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[Additional Counsel Listed on Signature Page]

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

KUUMBA MADISON, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

VITAL PHARMACEUTICALS, INC.,  
d/b/a VPX Sports, a Florida corporation

Defendant.

Civil Action No.: \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

1  
2 Plaintiff Kuumba Madison (“Plaintiff”), through his undersigned attorneys,  
3 Barbat, Mansour & Suciu PLLC, Kohn, Swift & Graf, P.C. and Greg Coleman  
4 Law, brings this Class Action Complaint against Defendant VITAL  
5 PHARMACEUTICALS INC., d/b/a VPX Sports (“Defendant”), individually and  
6 on behalf of all others similarly situated, and complains and alleges upon personal  
7 knowledge as to himself and his own acts and experiences and, as to all other  
8 matters, upon information and belief, including investigation conducted by his  
9 attorneys:  
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11

**NATURE OF THE ACTION**

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14 1. Defendant formulates, manufactures, advertises and sells the popular  
15 “BANG” branded caffeinated and non-caffeinated energy drink products  
16 (collectively the “Products”) throughout the United States, including in California.  
17 Defendant markets its Products in a systematically misleading manner, by  
18 misrepresenting that its Products contain ingredients that they do not in fact  
19 contain, and that the ingredients are potent, when in fact they are present, if at all,  
20 in doses so low as to be ineffective (the “Misrepresentations”).  
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23  
24 2. Because Defendant’s sales are driven by consumers seeking these  
25 ingredients and their purported effects, Defendant prominently advertises their  
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1 presence in its Products on the Products themselves, as well as in its' marketing.

2 3. Plaintiff and each of the Class members accordingly suffered an injury  
3 in fact caused by the false, fraudulent, unfair, deceptive, and misleading practices  
4 set forth herein, and seek compensatory damages, statutory damages, and  
5 declaratory and injunctive relief.  
6

7 **JURISDICTION AND VENUE**  
8

9 4. This Court has original jurisdiction over this controversy pursuant to  
10 28 U.S.C. § 1332(d). The amount in controversy in this class action exceeds  
11 \$5,000,000, exclusive of interest and costs, and there are numerous Class members  
12 who are citizens of states other than Defendant's states of citizenship.  
13

14 5. This Court has personal jurisdiction over Defendant in this matter.  
15 The acts and omissions giving rise to this action occurred in the state of California.  
16 Defendant has been afforded due process because it has, at all times relevant to this  
17 matter, individually or through its agents, subsidiaries, officers and/or  
18 representatives, operated, conducted, engaged in and carried on a business venture  
19 in this state and/or maintained an office or agency in this state, and/or marketed,  
20 advertised, distributed and/or sold products, committed a statutory violation within  
21 this state related to the allegations made herein, and caused injuries to Plaintiff and  
22 putative Class Members, which arose out of the acts and omissions that occurred in  
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1 the state of California, during the relevant time period, at which time Defendant  
2 was engaged in business activities in the state of California.

3 6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)  
4 and (c) because a substantial part of the events or omissions giving rise to  
5 Plaintiff's claims occurred in this District and because Defendant transacts  
6 business and/or has agents within this District and has intentionally availed itself of  
7 the laws and markets within this district.  
8  
9

10 **PARTIES**

11 7. Plaintiff Madison Kuumba is a citizen of California who resides in  
12 Santa Ramon, California. Plaintiff purchased BANG from vitaminshoppe.com on  
13 June 14, 2018. Prior to purchase, Plaintiff carefully read the BANG labeling,  
14 including the representation that it contained "CREATINE," "BRANCHED  
15 CHAIN AMINO ACIDS," and "COENZYME Q<sub>10</sub>." Plaintiff understood this to  
16 mean that the BANG contained these ingredients, and moreover that the Products  
17 contained them in dosages that were "POTENT" as claimed both on the front of  
18 the Product label, as well as on the back. Plaintiff relied on these claims in that he  
19 would not have purchased BANG, or would have only been willing to pay a  
20 substantially reduced price for BANG, had he known that this representation was  
21 false and misleading.  
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1 8. Defendant Vital Pharmaceuticals, Inc. d/b/a VPX Sports is a Florida  
2 corporation with its principal place of business at 1600 North Park Drive, Weston,  
3 FL 33326.  
4

5 **FACTUAL ALLEGATIONS**

6 9. At all relevant times, Defendant has marketed its BANG Products in a  
7 consistent and uniform manner relating to both ingredients, potency, and effect.  
8 Defendant sells BANG Products in all 50 states on its website and through various  
9 distributors.  
10

11 10. Defendant labels and advertises all of its BANG Products in a manner  
12 that leads consumers to believe that they fuel the brain and body and that, unlike  
13 the competition, it is an honest company that accurately represents the products'  
14 ingredients and efficacy. Contrary to these representations, as shown below,  
15 testing commissioned by Plaintiff's attorney confirms that the products do not  
16 contain the represented ingredients and potency. Such representations constitute  
17 an express warranty regarding the Products' content.  
18  
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20

21 **Defendant's Deceptive Advertising and Labeling**

22 11. On its website, Defendant represents that all of its "raw materials are  
23 received into the warehouse, quarantined, and then tested for efficacy in our own  
24 state of the art laboratories to ensure we only provide the end-consumer with the  
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28

1 best product possible.” Jack Owec, the CDEO of BANG, states on the website  
2 that:

### 3 **Supplement Scams Costing you Money and Muscle!**

4  
5 As previously mentioned, *one of the reasons I entered into the*  
6 *supplement industry was my disgust for unscrupulous supplement*  
7 *manufacturers who were intentionally mislabeling their supplements*  
8 *and ripping the public off.* However, let’s be crystal clear; my broader  
9 vision was to create supplements that were super potent and highly  
10 effective – supplements so effective that they had the power to  
11 positively impact lives and radically improve health in a very short  
12 period of time.

