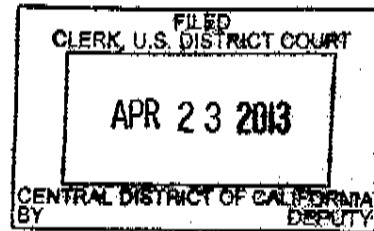


1 BRIAN TOMINA, Bar No. 255386
2 OLIVER LAW GROUP PC
3 5900 Wilshire Blvd., Suite 2600
4 Los Angeles, CA 90036
5 Telephone: (248) 327-6556
6 Facsimile: (248) 436-3385
7 notifications@oliverlg.com
8 www.legalactionnow.com



9 Attorneys for Plaintiff
10 Steven Hodges, and on Behalf
11 of All Others Similarly Situated,

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 STEVEN HODGES,
15 Individually and on Behalf of All
16 Others Similarly Situated,
17 Plaintiff,

18 v.

19 VITAMIN SHOPPE, INC;
20
21
22
23 Defendant.

Case No. **CV 13-02849** - *RGK*
(JC)

**CLASS ACTION
COMPLAINT**

1. VIOLATIONS OF
BUSINESS & PROFESSIONS
CODE SECTION
17200 ET SEQ.

2. VIOLATIONS OF
CALIFORNIA CIVIL CODE
SECTION 1750 ET SEQ.

3. VIOLATIONS OF THE
FALSE ADVERTISING
LAW, CALIFORNIA
BUSINESS & PROFESSIONS
CODE SECTION 17500 ET
SEQ.

CLASS ACTION COMPLAINT

1 4. BREACH OF EXPRESS
2 WARRANTY

3 5. UNJUST ENRICHMENT

4 DEMAND FOR JURY
5 TRIAL
6 /

7
8 **CLASS ACTION COMPLAINT**

9
10 NOW COMES Plaintiff STEVEN HODGES, ("Plaintiff"), by and through
11 his attorneys OLIVER LAW GROUP, P.C., individually and on behalf of all
12 others similarly situated, alleges the following:
13

- 14 1. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d), because
15 there are at least 100 Class Members in the proposed Class, the combined
16 claims of proposed Class Members exceed \$5,000,000 exclusive of interest
17 and costs, and at least one Class Member is a citizen of a state other than
18 Defendant's state of citizenship.
19

20 **NATURE OF THE ACTION**

- 21
22 2. This is a civil class action brought individually by Plaintiff and on behalf of
23 a class of persons similarly situated, ("Class Members"), who purchased the
24 dietary supplement True Athlete Training Formula ("Product") from
25 Defendant.
26
27
28

3. The class members are all persons located within the state of California who purchased the Product.
4. Defendant Vitamin Shoppe, Inc., advertises, manufactures, markets, sells and distributes the Product.
5. The dietary supplement industry is a growing and extremely competitive business environment, especially the sports (bodybuilding) supplement segment.
6. Most companies in this segment distort, if not totally ignore, competent and reliable scientific data regarding their products and ingredients.
7. The Product is generally categorized as a "Pre-Workout Muscle Building and Performance Enhancing" product.
8. Defendant uses ineffective compounds relating to their efficacy claims and also dramatically under dose certain compounds, yet boast their efficacy.
9. Defendant makes numerous false, fraudulent, misleading, and deceptive label claims regarding the Product.
10. Defendant uses several false, fraudulent, misleading, unfair and deceptive claims on the label of the Product. (See Exhibits A and B).
11. Defendant uses several false, fraudulent, misleading, unfair and deceptive claims at the point of purchase for the Product on their websites www.vitmainshoppe.com and www.true-athlete.com. (Exhibits A and B).

12. By Defendant's unfair, deceptive, fraudulent, unfair and misleading practices, Plaintiff and Class Members have been unfairly deceived into purchasing the Product.

13. Plaintiff brings this action challenging Defendant's claims relating to the Product on behalf of himself and all others similarly situated, under California's Unfair Competition Law, False Advertising Law, Consumer Legal Remedies Act, Breach of Express Warranty, and Unjust Enrichment.

14. Plaintiff seeks an order compelling Defendant to (1) cease marketing the Product using the misleading tactics complained of herein, (2) conduct a corrective advertising campaign, (3) restore the amounts by which Defendant has been unjustly enriched, and (4) destroy all misleading and deceptive materials.

JURISDICTION AND VENUE

15. This Court has jurisdiction over all causes of action asserted herein.

16. Plaintiff will likely have evidentiary support after a reasonable opportunity for further investigation or discovery regarding Defendant's sales of the Product during the class period.

17. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to the claims asserted herein occurred in this District. Venue is proper pursuant to 28 U.S.C. § 1391(c) because

1 Defendant conducts substantial business in this District, has sufficient
2 minimum contacts with this District, and otherwise purposely avail
3 themselves of the markets in this District, through the promotion, sale, and
4 marketing of their Product in this District.

- 5
6 18. Defendant and other out-of-state participants can be brought before this
7 Court pursuant to state and federal law.
8

9 THE PARTIES

- 10 19. During the Class period, Plaintiff and Class Members purchased the Product
11 through Defendant's website www.vitaminshoppe.com and/or one of the
12 many brick and mortar locations owned by Defendant. Plaintiff and Class
13 Members suffered an injury in fact caused by the false, fraudulent, unfair,
14 deceptive and misleading practices set forth in this Complaint.
15
16

- 17 20. Plaintiff is a resident of the County of Los Angeles, State of California, and
18 the events set forth in this Complaint took place therein, who, on or about
19 December 2, 2012, purchased the Product for his own use, and not for resale,
20 from Defendant's website www.vitaminshoppe.com.
21

- 22 21. Vitamin Shoppe, Inc. is a New Jersey corporation headquartered at 2101
23 91st Street, North Bergen, New Jersey. Vitamin Shoppe is a retailer of
24 nutritional products and sports supplements as well as herbs, homeopathic
25 remedies, and beauty aids. The company currently sells its products through
26
27
28

1 more than 500 stores located in 38 states and Puerto Rico, as well as through
2 internet sales.

3 4 **FACTUAL ALLEGATIONS**

5 22. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

6
7 23. Plaintiff Hodges reviewed Defendant's websites and the Product's label
8 prior to purchasing the Product through Defendant's website
9 www.vitaminshoppe.com.

10
11 24. Plaintiff Hodges reasonably relied on the information provided by Defendant
12 when making the decision to purchase the Product.

13 25. Defendant's claims are false and misleading.

14
15 26. Defendant had access, but knowingly and/or recklessly ignored all
16 competent and reliable scientific evidence regarding the Product and its
17 ingredients.

