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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

CEDRIC MOSELY and J. RAFAEL COSIO,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

VITALIZE LABS, LLC,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs Cedric Mosely and J. Rafael Cosio (“Plaintiffs”), individually and on behalf of others similarly situated, alleges for their Class Action Complaint against Defendant Vitalize Labs, LLC (“Defendant”) upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigation made by their attorneys, as follows:

NATURE OF THE ACTION

1. Defendant Vitalize Labs, LLC markets EBOOST as a “naturally flavored effervescent vitamin supplement” that delivers energy with a “boost” of “immunity.” Each of the products – EBOOST Natural Orange, Natural Acai Pomegranate, and Natural Pink Lemonade powder packets (“just add water”), EBOOST All-Natural Orange Flavor effervescent tablets, and EBOOST Natural Orange and Super Berry (or Superberry) liquid shots (collectively, the “Immunity Products”) – claims to provide an immunity “boost” for persons with “busy lifestyles and demanding schedules.”¹ The Immunity Products are sold in all fifty states, Canada, and Europe. Defendant claims that its Immunity Products “started as a celebrity secret for A-Listers like Madonna, Shakira, Oprah Winfrey, and Amar’e Stoudemire” but are now a “necessity for the multi-tasking generation.”² EBOOST has also captured the public’s attention through features in publications such as Shape, People, O–The Oprah Magazine, Men’s Fitness, and the New York Post.

2. Unfortunately for consumers, claims that the products actually “boost” immunity for those who drink them are false and wholly unsupported by evidence-based science. To the contrary, adding supplements to one’s diet has not been shown to “boost” immunity at all.

¹EBOOST Website, <http://www.eboost.com/faq/> (last visited Oct. 1, 2012).

²EBOOST Website, <http://www.eboost.com/about/> (last visited Oct. 1, 2012).

3. This lawsuit is brought by Plaintiffs, as a nationwide class action against Defendant on behalf of Plaintiffs and a class of similarly situated persons who have purchased EBOOST Immunity Products. This class action seeks to halt Defendant's deceptive marketing of EBOOST Immunity Products and seeks damages for Defendant's illegal conduct in violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17209, California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500-17536, California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750-1784, and New York General Business Law § 349. The lawsuit further alleges that Defendant was unjustly enriched by its deceptive marketing at the expense of Plaintiffs and the Class.

JURISDICTION AND VENUE

4. This action is within the original jurisdiction of this Court by virtue of 28 U.S.C. § 1332(d)(2). At least one Plaintiff is a citizen of a different state than Defendant, and the amount in controversy of this class action exceeds five million dollars (\$5,000,000.00), exclusive of interest and costs.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(1) & (2). Plaintiff Mosely resides in this district and bought Defendant's product(s) within this District.

THE PARTIES

6. Plaintiff Cedric Mosely is a citizen of New York who resides in Brooklyn, New York. He purchased EBOOST's All-Natural Orange Flavor powder packets and Natural Orange liquid shots in Brooklyn and the surrounding New York City metropolitan area during the Class Period based on the representation that the products would boost his immunity and provide a natural energy boost. Had Plaintiff Mosely known that the statements regarding immunity and naturalness were

false and misleading, he would not have purchased the products or paid a premium price for the products.

7. Plaintiff J. Rafael Cosio is a citizen of California who resides in West Hollywood, California. He purchased EBOOST's All-Natural Orange Flavor and Natural Pink Lemonade Flavor powder packets around the onset of the flu season and California in or about November 2011, from his local CVS Store in West Hollywood, based on the representation that the products would boost his immunity. Had Plaintiff known that the statements regarding immunity were false and misleading, he would not have purchased the products.

8. Defendant Vitalize Labs, LLC is a corporation organized under the laws of the state of New York, with its corporate offices at 151 Mercer St., New York, New York 10012. According to the United States Securities and Exchange Commission, Defendant issued an offer to sell \$2,000,000 of stock with a minimum investment of \$100,000 on February 2, 2012. EBOOST is now distributed to every U.S. state as well as Canada and Europe.

SUBSTANTIVE ALLEGATIONS

9. The labels for Defendant's EBOOST Immunity Products characterize them as a dietary supplement.

10. During the Class Period, Defendant's EBOOST Immunity Products have been offered in the form of "Boosters" – single-serving packets of crystalized powder – in orange, acai pomegranate, and pink lemonade flavors, effervescent tablets in orange flavor, and liquid shots sold in 2 oz. bottles in "SUPER BERRY" and "NATURAL ORANGE" flavors.

