

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CASE NO.:

ANTHONY MAZZEO, on behalf of himself
and all others similarly situated,

Plaintiffs,

CLASS ACTION

vs.

USPLABS, LLC., a Texas corporation,

Defendant.

CLASS ACTION COMPLAINT
FOR EQUITABLE RELIEF AND DAMAGES

Plaintiff, ANTHONY MAZZEO, (“Plaintiff”), by and through his attorneys, files this Class Action Complaint for Equitable Relief and Damages on behalf of himself and all others similarly situated, against Defendant, USPLABS, LLC., a Texas corporation (“Defendant”), wherein Plaintiff hereby alleges as follows:

INTRODUCTION

1. This is an economic consumer protection action, not a personal injury claim. Plaintiff is seeking equitable relief and economic damages, not tort relief. Defendant sells a variety of energy and weight loss dietary supplements under the brand name of OxyElite Pro™(the “Product”), which are dangerous, sold pursuant to deceptive and unfair practices, and not fit for their intended purpose.

2. The Product is intended to safely provide weight loss, energy, and mental focus. However, it instead causes severe adverse health effects. Plaintiff, and all other similarly

situated consumers, did not bargain for a Product that causes adverse health effects in exchange for their payment of the purchase price.

3. Several adverse reactions have been reported from consumers who have purchased and ingested the Product, including, but not limited to serious livery injury and acute liver failure, resulting in one death and several liver transplants.

4. Defendant had and has actual knowledge of the Product's shortcomings, but failed to timely act to adequately warn consumers of the unfitness of the Product, the extreme adverse side effects associated with the Product, or provide adequate relief to the putative Class of consumers who purchased the Product.

5. Plaintiff contends that the Product does not work as impliedly warranted and as a result, misleads consumers into purchasing it under misleading circumstances. The Product is sold pursuant to unfair and unconscionable trade practices because it offends public policy and is immoral, unethical, oppressive, unscrupulous and substantially injures to consumers.

6. All allegations herein are based on information and belief and/or are likely to have evidentiary support after reasonable opportunity for further investigation and discovery.

PARTIES

7. Plaintiff, Anthony Mazzeo, is an individual who resides in the State of Florida. He purchased one of the Products at issue: the OxyElite Pro™ Super Thermo Capsules, 90 count capsules, UPC #094922395573. Plaintiff purchased the Product approximately six times during the years 2011 through 2012. Plaintiff paid approximately \$40.00-\$60.00 each time he purchased the Product, depending on the date of sale. Plaintiff purchased the Products from a Supplement Warehouse located in Davie, Broward County, Florida, and from a Body Alive Nutrition Center located in Pembroke Pines, Broward County, Florida.

8. Plaintiff purchased the Product to safely obtain energy, to lose weight, and for an increase in mental focus; however, it exposed Plaintiff to dangerous ingredients rendering the Product unfit for human consumption, and therefore was not suited for the implied purpose the Product was sold.

9. Defendant, USPlabs, LLC., is a Texas corporation. Defendant lists with the Texas Secretary of State a principle place of business located at 10761 King William Drive, Dallas, TX 75220, and a registered agent for serviced of process by the name of CT Corporation System, 350 North St. Paul Street, Ste. 2900, Dallas, TX 75201. For purposes of diversity, Defendant is a “citizen” of the State of Texas. Defendant owns and maintains an interactive website, <http://www.usplabsdirect.com> which is accessible to citizens of this judicial district, and which sells the Product in this jurisdiction and in this judicial district.

10. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, that Defendant and its employees, subsidiaries, affiliates and other related entities, were, at all times relevant herein, agents, servants and employees of each other, and at all times herein mentioned, each was acting within the purpose and scope of said agency and employment.

11. Whenever reference in this Complaint is made to any act or transaction of Defendant, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of Defendant committed, knew of, performed, authorized, ratified and/or directed such act or transaction on behalf of Defendant while actively engaged in the scope of their duties.

VENUE AND JURISDICTION

12. This Court has jurisdiction over the subject matter presented by this Complaint because it is a class action arising under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the

Federal Courts of any class action in which any member of the Plaintiff class is a citizen of a state different from any Defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5,000,000, exclusive of interest and costs. The amount in controversy is based upon information and belief, and the evidence to support the computation for the amount in controversy will be established during the course of discovery.

