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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HAROLD M. HOFFMAN, individually and on behalf of those similarly situated, Plaintiff, vs. LUMINA HEALTH PRODUCTS, INC., Defendant.	Civil Action No. _____ *Document electronically filed* **NOTICE OF REMOVAL** [Previously pending in the Superior Court of New Jersey, Bergen County, Law Division, BER-L-5303-13]

TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

PLEASE TAKE NOTICE THAT Defendant Lumina Health Products, Inc. ("Lumina" or "Defendant"), by and through its counsel, Gibbons P.C., respectfully requests that this action be removed from the Superior Court of New Jersey, Law Division, Bergen County to the United States District Court for the District of New Jersey under 28 U.S.C. § 1441(a) on the grounds of diversity jurisdiction under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1132(d). In support of this Notice of Removal, Defendant alleges as follows:

BACKGROUND

1. On July 11, 2013, Plaintiff Harold M. Hoffman ("Plaintiff Hoffman" or "Plaintiff"), pro se, on behalf of himself and as the representative of a class of similarly situated persons, filed a nationwide class action complaint against Defendant Lumina Health Products,

Inc., in the Superior Court of New Jersey, Bergen County, Law Division, captioned: Harold M. Hoffman, individually and on behalf of those similarly situated v. Lumina Health Products, Inc., LLC., Docket No. BER-L-5304-13. A copy of the Summons and Complaint "served"[1] upon Defendant are annexed hereto as Exhibit A.

2. Though service of process was improper, Defendant received a copy of the Complaint on July 16, 2013, by way of Federal Express.

3. The Complaint alleges that Defendant is liable to Plaintiff and each class member for allegedly violating the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, et seq., and committing common law fraud; the Complaint further alleges that Defendant has been unjustly enriched. See Ex. A, Compl. at Counts I through VII.

4. Specifically, Plaintiff alleges that Defendant advertises, promotes, markets, distributes, and sells "a dietary supplement in liquid concentrate form known as *Cell Food*" that contains "129 trace nutrients and electrolytes" with the "'unique ability to release oxygen and hydrogen throughout every cell in the human body,' and [are] thus capable of delivering improved levels of consumer energy, endurance and health." Id., Compl. at Overview. Plaintiff alleges that Defendant misrepresents Cell Food's "product efficacy" because "there are no valid clinical studies and there is no medical-accepted evidence that Cell Food possesses efficacy to deliver improved levels of energy, endurance and health, or do anything whatsoever in that regard." Id., Compl. at Overview.

[1] Lumina does not waive the defense of insufficient service of process due to attempted service by Federal Express. See N.J. Court Rule 4.4-4 ("[I]n personam jurisdiction may be obtained over any defendant as follows: (C) mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, and simultaneously, by ordinary mail . . . .").

5. Plaintiff alleges that he and the class members saw, read, or heard Defendant's "advertising and marketing claims and promises" about Cell Food, and "made an out of pocket payment and expenditure" in response thereto. Id., Compl. at ¶¶ 1, 16.

6. The Complaint alleges that Plaintiff and members of the class were damaged as a result of Defendant's alleged violations of the New Jersey Consumer Fraud Act and common law fraud. See id., Compl. at Counts I through V, ¶¶ 36-55. Specifically, the Complaint alleges that Plaintiff and members of the class suffered ascertainable losses: (1) "in the form of actual out of pocket payment and expenditure, as aforesaid, as a result of Defendants' [sic] unlawful conduct as aforesaid"; (2) "when they received, for their money, a product less than, and different from, the product promised by Defendant"; and (3) when they "received something less than, and different from, what they reasonably expected in view of Defendant's representations." Id., Compl. at ¶¶ 26-28.

7. The Complaint further alleges that "there is a causal relationship between the Defendant's misrepresentations of product efficacy and the loss suffered by plaintiff and class members." Id., Compl. at ¶ 29.

8. In addition, the Complaint claims that Defendant committed common law fraud by, in essence, misrepresenting and knowingly omitting material facts, resulting in damages to Plaintiff and the class. Id., Compl. at Count VI, ¶¶ 52-53.

9. The Complaint further alleges that Defendant is liable to Plaintiff and each class member for unjust enrichment. Id., Compl. at Count VII, ¶¶ 56-62. Specifically, Plaintiff alleges that as a result of Defendant's unlawful conduct, "the class members paid money to and conferred a benefit upon Defendant in connection with the sale of Cell Food by Defendant to class members . . . . " Id., Compl. at ¶ 57. Plaintiff alleges that Defendant is "indebted to class

members for the sums paid . . . for purchase of a misrepresented product." Id., Compl. at ¶ 60. Plaintiff alleges that therefore, it would be "unlawful, unjust and inequitable" for Defendant to retain the benefit conferred upon it by the class members, so Defendant must disgorge "[a]ll monies paid by class members to Defendant for purchase of Cell Food, including all interest earned by Defendant on such monies while in wrongful possession thereof . . . ." Id., Compl. at ¶ 61. Plaintiff alleges that the class has been damaged by Defendant's conduct. Id., Compl. at ¶ 62.

10. The Complaint demands unspecified "punitive damages," treble damages for each of the five New Jersey Consumer Fraud Act counts, as well as pre-judgment and post-judgment interest, fees, costs, attorneys' fees, and civil penalties.

11. The Complaint purports to seek certification of a potential class of "all nationwide purchasers of Cell Food for the two year period preceding the filing of this suit." Id., Compl. at ¶ 30.

JURISDICTIONAL REQUIREMENTS SATISFIED

12. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A) because:

a. The action filed by Plaintiff in the Superior Court of New Jersey, Bergen County, Law Division, is a "class action" as defined in 28 U.S.C. § 1332(d)(1)(B);

b. There is minimal diversity. Specifically, at least one member of the putative, potential nationwide class of plaintiffs, including named Plaintiff Hoffman, is a citizen of a different state than Defendant; and

c. The aggregate value of the amount in controversy based on Plaintiff's allegations exceeds $5,000,000, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2).

