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2013 NOV -4 PM 12:46

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

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*Counsel for Plaintiff and all
others similarly situated*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TIMOTHY CLARK, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

T.C.C.D. INTERNATIONAL, INC., a
Florida Corporation, and DOES 1-10,
inclusive,

Defendants.

Case No.

CV 13-08140 -GW

(FFM)

**CLASS ACTION
COMPLAINT FOR:**

**1. VIOLATION OF THE FALSE
ADVERTISING LAWS ("FAL");
Bus. & Prof. Code § 17500;**

**2. VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAWS
("UCL"); Bus. & Prof. Code § 17200
et seq.;**

**3. VIOLATION OF CALIFORNIA'S
CONSUMER LEGAL REMEDIES
ACT ("CLRA"); Civil Code § 1750 et
seq.**

DEMAND FOR JURY TRIAL

RECEIVED
CLERK, U.S. DISTRICT COURT

OCT 31 2013

CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

99003-00001 161118.01

1 Plaintiff Timothy Clark ("Plaintiff"), on behalf of himself and all others
 2 similarly situated, alleges as follows. Plaintiff's allegations are based on the
 3 investigation of counsel, and thus on information and belief, except as to the
 4 individual allegations of Plaintiff, as to which Plaintiff has personal knowledge.

5 INTRODUCTION

- 6 1. T.C.C.D. International, Inc. (also referred to as "Defendant") manufactures,
 7 markets, and sells its Buckpower Antler Velvet product ("the Product" or
 8 "Buckpower"). Defendant claims, on the Product label, that the Product will
 9 "increase muscle strength & recovery," "promote healthy joint function,"
 10 "improves energy & endurance," and "boosts libido." In reality, the Product
 11 is nothing of the sort and has no such capabilities. This false and deceptive
 12 marketing enables Defendant to unfairly capture sales that it would not make
 13 but for its deception, and also charges consumers a premium based thereon.
- 14 2. Defendant's misrepresentations were designed to, and did, lead Plaintiff and
 15 others similarly situated (collectively the "Class") to believe that the Product
 16 could cause an increase strength, recovery, joint function, energy, endurance,
 17 libido, and a decrease bad cholesterol when it cannot.
- 18 3. Plaintiff brings this class action lawsuit to enjoin the ongoing deception of
 19 thousands of California and nationwide consumers by Defendant, and to
 20 recover the monetary gains taken by this unlawful practice.

21 THE PARTIES

- 22 4. Plaintiff, Timothy Clark, is a citizen and resident of Los Angeles County,
 23 California who purchased Buckpower from the Vitamin Shoppe on West
 24 Victory Blvd in Los Angeles, California, on August 16, 2013.
- 25 5. Plaintiff is informed and believes, and upon such information and belief
 26 alleges, that T.C.C.D. International, Inc. is a Florida corporation, with its
 27 principle place of business in Pompano Beach, Florida, that manufactures,
 28 markets, distributes and/or sells Buckpower, a deer antler velvet dietary

1 supplement. Defendant sells its Product to consumers in California and
2 throughout the nation.

3 6. Plaintiff does not know the true names or capacities of the persons or entities
4 sued herein as DOES 1-10, inclusive, and therefore sues such Defendants by
5 such fictitious names. Plaintiff is informed and believes, and upon such
6 information and belief alleges, that each of the DOE Defendants is in some
7 manner legally responsible for the damages suffered by Plaintiff and the
8 members of the Class as alleged herein. Plaintiff will amend this complaint to
9 set forth the true names and capacities of these Defendants when they have
10 been ascertained, along with appropriate charging allegations, as may be
11 necessary.

12 7. At all times herein mentioned, Defendants and each of them were the agents,
13 principals, servants, employees and subsidiaries of each of the remaining
14 Defendants, and were at all times acting within the purpose and scope of such
15 agency, service and employment, and directed, consented, ratified, permitted,
16 encouraged and approved the acts of each remaining Defendant.

17 JURISDICTION AND VENUE

18 8. This Court has subject matter jurisdiction pursuant to the Class Action
19 Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member
20 is of diverse citizenship from one Defendant; there are more than 100 Class
21 members nationwide; the aggregate amount in controversy exceeds
22 \$5,000,000; and minimal diversity exists.

23 9. Venue is proper in this District under 28 U.S.C. § 1391(a) because a
24 substantial part of the events or omissions giving rise to the claims occurred
25 and/or emanated from this District, and Defendant has caused harm to Class
26 members residing in this District.

27 //

FACTUAL ALLEGATIONS

10. Defendant manufactures, markets, and sells Buckpower as a “dietary supplement” which Defendant claims is “100% New Zealand Red Deer Antler Velvet” that can cause numerous health benefits.
11. On each of the Product’s packaging, Defendant states in bold that the Product “Increases Muscle Strength & Recovery,” “Promotes Healthy Joint Function,” “Improves Energy & Endurance,” and “Boosts Libido.” However, the Product does not have the ability to produce the results promised.
12. Defendant’s Product does not work as advertised. Defendant’s claims about the Product’s benefits are false and misleading.
13. Plaintiff was curious about the alleged benefits after reviewing the deceptive claims, and in reliance thereon, decided to purchase the Product. Plaintiff was damaged in purchasing Defendant’s Product because he did not experience any of Defendant’s promised benefits. Plaintiff would not have purchased the Product but for the deceptive and misleading claims described herein that were made by Defendant.
14. Defendant’s misrepresentations regarding the character and quality of the Product were designed to, and did, lead Plaintiff and others similarly situated to believe that the Product causes numerous health benefits. Plaintiff and members of the Class relied on Defendant’s misrepresentations and would not have paid as much, if at all, for the Product but for Defendant’s misrepresentations.
15. Accordingly, Plaintiff brings this lawsuit to enjoin the ongoing deception of thousands of California and nationwide consumers by Defendant, and to recover the monetary gains taken by this unlawful practice.

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CLASS DEFINITIONS AND CLASS ALLEGATIONS

16. Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated and, as members of the Class or subclasses (collectively referred to hereafter as the “Class”) defined as follows:

(1) California Class: The Class that Plaintiff seeks to represent (“the California Class”) consists of all persons who are citizens or residents of California who purchased Buckpower within the four years prior to the filing of the initial complaint. Excluded from the Class are Defendant, any parent, subsidiary, affiliate or controlled person of Defendant, as well as the officers and directors of Defendant, and the immediate family member of any such person. Also excluded is any judge who may preside over this case.

(2) Nationwide Class: The Class that Plaintiff seeks to represent (“the Nationwide Class”) is defined to include all persons in the United States who purchased Buckpower within the four years prior to the filing of the initial complaint. Excluded from the Class are Defendant, any parent, subsidiary, affiliate or controlled person of Defendant, as well as the officers and directors of Defendant, and the immediate family member of any such person. Also excluded is any judge who may preside over this case.

17. This action is brought and may be properly maintained as a class action pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy, predominance and superiority requirements of those provisions.

18. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and

believes the Class includes thousands of members. Plaintiff alleges that the Class may be ascertained by the records maintained by Defendant.

19. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all members of the Class, which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from Class member to Class member, and which may be determined without reference to the individual circumstances of any Class member, include, but are not limited to, the following:

- (a) Whether Defendant engaged in false or misleading advertising;
- (b) Whether Defendant's conduct violates the California Legal Remedies Act or other laws;
- (c) Whether Defendant's conduct is "unfair" or "unlawful" under *Business & Professional Code* § 17200;
- (d) Whether, as a result of Defendant's misconduct, Plaintiff and the Class are entitled to damages, restitution, equitable relief and other relief, and the amount and nature of such relief.

20. [Fed. R. Civ. P. 23(a)(3)] Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have sustained damages and are facing irreparable harm arising out of Defendant's common course of conduct as complained of herein. The losses of each member of the Class were caused directly by Defendant's wrongful conduct as alleged herein.

21. [Fed. R. Civ. P. 23(a)(4)] Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained attorneys experienced in the prosecution of class actions, including complex consumer and mass tort litigation.

22. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual

litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be an unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

23. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by thousands of individual Class members would create the risk of inconsistent or varying adjudications with respect to, among other things, the need for and the nature of proper notice, which Defendant must provide to all Class members.

24. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

25. [Fed. R. Civ. P. 23(b)(2)] Defendant has acted or refused to act in respects generally applicable to the Class, thereby making appropriate final injunctive relief with regard to the members of the Class as a whole.

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FIRST CAUSE OF ACTION**Business and Professions Code § 17500****(Violation of the False Advertising Act)****(By Plaintiff and the Class Against Defendant)**

26. Plaintiff hereby incorporates paragraphs 1-25 above as if set forth in full.

27. California *Business and Professions Code* § 17500 provides that “[i]t is unlawful for any ... corporation . . . with intent . . . to dispose of . . . personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading”

28. Plaintiff and Class members were misled by Defendant’s untrue statements and failure to disclose what is required as stated in the Code, as alleged above.

29. As a direct and proximate result of Defendant’s misleading and false advertising, Plaintiff and the members of the Class have suffered injury in fact and have lost money or property.

30. The misleading and false advertising described herein presents a continuing threat to Plaintiff and the Class in that Defendant persists and continues to engage in these practices, and will not cease doing so unless and until forced to do so by this Court. Defendant’s conduct will continue to cause irreparable damages to consumers unless enjoined or restrained.

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SECOND CAUSE OF ACTION

Business and Professions Code § 17200 et seq.

(Violation of the Unfair Competition Law)

(By Plaintiff and the Class Against Defendant)

31. Plaintiff hereby incorporates paragraphs 1-30 above as if set forth in full.

32. California *Business and Professions Code* § 17200 *et seq.* (the “Unfair Competition Law” or “UCL”) authorizes private lawsuits to enjoin acts of “unfair competition,” which include any unlawful or unfair business practice.

33. The UCL imposes strict liability. Plaintiff need not prove Defendant intentionally or negligently engaged in unlawful or unfair business practices — but only that such practices occurred. Further, in order to prevail on this cause of action, it is not necessary for Plaintiff to show that Defendant acted with intent or malice, nor is it necessary for Plaintiff to show Defendant’s knowledge or scienter related to the false or misleading nature of Defendant’s claims.

34. The material misrepresentations and non-disclosures by Defendant and DOES 1-10 as part of their marketing and advertising of the Product are unlawful and unfair business practices prohibited by the UCL.

35. In carrying out such marketing, Defendant has violated the Consumer Legal Remedies Act, the False Advertising Law and various other laws, regulations, statutes and/or common law duties. Defendant’s business practices alleged herein, therefore, are unlawful within the meaning of the UCL.

36. The harm to Plaintiff and members of the Class outweighs the utility of Defendant’s practices and, consequently, Defendant’s practices, as set forth fully above, constitute an unfair business act or practice within the meaning of the UCL.

37. Defendant’s practices are additionally unfair because they have caused Plaintiff and the Class substantial damage, which is not outweighed by any

1 countervailing benefits to consumers or to competition, and is not a damage
2 the consumers themselves could have reasonably avoided.

3 38. Defendant's practices, as set forth above, have misled the general public in
4 the past and will mislead the general public in the future. Consequently,
5 Defendant's practices constitute an unlawful and unfair business practice
6 within the meaning of the UCL.

7 39. Pursuant to California *Business and Professions Code* § 17204, an action for
8 unfair competition may be brought by any "person . . . who has suffered injury
9 in fact and has lost money or property as a result of such unfair competition."
10 Defendant's misrepresentations and omissions have directly and seriously
11 injured Plaintiff and the putative class by causing them to purchase
12 Buckpower based upon false and misleading marketing and advertising.

13 40. The unlawful and unfair business practices of Defendant are ongoing and
14 present a continuing threat that members of the public will be misled into
15 purchasing Buckpower based upon false and/or misleading marketing and
16 advertising.

17 41. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent
18 injunctive relief ordering Defendant to cease this unfair competition, as well
19 as disgorgement and restitution to Plaintiff and the Class of all of Defendant's
20 revenues associated with its unfair competition, or such portion of those
21 revenues as the Court may find equitable.

22 **THIRD CAUSE OF ACTION**

23 **Civil Code § 1750 et seq.**

24 **(Violation of the Consumer Legal Remedies Act)**

25 **(By Plaintiff and the Class Against Defendant)**

26 42. Plaintiff hereby incorporates paragraphs 1-41 above as if set forth in full.

27 43. The Consumer Legal Remedies Act ("CLRA") creates a non-exclusive
28 statutory remedy for unfair methods of competition and unfair acts or business

1 practices. *See Reveles v. Toyota by the Bay*, 57 Cal. App. 4th 1139, 1164
2 (1997). Its self-declared purpose is to protect consumers against these unfair
3 business practices and to provide efficient and economical procedures to
4 secure such protection. Cal. Civil Code § 1760. The CLRA was designed to
5 be liberally construed and applied in favor of consumers to promote its
6 underlying purposes. *Id.*

7 44. Plaintiff has standing to pursue this claim, as Plaintiff purchased and used the
8 Product, and lost money as a result of such purchase. Plaintiff used
9 Buckpower as directed, but the Product did not work as advertised, and
10 Plaintiff did not experience the promised benefits.

11 45. Defendant's wrongful business practices constituted, and constitute, a
12 continuing course of conduct in violation of the California Consumer Legal
13 Remedies Act since Defendant is still representing that its Product has
14 characteristics and abilities which are false and misleading, and since its
15 Product has injured Plaintiff and the Class.

16 46. More specifically, Plaintiff alleges that Defendant has violated paragraphs 5,
17 7 and 9 of California *Civil Code* § 1770(a) by engaging in the unfair acts and
18 practices set forth herein. Defendant's unfair business practices in carrying
19 out the marketing objectives described did, and do, result in the Plaintiff and
20 Class members purchasing Defendant's Product, in violation of the CLRA.
21 Cal. Civil Code § 1770 *et seq.*

22 47. As a result of Defendant's unfair business practices, Plaintiff and all
23 consumers who purchased Defendant's Product have suffered damage and
24 lost money in that they paid for services that did not have the benefits as
25 represented. Plaintiff seeks and is entitled to an order enjoining Defendant
26 from continuing to engage in the unfair business practices alleged herein.

27 48. Pursuant to Section 1782 of the CLRA, Plaintiff intends to notify Defendant
28 in writing of the particular violations of Section 1770 of the CLRA (the

1 “Notice Letter”). If Defendant fails to comply with Plaintiff’s demands
 2 within thirty days of receipt of the Notice Letter, pursuant to Section 1782 of
 3 the CLRA, Plaintiff will amend this Complaint to further request damages
 4 under the CLRA.

5 **PRAYER FOR RELIEF**

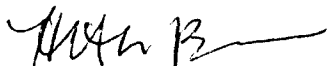
6 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for
 7 relief and judgment as follows:

- 8 1. For preliminary and permanent injunctive relief enjoining Defendant, its
 9 agents, servants and employees, and all persons acting in concert with it,
 10 from engaging in, and continuing to engage in, the unfair, unlawful and/or
 11 fraudulent business practices alleged above and that may yet be discovered in
 12 the prosecution of this action;
- 13 2. For certification of the putative class;
- 14 3. For restitution and disgorgement of all money or property wrongfully
 15 obtained by Defendant by means of its herein-alleged unlawful, unfair, and
 16 fraudulent business practices;
- 17 4. For an accounting by Defendant for any and all profits derived by Defendant
 18 from its herein-alleged unlawful, unfair and/or fraudulent conduct and/or
 19 business practices;
- 20 5. An award of statutory damages according to proof, except that no damages
 21 are currently sought on Plaintiff’s Cause of Action regarding the Consumer
 22 Legal Remedies Act at this time;
- 23 6. An award of general damages according to proof, except that no damages are
 24 currently sought on Plaintiff’s Cause of Action regarding the Consumer Legal
 25 Remedies Act at this time;
- 26 7. An award of special damages according to proof, except that no damages are
 27 currently sought on Plaintiff’s Cause of Action regarding the Consumer Legal
 28 Remedies Act at this time;

- 1 8. Exemplary damages, except that no damages are currently sought on
- 2 Plaintiff's Cause of Action regarding the Consumer Legal Remedies Act at
- 3 this time;
- 4 9. For attorneys' fees and expenses pursuant to all applicable laws, including,
- 5 without limitation, the CLRA and the common law private attorney general
- 6 doctrine;
- 7 10. For costs of suit; and
- 8 11. For such other and further relief as the Court deems just and proper.
- 9

10 DATED: October 29, 2013

KIRTLAND & PACKARD LLP

11 By: 
12 MICHAEL LOUIS KELLY
13 BEHRAM V. PAREKH
14 HEATHER M. BAKER
15 *Counsel for Plaintiff and the Class*


JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all issues so triable.

DATED: October 29, 2013

KIRTLAND & PACKARD LLP

By:


MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. BAKER
Counsel for Plaintiff and the Class

1 I, Timothy Clark, declare as follows:

2 1. I am a Plaintiff in this action, and am a citizen of the State of California. I have
3 personal knowledge of the facts herein and, if called as a witness, I could and would testify
4 competently thereto.

5

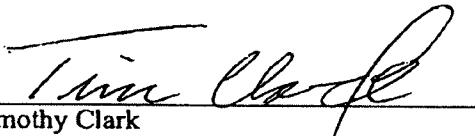
6 2. The Complaint in this action, filed concurrently with this Declaration, is filed in the
7 proper place for trial under Civil Code Section 1780(d) in that Los Angeles County is a county
8 in which Defendants are doing business.

9

10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct.

12

13


Timothy Clark

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

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge George H. Wu and the assigned Magistrate Judge is Frederick F. Mumm.

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

2:13-CV-8140-GW (FFMx)

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

November 4, 2013

Date

By MDAVIS

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:

Michael Louis Kelly
KIRTLAND & PACKARD LLP
2041 Rosecrans Avenue
Third Floor
El Segundo, CA 90245

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TIMOTHY CLARK, on behalf of himself and
all others similarly situated,

PLAINTIFF(S)

v.

T.C.C.D. INTERNATIONAL, INC., a Florida
Corporation, and DOES 1-10, inclusive,

DEFENDANT(S).

CASE NUMBER

CV 13-08140 - GW (FFM)

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, Michael Louis Kelly, whose address is 2041 Rosecrans Avenue, Third Floor, El Segundo, CA 90245. 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: NOV - 4 2013By: Maureen D.

Deputy Clerk



(Seal of the Court)

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

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

I. (a) PLAINTIFFS (Check box if you are representing yourself ☐)
TIMOTHY CLARK, on behalf of himself and
all others similarly situated,

DEFENDANTS (Check box if you are representing yourself ☐)
T.C.C.D. INTERNATIONAL, INC., a Florida
Corporation, and DOES 1-10, inclusive,

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

KIRTLAND & PACKARD LLP
2041 Rosecrans Avenue
Third Floor
El Segundo, CA 90245
(310) 536-1000

(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)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input 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:** \$ TBD

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.)

28 U.S.C. 1332(d) (2) (A) - Class Action Fairness Act Diversity - false and misleading advertising causing Plaintiff and the Class to purchase Defendant's products.

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

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> Habeas Corpus: 463 Alien Detainee	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 530 General	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	TORTS	PERSONAL PROPERTY	<input type="checkbox"/> 535 Death Penalty	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	PERSONAL INJURY	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 550 Civil Rights	<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"/> 380 Other Personal Property Damage	<input type="checkbox"/> 555 Prison Condition	<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"/> 385 Property Damage Product Liability	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 330 Fed. Employers' Liability	BANKRUPTCY	FORFEITURE/PENALTY	FEDERAL TAX SUITS
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input checked="" type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 350 Motor Vehicle	CIVIL RIGHTS	LABOR	
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 751 Family and Medical Leave Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 790 Other Labor Litigation	
		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	
		<input type="checkbox"/> 369 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 448 Education		

FOR OFFICE USE ONLY: Case Number:

CV13-08140

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
Clark - Los Angeles	

(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
	T.C.C.D. International, Inc. - Florida

(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
Clark's claim - Los Angeles	

* 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): Heather M. Baker DATE: October 29, 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))