

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

8 Other Attorneys listed in signature line

9 Attorneys for Plaintiff
10 Patrick Hesano, and on Behalf
11 of All Others Similarly Situated,

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 PATRICK HESANO,
15 Individually and on Behalf of All
16 Others Similarly Situated,

Case No.
'13CV1960 WQHJMA

17 Plaintiff,

**CLASS ACTION
COMPLAINT**

18 v.

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

22 IOVATE HEALTH SCIENCES, INC.;
23 IOVATE HEALTH SCIENCES U.S.A.,
24 INC.; and
25 IOVATE HEALTH SCIENCES GROUP, INC.,
26 n/k/a KERR INVESTMENT HOLDING CORP,

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

Defendants.

3. VIOLATIONS OF THE
FALSE ADVERTISING LAW,
CALIFORNIA

BUSINESS & PROFESSIONS
CODE SECTION 17500 ET
SEQ.

4. BREACH OF EXPRESS
WARRANTY

**DEMAND FOR JURY
TRIAL**

CLASS ACTION COMPLAINT

NOW COMES Plaintiff PATRICK HESANO, (“Plaintiff”), by and through his attorneys OLIVER LAW GROUP, P.C., individually and on behalf of all others similarly situated, alleges the following:

NATURE OF THE ACTION

1. This is a civil class action brought individually by Plaintiff and on behalf of a class of persons similarly situated, (“Class Members”), who purchased the dietary supplement Six Star Pro Nutrition N.O. Fury caplets (“Product”).
2. The class members are all persons located within the state of California and the United States who purchased the Product.
3. Defendants advertise, manufacture, market, sell and distribute the Product, as well as many other dietary and sports supplements to allegedly promote health and increase athletic performance.

- 1 4. The Product is generally categorized as a Nitric Oxide product which falsely
2 claims to provide increased formation of Nitric Oxide in the blood, increase
3 circulation of oxygen and nutrients, enhance athletic performance, increase
4 lean muscle mass, and provide muscle “pumps”.
- 5
6 5. Plaintiff purchased the Product from www.cvs.com. CVS also sells the
7 Product in all of its retail outlets throughout California and the United States.
8 Defendants provide online retailers of the Product with the advertising and
9 marketing language used in the sale of the Product.
- 10
11 6. L-Arginine is an amino acid found naturally in the body and is known to
12 metabolize into Nitric Oxide (NO). Once this NO is formed in the body it
13 plays a critical role in expanding blood vessels, thus increasing blood flow.
14 Defendants incorrectly base their labeling and marketing claims on the
15 assumption that because naturally produced L-Arginine effects blood flow,
16 that when supplemented orally, L-Arginine will produce the same results.
- 17
18 7. As referenced throughout Plaintiff’s Complaint, oral Arginine
19 supplementation does not produce the same results. Instead, it has been
20 found numerous times in reliable scientific studies that Arginine
21 supplements, when taken orally, only increase plasma arginine levels and do
22 not metabolize into NO or induce vasodilation (blood flow).
- 23
24 8. Nitric Oxide products are a growing and substantial segment of the sports
25 (bodybuilding) supplement segment of the dietary supplement market.
- 26
27
28

1 9. Defendants have complete control and authority over the labeling and
2 marketing language used for the Product.

3 10. By Defendants' unfair, deceptive, fraudulent, unfair and misleading
4 practices, Plaintiff and Class Members have been unfairly deceived into
5 purchasing the Product.
6

7 11. Plaintiff brings this action challenging Defendants' claims relating to the
8 Product on behalf of himself and all others similarly situated, under
9 California's Unfair Competition Law, False Advertising Law, Consumer
10 Legal Remedies Act, and Breach of Express Warranty.
11

12 12. Plaintiff seeks an order compelling Defendants to (1) cease marketing the
13 Product using the misleading tactics complained of herein, (2) conduct a
14 corrective advertising campaign, (3) restore the amounts by which
15 Defendants have been unjustly enriched, and (4) destroy all misleading and
16 deceptive materials.
17
18

19
20 **JURISDICTION AND VENUE**

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

22 14. Jurisdiction is proper in this court pursuant to 28 U.S.C. § 1332(d), because
23 there are at least 100 Class Members in the proposed Class, the combined
24 claims of proposed Class Members exceed \$5,000,000 exclusive of interest
25 and costs, and at least one Class Member is a citizen of a state other than
26 Defendants' state of citizenship.
27
28

CLASS ACTION COMPLAINT

1 15.Plaintiff will likely have evidentiary support after a reasonable opportunity
2 for further investigation or discovery regarding Defendants' sales of the
3 Product during the class period.
4

5 16.Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part
6 of the events giving rise to the claims asserted herein occurred in this
7 District. Venue is proper pursuant to 28 U.S.C. § 1391(c) because
8 Defendants conduct substantial business in this District, have sufficient
9 minimum contacts with this District, and otherwise purposely avail
10 themselves of the markets in this District, through the promotion, sale, and
11 marketing of their Product in this District.
12
13