11. EBOOST Immunity Products are marketed, advertised, and labeled as a supplement that provides "energy + immunity."

12. Specifically, EBOOST's packaging and advertising represent that EBOOST will boost immunity.

13. The EBOOST immunity shot proclaims, "With our shot we combined natural green tea extract, vitamins and minerals for a healthy sustained *boost of energy and immunity*." (emphasis added). The packaging for the Orange and Pink Lemonade Flavor Energy Boosters states the Boosters contain a "proprietary formula of vitamins, minerals, and super-nutrients, that deliver a *boost of energy and immunity* in an easy to mix effervescent packet." (emphasis added). The packaging for the Pink Lemonade Flavor Energy Booster has also claimed that its natural proprietary blend delivers "immunity that is derived from vitamins and minerals."

14. Until recently, Defendant's Internet advertising corroborated its intent to market the products as immune boosting:

- a. The EBOOST website claimed its Orange Natural Energy Tablets are "loaded with green tea, vitamins, super nutrients and Stevia, to give you the energy and immunity boost you need no matter where you are – The secret to a jet set lifestyle, without the jet lag."³
- b. Defendant advertised EBOOST's ability to fight the cold and flu when offering its EBOOST "Energy + Immunity Office Kit." In the special offer, Defendant stated:

"It's all very well to drink your EBOOST and take care of yourself at home, but what happens when you go to work? All of a sudden, you're surrounded by sniffing, sneezing people who wipe their noses, don't wash their hands and share their germs on every file folder.

³ EBOOST Website, <https://shopping.eboost.com/index.php/orange-natural-energy-tablets.html> (last visited Sept. 24, 2012).

shudder Since you can't surround your cubicle with a quarantine tent, EBOOST introduces the next best thing: a BOOST for your entire office! Just in time for cold & flu season, we're offering huge savings on the Energy + Immunity Office Kit.

* * * *

So do yourself (and your coworkers) a favor and grab an Office Kit before it's too late. Your boss will thank you.”⁴

- c. Defendant also advertised its product as containing “many of the vitamins and herbs that play an important role in getting your immune system ready to face the seasonal onslaught.” It further claimed that “regular doses of EBOOST will turn your immune system into a virus-fighting machine!”⁵

15. EBOOST contains 1,000 mg of Vitamin C, nearly seventeen times the recommended daily allowance of Vitamin C by the Food and Drug Administration, as well as a blend of additional miscellaneous vitamins and minerals.

16. The creation, naming, and labeling of EBOOST as an immunity boost was intended to capitalize on consumer's misconceptions regarding the ability to boost the immune system by simply adding supplements to one's diet.

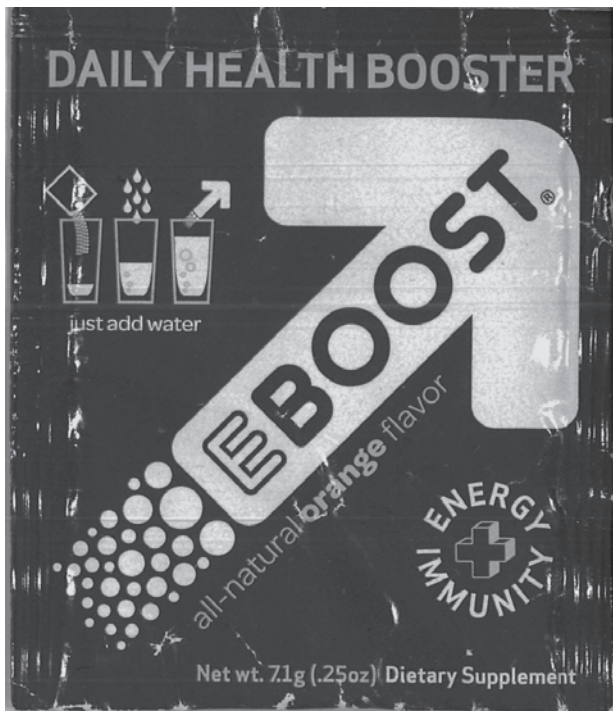
17. As seen in the images below, EBOOST's Pink Lemonade and Orange Flavor Booster's labels include, or included at one time:

- a. the name, “EBOOST”;
- b. the claim “energy + immunity”;

⁴ Press Release, Vitalize Labs, LLC, Introducing the Energy + Immunity Office Kit (Nov. 4, 2011), available at <http://www.eboost.com/2011/11/energy-immunity-office-kit/> (last visited Sept. 24, 2012).