13 Surprisingly, supplements aren’t much better today than they were 24  
14 years ago. Almost every single sports nutrition company offers a  
15 worthless, muscle-destroying pre-workout called a “concentrate”. It is  
16 a rigged system where the health food or online store collaborate to  
17 push a concentrate on you because of the massive profit that they  
18 make at your expense! You lose both money and muscle, while they  
19 profit handsomely. It is not just the small companies either that are  
20 ripping you off. One of the biggest protein manufacturers in the world  
21 was recently tested to be 30% under protein claimed on the label and  
22 also contained 30% of what I refer to as “non-protein filler”. Compare  
23 that to our **SRO™ Zero Carb® Protein** which contains the highest  
24 protein content per pound and per ounce! Further scams are evident  
25 by the largest seller of ready to drink protein beverages that tested  
26 32% under label claim. This is insane my friends. There is a willful  
27 and purposeful intent to rip you off. *Worse yet, you have to wonder*  
28 *what the hell is in these products that you are drinking that isn’t*  
*protein!*

### 23 **Quality Control: Truth in Labeling**

24 This is why VPX/Bang/Redline does things differently! *All of our raw*  
25 *materials are received into the warehouse, quarantined, and then*  
26 *tested for efficacy in our own state of the art laboratories to ensure*  
27 *that we only provide the end-consumer with the best product possible.*

1 Raw materials are sampled and taken to the quality control lab for  
2 analysis. Our analysis of each ingredient is conducted by tests on  
3 several levels; first through our high-performance liquid  
4 chromatography (HPLC) units that confirm the identity and purity  
5 levels of the ingredient; and second, the physical characteristics of the  
6 compound are verified through our infrared spectroscopy (IR)  
7 machine. Once the test results meet our set release specifications and  
8 the supplier's certificate of analysis, the ingredient is released and can  
9 be utilized within manufacturing. Maintaining this high level of  
10 testing ensures that every VPX product is manufactured to its intended  
11 design and that we continually produce products that meet and exceed  
12 our customers' expectations.<sup>1</sup>

13  
14 12. Further, customers are told, on the BANG Product label: "Power up  
15 with BANG's potent brain & body-rocking fuel: Creatine, Caffeine, CoQ10 &  
16 BCAAs (Branched Chain Amino Acids)."

17  
18 13. The BANG Product labels also specifically state the provide "Potent  
19 Brain and Body Fuel," and the labels highlight the amount of Creatine, Branched  
20 Chain Amino Acids, and Coenzyme Q<sub>10</sub> contained within. Each Product lists those  
21 ingredients in circular fashion around the top lip of the Product container, again on  
22 the information panel, and a third time in the Nutrition Facts panel.

23  
24 14. Likewise, VPX's website tells users to "Power up with BANG's  
25 potent brain & body-rocking fuel: Creatine, Caffeine, & BCAAs (Branched Chain

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26 <sup>1</sup> <https://vpxsports.com/about-us/> (emphasis added) (last visited 10/12/18).

1 Amino Acids).”<sup>2</sup>

2 15. For each Product quantity (i.e. a pack of four, twelve, etc...), the  
3 VPXSports.com website repeats these claims of ingredients and potency.

4  
5 16. The BANG Products that repeat these claims are: Cotton Candy,  
6 Lemon Drop, Root Beer, Blue Razz, Sour Heads, Peach Mango, Star Blast, Power  
7 Punch, Champagne, Black Cherry Vanilla, Pina Colada, Purple Guava Pear, Citrus  
8 Twist, Purple Haze, Cherry Blade Lemonade, Lemon Drop Sweet Tea, Sweet Ice  
9 Tea, Rainbow Unicorn, Georgia Peach Sweet Tea, Sour Heads, Cotton Candy,  
10 Black Cherry Vanilla, Purple Guava Pear, and Cherry Blade Lemonade.

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13 17. The BANG ENERGY Instagram account includes a header that again  
14 touts the presence of these ingredients: “☼ Caffeine, Super Creatine, BCAAs,  
15 CoQ10”<sup>3</sup>

16  
17 18. The product description for BANG under Defendant’s VPX account  
18 on Amazon.com also repeats these claims: “Potent Brain & Body-Rocking  
19 Fuel: Creatine, Caffeine, Coq10 & Bcaas (Branched Chain Amino Acids).  
20 Benefits Contains Creatine, Caffeine, Coq10 And Bcaas”<sup>4</sup>

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22  
23 <sup>2</sup> [https://vpxsports.com/product/bang-12-pack/?doing\\_wp\\_cron=1539219060.9104490280151367187500](https://vpxsports.com/product/bang-12-pack/?doing_wp_cron=1539219060.9104490280151367187500) last visited October 10<sup>th</sup>, 2018.

24  
25 <sup>3</sup> <https://www.instagram.com/bangenergy/?hl=en> last visited October 11<sup>th</sup>, 2018.

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27 <sup>4</sup> [https://www.amazon.com/gp/product/B07GSCB9D9/ref=s9\\_dcacsd\\_dcoop\\_bw\\_cr\\_x\\_a\\_w](https://www.amazon.com/gp/product/B07GSCB9D9/ref=s9_dcacsd_dcoop_bw_cr_x_a_w) last accessed October 11<sup>th</sup> 2018.



1 19. Defendant's Product description on vitaminshoppe.com includes these  
2 same claims about ingredients, and potency.<sup>5</sup>

3 20. Creatine monohydrate is one of the most popular dietary supplements  
4 in the world and is believed to have a variety of beneficial effects on both physical  
5 performance and body composition.<sup>6</sup>

7 21. Creatine has been shown, in numerous scientific studies to increase  
8 strength and fat free mass. It has been shown beneficial in exercise modalities  
9 ranging from high-intensity sprints to endurance work. The mechanism of action is  
10 thought to be a result of the build-up of creatine stores in the body, which in turn  
11 allows for more rapid regeneration of adenosine triphosphate.<sup>7</sup>

12 22. Creatine monohydrate may also have beneficial effects on cognitive  
13 function in healthy populations, such as improving short-term memory and  
14 intelligence/reasoning<sup>8</sup>, and may show similar positive effects in diseased states

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19 <sup>5</sup> <https://www.vitaminshoppe.com/p/bang-citrus-twist-12-drinks/vz-2040> last accessed October  
20 15th, 2018.