14 17.Defendants and other out-of-state participants can be brought before this
15 Court pursuant to state and federal law.
16

17 **THE PARTIES**

18 18.During the Class period, Plaintiff and Class Members purchased the Product
19 through Defendants' website www.sixstarpro.com and/or several different
20 online retailers, and/or several different brick/mortar retail outlets
21 throughout California and the United States. Plaintiff and Class Members
22 suffered an injury in fact caused by the false, fraudulent, unfair, deceptive
23 and misleading practices set forth in this Complaint.
24
25

26 19.Plaintiff Hesano is a resident of the County of San Diego, State of
27 California, and the events set forth in this Complaint took place therein,
28

1 who, on or about May 29, 2013, purchased the Product for his own use, and
2 not for resale, from the CVS online store, www.cvs.com.

3 20. Defendant Iovate Health Sciences, Inc. is a Canadian corporation doing
4 business in and operating in California with a principal place of business at
5 381 North Service Road, Oakville, Ontario L6M 0H4 Canada.
6

7 21. Under information and belief Defendant Iovate Health Sciences, U.S.A.,
8 Inc., is a Delaware corporation. Formerly, it had a distribution warehouse
9 located at 3880 Jeffrey Boulevard, Blasdell, New York 14219; however,
10 currently, it does not have a United States business address.
11

12 22. Defendant Iovate Health Sciences Group, Inc., n/k/a Kerr Investment
13 Holding Corp. ("Kerr"), is a Canadian corporation with its principal place of
14 business at 381 North Service Road, Oakville, Ontario L6M 0H4 Canada.
15
16 Kerr is the parent company of Iovate Health and Iovate U.S.A.
17

18 **FACTUAL ALLEGATIONS**

19 23. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
20

21 24. Plaintiff reviewed the Product's label, as well as the CVS website prior to
22 purchasing the Product from the CVS online retail store www.cvs.com.
23

24 25. Plaintiff reasonably relied on the information provided by Defendants when
25 making the decision to purchase the Product.
26

27 26. Defendants' claims are false and misleading.
28

1 27. Defendants had access, but knowingly and/or recklessly ignored all
2 competent and reliable scientific evidence regarding the Product.

3 28. The ingredients in the Product, which are at issue regarding the false,
4 misleading, unfair and deceptive claims, are L-Arginine, L-Arginine Alpha-
5 Ketoglutarate (“AAKG”), and L-Arginine HCL (collectively referred to as
6 “Arginine”).
7

8 29. The Product also contains a minimal dose of L-Citrulline which has been
9 shown in scientific studies to increase plasma arginine and possibly have the
10 ability of increasing nitric oxide or inducing vasodilation¹. However,
11 Defendants include such a minimal amount compared to the clinical dosage,
12 that this compound is also useless.
13
14
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17

18 ¹ See Sureda A., Cordova A., Ferrer MD, Perez G., Tur JA, Pons A. L-citrulline-
19 malate influence over branched chain amino acid utilization during exercise. *Eur J*
20 *Appl Physiol.* 2010 Sep;110(2):341-51. doi: 10.1007/s00421-010-1509-4. Epub
21 2010 May 25; See also Ochiai M, Hayashi T, Morita M, Ina K, Maeda M,
22 Watanabe F, Morishita K. Short-term effects of L-citrulline supplementation on
23 arterial stiffness in middle-aged men. *Int J Cardiol.* 2012 Mar 8;155(2):257-61.
24 doi: 10.1016/j.ijcard.2010.10.004. Epub 2010 Nov 9; See also Schwedhelm E,
25 Maas R, Freese R, Jung D, Lukacs Z, Jambrecina A, Spickler W, Schulze F, Böger
26 RH. Pharmacokinetic and pharmacodynamic properties of oral L-citrulline and L-
27 arginine: impact on nitric oxide metabolism. *Br J Clin Pharmacol.* 2008
28 Jan;65(1):51-9. Epub 2007 Jul 27.

1 30.The Product contains a proprietary blend of the four ingredients at 3000mg
 2 per serving with a recommended dose of one serving per day.

Supplement Facts	
Serving Size: 3 Caplets	
Servings Per Container: 20	
Amount Per Serving	% Daily Value
Nitric Oxide Matrix 3,000mg	†
L-arginine	†
L-arginine alpha-ketoglutarate	†
L-arginine HCl	†
L-citrulline	†
†Daily Value not established.	

Other ingredients: microcrystalline cellulose, hydroxypropylcellulose, coating (polyethylene glycol, FD&C Red No. 40, talc, titanium dioxide), stearic acid, croscarmellose sodium, crospovidone, silica, magnesium stearate, acesulfame-potassium.

13 31.These ingredients are allegedly supposed to induce the release of nitric oxide
 14 into the blood, however, they do not.

16 32.Nitric oxide is a gaseous signaling molecule known to contribute to the
 17 control of vascular tone, and is considered to play a role in the vasodilatation
 18 of muscle resistance vessels during exercise.

20 33.Muscle “Pump” refers to increased blood flow to the muscles, which in turn
 21 is supposed to increase the size of the muscles.

23 34.“NOS” refers to nitric oxide.

24 35. 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

1 36.L-arginine-enhanced vasodilation and blood flow to working muscles during
2 resistance exercise is alleged to provide an even greater impetus for
3 increasing muscle strength and hypertrophy than exercise alone.
4

5 37.However, it has been shown that L-arginine supplementation does not
6 increase muscle blood flow².
7

8 38.Presently, there are several studies involving an L-arginine-based approach
9 to increase circulating nitric oxide in humans; however, none of the studies
10 have demonstrated any positive results that would justify the claims made by
11 Defendants.
12

13 39.Defendants make the following false, fraudulent, misleading, and deceptive
14 label claims regarding the Product:
15

16
17 ² See Tang J, Lysecki P, Manolakos J, Tarnopolsky M, Phillips S. Bolus arginine
18 supplementation affects neither muscle blood flow nor muscle protein synthesis
19 in young men at rest or after resistance exercise. *Journal of Nutrition*, 141:195-
20 200, 2011; See also Willoughby DS, Boucher T, Reid J, Skelton G, Clark M.
21 Effects of 7 days of arginine-alpha-ketoglutarate supplementation on blood flow,
22 plasma L-arginine, nitric oxide metabolites, and asymmetric dimethyl arginine
23 after resistance exercise. *International Journal of Sport Nutrition and Exercise*
24 *Metabolism*, 21:291-99, 2011.
25
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- 1 a) “Nitric Oxide Matrix”;
- 2 b) “Engineered to Ignite Massive Muscle Pumps”;
- 3 c) “Delivers a Precise Dose of Arginine- A Nitric Oxide Precursor”;
- 4
- 5 d) “Formulated for Increased Muscle Hardness & Fullness After Just One
- 6 Dose”; and
- 7
- 8 e) “Effective- Powerful Pumps”.
- 9



1 40. Defendants use the following false, fraudulent, misleading, unfair and
2 deceptive claims at the point of purchase for the Product on the retail website
3 www.cvs.com (See Exhibit A):

- 4
- 5 a) “Engineered to ignite massive muscle pumps”;
- 6 b) “Delivers a precise dose of arginine - a nitric oxide precursor”;
- 7
- 8 c) “Formulated for increased muscle hardness & fullness after just one
9 dose”;
- 10 d) “Effective - powerful pumps”;
- 11
- 12 e) “What benefits does it provide? gets you pumped while you train”;
- 13
- 14 f) “Professional strength N.O. Fury caplets flood your system with arginine
15 and are designed to enhance nitric oxide levels”;
- 16
- 17 g) “Added to your intense weight-training programs, professional strength
18 N.O. Fury caplets are formulated to deliver rapid vascular expansion and
19 powerful muscle pumps”; and
- 20
- 21 h) “Formulated for increased muscle hardness & fullness after just one dose.
22 Taken before your workouts, professional strength N.O. Fury caplets are
23 designed to deliver overpowering, muscle-swelling pumps and extreme
24 muscle hardness and fullness, after your very first dose!”
- 25
- 26
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1 41. Defendants use the following false, fraudulent, misleading, unfair and
2 deceptive claims at the point of purchase for the Product on the their website
3 www.sixstarpro.com (See Exhibit B):
4

- 5 a) “Pre-Workout Pill for Better Muscle Pumps”;
- 6 b) “Six Star® N.O. Fury® is a scientifically advanced pre-workout
7 supplement that harnesses the power of nitric oxide to get you incredibly
8 pumped and help you experience the best workouts of your life!”;
- 9 c) “3,000mg Nitric Oxide- Nitric oxide is widely known as an extremely
10 forceful vasodilator. Vasodilation is the expansion of blood vessels”;
- 11
12 d) “Six Star® N.O. Fury® caplets supply a mega-dosed 3,000mg blend of
13 powerful nitric oxide boosting ingredients for massive muscle pumps and
14 extreme muscle hardness and fullness after your very first dose!”;
- 15
16 e) “Engineered to Ignite Massive Muscle Pumps”;
- 17
18 f) “Six Star® N.O. Fury® caplets flood your system with ingredients
19 designed to enhance nitric oxide levels.”; and
20
- 21 g) “Added to your intense weight-training program, Six Star® N.O. Fury®
22 caplets are formulated to deliver rapid vascular expansion and muscle
23 pumps you’ll see and feel.”
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1 *Defendants' Claims Regarding the Product's Ability to Produce Nitric Oxide,*
2 *Induce Vasodilation, Increase Blood Flow and Provide Muscle "Pumps"*

3 42. A number of studies have been conducted on L-arginine and L-arginine-
4 containing supplements to assess the effectiveness in which they increase the
5 levels of nitric oxide in the blood.
6

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

9 44. Therefore, the metabolites nitrate and nitrite (NOX) are most often
10 measured.
11

12 45. The available published data on this issue has clearly indicated that these so-
13 called nitric oxide inducing supplements which contain Arginine are
14 ineffective in inducing increases in circulating nitric oxide.
15

16 46. For example, a single oral dose of Arginine provided at 0.1 gram/kg was in
17 ineffective at increasing NOX in the blood³.
18

19 47. Arginine provided orally at 6 g/day for three days was shown to have no
20 effect on plasma NOX metabolite levels in well-trained male athletes⁴.
21

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23
24

³ Tsai PH, Tang TK, Juang CL, Chen KW, Chi CA, Hsu MC. Effects of arginine
25 supplementation on post-exercise metabolic responses. Chinese Journal of
26 Physiology, 52:136-42, 2009.
27
28

1 48. More specifically, it has been shown that alleged “nitric oxide inducing”
2 supplements were ineffective at increasing circulating NOX levels and
3 muscle tissue oxygenation in response to resistance exercise⁵.
4

5 49. Additionally, the provision of 12 grams/day of Arginine for seven days
6 significantly increased plasma Arginine levels but had no significant effect
7
8
9
10
11

12 ⁴ Liu T, Wu C, Chiang C, Lo Y, Tseng H, Chang C. No effect of short-term
13 arginine supplementation on nitric oxide production, metabolism and
14 performance in intermittent exercise in athletes. *Journal of Nutritional*
15 *Biochemistry*, 20:462-68, 2009.
16

17 ⁵ See Bloomer RJ, Williams SA, Canale RE, Farney TM, Kabir MM. Acute effect
18 of nitric oxide supplement on blood nitrate/nitrite and hemodynamic variables in
19 resistance trained men. *Journal of Strength and Conditioning Research*, 24:2587-
20 92, 2010.; See also Bloomer R, Farney T, Trepanowski J, McCarthy C, Canale R,
21 Schilling B. Comparison of pre-workout nitric oxide stimulating dietary
22 supplements on skeletal muscle oxygen saturation, blood nitrate/nitrite, lipid
23 peroxidation, and upper body exercise performance in resistance training men.
24 *Journal of the International Society of Sport Nutrition*, 7:16-30, 2010.
25
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28

1 on circulating NOX or blood flow, either at rest or in response to resistance
2 exercise⁶.

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

7 51. In a study examining the effects of acute Arginine supplementation and
8 resistance exercise on arterial function in young men, there was no
9 significant change in blood flow and hemodynamic and vascular responses
10 when 7 grams of L-arginine was given immediately before resistance
11 exercise⁷.
12
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18 ⁶ Willoughby DS, Boucher T, Reid J, Skelton G, Clark M. Effects of 7 days of
19 arginine-alpha-ketoglutarate supplementation on blood flow, plasma L-arginine,
20 nitric oxide metabolites, and asymmetric dimethyl arginine after resistance
21 exercise. *International Journal of Sport Nutrition and Exercise Metabolism*,
22 21:291-99, 2011.
23

24 ⁷ Fahs C, Heffernan K, Fernhall B. Hemodynamic and vascular response to
25 resistance exercise with L-arginine. *Medicine and Science in Sports and*
26 *Exercise*, 41:773-79, 2009.
27
28

1 52.It has been shown that single doses of alleged “nitric oxide inducing”
2 supplements were ineffective at increasing blood flow in response to
3 resistance exercise⁸.
4

5 53.It has also been shown that 6 grams of L-arginine delivered either
6 intravenously or orally⁹ and 12 grams/day for 7 days¹⁰ did not result in any
7 significant changes in blood pressure, heart rate, or cardiac output.
8

9
10 ⁸ See Bloomer RJ, Williams SA, Canale RE, Farney TM, Kabir MM. Acute effect
11 of nitric oxide supplement on blood nitrate/nitrite and hemodynamic variables in
12 resistance trained men. *Journal of Strength and Conditioning Research*, 24:2587-
13 92, 2010.; See also Bloomer R, Farney T, Trepanowski J, McCarthy C, Canale R,
14 Schilling B. Comparison of pre-workout nitric oxide stimulating dietary
15 supplements on skeletal muscle oxygen saturation, blood nitrate/nitrite, lipid
16 peroxidation, and upper body exercise performance in resistance training men.
17 *Journal of the International Society of Sport Nutrition*, 7:16-30, 2010.
18

19
20 ⁹ Bode-Boger S, Boger R, Galland A, Tsikas D, Frolich J. L-arginine-induced
21 vasodilation in healthy humans: pharmacokinetic-pharmacodynamic
22 relationship. *British Journal of Clinical Pharmacology*, 46:489-97, 1998.
23

24 ¹⁰ Willoughby DS, Boucher T, Reid J, Skelton G, Clark M. Effects of 7 days of
25 arginine-alpha-ketoglutarate supplementation on blood flow, plasma L-arginine,
26 nitric oxide metabolites, and asymmetric dimethyl arginine after resistance
27
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1 54. In assessing the effects of high (5.7 grams) and low (2.8 grams) doses of L-
2 arginine supplementation for 4 weeks in endurance-trained male athletes,
3 there was no improvement in physical performance as measured by run time
4 to exhaustion¹¹.

5
6 55. In addition, no improvement in the time required to run 31 km was observed
7 after 14 days of Arginine supplementation at a dose of 15 grams/day¹².

8
9 ***Defendant's Claims Regarding the Product's Ability to Increase Lean Muscle***
10 ***Mass and Enhance Athletic Performance***

11 56. These statements are based on the notion that ingesting the Product during a
12 training protocol will progressively result in increased delivery of blood
13

14
15 exercise. *International Journal of Sport Nutrition and Exercise Metabolism*,
16 21:291-99, 2011.

17
18 ¹¹ Abel T, Knechtle B, Perret C, Esser P, von Arx P, Knecht H. Influence of
19 chronic supplementation of arginine aspartate in endurance athletes on
20 performance and substrate metabolism - a randomized, double-blind, placebo-
21 controlled study. *International Journal of Sports Medicine*, 26:344-49, 2005.

22
23 ¹² Colombani PC, Bitzi R, Frey-Rindova P, Frey W, Arnold M, Langhans W,
24 Wrenk C. Chronic arginine aspartate supplementation in runners reduces total
25 plasma amino acid level at rest and during a marathon run. *European Journal of*
26 *Nutrition*, 38:263-70, 1999.

1 (carrying oxygen, glucose, etc.) to muscles, thereby resulting in enhanced
2 anabolic, growth-promoting capacity¹³.

3 57. Arginine provided orally at 6 g/day for three days was shown to have no
4 effect on muscular power generated during an anaerobic cycle ergometer test
5 in well-trained male athletes¹⁴.

6
7 58. The provision of 3.7 grams of Arginine failed to improve muscle endurance
8 or significantly affect the blood pressure response to anaerobic work¹⁵.

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¹³ This Product is exclusively marketed to strength athletes, recreational weight
13 trainers, and bodybuilders. “Who is professional strength N.O. Fury for? Strength
14 athletes; recreational weight trainers; body builders” See Exhibit A. The ultimate
15 goal of the theoretical benefits of the Product is to push nutrients quicker into the
16 muscle by the increased blood flow, thus giving the user increased muscle mass.
17

18
19 ¹⁴ Liu T, Wu C, Chiang C, Lo Y, Tseng H, Chang C. No effect of short-term
20 arginine supplementation on nitric oxide production, metabolism and
21 performance in intermittent exercise in athletes. *Journal of Nutritional*
22 *Biochemistry*, 20:462-68, 2009.

23
24 ¹⁵ Greer BK, Jones BT. Acute arginine supplementation fails to improve muscle
25 endurance or affect blood pressure responses to resistance training. *Journal of*
26 *Strength and Conditioning Research*, 25:1789-94, 2011.
27
28

1 59. Furthermore, eight weeks of resistance training combined with Arginine
2 supplementation at a daily dose of 12 grams appeared to be safe and well
3 tolerated, but had only modest improvements in muscle strength and power,
4 and had no effects on body composition or aerobic capacity¹⁶.

6 60. In assessing the effects of high (5.7 grams) and low (2.8 grams) doses of
7 Arginine supplementation for 4 weeks in endurance-trained male athletes,
8 there was no improvement in physical performance as measured by run time
9 to exhaustion¹⁷.

11 61. In addition, no improvement in the time required to run 31 km was observed
12 after 14 days of Arginine supplementation at a dose of 15 grams/day¹⁸.

15 ¹⁶ Campbell B, Roberts M, Kerksick C, Wilborn C, Marcello B, Taylor L,
16 Nassar E, Leutholtz B, Bowden R, Rasmussen C, Greenwood M, Kreider R.
17 Pharmokinetics, safety, and effects on exercise performance of L-arginine alpha-
18 ketoglutarate in trained adult men. *Nutrition*, 22:872-881, 2006.

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

26 ¹⁸ 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

Conclusion

1
2 62. Arginine and Citrulline supplementation, at the levels present in the Product
3 and at the recommended doses, have been shown to be ineffective at
4 increasing circulation of nitric oxide, causing vasodilatation and increasing
5 blood flow, increasing muscle strength and mass, and increasing athletic
6 performance.
7

8
9 63. Defendants' non-disclosure to the Plaintiff and Class members regarding
10 clinical doses of the ingredients and the severe under-dosing of those
11 ingredients in the Product equate to omissions of material facts.
12

13 64. Plaintiff and the Class paid more for the Product, and would have been
14 unwilling to purchase the Product at all, absent the false and misleading
15 labeling complained of herein. Plaintiff the Class would not have purchased
16 the Product absent these claims and advertisements.
17

18 65. For these reasons, the Product was worth less, if it is worth anything at all,
19 than what Plaintiff and the Class paid for them.
20

21 66. Instead of receiving a product that had actual and substantiated healthful or
22 other beneficial qualities, the Product Plaintiff and the Class received was
23 one that did not provide any of the claimed benefits.
24

25
26 plasma amino acid level at rest and during a marathon run. *European Journal of*
27 *Nutrition*, 38:263-70, 1999.
28

1 67.Plaintiff and the Class lost money as a result of Defendants’ deceptive
2 claims and practices in that she did not receive what they paid for when
3 purchasing the Product.
4

5 68.Plaintiff and the Class altered their position to their detriment and suffered
6 damages in an amount equal to the amount they paid for the Product.
7

8 69.In sum, Defendants’ claims regarding the Product are false and misleading,
9 arbitrarily chosen to deceive Plaintiff and Class Members into purchasing an
10 otherwise useless and valueless product
11

12 CLASS ALLEGATIONS

13 70.Plaintiff incorporates the foregoing paragraphs as if fully restated herein.
14

15 71.Plaintiff brings this action on their own behalf and as a Class Action

16 Pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff seeks
17 certification of the following Class:

18 **California Class:** All Persons in the State of California who have spent
19 money purchasing the Product from Defendants from four years from the
20 first-filed complaint in this action until the final disposition of this and any
21 and all related cases.

22 72.The abundance of Class Members renders joinder of all Class members
23 individually, in one action or otherwise, impractical.
24

25 73.This action involves questions of law and fact common to Plaintiff and Class
26 Members including:
27
28

1 (a) Whether Defendants violated the California Civil Code Section 1750 *et*
2 *seq.*;

3 (b) Whether Defendants violated the California Business & Professions Code
4 Section 17200 *et seq.*;

5 (c) Whether Defendants violated the False Advertising Law, Cal. Bus. &
6 Prof. Code Section 17500 *et seq.*;

7 (d) Whether Defendants breached an express warranty; and

8 (e) Whether Plaintiff and Class Members sustained damages and, if so, the
9 proper measure of damages, restitution, equitable or other relief, and the
10 amount and nature of such relief.
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12
13

14 Excluded from the Class are: (a) any Judge or Magistrate presiding over this action
15 and members of their families; (b) Defendants and any entity in which Defendants
16 have a controlling interest or which has a controlling interest in Defendants and its
17 legal representatives, assigns and successors of Defendants; and (c) all persons
18 who properly execute and file a timely request for exclusion from the Class.
19
20

21 74.*Numerosity*: The Class are composed of thousands of persons geographically
22 dispersed throughout the State of California and Nationwide, the joinder of
23 whom in one action is impractical. Moreover, upon information and belief,
24 the Class are ascertainable and identifiable from Defendants' records.
25

26 75.*Commonality*: Questions of law and fact common to the Class exist as to all
27
28

1 members of the Class and predominate over any questions affecting only
2 individual members of the Class. These common legal and factual issues
3 include, but are not limited to the following:

4
5 (a) Whether Defendants violated the California Civil Code Section 1750 *et*
6 *seq.*;

7
8 (b) Whether Defendants violated the California Business & Professions Code
9 Section 17200 *et seq.*;

10
11 (c) Whether Defendants violated the False Advertising Law, Cal. Bus. &
12 Prof. Code Section 17500 *et seq.*;

13 (d) Whether Defendants breached an express warranty; and

14
15 (e) Whether Plaintiff and Class Members sustained damages and, if so, the
16 proper measure of damages, restitution, equitable or other relief, and the
17 amount and nature of such relief.

18 76. *Typicality*: Plaintiff's claims are typical of the claims of the members of the
19 Class, as all such claims arise out of Defendants' conduct in manufacturing,
20 marketing, advertising, warranting and selling the Product, Defendants'
21 conduct in concealing material facts regarding the Product, Defendants'
22 false, fraudulent, unfair and misleading claims and Plaintiff's and Class
23 Members' purchasing of the Product.
24
25

26 77. *Adequate Representation*: Plaintiff will fairly and adequately protect the
27 interests of the members of the Class and have no interests antagonistic to
28

1 those of the Class. Plaintiff has retained counsel experienced in the
2 prosecution of complex class actions, including consumer class actions
3 involving false and misleading advertising, product liability and product
4 design defects.
5

6 *78.Predominance and Superiority:* This class action is appropriate for
7 certification because questions of law and fact common to the members of
8 the Class predominate over questions affecting only individual members,
9 and a Class action is superior to other available methods for the fair and
10 efficient adjudication of this controversy, since individual joinder of all
11 members of the Class is impracticable. Should individual Class Members
12 be required to bring separate actions, this Court and Courts throughout
13 California and the United States would be confronted with a multiplicity of
14 lawsuits burdening the court system while also creating the risk of
15 inconsistent rulings and contradictory judgments. In contrast to proceeding
16 on a case-by-case basis, in which inconsistent results will magnify the delay
17 and expense to all parties and the court system, this class action presents far
18 fewer management difficulties while providing unitary adjudication,
19 economies of scale and comprehensive supervision by a single Court.
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CAUSES OF ACTION

COUNT I

Violations of California Business and Professions

Code § 17200 *et seq.*

(On Behalf of Plaintiff and the Class Against Defendants)

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

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

81. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants as alleged herein constitute “unlawful” business acts and practices in that Defendants’ conduct violates the False Advertising Law and the Consumer Legal Remedies Act.

82. Defendants’ conduct is further “unlawful” because it violates the Federal Food, Drug, and Cosmetic Act and its implementing regulations in at least the following ways:

- (1) Defendants’ deceptive statements violate 21 U.S.C. § 343(a), which deems food (including nutritional supplements) misbranded when the label contains a statement that is “false or misleading in any particular”;
- (2) Defendants’ deceptive statements violate 21 C.F.R. § 101.14(b)(3)(i), which mandates “substances” in dietary supplements consumed must contribute and retain “nutritional value” as defined under 21 C.F.R. § 101.14(a)(2)(3) when consumed at levels necessary to justify a claim.

1 83. Defendants' conduct is further "unlawful" because it violates The California
2 Sherman Food, Drug, and Cosmetic Law, which incorporates the provisions
3 of the Federal Food, Drug and Cosmetic Act.
4

5 84. The acts, omissions, misrepresentations, practices, and non-disclosures of
6 Defendants as alleged herein also constitute "unfair" business acts and
7 practices under the UCL in that Defendants' conduct is immoral,
8 unscrupulous, and offends public policy. Further, the gravity of Defendants'
9 conduct outweighs any conceivable benefit of such conduct.
10

11 85. The acts, omissions, misrepresentations, practices, and non-disclosures of
12 Defendants as alleged herein also constitute "fraudulent" business acts and
13 practices under the UCL in that Defendants' claims are false, misleading,
14 and have a tendency to deceive the Class and the general public.
15
16

17 86. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order
18 enjoining Defendants from continuing to conduct business through unlawful,
19 unfair, and/or fraudulent acts and practices, and to commence a corrective
20 advertising campaign.
21

22 87. Plaintiff further seeks an order for the disgorgement and restitution of all
23 monies from the sale of the Defendants' Product, which were acquired
24 through acts of unlawful, unfair, and/or fraudulent competition.
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COUNT II

Violations of California Legal Remedies Act

Cal. Civ. Code § 1750 *et seq.*

(On Behalf of Plaintiff and the Class Against Defendants)

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

89.Plaintiff has standing to pursue this claim as Plaintiff has suffered injuries in fact and has lost money or property as a result of Defendants’ actions as set forth herein.

90.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 Defendants’ actions as set forth herein.

91.Defendants’ 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.

92.Defendants’ wrongful business practices have caused injury to Plaintiff and the Class.

93.Pursuant to section 1770 of the California Civil Code, Plaintiff and the Class seek an order of this Court enjoining Defendants 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.

1 94.As a result, Plaintiff, the Class, and the general public are entitled to
2 injunctive and equitable relief, restitution, and an order for the disgorgement
3 of the funds by which Defendants were unjustly enriched.
4

5 95.Plaintiff and the Class also seek Punitive Damages since Defendants were
6 put on notice of its violations of the California Legal Remedies Act and took
7 no remedial actions.
8

9 **COUNT III**

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

12 **(On Behalf of Plaintiff and the Class Against Defendants)**

13 96.Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

14 97.In violation of Cal. Bus. & Prof. Code § 17500 *et seq.*, the advertisements,
15 labeling, policies, acts, and practices described herein were designed to, and
16 did, result in the purchase and use of the Product.
17

18 98.Defendants knew and reasonably should have known that the advertising,
19 marketing and labeling of the Product was untrue and/or misleading.
20

21 99.As a result, Plaintiff, the Class, and the general public are entitled to
22 injunctive and equitable relief, restitution, and an order for the disgorgement
23 of the funds by which Defendants were unjustly enriched.
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COUNT IV

Breach of Express Warranty

(On Behalf of Plaintiff and the Class Against Defendants)

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

101. Defendants made several different express warranties upon which Plaintiff relied in making his purchase, including the false and misleading claims contained herein.

102. In fact, there is no competent and reliable scientific evidence that support any of Defendants' claims, and actually there is competent and reliable scientific evidence refuting those claims.

103. Plaintiff received a product that did not meet any of the efficacy claims made by Defendants, resulting in Plaintiff purchasing a useless product.

104. These facts constitute breaches of all applicable express warranties as alleged in this Complaint.

PRAYER FOR RELIEF

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

- a. A determination that this action proceed as a class action and Plaintiff adequately represent the Class;

- 1 b. An Order requiring Defendants to bear the cost of class notice;
- 2 c. For compensatory, consequential and special damages in amounts proved, as
- 3 well as statutory damages, including a return of all amounts paid for the
- 4 Product sold by the Defendants to the Plaintiff and the Class Members;
- 5
- 6 d. For interest thereon, in the maximum amount allowable under applicable
- 7 law;
- 8
- 9 e. For delay damages thereon, in the maximum amount allowable under
- 10 applicable law;
- 11
- 12 f. For costs of suit, in the maximum amount allowable under applicable law;
- 13
- 14 g. For punitive damages, to the maximum amount permitted under applicable
- 15 law;
- 16
- 17 h. For an award of attorneys' fees and costs, to the maximum amount permitted
- 18 under applicable law;
- 19
- 20 i. For injunctive relief, restraining and enjoining the Defendants from
- 21 continuing to use these deceptive sales tactics;
- 22
- 23 j. For restitution of the funds which were unjustly enriched by Defendants, at
- 24 the expense of the Plaintiff and Class Members; and
- 25
- 26 k. For such other and further relief for the Plaintiff as this Honorable Court
- 27 shall deem just.
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DATED: August 22, 2013

Respectfully submitted,

By: /s/ Brian Tomina
BRIAN TOMINA, Bar No. 255386
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
Forthcoming)
OLIVER LAW GROUP, P.C.
950 W. University Drive, Suite 200
Rochester, MI 48307
Telephone: (248) 327-6556
Facsimile: (248) 436-3385
notifications@oliverlg.com
www.legalactionnow.com

Attorneys for Plaintiff
Patrick Hesano, and on Behalf
of All Others Similarly Situated

1
2 **DEMAND FOR JURY TRIAL**

3 Plaintiff and the Class Members demand trial by jury as to all matters and issues
4 triable.
5

6
7 DATED: August 22, 2013

8 Respectfully submitted,

9
10 By: /s/ Brian Tomina
11 BRIAN TOMINA, Bar No. 255386
12 5900 Wilshire Blvd., Suite 2600
13 Los Angeles, CA 90036
14 Telephone: (248) 327-6556
15 Facsimile: (248) 436-3385
notifications@oliverlg.com
www.legalactionnow.com

16
17 NICK SUCIU III (Pro Hac Vice
18 Forthcoming)
19 OLIVER LAW GROUP, P.C.
20 950 W. University Drive, Suite 200
21 Rochester, MI 48307
22 Telephone: (248) 327-6556
23 Facsimile: (248) 436-3385
notifications@oliverlg.com
www.legalactionnow.com

24 Attorneys for Plaintiff
25 Patrick Hesano, and on Behalf
26 of All Others Similarly Situated
27
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EXHIBIT A

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EXHIBIT B

PRE-WORKOUT

N.O. Fury | N.O. Fury (Pill) | Pre-Workout Ignition

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PRE-WORKOUT PILL FOR BETTER MUSCLE PUMPS

Six Star® N.O. Fury® is a scientifically advanced pre-workout supplement that harnesses the power of nitric oxide to get you incredibly pumped and help you experience the best workouts of your life!

3,000mg Nitric Oxide Matrix

Nitric oxide is widely known as an extremely forceful vasodilator. Vasodilation is the expansion of blood vessels. Six Star® N.O. Fury® caplets supply a mega-dosed 3,000mg blend of powerful nitric oxide boosting ingredients for massive muscle pumps and extreme muscle hardness and fullness after your very first dose!

Engineered to Ignite Massive Muscle Pumps

Six Star® N.O. Fury® caplets flood your system with ingredients designed to enhance nitric oxide levels. Added to your intense weight-training program, Six Star® N.O. Fury® caplets are formulated to deliver rapid vascular expansion and muscle pumps you'll see and feel.

JS 44 (Rev. 09/11)

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

Patrick Hesano,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Brian Tomina (Bar No. 255386), Oliver Law Group PC,
5900 Wilshire Blvd., Suite 2600, Los Angeles, CA 90036
(248) 327-6556

DEFENDANTS

Iovate Health Sciences, Inc.; Iovate Health Sciences U.S.A., Inc., and Iovate Health Sciences Group, Inc., n/k/a Kerr Investment Holding Corp.

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

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

'13CV1960 WQHRBB

Attorneys (If Known)
Scott J. Ferrell, Newport Trial Group,
4100 Newport Place, Suite 800, Newport Beach, CA 92660
(949)-706-6464

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 checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <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 type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input checked="" 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 (Excl. 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 - Med. 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 checked="" 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/Mgmt. 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 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <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 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	CIVIL RIGHTS	PRISONER PETITIONS			
<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	<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	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <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 USC Section 1332
Brief description of cause:
Consumer Protection

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 5,000,000.00

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 08/22/2013 SIGNATURE OF ATTORNEY OF RECORD /s/ Brian Tomina

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____