Minimal Diversity Exists Pursuant To 28 U.S.C. § 1332(d)(2)(A)

13. Plaintiff Hoffman is a member of the plaintiff class. See Ex. A, Compl. at ¶ 1. Plaintiff Hoffman is an individual purportedly domiciled in the State of New Jersey, Bergen County. See id., Compl. at ¶ 1.

14. Both at the time Plaintiff filed the Complaint in the Superior Court of New Jersey, Bergen County, Law Division against Defendant, and continuing to the present, Defendant was and is corporation organized and existing under the laws of the State of Florida, with a principal place of business located at 2301 Porter Lake Drive, Sarasota, FL 34240. See id., Compl. at ¶ 2; see also Certification of Mark Rubin ("Rubin Cert."), annexed as Exhibit B, at ¶ 1; see also 28 U.S.C. § 1332(c).

15. Plaintiff asserts claims on behalf of himself, a New Jersey citizen, and a class consisting of all persons nationwide who purchased Cell Food. See Ex. A, Compl. at ¶ 30. Defendant has marketed and sold Cell Food throughout the United States since at least 1999. See Ex. B, Rubin Cert. ¶ 3.

16. Based on the foregoing, minimal diversity exists because at least one member of the class is a citizen of a different state than Defendant. See 28 U.S.C. § 1132(d)(2).

The Aggregate Value of the Amount in Controversy Exceeds $5,000,000

17. Although the allegations in the Complaint purport to disclaim that the amount is controversy is less than the $5,000,000 jurisdictional threshold required for diversity jurisdiction under CAFA, see Ex. A, Compl. at ¶ 30, removal is proper here, however, because based upon a fair reading of the Complaint and the Notice of Removal, it appears to a legal certainty that Plaintiff and the class members can recover more than the CAFA jurisdictional amount of $5,000,000. See Frederico v. Home Depot, 507 F.3d 188, 196-97 (3d Cir. 2007) (citing Morgan v. Gay, 471 F.3d 469 (3d Cir. 2006)).

18. "In removal cases, determining the amount in controversy begins with a reading of the complaint filed in the state court." Samuel-Bassett v. KIA Motors America, Inc., 357 F.3d 392, 398 (3d Cir. 2004). Plaintiff includes only a conclusory statement that the amount in controversy as to "the individual plaintiff" is "less than $75,000" and "[a]s to the putative plaintiff class, the amount in controversy . . . is less than $5 million." See Ex. A., Compl. at ¶ 30. As such, Plaintiff has not stated an exact sum sought in the Class Action Complaint, so the Court must perform an independent appraisal of the amount in controversy and, in doing so, may rely upon facts alleged in Defendant's Notice of Removal as well as those alleged in Plaintiff's Class Action Complaint. See Frederico, 507 F.3d at 197 ("In addition, to determine whether the minimum jurisdictional amount has been met in a diversity case removed to a district court, a defendant's notice of removal serves the same function as the complaint would if filed in the district court."); Russ v. Unum Life Ins. Co., 442 F. Supp. 2d 193, 197 (D.N.J. 2006) ("If the complaint is open-ended and does not allege a specific amount, the court must perform an independent appraisal of the value of the claim by looking at the petition for removal or any other relevant evidence.").

19. Although Defendant disputes liability and any entitlement of Plaintiff or the proposed class to monetary relief, it is respectfully submitted that, based upon a fair reading of this Notice of Removal together with the Complaint -- including consideration of the relief sought, the class definition, and the scope and size of the class -- that the Complaint seeks damages which exceed the minimum jurisdictional amount of $5,000,000 under CAFA, to a legal certainty.

20. Although the Complaint does not identify the exact size of the proposed class, it alleges that the class is "so numerous that joinder of all members is impracticable." See Ex. A,

Compl. at ¶ 31. Moreover, the Complaint alleges that the "proposed Class consists of all nationwide purchasers of Cell Food for the two year period preceding the filing of this suit." Id., Compl. at ¶ 30. Therefore, the proposed class includes purchasers of Cell Food from July 11, 2011, to the present. See id.

21. The Complaint alleges ascertainable loss "in the form of actual out of pocket payment and expenditure" for the purchase of Cell Food, and alleges a claim of unjust enrichment because Plaintiff and the class members purportedly "conferred a benefit" upon Defendant through their purchases of Cell Food. See id., Compl. at ¶¶ 26, 57.

22. The Complaint alleges that Plaintiff purchased Cell Food "in liquid concentrate form," id., Compl. at Overview, which is sold as "Cell Food Liquid Original Formula," see Ex. B, Rubin Cert. ¶ 3.

23. Cell Food Liquid Original Formula is available in a one ounce bottle that provides a 30-day supply, which has a manufacturer suggested retail price ("MSRP") of $29.95. See id., Rubin Cert. ¶ 3.

24. From July 11, 2011, through July 11, 2013, Lumina's total nationwide sales of Cell Food Original Liquid Concentrate were at least $5 million. See id., Rubin Cert. ¶ 4.

25. Given that the Complaint alleges an ascertainable loss in the form of out of pocket payment and expenditures, and seeks treble damages under each of the five counts asserted under the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, et seq., see Ex. A, Compl. at Counts I through V, the damages sought in the Complaint based upon Lumina's sales during the time period in question, trebled under the NJCFA, far exceeds the CAFA jurisdictional threshold minimum amount in controversy of $5,000,000.

26. In addition to the New Jersey Consumer Fraud Act claims, the Complaint also seeks "punitive damages" for alleged common law fraud. See Ex. A, Compl. at Count VI. Punitive damages must be considered in calculating the amount-in-controversy. See Frederico, 507 F.3d at 199; Vigilante v. Statharos, No. 08-cv-3408, 2008 U.S. Dist. LEXIS 68768, at *4-5 (E.D. Pa. Sept. 10, 2008) (complaint seeking $50,000 in compensatory damages and unspecified punitive damages satisfied the jurisdictional threshold). Under New Jersey law, a plaintiff may collect punitive damages of up to five times the compensatory damages. Frederico, 507 F.3d at 199 (citing N.J.S.A. § 2A:15-5.14(b)). The Complaint also seeks the disgorgement of all profits of Cell Food for alleged unjust enrichment. See Ex. A, Compl. at Count VII.