21 <sup>6</sup> J. David Branch, *Effect of Creatine Supplementation on Body Composition and Performance: A  
22 Meta-analysis*, Int J Sport Nutr Exerc Metab. 2003 Jun;13(2):198-226.

23 <sup>7</sup> Cooper, Robert et al. *Creatine Supplementation with Specific View to Exercise/sports  
24 Performance: An Update*, Journal of the International Society of Sports Nutrition 9 (2012): 33.  
25 PMC. Web. 10 Oct. 2018.

26 <sup>8</sup> Avgerinos, et al., *Effects of creatine supplementation on cognitive function of healthy  
27 individuals: A systematic review of randomized controlled trials*, Experimental Gerontology,  
28 108, 166-173, 15 July 2018.

1 (such as Alzheimer’s, Huntington’s, and Parkinson’s) although more research is  
2 needed<sup>9</sup>.

3 23. Likewise, Coenzyme Q<sub>10</sub> has been implicated in ameliorating  
4 cognitive-related decline in diseased states<sup>10</sup>, but also in physical performance<sup>11</sup>,  
5 and the Mayo Clinic has noted that “it is believed that this supplement might  
6 improve your physical performance....<sup>12</sup>”  
7

8 24. Finally, Branched Chain Amino Acids have been shown to have  
9 beneficial effects on skeletal muscle such as reducing exercise-induced muscle  
10 damage and soreness<sup>13</sup>, as well as participating both directly and indirectly in  
11 numerous biochemical brain functions<sup>14</sup>.  
12

13 25. Defendant’s Products’ labels plainly state that they contain a “potent  
14  
15

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16 <sup>9</sup> Smith, Rachel N., Amruta S. Agharkar, and Eric B. Gonzales. *A Review of Creatine*  
17 *Supplementation in Age-Related Diseases: More than a Supplement for Athletes*, *F1000Research*  
18 3 (2014): 222. PMC. Web. 10 Oct. 2018.

19 <sup>10</sup> Hernández-Camacho, Juan D. et al., *Coenzyme Q10 Supplementation in Aging and Disease*,  
20 *Frontiers in Physiology* 9 (2018): 44. PMC. Web. 10 Oct. 2018.

21 <sup>11</sup> Fischer, Alexandra et al., *Coenzyme Q<sub>10</sub> Status as a Determinant of Muscular Strength in Two*  
22 *Independent Cohorts*, Ed. Gotthard Kunze. *PLoS ONE* 11.12 (2016): e0167124. PMC. Web. 10  
23 Oct. 2018.

24 <sup>12</sup> <https://www.mayoclinic.org/drugs-supplements-coenzyme-q10/art-20362602> last accessed  
25 October 9, 2018.

26 <sup>13</sup> Yoshiharu, S et al., *Nutraceutical Effects of Branched-Chain Amino Acids on Skeletal Muscle*,  
27 *The Journal of Nutrition*, Volume 136, Issue 2, 529S–532S, 2006.

28 <sup>14</sup> John D. Fernstrom, *Branched-Chain Amino Acids and Brain Function*, *The Journal of*  
*Nutrition*, Volume 135, Issue 6, 1539S–1546S, 2005

1 brain and body-rocking fuel: Creatine, Caffeine, CoQ10 & BCAAs (Branched  
2 Chain Amino Acids).” This representation is identical throughout all of  
3 Defendant’s BANG Products:  
4



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19 **BANG Product Testing Confirms Defendant’s Deception**

20 26. Contrary to Defendant’s uniform representations on the BANG  
21 Product labels, based upon testing commissioned by Plaintiff’s attorneys, the  
22 Products were shown not to contain Creatine. A true and correct copy of the  
23 Product testing commissioned by Plaintiff’s attorneys is attached hereto as **Exhibit**  
24  
25 **A.**  
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1           27. Based upon testing commissioned by Plaintiff's attorneys, the  
2 Products were shown not to contain Coenzyme Q<sub>10</sub>. A true and correct copy of the  
3 Product testing commissioned by Plaintiff's attorneys is attached hereto as **Exhibit**  
4 **B.**

5  
6           28. Based upon testing commissioned by Plaintiff's attorneys, the  
7 Products were shown to contain only .09g of the single Branched Chain Amino  
8 Acid Leucine. Isoleucine and Valine, the other Branched Chain Amino Acids,  
9 were not found. A true and correct copy of the Products testing commissioned by  
10 Plaintiff's attorneys is attached hereto as **Exhibit C.**

11  
12  
13 **Defendant's Deceptive Statements are Illegal**

14           29. Plaintiff and the Classes purchased and consumed the Products  
15 because they believed, based on the misleading product label and the information  
16 on Defendant's website, and identical misleading information listed on  
17 vitaminshoppe.com and other retailers' websites that the Products contained the  
18 ingredients stated on the Products' labeling and moreover that the Products  
19 contained them in dosages that were "POTENT" as claimed both on the front of  
20 the Products' label, as well as on the back.

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23           30. This clear mislabeling of the Products renders them misbranded.  
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1           31. Plaintiff and Class Members were, in fact, misled by Defendant’s  
2 representations regarding the true nature of the Products’ ingredients, efficacy, and  
3 value.

4           32. The difference between the Products promised and the Products sold  
5 is significant.

6           33. The efficacy—or lack thereof—of the Products has real impacts on  
7 the benefits provided to consumers by the Products and the actual value of the  
8 Products themselves.

9           34. Defendant’s deceptive statements violate the Food, Drug, and  
10 Cosmetic Act (“FDCA”), 21 U.S.C. § 343(a)(1), which deems food (including  
11 nutritional supplements) misbranded when the label contains a statement that is  
12 “false or misleading in any particular.”

13           35. Defendant’s conduct is also deceptive and unfair in that it violates the  
14 prohibition against false or misleading labeling under California’s Sherman Laws,  
15 which adopt the federal labeling regulations as the food labeling requirements of  
16 the state. Cal. Health & Safety Code § 110100.