13. Plaintiff alleges that the total claims of individual members of the Class in this action are in excess of \$5,000,000 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). Plaintiff is a citizen of the State of Florida, and as set forth above, Defendant is a citizen of the State of Texas. Therefore, diversity of citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A).

14. Furthermore, Plaintiff alleges that more than two-thirds of all of the members of the proposed Plaintiff Class in the aggregate are citizens of a state other than Florida, where this action is originally being filed, and that the total number of members of the proposed Plaintiff Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B). In fact, there are well over thousands, and even millions of consumers affected by the purchase of the Product as herein described.

15. Venue in this district is proper pursuant to 28 U.S.C. §1391(a) because Defendant conducts business within, may be found in, and is subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

16. Defendant sells a variety of OxyElite Pro™ dietary supplements. The specific products sold under the brand name OxyElite Pro™, which are included within the Product definition at issue in this action, include, but are not limited to:

- OxyElite Pro Super Thermo capsules
 - two count capsules UPC #094922417275
 - 10 count capsules UPC #094922417251
 - 10 count capsules UPC #094922417268
 - 21 count capsules UPC #094922426604
 - 90 count capsules UPC #094922395573
 - 90 count capsules “Pink label” UPC #094922447906
 - 180 count capsules UPC #094922447852

- OxyElite Pro Ultra-Intense Thermo capsules
 - three count capsules UPC #094922447883
 - three count capsules UPC #094922447876
 - 90 count capsules UPC #094922395627
 - 180 count capsules UPC #094922447869

- OxyElite Pro Super Thermo Powder
 - Fruit Punch 0.15 oz UPC #094922417237
 - Fruit Punch 0.15 oz UPC #094922447517
 - Fruit Punch 4.6 oz UPC #094922426369
 - Fruit Punch 5 oz. UPC #094922447487
 - Blue Raspberry 4.6 oz UPC #094922426376
 - Grape Bubblegum 4.6 oz UPC #094922447500
 - Green Apple 4.6 oz. UPC #094922426499

17. On October 11, 2013, the United States Food and Drug Administration (“FDA”) issued a warning letter to Defendant regarding the Product.¹ The labeling of the Product shows that it contains Aegeline, also referred to as N-[2-hydroxy-2(4-methoxyphenyl) ethyl]-3-phenyl-2-propenamide, as a dietary ingredient.

18. Because Aegeline is a “new dietary ingredient” (i.e., not marketed in the United States before October 15, 1994), it deemed adulterated under 21 U.S.C. 342(f).²

19. Aegeline was not lawfully marketed as a dietary ingredient in the United States before October 15, 1994, nor has it been demonstrated as an ingredient in the food supply as an article used for food in a form in which food has not been chemically altered.³

1. See FDA Warning Letter, dated October 11, 2013 (located at <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2013/ucm371203.htm>) (last visited December 4, 2013).

2. *Id.*

20. Aegeline is not reasonably expected to be safe when used under the conditions recommended on the Products' labeling, and public health officials throughout the United States are actively investigating a number of severe illnesses characterized by hepatotoxicity by consumers of the Product.⁴ Several findings suggest a causal connection exist between ingestion of the Product and the illnesses reported.

21. In a review of twenty (20) medical records initially submitted to FDA by the Hawaii Department of Health, fourteen (14) patients (70%) had ingested the Product prior to becoming ill. There were no other consistent commonalities among the fourteen (14) patients other than exposure to the Product. Importantly, eight (8) patients reported the Product as the sole dietary supplement they took prior to becoming ill, and most of these patients had been entirely healthy before they became ill. Second, upon discontinuing the Product following onset of illness, most patients recovered from their illness, implying the Product was the cause of the illness. Unfortunately, several patients sustained injuries to the liver that required transplantation, and one patient died before transplantation could be undertaken. And finally, rigorous clinical protocols were followed in the care of the patients to exclude and/or rule out known causes of liver disease. The absence of these causes of liver disease increases the likelihood that the Product played a hepatotoxic role in these patients. Therefore, in the absence of a history of use or other evidence of safety establishing that Aegeline is reasonably expected to be safe under the conditions recommended or suggested in the labeling of the Product, it is deemed to be adulterated under 21 U.S.C. 342(f).⁵