18
19 27. Specifically, Defendant uses an ingredient, L-Arginine Alpha Ketoglutarate
20 ("AAKG"), known to be useless for increasing nitric oxide production in the
21 body, enhancing athletic performance, improving cardiovascular function, or
22 building muscle. Defendant also knowingly under doses the remaining
23 active ingredients to save money but still entice consumers by using efficacy
24 claims for the compounds Creatine Monohydrate ("CM"), Beta-Alanine (as
25 Carnosyn®), and AstraGin™.

1 28. These ingredients are well known compounds in the sports supplement
2 industry.

3
4 29. Defendant uses the inclusion of these compounds in the Product to support
5 their false and misleading claims referred to herein.

6
7 30. Defendant unapologetically, and with no remorse, boasts the inclusion of
8 these popular ingredients in the Product, but then under doses them in the
9 formula to make the Product useless.

10
11 31. This inclusion of ingredients at levels under the clinical dosage is nothing
12 more than a new tactic at selling consumers "snake oil".

13 ***L-Arginine Alpha Ketoglutarate***

14
15 32. Defendant's Product contains AAKG which is falsely marketed as a muscle
16 building and endurance and performance enhancing compound.

17
18 33. The Product contains 1 gram of AAKG per serving. The Defendant directs
19 the consumer to "take 1 to 3 scoops prior to training or activity". (Exhibit
20 B).

21
22 34. This compound falsely claims to provide increased muscle strength, muscle
23 mass, stamina, improved cardiovascular function, by boosting Nitric Oxide
24 levels, increasing vasodilation and extending muscle "pumps".

25
26 35. "Muscle Pumps" refers to increased blood flow to the muscles, which in turn
27 is supposed to increase the size of the muscles.
28

1 36. Nitric oxide is a gaseous signaling molecule known to contribute to the
2 control of vascular tone, and is considered to play a role in the vasodilatation
3 of muscle resistance vessels during exercise.
4

5 37. Defendant uses the false and/or misleading claims:

6 a) "An advanced pre-workout formula that provides muscle, endurance &
7 performance support" (Exhibit A);
8

9 b) "Fueled by Creatine, Arginine and Beta Alanine" (Exhibit A);

10 c) "Serious muscle, endurance and performance support" (Exhibit B);
11

12 d) "True Athlete Training Formula contains the important base nutrients
13 creatine, arginine, and beta alanine, as well as AstraGin™, a proprietary
14 nutrient uptake enhancer" (Exhibit B);
15

16 e) "BODYBUILDING- COMBINE TRAINING FORMULA WITH
17 PROTEIN OR AMINO ACIDS FOR ADDED MUSCLE SUPPORT"
18 (Exhibit B); and
19

20 f) "FITNESS/SPORTS TRAINING- FOR ADDED ENERGY AND
21 RECOVERY SUPPORT, COMBINE TRAINING FORMULA WITH
22 AMINO ACIDS AND/OR NATURAL FRUIT JUICE" (Exhibit B).
23

24 38. L-arginine (2-amino-5-guanidino-pentanoic acid) is a conditionally-
25 essential, proteinogenic amino acid and a natural constituent of dietary
26 proteins.
27
28

39. L-arginine-enhanced vasodilation and blood flow to working muscles during resistance exercise is alleged to provide an even greater impetus for increasing muscle strength and hypertrophy than exercise alone.

40. AAKG supplementation has been shown not to increase muscle blood flow after resistance training, thus providing no increase in size to the muscles trained¹.

41. Presently, there are several studies involving an L-arginine-based approach to increase circulating nitric oxide in humans; however, none of the studies have demonstrated any positive results that would justify the claims made by Defendant.

42. A number of studies have been conducted on L-arginine and L-arginine-containing supplements to assess the effectiveness in which they increase the levels of nitric oxide in the blood.

43. It should be noted that nitric oxide is very difficult to measure in circulation due to its relative instability and short half-life.

¹ See Tang J, Lysecki P, Manolagos J, Tarnopolsky M, Phillips S. Bolus arginine supplementation affects neither muscle blood flow nor muscle protein synthesis in young men at rest or after resistance exercise. *Journal of Nutrition*, 141:195-200, 2011; see also Willoughby DS, Boucher T, Reid J, Skelton G, Clark M. Effects of 7 days of arginine-alpha-ketoglutarate supplementation on blood flow, plasma L-arginine, nitric oxide metabolites, and asymmetric dimethyl arginine after resistance exercise. *International Journal of Sport Nutrition and Exercise Metabolism*, 21:291-99, 2011.

1 44. Therefore, the metabolites nitrate and nitrite (NOX) are most often
2 measured.

3
4 45. The available published data on this issue has clearly indicated that these so-
5 called nitric oxide inducing supplements which contain L-arginine are
6 ineffective in inducing increases in circulating nitric oxide.

7
8 46. For example, a single oral dose of L-arginine provided at 0.1 gram/kg was in-
9 ineffective at increasing NOX in the blood².

10 47. L-arginine provided orally at 6 g/day for three days was shown to have no
11 effect on plasma NOX metabolite levels in well-trained male athletes³.

12
13 48. More specifically, it has been shown that alleged "nitric oxide inducing"
14 supplements were ineffective at increasing circulating NOX levels and
15 muscle tissue oxygenation in response to resistance exercise⁴.
16

17
18
19 ² See Tsai PH, Tang TK, Juang CL, Chen KW, Chi CA, Hsu MC. Effects of
20 arginine supplementation on post-exercise metabolic responses. *Chinese Journal*
21 *of Physiology*, 52:136-42, 2009.

22 ³ See Liu T, Wu C, Chiang C, Lo Y, Tseng H, Chang C. No effect of short-term
23 arginine supplementation on nitric oxide production, metabolism and
24 performance in intermittent exercise in athletes. *Journal of Nutritional*
25 *Biochemistry*, 20:462-68, 2009.

26 ⁴ See Bloomer RJ, Williams SA, Canale RE, Farney TM, Kabir MM. Acute effect
27 of nitric oxide supplement on blood nitrate/nitrite and hemodynamic variables in
28 resistance trained men. *Journal of Strength and Conditioning Research*, 24:2587-
92, 2010.; see also Bloomer R, Farney T, Trepanowski J, McCarthy C, Canale R,
Schilling B. Comparison of pre-workout nitric oxide stimulating dietary
supplements on skeletal muscle oxygen saturation, blood nitrate/nitrite, lipid

1 49. Additionally, the provision of 12 grams/day of AAKG for seven days
2 significantly increased plasma L-arginine levels but had no significant effect
3 on circulating NOX or blood flow, either at rest or in response to resistance
4 exercise⁵.

6 50. Based on this premise, hemodynamic function (heart rate and blood
7 pressure) would increase to justify the increased blood flow, ultimately
8 improving cardiovascular function.

10 51. In a study examining the effects of acute L-arginine supplementation and
11 resistance exercise on arterial function in young men, there was no
12 significant change in blood flow and hemodynamic and vascular responses
13 when 7 grams of L-arginine was given immediately before resistance
14 exercise⁶.

20 peroxidation, and upper body exercise performance in resistance training men.
21 *Journal of the International Society of Sport Nutrition*, 7:16-30, 2010.

22 ⁵ See Willoughby DS, Boucher T, Reid J, Skelton G, Clark M. Effects of 7 days
23 of arginine-alpha-ketoglutarate supplementation on blood flow, plasma L-
24 arginine, nitric oxide metabolites, and asymmetric dimethyl arginine after
25 resistance exercise. *International Journal of Sport Nutrition and Exercise*
Metabolism, 21:291-99, 2011.

26 ⁶ See Fabs C, Heffernan K, Fernhall B. Hemodynamic and vascular response to
27 resistance exercise with L-arginine. *Medicine and Science in Sports and Exercise*,
28 41:773-79, 2009.

52. It has been shown that single doses of alleged “nitric oxide inducing” supplements were ineffective at increasing blood flow in response to resistance exercise⁷.

53. It has also been shown that 6 grams of L-arginine delivered either intravenously or orally⁸ and 12 grams/day for 7 days⁹ did not result in any significant changes in blood pressure, heart rate, or cardiac output.

54. In assessing the effects of high (5.7 grams) and low (2.8 grams) doses of L-arginine supplementation for 4 weeks in endurance-trained male athletes,

⁷ See Bloomer RJ, Williams SA, Canale RE, Farney TM, Kabir MM. Acute effect of nitric oxide supplement on blood nitrate/nitrite and hemodynamic variables in resistance trained men. *Journal of Strength and Conditioning Research*, 24:2587-92, 2010.; see also Bloomer R, Farney T, Trepanowski J, McCarthy C, Canale R, Schilling B. Comparison of pre-workout nitric oxide stimulating dietary supplements on skeletal muscle oxygen saturation, blood nitrate/nitrite, lipid peroxidation, and upper body exercise performance in resistance training men. *Journal of the International Society of Sport Nutrition*, 7:16-30, 2010.

⁸ See Bode-Boger S, Boger R, Galland A, Tsikas D, Frolich J. L-arginine-induced vasodilation in healthy humans: pharmacokinetic-pharmacodynamic relationship. *British Journal of Clinical Pharmacology*, 46:489-97, 1998.

⁹ See Willoughby DS, Boucher T, Reid J, Skelton G, Clark M. Effects of 7 days of arginine-alpha-ketoglutarate supplementation on blood flow, plasma L-arginine, nitric oxide metabolites, and asymmetric dimethyl arginine after resistance exercise. *International Journal of Sport Nutrition and Exercise Metabolism*, 21:291-99, 2011.

1 there was no improvement in physical performance as measured by run time
2 to exhaustion¹⁰.

3
4 55. In addition, no improvement in the time required to run 31 km was observed
5 after 14 days of L-arginine supplementation at a dose of 15 grams/day¹¹.

6
7 56. L-arginine provided orally at 6 g/day for three days was shown to have no
8 effect on muscular power generated during an anaerobic cycle ergometer test
9 in well-trained male athletes¹².

10
11 57. The provision of 3.7 grams of AAKG failed to improve muscle endurance or
12 significantly affect the blood pressure response to anaerobic work¹³.

13
14 58. Furthermore, eight weeks of resistance training combined with AAKG
15 supplementation at a daily dose of 12 grams appeared to be safe and well

16
17 ¹⁰ See Abel T, Knechtle B, Perret C, Esser P, von Arx P, Knecht H. Influence of
18 chronic supplementation of arginine aspartate in endurance athletes on
19 performance and substrate metabolism - a randomized, double-blind, placebo-
controlled study. *International Journal of Sports Medicine*, 26:344-49, 2005.

20 ¹¹ See Colombani PC, Bitzi R, Frey-Rindova P, Frey W, Arnold M, Langhans W,
21 Wrenk C. Chronic arginine aspartate supplementation in runners reduces total
22 plasma amino acid level at rest and during a marathon run. *European Journal of
Nutrition*, 38:263-70, 1999.

23 ¹² See Liu T, Wu C, Chiang C, Lo Y, Tseng H, Chang C. No effect of short-term
24 arginine supplementation on nitric oxide production, metabolism and
25 performance in intermittent exercise in athletes. *Journal of Nutritional
Biochemistry*, 20:462-68, 2009.

26 ¹³ See Greer BK, Jones BT. Acute arginine supplementation fails to improve
27 muscle endurance or affect blood pressure responses to resistance training.
28 *Journal of Strength and Conditioning Research*, 25:1789-94, 2011.

1 tolerated, but had only modest improvements in muscle strength and power,
2 and had no effects on body composition or aerobic capacity¹⁴.

3
4 59. In assessing the effects of high (5.7 grams) and low (2.8 grams) doses of L-
5 arginine supplementation for 4 weeks in endurance-trained male athletes,
6 there was no improvement in physical performance as measured by run time
7 to exhaustion¹⁵.

8
9 60. In addition, no improvement in the time required to run 31 km was observed
10 after 14 days of L-arginine supplementation at a dose of 15 grams/day¹⁶.

11
12 61. AAKG supplementation, at the levels present in the Product and at the
13 recommended doses, have been shown to be ineffective at increasing
14 circulation of nitric oxide, causing vasodilatation and increasing blood flow,
15 increasing muscle strength and mass, and increasing cardiovascular-based
16 exercise performance.
17

18
19 ¹⁴ See Campbell B, Roberts M, Kerkick C, Wilborn C, Marcello B, Taylor L,
20 Nassar E, Leutholtz B, Bowden R, Rasmussen C, Greenwood M, Kreider R.
21 Pharmacokinetics, safety, and effects on exercise performance of L-arginine alpha-
ketoglutarate in trained adult men. *Nutrition*, 22:872-881, 2006.

22 ¹⁵ See Abel T, Knechtle B, Perret C, Esser P, von Arx P, Knecht H. Influence of
23 chronic supplementation of arginine aspartate in endurance athletes on
24 performance and substrate metabolism - a randomized, double-blind, placebo-
25 controlled study. *International Journal of Sports Medicine*, 26:344-49, 2005.

26 ¹⁶ See Colombani PC, Bitzi R, Frey-Rindova P, Frey W, Arnold M, Langhans W,
27 Wrenk C. Chronic arginine aspartate supplementation in runners reduces total
28 plasma amino acid level at rest and during a marathon run. *European Journal of
Nutrition*, 38:263-70, 1999.

Creatine Monohydrate ("CM")

62. The Products contain CM, which has been clinically proven to increase strength and muscle mass when used by bodybuilders.

63. The only dosing of CM that has shown to be truly effective has been a loading period, usually around 0.3 grams/kg/day, for 3 to 5 days, then a continued dosing of 3-5 grams/day¹⁷.

64. Ingesting smaller amounts of CM (e.g., 2–3 grams/day) will increase muscle creatine stores over a 3–4 week period, however, the performance effects of this method of supplementation are less supported¹⁸.

65. CM given in low doses actually decreased the free creatine content in muscles rather than increasing it.

¹⁷ See Jager, R; Harris, R.C.; Purpura, M; Francaux, M. Comparison of new forms of creatine in raising plasma creatine levels. *Journal of the International Society of Sports Nutrition*, 4(17), 2007; *see also* Jager, R; Purpura, M; Shao, A; Inoue, T; Kreider, R.B. Analysis of the efficacy, safety, and regulatory status of novel forms of creatine. *Amino Acids*, 40: 1369-1383, 2011; *see also* Clark, J.F. Creatine and Phosphocreatine: A review of their use in exercise and sport. *J Athl Train*, 32(1): 45-51, 1997; *see also* Graef, J.L; Smith, A.E.; Kendall, K.L.; Fukuda, D.H.; Moon, J.R.; Beck, T.W.; Cramer, J.T.; Stout, J.R. The effects of four weeks of creatine supplementation and high-intensity interval training on cardiorespiratory fitness: a randomized control trial. *Journal of International Society of Sports Nutrition*, 6(18), 2009; *see also* Greenhaff, P.L. The nutritional biochemistry of creatine. *The Journal of Nutritional Biochemistry*, 8(11): 610-618, 1997; *see also* Tarnopolsky, M.A.. Creatine as a therapeutic strategy for myopathies. *Amino Acids*, 40: 1397-1407, 2011.

¹⁸ See Buford, T.; Kreider, R.; Stout, J.; Greenwood, M.; Campbell, B.; Spano, M.; Ziegenfuss, T.; Lopez, H.; Landis, J.; Antonio, J. International Society of Sports Nutrition position stand: creatine supplementation and exercise. *International Society of Sports Nutrition*, 4:6, 2007.

66. Defendant's Product contains 1 gram of CM per serving. The Defendant directs the consumer to "take 1 to 3 scoops prior to training or activity". (Exhibit B).

67. Only if the consumer consumed the maximum dosage suggested by the Defendant would the consumer have the slightest possibility of receiving the benefits of CM.

68. The clinically and most scientifically supported dosage of CM for increasing athletic performance is 5 grams/day.

69. Defendant's following claims are untrue based on the under dosing of CM.

70. Defendant uses the false and/or misleading claims:

a) "An advanced pre-workout formula that provides muscle, endurance & performance support" (Exhibit A);

b) "Fueled by Creatine, Arginine and Beta Alanine" (Exhibit A);

c) "Serious muscle, endurance and performance support" (Exhibit B);

d) "True Athlete Training Formula contains the important base nutrients creatine, arginine, and beta alanine, as well as AstraGin™, a proprietary nutrient uptake enhancer" (Exhibit B);

e) "BODYBUILDING- COMBINE TRAINING FORMULA WITH PROTEIN OR AMINO ACIDS FOR ADDED MUSCLE SUPPORT" (Exhibit B); and

f) "FITNESS/SPORTS TRAINING- FOR ADDED ENERGY AND RECOVERY SUPPORT, COMBINE TRAINING FORMULA WITH AMINO ACIDS AND/OR NATURAL FRUIT JUICE" (Exhibit B).

Beta-Alanine

71. The Products contain Beta-Alanine (as Carnosyn®) which has been shown in clinical studies, at a dose dependent amount, to delay muscular fatigue, promote muscular endurance, and improve workout performance.

72. The effective dosage of the patented Beta-Alanine is 2.4 to 3.2 grams per day, as suggested by the patent-holder. (Exhibit C).

73. Defendant's Product contains 500mg of Beta Alanine (as Carnosyn®) per serving. The Defendant directs the consumer to "take 1 to 3 scoops prior to training or activity". (Exhibit B).

74. Defendant's following claims are untrue based on the under dosing of Beta-Alanine (as Carnosyn®).

75. Defendant uses the false and/or misleading claims:

a) "An advanced pre-workout formula that provides muscle, endurance & performance support" (Exhibit A);

b) "Fueled by Creatine, Arginine and Beta Alanine" (Exhibit A);

c) "Serious muscle, endurance and performance support" (Exhibit B);

d) "True Athlete Training Formula contains the important base nutrients creatine, arginine, and beta alanine, as well as AstraGin™, a proprietary nutrient uptake enhancer" (Exhibit B);

e) "BODYBUILDING- COMBINE TRAINING FORMULA WITH PROTEIN OR AMINO ACIDS FOR ADDED MUSCLE SUPPORT" (Exhibit B); and

f) "FITNESS/SPORTS TRAINING- FOR ADDED ENERGY AND RECOVERY SUPPORT, COMBINE TRAINING FORMULA WITH AMINO ACIDS AND/OR NATURAL FRUIT JUICE" (Exhibit B).

AstraGin™

76. Defendant's Product contains the compound AstraGin™ which is marketed by the TM holder as a natural compound that in multiple pre-clinical studies has been shown to increase the absorption of certain nutrients, including Arginine.

77. The clinically required dosage of AstraGin™, to achieve these results, is 50 mg.

78. Defendant's Product contains 17 mg of AstraGin™ per serving. The Defendant directs the consumer to "take 1 to 3 scoops prior to training or activity". (Exhibit B).

1 79. Only if the consumer consumed the maximum dosage suggested by the
2 Defendant would the consumer have the slightest possibility of receiving the
3 benefits of AstraGin™.
4

5 80. Defendants' following claims are untrue based on the under dosing of
6 AstraGin™.
7

8 81. Defendants use the false and/or misleading claims:

9 a) "Creatine, Arginine and Beta Alanine with AstraGin™ Nutrient Uptake
10 Enhancer" (Exhibit B); and
11

12 b) "True Athlete Training Formula contains the important base nutrients
13 creatine, arginine, and beta alanine, as well as AstraGin™, a proprietary
14 nutrient uptake enhancer" (Exhibit B).
15

16 82. The claims referred to in pp. 81 are also misleading because they suggest
17 that AstraGin™ enhances the uptake of Creatine and Beta Alanine.
18 However, there have been no scientifically reliable studies on AstraGin's
19 effect on Creatine or Beta Alanine absorption.
20

21 ***Defendant's Omissions of Material Facts***

22 83. Defendant includes the compounds in the Product, but fails to disclose to
23 consumers that they are either completely incapable of providing muscle,
24 endurance or performance support, or that the compounds are under dosed as
25 to not be able to provide muscle, endurance or performance support.
26
27
28

Defendant's Misleading Statements Regarding "Servings Per Container"

84. As stated above, the Product is useless at servings of 1-2 scoops. (Exhibit B).

85. Further, even at 3 full scoops, Defendant's Product is arguably useless to consumers.

86. Defendant's recommended dosage is 1-3 scoops. (Exhibit B).

87. However, under the Product's "Supplement Facts" on the label, the serving size is listed at 1 Scoop, and Servings Per Container is listed at 90. (Exhibit B).

88. Defendant's claim that there are 90 servings contained in the Product is misleading because at that dosage-one scoop- the Product is completely useless.

Conclusion

89. At the Product's dosing protocols it is impossible for Defendant to meet their advertising, labeling and marketing claims contained herein.

RELIANCE AND INJURY

90. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

91. When purchasing the Product, Plaintiff was seeking a product that had the qualities described in Defendant's advertising, labeling and marketing.

92. Plaintiff read and relied on the deceptive claims contained herein.

CLASS ACTION COMPLAINT

1 93. Plaintiff believed the Product had the qualities he sought, but the Product
2 was actually unsatisfactory to Plaintiff for the reasons described herein.

3
4 94. Plaintiff paid more for the Product, and would have been unwilling to
5 purchase the Product at all, absent the false and misleading labeling
6 complained of herein. Plaintiff would not have purchased the Product
7 absent these claims and advertisements.
8

9 95. For these reasons, the Product was worth less, if it all, than what Plaintiff
10 paid for it.
11

12 96. Instead of receiving a product that had actual and substantiated healthful or
13 other beneficial qualities, the Product Plaintiff received was one that does
14 not provide the claimed benefits.
15

16 97. Plaintiff lost money as a result of Defendant's deceptive claims and practices
17 in that he did not receive what he paid for when purchasing the Product.
18

19 98. Plaintiff altered his position to his detriment and suffered damages in an
20 amount equal to the amount he paid for the Product.
21

22 **CLASS ALLEGATIONS**

23 99. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

24 100. Plaintiff brings this action on his own behalf and as a Class Action Pursuant
25 to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff seeks
26 certification of the following Class:
27
28

1 All Persons in the State of California who have spent money purchasing the
2 Product from Defendant from four years from the first-filed complaint in this
3 action until the final disposition of this and any and all related cases.

4 101. The abundance of Class Members renders joinder of all Class members
5 individually, in one action or otherwise, impractical.

6 102. This action involves questions of law and fact common to Plaintiff and Class
7 Members including:
8

9 (a) Whether Defendant violated the California Civil Code Section 1750 *et*
10 *seq.*;

11 (b) Whether Defendant violated the California Business & Professions Code
12 Section 17200 *et seq.*;

13 (c) Whether Defendant violated the False Advertising Law, Cal. Bus. &
14 Prof. Code Section 17500 *et seq.*;

15 (d) Whether Defendant breached an express warranty;

16 (e) Whether Defendant was unjustly enriched at the expense of the Class
17 Members; and
18

19 (f) Whether Plaintiff and Class Members sustained damages and, if so, the
20 proper measure of damages, restitution, equitable or other relief, and the
21 amount and nature of such relief.
22

23 Excluded from the Class is: (a) any Judge or Magistrate presiding over this action
24 and members of their families; (b) Defendant and any entity in which Defendant
25
26
27
28

1 has a controlling interest or which has a controlling interest in Defendant and its
2 legal representatives, assigns and successors of Defendant; and (c) all persons who
3 properly execute and file a timely request for exclusion from the Class.
4

5 103. *Numerosity*: The Class is composed of thousands of persons geographically
6 dispersed throughout the State of California, the joinder of whom in one
7 action is impractical. Moreover, upon information and belief, the Classes
8 are ascertainable and identifiable from Defendant's records.
9

10 104. *Commonality*: Questions of law and fact common to the Class exist as to all
11 members of the Class and predominate over any questions affecting only
12 individual members of the Class. These common legal and factual issues
13 include, but are not limited to the following:
14

15 (a) Whether Defendant violated the California Civil Code Section 1750 *et*
16 *seq.*;

17 (b) Whether Defendant violated the California Business & Professions Code
18 Section 17200 *et seq.*;

19 (c) Whether Defendant violated the False Advertising Law, Cal. Bus. &
20 Prof. Code Section 17500 *et seq.*;

21 (d) Whether Defendant breached an express warranty;

22 (e) Whether Defendant was unjustly enriched at the expense of the Class
23 Members; and
24
25
26
27
28

(f) Whether Plaintiff and Class Members sustained damages and, if so, the proper measure of damages, restitution, equitable or other relief, and the amount and nature of such relief.

105. *Typicality*: Plaintiff's claims are typical of the claims of the members of the Class, as all such claims arise out of Defendant's conduct in manufacturing, marketing, advertising, warranting and selling the Product, Defendant's conduct in concealing material facts regarding the Product, Defendant's false, fraudulent, unfair and misleading claims and Plaintiff's and Class Members' purchasing the Product.

106. *Adequate Representation*: Plaintiff will fairly and adequately protect the interests of the members of the Class and have no interests antagonistic to those of the Class. Plaintiff has retained counsel experienced in the prosecution of complex class actions, including consumer class actions involving false and misleading advertising, product liability and product design defects.

107. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members

1 be required to bring separate actions, this Court and Courts throughout
 2 California would be confronted with a multiplicity of lawsuits burdening the
 3 court system while also creating the risk of inconsistent rulings and
 4 contradictory judgments. In contrast to proceeding on a case-by-case basis,
 5 in which inconsistent results will magnify the delay and expense to all
 6 parties and the court system, this class action presents far fewer management
 7 difficulties while providing unitary adjudication, economies of scale and
 8 comprehensive supervision by a single Court.
 9
 10
 11

12 **CLAIMS FOR RELIEF**

13 **FIRST CLAIM FOR RELIEF**

14 **Violations of California Business and Professions**

15 **Code § 17200 *et seq.***

16
 17 108. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

18
 19 109. Cal. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or
 20 fraudulent business act or practice.”

21
 22 110. The acts, omissions, misrepresentations, practices, and non-disclosures of
 23 Defendant as alleged herein constitute “unlawful” business acts and
 24 practices in that Defendant’s conduct violates the False Advertising Law and
 25 the Consumer Legal Remedies Act.
 26
 27
 28

1 111. Defendant's conduct is further "unlawful" because it violates the Federal
2 Food, Drug, and Cosmetic Act and its implementing regulations in at least
3 the following ways:
4

5 (1) Defendant's deceptive statements violate 21 U.S.C. § 343(a), which
6 deems food (including nutritional supplements) misbranded when the
7 label contains a statement that is "false or misleading in any particular";

8 (2) Defendant's deceptive statements violate 21 C.F.R. § 101.14(b)(3)(i),
9 which mandates "substances" in dietary supplements consumed must
10 contribute and retain "nutritional value" as defined under 21 C.F.R. §
11 101.14(a)(2)(3) when consumed at levels necessary to justify a claim.

12 112. Defendant's conduct is further "unlawful" because it violates The California
13 Sherman Food, Drug, and Cosmetic Law, which incorporates the provisions
14 of the Federal Food, Drug and Cosmetic Act.
15

16 113. The acts, omissions, misrepresentations, practices, and non-disclosures of
17 Defendant as alleged herein also constitute "unfair" business acts and
18 practices under the UCL in that Defendant's conduct is immoral,
19 unscrupulous, and offends public policy. Further, the gravity of Defendant's
20 conduct outweighs any conceivable benefit of such conduct.
21

22 114. The acts, omissions, misrepresentations, practices, and non-disclosures of
23 Defendant as alleged herein also constitute "fraudulent" business acts and
24 practices under the UCL in that Defendant's claims are false, misleading,
25 and have a tendency to deceive the Class and the general public.
26
27
28

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

116. Plaintiff further seeks an order for the disgorgement and restitution of all monies from the sale of the Defendant's Product, which were acquired through acts of unlawful, unfair, and/or fraudulent competition.

SECOND CLAIM FOR RELIEF

Violations of California Legal Remedies Act

Cal. Civ. Code § 1750 *et seq.*

117. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

118. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and have lost money or property as a result of Defendant's actions as set forth herein.

119. This cause of action is brought on behalf of all people of the State of California in accordance with the provisions of the California Legal Remedies Act (California Civil Code section 1770). Class members have lost money or property as a result of Defendant's actions as set forth herein.

120. Defendant's wrongful business practices constituted, and constitute, a continuing course of conduct of violation of the California Legal Remedies

Act since Defendants are still representing that the Product has characteristics and abilities which are false and misleading.

121. Defendant's wrongful business practices have caused injury to Plaintiff and the Class.

122. Pursuant to section 1770 of the California Civil Code, Plaintiff and the Class seek an order of this Court enjoining Defendant from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law, including those set forth in this Complaint.

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

124. Plaintiff and the Class also seek Punitive Damages since Defendant was put on notice of its violations of the California Legal Remedies Act and took no remedial actions.

THIRD CLAIM FOR RELIEF

Violations of the False Advertising Law, Business and Professions Code Sections 17500 *et seq.*

125. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

126. In violation of Cal. Bus. & Prof. Code § 17500 *et seq.*, the advertisements, labeling, policies, acts, and practices described herein were designed to, and did, result in the purchase and use of the Product.

1 127. Defendant knew and reasonably should have known that the advertising,
2 marketing and labeling of the Product was untrue and/or misleading.

3
4 128. As a result, Plaintiff, the Class, and the general public are entitled to
5 injunctive and equitable relief, restitution, and an order for the disgorgement
6 of the funds by which Defendant was unjustly enriched.
7

8
9
10 **FOURTH CLAIM FOR RELIEF**
11 **Breach of Express Warranty**

12 129. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

13
14 130. Defendant made several different express warranties upon which Plaintiff
15 relied in making his purchase, including the false and misleading claims
16 contained herein.
17

18 131. In fact, there is no competent and reliable scientific evidence that support
19 any of Defendant's claims, and actually there is competent and reliable
20 scientific evidence refuting those claims.
21

22 132. The Plaintiff and Class Members received a product that did not provide
23 muscle, endurance and performance support.

24 133. These facts constitute breaches of all applicable express warranties as
25 alleged in this complaint.
26
27
28

FIFTH CLAIM FOR RELIEF

Unjust Enrichment

134. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

135. Plaintiff and Class Members conferred benefits on Defendant by purchasing the Product.

136. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff's and Class Members' purchase of the Product. Retention of those monies under these circumstances is unjust and inequitable because Defendant misrepresented the Product's efficacy, which caused injuries to Plaintiff and Class Members because they would have not purchased the Product if the true facts would have been known.

137. Because Defendant's retention of the non-gratuitous benefits conferred on them by Plaintiff and Class Members is unjust and inequitable, Defendant must pay restitution to Plaintiff and the Class Members for their unjust enrichment, as ordered by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Members demand judgment in their favor against the Defendant, as follows:

- a. A determination that this action proceed as a class action and Plaintiff adequately represents the Class;
- b. An Order requiring Defendant to bear the cost of class notice;
- c. For compensatory, consequential and special damages in amounts proved, as well as statutory damages, including a return of all amounts paid for the Product sold by the Defendant to the Plaintiff and the Class Members;
- d. For interest thereon, in the maximum amount allowable under applicable law;
- e. For delay damages thereon, in the maximum amount allowable under applicable law;
- f. For costs of suit, in the maximum amount allowable under applicable law;
- g. For punitive damages, to the maximum amount permitted under applicable law;
- h. For an award of attorneys' fees and costs, to the maximum amount permitted under applicable law;
- i. For injunctive relief, restraining and enjoining the Defendant from continuing to use these deceptive sales tactics;

- j. For restitution of the funds which were unjustly enriched by Defendant, at the expense of Plaintiff and Class Members; and
- k. For such other and further relief for the Plaintiffs as this Honorable Court shall deem just.

DATED: April 18, 2013

By: /s/ Brian Tomina
BRIAN TOMINA, Bar No. 255386
OLIVER LAW GROUP, P.C.
5900 Wilshire Blvd., Suite 2600
Los Angeles, CA 90036
Telephone: (248) 327-6556
Facsimile: (248) 436-3385
notifications@oliverlg.com
www.legalactionnow.com

NICK SUCIU III
(Pro Hac Vice Application Pending)
OLIVER LAW GROUP, P.C.
950 W. University Drive, Ste. 200
Rochester, MI 48307
Telephone: (248) 327-6556
Facsimile: (248) 436-3385
notifications@oliverlg.com
www.legalactionnow.com

Attorneys for Plaintiff
Steven Hodges, and on Behalf
of All Others Similarly Situated

DEMAND FOR JURY TRIAL

Plaintiff and the Class Members demand trial by jury as to all matters and issues triable.

DATED: April 18, 2013

By: /s/ Brian Tomina
BRIAN TOMINA, Bar No. 255386
OLIVER LAW GROUP PC
5900 Wilshire Blvd., Suite 2600
Los Angeles, CA 90036
Telephone: (248) 327-6556
Facsimile: (248) 436-3385
notifications@oliverlg.com
www.legalactionnow.com

NICK SUCIU III
(Pro Hac Vice Application Pending)
OLIVER LAW GROUP PC
950 W. University Drive, Ste. 200
Rochester, MI 48307
Telephone: (248) 327-6556
Facsimile: (248) 436-3385
notifications@oliverlg.com
www.legalactionnow.com

Attorneys for Plaintiff
Steven Hodges, and on Behalf
of All Others Similarly Situated

EXHIBIT A

True Athlete - Pre-Workout products

Page 1 of 1



INTRODUCING TRUE ATHLETE™

PRODUCT CATEGORY

THE TRUE ATHLETE™ STORY

NSF® CERTIFIED FOR SPORT®

FIND A STORE

PRE-WORKOUT TRAINING FORMULA

- AN ADVANCED PRE-WORKOUT FORMULA THAT PROVIDES MUSCLE, ENDURANCE & PERFORMANCE SUPPORT
- FUELED BY CREATINE, ARGININE AND BETA-ALANINE
- NO ARTIFICIAL COLORS, FLAVORS OR SWEETENERS



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INTRODUCING TRUE ATHLETE

PRODUCT CATEGORY

THE TRUE ATHLETE STORY

NSF CERTIFIED FOR SPORT

FIND A STORE

THE TRUE ATHLETE® STORY

THE MISSION

EMPOWER & INSPIRE

EMPOWER: The True Athlete® mission is to empower athletes and fitness enthusiasts who crave performance, quality and integrity. We are inspired by the Olympic mindset. If you win naturally, it means more. It's about competing against yourself to achieve your personal best.

THE PHILOSOPHY

TRUE ATHLETE® EMBRACES 5 CORE TRUTHS:

1. Compete with honor
2. Commit to the journey
3. Dedicate yourself to your regimen
4. Empower individual achievement
5. Focus your mind to power your body

THE FORMULA

Purity of intent led to purity in formulation. We developed a revolutionary line of sports nutrition that athletes and fitness enthusiasts would embrace with no artificial colors.

ZMA WITH
THEANINE

GEL ALKALINE

TRAINING
FORMULAWHEY PROTEIN
- CHOCOLATEWHEY PROTEIN
- VANILLAMULTIVITAMIN
FOR MENMULTIVITAMIN
FOR WOMEN

TRUE ATHLETE



TRUE ATHLETE

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EXHIBIT B


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Training Formula

9.2 Ounces Powder Item #: VS-6024 / 1774439

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Value Price: \$24.99

Earn 25 Healthy Awards points when you buy this item. What's this?

 Availability: **In Stock - Will Ship Today**

Quantity: 1

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Have a question? Speak to a customer service representative live.


 questions?
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We're ready to help. For this sort of question, please contact us one of these ways:

- Call us: 9 am - 9 pm ET - 1-866-293-3367
- Chat live with our expert Health Enthusiasts
- Email us

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[Product Info](#)
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Reviews

Customer Q&A

Product Label

TRUE ATHLETE
NATURALLY DRIVEN

Serious muscle, endurance and performance support. That's what you get with True Athlete Training Formula. No filler. No fluff. No hype. Just the primary active ingredients needed to give you the advanced pre-workout support you want. Developed with the athlete and fitness enthusiast in mind, True Athlete Training Formula contains the important base nutrients creatine, arginine and beta alanine, as well as AstraGin, a proprietary nutrient uptake enhancer. This TMed ingredient is produced from ginseng and astragalus and has been shown to improve absorption of amino acids, glucose, vitamins and other nutrients over placebo. This streamlined formula can be customized to meet your athletic and fitness needs.

BODYBUILDING - COMBINE TRAINING FORMULA WITH PROTEIN OR AMINO ACIDS FOR ADDED MUSCLE SUPPORT
FITNESS/SPORTS TRAINING - FOR ADDED ENERGY AND RECOVERY SUPPORT, COMBINE TRAINING FORMULA WITH AMINO ACIDS AND/OR NATURAL FRUIT JUICE
ENDURANCE - CAN BE TAKEN WITH ELECTROLYTES OR ADDED TO YOUR FAVORITE SPORTS BEVERAGE

True Athlete Training Formula is lightly sweetened with stevia, so it can be taken alone or in combination with other sports nutrition supplements.

Products that are designated "NSF Certified for Sport" are rigorously tested to help ensure that they contain no banned substances, unlisted ingredients, or harmful impurities.

www.true-athlete.com

Directions

As a dietary supplement, take 1 to 3 scoops prior to training or activity.

Warning

Consult your healthcare provider prior to use if you are pregnant, nursing, taking any medication or have any medical conditions. KEEP OUT OF REACH OF CHILDREN.

Does Not Contain:

No Artificial Colors, Flavors or Sweeteners. NO Yeast, Corn, Wheat, Gluten, Sugar, Salt, Soy, Dairy, Citrus, Fish, Preservatives, Artificial Colors or Flavors Added

How do you read a supplement facts label?

Supplement Facts

Serving Size 1 SCOOP (2.9 GM)

Servings Per Container 90

	Amount	%
	Per	Daily
	Serving	Value
Creatine Monohydrate	1 Gm	N/A*
ARGININE AKG	1 Gm	N/A*
BETA ALANINE (CARNOSYN)	500 Mg	N/A*
ASTRAGIN	17 Mg	N/A*

* Daily value not established

Other Ingredients:

Stevia

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4.1 (based on 14 reviews)

75% of respondents would recommend this to a friend.

EXHIBIT C

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SATURDAY, NOVEMBER 26, 2011

CarnoSyn® FAQs--Advanced (Product Development)



When we talk about new product development, often the questions revolve around the taste and stability of CarnoSyn®. This post is an attempt to cut straight to the point for every New Product Developer out there.

Does CarnoSyn® Beta-Alanine require a loading phase?

Yes. If you're taking 3.2g per day, it typically takes from 4-6 weeks to reach maximum muscle carnosine levels. But the half life of Beta-Alanine in the body is approximately 49 days. So don't limit Beta-Alanine to pre-workouts. It can be added to various formulas to create "PERFORMANCE" proteins, BCAAs, EAAs, vitamins, water, energy drinks and more. Why not get more out your everyday products by adding CarnoSyn®?

Is Beta-Alanine hygroscopic?

Beta-Alanine is a white, free-flowing powder that is slightly hygroscopic. It generally poses no problem with moisture, but adding silica to a powder formula is often recommended to keep moisture low and flowability high.

What is the particle size?

Beta-Alanine is 20-40 mesh. The particle size variance

About



Compound
Solutions, Inc.

Compound Solutions is a science-based ingredient supplier and product developer specializing in amino acids.

[View my complete profile](#)

Get CarnoSyn® Beta-Alanine for your product

<http://camosynworkout.biz/>

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CarnoSyn Workout
CarnosynWorkout

CarnosynWorkout NEW!
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CarnosynWorkout Infinite Turns To CarnoSyn® For "HP" Series: Infinite Labs recently launched its High Performance (HP) series of... [bit.ly/JVJqro](#)
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CarnosynWorkout Announcing CarnoSyn® In 1.M.R.!: CarnoSyn® Beta-Alanine is now in the new 1.M.R. 1.M.R. has come on strong in th... [bit.ly/JxSVh8](#)

between different manufacturers is extremely small. It is naturally granular. If you micronize it, it will take on more hygroscopic properties and you'll have to break up the clumps in production. Just FYI, micronizing Beta-Alanine is 100% marketing gimmick. It is worthless to micronize something so incredibly soluble and absorbable in water.

How does CarnoSyn® Beta-Alanine taste?

Beta-Alanine tastes neutral. It will not negatively impact a drink's taste.

Is CarnoSyn® Beta-Alanine stable?

Yes, Beta-Alanine is stable in powder form. It is stable in heat (melting point is 210°C) and light, and it has a three-year shelf life in powder form in its original containers. Compound Solutions, Inc. is currently working on liquid stability. Two-month data suggests it is stable in water (RTDs).

Is CarnoSyn® Beta-Alanine soluble in water?

It is extremely soluble in water—55 grams per 100 milliliters of water.

Is CarnoSyn® Beta-Alanine easy to formulate with?

In terms of taste, solubility, stability and hygroscopicity, Beta-Alanine is one of the easiest ingredients in sports to formulate with.

What dosage forms can CarnoSyn® Beta-Alanine be used in?

Among others, powders, RTDs, gels, stick packs, confectionary, tablets and capsules.

Why not just take Carnosine?

Because ingesting Carnosine is costly and inefficient. Ingested Carnosine breaks into Beta-Alanine and Histidine and is then

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CarnosynWorkout Beach Body's Newest Pre-Workout Contains CarnoSyn® Beta-Alanine: Beach Body is most famous for owning the P90X e... bit.ly/w0Lt40

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uses only 60% of ingested Carnosine.

How much CarnoSyn® Beta-Alanine should be dosed in a product?

Most of the studies have used 3.2 grams per day. Because Beta-Alanine causes a tingling sensation called paresthesia, it is best to split the 3.2 gram dose into two to three doses per day. We have found 1.2 grams per dose is a good dose for the mass market because the tingling sensation is not overwhelming. However, many people in bodybuilding like to take up to 1.6 grams per dose for a more intense experience.

What is paresthesia?

It is a harmless tingling sensation many feel for 10 to 20 minutes after ingesting Beta-Alanine. Most people like the sensation because they can feel it working.

Posted by Compound Solutions, Inc. at 9:17 PM 

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► January (1)

► 2010 (29)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge R. Gary Klausner and the assigned discovery Magistrate Judge is Jacqueline Chooljian.

The case number on all documents filed with the Court should read as follows:

CV13- 2849 RGK (JCx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Brian Tomina, (Bar No. 255386)
 Oliver Law Group PC
 5900 Wilshire Blvd., Suite 2600
 Los Angeles, CA 90036
 Telephone: (248) 327-6556 Fax: (248) 436-3385
 notifications@oliverlg.com

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

STEVEN HODGES, Individually and on Behalf of All
 Others Similarly Situated,

PLAINTIFF(S)

v.

VITAMIN SHOPPE, INC.,

DEFENDANT(S).

CASE NUMBER

CV13-02849 -RGK(JC)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Brian Tomina, (Bar No. 255386), whose address is 5900 Wilshire Blvd., Suite 2600, Los Angeles, CA 90036. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: APR 23 2013

By: Mandip Sam

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

Brian Tomina, (Bar No. 255386)
 Oliver Law Group PC
 5900 Wilshire Blvd., Suite 2600
 Los Angeles, CA 90036
 Telephone: (248) 327-6556 Fax: (248) 436-3385
 notifications@oliverlg.com

UNITED STATES DISTRICT COURT
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Clerk, U.S. District Court

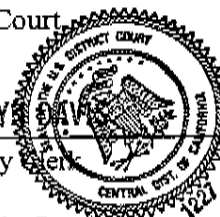
Dated: APR 23 2013

By: _____

MARILYN DAVIS

Deputy Clerk

(Seal of the Court)



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETI. (a) PLAINTIFFS (Check box if you are representing yourself ☐)

HODGES, STEVEN-Individually and on Behalf of All Others Similarly Situated,

DEFENDANTS (Check box if you are representing yourself ☐)

VITAMIN SHOPPE, INC.

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Brian Tomina, (Bar No. 255386)
5900 Wilshire Blvd., Suite 2600, Los Angeles, CA 90036
Telephone: (248) 327-6556 Fax: (248) 436-3385
notifications@oliverlg.com

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

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-For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)

- | | | | | | |
|---|---|--------------------------------|---|--------------------------------|---------------------------------------|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" 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. 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. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)CLASS ACTION under F.R.Cv.P. 23: ☒ Yes ☐ No ☒ MONEY DEMANDED IN COMPLAINT: \$ 5,000,000.00VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
28 U.S.C. 1332- Consumer Protection

VII. NATURE OF SUIT (Place an X in one box only.)

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

FOR OFFICE USE ONLY: Case Number:

CV13-02849

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Steven Hodges- Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Vitamin Shoppe, Inc.- Hudson County (NJ)

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
NOTE: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Steven Hodges- Los Angeles County	

*Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): _____

DATE: _____

04-18-13

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))