17           36. The introduction of misbranded food into interstate commerce is  
18 prohibited under the FDCA and the parallel state statute cited in this Class Action  
19 Complaint.

1 37. Plaintiff and Class Members would not have purchased the Products  
2 or would have paid less for the Products if they were aware of the misleading  
3 labeling of the Products by Defendant.

4 38. Defendant intended for Plaintiff and the Class members to be  
5 deceived or misled.  
6

7 39. Defendant's deceptive and misleading practices proximately caused  
8 harm to the Plaintiff and the Class.  
9

10 40. Plaintiff and Class members would not have purchased the Products,  
11 or would have not paid as much for the Products, had they known the truth about  
12 the mislabeled and falsely advertised Products.  
13

14 **CLASS ACTION ALLEGATIONS**

15 41. Plaintiff brings this action individually and as representatives of all  
16 those similarly situated, pursuant to Federal Rule of Civil Procedure 23, on behalf  
17 of the below-defined Class:  
18

19 **National Class: All persons in the United States who purchased the**  
20 **Products.**

21 42. In the alternative, Plaintiff brings this action on behalf of the  
22 following State Class:  
23

24 **California State Class: All persons in the State of California who**  
25 **purchased the Products.**  
26

1 43. Excluded from the Classes are: (1) Defendant, and any entity in which  
2 Defendant has a controlling interest or which have a controlling interest in  
3 Defendant; (2) Defendant’s legal representatives, assigns and successors; and (3)  
4 the judge(s) to whom this case is assigned and any member of the judge’s  
5 immediate family.  
6

7 44. Plaintiff reserves the right to redefine the Class(es), and/or requests  
8 for relief.  
9

10 45. Certification of Plaintiff’s claims for class-wide treatment is  
11 appropriate because Plaintiff can prove the elements of his claims on a class-wide  
12 basis using the same evidence as would be used to prove those elements in  
13 individual actions alleging the same claims.  
14

15 46. The members of the proposed Class(es) are so numerous that joinder  
16 of all members is impracticable.  
17

18 47. The exact number of Class members is unknown. Due to the nature of  
19 the trade and commerce involved, as well as the number of online and direct  
20 complaints, Plaintiff believes the Class consists of thousands of consumers.  
21

22 48. Common questions of law and fact affect the right of each Class  
23 member, and a common relief by way of damages is sought for Plaintiff and Class  
24 members.  
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1           49. Common questions of law and fact that affect Class members include,  
2 but are not limited to:

- 3           a. Whether the Products, when used by consumers in a normal and  
4 customary manner and/or in accordance with Defendant’s suggested  
5 use, works as advertised, marketed, and conveyed to consumers;
- 6           b. Whether, in the course of business, Defendant represented that the  
7 Products have characteristics, uses, benefits, or qualities that they do  
8 not have when used by consumers in a normal and customary manner  
9 and/or in accordance with Defendant’s suggested use;
- 10           c. Whether the claims Defendant made and is making regarding the  
11 Products are unfair or deceptive; specifically, whether the Products  
12 contained the ingredients stated on the Products’ labeling and  
13 moreover that the Products contained them in dosages that were  
14 “POTENT” as claimed both on the front of the Products’ label, as  
15 well as on the back.
- 16           d. Whether Defendant knew at the time the consumer transactions took  
17 place that consumers would not receive the promised benefits of the  
18 Products that Defendant was claiming they would receive;
- 19           e. Whether Defendant knowingly made misleading statements in  
20 connection with consumer transactions that reasonable consumers  
21 were likely to rely upon to their detriment;
- 22           f. Whether Defendant knew or should have known that the  
23 representations and advertisements regarding the Products were  
24 unsubstantiated, false, and misleading;
- 25           g. Whether Defendant has breached express and implied warranties in  
26 the sale and marketing of the Products;
- 27           h. Whether Defendant’s conduct violates public policy;
- 28



- 1 i. Whether Defendant's acts and omissions violated the consumer fraud  
2 acts;
- 3 j. Whether Defendant has been unjustly enriched by the sale of the  
4 Products to the Plaintiff and the Class Members;
- 5 k. Whether Plaintiff and the Class Members did not receive the benefit  
6 of their bargain when purchasing the Products;
- 7 l. Whether the Plaintiff and the Class Members suffered monetary  
8 damages, and, if so, what is the measure of those damages;
- 9 m. Whether Plaintiff and the Class Members are entitled to an injunction,  
10 damages, restitution, equitable relief, and other relief deemed  
11 appropriate, and, if so, the amount and nature of such relief.

12 50. Defendant engaged in a common course of conduct giving rise to the  
13 legal rights sought to be enforced by Plaintiff, on behalf of himself and the other  
14 Class members. Similar or identical statutory and common law violations,  
15 business practices, and injuries are involved. Individual questions, if any, are pale  
16 by comparison, in both quality and quantity, to the numerous common questions  
17 that dominate this action.  
18

19  
20 51. Additionally, the factual basis of Defendant's conduct is common to  
21 all Class members and represents a common thread of misconduct resulting in  
22 injury and damages to all members of the Class.  
23

24 52. The named Plaintiff will fairly and adequately assert and protect the  
25 interests of the Class. Specifically, he has hired attorneys who are experienced in  
26  
27

1 prosecuting class action claims and will adequately represent the interests of the  
2 Class; and they have no conflict of interests that will interfere with the  
3 maintenance of this class action.

- 4
- 5 a. The common questions of law and fact set forth herein predominate  
6 over any questions affecting only individual Class members;
- 7 b. The Class is so numerous as to make joinder impracticable but not so  
8 numerous as to create manageability problems;
- 9 c. There are no unusual legal or factual issues which would create  
10 manageability problems, and depending on discovery, manageability  
11 will not be an issue as much information is solely in Defendant's  
12 possession;
- 13 d. Prosecution of separate actions by individual members of the Class  
14 would create a risk of inconsistent and varying adjudications against  
15 Defendant when confronted with incompatible standards of conduct;
- 16 e. Adjudications with respect to individual members of the Class could,  
17 as a practical matter, be dispositive of any interest of other members  
18 not parties to such adjudications, or substantially impair their ability  
19 to protect their interests; and
- 20 f. The claims of the individual Class members are small in relation to  
21 the expenses of litigation, making a Class action the only procedure in  
22 which Class members can, as a practical matter, recover. However,  
23 the claims of individual Class members are collectively large enough  
24 to justify the expense and effort in maintaining a class action.