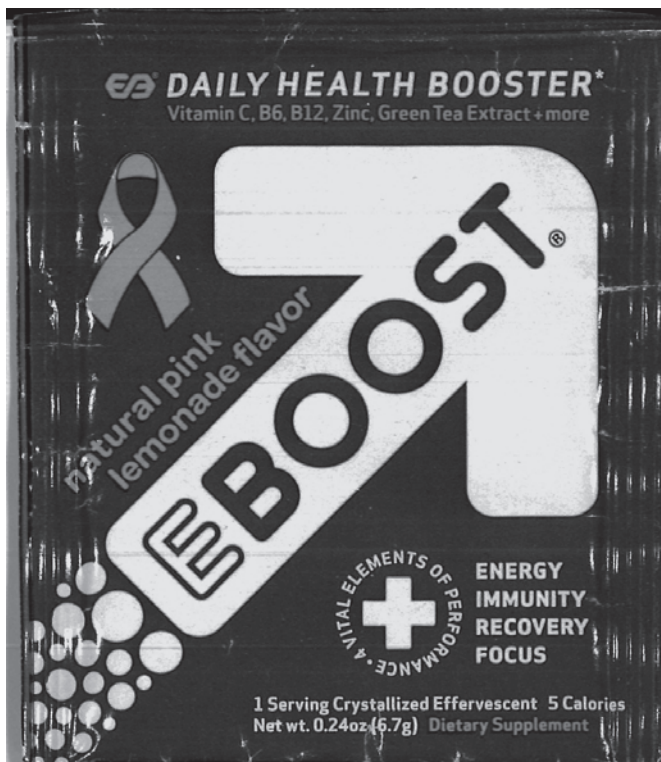
⁵ EBOOST Website, <http://www.eboost.com/2009/09/eboost-your-immune-system/> (last visited Sept. 24, 2012).

- c. the descriptive “natural orange flavor”;
- d. the claim that EBOOST is a “proprietary formula of vitamins, minerals, and super-nutrients, that deliver a boost of energy and immunity in an easy to mix effervescent packet”; and
- e. the statement “5 CALORIES.”



18. As seen in the images below, prior packaging for EBOOST's Pink Lemonade Booster at one time included:

- a. the name, "EBOOST";
- b. the claim "Energy, Immunity, Recovery and Focus";
- c. the descriptive "natural pink lemonade flavor";
- d. a claim that "EBOOST's natural proprietary blend delivers energy that is unyielding, focus that is unclouded, immunity that is derived from vitamins and minerals, and a means of recovery that is not only sugar-free but delivers essential nutrients. EBOOST gives all those who rely on it a healthy competitive advantage. At work. At play. At life."; and
- e. the statement "5 CALORIES."



19. Additionally, the label for EBOOST's Orange Energy Tablets, on information and belief, have always included:

- a. the name, "EBOOST";
- b. the claim "energy + immunity"; and
- c. the descriptive "natural orange flavor."

20. In earlier packaging, as seen in the image below, the Orange tablets were advertised as a boost for "Energy", "Immunity", "Recovery", and "Focus".



21. The labeling on EBOOST's Super Berry Natural Energy Shot, on information and belief, has always included, as seen in the images below:

- a. the name, "EBOOST";
- b. the claim "natural energy + immunity";
- c. the descriptive "super berry"; and
- d. a claim that "With our shot we combined natural green tea extract, vitamins and minerals for a healthy sustained boost of energy and immunity. No chemicals."



22. There is no scientific evidence to support EBOOST's promise to boost immunity. In fact, scientific evidence yields results to the contrary. Accordingly, such representations are unfair, unjust, false, misleading, and deceptive.

23. The human body's immune system is made up of the cells, molecules, and tissues that protect the human body from infectious disease.⁶

24. A Harvard Medical School special health report observed that consuming food products to which vitamins and minerals are added that are part of a normal, healthy diet has *no impact on the immune system*: "There isn't any evidence-based science behind the concept of

⁶ Starnbach, Michael N. (ed.), *The Truth About Your Immune System*, Harvard Medical School Special Health Report, 2010 ("Harvard Report"), at 2, 5, *available at* http://www.health.harvard.edu/special_health_reports/the-truth-about-your-immune-system.

