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10 **Counsel for Plaintiffs and the**
11 **Proposed Class**

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

16 FRANK ORTEGA and TROY
17 LAMBERT on Behalf of Themselves
18 and All Others Similarly Situated,

19 Plaintiffs,

20 v.

22 NATURAL BALANCE INC., a
23 Delaware Corporation, and
24 NUTRACEUTICAL
25 INTERNATIONAL CORPORATION,
a Delaware Corporation.

26 Defendants.

Case No: **CV 13 - 05942 ABC (Ex)**

CLASS ACTION
**COMPLAINT FOR VIOLATIONS OF
CALIFORNIA'S:**

UNFAIR COMPETITION LAW;

FALSE ADVERTISING LAW; AND

**CONSUMER LEGAL REMEDIES
ACT**

DEMAND FOR JURY TRIAL

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**COMPLAINT FOR VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW,
FALSE ADVERTISING LAW, AND CONSUMER LEGAL REMEDIES ACT**

BY
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
SAN DIEGO, CALIF.
2013 AUG 14 PM 1:41

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1 Plaintiffs Frank Ortega and Troy Lambert, on behalf of themselves, all others
2 similarly situated, and the general public, through undersigned counsel, sue Defendants
3 Natural Balance, Inc. (“NBI”) and Nutraceutical International Corporation (“NIC”) and,
4 upon information and belief and investigation of counsel, alleges as follows:

5 **INTRODUCTION**

6 1. NBI and NIC falsely market their dietary supplement “Cobra Sexual
7 Energy” (“Cobra” or the “Product”) as having beneficial health properties and being
8 scientifically formulated to improve virility, despite a lack of scientific evidence to
9 support these claims.

10 2. Plaintiffs Frank Ortega and Troy Lambert paid for Cobra during the Class
11 Period defined herein, saw and believed these claims, and were damaged as a result.

12 3. Plaintiffs bring this action challenging NBI and NIC’s claims relating to
13 Cobra on behalf of themselves and all others similarly situated, under California’s Unfair
14 Competition Law, False Advertising Law, and Consumer Legal Remedies Act.

15 4. Plaintiffs seek an order compelling NBI and NIC to (1) cease marketing
16 Cobra using the misleading tactics complained of herein, (2) conduct a corrective
17 advertising campaign, (3) restore the amounts by which NBI and NIC have been unjustly
18 enriched, (4) destroy all misleading and deceptive materials, and for (5) damages and
19 punitive damages as allowed by law.

20 **JURISDICTION AND VENUE**

21 5. This Court has original jurisdiction under 28 U.S.C. §1332(d)(2) (The Class
22 Action Fairness Act) because the matter in controversy exceeds the sum or value of
23 \$5,000,000 exclusive of interest and costs and more than two-thirds of the members of
24 the Class reside in states other than the state of which Defendants are citizens.

25 6. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because Plaintiffs
26 reside in this District; have suffered and continue to suffer injuries as a result of
27 Defendants’ acts in this district; many of the acts and transactions giving rise to this
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1 action occurred in this district; and because NBI and NIC are authorized to conduct
2 business in this District, and have intentionally availed themselves of the laws and
3 markets of this District through the promotion, marketing, distribution, and sale of its
4 Product in this District, and are subject to personal jurisdiction in this District.

5 **PARTIES**

6 7. Defendant NBI is a Delaware corporation with its principal place of business
7 in Englewood, Colorado, and is the producer and manufacturer of Cobra.

8 8. Defendant NIC is a publicly traded Delaware Corporation and the
9 international parent company of NBI.

10 9. Plaintiff Frank Ortega is a resident of California and purchased Cobra for his
11 own and household use and not for resale in California during the Class Period defined
12 herein.

13 10. Plaintiff Troy Lambert is a resident of Long Beach, California and
14 purchased Cobra for his own and household use and not for resale in California during
15 the Class Period defined herein.

16 **FACTUAL ALLEGATIONS**

17 11. In or around May 2011 through December 2011, Plaintiff Frank Ortega
18 purchased Cobra from CVS in Reseda, Los Angeles County, California and from Rite-
19 Aid and Target stores located in Northridge, California. The cost was approximately \$16-
20 \$17 per bottle.

21 12. Mr. Ortega first discovered Defendants' unlawful acts described herein in
22 December 2012, when he learned that the Defendants' Product violates the FDCA and its
23 implementing regulations and that the labels were untrue and/or misleading.

24 13. Plaintiff Troy Lambert purchased Cobra from the Rite-Aid located at 300
25 East Willow Street in Long Beach, California approximately ten times. His most recent
26 purchase was in November 2012. The cost was approximately \$16-17 per bottle.

27 14. Mr. Lambert first discovered Defendants' unlawful acts described herein in
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1 January 2013, when he learned that the Defendants' Product violates the Federal Food,
2 Drug and Cosmetic Act ("FDCA") and its implementing regulations and that the labels
3 were untrue and/or misleading.

4 15. Plaintiffs, in the exercise of reasonable diligence, could not have discovered
5 earlier Defendants' unlawful acts described herein because the violations were known to
6 Defendants, and not to them, throughout the Class Period defined herein. Plaintiffs are
7 not nutritionists, food experts, or food scientists, but rather lay consumers who did not
8 have the specialized knowledge that Defendants had.

9 16. Throughout the Class Period, Defendants have used various methods to
10 represent the purported medicinal, healthful, and/or beneficial qualities of Cobra. Such
11 representations and claims, however, are unsubstantiated by scientific evidence and are
12 false or misleading.

13 17. Absent the misstatements and fraudulent claims described herein, Plaintiffs
14 would not have purchased Cobra.

15 **The Composition of Cobra**

16 18. Defendants' product Cobra primarily consists of a "proprietary blend" of
17 small amounts of extracts from herbs, roots, and other organic substances, some of which
18 are purported to have an effect on the human body.

19 19. Cobra, by means of its "proprietary blend," claims to increase "sexual
20 energy" in the human body.

21 20. None of the ingredients in Cobra, however, have ever been found by any
22 scientific human study to increase sexual energy.

23 21. While a few unreplicated scientific studies suggest ingredients in
24 Defendants' proprietary blend may, in necessary amounts, have benefits to sufferers of
25 certain specific conditions, many of the ingredients in Cobra appear to have never been
26 studied at all or have not otherwise been shown to have any effect on the human body,
27 much less to increase "sexual energy."
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1 22. Further, consuming such random herbs and herbal extracts presents a risk of
2 an allergic or other adverse reaction without any offsetting benefit.

3 **Cobra’s Yohimbe Content Poses Grave and Undisclosed Risks to Human Health**

4 23. Yohimbe extracts in Cobra present several added risks not stated on
5 Defendants’ label:

6 24. The National Institute of Health (“NIH”) strongly cautions that sufferers of
7 anxiety and/or depression should not use yohimbe: “Yohimbe might bring out manic-like
8 symptoms in people with bipolar disorder or suicidal tendencies in individuals with
9 depression.”¹

10 25. The NIH further warns against yohimbe for use by individuals suffering
11 from diabetes, because the substance may “interfere with insulin and other medications
12 used for diabetes and cause low blood sugar.” *Id.*

13 26. Like early antidepressant drugs, yohimbe extracts can lead to serious and in
14 some cases life-threatening conditions when ingested with any of the many foods
15 containing significant amounts of the monoamine tyramine.

16 27. Both yohimbe and these first generation antidepressants are referred to as
17 Monoamine Oxidase Inhibitors (“MAOIs”).

18 28. MAOIs, by inhibiting monoamine oxidase, are also responsible for the
19 reduction in the breakdown of tyramine, an amino acid in many foods. The retarding of
20 this process by MAOIs leads to a build-up of tyramine in the body, causing high blood
21 pressure and severe hypertension.

22 29. The dangerous combination of MAOIs and tyramine can also result in stroke
23 and cardiac arrhythmia.

24 30. As a result, those prescribed MAOIs are warned to avoid these and other
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26 ¹The National Institute of Health, *Yohimbe*
27 <http://www.nlm.nih.gov/medlineplus/druginfo/natural/759.html> (last visited June 4,
28 2013).

1 types of tyramine-heavy foods.

2 31. This warning, from the National Institute of Health U.S. Library of
3 Medicine, is typical:

4 You may experience a serious reaction if you eat foods that are high
5 in tyramine during your treatment with phenelzine [an MAOI, brand
6 name: “Nardil”]. Tyramine is found in many foods, including meat,
7 poultry, fish, or cheese that has been smoked, aged, improperly stored,
8 or spoiled; certain fruits, vegetables, and beans; alcoholic beverages;
9 and yeast products that have fermented. Your doctor or dietitian will
10 tell you which foods you must avoid completely, and which foods you
11 may eat in small amounts. You should also avoid foods and drinks
12 that contain caffeine during your treatment with phenelzine. Follow
13 these directions carefully. Ask your doctor or dietitian if you have any
14 questions about what you may eat and drink during your treatment.²

15 32. Even small amounts of yohimbe may cause high blood pressure.

16 33. Yohimbe itself elevates normal blood pressure levels, and Defendants fail to
17 warn consumers that, similar to MAOIs, the consumption of yohimbe with common
18 foods heavy in tyramine presents the risk of hypertension and possibly even stroke or
19 death; and such foods should be avoided when taking yohimbe.

20 34. Of significant concern is a study published in 2008, which in a yearlong
21 surveillance study of dietary supplement-related poison control center calls, found that
22 yohimbe products accounted for almost a fifth of all exposures to dietary supplements
23 that led to negative symptoms, despite being a very small percentage of dietary
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26 ² The National Institute of Health, *Yohimbe*
27 <http://www.nlm.nih.gov/medlineplus/druginfo/natural/759.html> (last visited June 4,
28 2013).

1 supplement sales.³

2 35. These symptoms include: anxiety, tremulousness, diaphoresis, hypertension,
3 palpitations, headache, chest pain, tachycardia, shortness of breath, stroke, dizziness,
4 agitation, and abnormally dilated pupils.

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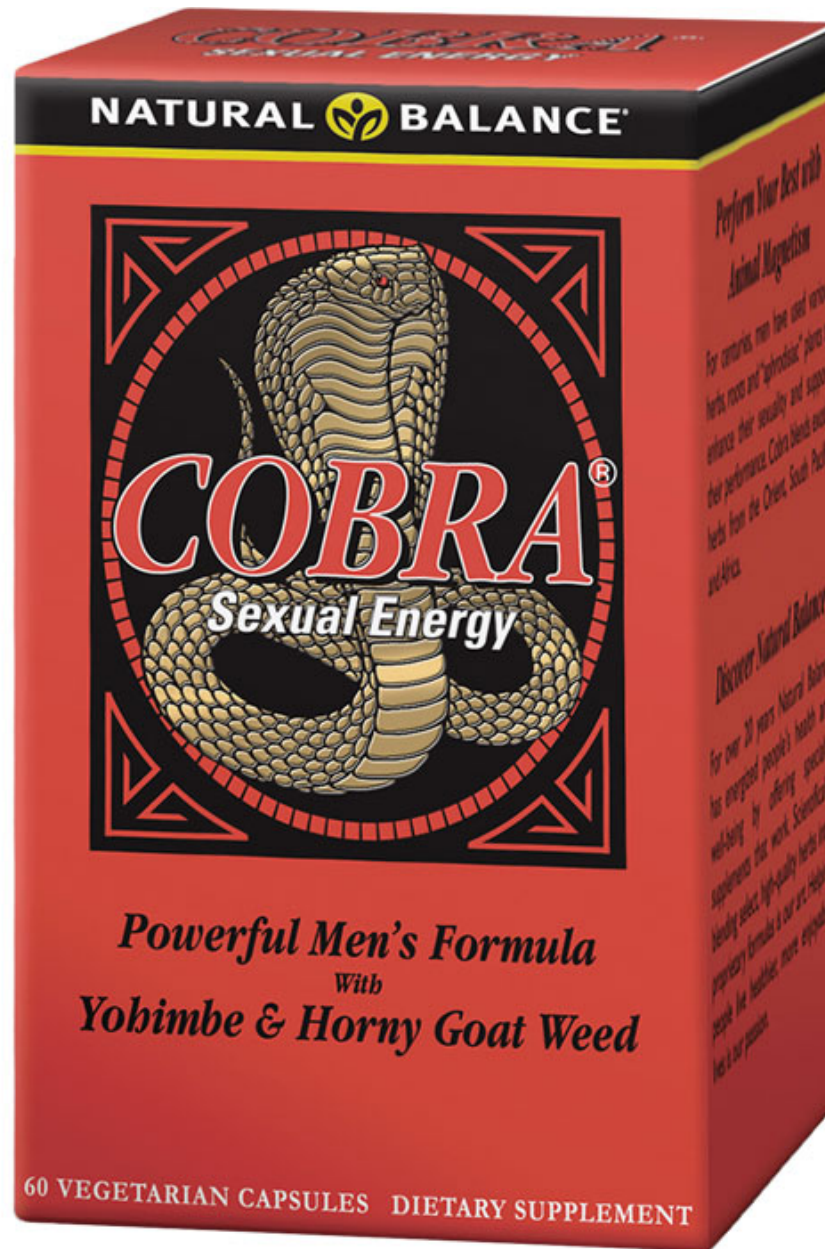
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27 ³ C. Haller, et al. *Dietary Supplement Adverse Events: Report of a One-Year Poison*
28 *Center Surveillance Project*, 4(2) *Journal of Medical Toxicology*, June 2008 at 84-92.

1 **Specific Misrepresentations and Deceptive Acts**

2 Front Label:



23 36. **Misleading supplement name:** Defendants prominently label their product
24 under the name “Cobra Sexual Energy” despite that there is no evidence it contributes to
25 human sexual energy.

26 37. **Misleading graphic:** Defendants place a graphic of cobra snake with an
27 erect head on the front of the Cobra box, implying clear phallic overtones of the
28 purported effect of Defendants’ Product.

1 38. **Misleading sub-heading:** The front of the Cobra label features the
2 misleading sub-heading “Powerful Men’s Formula,” suggesting that not only does its
3 proprietary blend work in the way advertised, but has a strong “powerful” effect.

4 39. Furthermore, the label features beneath this misleading sub-heading in large
5 bolded and italicized words “with Yohimbe & Horny Goat Weed.” This claim suggests
6 that these two proprietary blend ingredients are present in the amounts necessary to be
7 effective and, are effective in the manner in which Defendants present them in Cobra.

8 40. The combined effect of these misleading statements, together and in context
9 with other labeling claims, is that Defendants falsely suggest there is a scientific and/or
10 research basis for claims about Cobra.

11 41. Neither Yohimbe nor Horny Goat Weed, however, has ever been shown in
12 any scientific study to improve human “sexual energy.”

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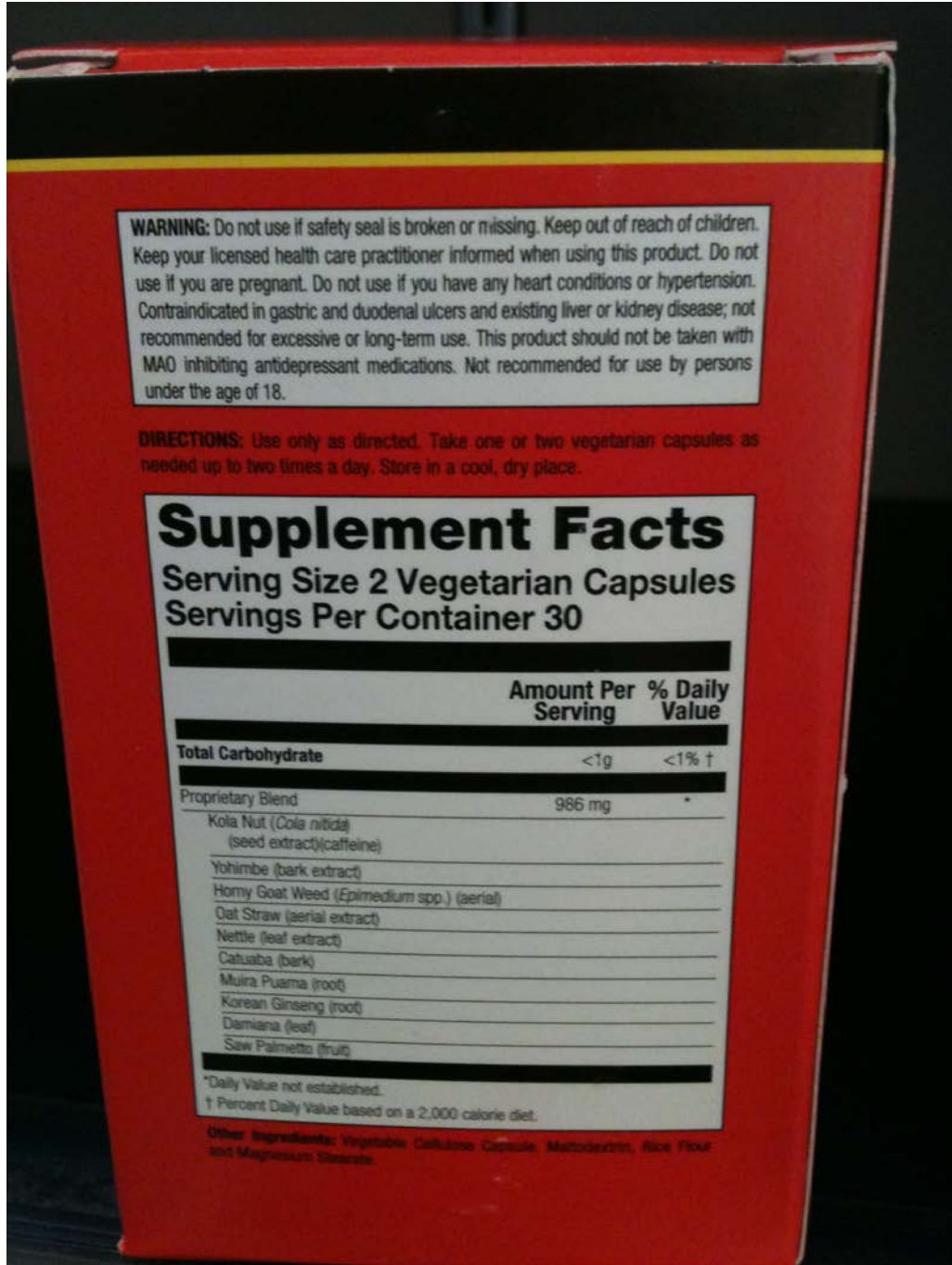
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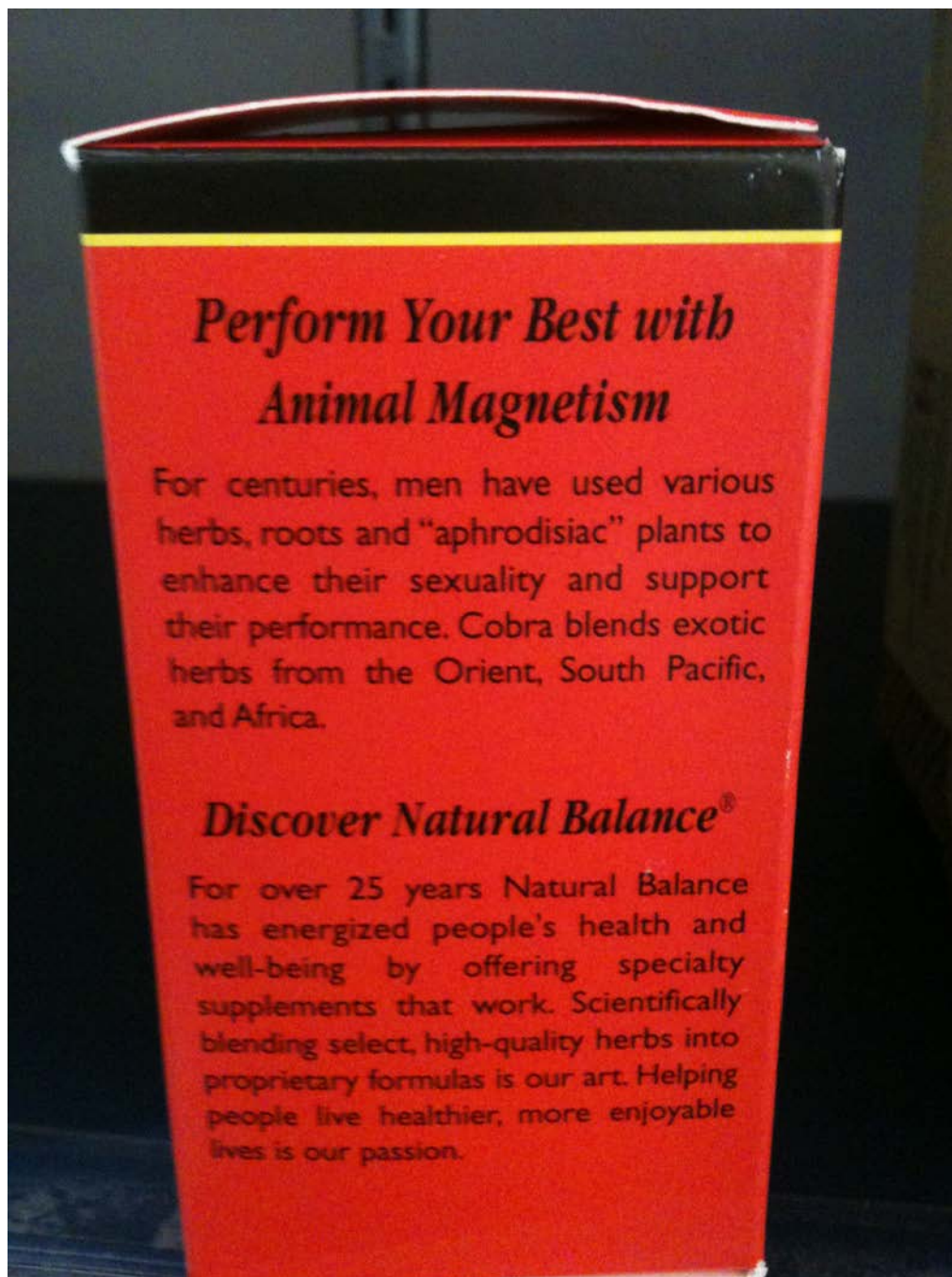
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Back Label:



Side Label:



42. **Misleading heading:** The side label of Cobra prominently claims: “Perform Your Best with Animal Magnetism”; and “For centuries, men have used various herbs, roots and ‘aphrodisiac’ plants to enhance their sexuality and improve their performance. Cobra blends exotic herbs from the Orient, South Pacific, and Africa.”

1 43. Such claims, alone, and even more so taken together with the rest of the
2 label, convey a misleading impression of what the product will do for the consumer,
3 implying that the “exotic herbs” in Defendants’ proprietary blend are not only similar to
4 those that have been used for “centuries” around the world but have the effects of
5 “enhance[d] sexuality” and “improve[d] performance.”

6 44. **Misleading second heading claims:** The second section of this side of the
7 Cobra label prominently claims “Discover Natural Balance” in large, bolded, italicized
8 font. Defendants further claim that: “Scientifically blending select, high-quality herbs
9 into proprietary formulas is our art.”

10 45. This statement implies that the ingredients, which constitute Cobra’s
11 “proprietary” blend, have been chosen based on scientific research in order to achieve the
12 product’s advertised effect. Such an implication is false and the statement, both alone and
13 taken together with the rest of the package, is misleading.

14 46. Also beneath this large heading, the Cobra label states: “For over 20 years
15 Natural Balance has energized people’s health and well-being by offering specialty
16 supplements that work.”

17 47. This sentence makes the dual claim that Natural Balance has historically
18 contributed to people’s overall “health” and “well-being,” and that Natural Balance
19 “energize[s]” consumers. The pervasive context of Defendants’ Cobra label promotes the
20 idea that Cobra is healthy to consume despite significant evidence it poses serious health
21 risks to consumers, and whose main function is to promote “energy” of a sexual nature
22 when there is no evidence demonstrating this to be true either.

23 48. These express claims therefore are both false and misleading.

24 49. The above sentence also explicitly states that Defendants “[offer] specialty
25 supplements that work.” Unfortunately for consumers, at least in regards to Defendants’
26 Product, the company fails even this modest claim. “Cobra Sexual Energy” is little more
27 than aggressively advertised snake oil.
28

1 50. Further, this part of the Cobra label concludes with the claim: “Helping
2 people live healthier, more enjoyable lives is our passion.”

3 51. This claim misleads consumers to believe that, because of Defendants’
4 stated “passion” in life, they are safe to assume that in purchasing Cobra they are
5 purchasing a product that will contribute to a “healthier” life and “enjoy” the benefits
6 Defendants claim their Product will give them.

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Side Label:



52. **Misleading Heading:** The side label of Cobra states in large type: "Take Virility to the Max!"

1 53. “Virility” means sexual energy and vigor, and in the sexual context of
2 Defendants’ Product, misleadingly implies Cobra Sexual Energy delivers the advertised
3 result with “max[imum]” effectiveness.

4 54. There is no scientific evidence that the ingredients at the levels found in
5 Cobra, individually or in any combination, provide sexual energy for the human body.

6 55. **Misleading ingredient sub-headings:** The side label of Cobra also lists
7 several claims related to various ingredients in its proprietary blend:

8 56. **“Yohimbe Bark Extract”:** Under this sub-heading Defendants’ Cobra label
9 states: “Legendary herb from Africa that contains Yohimbine. Yohimbe is intended to
10 provide nutritive support for healthy blood flow.”

11 57. While some studies possibly support “increased blood flow,” stating them in
12 the context of sexual energy is misleading. The increase in blood flow Defendants refer
13 to has not been shown by any scientific study to affect human sexual energy.

14 58. The NIH has stated that Yohimbe is possibly helpful only for erectile
15 dysfunction and sexual problems arising from certain medications, but cautions that
16 Yohimbe has not been adequately researched to justify being described as having these or
17 any other sexual benefits.⁴

18 59. Extracts from this bark, aside from not having the healthful benefits claimed
19 on Defendants’ label, present the added risks described above (hypertension, stroke, and
20 manic-depressive episodes), which are not indicated on Defendants’ label.⁵

21 60. **“Horny Goat Weed”:** Under this sub-heading Defendants’ Cobra label
22 states: “From China, it is thought to support sensitivity in the sensory nerves.”
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24 ⁴ The National Institute of Health, *Yohimbe*
25 <http://www.nlm.nih.gov/medlineplus/druginfo/natural/759.html> (last visited June 4,
2013).

26 ⁵ The National Institute of Health, *Yohimbe*
27 <http://www.nlm.nih.gov/medlineplus/druginfo/natural/759.html> (last visited June 4,
2013).
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1 61. There are no scientific studies substantiating this claim and stating such a
2 claim in the context of sexual energy is misleading.

3 62. **“Muiria Puama”**: Under this sub-heading Defendants’ Cobra label states:
4 “Stimulating Brazilian herb known as ‘potency wood’.”

5 63. There are no scientific studies substantiating that extracts from this herb
6 improve human sexual energy. This claim is misleading as stated in the overall context of
7 Defendants’ Cobra label.

8 64. **“Korean Ginseng”**: Under this sub-heading Defendants’ Cobra label states:
9 “Most famous of all performance enhancing herbs. Ginseng is prized in the Orient.”

10 65. There are no scientific studies that demonstrate extracts from this herb
11 “enhances” sexual performance.

12 66. The NIH has also cautioned that “ginseng may lower levels of blood sugar”;
13 and that “this effect may be seen more in people with diabetes.”⁶ Therefore, Defendants’
14 Cobra presents an additional risk to the consumer in the absence of any such warning on
15 its label, without any of the offsetting benefits that it claims to possess.

16 67. As the NIH has also warned that yohimbe, present in Cobra’s “proprietary
17 blend,” also presents risks for those who suffer from diabetes, Cobra presents a double
18 risk for such consumers without any such warning on its label.

19 68. **“Saw Palmetto”**: Under this sub-heading Defendants’ Cobra label states:
20 “North American herb known for its reputed ability to help promote prostate function.”

21 69. While naturally-occurring phytosterol compounds⁷ found in nearly all
22 plants, including Saw Palmetto, have been shown to present certain specific benefits for
23 sufferers of benign prostate hyperplasia,⁸ no scientific study has ever shown that

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25 ⁶ The National Institute of Health, *Herbs at a Glance: Asian Ginseng*
<http://nccam.nih.gov/health/asianginseng/> (last visited June 4, 2013).

26 ⁷ Plant forms of cholesterol.

27 ⁸ A non-cancerous enlargement of the prostate. *See e.g., Berges RR, et al. Randomised,*
28 *Placebo-Controlled, Double-Blind Clinical Trial of beta-Sitosterol in Patients with*

1 phytosterols “promote healthy prostate function.”

2 70. Furthermore, the NIH has warned that the Cobra ingredient yohimbe “might
3 make the symptoms of BPH (benign prostatic hyperplasia) worse,” negating any such
4 implied benefit for the prostate.⁹

5 71. Such a suggestion is not only false but also misleading in the context of
6 other claims made throughout Defendants’ Cobra label.

7 72. A reasonable consumer would assume significant improvement of prostate
8 function might also improve “sexual energy” or performance.

9 73. Further, neither phytosterols nor Saw Plametto extracts have ever been
10 shown by any scientific study to affect human sexual energy levels in any way.

11 **Other Ingredients Listed Under NBI’s Proprietary Blend**

12 74. **“Kola Nut (seed extract)”**: There are no scientific studies showing that seed
13 extracts from the Kola nut, or any other such extract, improve “sexual energy” levels.

14 75. **“Oat Straw (aerial extract)”**: There are no scientific studies showing that
15 “aerial” extracts from oat straw, or any other such extract, improve “sexual energy”
16 levels.

17 76. **“Nettle (leaf extract)”**: There are no scientific studies that demonstrate
18 extracts from any nettle plant improve “sexual energy” levels.

19 77. **“Catuaba (bark)”**: There are no scientific studies that demonstrate extracts
20 from Catuaba bark improve “sexual energy” levels.

21 78. **“Damiana (leaf)”**: Also known as *tunera diffusa*, extracts from this plant
22 have been shown to increase the sexual activity and copulation rate of rats in one study.

23 79. However, rats exhibiting this gain were at the outset “sexually sluggish”
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25 *Benign Prostatic Hyperplasia. beta-Sitosterol Study Group*, 345(8964) *Lancet* 1529-32
(1995).

26 ⁹ The National Institute of Health, *Yohimbe*
27 <http://www.nlm.nih.gov/medlineplus/druginfo/natural/759.html> (last visited June 4,
28 2013).

1 before Damiana extracts were administered in solution. Rats exhibiting normal sexual
2 behavior, however, showed no such benefit when given the extract as compared to a
3 control group. The hypothesized mechanisms by which Damiana extracts are purported to
4 affect “sexually sluggish” rats did appear to be present in healthy rats:

5 So, from our present data, it would appear that the plant extracts used
6 in this study, which selectively improve the sexual behavior of
7 sluggish/impotent rats, *while being ineffective in potent rats*, might act
8 mainly by increasing central noradrenergic and dopaminergic tone,
9 and possibly (indirectly) oxytocinergic transmission.¹⁰

10 80. No human study, however, has replicated this finding in the fourteen years
11 since this study was performed. Accordingly, claims as to the possible effects and
12 benefits of Damiana leaf extracts on human beings (let alone human beings not suffering
13 from the issues as the “sluggish” rats) are misleading.

14 Violations of 21 C.F.R. § 310.528

15 81. The labeling described above, including but not limited to: “Sexual Energy,”
16 “Powerful Men’s Formula,” “Horny Goat Weed,” “Potency Wood,” “Perform Your Best
17 with Animal Magnetism,” “enhance. . . sexuality,” “enhance. . . sexual energy,”
18 “improve. . . performance,” “Take Virility to the Max!,” “performance enhancing,” alone
19 and in context with other labeling claims and packaging graphics, evidence Cobra’s
20 intended use as an aphrodisiac, to arouse or increase sexual desire or improve sexual
21 performance.

22 82. Pursuant to Title 21 of the Code of Federal Regulations, Part 310.528 (21
23 CFR § 310.528) any OTC drug product that is labeled, represented, or promoted for use
24 as an aphrodisiac, like Cobra, is regarded as a “new drug” within the meaning of section
25

26 ¹⁰ R. Arletti, *et al.*, *Stimulating Property of Tunera Diffusa and Pfaffia Paniculata*
27 *Extracts on the Sexual Behavior of Male Rats*, 143 *Pharmacology* 15, 15-19 (1999)
28 (emphasis added).

1 201(p) of the FDCA (located at 21 U.S.C. § 355(p)).

2 83. The FDCA requires any new drug to have an application approved by the
3 Food and Drug Administration (“FDA”) before the drug can be marketed to the public,
4 and further that the drug’s label be approved by the FDA prior to marketing or selling the
5 drug to the public. *See, generally, id.*; 21 U.S.C. §§ 355(a), (b) [New Drug Application],
6 (j) [Abbreviated New Drug Application, for generic drugs].

7 84. Defendants’ Product violates Section 505(a) of the FDCA since the
8 adequacy of the labeled directions for its “aphrodisiac” uses has not been approved by the
9 FDA prior to Cobra being marketed to the public (*see* 21 U.S.C. § 355(a)).¹¹
10 Accordingly, the Product is misbranded under section 502(f)(1) of the FDCA (located at
11 21 U.S.C. § 352).

12 85. Further, Cobra includes the ingredients: Yohimbe, Horny Goat Weed, Muira
13 Puama, Korean Ginseng, Saw Palmetto, Kola Nut, Oat Straw, Nettle, Catuaba, and
14 Damiana. However, there is a lack of adequate data to establish general recognition of
15 the safety and effectiveness of any of these ingredients, or any other ingredient, for OTC
16 use as an aphrodisiac. 21 C.F.R. § 310.528. Labeling claims for aphrodisiacs for OTC
17 use are either false, misleading, or unsupported by scientific data. *Id.* Thus, based on the
18 evidence currently available, any OTC drug product containing ingredients for use as an
19 aphrodisiac, including Cobra, cannot be generally recognized as safe and effective. *See*
20 *id.*

21 **RELIANCE AND INJURY**

22 86. When purchasing Cobra, Plaintiffs were seeking a product that had the
23 qualities described on Defendants’ Cobra label.

24 87. Plaintiffs read and relied on the following deceptive claims by Defendants
25 concerning Cobra:

26 _____
27 ¹¹ In addition to proving effectiveness, the manufacturer of a new drug must also prove
28 the drug’s safety, sufficient to meet FDA standards. 21 U.S.C. § 355(d).

- 1 a. the product’s name, “Cobra Sexual Energy”;
- 2 b. “Powerful Men’s Formula”;
- 3 c. “with Yohimbe & Horny Goat Weed”;
- 4 d. “Perform Your Best with Animal Magnetism”;
- 5 e. “‘aphrodisiac’ plants to enhance...sexual energy”;
- 6 f. “improve. . . performance”;
- 7 g. “Scientifically blending select, high-quality herbs”;
- 8 h. “Natural Balance has energized people’s health and well-being”;
- 9 i. “offering specialty supplements that work”;
- 10 j. “Helping people live healthier, more enjoyable lives”;
- 11 k. “proprietary formulas”;
- 12 l. “Take Virility to the Max!”; and
- 13 m. “Most famous of all performance enhancing herbs”;

14 88. Plaintiffs believed Cobra had the qualities they sought based on its deceptive
15 labeling, but the product was actually unsatisfactory to Plaintiffs for the reasons
16 described herein, *i.e.*, there is no evidence the ingredients in Cobra present the claimed
17 benefits and the ingredients may actually impose an unreasonable risk of danger.

18 89. Cobra costs more than similar products without misleading labeling, and
19 would have cost less absent the false and misleading statements.

20 90. Plaintiffs paid more for Cobra, and would have been willing to pay less or
21 unwilling to purchase the product at all, absent the false and misleading labeling
22 complained of herein. Plaintiffs would not have purchased Cobra absent these claims and
23 advertisements.

24 91. For these reasons, Cobra was worth less than what Plaintiffs paid for it.

25 92. Instead of receiving a product that had actual and substantiated healthful or
26 other beneficial qualities, the product Plaintiffs received was one which does not provide
27 the claimed benefits.

1 93. Plaintiffs lost money as a result of Defendants’ deceptive claims and
2 practices in that they did not receive what they paid for when purchasing Cobra.

3 94. Plaintiffs altered their position to their detriment and suffered damages in an
4 amount equal to the amount they paid for Cobra.

5 95. Plaintiff, Frank Ortega, did not discover that Defendants labeling was false,
6 deceptive, or misleading until December 2012, when he learned that the Defendants’
7 Product violates the FDCA and its implementing regulations and that the labels were
8 untrue and/or misleading.

9 96. Plaintiff, Troy Lambert, did not discover that Defendants labeling was false,
10 deceptive, or misleading until January 2013, when he learned that the Defendants’
11 Product violates the FDCA and its implementing regulations and that the labels were
12 untrue and/or misleading.

13 97. Plaintiffs are reasonably diligent consumers who exercised reasonable
14 diligence in their purchasing, use, and consumption of the Product. Nevertheless, they
15 would not have been able to discover Defendants’ deceptive practices and lack the means
16 to discover them given that, like nearly all consumers, they are not nutritionists, food
17 experts, or food scientists, but rather lay consumers who did not have the specialized
18 knowledge that Defendants had.

19 **CLASS ACTION ALLEGATIONS**

20 98. Plaintiffs bring this action on behalf of themselves and all others similarly
21 situated (the “Class”) in accordance with Rule 23 of the Federal Rules of Civil Procedure.

22 99. The Class is defined as:

23 All persons (excluding officers, directors, and employees of NBI and
24 NIC) who purchased, on or after January 1, 2006, Defendants’ Cobra
25 Products (in all packaging sizes and iterations) in the United States for
26 their own use rather than resale or distribution.

27 100. Questions of law and fact common to Plaintiffs and the Class include:
28

- 1 a. Whether Defendants contributed to, committed, and/or are responsible
- 2 for the conduct alleged herein;
- 3 b. Whether Defendants' conduct constitutes the violations of law alleged
- 4 herein;
- 5 c. Whether Defendants acted willfully, recklessly, negligently, or with
- 6 gross negligence in the violations of law alleged herein; and
- 7 d. Whether Class members are entitled to compensatory, injunctive, and
- 8 other equitable relief.

9 101. By purchasing Cobra, all Class members were subjected to the same
10 wrongful conduct.

11 102. Absent Defendants' deceptive claims, Plaintiffs and Class members would
12 not have purchased Cobra.

13 103. Plaintiffs' claims are typical of the Class's claims. Plaintiffs will fairly and
14 adequately protect the interests of the Class, have no interests that are incompatible with
15 the interests of the Class, and have retained counsel competent and experienced in class
16 litigation.

17 104. The Class is sufficiently numerous, as it includes thousands of individuals
18 who purchased Cobra throughout the United States during the Class Period.

19 105. Class representation is superior to other options for the resolution of the
20 controversy. The relief sought for each Class member is small. Absent the availability of
21 class action procedures, it would be infeasible for Class members to redress the wrongs
22 done to them.

23 106. Defendants have acted on grounds applicable to the Class, thereby making
24 appropriate final injunctive relief or declaratory relief concerning the Class as a whole.

25 107. Questions of law and fact common to the Class predominate over any
26 questions affecting only individual members.

27 108. Class treatment is appropriate under FRCP 23(a), and both 23(b)(2) and
28

1 23(b)(3). Plaintiffs do not contemplate class notice if the Class is certified under FRCP
2 23(b)(2), which does not require notice, and notice via publication if the Class is certified
3 under FRCP 23(b)(3) or if the Court determines Class notice is required notwithstanding
4 that notice is not required under FRCP 23(b)(2). Plaintiffs will, if notice is required,
5 confer with Defendants and seek to present the Court with a stipulation and proposed
6 order on the details of a Class notice plan.

7 **FIRST CAUSE OF ACTION**

8 **Violations of the Unfair Competition Law, Unlawful Prong**

9 **Cal. Bus. & Prof. Code § 17200 *et seq.*,**

10 109. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint
11 as if set forth in full herein.

12 110. California Business and Professional Code § 17200 prohibits any “unlawful,
13 unfair or fraudulent business act or practice.”

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

18 112. Defendants’ conduct is further “unlawful” because it violates the FDCA and
19 its implementing regulations in the following ways:

- 20 a. Defendants’ deceptive statements violate 21 U.S.C. §§ 343(a) and 352,
21 which deem a food or drug (including nutritional supplements) misbranded
22 when the label contains a statement that is “false or misleading in any
23 particular;”
- 24 b. Defendants’ deceptive statements violate 21 C.F.R. § 101.14(b)(3)(i), which
25 mandates “substances” in dietary supplements consumed must contribute
26 and retain “nutritive value,” as defined under 21 C.F.R. § 101.14(a)(2)(3)
27 when consumed at levels necessary to justify a claim;
- 28

1 c. Defendants’ deceptive statements are per se false and misleading because
2 the FDA has ruled there is a lack of adequate data to establish general
3 recognition of the safety and effectiveness of any of Cobra’s ingredients, or
4 any other ingredient, for OTC use as an aphrodisiac; and labeling claims for
5 aphrodisiacs for OTC use are “either false, misleading, or unsupported by
6 scientific data.” 21 C.F.R. § 310.528(a);

7 d. Defendants’ deceptive statements violate 21 CFR § 310.528(b), which
8 mandates that any OTC product that is labeled, represented, or promoted for
9 use as an aphrodisiac, like Cobra, is regarded as a “new drug” within the
10 meaning of 21 U.S.C. § 355(p), but Defendants do not have new drug
11 approval for Cobra or its labeling, as required under the FDCA and its
12 implementing regulations. Accordingly, Defendants’ Product is misbranded
13 under section 502(f)(1) of the FDCA;

14 e. Defendants’ Product also violates the FDCA because, as an unapproved new
15 drug and aphrodisiac, Cobra cannot be generally recognized as safe and
16 effective in the absence of a new drug application as set forth in the FDCA
17 and its implementing regulations. 21 C.F.R. § 310.528(a);

18 113. Defendants’ conduct is further “unlawful” because it violates The California
19 Sherman Food, Drug, and Cosmetic Law, *see* Cal. Health & Safety Code § 109875-
20 111900, which incorporates the provisions of the FDCA. *See id.* §§ 110110-110115.

21 114. In accordance with Bus. & Prof. Code § 17203, Plaintiffs seek an order
22 enjoining Defendants from continuing to conduct business through unlawful, unfair,
23 and/or fraudulent acts and practices, and to commence a corrective advertising campaign.

24 115. Plaintiffs further seek an order for the disgorgement and restitution of all
25 monies from the sale of the Defendants’ Product, which were acquired through acts of
26 unlawful, unfair, and/or fraudulent competition.

27 ///

SECOND CAUSE OF ACTION

Violations of the Unfair Competition Law, Unfair and Fraudulent Prongs

Cal. Bus. & Prof. Code § 17200 *et seq.*,

116. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

117. California Business and Professional Code § 17200 prohibits any “unlawful, unfair or fraudulent business act or practice.”

118. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants as alleged herein also constitute “unfair” business acts and practices under the UCL in that Defendants’ conduct is immoral, unscrupulous, and offends public policy by seeking to profit from male vulnerability to false or deceptive virility or aphrodisiac claims. Further, the gravity of Defendants’ conduct outweighs any conceivable benefit of such conduct.

119. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants as alleged herein constitute “fraudulent” business acts and practices under the UCL in that Defendants’ claims are false, misleading, and have a tendency to deceive the Class and the general public, as detailed herein.

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

121. Plaintiffs further seek an order for the disgorgement and restitution of all monies from the sale of the Defendants’ Product, which were acquired through acts of unlawful, unfair, and/or fraudulent competition.

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1 **THIRD CAUSE OF ACTION**

2 **Violations of the False Advertising Law,**
3 **Cal. Bus. & Prof. Code § 17500 *et seq.***

4 122. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint
5 as if set forth in full herein.

6 123. In violation of California Business and Professional Code § 17500 *et seq.*,
7 the advertisements, labeling, policies, acts, and practices described herein were designed
8 to, and did, result in the purchase and use of Cobra.

9 124. Defendants knew and reasonably should have known that the labels on the
10 Defendants' Product were untrue and/or misleading.

11 125. As a result, Plaintiffs, the Class, and the general public are entitled to
12 injunctive and equitable relief, restitution, and an order for the disgorgement of the funds
13 by which Defendants were unjustly enriched.

14 **FOURTH CAUSE OF ACTION**

15 **Violations of the Consumer Legal Remedies Act,**
16 **Cal. Civ. Code § 1750 *et seq.***

17 126. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint
18 as if set forth in full herein.

19 127. The CLRA prohibits deceptive practices in connection with the conduct of a
20 business that provides goods, property, or services primarily for personal, family, or
21 household purposes.

22 128. Defendants false and misleading labeling and other policies, acts, and
23 practices were designed to, and did, induce the purchase and use of the Defendants'
24 Products for personal, family, or household purposes by Plaintiffs and class members,
25 and violated and continue to violate the following sections of the CLRA:

- 26 a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits
27 which they do not have.

1 b. § 1770(a)(7): representing that goods are of a particular standard, quality, or
2 grade if they are of another.

3 c. § 1770(a)(9): advertising goods with intent not to sell them as advertised.

4 d. § 1770(a)(16): representing the subject of a transaction has been supplied in
5 accordance with a previous representation when it has not.

6 129. As a result, Plaintiffs and the Class have suffered irreparable harm, seek, and
7 are entitled to, actual damages, punitive damages, injunctive relief and restitution.

8 130. Pursuant to section 1782 *et seq.* of the CLRA, Plaintiffs notified Defendants
9 in writing by certified mail of the particular violations of § 1770 of the Act as to the
10 Products and demanded that Defendants rectify the problems associated with the actions
11 detailed above and give notice to all affected consumers of its intent to so act. *See*
12 Exhibit 1 attached hereto. Defendants' wrongful business practices regarding the
13 Products constituted, and constitute, a continuing course of conduct in violation of the
14 CLRA since Defendants are still representing that the Products have characteristics, uses,
15 benefits, and abilities which are false and misleading, and have injured Plaintiffs and the
16 Class.

17 131. Because Defendants failed to implement remedial measures, Plaintiffs seek
18 actual and punitive damages for their CLRA claims.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated,
21 and the general public, prays for judgment and relief against Defendants as follows:

22 A. An Order declaring this action to be a proper class action and appointing
23 undersigned counsel as class counsel;

24 B. An Order requiring Defendants to bear the cost of class notice;

25 C. An Order compelling Defendants to conduct a corrective advertising
26 campaign;

27 D. An Order requiring Defendants to disgorge all monies, revenues, and profits
28

1 obtained by means of any wrongful act or practice;

2 E. An Order compelling Defendants to destroy all misleading and deceptive
3 advertising materials and product labels;

4 F. An Order awarding damages and punitive damages;

5 G. An Order requiring Defendants to pay restitution to restore all funds
6 acquired by means of any act or practice declared by this Court to be an unlawful, unfair,
7 or fraudulent business act or practice, untrue or misleading advertising, or a violation of
8 the CLRA, plus pre-and post-judgment interest thereon;

9 H. An Order awarding costs, expenses, and reasonable attorneys' fees;

10 I. Any other and further relief the Court deems necessary, just, or proper.

11 **JURY DEMAND**

12 Plaintiffs demand a trial by jury on all causes of action so triable.

13 DATED: August 14, 2013

Respectfully Submitted,

14 */s/ Ronald A. Marron*

15 Ronald A. Marron

16 **THE LAW OFFICES OF RONALD A.**

17 **MARRON, APLC**

18 RONALD A. MARRON

19 SKYE RESENDES

ALEXIS M. WOOD

651 Arroyo Drive

San Diego, CA 92103

Telephone: (619) 696-9006

Facsimile: (619) 564-6665

22 **THE WESTON FIRM**

23 GREGORY S. WESTON

24 JACK FITZGERALD

25 MELANIE PERSINGER

26 PAUL K. JOSEPH

1405 Morena Blvd., Suite 201

San Diego, CA 92110

Telephone: (619) 798-2006

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Facsimile: (480) 247-4553

**Counsel for Plaintiffs and
the Proposed Class**

Table of Exhibits

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	PAGE NUMBERS
Exhibit 1	Plaintiffs' CLRA Letters	1 – 6

EXHIBIT 1

Law Offices of
Ronald A. Marron
A Professional Law Corporation

3636 Fourth Avenue, Ste 202
San Diego, CA 92103

Tel: 619.696.9006
Fax: 619.564.6665

December 13, 2012

Via: Certified Mail, (receipt acknowledgment with signature requested)

Tim Hinricks, Executive Vice-President
Natural Balance, Inc.
383 Inverness Parkway # 390
Englewood, CO 80112

Corporation Service Company
As Agent for Service of Process for
Natural Balance, Inc.
2711 Centerville Road, Ste. 400
Wilmington, DE 19808

Frank Gay II, Chief Executive Officer
Stanly Soper, Vice-President-Legal
Nutraceutical Corporation
1400 Kearns Blvd., Second Floor,
Park City, UT 84060

Prentice-Hall Corporation System, Inc.
As Agent for Service of Process for
Nutraceutical Corporation
2711 Centerville Road, Ste. 400
Wilmington, DE 19808

Frank Gay II, Chief Executive Officer
Stanly Soper, Vice-President-Legal
Nutraceutical International Corporation
1400 Kearns Blvd., Second Floor,
Park City, UT 84060

Corporation Service Company
As Agent for Service of Process for
Nutraceutical International Corporation
2711 Centerville Road, Ste. 400
Wilmington, DE 19808

RE: NOTICE: Violations of the California Consumer Legal Remedies Act and Duty to Preserve Evidence

Dear Sir or Madam,

PLEASE TAKE NOTICE that this letter constitutes notice under the California Consumer Legal Remedies Act, ("CLRA"), California Civil Code Section 1750, *et seq.*, (the "ACT") — pursuant specifically to Civil Code Section 1782 — notifying **NATURAL BALANCE, INC., NUTRACEUTICAL CORPORATION AND NUTRACEUTICAL INTERNATIONAL CORPORATION** (collectively, "YOU" and "YOUR") of violations of the Act and of our demand that YOU remedy such violations within thirty (30) days from your receipt of this letter.

This firm represents Frank Ortega. Mr. Ortega purchased Cobra Sexual Energy ("the Product") from CVS, Rite-Aid and Target stores located in Reseda, California. Mr. Ortega was exposed to and saw YOUR claims about the Product, purchased the Product in reliance on those claims, and suffered injury in fact as a result of YOUR false and misleading advertising.

YOU falsely advertise and market YOUR products, including Cobra Sexual Energy by putting false and misleading claims on the label that the Product increases sexual energy in the human body; among other representations. None of the ingredients in Cobra, however, have been shown by any scientific human study to increase sexual energy. Moreover, the consumption of the random herbs and herbal extracts presents a risk of an allergic or other adverse reaction without any offsetting benefit.

A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence would not have discovered the violations alleged herein because YOU actively and purposefully concealed the truth regarding YOUR products or services.

In short, these material misrepresentations are deceiving customers into purchasing Cobra Sexual Energy by creating the impression that the Product provides significant sexual benefits, when in fact it does not. On behalf of himself and all others similarly situated, our client hereby demands that you remedy these violations of the CLRA and other California consumer laws within 30 days of your receipt of this letter.

Please be advised that the alleged unfair methods of competition or unfair or deceptive acts or practices in violation of the CLRA include, but are not necessarily limited to:

§ 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.

§ 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another.

§ 1770(a)(9): advertising goods with intent not to sell them as advertised.

§ 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

YOU have failed to honor your consumer protection obligations. Based upon the above, demand is hereby made that YOU conduct a corrective advertising campaign and destroy all misleading and deceptive advertising materials and products.

Please be advised that your failure to comply with this request within thirty (30) days may subject you to the following remedies, available for violations of the CLRA, which will be requested in the class action complaint on behalf of our client, Frank Ortega and all other similarly-situated U.S. residents:

- (1) The actual damages suffered;
- (2) An order enjoining you for such methods, acts or practices;
- (3) Restitution of property (when applicable);
- (4) Punitive damages;
- (5) Any other relief which the court deems proper; and
- (6) Court costs and attorneys' fees.

Additionally, I remind you of your legal duty to preserve all records relevant to such litigation. See, e.g., *Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Computer Ass'n Int'l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This firm anticipates that all e-mails (including related attachments in any file format), letters, reports, internal corporate instant messages, and laboratory records that related to the formulation and marketing of YOUR products will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your product account) to preserve all such relevant information.

In addition, California Civil Code Section 1780 (b) provides in part that: "Any consumer who is a **senior citizen or a disabled person**, as defined in subdivision (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedied specified therein, up to **five thousand dollars** (\$5,000)... [emphasis added]".

Sincerely,

THE LAW OFFICES OF RONALD A. MARRON APLC

/s/ Ronald A. Marron

Ronald A. Marron

Attorney for Frank Ortega, and all others similarly situated

Law Offices of

Ronald A. Marron

A Professional Law Corporation

3636 Fourth Avenue, Ste 202
San Diego, CA 92103

Tel: 619.696.9006
Fax: 619.564.6665

January 22, 2013

Via: Certified Mail, (receipt acknowledgment with signature requested)

Tim Hinricks, Executive Vice-President
Natural Balance, Inc.
383 Inverness Parkway # 390
Englewood, CO 80112

Corporation Service Company
As Agent for Service of Process for
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This firm represents Troy Lambert. Mr. Lambert purchased Cobra Sexual Energy (“the Product” or “Cobra”) from Rite-Aid located at 300 East Willow Street, Long Beach, CA 90806. Mr. Lambert was exposed to and saw YOUR claims about the Product, purchased the Product in reliance on those claims, and suffered injury in fact as a result of YOUR false and misleading advertising.

YOU falsely advertise and market Cobra Sexual Energy by putting false and misleading claims on the label that the Product increases sexual energy in the human body, among other representations. None of the ingredients in Cobra, however, have been shown by any scientific human study to increase sexual energy. Moreover, the consumption of the random herbs and herbal extracts presents a risk of an allergic or other adverse reaction without any offsetting benefit.

A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence would not have discovered the violations alleged herein because YOU actively and purposefully concealed the truth regarding YOUR products or services.

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§ 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

YOU have failed to honor your consumer protection obligations. Based upon the above, demand is hereby made that YOU conduct a corrective advertising campaign and destroy all misleading and deceptive advertising materials and products.

Please be advised that your failure to comply with this request within thirty (30) days may subject you to the following remedies, available for violations of the CLRA, which will be requested in the class action complaint on behalf of our client, Troy Lambert and all other similarly-situated U.S. residents:

- (1) The actual damages suffered;
- (2) An order enjoining you for such methods, acts or practices;
- (3) Restitution of property (when applicable);
- (4) Punitive damages;
- (5) Any other relief which the court deems proper; and
- (6) Court costs and attorneys' fees.

Additionally, I remind you of your legal duty to preserve all records relevant to such litigation. See, e.g., *Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Computer Ass'n Int'l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This firm anticipates that all e-mails (including related attachments in any file format), letters, reports, internal corporate instant messages, and laboratory records that related to the formulation and marketing of YOUR products will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your product account) to preserve all such relevant information.

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Sincerely,

THE LAW OFFICES OF RONALD A. MARRON APLC

/s/ Ronald A. Marron

Ronald A. Marron

Attorney for Troy Lambert, and all others similarly situated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Audrey B. Collins and the assigned Magistrate Judge is Charles F. Eick.

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

CV 13-05942 ABC (Ex)

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

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

Clerk, U. S. District Court

August 14, 2013
Date

By D. Vo
Deputy Clerk

NOTICE TO COUNSEL

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

Subsequent documents must be filed at the following location:



Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

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

Name & Address:

Law Offices of Ronald A. Marron, APLC
 Ronald A. Marron (SBN 175650)
 651 Arroyo Drive
 San Diego, CA 92103
 Telephone: (619) 696-9006

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

FRANK ORTEGA and TROY LAMBERT on Behalf
 of Themselves and All Others Similarly Situated,

PLAINTIFF(S)

v.

NATURAL BALANCE INC., a Delaware
 Corporation, and NUTRACEUTICAL
 INTERNATIONAL CORPORATION, a Delaware
 Corporation

DEFENDANT(S).

CASE NUMBER

CV 13 - 05942 ABC (Ex)

SUMMONS

TO: DEFENDANT(S):

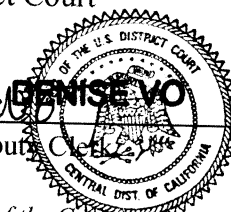
A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Ronald A. Marron, whose address is 651 Arroyo Drive, San Diego, CA 92103. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 8/14/2013

By: Denise Vo
 Deputy Clerk



(Seal of the Court) 1225

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

I. (a) PLAINTIFFS (Check box if you are representing yourself)
 FRANK ORTEGA and TROY LAMBERT on Behalf of Themselves and All Others Similarly Situated

DEFENDANTS (Check box if you are representing yourself)
 NATURAL BALANCE INC., a Delaware Corporation, and NUTRACEUTICAL INTERNATIONAL CORPORATION, a Delaware Corporation

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
 Law Offices of Ronald A. Marron, APLC
 651 Arroyo Drive
 San Diego, CA 92103
 Telephone: (619) 696-9006

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

II. BASIS OF JURISDICTION (Place an X in one box only.)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)

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

IV. ORIGIN (Place an X in one box only.)

1. Original Proceeding
 2. Removed from State Court
 3. Remanded from Appellate Court
 4. Reinstated or Reopened
 5. Transferred from Another District (Specify)
 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ over 5,000,000.00

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Violations of UCL, FAL, and CLRA

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

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument		TORTS	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input checked="" type="checkbox"/> 370 Other Fraud	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 155 Contract of Employment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	LABOR	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 740 Railway Labor Act	
		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 790 Other Labor Litigation	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY: Case Number: **CV 13 - 05942 ABC (Ex)**

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

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

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

If yes, list case number(s): _____

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

If yes, list case number(s): _____

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

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

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

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

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

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

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

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

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Delaware

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

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

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

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): Ronald J. M. DATE: 08/14/2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

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