27. As such, it appears to a legal certainty that the amount in controversy in this action is above the mandatory minimum threshold for jurisdiction under CAFA. Because the Complaint alleges damages in the form of the "out of pocket payment" for Cell Food for nationwide consumers for a two year period, the amount of sales from July 11, 2011 to date -- especially when trebled under the New Jersey Consumer Fraud Act -- would bring the matter in controversy over the $5 million threshold for purposes of CAFA jurisdiction. This calculation does not take into consideration the punitive damages sought for common law fraud, or the disgorgement of all profits of Cell Food for alleged unjust enrichment, which would lend further support to the conclusion that Plaintiff can recover the jurisdictional amount.

28. Therefore, based on the allegations of the Complaint, it appears to a legal certainty that the amount in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and thus diversity jurisdiction exists under CAFA.

29. In addition, 28 U.S.C. § 1453 provides an alternate, independent basis for removal. Section 1453 provides that "[a] class action may be removed to a district court of the

United States in accordance with section 1446 . . . without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants." Such minimal diversity exists here because, as explained above, Plaintiff is a citizen of New Jersey and Defendant is a citizen of Florida.

REMOVAL REQUIREMENTS SATISFIED

30. As required by 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty (30) days after Defendant received a copy of the Complaint (by way of Federal Express) that was filed by Plaintiff in the Superior Court of New Jersey, Bergen County, Law Division.

31. Defendant has not filed a responsive pleading in the action commenced by Plaintiff in the Superior Court of New Jersey, Bergen County, Law Division against Defendant and no other proceedings have transpired in that action.

32. This Notice of Removal is being filed in the District of New Jersey, the district court of the United States for the district and division within which the state court action is pending, as required by 28 U.S.C. §§ 1446(a) and 1441(a).

33. Promptly after filing this Notice of Removal with the District Court for the District of New Jersey, a copy of this Notice of Removal, along with the Notice of Filing of Notice of Removal, will be filed with the Clerk of the Superior Court of New Jersey, Bergen County, Law Division pursuant to 28 U.S.C. § 1446(d). A copy of both documents will also be served upon Plaintiff's counsel. A copy of the letter notifying the Clerk of the New Jersey Superior Court, Bergen County, Law Division, of removal from state court, is annexed hereto as Exhibit C.

34. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required by 28 U.S.C. § 1446(a).

WHEREFORE, Defendant respectfully requests that this action be duly removed from the Superior Court of New Jersey, Bergen County, Law Division, to this Court, and that it proceed herein.

Dated: August 15, 2013

By: s/ Michael R. McDonald, Esq.

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EXHIBIT A

HAROLD M. HOFFMAN, ESQ.
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HOFFMAN.ESQ@VERIZON.NET
ATTORNEY FOR PLAINTIFF AND THE PUTATIVE CLASS

HAROLD M. HOFFMAN, individually and on behalf of those similarly situated, Plaintiff, -against- **LUMINA HEALTH PRODUCTS, INC.,** Defendant.	SUPERIOR COURT OF NEW JERSEY BERGEN COUNTY - LAW DIVISION DOCKET NO.: **BER-L-5304-13** CIVIL ACTION **SUMMONS**

From the State of New Jersey To the Defendant(s) named above:

LUMINA HEALTH PRODUCTS, INC.

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The Complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided). If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, CN-971, Trenton, NJ 08625. A $200 filing fee, payable to the Clerk of the Superior Court, and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

/S/ Jennifer M. Perez
Jennifer M. Perez, Acting Superior Court Clerk

Dated: July 15, 2013

Name of Defendant to be Served: **LUMINA HEALTH PRODUCTS, INC.**
Address of Defendant to be Served: c/o Mark Rubin, 3693 Walden Pond Dr., Sarasota, FL 34240

ATLANTIC COUNTY
Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., 1st Fl.
Atlantic City, NJ 08401
LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY
Deputy Clerk of the Superior Court
Case Processing Section - Rm 113
Justice Center - 10 Main St.
Hackensack, NJ 07601
LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY
Deputy Clerk of the Superior Court
Central Processing Office
Attn.: Judicial Intake
49 Rancocas Rd., 1st Fl.
Mt. Holly, NJ 08060
LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(609) 261-1088

CAMDEN COUNTY
Deputy Clerk of the Superior Court
Civil Processing Office
Hall of Records, Suite 150
101 S. Fifth St.
Camden, NJ 08103-4001
LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY
Deputy Clerk of the Superior Court
Court House
9 N. Main Street
Cape May, NJ 08210
LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY
Deputy Clerk of the Superior Court
Civil Case Management Office
Broad & Fayette Sts., PO Box 10
Bridgeton, NJ 08302
LAWYER REFERRAL
(856) 692-6207
LEGAL SERVICES
(856) 451-0003

ESSEX COUNTY
Deputy Clerk of the Superior Court
237 Hall of Records
465 Dr. Martin Luther King, Jr. Blvd.
Newark, NJ 07102
LAWYER REFERRAL
(973) 533-6755
Legal Services
(973) 624-4500

GLOUCESTER COUNTY
Deputy Clerk of the Superior Court
Civil Case Management Office
Broad & Delaware Streets
Woodbury, NJ 08096
LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 964-9400

HUDSON COUNTY
Deputy Clerk of the Superior Court
Administration Bldg
Hudson Fee Office, Room G-9
595 Newark Ave.
Jersey City, NJ 07306
LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY
Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08822
LAWYER REFERRAL
(908) 735-2611
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY
Deputy Clerk of the Superior Court
Local Filing Office, Court House
175 S. Broad St., PO Box 8068
Trenton, NJ 08650
LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY
Deputy Clerk of the Superior Court
Court House, 1st Fl.
1 Kennedy Sq., PO Box 2633
New Brunswick, NJ 08903-2633
LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY
Deputy Clerk of the Superior Court
71 Monument Park, PO Box 1260
Court House
Freehold, NJ 07728-1262
LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY
Deputy Clerk of the Superior Court
Civil Division
PO Box 910
Morristown, NJ 07930-0910
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY
Deputy Clerk of the Superior Court
Court House, Room 121
118 Washington St.
Toms River, NJ 08754
LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY
Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton St.
Paterson, NJ 07505
LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 523-2900

SALEM COUNTY
Deputy Clerk of the Superior Court
92 Market St., PO Box 29
Salem, NJ 08079
LAWYER REFERRAL
(856) 935-5629
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY
Deputy Clerk of the Superior Court
Civil Division Office
Court House, 3rd Fl.
Somerville, NJ 08876
LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY
Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860
LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY
Deputy Clerk of the Superior Court
Court House, Room 107
2 Broad Street
Elizabeth, NJ 07207-6073
LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY
Deputy Clerk of the Superior Court
Civil Division Office
Court House
413 Second Street
Belvidere, NJ 07823-1500
LAWYER REFERRAL
(908) 387-1835
LEGAL SERVICES
(908) 475-2010

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SUPERIOR COURT BERGEN COUNTY
FILED
JUL 11 2013
DEPUTY CLERK

DATE FILED 7/11/13
BATCH # 009
PAYMENT # 141867
CA CK CC MO CG
PAYOR Hoffman
AMOUNT 200
OVER

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ATTORNEY FOR PLAINTIFF AND THE PUTATIVE CLASS

HAROLD M. HOFFMAN, individually and on behalf of those similarly situated,

Plaintiff,

-against-

LUMINA HEALTH PRODUCTS, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY - LAW DIVISION

DOCKET NO.: **BER-L-** 5304 **-13**

CIVIL ACTION

COMPLAINT AND JURY DEMAND IN CLASS ACTION

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OVERVIEW

By this civil action, Plaintiff brings claims on his own behalf and on behalf of those similarly situated (the "Class"), to redress nationwide injury inflicted on the United States consumer public. As detailed below, Defendant, on a nationwide basis, advertised, promoted, marketed, distributed and sold – both online and in retail stores throughout the nation, including the State of New Jersey – a dietary supplement in liquid concentrate form known as *Cell Food*, based upon false and misrepresented claims of product efficacy.

16

As alleged below, Defendant advertises, markets, distributes and sells Cell Food, a dietary supplement in liquid concentrate form, as containing 129 trace nutrients and electrolytes, and "the unique ability to release oxygen and hydrogen throughout every cell in the human body," and thus capable of delivering improved levels of consumer energy, endurance and health. In truth and in fact, and as confirmed by medical experts who will testify at trial, there are no valid clinical studies and there is no medically-accepted evidence that Cell Food possesses efficacy to deliver improved levels of energy, endurance and health, or do anything whatsoever in that regard. Defendant's product efficacy claims are false and misleading and there exists no reliable evidence substantiating Defendant's claims and promises. Defendant's claims and promises with respect to the purported efficacy of Cell Food were calculated and designed to lead Plaintiff and others similarly situated to believe that Cell Food had the capacity to deliver improved energy, endurance and health, as above noted. Defendant took consumers' money predicated on these specific claims of health benefit and delivered to them, in return, nothing but broken promises.

The putative class comprises all nationwide purchasers of Cell Food for the two year period preceding the filing of this suit.

1. At all times relevant, Plaintiff Harold M. Hoffman had a place of residence in the State of New Jersey, County of Bergen. Plaintiff was exposed to and read, saw and/or heard Defendant's advertising and marketing claims and promises with respect to

Cell Food, and thereafter purchased the product, in or about June of 2013 at a Whole Foods supermarket in Bergen County, New Jersey.

2. At all relevant times, Defendant was a corporation organized and existing pursuant to the laws of the State of Florida, with a principal place of business in Sarasota, FL.

3. Defendant advertised, marketed, distributed and sold Cell Food in commerce throughout the United States, including but not limited to the State of New Jersey.

4. At all relevant times, plaintiff was and is a consumer, with a residence in the State of New Jersey, County of Bergen.

5. At all relevant times, Defendant constituted a "person" as defined in the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-1(d).

6. For the two-year period preceding the filing of this action, Defendant, by retail and online sale throughout the nation, including the State of New Jersey, marketed, advertised, promoted, offered and sold its products to consumers, including Cell Food, a dietary supplement in liquid concentrate form purportedly able to deliver improved energy, endurance and health.

7. Defendant markets, advertises and sells Cell Food as possessing efficacy to

deliver the foregoing benefits. Indeed, Defendant touts that Cell Food is "an unsurpassed oxygen and nutrient delivery system, and is absorbed quickly and efficiently by every cell in the body. Cell food's unique structure oxygenates and feeds the cells— cleaning and tuning up the body's systems throughout the day." Apparently, this unsurpassed "delivery system" is what enables Cell Food to deliver improved energy, endurance and health. Based on these utterly nonsensical claims, Defendant is believed to have sold significant quantities of Cell Food to consumers throughout the nation, including the State of New Jersey.

8. To maximize the sale of this product through the duping of consumers, Defendant makes the foregoing claims of product efficacy on the Cell Food product label which is prominently exhibited to consumers in a variety of retail supermarkets, including Whole Foods Markets, and other retail outlets.

9. Cell Food purportedly contains a secret "proprietary" blend of undisclosed ingredients that "feeds the cells."

10. There is no valid, reliable, credible, independent clinical research and/or testing and/or medical science whatsoever to support Defendant's claim that Cell Food can deliver any benefit including, without limitation, improved energy, endurance and health. According to reliable, competent medical experts who will testify at trial, it does not.

11. Defendant's exaggerated and blatant misrepresentations regarding the efficacy of Cell Food were designed to and did lead Plaintiff and others similarly situated to believe that Cell Food was effective in delivering improved energy, endurance and health.

12. Plaintiff and members of the putative Class relied on Defendant's misrepresentations and would not have paid as much, if at all, for Cell Food. As a result, Defendant has wrongfully taken substantial sums from hard-working New Jersey and U.S. consumers.

13. Plaintiff brings this suit to recover funds taken by Defendant as a consequence of its ongoing deception of nationwide consumers.