‘boosting’ immunity beyond what our finely tuned immune system already provides.”⁷

25. Governmental and scientific entities that have studied the effect of diet and dietary supplements on health have further concluded that consuming real fruits and vegetables is a far superior method of enhancing health as compared to adding antioxidants to the diet in the form of food additives or dietary supplements.⁸

26. As detailed above, evidence-based science specifically contradicts the promises made on the EBOOST labels.

27. Accordingly, the labeling and other marketing of EBOOST is deceptive and misleading in that it represents the Immunity Products boost immunity.

28. The labeling and other marketing of EBOOST is also deceptive and misleading in that it represents the Immunity Products are natural when, in fact, the Immunity Products contain unnatural ingredients, including, but not limited to, citric acid, maltodextrin, added color, and erythritol.

PLAINTIFFS’ CLASS ACTION ALLEGATIONS

29. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23. Plaintiffs seek to represent a class (“Class”) consisting of:

All persons who purchased EBOOST during the period of April 24, 2007, to the date of class certification (the “Class Period”) for their own or household use rather than resale or distribution. Excluded from the Class are Defendant,

⁷ *Id.* at 28.

⁸ See e.g., Nat’l Institutes of Health (NIH), Office of Dietary Supplements, *Dietary Supplement Fact Sheet: Vitamin C*, available at <http://ods.od.nih.gov/factsheets/VitaminC-HealthProfessional/> (U.S. Department of Agriculture, Agricultural Research Service, *USDA National Nutrient Database for Standard Reference, Release 24*, 2011, available at <http://www.ars.usda.gov/ba/bhnrc/ndl>); Harvard Report at 26-28.

any entity that has a controlling interest in Defendant, and Defendant's current or former directors, officers, counsel, and their immediate families.

30. In the alternative, Plaintiff Cosio seeks to represent a class (the "California Class") consisting of all California residents who purchased EBOOST during the Class Period for their own or household use rather than resale or distribution, excluding Defendant, any entity that has a controlling interest in Defendant, and Defendant's current or former directors, officers, counsel and their immediate families; and Plaintiff Mosely seeks to represent a class (the "New York Class") consisting of all New York residents who purchased EBOOST during the Class Period for their own or household use rather than resale or distribution, excluding Defendant, any entity that has a controlling interest in Defendant, and Defendant's current or former directors, officers, counsel and their immediate families.

31. For purposes of this Complaint, the phrase "Class Members" refers collectively to all members of the Class, the California Class, and the New York Class, including Plaintiffs.

32. This action has been brought and may properly be maintained as a class action against Defendant pursuant to the provisions of Federal Rule of Civil Procedure 23 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

33. The requirements of Rule 23 are satisfied because:

- a. Numerosity: The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of class members is presently unknown to Plaintiffs, Defendant's volume of sales indicates that the number of Class members would make joinder impracticable.
- b. Commonality: The questions of law and fact that predominate over questions which may affect individual Class members include the following:

- 1) Whether Defendant materially misrepresented the immunity benefits of EBOOST;
 - 2) Whether Defendant materially misrepresented that its Immunity Products are natural;
 - 3) Whether Defendant's misrepresentations and omissions were material to reasonable consumers;
 - 4) Whether Defendant's marketing, advertising, packaging, labeling, distributing, and selling of EBOOST constitute an unfair, unlawful, or fraudulent practices;
 - 5) Whether marketing, advertising, packaging, labeling, distributing, and selling EBOOST constitute false advertising;
 - 6) Whether Defendant's conduct described above injured consumers and, if so, the extent of the injury; and
 - 7) Whether, and to what extent, injunctive relief should be imposed on Defendant to prevent such conduct in the future.
- c. Typicality: Plaintiffs' claims are typical of the claims of the Class because Plaintiffs suffered from the same harm as the Class in that Plaintiffs purchased products during the Class Period, based on a misleading and deceptive label that was the same regardless of where the products were purchased, that did not deliver what it promised. Moreover, Defendant made the same false and misleading representations and omissions to the Class members on the label of the product. Thus, Plaintiffs and other members of the Class sustained the same injuries and damages arising out of Defendant's

conduct in violation of California and New York law. Plaintiffs do not have any interests antagonistic to or in conflict with the Class.