3. *Id.*

4. *Id.*

5. *Id.*

22. In response to the FDA's warning letter stating "[f]ailure to immediately cease distribution of all products containing aegeline may result in enforcement action by FDA without further notice," Defendant issued a recall of the Product nearly a month later on or about November 9, 2013.⁶

23. In addition to the Products being recalled, the FDA continues to advise consumers not to use any of the Products.⁷

24. As of November 10, 2013, a review of 46 medical records submitted to the FDA by the Hawaii Department of Health, 27 patients, or 58 percent, had taken the Product prior to becoming ill. Seventeen of the 27 patients (or 63 percent) reported that the Product was the only dietary supplement they were taking. One death has occurred among these patients, another patient has required a liver transplant, and others await liver transplants.⁸

25. Defendant is voluntarily conducting a national recall of all lots and sizes of the Product because they contain aegeline, a synthesized version of a natural extract from the Bael tree.⁹ Epidemiological evidence shows that use of the Product has been associated with the reported serious adverse health consequences.¹⁰

26. Defendant marketed and sold the Product without a proper and adequate warning, and without modifying the Product so it is fit for human consumption.

6. *FDA Website*, USPlabs LLC recalls OxyElite Pro dietary supplements; products linked to liver illness (available at <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm374395.htm>) (last visited December 4, 2013).

7. *Id.*

8. *Id.*

9. *FDA Website*, USPlabs LLC Announces a Recall of OxyElite Pro Dietary Supplements Due to Possible Health Risk (available at <http://www.fda.gov/safety/recalls/ucm374394.htm>) (last visited December 4, 2013).

10. *Id.*

27. Defendant presents itself as a reputable, reliable and safe manufacturer, and Plaintiff relied on this and other implied representations by Defendant in purchasing and using the Product.

28. Plaintiff was induced to purchase the Product based on the Product's implied representation that it would safely provide energy, increase weight loss, and increase mental focus so long as the consumer used the Product as directed.

29. Plaintiff has suffered economic damages as a result of purchasing the Product, in that, among other things, he spent money on a Product that was unfit for human consumption—and therefore lacked the value he had been led to believe the Product had—and for which he paid in the purchase price of the Product.

30. An average and reasonable consumer would not expect the Product to inflict such adverse side effects when consumed as instructed. Defendant's labeling convey a series of implied claims and/or omissions which it knows are material to the reasonable consumer, and which it intended for consumers to rely upon when choosing to purchase the Product. Defendant's inadequate labeling is an unfair trade practice because the ingredients render it unfit for safe use and reasonable consumers have suffered severe adverse side effects from taking it. Plaintiff, and no other reasonable consumer, would have purchased the Product had they known about the severe adverse effects the Product can cause to humans. A lack of an adequate warning and the severity of the adverse side effects is material to the average consumer.

31. Plaintiff would not have purchased the Product had he known the truth about it.

CLASS ALLEGATIONS

32. Plaintiff incorporates all previous paragraphs alleged in this Complaint as if fully alleged herein.

33. Plaintiff brings this action on behalf of himself and all other similarly situated consumers pursuant to Federal Rules of Civil Procedure 23(a) and 23(b). The Class of persons whom Plaintiffs seek to represent is defined as:

- a) All United States persons who, within the applicable statute of limitations, purchased the Product, for personal use and not resale, through and to the date Notice is provided to the Class.
- b) Plaintiff reserves the right to broaden or narrow the Class after a reasonable opportunity to conduct discovery.
- c) Excluded from the Class is Defendant, any parent, subsidiary or affiliate of Defendant, any entity in which Defendant has a controlling interest, and the respective officers, directors, employees, agents, legal representatives, heirs, predecessors, successors, and assigns of such excluded persons or entities.

34. Plaintiff and Class members are so numerous that joinder of all members individually, in one action or otherwise, is impracticable.

35. There are questions of law and fact common to the Class.

36. Plaintiff's claims are typical of the claims of other Class members. The named Plaintiff is a member of the Class of affected consumers described herein.

37. The named Plaintiff is willing and prepared to serve the Court and the proposed Class in a representative capacity with all of the obligations and duties material thereto. Plaintiff will fairly and adequately protect the interests of the Class and has no interests adverse to or which directly and irrevocably conflict with the interests of other members of the Class.