14. The affirmative promises and representations made by Defendant in connection with the marketing, advertisement and sale of Cell Food, as aforesaid, are false and are without valid, credible scientific, medical and/or clinical support.

15. Plaintiff and members of the putative class are purchasers of Cell Food and, prior to purchasing the product, saw, read and/or heard Defendant's advertisements, promises, claims and representations, as aforesaid.

16. Plaintiff and members of the class, prior to purchasing the product, saw, read

and/or heard Defendant's promises, claims and representations as aforesaid, and made an out of pocket payment to Defendant in response thereto.

17. The very purpose of the New Jersey Consumer Fraud Act is to protect consumers, such as the putative class members at bar, from being victimized by false and unsubstantiated promises and claims with respect to product efficacy and benefit.

18. In truth and fact, Defendant misrepresented the efficacy and benefit of its product. Plaintiff and members of the class paid for a product that Defendant affirmatively and specifically represented to be effective in promoting improved energy, endurance and health. In truth, the product sold by Defendant can deliver no benefit consistent with Defendant's promises.

19. Here, consumers, including plaintiff, made purchasing decisions and did, in fact, make purchases from Defendant based upon Defendant's specific claims and representations of product efficacy and benefit.

20. Defendant has sold an affirmatively misrepresented and mislabeled product.

21. The affirmative promises and representations made by Defendant – both in product labeling and in marketing advertisements and representations – in connection with Cell Food are false and misleading. Indeed, Defendant has misrepresented the product's

purported salutary benefits.

22. Plaintiff and members of the class were entitled to trust the Defendant's labeling and marketing representations and advertisements with respect to the product. The product delivered by Defendant to plaintiff and members of the putative class misrepresented product efficacy and benefit.

23. Defendant's advertisements, promises and representations concerning Cell Food are false and constitute a deception; a misrepresentation; an unconscionable trade practice; a sharp and deceitful marketplace practice, and are a false promise.

24. Defendant's advertisements, promises and representations concerning Cell Food result in nationwide consumers who purchased it, being subjected to misrepresentation, false promise, fraud, deceit, trickery and false and deceptive advertising.

25. Defendant has made affirmative misrepresentations in connection with the sale, marketing and/or advertisement of Cell Food.

26. Plaintiff and members of the putative class suffered ascertainable loss in the form of actual out of pocket payment and expenditure, as aforesaid, as a result of Defendants' unlawful conduct as aforesaid. Plaintiff and members of the putative class paid hard earned money and received from Defendant, in exchange, a product which was

unable to deliver the benefits promised by Defendant. Indeed, there was a substantial difference between the price paid by consumers, including plaintiff, for the Defendant's product, and the represented value of the product.

27. Here, plaintiff and members of the class suffered ascertainable loss when they received, for their money, a product less than, and different from, the product promised by Defendant. The Defendant's product failed to measure up to the consumers' reasonable expectations based on the representations made by Defendant. Thus, purchasers of said product were injured and suffered loss.

28. For their money, plaintiff and members of the class received something less than, and different from, what they reasonably expected in view of Defendant's representations. As a result, they suffered ascertainable loss.

29. Defendant marketed and sold Cell Food - and consumers purchased it - on the premise that the product could deliver specified benefit. It cannot do so. Thus, there is a causal relationship between the Defendant's misrepresentations of product efficacy and the loss suffered by plaintiff and class members.

CLASS ALLEGATIONS

30. Plaintiff brings this suit as a class action individually and in behalf of others similarly situated pursuant to New Jersey Court Rule 4:32. Subject to additional information obtained through further investigation and/or discovery, the definition of the Class may be expanded or narrowed. The proposed Class consists of all nationwide purchasers of Cell Food for the two year period preceding the filing of this suit. As to the individual plaintiff, the amount in controversy in this action, including, without limitation, compensatory, treble, and/or punitive damages and counsel fees, is less than $75,000.00. As to the putative plaintiff class, the amount in controversy in this action, including, without limitation, compensatory, treble, and/or punitive damages and counsel fees, is less than $5 million.

31. This action has been brought and may properly be maintained as a class action pursuant to New Jersey Court Rule 4:32.

Numerosity: The members of the Class are so numerous that joinder of all members is impracticable. The Class is comprised of thousands of consumers throughout the United States.

Commonality: Common questions of law and fact exist as to all members of the Class. These common questions predominate over the questions affecting only individual Class members, and include:

a. Whether Defendant made affirmative misrepresentations in violation of the New Jersey Consumer Fraud Act;

b. Whether Defendant misrepresented the efficacy of Cell Food; and,

c. The appropriate measure of damages sustained by the Plaintiff and/or other members of the Class.

Typicality: Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct. Plaintiff, like other members of the Class, purchased Cell Food after exposure to the same misrepresentations and/or omissions in Defendants' advertising and received a product less than and different from the promised product. Plaintiff is advancing claims and legal theories typical to the Class.

Adequacy: Plaintiff's claims are made in a representative capacity on behalf of all members of the Class. Plaintiff has no interests antagonistic to the interests of the other members of the proposed Class and is subject to no unique defenses.

32. Plaintiff is similarly situated in interest to all members of the proposed Class and is committed to the vigorous prosecution of this action. Accordingly, Plaintiff is an adequate representative of the proposed Class and will fairly and adequately protect the interests of the Class.

33. This suit may be maintained as a class action because Defendant has acted, and/or have refused to act, on grounds generally applicable to the Class, thereby making

appropriate final relief.

34. At bar, Plaintiff does not presently seek injunctive relief.

35. **Superiority**: In addition, this suit may be maintained as a class action because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. The claims asserted herein are applicable to all consumers throughout the United States who purchased Cell Food. The injury suffered by each individual class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually effectively and cost-efficiently to redress Defendant's wrongful conduct. Individual litigation would enhance delay and expense to all parties. The class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

COUNT I

36. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

37. Defendant's conduct constitutes an unconscionable commercial practice in violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

38. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT II

39. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

40. Defendant's conduct constitutes deception in violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

41. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and

post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT III

42. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

43. Defendant's conduct constitutes fraud in violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

44. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT IV

45. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

46. Defendant's conduct constitutes false pretense, false promise and/or misrepresentation, in violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

47. As a proximate result of Defendant's conduct, plaintiff and members of

the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT V

48. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

49. Defendant's conduct constitutes knowing concealment, suppression and/or omission of material facts with the intent that others, including members of the plaintiff-class, rely upon such concealment, suppression and/or omission, in connection with the sale or advertisement of any merchandise in violation of the New Jersey Consumer Fraud Act, *N.J.S.A.* 56:8-2.

50. As a proximate result of Defendant's conduct, plaintiff and members of the class were damaged.

WHEREFORE, plaintiff, individually and in behalf of the class, demands judgment against the Defendant for treble damages together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, civil penalties mandated by *N.J.S.A.* 56:8-19, and any other and further relief as the Court deems just and proper.

COUNT VI

51. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

52. Defendant, in the advertisement, marketing and sale of Cell Food, deliberately engaged in deception, false pretense, false promise and/or misrepresentation with respect to material facts, and did so with the intent that others, including members of the plaintiff-class, rely upon same, and, upon information and belief, members of the class did justifiably rely upon same to their detriment.

53. Defendant, in the advertisement, marketing and sale of Cell Food, deliberately and knowingly engaged in concealment, suppression and/or omission of material facts with the intent that others, including members of the plaintiff-class, rely upon same, and, upon information and belief, members of the class did justifiably rely upon same to their detriment.

54. As a proximate result of defendant's conduct, members of the class were damaged.

55. Defendant's conduct constitutes common law fraud.

WHEREFORE, plaintiff, in behalf of the class, demands judgment against the Defendant for treble damages and/or punitive damages together with pre-judgment and

post-judgment interest, fees, costs, attorney's fees, and any other and further relief as the Court deems just and proper.

COUNT VII

56. Plaintiff repeats and realleges the prior allegations of this complaint as if fully set forth at length.

57. As a result of Defendant's false and deceptive advertisements, claims, promises and representations concerning the efficacy of Cell Food, and as a consequence of Defendant's unconscionable trade practices, its sharp and deceitful marketplace practices, and its false promises, all as aforesaid, the class members paid money to and conferred a benefit upon Defendant in connection with the sale of Cell Food by Defendant to class members, which benefit was received and continues to be retained by Defendant.

58. Retention of that benefit without reimbursement by Defendant to all class members would be unjust and inequitable.

59. Retention of that benefit by Defendant at the expense of all class members would be unjust and inequitable.

60. Defendant, as a result of its false and deceptive conduct as aforesaid, became indebted to class members for the sums paid by class members to Defendant for purchase of a misrepresented product. Retention of said sums, without reimbursement,

would result in the unlawful, unjust and inequitable enrichment of Defendant beyond its lawful rights in connection with the sale of Cell Food to class members.

61. All monies paid by class members to Defendant for purchase of Cell Food, including all interest earned by Defendant on such monies while in wrongful possession thereof, should be disgorged by Defendant and reimbursed to class members under principles of unjust enrichment.

62. As a proximate result of Defendant's conduct, members of the class were damaged.

WHEREFORE, plaintiff, in behalf of the class, demands judgment against the Defendant for reimbursement of sums paid by class members to Defendant for purchase of a misrepresented product, Cell Food, together with pre-judgment and post-judgment interest, fees, costs, attorney's fees, and any other and further relief as the Court deems just and proper.

Dated: July 9, 2013

HAROLD M. HOFFMAN, ESQ.
Counsel for Plaintiff and the Putative Class
240 Grand Avenue
Englewood, NJ 07631
hoffman.esq@verizon.net

JURY DEMAND

Demand is hereby made for trial by jury as to all issues.

TRIAL COUNSEL DESIGNATION

Pursuant to Rule 4:25-4, the Court is respectfully advised that Harold M. Hoffman, Esq., is hereby designated as trial counsel in behalf of plaintiff and the putative class.

CERTIFICATION PURSUANT TO RULE 4:5-1

Harold M. Hoffman, counsel for plaintiff, hereby certifies that the matter in controversy is not the subject of any other known pending action in this or any other Court or any pending arbitration, nor is any other action or arbitration known to be contemplated. At this time, no other known party, other than members of the class, are anticipated for joinder.

I certify that the foregoing is true to the best of my knowledge. I am aware that if any of the foregoing is wilfully false, I am subject to punishment.

HAROLD M. HOFFMAN, ESQ.

Dated: July 9, 2013

Appendix XII-B1

CIVIL CASE INFORMATION STATEMENT

(CIS)

Use for initial Law Division
Civil Part pleadings (not motions) under Rule 4:5-1
Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE: ☐CK ☐CG ☐CA
CHG/CK NO.
AMOUNT:
OVERPAYMENT:
BATCH NUMBER:

ATTORNEY/PRO SE NAME	TELEPHONE NUMBER	COUNTY OF VENUE
HAROLD M. HOFFMAN, ESQ.	(201) 569-0086	Bergen
FIRM NAME (If applicable)		DOCKET NUMBER (When available) L- 5304 -13
OFFICE ADDRESS 240 GRAND AVENUE, ENGLEWOOD, NJ 07631-4352 hoffman.esq@verizon.net		DOCUMENT TYPE COMPLAINT
		JURY DEMAND ☒ YES ☐ NO

NAME OF PARTY (e.g., John Doe, Plaintiff)	CAPTION
HAROLD M. HOFFMAN, Individually and on behalf of those similarly situated	HAROLD M. HOFFMAN, Individually and on behalf of those similarly situated v. LUMINA HEALTH PRODUCTS, INC.

CASE TYPE NUMBER (See reverse side for listing): 699

IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☒ NO

IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.

RELATED CASES PENDING? ☐ YES ☒ NO

IF YES, LIST DOCKET NUMBERS

DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☐ YES ☒ NO

NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN ☐ NONE ☒ UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? ☐ YES ☒ NO

IF YES, IS THAT RELATIONSHIP ☐ EMPLOYER-EMPLOYEE ☐ FRIEND/NEIGHBOR ☐ OTHER (explain) ☐ FAMILIAL ☐ BUSINESS

DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? ☒ YES ☐ NO

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:

This case is brought as a putative class action seeking recovery in behalf of a class of consumer purchasers and alleges that defendant(s) engaged in deceptive and unconscionable commercial practices in violation of the New Jersey Consumer Fraud Act.

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? ☐ YES ☒ NO

IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:

WILL AN INTERPRETER BE NEEDED? ☐ YES ☒ NO

IF YES, FOR WHAT LANGUAGE:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

ATTORNEY SIGNATURE:

Revised Effective 9/2009, CN 10517

SIDE 2

CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule* 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I — 150 days' discovery

151 NAME CHANGE
175 FORFEITURE
302 TENANCY
399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
502 BOOK ACCOUNT (debt collection matters only)
505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
506 PIP COVERAGE
510 UM or UIM CLAIM
511 ACTION ON NEGOTIABLE INSTRUMENT
512 LEMON LAW
801 SUMMARY ACTION
802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
999 OTHER (Briefly describe nature of action)

Track II — 300 days' discovery

305 CONSTRUCTION
509 EMPLOYMENT (other than CEPA or LAD)
599 CONTRACT/COMMERCIAL TRANSACTION
603 AUTO NEGLIGENCE – PERSONAL INJURY
605 PERSONAL INJURY
610 AUTO NEGLIGENCE – PROPERTY DAMAGE
699 TORT – OTHER

Track III — 450 days' discovery

005 CIVIL RIGHTS
301 CONDEMNATION
602 ASSAULT AND BATTERY
604 MEDICAL MALPRACTICE
606 PRODUCT LIABILITY
607 PROFESSIONAL MALPRACTICE
608 TOXIC TORT
609 DEFAMATION
616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
617 INVERSE CONDEMNATION
618 LAW AGAINST DISCRIMINATION (LAD) CASES
620 FALSE CLAIMS ACT

Track IV — Active Case Management by Individual Judge / 450 days' discovery

156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
303 MT. LAUREL
508 COMPLEX COMMERCIAL
513 COMPLEX CONSTRUCTION
514 INSURANCE FRAUD
701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Centrally Managed Litigation (Track IV)

280 Zelnorm
285 Stryker Trident Hip Implants

Mass Tort (Track IV)

248 CIBA GEIGY
266 HORMONE REPLACEMENT THERAPY (HRT)
271 ACCUTANE
272 BEXTRA/CELEBREX
274 RISPERDAL/SEROQUEL/ZYPREXA
275 ORTHO EVRA
277 MAHWAH TOXIC DUMP SITE
278 ZOMETA/AREDIA
279 GADOLINIUM
281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL
282 FOSAMAX
283 DIGITEK
284 NUVARING
286 LEVAQUIN
601 ASBESTOS
619 VIOXX

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

☐ Verbal Threshold ☒ Putative Class Action ☐ Title 59

FedEx

August 13,2013

Dear Customer:

The following is the proof-of-delivery for tracking number **796231387570**.

Delivery Information:			
Status:	Delivered	**Delivered to:**	Residence
Signed for by:	Signature not required	**Delivery location:**	SARASOTA, FL
Service type:	FedEx Standard Overnight	**Delivery date:**	Jul 16, 2013 15:00
Special Handling:	Deliver Weekday Residential Delivery		

NO SIGNATURE REQUIRED
Proof-of-delivery details appear below; however, no signature is available for this FedEx Express shipment because a signature was not required.

Shipping Information:			
Tracking number:	796231387570	**Ship date:**	Jul 15, 2013
		Weight:	0.5 lbs/0.2 kg

Recipient:
SARASOTA, FL US

Shipper:
Englewood, NJ US

Thank you for choosing FedEx.

EXHIBIT B

Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500

Attorneys for Defendant
Lumina Health Products, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HAROLD M. HOFFMAN, individually and on behalf of those similarly situated, Plaintiff, vs. LUMINA HEALTH PRODUCTS, INC. Defendant.	Civil Action No. _____ ***Document electronically filed*** **CERTIFICATION OF MARK RUBIN**

I, **Mark Rubin**, certify as follows:

1. I am the President and Co-Founder of Lumina Health Products, Inc. ("Lumina Health"), a corporation organized and existing under the laws of the State of Florida. The principal place of business for Lumina Health is 2301 Porter Lake Drive, Sarasota, Florida 34240.

2. I have been employed as the President and Co-Founder of Lumina Health since I co-founded the company in 1999. In that capacity, I am familiar with the marketing and sales of our dietary supplement known as Cell Food Original Liquid Concentrate, which is described as "a dietary supplement in liquid concentrate form known as *Cell Food*," in Plaintiff's Complaint.

3. Lumina has marketed and sold Cell Food Original Liquid Concentrate throughout the United States since at least 1999. Cell Food Original Liquid Concentrate is available in a one

ounce bottle that provides a 30-day supply, which has a manufacturer suggested retail price ("MSRP") of $29.95.

4. From July 11, 2011 through July 11, 2013, Lumina's total nationwide sales of Cell Food Original Liquid Concentrate were at least $5 million.

I certify under penalty of perjury that the foregoing is true and correct. Executed on this 13 day of August, 2013, in Sarasota, Florida.

By: _____
Mark Rubin

EXHIBIT C

GIBBONS

MICHAEL R. MCDONALD
Director

Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310
Direct: (973) 596-4827 Fax: (973) 639-6295
mmcdonald@gibbonslaw.com

August 15, 2013

VIA FEDEX

Clerk of the Court
Superior Court of New Jersey
Bergen County
10 Main Street
Hackensack, New Jersey 07601-7699

Re: *Harold M. Hoffman v. Lumina Health Products, Inc.*
Docket No. BER-L-5304-13

Dear Sir or Madam:

This law firm represents Defendant Lumina Health Products, Inc. in the above-referenced matter. I enclose herewith for filing an original and two (2) copies of our Notice of Filing Notice of Removal of this matter to the United States District Court for the District of New Jersey. Please charge our account number 0018800 (our internal number is 112236-84780) for any fees associated with this filing. Please return a stamped "Filed" copy to me in the pre-paid, self-addressed envelope enclosed.

If you have any questions, please contact me with any questions or concerns regarding the foregoing.

Very truly yours,

Michael R. McDonald

MRM/mmm

Enclosures

cc: Harold M. Hoffman, Esq. (*via Federal Express w/enclosures*)
Jennifer Marino Thibodaux, Esq.

Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500

Attorneys for Defendant
Lumina Health Products, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HAROLD M. HOFFMAN, individually and on behalf of those similarly situated, Plaintiff, vs. LUMINA HEALTH PRODUCTS, INC., Defendant.	Civil Action No. _____ ***Document electronically filed*** **CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 10.1(a)**

Pursuant to Local Civil Rule 10.1(a), attached hereto as Exhibit A is a Service List that sets forth the names and addresses of each party, as well as counsel for each of the parties, in the above-captioned action.

Dated: August 15, 2013
Newark, New Jersey

By: s/Michael R. McDonald
Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102-5310
(973) 596-4500
mmcdonald@gibbonslaw.com
jthibodaux@gibbonslaw.com

Attorneys for Defendant
Lumina Health Products, Inc.

Exhibit A

HAROLD M. HOFFMAN v. LUMINA HEALTH PRODUCTS, INC.
Civil Action No.: _____

Service List

Plaintiff / Plaintiff's Counsel

Harold M. Hoffman, Esq.
240 Grand Avenue
Englewood, New Jersey 07631
(201) 569-0086
hoffman.esq@verizon.net

Defendant

Lumina Health Products, Inc.
2301 Porter Lake Drive
Sarasota, FL 34240

Defendant's Counsel

Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
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One Gateway Center
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Attorneys for Defendant
Lumina Health Products, Inc.

Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
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(973) 596-4500

Attorneys for Defendant
Lumina Health Products, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HAROLD M. HOFFMAN, individually and on behalf of those similarly situated, Plaintiff, vs. LUMINA HEALTH PRODUCTS, INC., Defendant.	Civil Action No. _____ ***Document electronically filed*** **CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2**

I, Michael R. McDonald., admitted to the bars of the State of New Jersey and this Court and a member of the law firm of Gibbons P.C., counsel for Defendant Lumina Health Products, Inc., in the above-captioned matter, hereby certify that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: August 15, 2013

By: s/ Michael R. McDonald, Esq.

Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
Phone: (973) 596-4500
Facsimile: (973) 639-6295
mmcdonald@gibbonslaw.com
jthibodaux@gibbonslaw.com

Attorneys for Defendant
Lumina Health Products, Inc.

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 THE REVERSE OF THE FORM.)**

I (a) PLAINTIFF

HAROLD M. HOFFMAN, individually and on behalf of the class of purchasers of Lumina Health Products, Inc.'s Cell Food

(b) COUNTY OF RESIDENT OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) **Bergen, NJ**

DEFENDANTS

Lumina Health Products, Inc.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) **Sarasota County, FL**

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Harold M. Hoffman, Esq.
240 Grand Avenue
Englewood, NJ 07631
(201) 569-0086

ATTORNEYS (IF KNOWN)
Michael R. McDonald, Esq.
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310
973-596-4500

II. BASIS OF JURISDICTION

(PLACE AN x IN ONE BOX ONLY)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only) (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	**Incorporated or Principal Place of Business in This State**	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	**Incorporated or Principal Place of Business in Another State**	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	**Foreign Nation**	☐ 6	☐ 6

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

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment and enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholder's Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Liability Assault, & Libel Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☒ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Other

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title (XVI)
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☒ 890 Other Statutory Actions

VI ORIGIN

☐ 1 Original Proceeding	☒ 2 Removed	☐ 3 Remanded from State Court	☐ 4 Remanded from Appellate Court	☐ 5 Transferred from another district (specify)	☐ 6 Multidistrict Litigation	☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

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

28 U.S.C. 1332(d)

Brief description of cause: This is a putative class action lawsuit alleging violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, et seq., common law fraud, and unjust enrichment.

VII. REQUESTED IN COMPLAINT:

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

CLASS ACTION

DEMAND $ N/A

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) (See instructions)

JUDGE _____ DOCKET NUMBER _____

Explanation:

s/ Michael R. McDonald.

DATE August 15, 2013 SIGNATURE OF ATTORNEY OF RECORD

For Office Use Only

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

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority for Civil Cover Sheet

The JS-44 cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved 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. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows;

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter firm name, address, telephone number, and attorney or record. If there are several attorneys, list then on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction is based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an X in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV more than one nature of suit, select the most definitive.

VI. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not in a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
Date and Attorney Signature. Date and sign the civil cover sheet.

Michael R. McDonald, Esq.
Jennifer Marino Thibodaux, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500

Attorneys for Defendant
Lumina Health Products, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HAROLD M. HOFFMAN, individually and on behalf of those similarly situated, Plaintiff, vs. LUMINA HEALTH PRODUCTS, INC., Defendant.	Civil Action No. ***Document electronically filed*** **CERTIFICATE OF SERVICE**

I, **MICHAEL R. MCDONALD, ESQ.**, hereby certify as follows:

1. I am an attorney at law admitted to practice before this Court and am a member of the firm Gibbons P.C., attorneys for Defendant Lumina Health Products, Inc. in the above-captioned matter. On August 15, 2013, I electronically filed and served the following documents on behalf of Defendant:

- Notice of Removal with accompanying exhibits;
- Corporate Disclosure Statement Pursuant to Federal Rule of Civil Procedure 7.1;
- Statement Pursuant to Local Civil Rule 10.1(a);
- Certificate Pursuant to Local Civil Rule 11.2;
- Civil Cover Sheet; and
- Certificate of Service.

2. Service was also made on this date upon the following counsel in accordance with the Federal Rules of Civil Procedure and the District of New Jersey's Local Rules on Electronic Service:

Harold M. Hoffman, Esq.
240 Grand Avenue
Englewood, New Jersey 07631
Phone: (201) 569-0086
hoffman.esq@verizon.net

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: August 15, 2013

By: s/ Michael R. McDonald, Esq.
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