- d. Adequacy: Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. No conflicts of interest exist between Plaintiffs and the Class members. Plaintiffs have retained competent counsel experienced in class action litigation and intend to prosecute this action vigorously.
- e. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Since the damages suffered by individual Class members are relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to seek redress for the wrongful conduct alleged, while an important public interest will be served by addressing the matter as a class action.

34. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

35. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

CAUSES OF ACTION
FIRST CAUSE OF ACTION
**(California Business and Professions Code §§ 17200 *et seq.* –
Unlawful Business Acts and Practices)**

36. Plaintiff Cosio incorporates by reference and realleges all allegations set forth in the preceding paragraphs.

37. The acts of Defendant, as described above, and each of them, constitute unlawful business acts and practices.

38. In this regard, Defendant's manufacturing, marketing, advertising, packaging, labeling, distributing, and selling of EBOOST violate California's Sherman Food, Drug and Cosmetics Law, Cal. Health & Safety Code §§ 109875 *et seq.* (the "Sherman Act").

39. In relevant part, the Sherman Act declares that food is misbranded if its labeling is false or misleading in any particular way and further provides that it is unlawful for any person to misbrand any food. Cal. Health & Safety Code §§ 110660, 110765.

40. The Sherman Act defines a "person" as "any individual, firm, partnership, trust, corporation, limited liability company, company, estate, public or private institution, association, organization, group, city, county, city and county, political subdivision of this state, other governmental agency within the state, and any representative, agent, or agency of any of the foregoing." Cal. Health & Safety Code § 109995. Defendant is a corporation and, therefore, a "person" within the meaning of the Sherman Act.

41. The business practices alleged above are unlawful under the Consumers Legal Remedy Act, Cal. Civ. Code §§ 1750 *et seq.* ("CLRA"), which forbids deceptive advertising.

42. The business practices alleged above are unlawful under California Business and Professions Code § 17200 *et seq.* by virtue of violating California Business and Professions Code §§ 17500 *et seq.*, which forbids untrue advertising and misleading advertising.

43. As a result of the business practices described above, Plaintiff Cosio and the other members of the Class, pursuant to California Business and Professions Code § 17203, are entitled to an order enjoining such future conduct on the part of Defendant and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any person in interest any money paid for EBOOST as a result of the wrongful conduct of Defendant.

44. The above-described unlawful business acts and practices of Defendant present a threat and reasonable likelihood of deception to Plaintiff Cosio and the other members of the Class in that Defendant has systematically perpetrated and continue to perpetrate such acts or practices upon members of the Class by means of their misleading manufacturing, marketing, advertising, packaging, labeling, distributing and selling of EBOOST.

45. THEREFORE, Plaintiff Cosio prays for relief as set forth below.

SECOND CAUSE OF ACTION
(California Business and Professions Code §§ 17200 *et seq.* –
Unfair Business Acts and Practices)

46. Plaintiff Cosio incorporates by reference and realleges all allegations set forth in the preceding paragraphs.

47. Such acts of Defendant, as described above, constitute unfair business acts and practices.

48. Plaintiff Cosio, and the other members of the Class who purchased Defendant's EBOOST Immunity Products, suffered a substantial injury by virtue of buying products they would not have purchased absent Defendant's unfair marketing, advertising, packaging, labeling, distributing, and selling.

49. There is no benefit to consumers or competition by deceptively marketing, advertising, packaging, labeling, distributing, and selling EBOOST. Indeed, the harm to consumers

and competition is substantial.

50. Plaintiff Cosio and the other members of the Class who purchased Defendant's EBOOST products had no way of reasonably knowing that the products they bought were not as marketed, advertised, packaged, labeled, and sold. Thus, they could not have reasonably avoided the injury each of them suffered.

51. The gravity of the consequences of Defendant's conduct as described above outweighs any justification, motive, or reason therefore, particularly considering the available legal alternatives which exist in the marketplace, and is immoral, unethical, unscrupulous, offends established public policy, or is substantially injurious to Plaintiff Cosio and the other members of the Class.

52. As a result of the business acts and practices described above, Plaintiff Cosio and the other members of the Class, pursuant to California Business and Professions Code § 17203, are entitled to an order enjoining such future conduct on the part of Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any person in interest any money paid for EBOOST as a result of the wrongful conduct of Defendants.