38. The self interests of the named Class representatives are co-extensive with, and are not antagonistic to, those of the absent Class members. The proposed representative will undertake to represent and protect the interests of the absent Class members.

39. The named Plaintiff has engaged the services of counsel indicated below. Counsel are adequately experienced in complex class action litigation, will effectively prosecute this action, and will assert and protect the rights of, and otherwise will represent the named Class representative and absent Class members.

40. This action is also appropriate as a class action pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

41. This action involves questions of law and fact common to Plaintiff and all members of the Class. These common questions predominate over any issues affecting individual members of the Class and include:

- a) Whether Defendant engaged in unfair methods of competition; unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of its labeling and advertising of the Product;
- b) Whether Defendant materially misrepresented that the Product was safe to consume even though it has harmful and adverse effects;
- c) Whether Defendant knew that the Product has harmful effects;
- d) Whether Plaintiff and Class members are entitled to injunctive relief enjoining Defendant from continuing to fail to disclose that the Product has severe adverse and harmful effects that may require hospitalization;
- e) Whether Defendant should be made to engage in a corrective advertising campaign advising consumers that the Product has the adverse and harmful effects; and

f) Whether Plaintiff and Class Members have been harmed and the proper measure of relief.

42. Judicial determination of the common legal and factual issues essential to this case would be far more efficient and economical as a class action than in piecemeal individual determinations.

43. There is no plain, speedy or adequate remedy other than by maintenance of this lawsuit as a class action because individual damages are relatively small, making it economically infeasible for Class members to pursue remedies individually.

44. The prosecution of separate actions by individual members of the Class, even if theoretically possible, would create a risk of inconsistent or varying adjudications with respect to individual Class members against Defendant and would establish incompatible standards of conduct for Defendant.

45. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

- a) Given the complexity of issues involved in this action and the expense of litigating the claims, few, if any, Class members could afford to seek legal redress individually for the wrongs that Defendant committed against them, and absent Class members have no substantial interest in individually controlling the prosecution of individual actions;
- b) When Defendant's liability has been adjudicated, claims of all Class members can be determined by the Court;
- c) This action will cause an orderly and expeditious administration of the Class claims and foster economies of time, effort and expense, and ensure uniformity of decisions; and

d) Without a class action, many Class members would continue to suffer injury, and Defendant's violations of law will continue without redress while Defendant continue to reap and retain the substantial proceeds of its wrongful conduct.

46. Plaintiff knows of no difficulty that will be encountered in the management of this litigation, which would preclude its maintenance as a class action.

47. Defendant has acted on grounds applicable to the Class generally; therefore, Plaintiff seek equitable and injunctive relief on behalf of the entire Class on grounds generally applicable to the entire Class.

COUNT I
VIOLATIONS OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT,
FLA. 501.201, ET SEQ.

48. Pursuant to Fed. R. Civ. P. 10, Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs one (1) through forty-seven (47) of this Complaint as if fully set forth herein.

49. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 201.213, *Florida Statutes*. The express purpose of the Act is to "protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce" Section 501.202(2).

50. The sale of the Products at issue in this cause was a "consumer transaction" within the scope of the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 201.213, *Florida Statutes*.

51. Section 501.204(1), *Florida Statutes* declares as unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce”.

52. Section 501.204(2), *Florida Statutes* states that “due consideration be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a)(1) of the Trade Commission Act.” Defendant’s unfair and deceptive practices are likely to mislead – and have misled – the consumer acting reasonably under the circumstances and, therefore, violate Section 500.04, Florida Statutes and 21 U.S.C. Section 343.

53. Defendant has violated the Act by engaging in the unfair and deceptive practices described above, which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers. Specifically, Defendant has impliedly represented that its Product is safe for human consumption, when in fact, it is not, because it exposes consumers to severe adverse health effects.

54. Defendant’s sale of the Product is an unfair method of competition, unconscionable act and practice, and an unfair and deceptive act and practice in the conduct of its business.

55. The material misrepresentations and omissions alleged herein constitute deceptive and unfair trade practices, in that they were intended to and did deceive Plaintiff and the general public, into believing that the Product was safe to consume when used as directed. However, as set forth in detail above, it had severe harmful, hidden effects.