25 **CAUSES OF ACTION**

26 **COUNT I**

27 **California's Unfair Competition Law**  
28 **Cal. Bus. & Prof. Code § 17200 et seq. ("UCL")**  
**(On Behalf of the California Class)**

1 53. Plaintiff re-alleges and incorporate by reference the allegations  
2 contained in Paragraphs 1 through 52, as though set forth fully herein.

3 54. The UCL prohibits any “unlawful, unfair or fraudulent business act or  
4 practice.” Cal. Bus. & Prof. Code § 17200.  
5

6 55. The acts, omissions, misrepresentations, practices, and non-  
7 disclosures of Defendant as alleged herein constitute business acts and practices.  
8

9 56. Unlawful: The acts alleged herein are “unlawful” under the UCL in  
10 that they violate at least the following laws:

- 11 a. The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 et seq.;
- 12 b. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.;
- 13 c. The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq.;
- 14 and  
15
- 16 d. The California Sherman Food, Drug, and Cosmetic Law, Cal. Health  
17 & Safety Code §§ 110100 et seq.

18 57. Unfair: Defendant’s conduct with respect to the labeling, advertising,  
19 and sale of the Products was “unfair” because Defendant’s conduct was immoral,  
20 unethical, unscrupulous, or substantially injurious to consumers and the utility of  
21 their conduct, if any, does not outweigh the gravity of the harm to their victims.  
22

23 58. Defendant’s conduct with respect to the labeling, advertising, and sale  
24 of the Products was and is also unfair because it violates public policy as declared  
25 by specific constitutional, statutory or regulatory provisions, including but not  
26

1 limited to the applicable sections of: the Consumers Legal Remedies Act, the False  
2 Advertising Law, the Federal Food, Drug, and Cosmetic Act, and the California  
3 Sherman Food, Drug, and Cosmetic Law.  
4

5 59. Defendant's conduct with respect to the labeling, advertising, and sale  
6 of the Products was and is unfair because the consumer injury was substantial, not  
7 outweighed by benefits to consumers or competition, and not one consumer  
8 themselves could reasonably have avoided.  
9

10 60. Fraudulent: A statement or practice is "fraudulent" under the UCL if  
11 it is likely to mislead or deceive the public, applying an objective reasonable  
12 consumer test.  
13

14 61. As set forth herein, Defendant's claims relating the ingredients stated  
15 on the Products' labeling and moreover that the Products contained them in  
16 dosages that were "POTENT" as claimed both on the front of the Products' label,  
17 as well as on the back are likely to mislead reasonable consumers to believe the  
18 product can provide the claimed benefits, when they cannot.  
19  
20

21 62. Defendant profited from its sale of the falsely, deceptively, and  
22 unlawfully advertised and packaged Products to unwary consumers.  
23

24 63. Plaintiff and Class Members are likely to continue to be damaged by  
25 Defendant's deceptive trade practices, because Defendant continues to disseminate  
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28

1 misleading information on the Products’ packaging. Thus, injunctive relief  
2 enjoining Defendant’s deceptive practices is proper.

3 64. Defendant’s conduct caused and continues to cause substantial injury  
4 to Plaintiff and the other Class Members. Plaintiff has suffered injury in fact as a  
5 result of Defendant’s unlawful conduct.  
6

7 65. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an  
8 order enjoining Defendant from continuing to conduct business through unlawful,  
9 unfair, and/or fraudulent acts and practices, and to commence a corrective  
10 advertising campaign.  
11

12 66. Plaintiff and the Class also seek an order for and restitution of all  
13 monies from the sale of the Products, which were unjustly acquired through acts of  
14 unlawful competition.  
15

16  
17 **COUNT II**  
18 **California’s False Advertising Law**  
19 **Cal. Bus. & Prof. Code § 17500 (“FAL”)**  
20 **(On Behalf of the California Class)**

21 67. Plaintiff incorporates paragraphs 1 through 52 as if fully set forth  
22 herein.

23 68. The FAL provides that “[i]t is unlawful for any person, firm,  
24 corporation or association, or any employee thereof with intent directly or  
25 indirectly to dispose of real or personal property or to perform services” to  
26

1 disseminate any statement “which is untrue or misleading, and which is known, or  
2 which by the exercise of reasonable care should be known, to be untrue or  
3 misleading.” Cal. Bus. & Prof. Code § 17500.  
4

5 69. It is also unlawful under the FAL to disseminate statements  
6 concerning property or services that are “untrue or misleading, and which is  
7 known, or which by the exercise of reasonable care should be known, to be untrue  
8 or misleading.” Id.  
9

10 70. As alleged herein, the advertisements, labeling, policies, acts, and  
11 practices of Defendant relating to the Products misled consumers acting reasonably  
12 as to the ingredients and effectiveness of the Products.  
13

14 71. Plaintiff suffered injury in fact as a result of Defendant’s actions as set  
15 forth herein because he purchased the Products in reliance on Defendant’s false  
16 and misleading labeling claims that the Products, among other things, that the  
17 Products contained the ingredients stated on the Products’ labeling and moreover  
18 that the Products contained them in dosages that were “POTENT” as claimed both  
19 on the front of the Products’ label, as well as on the back.  
20  
21

22 72. Defendant’s business practices as alleged herein constitute deceptive,  
23 untrue, and misleading advertising pursuant to the FAL because Defendant has  
24 advertised the Products in a manner that is untrue and misleading, which  
25  
26  
27  
28

1 Defendant knew or reasonably should have known, and omitted material  
2 information from its advertising.

3 73. Defendant profited from its sale of the falsely and deceptively  
4 advertised Products to unwary consumers.

6 74. As a result, Plaintiff, the California Class, and the general public are  
7 entitled to injunctive and equitable relief, restitution, and an order for the  
8 disgorgement of the funds by which Defendant was unjustly enriched.

10 75. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff, on behalf of  
11 himself and the California Class, seeks an order enjoining Defendant from  
12 continuing to engage in deceptive business practices, false advertising, and any  
13 other act prohibited by law, including those set forth in this Complaint.  
14

15  
16 **COUNT III**  
17 **California’s Consumer Legal Remedies Act**  
18 **Cal. Civ. Code § 1750 et seq. (“CLRA”)**  
19 **(On Behalf of the California Class)**

20 76. Plaintiff incorporates paragraphs 1 through 52 as if fully set forth  
21 herein.

22 77. The CLRA prohibits deceptive practices in connection with the  
23 conduct of a business that provides goods, property, or services primarily for  
24 personal, family, or household purposes.  
25  
26  
27

1 78. Defendant’s false and misleading labeling and other policies, acts, and  
2 practices were designed to, and did, induce the purchase and use of the Products  
3 for personal, family, or household purposes by Plaintiff and Class Members, and  
4 violated and continue to violate the following sections of the CLRA:  
5

- 6 a. § 1770(a)(5): representing that goods have characteristics, uses, or  
7 benefits which they do not have;
- 8 b. § 1770(a)(7): representing that goods are of a particular standard,  
9 quality, or grade if they are of another;
- 10 c. § 1770(a)(9): advertising goods with intent not to sell them as  
11 advertised; and
- 12 d. § 1770(a)(16): representing the subject of a transaction has been  
13 supplied in accordance with a previous representation when it has not.

14 79. Defendant profited from the sale of the falsely, deceptively, and  
15 unlawfully advertised Products to unwary consumers.  
16

17 80. Defendant’s wrongful business practices constituted, and constitute, a  
18 continuing course of conduct in violation of the CLRA.  
19

20 81. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff  
21 provided a letter to Defendant with notice of its alleged violations of the CLRA,  
22 demanding that Defendant correct such violations, and providing it with the  
23 opportunity to correct its business practices. If Defendant does not thereafter  
24 correct its business practices, Plaintiff will amend (or seek leave to amend) the  
25  
26  
27  
28



1 complaint to add claims for monetary relief, including restitution and actual  
2 damages under the Consumers Legal Remedies Act.

3 82. Pursuant to California Civil Code § 1780, Plaintiff seeks injunctive  
4 relief, their reasonable attorney fees and costs, and any other relief that the Court  
5 deems proper.  
6

7  
8 **COUNT IV**  
9 **Breach of Express Warranties**  
10 **Cal. Com. Code § 2313(1)**  
11 **(On Behalf of the California Class)**

12 83. Plaintiff incorporates paragraphs 1 through 52 as if fully set forth  
13 herein.

14 84. Through the Products' labels and advertising, Defendant made  
15 affirmations of fact or promises, or description of goods, described above, which  
16 were "part of the basis of the bargain," in that Plaintiff and the Class purchased the  
17 Products in reasonable reliance on those statements. Cal. Com. Code § 2313(1).  
18

19 85. Defendant breached the express warranties by selling Products that do  
20 not and cannot provide the promised benefits.

21 86. Plaintiff and the Class Members would not have purchased the  
22 Products had they known the true nature of the Products' ingredients and what the  
23 Products contained.  
24  
25  
26  
27  
28

1 87. That breach actually and proximately caused injury in the form of the  
2 lost purchase price that Plaintiff and Class members paid for the Products.

3 88. Furthermore, Defendant had actual knowledge of the defect in the  
4 Products purchased by Plaintiff, as well as the Products purchased by other  
5 members of the Class, because: (a) it has knowledge of various studies concluding  
6 the inefficacy of the ingredients included in the formulation of the Products; (b) it  
7 had actual knowledge of the ingredients and quantities of the ingredients in its  
8 Products by virtue of its own Products' testing and it knows that the affirmations  
9 and representations it makes concerning the ingredients and quantities on the  
10 Products' labeling and advertising is false; and (c) there exist several other lawsuits  
11 against Defendant that also contend that Defendant's statements about the Products  
12 were false and the Products do not conform to Defendant's affirmations and  
13 promises as described above.

14 89. As a result of Defendant's breach of warranty, Plaintiff and Class  
15 Members have been damaged in the amount of the purchase price of the Products  
16 and any consequential damages resulting from the purchases.

17  
18 **COUNT V**  
19 **Breach of Implied Warranty of Merchantability**  
20 **Cal. Com. Code § 2314**  
21 **(On Behalf of the California Class)**

22 90. Plaintiff incorporates paragraphs 1-52 as if fully set forth herein.  
23  
24  
25  
26  
27

1 91. Defendant, through its acts and omissions set forth herein, in the sale,  
2 marketing, and promotion of the Products, made representations to Plaintiff and the  
3 Class that, among other things, the Products contained the ingredients stated on the  
4 Products' labeling and moreover that the Products contained them in dosages that  
5 were "POTENT" as claimed both on the front of the Products' label, as well as on  
6 the back.  
7

8  
9 92. Plaintiff and the Class bought the Products manufactured, advertised,  
10 and sold by Defendant, as described herein.

11 93. Defendant is a merchant with respect to the goods of this kind which  
12 were sold to Plaintiff and the Class, and there was, in the sale to Plaintiff and other  
13 consumers, an implied warranty that those goods were merchantable.  
14

15 94. However, Defendant breached that implied warranty in that the  
16 Products provide no benefits, as set forth in detail herein.  
17

18 95. As an actual and proximate result of Defendant's conduct, Plaintiff  
19 and the Class did not receive goods as impliedly warranted by Defendant to be  
20 merchantable in that they did not conform to promises and affirmations made on  
21 the container or label of the goods nor are they fit for their ordinary purpose of  
22 providing "potent" energy.  
23  
24  
25  
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1 96. Plaintiff and the Class have sustained damages as a proximate result  
2 of the foregoing breach of implied warranty in the amount of the Products'  
3 purchase prices.  
4

5 **COUNT VI**  
6 **Declaratory Relief Under the Declaratory Judgment Act**  
7 **(On Behalf of the Nationwide Class or,**  
8 **Alternatively, the California Sub-Class)**

9 97. Plaintiff incorporates paragraphs 1-52 as if fully set forth herein.

10 98. Plaintiff brings this cause of action on behalf of the Nationwide Class  
11 and/or the California Subclass.

12 99. Declaratory relief is intended to minimize “the danger of avoidable  
13 loss and unnecessary accrual of damages.” 10B Charles Alan Wright, Arthur R.  
14 Miller & Mary Kay Kane, Federal Practice and Procedure § 2751 (3d ed. 1998).  
15

16 100. Pursuant to 28 U.S.C. § 2201, et seq., there is an actual controversy  
17 between Defendant and Plaintiff concerning whether:  
18

- 19 a. Defendant has misrepresented the ingredients and effectiveness of the  
20 Products; and  
21 b. Defendant knew or should have known of the misrepresentations  
22 regarding the efficacy of the Products.

23 101. Pursuant to 28 U.S.C. § 2201, the Court may “declare the rights and  
24 legal relations of any interested party seeking such declaration, whether or not  
25 further relief is or could be sought.”  
26  
27

1 102. Despite the studies which have proven Defendant's representations  
2 false, Defendant continues to represent the ingredients and effectiveness of the  
3 Products, and has otherwise failed to correct those misrepresentations.  
4

5 103. Accordingly, based on Defendant's repeated and continued  
6 misrepresentations, Plaintiff seeks a declaration that Defendant has misrepresented  
7 the ingredients and effectiveness of the Products and that its actions are unlawful.  
8

9 104. The declaratory relief requested herein will generate common answers  
10 that will settle the controversy related to the misrepresented labeling of the  
11 Products. There is an economy to resolving these issues as they have the potential  
12 to eliminate the need for continued and repeated litigation.  
13

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays that this case be certified and maintained as a  
16 class action and for judgment to be entered against Defendant as follows:  
17

- 18 A. Enter an order certifying the proposed Class (and subclasses, if  
19 applicable), designating Plaintiff as the class representative, and  
20 designating the undersigned as class counsel;
- 21 B. Enter an order awarding Plaintiff and the class members their actual  
22 damages, treble damages, and/or any other form of monetary relief  
23 provided by law, except that no monetary relief is presently sought for  
24 violations of the Consumers Legal Remedies Act;
- 25 C. Declare that Defendant is financially responsible for notifying all  
26 Class members of the problems with the Products;  
27  
28

- 1 D. Declare that Defendant must disgorge, for the benefit of the Class, all  
2 or part of the ill-gotten profits it received from the sale of the  
3 Products, or order Defendant to make full restitution to Plaintiff and  
4 the members of the Class, except that no monetary relief is presently  
5 sought for violations of the Consumers Legal Remedies Act;
- 6 E. Defendant shall audit and reassess all prior customer claims regarding  
7 the Products, including claims previously denied in whole or in part;
- 8 F. An order awarding Plaintiff and the classes pre-judgment and post-  
9 judgment interest as allowed under the law;
- 10 G. For reasonable attorneys' fees and reimbursement of all costs for the  
11 prosecution of this action, including expert witness fees; and
- 12 H. For such other and further relief as this Court deems just and  
13 appropriate.

14 **JURY DEMAND**

15 Plaintiff hereby demands a trial by jury on all issues so triable.

16 Date: October 15, 2018

17 Respectfully Submitted,

18 By: /s/ Jonathan Shub  
19 Jonathan Shub (CA Bar  
20 #237708)  
21 Kevin Laukaitis\*  
22 **KOHN, SWIFT & GRAF,**  
23 **P.C.**  
24 1600 Market Street, Suite 2500  
25 Philadelphia, PA 19103  
26 Tel: 215-238-1700  
27 [jshub@kohnswift.com](mailto:jshub@kohnswift.com)  
28 [klaukaitis@kohnswift.com](mailto:klaukaitis@kohnswift.com)

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Nick Suciu III\*  
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Tel: 865-247-0080  
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*\*Pro Hac Vice Application  
Forthcoming  
Counsel For Plaintiff  
And The Class*

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

Contra Costa

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

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

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

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

Large table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

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

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

# **EXHIBIT A**



Eurofins Scientific Inc. (Petaluma)

1365 Redwood Way  
 Petaluma, CA 7570  
 +1 707 792 7300  
 ESACClientServices@EurofinsUS.com

Eurofins Frontier Global Services, Inc.

Maricris Dela Rosa  
 11720 N Creek Pkwy N Ste. 400 SUITE 400  
 Bothell, WA 98011

## Analytical Report

AR-18-KK-013320-01

Client Code: KK0001484  
 PO Number: 8H1001

Received On: 08/30/2018  
 Reported On: 09/10/2018

Eurofins Sample Code:740-2018-08300044

Sample Registration Date: 08/30/2018

Client Sample Code:

Condition Upon Receipt: acceptable

Sample Description: Sample ID #502389 080719  
 TP2 0652 Bang Cherry  
 Blade Lemonade(473ml),  
 Liquid, Lab ID #8H01001-01

Sample Reference:

K0010 - Creatine and creatinine (HPLC)

Reference  
 Internal Method

Analysis Completed  
 08/30/2018

Parameter	Result
Creatine Nitrate	ND
Creatine Monohydrate	ND
ND = None Detected.	
Creatine HCl	ND
Creatine	ND
Creatinine	ND
ND = None Detected.	

Respectfully Submitted,

Michael Moeszinger  
 Associate Scientist Group Leader

Results shown in this report relate solely to the item submitted for analysis. | Any opinions/interpretations expressed on this report are given independent of the laboratory's scope of accreditation. | All results are reported on an "As Received" basis unless otherwise stated. | Reports shall not be reproduced except in full without written permission of Eurofins Scientific, Inc. | All work done in accordance with Eurofins General Terms and Conditions of Sale: [www.eurofinsus.com/terms\\_and\\_conditions.pdf](http://www.eurofinsus.com/terms_and_conditions.pdf) | √ Indicates a subcontract test to a different lab. Lab(s) are listed at end of the report. For further details about the performing labs please contact your customer service contact at Eurofins. Measurement of uncertainty can be obtained upon request.

# **EXHIBIT B**



Eurofins Scientific Inc. (Petaluma)

1365 Redwood Way  
 Petaluma, CA 7570  
 +1 707 792 7300  
 ESACClientServices@EurofinsUS.com

Eurofins Frontier Global Services, Inc.

Maricris Dela Rosa  
 11720 N Creek Pkwy N Ste. 400 SUITE 400  
 Bothell, WA 98011

## Analytical Report

AR-18-KK-014229-01

Client Code: KK0001484

PO Number: 8I00540

Received On: 09/20/2018

Reported On: 09/27/2018

<b>Eurofins Sample Code:</b> 740-2018-09200023	<b>Sample Registration Date:</b> 09/20/2018
<b>Client Sample Code:</b>	<b>Condition Upon Receipt:</b> acceptable
<b>Sample Description:</b> Sample ID: 502407 080719 TP2 0652 Bang Cherry Blade Lemonade (473ML), Liquid, Serving = 473g	<b>Sample Reference:</b>

<b>K0028 - Coenzyme Q10, Ubiquinone (HPLC)</b>	<b>Reference</b> Internal Method	<b>Accreditation</b> A2LA 2942.01	<b>Analysis Completed</b> 09/27/2018
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<b>Parameter</b>	<b>Result</b>
Coenzyme Q10	ND

ND = None Detected.

Respectfully Submitted,

Nizam Kadri  
 Scientist Group Leader



Results shown in this report relate solely to the item submitted for analysis. | Any opinions/interpretations expressed on this report are given independent of the laboratory's scope of accreditation. | All results are reported on an "As Received" basis unless otherwise stated. | Reports shall not be reproduced except in full without written permission of Eurofins Scientific, Inc. | All work done in accordance with Eurofins General Terms and Conditions of Sale: [www.eurofinsus.com/terms\\_and\\_conditions.pdf](http://www.eurofinsus.com/terms_and_conditions.pdf) | √ Indicates a subcontract test to a different lab. Lab(s) are listed at end of the report. For further details about the performing labs please contact your customer service contact at Eurofins. Measurement of uncertainty can be obtained upon request.

# **EXHIBIT C**



## Nutrition Analysis Center

Eurofins Scientific Inc.  
 Nutrition Analysis Center  
 2200 Rittenhouse Street, Suite 150  
 Des Moines, IA 50321  
 Tel:+1 515 265 1461  
 Fax:+1 515 266 5453

**Eurofins Sample Code:** 464-2018-09200985  
**Sample Description:** 502407 080719 TP2 0652 Bang Cherry Blade Lemonade  
 (473 ml) ss=473g  
**Client Sample Code:** 8I00540-01  
**PO Number:**

**Entry Date:** 09/20/2018  
**Reporting Date:** 09/24/2018

Eurofins Frontier Global Services, Inc.  
 attn: Maricris Dela Rosa  
 11720 N Creek Pkwy N Ste. 400  
 SUITE 400  
 Bothell, WA 98011

Eurofins Frontier Global Services, Inc.  
 Attn: Amy Goodall  
 11720 N Creek Pkwy N Ste. 400  
 SUITE 400  
 Bothell, WA 98011

### CERTIFICATE OF ANALYSIS

AR-18-QD-143343-01

Test	As Is Basis	Per Serving	Theoretical Level
<b>QD275 - Serving Size (Customer Supplied)</b>			<b>Completed: 09/20/2018</b>
No Reference			
Unit weight	473.0000 g	473.0000 g	
Units per serving	1	1	1
Serving Size	473.00 g	473.00 g	473 g/serving
<b>QQ007 - Free Amino Acid Profile (AOAC, Most Matrices)</b>			<b>Completed: 09/24/2018</b>
AOAC 999.13 mod.			
Alanine (Free)	<0.01 %	<0.05 g/Serving	
Arginine (Free)	<0.01 %	<0.05 g/Serving	
Aspartic acid (Free)	<0.01 %	<0.05 g/Serving	
Cystine, free	<0.01 %	<0.05 g/Serving	
Glutamic acid (Free)	<0.01 %	<0.05 g/Serving	
Glycine (Free)	<0.01 %	<0.05 g/Serving	
Histidine (Free)	<0.01 %	<0.05 g/Serving	
Isoleucine (Free)	<0.01 %	<0.05 g/Serving	
Leucine (Free)	0.02 %	0.09 g/Serving	
Lysine (Free)	<0.01 %	<0.05 g/Serving	
Methionine (Free)	<0.01 %	<0.05 g/Serving	
Phenylalanine (Free)	<0.01 %	<0.05 g/Serving	
Proline (Free)	<0.01 %	<0.05 g/Serving	
Serine (Free)	<0.01 %	<0.05 g/Serving	
Threonine (Free)	<0.01 %	<0.05 g/Serving	
Tyrosine (Free)	<0.01 %	<0.05 g/Serving	
Valine (Free)	<0.01 %	<0.05 g/Serving	
<b>QD0GD - Sum of Free Amino Acids</b>			<b>Completed: 09/24/2018</b>
AOAC 999.13 mod.			
Sum of Amino Acids	0.02 %	0.09 g/Serving	



Eurofins Sample Code: 464-2018-09200985

Client Sample Code: 8I00540-01

Respectfully Submitted,  
Eurofins Scientific Inc.

A handwritten signature in black ink, appearing to read "John Jordan", is written over a horizontal line. Below the signature, the name "John Jordan" and the title "Manager" are printed.

John Jordan

Manager

Results shown in this report relate solely to the item submitted for analysis.  
All results are reported on an "As Received" basis unless otherwise stated.  
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