53. THEREFORE, Plaintiff Cosio prays for relief as set forth below.

THIRD CAUSE OF ACTION
(California Business and Professions Code §§ 17200 *et seq.* –
Fraudulent Business Acts and Practices)

54. Plaintiff Cosio incorporates by reference and realleges all allegations set forth in the preceding paragraphs.

55. The acts of Defendant as described above, constitute fraudulent business practices under California Business and Professions Code §§ 17200 *et seq.*

56. As more fully described above, Defendant's misleading marketing, advertising,

packaging, labeling, distributing, and selling of EBOOST are likely to deceive reasonable California consumers. Indeed, Plaintiff Cosio and the other members of the Class were unquestionably deceived regarding the characteristics of Defendant's product, as Defendant's marketing, advertising, packaging, labeling, distributing, and selling of EBOOST misrepresented and/or omitted the true nature of the contents of EBOOST. Said acts are fraudulent business acts and practices.

57. This fraud and deception caused Plaintiff Cosio and the other members of the Class to purchase more EBOOST than they would have or to pay more than they would have for the products had they known the true nature of the products.

58. As a result of the business acts and practices described above, Plaintiff Cosio and the other members of the Class, pursuant to California Business and Professions Code § 17203, are entitled to an order enjoining such future conduct on the part of Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any person in interest any money paid for EBOOST as a result of the wrongful conduct of Defendant.

59. THEREFORE, Plaintiff Cosio prays for relief as set forth below.

FOURTH CAUSE OF ACTION
(California Business and Professions Code §§ 17500 *et seq.* –
Misleading and Deceptive Advertising)

60. Plaintiff Cosio incorporates by reference and realleges all allegations set forth in the preceding paragraphs.

61. Plaintiff Cosio asserts this cause of action for violations of California Business and Professions Code §§ 17500 *et seq.* for misleading and deceptive advertising against Defendant.

62. At all material times, Defendant engaged in a scheme of offering its EBOOST Immunity Products for sale to Plaintiff Cosio and the other members of the Class by way of, *inter alia*, marketing, advertising, packaging, labeling, distributing, and selling EBOOST. These

materials misrepresented and/or omitted the true nature of the contents of EBOOST. Said advertisements and inducements were made within the State of California and come within the definition of advertising as contained in Business and Professions Code §§ 17500 *et seq.* in that such promotional materials were intended as inducements to purchase EBOOST and are statements disseminated by Defendant to Plaintiff Cosio and the other members of the Class and were intended to reach members of the Class. Defendant knew, or in the exercise of reasonable care should have known, that these statements were misleading and deceptive.

63. In furtherance of this plan and scheme, Defendant has prepared and distributed within the State of California, via commercial marketing, advertising, packaging, labeling, and other promotional materials, statements that misleadingly and deceptively represent the efficacy of the ingredients contained in EBOOST. Consumers, including Plaintiff Cosio, necessarily and reasonably relied on these materials concerning EBOOST. Consumers, including Plaintiff Cosio and the other members of the Class, were among the intended targets of such representations.

64. The above acts of Defendant, in disseminating said misleading and deceptive statements throughout the State of California to consumers, including Plaintiff Cosio and the other members of the Class, were and are likely to deceive reasonable consumers, including Plaintiff Cosio and the other members of the Class, by obfuscating the true nature of the ingredients of EBOOST, all in violation of the “misleading prong” of California Business and Professions Code § 17500.

65. As a result of the above violations of the “misleading prong” of California Business and Professions Code §§ 17500 *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiff Cosio and the other members of the Class. Plaintiff Cosio and the other members of the Class, pursuant to California Business and Professions Code § 17535, are entitled to an order of this

Court enjoining such future conduct on the part of Defendant and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore to any person in interest any money paid for EBOOST as a result of the wrongful conduct of Defendant.

66. THEREFORE, Plaintiff Cosio prays for relief as set forth below.

FIFTH CAUSE OF ACTION
**(California Business and Professions Code §§ 17500 *et seq.* –
Untrue Advertising)**

67. Plaintiff Cosio incorporates by reference and realleges all allegations set forth in the preceding paragraphs.

68. Plaintiff Cosio asserts this cause of action for violations of California Business and Professions Code §§ 17500 *et seq.* for untrue advertising against Defendant.

69. At all material times, Defendant has engaged in a scheme of offering EBOOST for sale to Plaintiff Cosio and the other members of the Class by way of, *inter alia*, commercial marketing, advertising, packaging, labeling, and other promotional materials. These materials misrepresented and/or omitted the true nature of EBOOST. Said advertisements and inducements were made within the State of California and come within the definition of advertising as contained in California Business and Professions Code §§ 17500 *et seq.* in that such promotional materials were intended as inducements to purchase EBOOST and are statements disseminated by Defendant to Plaintiff Cosio and the other members of the Class and were intended to reach members of the Class. Defendant knew, or in the exercise of reasonable care should have known, that these statements were untrue.

70. In furtherance of this plan and scheme, Defendant has prepared and distributed within the State of California, via commercial marketing, advertising, packaging, labeling, and other promotional materials, statements that falsely advertise the ingredients contained in EBOOST.

Consumers, including Plaintiff Cosio and the other members of the Class, are among the intended targets of such representations and would reasonably be deceived by such promotional materials.

71. The above acts of Defendant in disseminating this untrue advertising throughout the State of California deceived Plaintiff Cosio and the other members of the Class by obfuscating the nature and quality of EBOOST, all in violation of the “untrue prong” of California Business and Professions Code § 17500.

72. As a result of the above violations of the “untrue prong” of California Business and Professions Code §§ 17500 *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiff Cosio and the other members of the Class. Plaintiff Cosio and the other members of the Class, pursuant to California Business and Professions Code § 17535, are entitled to an order of this Court enjoining such future conduct on the part of Defendant and such other orders and judgments which may be necessary to disgorge Defendant’s ill-gotten gains and restore to any person in interest any money paid for EBOOST as a result of the wrongful conduct of Defendants.

73. THEREFORE, Plaintiff Cosio prays for relief as set forth below.

SIXTH CAUSE OF ACTION
(California’s Consumers Legal Remedies Act - Cal. Civ. Code §§ 1750 *et seq.*)

74. Plaintiff Cosio incorporates by reference and realleges all allegations set forth in the preceding paragraphs.

75. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (the “CLRA”).

76. Defendant’s actions, representations, and conduct have violated and continue to violate the CLRA because they extend to transactions that are intended to result, or which have resulted, in the sale of lease of goods or services to consumers.

77. Plaintiff Cosio and the other Class members are “consumers” as that term is defined

by the CLRA in California Civil Code § 1761(d).

78. The EBOOST that Plaintiff Cosio and other members of the Class purchased from Defendant were “goods” within the meaning of California Civil Code § 1761(a).

79. By engaging in the actions, misrepresentations and misconduct set forth in this Class Action Complaint, Defendant has violated and continues to violate California Civil Code § 1770(a)(5). Specifically, in violation of § 1770(a)(5), Defendant’s acts and practices constitute unfair methods of competition and unfair or fraudulent acts or practices in that they represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have.

80. By engaging in the actions, misrepresentations, and misconduct set forth in this Class Action Complaint, Defendant has violated and continues to violate California Civil Code § 1770(a)(7). Specifically, in violation of § 1770(a)(7), Defendant’s acts and practices constitute unfair methods of competition and unfair or fraudulent acts or practices in that they misrepresent the particular standard, quality, or grade of the goods.

81. By engaging in the actions, misrepresentations, and misconduct set forth in this Class Action Complaint, Defendant has violated and continues to violate California Civil Code § 1770(a)(16). Specifically, in violation of § 1770(a)(16), Defendant’s acts and practices constitute unfair methods of competition and unfair or fraudulent acts or practices in that it represents that a subject of a transaction has been supplied in accordance with a previous representation when they have not.

82. Plaintiff Cosio requests that this Court enjoin Defendant from continuing to employ the unlawful methods, acts, and practices alleged herein pursuant to California Civil Code § 1780(a)(2). If Defendant is not restrained from engaging in these types of practices in the future,

Plaintiff Cosio and the other members of the Class will continue to suffer harm.

83. A CLRA pre-suit demand letter was sent to Defendant on November 5, 2012, requesting it to remedy. Accordingly, Plaintiff Cosio also seeks monetary damages.

84. THEREFORE, Plaintiff Cosio prays for monetary and injunctive relief as provided by the CLRA.

SEVENTH CAUSE OF ACTION
(Violation of the New York General Business Law § 349)

85. Plaintiffs incorporate by reference and realleges all allegations set forth in the preceding paragraphs.

86. Defendant engaged in false and misleading marketing concerning its Immunity Products.

87. As fully alleged above, by advertising, marketing, distribution, and/or selling the Immunity Products to Plaintiffs and the other members of the Class, Defendant engaged in and continues to engage in deceptive acts and practices.