56. There was no and/or an inadequate warning/disclaimer on the Product informing Plaintiff of the severity of the adverse health effects, the potential for hospitalization, the true strength of the Product, and the dangers of consuming the Product.

57. Had Plaintiff and Class members known the Product was not safe when consumed, in that it had such harmful effects, they would not have purchased the Product.

58. As a result of Defendant's deceptive and unfair acts, Plaintiff and Class members have been damaged in the amount of the aggregate retail sales of the Product throughout the Class period. The Product was rendered valueless because it is useless to any reasonable consumer. Had Plaintiff and the Class known about the true nature of the Product, they would not have purchased it. Alternatively, Plaintiff and the Class are entitled to the difference between the premium price paid for the Product and the price they would have paid had they known that the Product was not fit when consumed in that it had such harmful effects. Because Plaintiff and the Class would not have paid anything for the Product had they known it was not fit when consumed, Plaintiff contends the Class is entitled to restitution of the full purchase price.

59. Defendant's conduct offends established public policy, and is immoral, unethical, oppressive, unscrupulous and substantially injurious to consumers.

60. Defendant should also be ordered to cease its deceptive and unfair advertising, and should be made to engage in a corrective advertising campaign, to inform consumers that the Product is not safe when consumed in that it has said adverse and harmful effects.

WHEREFORE, Plaintiffs seek relief in the form of actual and compensatory damages, injunctive relief in the form of corrective advertising, equitable relief including restitution, pre and post judgment interest, reimbursement of costs, reasonable attorney's fees, and for any other relief that this Court deems just and proper, as set forth more fully below in the Prayer for Relief section of this Complaint.

COUNT II
UNJUST ENRICHMENT

61. Pursuant to Fed. R. Civ. P. 10, Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs one (1) through forty-seven (47) of this Complaint as if fully set forth herein.

62. Plaintiff and Class members conferred a benefit on Defendant by purchasing the Product at a premium price.

63. Defendant received the money paid by Plaintiff and Class members and thus knew of the benefit conferred upon them.

64. Defendant accepted and retained the benefit in the amount of the profits it earned from sales to Plaintiff and Class members.

65. Defendant has profited from its unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiff and Class members, under circumstances in which it would be unjust for Defendant to be permitted to retain the benefit.

66. As a result of purchasing the Product, Plaintiff and the Class spent money on a useless Product that they otherwise would not have purchased.

67. There was no and/or an inadequate warning/disclaimer on the Product informing Plaintiff of the severity of the adverse health effects, the potential for hospitalization and liver illness, the true strength of the Product, and the dangers of consuming the Product.

68. Pursuant to Fed. R. Civ. P. 8(d)(2)-(3), Plaintiff (alternatively) does not have an adequate remedy at law against Defendant.

69. Plaintiff and Class members are entitled to restitution of the excess amount paid for the Product, over and above what they would have paid had they known that the Product was not safe when consumed in that it had harmful effects. Because Plaintiff and the Class would not

have paid anything for the Product had they known it was unfit, Plaintiff and the Class are entitled to restitution of the full purchase price.

WHEREFORE, Plaintiffs seek relief in the form of injunctive relief in the form of corrective advertising, equitable relief including restitution, pre and post judgment interest, reimbursement of costs, reasonable attorney's fees, and for any other relief that this Court deems just and proper, as set forth more fully below in the Prayer for Relief section of this Complaint.

COUNT III
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

70. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs one (1) through forty-seven (47) of this Complaint as if fully set forth herein.

71. Plaintiff and other members of the Class sought an energy enhancing and weight loss product that would safely provide the purported benefits. In doing so, Plaintiff and other Members of the Class reasonably relied on Defendant's skill and judgment to select and furnish suitable goods for that purpose, and on or about that time, Defendant sold the Product to Plaintiff and other members of the Class.

72. Plaintiff and Class members were the foreseeable users of the Product.

73. At the time of sale, Defendant had reason to know the of the ordinary and intended purpose for which the goods were required, to safely provide energy, increase weight loss, improvement in mental focus, and that Plaintiff and members of the Class were relying on Defendant's skill and judgment to select and furnish suitable and harmless goods, so there was an implied warranty that the goods were fit for this intended and ordinary purpose.

