UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

ADAM MIRABELLA, on behalf of himself and all others similarly situated,

Plaintiffs,

vs.

VITAL PHARMACEUTICALS, INC, a Florida corporation, doing business as **VPX,**

Defendant.

CLASS ACTION COMPLAINT FOR EQUITABLE RELIEF AND DAMAGES

Plaintiff, ADAM MIRABELLA, ("Plaintiff"), by and through his attorneys, brings this action on behalf of himself and all others similarly situated against Defendant VITAL PHARMACEUTICALS, INC, a Florida corporation, doing business as VPX. ("VPX" or "Defendant"), wherein Plaintiff hereby alleges as follows:

INTRODUCTION

1. Defendant sells a variety of energy supplements under the brand name of Redline® (the "Product"), which are dangerous, sold pursuant to deceptive and unfair practices, and not fit for their intended purpose.

2. The Product is intended to safely provide energy. However, it instead causes adverse health effects. Plaintiff, and all other similarly situated consumers, did not bargain for adverse health effects in exchange for their payment of the purchase price.

3. Several adverse reactions have been reported from consumers who have purchased and ingested the Product, including, but not limited to, chills, excessive sweating,

vomiting, convulsions, chest pain, and rapid heartbeat. Consumers of the Product, including Plaintiff, have been hospitalized after consuming the Product.

4. Defendant had and has actual knowledge of the Product's shortcomings, but has failed to act to adequately warn consumers of the unfitness of the Product, the extreme adverse side effects associated with the Product, or provide adequate relief to the putative Class of consumers who purchased the Product.

5. Plaintiff contends that the Product does not work as impliedly warranted and as a result, misleads consumes into purchasing it under fraudulent circumstances.

6. All allegations herein are based on information and belief and/or are likely to have evidentiary support after reasonable opportunity for further investigation and discovery.

PARTIES

7. Plaintiff Adam Mirabella is an individual who resides in the State of Texas, in Williamson County. He purchased the Product; REDLINE Xtreme® Energy Drink Watermelon Flavor, a predominately red-colored bottle labeled, on or about July 20, 2012, at an Exxon gas station, located in Cedar Park, Texas.

8. Plaintiff purchased the Product to obtain energy; however, it caused him to suffer adverse health effects requiring hospitalization, and therefore was not suited for the implied purpose the Product was sold.

9. Defendant Vital Pharmaceuticals, Inc. is a Florida corporation doing business as, and selling the Product under, the trademark name of VPX. Defendant lists with the Florida Secretary of State a principle place of business located at 1600 North Park Drive, Weston, Florida 33326, and a registered agent for serviced of process by the name of John H. Owoc, also at 1600 North Park Drive, Weston, Florida 33326. For purposes of diversity, Defendant is a

"citizen" of the State of Florida. Defendant owns and maintains an interactive website, *http://www.vpxsports.com*, which is accessible to citizens of this judicial district, and which sells the Product in this jurisdiction and in this judicial district.

10. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, that Defendant and its employees, subsidiaries, affiliates and other related entities, were, at all times relevant herein, agents, servants and employees of each other, and at all times herein mentioned, each was acting within the purpose and scope of said agency and employment.

11. Whenever reference in this Complaint is made to any act or transaction of Defendant, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of Defendant committed, knew of, performed, authorized, ratified and/or directed such act or transaction on behalf of Defendant while actively engaged in the scope of their duties.

VENUE AND JURISDICTION

12. This Court has jurisdiction over the subject matter presented by this Complaint because it is a class action arising under the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the Plaintiff class is a citizen of a state different from any Defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5,000,000, exclusive of interest and costs.

13. Plaintiff alleges that the total claims of individual members of the Class in this action are in excess of $5,000,000 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). Plaintiff is a citizen of the State of Florida, and as set forth above,

Defendant is a citizen of the State of Florida. Therefore, diversity of citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A).

14. Furthermore, Plaintiff alleges that more than two-thirds of all of the members of the proposed Plaintiff Class in the aggregate are citizens of a state other than Florida, where this action is originally being filed, and that the total number of members of the proposed Plaintiff Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B). In fact, there are well over thousands, and even millions of consumers affected by the purchase of the Product as herein described.

15. Venue in this district is proper pursuant to 28 U.S.C. §1391(a) because Defendant conducts business within, may be found in, and is subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

16. Defendant sells a variety Redline® energy drinks and other forms of the Product under the names: REDLINE® RTD, REDLINE PRINCESS® REDLINE Power Rush® REDLINE Xtreme® REDLINE® Concentrate and REDLINE® GEL CAPS.

17. The Product contains the following ingredients: anhydrous caffeine, evodiamine, tyrosine, yerba mate extract, green tea extract, 5-HTP, vinpocetine, and yohimbine. These ingredients are notable for the adverse effects they cause to humans that go well beyond the Product's goal of energy enhancement:

a. Yohimbine is a stimulant that has been used in the treatment of posttraumatic stress disorder to aid recall of traumatic memories.[1] It can be dangerous if used in excessive amounts; side effects at certain doses include rapid heart rate, high blood pressure, overstimulation, insomnia, panic attacks, hallucinations, headaches, dizziness, and skin flushing.[2]

1. Approaches to the treatment of PTSD, *http://www.traumatherapie.de/users/vanderkolk/kolk2.html.*

2. Prescription for Nutritional Healing, fourth edition, Phyllis A. Balch, CNC.

b. Vinpocetine is a semisynthetic derivative alkaloid of vincamine,[3] an extract from the periwinkle (plant) Vinca minor. It has been reported to have cerebral blood-flow enhancing[4] and neuroprotective effects,[5] and is used in Eastern Europe to treat cerebrovascular disorders and age-related memory impairment.[6] Side effects include nausea, dizziness, anxiety, facial flushing, insomnia, headache, drowsiness and dry mouth; it may also cause a temporary drop in blood pressure.[7]

c. Tyrosine is one of the amino acids the body uses to synthesize proteins. In the adrenal gland, it is converted to levodopa. Tyrosine increases plasma neurotransmitter levels (particularly dopamine and norepinephrine)[8] but has little if any effect on mood.[9]

d. 5-Hydroxytryptophan (or 5-HTP) is a naturally occurring amino acid marketed in the United States and other countries as a dietary supplement for use as an

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3. IUPAC-IUBMB Joint Commission on Biochemical Nomenclature (1983). "Nomenclature and Symbolism for Amino Acids and Peptides". Recommendations on Organic & Biochemical Nomenclature, Symbols & Terminology. *http://www.chem.qmul.ac.uk/iupac/AminoAcid/.*

4. Leathwood PD, Pollet P (1982). "Diet-induced mood changes in normal populations". Journal of psychiatric research (2): 147–54. Doi:10.1016/0022-3956(82)90016-4. PMID 6764931. Journal of Neurological Sciences 2005 Mar 15; 229-230:275-84. Epub 2005 Jan 8. PMID: 15760651.

5. Dézsi L, Kis-Varga I, Nagy J, Komlódi Z, Kárpáti E. "[Neuroprotective effects of vinpocetine in vivo and in vitro. Apovincaminic acid derivatives as potential therapeutic tools in ischemic stroke]." Acta Pharmaceutica Hungarica 2002; 72(2):84-91. 12498034.

6. "Vinpocetine. Monograph." Alternative Medicine Review 2002 Jon's(3):240-3, pp. 240. PMID: 12126465.

7. *http://altmedicine.about.com/od/herbsupplementguide/a/vinpocetine.htm.*

8. Rasmussen DD, Ishizuka B, Quigley ME, Yen SS (1983). "Effects of tyrosine and tryptophan ingestion on plasma catecholamine and 3,4-dihydroxyphenylacetic acid concentrations". J. Clin. Endocrinol. Metab. (4): 760–3. PMID 6885965.

9. Leathwood PD, Pollet P (1982). "Diet-induced mood changes in normal populations". Journal of psychiatric research (2): 147–54. doi:10.1016/0022-3956(82)90016-4. PMID 676493; Deijen JB, Orlebeke JF (1994). "Effect of tyrosine on cognitive function and blood pressure under stress". Brain Res. Bull. (3): 319–23. doi:10.1016/0361-9230(94)90200-3. PMID 8293316; Lieberman HR, Corkin S, Spring BJ, Wurtman RJ, Growdon JH (1985). "The effects of dietary neurotransmitter precursors on human behavior". Am J Clin Nutr. (2): 366–370. PMID 4025206.

> antidepressant, appetite suppressant, and sleep aid. 5-HTP has not been thoroughly studied in a clinical setting, therefore, possible side effects and drug interactions are not well known. Evidence indicates possible side effects that include heart valve damage or disease.[10]

18. Plaintiff has conducted a good faith investigation and acted with due diligence prior bringing this action, by preliminarily retaining expert, Sheri Zidenberg-Cherrr, Ph.D., a Nutrition Science Specialist, and Chair of the Graduate Group in Nutritional Biology at the University of California at Davis. Dr. Zidenberg-Cherr conducted a thorough examination of the Product and its ingredients. Plaintiff intends to establish through the expert testimony of Dr. Zidenberg-Cherr that:

a. The American Beverage Association has defined energy drinks as "non-alcoholic beverages that are specifically marketed with an energizing effect and a unique combination of characterizing ingredients;

b. Companies, such as VPX, have the choice to label an energy drink a beverage or liquid supplement, and VPX labels the Product as a supplement;

c. Because VPX labels and advertises the Product as a supplement, it should follow FDA guidance and regulations for labeling of supplements;

d. The product is inadequately labeled because the print and type size is not prominent, not conspicuous, and not easy to read. Additionally, the letters are not the appropriate height, width, or color contrast. Moreover, the Product fails to adequately warn the consumer of its dangers;

e. The Redline Extreme Product provides a tremendous amount of information on the label making it difficult to read. The supplement facts label lists the

10. *Id.*

ingredients, including that it contains a proprietary blend. The letters are small, and in some cases smaller than that required by the FDA. Even more disconcerting is the information provided on the warning section of the label. The words blend together and are difficult to read. They are also less than the required height and dot follow a straight line. Included in this section are warnings that Dr. Zidenberg-Cherr could only read with a magnifying glass.

f. In addition to improper labeling, the combination of the Product's ingredients makes it unfit for human consumption. First, reported adverse effects seen with caffeine in the quantities present in the Product include insomnia, nervousness, headaches, and tachycardia, which disrupts normal heart rate function.

g. In addition to caffeine, the Product contains Yerba Mate. The chief alkaloid in this herb is also caffeine. The caffeine concentration added to the Product is not possible to discern,

h. Yohimbine HCI is also an active ingredient. Yohimbe bark contains the primary active ingredient, Yohimbine. This is considered a prescription drug in North America. Consumption of this drug is not appropriate for unsupervised use due to potentially severe side effects linked to irregular or rapid heartbeat, kidney failure, seizure, heart attack and other serious conditions such as upset stomach, tremor, anxiety or agitation, high blood pressure, a racing heartbeat, dizziness, and nausea. Taking high doses can causes difficulty breathing, heart problems, and death. When Yohimbine interacts with the other ingredients found in the Product, the recipe can cause serious problems including increased heart rate and dangerously high blood pressure.

i. Green Tea is another active ingredient, and is a further source of caffeine in the Product. Green tea extracts can cause serious side effects resulting in acute liver toxicity, and the inclusion of this ingredient amplifies all of the harmful effects.

j. 5-HTP is another active ingredient. 5-HTP increases the production of the chemical, serotonin. Health professionals do not recommend the use of 5-HTP and it is considered unsafe. The combination of 5-HTP with the other ingredients in the product put the consumer at risk of excessive serotonin levels.

k. Vinpocetine is another synthetic compound in the Product. It is sold a prescription drug in Germany under the brand name Cavinton. Its side effects include excessive bleeding.

l. In addition to caffeine intoxication, consumption of energy drinks has been linked to seizures, hypertension, acute mania, and stroke. The risks for serious adverse effects of caffeine are higher when combined with physical activity, since the adrenergic effects and diuretic and natriuretic actions may be exaggerated. Despite this risk, VPX encourages consumers to ingest the Product prior to performing physical activity.

m. The high doses of caffeine in combination with the other ingredients, with unknown safety profiles, mandates urgent research on the safety of the Product.

n. Studies show that increased resting heart rate, systolic blood pressure and episodes of atrial fibrillation after the consumption of Red Bull and Sugar Free Red Bull, both containing only 80 mg of caffeine per serving; many of the Redline Product's contained 150-300 mg of caffeine per serving.

o. There is evidence that consumption of the Product can pose substantial risk to individuals, especially those with hypertension and pre-existing cardiovascular problems. Often time, these conditions are unrecognized, thus individuals are not aware that they should avoid the Product. Regardless, reports indicate that even those without previously diagnosed risk factors have suffered negative consequences following consumption of the Product.

19. Redline is sold in convenience stores and other outlets, as well as online. In stores, it is sold alongside other energy drinks, canned iced teas and soft drinks.

20. As noted above, persons who have consumed the Product have reported a range of adverse side effects, including, but not limited to, chills, excessive sweating, vomiting, convulsions, chest pains, and rapid heartbeat. California's poison control center toxicologists have reported similar problems among people who drank Redline. One analysis of ten Redline intoxication calls revealed that the patients, nine of whom were male, ranged in ages from 13 to 53. Some had ingested Redline's powdered concentrate, which contains 250 milligrams of caffeine per teaspoon; six had consumed just one 8-ounce can of the ready-to-drink variety. Complaints included nausea, vomiting, rapid heartbeat, hypertension, tremors, dizziness and chest pain.

21. Despite having knowledge of the severity of these adverse effects, Defendant continues to market and sell the Product without a proper and adequate warning, and without modifying the Product so it is fit for human consumption. Defendant's website even acknowledges that "exceeding recommended serving may cause adverse health effects." The Product contains a dangerous combination of ingredients that render it unfit for human consumption.

22. Defendant presents itself as a reputable, reliable and safe manufacturer, and Plaintiff relied on this and other implied representations by Defendant in purchasing and using the Product.

23. Plaintiff was induced to purchase the Product based on the Product's implied representation that it would safely provide energy so long as the consumer used the Product as directed.

24. Plaintiff has suffered economic damages as a result of purchasing the Product, in that, among other things, he spent money on a Product that didn't work—and therefore lacked the value he had been led to believe the Product had—and for which he paid in the purchase price of the Product.

25. Rather than receive energy, after consuming one serving of the Product exactly as directed on the Product's label, Plaintiff sustained severe adverse health effects. Up to ten hours after Plaintiff consumed one serving of the Product his heart continued race at an excessive rate, he suffered extreme chest pain that felt like a heart attack, he lost sensation in his hands, and he had extreme nausea. He required hospitalization in the emergency room, and required sedation for two days to allow his heart to recuperate after ingesting the Product. The emergency room doctor advised that the Product's adverse side effects resembled a cocaine overdose. The doctor further advised that Plaintiff can no longer drink any kind of energy drink whatsoever, as his body risks suffering a relapse. Plaintiff's mother notified the Defendant of the adverse side effects via e-mail, on August 8, 2012.

26. An average and reasonable consumer would not expect the Product to inflict such adverse side effects when consumed as instructed. VPX's labeling and advertisements convey a series of implied claims and/or omissions which it knows are material to the reasonable

consumer, and which it intended for consumers to rely upon when choosing to purchase the Product. VPX's inadequate labeling is an unfair deception because VPX knows the Product contains a combination of ingredients that render it unfit for safe use and that reasonable consumers have suffered severe adverse side effects from, yet it fails to take any corrective measures to adequately warn consumers or modify the product. A lack of adequate warning of the severity of the adverse side effects is material to the average consumer.

27. Plaintiff would not have purchased the Product had he known the truth about it.

CLASS ALLEGATIONS

28. Plaintiff incorporates all previous paragraphs alleged in this Complaint as if fully alleged herein.

29. Plaintiff brings this action on behalf of himself and all other similarly situated consumers pursuant to Federal Rules of Civil Procedure 23(a) and 23(b). The Class of persons whom Plaintiffs seek to represent is defined as:

a) All United States persons who, within the applicable statute of limitations, purchased the REDLINE® Product, for personal use and not resale.

b) Plaintiff reserves the right to broaden or narrow the Class after a reasonable opportunity to conduct discovery.

c) Excluded from the Class is VPX, any parent, subsidiary or affiliate of VPX, any entity in which VPX has a controlling interest, and the respective officers, directors, employees, agents, legal representatives, heirs, predecessors, successors, and assigns of such excluded persons or entities.

30. Plaintiff and Class members are so numerous that joinder of all members individually, in one action or otherwise, is impracticable.

31. There are questions of law and fact common to the Class.

32. Plaintiff's claims are typical of the claims of other Class members. The named Plaintiff is a member of the Class of affected consumers described herein.

33. The named Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity with all of the obligations and duties material thereto. Plaintiff will fairly and adequately protect the interests of the Class and has no interests adverse to or which directly and irrevocably conflict with the interests of other members of the Class.

34. The self interests of the named Class representatives are co-extensive with, and are not antagonistic to, those of the absent Class members. The proposed representative will undertake to represent and protect the interests of the absent Class members.

35. The named Plaintiff has engaged the services of counsel indicated below. Counsel are adequately experienced in complex class action litigation, will effectively prosecute this action, and will assert and protect the rights of, and otherwise will represent the named Class representative and absent Class members.

36. This action is also appropriate as a class action pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

37. This action involves questions of law and fact common to Plaintiff and all members of the Class. These common questions predominate over any issues affecting individual members of the Class and include:

a) Whether VPX engaged in unfair methods of competition; unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of its labeling and advertising of the Product;

b) Whether VPX materially misrepresented that the Product was safe to consume even though it has harmful and adverse effects;

c) Whether VPX knew that the Product has harmful effects;

d) Whether Plaintiff and Class members are entitled to injunctive relief enjoining VPX from continuing to fail to disclose that the Product has severe adverse and harmful effects that may require hospitalization;

e) Whether VPX should be made to engage in a corrective advertising campaign advising consumers that the Product has the adverse and harmful effects; and

f) Whether Plaintiff and Class Members have been harmed and the proper measure of relief.

38. Judicial determination of the common legal and factual issues essential to this case would be far more efficient and economical as a class action than in piecemeal individual determinations.

39. There is no plain, speedy or adequate remedy other than by maintenance of this lawsuit as a class action because individual damages are relatively small, making it economically infeasible for Class members to pursue remedies individually.

40. The prosecution of separate actions by individual members of the Class, even if theoretically possible, would create a risk of inconsistent or varying adjudications with respect to individual Class members against VPX and would establish incompatible standards of conduct for VPX.

41. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

a) Given the complexity of issues involved in this action and the expense of litigating the claims, few, if any, Class members could afford to seek legal redress individually for the wrongs that VPX committed against them, and absent Class members have no substantial interest in individually controlling the prosecution of individual actions;

b) When VPX's liability has been adjudicated, claims of all Class members can be determined by the Court;

c) This action will cause an orderly and expeditious administration of the Class claims and foster economies of time, effort and expense, and ensure uniformity of decisions; and

d) Without a class action, many Class members would continue to suffer injury, and GNC's violations of law will continue without redress while GNC continue to reap and retain the substantial proceeds of its wrongful conduct.

42. Plaintiff knows of no difficulty that will be encountered in the management of this litigation, which would preclude its maintenance as a class action.

43. VPX has acted on grounds applicable to the Class generally; therefore, Plaintiff seek equitable and injunctive relief on behalf of the entire Class on grounds generally applicable to the entire Class.

COUNT I
VIOLATIONS OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, FLA. 501.201, *ET SEQ.*

44. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs one (1) through forty-three (43) of this Complaint as if fully set forth herein.

45. VPX violated Florida's Deceptive and Unfair Trade Practices Act by engaging in unfair methods of competition, unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of its business.

46. The material misrepresentations and omissions alleged herein constitute deceptive and unfair trade practices, in that they were intended to and did deceive Plaintiff and the general public, particularly young adults, into believing that the Product was safe to consume when used as directed, when, in fact, as set forth in detail above, it had severe harmful, hidden effects including, but not limited to, heart palpitations, nausea, chills, excessive sweating, vomiting, convulsions, chest pain, and loss of sensation in the extremities.

47. As a result of consuming the Product, Plaintiff became ill and required hospitalization. Upon information and belief, the cause of Plaintiff's injuries resulted from consumption of the Product. There was no and/or and inadequate warning/disclaimer on the Product informing Plaintiff of the severity of the adverse health effects, the potential for hospitalization, the true strength of the Product, the dangers of consuming the Product without supervision, or the steps to take in the event the adverse side effects do not subside. Moreover, Defendant encourages consumers to ingest the Product prior to physical activity, despite the fact that Defendant knows that physical activity intensifies the adverse health effects and increases the likelihood of a severe reaction.

48. Had Plaintiff and Class members known the Product was not safe when consumed, in that it had such harmful effects, they would not have purchased the Product.

49. As a result of VPX's deceptive and unfair acts, Plaintiff and Class members have been damaged in the amount of the difference between the premium price paid for the Product and the price they would have paid had they known that the Product was not fit when consumed in that it had such harmful effects.

50. VPX's conduct offends established public policy, and is immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers.

51. Plaintiff and Class members are entitled to damages in an amount to be proven at trial, but not less than the difference between the premium price paid for the Product and the price they would have paid had they known that the Product was not safe when consumed in that it had such harmful effects.

52. VPX should also be ordered to cease its deceptive advertising, and should be made to engage in a corrective advertising campaign, to inform consumers that the Product is not safe when consumed in that it has said adverse and harmful effects.

COUNT II
UNJUST ENRICHMENT

53. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs one (1) through forty-three (43) of this Complaint as if fully set forth herein.

54. Plaintiff and Class members conferred a benefit on VPX by purchasing the Product at a premium price.

55. VPX received the money paid by Plaintiff and Class members and thus knew of the benefit conferred upon them.

56. VPX accepted and retained the benefit in the amount of the profits it earned from sales to Plaintiff and Class members.

57. VPX has profited from its unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiff and Class members, under circumstances in which it would be unjust for VPX to be permitted to retain the benefit.

58. As a result of consuming the Product, Plaintiff became ill and was hospitalized. Upon information and belief, the cause of Plaintiff's injuries resulted from consumption of the Product.

59. There was no and/or and inadequate warning/disclaimer on the Product informing Plaintiff of the severity of the adverse health effects, the potential for hospitalization, the true strength of the Product, the dangers of consuming the Product without supervision, or the steps to take in the event the adverse side effects do not subside. Moreover, Defendant encourages consumers to ingest the Product prior to physical activity, despite the fact that Defendant knows that physical activity intensifies the adverse health effects and increases the likelihood of a severe reaction.

60. Plaintiff (alternatively) does not have an adequate remedy at law against VPX.

61. Plaintiff and Class members are entitled to restitution of the excess amount paid for the Product, over and above what they would have paid had they known that the Product was not safe when consumed in that it had harmful.

COUNT III
BREACH OF IMPLIED WARRANTY OF FITNESS FOR PURPOSE

62. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs one (1) through forty-three (43) of this Complaint as if fully set forth herein.

63. Plaintiff and other members of the Class sought an energy enhancing product. In doing so, Plaintiff and other Members of the Class reasonably relied on Defendant's skill and judgment to select and furnish suitable goods for that purpose, and on or about that time, Defendant sold the Product to Plaintiff and other members of the Class.

64. At the time of sale, Defendant had reason to know the particular purpose for which the goods were required, to safely provide energy prior to physical activity, and that Plaintiff and members of the Class were relying on Defendant's skill and judgment to select and furnish suitable and harmless goods, so that there was an implied warranty that the goods were fit for this purpose.

65. However, Defendant breached the warranty implied at the time of sale in that Plaintiff and members of the Class did not receive suitable goods, and the goods were not fit for the particular purpose for which they were made, as set forth above.

66. As a proximate result of this breach of warranty by Defendant, Plaintiff and members of the Class have suffered actual damages in an amount to be determined at trial, in that they were induced to purchase a product they would not have purchased had they known the true facts about, and that lacks the value Defendant represented the Product had, which was reflected in the purchase price.

COUNT IV
BREACH OF IMPLIED WARRANTY OF MERCHANTIBILITY

67. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs one (1) through forty-three (43) of this Complaint as if fully set forth herein.

68. Plaintiff and other members of the Class sought an energy enhancing product. In doing so, Plaintiff and other Members of the Class reasonably relied on Defendant's skill and

judgment to select and furnish suitable goods for that purpose, and on or about that time, Defendant sold the Product to Plaintiff and other members of the Class.

69. At the time of sale, Defendant had reason to know the of the intended purpose for which the goods were required (to safely provide energy), and that Plaintiff and members of the Class were relying on Defendant's skill and judgment to select and furnish suitable and harmless goods, so there was an implied warranty that the goods were fit for this intended purpose.

70. However, Defendant breached the warranty implied at the time of sale in that Plaintiff and members of the Class did not receive suitable goods, and the goods were not reasonably fit for the intended purpose for which they were made, as set forth above.

71. As a proximate result of this breach of warranty by Defendant, Plaintiff and members of the Class have suffered actual damages in an amount to be determined at trial, in that they were induced to purchase a product they would not have purchased had they known the true facts about, and that lacks the value Defendant represented the Product had, which was reflected in the purchase price.

COUNT V
VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT (15 U.S.C. §§ 2301 *et seq.*).

72. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs one (1) through forty-three (43) of this Complaint as if fully set forth herein.

73. Defendant has breached implied warranties regarding the Product, as described in paragraphs sixty-two (62) through seventy-one (71), Counts III and IV above. Plaintiff re-alleges and incorporates by reference the allegations in said paragraphs, as if fully set forth herein.

74. Plaintiff and the Class are consumers as defined in 15 U.S.C. § 2301(3).

75. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4)(5).

76. The Product is a consumer product as defined in 15 U.S.C. § 2301(6).

77. By reason of Defendant's breach of the above implied warranty of fitness for particular purpose and breach of the implied warranty of merchantability, Defendant has violated the statutory rights due to Plaintiff and members of the Class pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C.§§ 2301 *et seq.*, thereby economically damaging Plaintiff and the Class. The Act is intended to increase the enforceability of these warranties.

78. Therefore, Plaintiff and the Class seek all available remedies, damages, and awards under the Magnuson-Moss Warranty act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray this Court:

1. Certify this action as a Plaintiff class action, and appointing Plaintiff as class representative with Plaintiff's counsel as Lead Interim Counsel;

2. Award actual and compensatory damages as to all Counts where such relief is permitted;

3. Enjoin VPX's unlawful conduct found to be in violation of FDUTPA, and order VPX to engage in a corrective advertising and labeling/disclosure campaign;

4. Award equitable monetary relief, including restitution;

5. Award pre-judgment and post-judgment interest at the legal rate;

6. Award Plaintiff and Class members the costs of this action, including reasonable attorney's fees and expenses; and

7. Award such other and further legal and equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

DATED: October 23, 2012

Respectfully Submitted,

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