88. Plaintiffs and the other members of the Class seek to enjoin such unlawful deceptive acts and practices as described above. Each of the Class members will be irreparably harmed unless the unlawful actions of the Defendant are enjoined in that Defendant will continue to falsely and misleadingly advertise the healthy nature of its Products. Towards that end, Plaintiffs and the Class request an order granting them injunctive relief as follows: order prohibiting Defendant from making immunity claims regarding its EBOOST products and to issue corrective advertising stating its products cannot boost one's immune system.

89. Absent injunctive relief, Defendant will continue to manufacture and sell its Immunity Products as products that can benefit one's immune system.

90. In this regard, Defendant has violated, and continues to violate, section 349 of the

New York General Business Law (GBL), which makes deceptive acts and practices unlawful. As a direct and proximate result of Defendant's violation of GBL § 349 as described above, Plaintiffs and the other members of the Class have suffered damages in an amount to be determined at trial.

91. Therefore, Plaintiffs pray for relief as set forth below.

EIGHTH CAUSE OF ACTION
(Unjust Enrichment under New York Common Law)

92. Plaintiffs incorporate by reference and reallege all allegations set forth in the preceding paragraphs.

93. As a result of Defendant's deceptive, fraudulent, and misleading labeling, advertising, marketing, and sales of the Immunity Products, Defendant was enriched, at the expense of Plaintiffs and the other Class members through the payment of the purchase price for the EBOOST products.

94. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from Plaintiffs and the other Class members in light of the fact that the Immunity Products purchased by Plaintiffs and the other Class members were not what Defendant purported them to be. Thus, it would be unjust or inequitable for Defendant to retain the benefit without restitution to Plaintiffs and the other Class members for the monies paid to Defendant for such products.

95. Therefore, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment as requested above against Defendant and further pray for:

- (a) An order certifying the Class proposed in this Complaint and appointing Plaintiffs and their counsel to represent the Class and requiring Defendant to bear the cost of class notice (or alternatively, certifying the New York and California Classes proposed in this Complaint and appointing Plaintiffs and their counsel to represent their respective Classes and requiring Defendant to bear the cost of class notice);
- (b) Restitution and/or disgorgement of amounts paid by Plaintiffs and the other members of the Class(es) for the purchase of the EBOOST Immunity Products, together with interest from the date of payment;
- (c) Actual damages;
- (d) An order granting monetary and injunctive pursuant to California Civil Code § 1780;
- (e) An order granting monetary and injunctive relief pursuant to GBL § 349;
- (f) An order granting injunctive relief requiring Defendant to stop making immunity and natural claims for its EBoost products and requiring other appropriate disclosures and disclaimers on the labeling, distributing, and selling of EBOOST;
- (g) Statutory prejudgment interest;
- (h) Reasonable attorneys' fees and the costs of this action;
- (i) Other legal and equitable relief under the causes of action stated herein; and
- (j) Such other relief at this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: April 23, 2013

Respectfully submitted,

/s/ Michael R. Reese

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- and -

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Counsel for Plaintiff and the Proposed Class

CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CEDRIC MOSELY and J. RAFAEL COSIO, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff **Kings County**

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Michael R. Reese, REESE RICHMAN LLP,
875 Avenue of the Americas, 18th Floor, New York, New York 10001,
(212) 643-0500

DEFENDANTS

VITALIZE LABS, LLC

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)

Anthony A. LoPresti, LOPRESTI & ASSOCIATES PLLC,
30 Broad Street, 37th Floor, New York, New York 10004,
(212) 425-0551

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

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

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

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

VI. CAUSE OF ACTION

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

28 U.S.C. § 1332(d)(2)

Brief description of cause:

diversity action for violation of California and New York consumer protection statutes and for unjust enrichment

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/23/2013

SIGNATURE OF ATTORNEY OF RECORD

/s/ Michael R. Reese

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Michael R. Reese, counsel for Plaintiffs Mosely and Cosio, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☒ monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- ☒ the complaint seeks injunctive relief,
- ☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

N/A

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No. _____
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No. _____
- b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes. _____

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? N/A

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: /s/ Michael R. Reese