74. However, Defendant breached the warranty implied at the time of sale in that Plaintiff and members of the Class did not receive suitable goods, but rather defective and non-merchantable goods, and the goods were not reasonably fit for the intended purpose for which

they were made, as set forth above. The Products defective nature existed at the time the Product left the possession of the Defendant. Additionally, as set forth above, the Product was inadequately packaged and labeled.

75. The product was used in its intended manner by Plaintiff and the Class.

76. As a proximate result of this breach of warranty by Defendant, Plaintiff and members of the Class have suffered actual damages in an amount to be determined at trial, in that they were induced to purchase a product they would not have purchased had they known the true facts about, and that lacks the value Defendant represented the Product had, which was reflected in the purchase price.

WHEREFORE, Plaintiffs seek relief in the form of actual and compensatory damages, injunctive relief in the form of corrective advertising, equitable relief including restitution, pre and post judgment interest, reimbursement of costs, reasonable attorney's fees, and for any other relief that this Court deems just and proper, as set forth more fully below in the Prayer for Relief section of this Complaint.

COUNT V
VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT (15 U.S.C. §§ 2301 *et seq.*)

77. Pursuant to Fed. R. Civ. P. 10, Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs one (1) through forty-seven (47) of this Complaint as if fully set forth herein.

78. Defendant has breached implied warranties regarding the Product. Thus, pursuant to Fed. R. Civ. P. 10, Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 70 through 76, as if fully set forth herein.

79. Plaintiff and the Class are consumers as defined in 15 U.S.C. § 2301(3).

80. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4)(5).

81. The Product is a consumer product as defined in 15 U.S.C. § 2301(6).

82. By reason of Defendant's breach of the above implied warranty merchantability, Defendant has violated the statutory rights due to Plaintiff and members of the Class pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, thereby economically damaging Plaintiff and the Class. The Act is intended to increase the enforceability of these warranties.

83. Therefore, Plaintiff and the Class seek all available remedies, damages, and awards under the Magnuson-Moss Warranty act.

WHEREFORE, Plaintiffs seek relief in the form of actual and compensatory damages, injunctive relief in the form of corrective advertising, equitable relief including restitution, pre and post judgment interest, reimbursement of costs, reasonable attorney's fees, and for any other relief that this Court deems just and proper, as set forth more fully below in the Prayer for Relief section of this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Pursuant to Fed. R. Civ. P. 8(a)(3), Plaintiffs pray this Court:

1. Certify this action as a Plaintiff class action, and appointing Plaintiff as class representative with Plaintiff's counsel as Lead Interim Counsel;
2. Award actual and compensatory damages as to all Counts where such relief is permitted;
3. Enjoin Defendant's unlawful conduct found to be in violation of FDUTPA, and order Defendant to engage in a corrective advertising and labeling/disclosure campaign;
4. Award equitable monetary relief, including restitution;
5. Award pre-judgment and post-judgment interest at the legal rate;
6. Award Plaintiff and Class members the costs of this action, including reasonable attorney's fees and expenses; and

7. Award such other and further legal and equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: December 4, 2013

Respectfully Submitted,

By:

/s/ Joshua H. Eggnatz
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*Attorneys for Plaintiff and the Proposed
Class*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

ANTHONY MAZZEO, on behalf of himself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) The Eggatz Law Firm, P.A. 1920 N. Commerce Parkway, Ste. 1, Weston, FL 33326, (954)634-4355

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

DEFENDANTS

USPLABS, LLC, a Texas corporation

County of Residence of First Listed Defendant Dallas, TX (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

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 (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 and 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)

Table with 4 main columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment
8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

- a) Re-filed Case YES NO
b) Related Cases YES NO

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332 (d)(2): Claims for Violations of Florida's Deceptive & Unfair Trade Practices Act, et al. LENGTH OF TRIAL via 10 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE December 4, 2013 SIGNATURE OF ATTORNEY OF RECORD /s/ Joshua H. Eggatz

FOR OFFICE USE ONLY

RECEIPT # aaaaaaaaaa AMOUNT aaaaaaaaaa IFP aaaaaaaaaa JUDGE aaaaaaaaaa *****MAG JUDGE aaaaaaaaaa

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil 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 a 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 the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them 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 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. 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 VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. 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.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

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 judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. 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 a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, 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 OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: