect on the effectiveness of these ingredients.

17. Defendant's failure to substantiate the safety of the Class Products is a violation of 21 U.S.C. 342(f)(1)(B), making the Products adulterated. Additionally, Defendant's misrepresentations regarding the safety and effectiveness of the Creatine Nitrate, Leucine Nitrate, and Arginine Nitrate in the Class Products are unauthorized under California law, portions of which parallels the FDCA through the "Sherman Law", Health & Safety Code § 109875 *et seq.* The Sherman Law explicitly incorporates by reference "[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the FDCA," as the food labeling regulations of California Health & Safety Code, § 110100, subd. (a).

18. Had Plaintiffs and putative Class members known the true nature of the Class Products, including that they had not been established as safe through required regulatory fillings to the FDA, they would not have purchased such Products. Accordingly, Plaintiffs and other Class members have been, and continue to be, harmed by Defendant's misrepresentations.

V. CLASS ALLEGATIONS

19. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23 for the following Class of persons:

> All persons who, within four (4) years of the filing of this Complaint, purchased from a retailer located in California any dietary supplement, manufactured, distributed, or sold by Defendant that contained Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate for personal or household use.

Excluded from the Class are all legal entities, Defendant herein and any person, firm, trust, corporation, or other entity related to or affiliated with Defendant, as well as any judge, justice or judicial officer presiding over this matter and members of their immediate families and judicial staff.

20. Plaintiff reserves the right to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified.

21. While the exact number of Class members is unknown to Plaintiff at this time, and will be ascertained through appropriate discovery, Plaintiff are informed and believe that there are tens of thousands of members in the proposed Class. The number of individuals who comprise the Class is so numerous that joinder of all such persons is impracticable and the disposition of their claims in a class action, rather than in individual actions, will benefit both the parties and the courts.

22. Plaintiff's claims are typical of the claims of the other members of the Class. All members of the Class have been and/or continue to be similarly affected by Defendant's wrongful conduct as complained of herein, in violation of federal and state law. Plaintiff is unaware of any interests that conflict with or are antagonistic to the interests of the Class.

23. Plaintiff will fairly and adequately protect the Class members' interests and have retained counsel competent and experienced in consumer class action lawsuits and complex litigation. Plaintiff and his counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff is aware of their duties and responsibilities to the Class.

24. Defendant has acted with respect to the Class in a manner generally applicable to each Class member. Common questions of law and fact exist as to all Class members and predominate over any questions wholly affecting individual Class members. There is a well-defined community of interest in the questions of law and

fact involved in the action which affect all Class members. Among the questions of law and fact common to the Class are, *inter alia*:

a) Whether the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained in the Class Products are a new dietary ingredient which has not been present in the food supply as an article used for food in a form in which the food has not been chemically altered;

b) Whether Defendant provided the FDA with a proper 75-Day Premarket Notification for Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained in the Class Products;

c) Whether the Class Products are adulterated supplements;

d) Whether Defendant's sale of the Class Products constitutes unfair methods of competition and unfair or deceptive acts or practices in violation of, *inter alia*, CAL. CIV. CODE §§ 1770 *et seq.*, including:

(i) Whether Defendant misrepresents the source, sponsorship, approval, or certification of the Class Products;

(ii) Whether Defendant misrepresents that the Class Products have benefits which they do not have;

(iii) Whether Defendant represents that the Class Products are of a particular standard or quality if it is of another; and

(iv) Whether Defendant advertises the Class Products with intent not to sell them as advertised;

e) Whether Defendant's sale of the Class Products constitutes misleading and deceptive advertising under, *inter alia*, CAL. BUS. & PROF. CODE § 17500.

f) Whether Defendant's sale of the Class Products constitutes "unlawful," "unfair," or "fraudulent" business acts or practices under, inter alia, CAL. BUS. & PROF. CODE §§ 17200 et seq., including:

(i) Whether Defendant's sale of the Class Products constitutes

"unlawful" or "unfair" business practices by violating the public policies set out in CAL. BUS. & PROF. CODE §§ 1770 *et seq.*, CAL. BUS. & PROF. CODE §§ 17500 and other California and federal statutes and regulations;

(ii) Whether Defendant's sale of the Class Products is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers;

(iii) Whether Defendant's sale of the Class Products constitutes an "unfair" business practice because consumer injury outweighs any countervailing benefits to consumers or competition, and because such injury could not be reasonably avoided by consumers; and

(iv) Whether Defendant's mischaracterization of the Class Products products constitutes a "fraudulent" business practice because members of the public are likely to be deceived;

g) Whether Defendant's sale of adulterated supplements constitutes a breach of express warranty;

h) Whether Defendant's sale of adulterated supplements constitutes a breach of implied warranty of merchantability;

i) The nature and extent of damages, restitution, equitable remedies, and declaratory and injunctive relief to which Plaintiff and the Class are entitled; and

j) Whether Plaintiff and the Class should be awarded attorneys' fees and the costs of suit.

25. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members to individually redress the wrongs done to them. There will be no difficulty in managing this action as a class action.

26. Defendant has acted on grounds generally applicable to the entire Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

FIRST COUNT

Violation of CAL. BUS. & PROF. CODE §§ 17500, *et seq.* - Untrue, Misleading and Deceptive Advertising (On Behalf of the Class)

27. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

28. At all material times, Defendant engaged in a scheme of offering the Class Products for sale to Plaintiff and other members of the Class by way of, *inter alia*, commercial marketing, and advertising, internet content, product packaging and labelling, and other promotional materials.

29. These materials, advertisements and other inducements misrepresented and/or omitted the true approval, contents, and benefits of Defendant's products as alleged herein. Said materials, advertisements, and other inducements were directed at consumers in the State of California by Defendant.

30. Defendant's advertisements and other inducements come within the definition of advertising as contained in CAL. BUS. PROF. CODE §§ 17500, *et seq.*, in that such promotional materials were intended as inducements to purchase Defendant's products and are statements disseminated by Defendant to Plaintiff and other members of the Class.

31. Defendant knew, or in the exercise of reasonable care should have known, that the statements made in advertisements and other inducements regarding the Class Products were false, misleading, and/or deceptive. Defendant has no evidence to substantiate the safety of its use of Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate in its product and the effectiveness of these same ingredients.

32. Defendant did not file the required 75-Day Premarket Notification for the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained in the Class

Products, and should have known that it was not entitled to sell these Products in the United States.

33. Consumers, including Plaintiff and members of the Class necessarily and reasonably relied on Defendant's representations that their products were safety, effective, and could be legally sold as dietary supplements. The falsity and misleading nature of Defendant's statements could not be discovered based on common knowledge and/or by examining face of the Class Product's labels. Consumers, including Plaintiff and members of the Class were among the intended targets of Defendant's representations.

34. The above acts of Defendant, in disseminating said misleading and deceptive statements throughout the State of California, including to Plaintiff and members of the Class, were and are likely to deceive reasonable consumers by obfuscating the true nature, safety, and approval of the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate in Defendant's products, and thus are violations of CAL. BUS. PROF. CODE §§ 17500, *et seq*.

35. Plaintiff and Class members were harmed and suffered injury as a result of Defendant's violations of the CAL. BUS. PROF. CODE §§ 17500, *et seq*. Defendant has been unjustly enriched at the expense of Plaintiff and the members of the Class.

36. Accordingly, Plaintiff and members of the Class seek injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Adulterated food products cannot legally be manufactured, held, advertised, distributed or sold. Thus, an adulterated supplement has no economic value and is worthless as a matter of law, and purchasers of adulterated supplement are entitled to a restitution refund of the purchase price of the supplement.

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SECOND COUNT

Violation of CAL. CIV. CODE §§ 1750, *et seq.* - Consumer Legal Remedies Act (On Behalf of the Class)

37. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

38. 70. Defendant's supplements are a "good" as defined by California Civil Code section 1761(a).

39. Defendant is a "person" as defined by California Civil Code §1761(c).

40. Plaintiff and Class members are "consumers" within the meaning of California Civil Code section 1761(d) because they purchased the Class Products for personal, family or household use.

41. The sale of the Class Products to Plaintiff and Class members is "transaction" as defined by California Civil Code §1761(e).

42. By failing to provide the FDA with the required 75-Day Premarket Notification for the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained in the Class Products needed to lawfully and safely sell the Class Products, Defendant violated California Civil Code section 1770(a)(2), (5), (7) and (9), as it misrepresented the standard, quality, sponsorship, approval, and/or certification of its products.

43. Additionally, the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained in the Class Products does not deliver the benefits stated. Therefore, Defendant violated California Civil Code section 1770(a)(2), (5), (7) and (9), as it misrepresented the standard, quality, sponsorship, approval, and/or certification of its products.

44. As a result of Defendant's conduct, Plaintiff and Class members were harmed and suffered actual damages as a result of Defendant's unfair competition and deceptive acts and practices. Had Defendant disclosed the true nature and/or not falsely represented the Class Products, Plaintiff and the Class would not have been

misled into purchasing Defendant's products, or, alternatively, pay significantly less for them.

45. Additionally, adulterated supplements cannot legally be manufactured, held, advertised, distributed or sold. Thus, adulterated supplements have no economic value and are worthless as a matter of law, and purchasers of misbranded food are entitled to a refund of the purchase price of the adulterated supplements.

46. Plaintiff, on behalf of himself and all other similarly situated California consumers, and as appropriate, on behalf of the general public of the State of California, seeks injunctive relief prohibiting Defendant continuing these unlawful practices pursuant to California Civil Code § 1782(a)(2).

47. Plaintiff provided Defendant with notice of its alleged violations of the CLRA pursuant to California Civil Code § 1782(a) *via* certified mail, demanding that Defendant correct such violations concurrently with the filing of this complaint. If Defendant fails to adequately respond to Plaintiff's notice within 30 days, Plaintiff will amend this complaint, and seek all available damages under the CLRA for all violations complained of herein, including, but not limited to, statutory damages, punitive damages, and any other relief that the Court deems proper.

THIRD COUNT

Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* - Unlawful Business Acts and Practices (On Behalf of the Class)

48. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

49. The Sherman Law, HEALTH & SAF. CODE §§ 109875 *et seq.*, broadly prohibits any adulterated food products or dietary supplements. California has adopted federal food and dietary supplement laws and regulations as its own, and as the Sherman Law expressly incorporates, "[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the federal act, in effect on

January 1, 1993, or adopted on or after that date" as "the food labeling regulations of this state" including, but not limited to, 21 U.S.C. § 342(f)(1)(B).

50. The California Civil Code § 1770(a)(2), (5), (7) and (9) also prohibits mislabeling food misrepresenting the standard, quality, sponsorship, approval, and/or certification of food products, as noted in above.

51. The business practices alleged above are unlawful under Business and Professional Code §§ 17500, *et seq.*, California Civil Code §§ 1770(a)(2), (5), (7) and (9) and the Sherman Law, each of which forbids the untrue, fraudulent, deceptive, and/or misleading marketing, advertisement, packaging and labelling of food products and dietary supplements.

52. Defendant's sale of the Class Products violates 21 U.S.C. § 342(f)(1)(B) which require Defendant to establish the safety of the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate contained in the Class Products and file a 75-Day Premarket Notification with the FDA. Defendant's failure to do so renders the Class Products adulterated under federal and corresponding state law.

53. Plaintiff and Class members were harmed and suffered injury as a result of Defendant's violations of the CAL. BUS. PROF. CODE §§ 17200, *et seq.* Defendant has been unjustly enriched at the expense of Plaintiff and the members of the Class.

54. Accordingly, Plaintiff and members of the Class seek injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Adulterated supplements cannot legally be manufactured, held, advertised, distributed or sold. Thus, adulterated supplements have no economic value and are worthless as a matter of law, and purchasers of adulterated supplements are entitled to a restitution refund of the purchase price of the Class Products.

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FOURTH COUNT

Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* - Unfair Business Acts and Practices (On Behalf of the Class)

55. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

56. Plaintiff and other members of the Class who purchased the Class Products suffered a substantial injury by virtue of buying a product that misrepresented the true nature of the Class products, as alleged herein. Had Plaintiff and members of the Class known that Defendant's materials, advertisement and other inducements misrepresented the true benefits of its products, they would not have purchased said products. Additionally, the Class Products are adulterated under federal law, and may not be purchased and sold.

57. Defendant's actions alleged herein violate the laws and public policies of California and the United States, as set out preceding paragraphs of this Complaint.

58. There is no benefit to consumers or competition by allowing Defendant to sell adulterated supplements and deceptively market, advertise, package and label its products.

59. Plaintiff and Class members who purchased the Class Products had no way of reasonably knowing that these products were deceptively marketed, advertised, packaged and labeled, and/or adulterated. Thus, Plaintiff and Class members could not have reasonably avoided the injury they suffered.

60. The gravity of the harm suffered by Plaintiff and Class members who purchased the Class Products outweighs any legitimate justification, motive or reason for marketing, advertising, packaging and labeling the adulterated Products in a deceptive and misleading manner. Accordingly, Defendant's actions are immoral, unethical, unscrupulous and offend the established public policies as set out in federal regulations and state law and is substantially injurious to Plaintiff and members of the Class.

61. Plaintiff and Class members were harmed and suffered injury as a result of Defendant's violations of the CAL. BUS. PROF. CODE §§ 17200, *et seq.* Defendant has been unjustly enriched at the expense of Plaintiff and the members of the Class.

62. Accordingly, Plaintiff and members of the Class seek injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Adulterated food products cannot legally be manufactured, held, advertised, distributed or sold. Thus, adulterated food has no economic value and is worthless as a matter of law, and purchasers of adulterated food are entitled to a restitution refund of the purchase price of the Class Products.

FIFTH COUNT

Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* - Fraudulent Business Acts and Practices (On Behalf of the Class)

63. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

64. The acts of Defendant as described above constitute a fraudulent business practice under Business and Professional Code §§ 17200, *et seq.*

65. As more fully described above, Defendant does not state that the Class Products are adulterated under federal law, and may not be purchased and sold.

66. Defendant's misleading marketing, advertising, packaging, and labeling are likely to, and do, deceive reasonable consumers. Indeed, Plaintiffs were deceived about the approval and benefits of Defendant's products, as Defendant's marketing, advertising, packaging, and labeling of its products misrepresents the true nature of the Leucine Nitrate, Creatine Nitrate, and Arginine Nitrate in the Class Products. Said acts are fraudulent business practice and acts.

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67. Defendant's misleading and deceptive practices caused Plaintiff to purchase Defendant's products and/or pay more than he would have otherwise had he known that the Class Products are adulterated under federal law.

68. Plaintiff and Class members were harmed and suffered injury as a result of Defendant's violations of the CAL. BUS. PROF. CODE §§ 17200, *et seq.* Defendant has been unjustly enriched at the expense of Plaintiff and the members of the Class.

69. Accordingly, Plaintiff and members of the Class seek injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Adulterated food products cannot legally be manufactured, held, advertised, distributed or sold. Thus, adulterated food has no economic value and is worthless as a matter of law, and purchasers of adulterated food are entitled to a restitution refund of the purchase price of the Class Products.

SIXTH COUNT

Breach of Implied Warranty of Merchantability (On Behalf of the Class)

70. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

71. Defendant is a merchant with regards to the dietary supplements it regularly markets and sells to consumers within California.

72. At the time Defendant marketed, distributed, and sold the Class Products to Plaintiff and other members of the Class, Defendant knew of the intended, reasonably foreseeable and/or ordinary use of its dietary supplements and warranted that the Class Products was merchantable, safe and fit for such use.

73. Members of the consuming public, including consumers such as Plaintiff, were intended beneficiaries of the warranty.

74. Plaintiff, and other members of the Class, in purchasing the Class Products, reasonably relied upon the skill and judgment of Defendant as to whether the Class Products was of merchantable quality and safe for its intended, reasonably foreseeable and/or ordinary use.

75. Defendant breached the implied warranty of merchantability by failing to deliver that is generally acceptable in trade and/or was not fit for the ordinary purposes for which such goods are used because the Class Products are adulterated under federal law and may not be sold or possessed in the United States.

76. Defendant's breach of the implied warranty of merchantability was the direct and proximate cause of Plaintiff's injury

77. As a result of Defendant's breach of warranty, Plaintiffs and each of the members of the Class have been damaged in the amount of the purchase price of the Product and any consequential damages resulting from the purchases.

SEVENTH COUNT

Breach of Express Warranty (On Behalf of the Class)

78. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

79. Plaintiff, and each member of the Class, formed a contract with Defendant at the time Plaintiffs and the other Class members purchased the Products. The terms of the contract includes representations made by Defendant on the Products' packaging and through marketing and advertising, as described above. This labeling, marketing and advertising constitute express warranties and became part of the basis of bargain, and are part of the standardized contract between Plaintiffs and the members of the Class and Defendant.

80. Defendant breached express warranties about the Product because Defendant's representations about the Product were false and the Products do not conform to Defendant's affirmations and promises described above.

81. Defendant warranted that the Class Products were Dietary Supplements, which could be used, possessed, and purchased in the United States. They were not.

82. Plaintiffs and each of the members of the Class would not have purchased the Products had they known the true nature of the Class Products.

83. Defendant's breach of the breach of its express warranty was the direct and proximate cause of Plaintiff's injury

84. As a result of Defendant's breach of warranty, Plaintiffs and each of the members of the Class have been damaged in the amount of the purchase price of the Product and any consequential damages resulting from the purchases.

EIGHTH COUNT

Negligent Misrepresentation (On Behalf of the Class)

85. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

86. Defendant has a duty, as a manufacturer, distributor, and retailer of dietary supplements, to comply with the applicable laws governing the production and distribution of dietary supplements.

87. Defendant states on each of the Class Products, that such products are "dietary supplements" and can be possessed, used, and sold as such.

88. Plaintiff and other members of the Class relied on Defendant's representations that the Class Products were indeed dietary supplements, which may be sold and possessed in the United States and are safe to be used as such. This reliance was reasonable, as a rational consumer would only purchase products deemed safe for human consumption and approved to be sold as dietary supplements in the United States.

89. However, the Class Products were not dietary supplements approved for use in the United States, but were instead considered misbranded and adulterated

under federal law. Accordingly, the Class Products cannot be possessed, sold, or used as dietary supplements.

90. Defendant knew, or with reasonable care should have known, that its products were not dietary supplements approved for use in the United States, but were considered misbranded and adulterated under federal law.

91. As a result of Defendant's misrepresentation, Plaintiffs and each of the members of the Class have been damaged in the amount of the purchase price of the Product.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class pray for relief and judgment as follows:

A. For an order declaring that this action is properly maintained as a class action and appointing Plaintiffs as representatives for the Class, and appointing Plaintiffs' counsel as Class counsel;

B. That Defendant bear the costs of any notice sent to the Class;

C. For an order awarding Plaintiffs and the members of the Class actual damages, restitution and/or disgorgement;

D. For an order requiring Defendant to pay punitive and statutory damages, as allowable by law, to Plaintiffs and the other members of the Classes;

E. For an order enjoining Defendant from continuing to engage in the unlawful and unfair business acts and practices as alleged herein;

F. For an order awarding Plaintiffs and the members of the Class pre- and post-judgment interest;

G. For an order awarding attorneys' fees and costs of suit, including expert witnesses fees as permitted by law; and

H. Such other and further relief as this Court may deem just and proper.

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VII. JURY TRIAL DEMAND

Plaintiffs demand a trial by jury for all of the claims asserted in this Complaint so triable.

DATED: January 6, 2016

Respectfully submitted,

FINKELSTEIN & KRINSK LLP

By: /s/ Trenton R. Kashima
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DECLARATION OF OMARI BOBO

I, Omari Bobo, declare and state as follows:

1. I am a plaintiff in the above captioned case alleging a violation of the Consumer Legal Remedies Act.

2. The Defendant in this action, Woodbolt Distribution, LLC., is doing business in San Diego County, California. Namely, Defendant Woodbolt Distribution, LLC. distributes, sells, or offers its Cellucor or Nutrabolt branded products for sale in San Diego County, California. Indeed, I purchased Defendant's products in San Diego County.

3. The transaction that gives rise the cause of action under Consumer Legal Remedies Act, as set forth in the attached Complaint, occurred in San Diego County.

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

Executed this 31 th day of December, 2015, in San Diego, California

Omari Bobo