

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

MARIA HOSTRUP, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

HI-TECH PHARMACEUTICALS, INC.,

Defendant.

CASE NO.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, Maria Hostrup, by and through undersigned counsel, on behalf of herself and all others similarly situated, brings this action against Defendant, Hi-Tech Pharmaceuticals, Inc. (“Defendant”), and for her Complaint alleges, upon information and belief and based on the investigation to date of her counsel, as follows:

INTRODUCTION

1. This is a class action brought individually by Plaintiff and on behalf of a class of persons similarly situated, (the “Class” or “Class Members”), who purchased the weight loss dietary supplement Hi-Tech Pharmaceuticals Garcinia Cambogia Extract (“Product”) from Defendant. Defendant’s efficacy claims for the Product are false.

2. Sales of retail diet pills, combined with meal replacements, are estimated to reach \$3.04 billion in the United States in 2014.

3. Defendant Hi-Tech Pharmaceuticals, Inc. advertises, manufactures, markets, sells, and distributes the Product, which is marketed and sold in the growing and extremely

competitive diet/weight loss dietary supplement industry as a highly effective appetite suppressant, fat burner, and weight loss pill.

4. Although Defendant boasts about the Product's efficacy in labeling and advertising the Product, the Product does not and cannot deliver any of the promised benefits.

5. In late 2012, Dr. Mehmet Oz, of the highly popular television program "The Dr. Oz Show", claimed on his website that Garcinia Cambogia was the "Newest, Fastest Fat-Buster." On his TV show, Dr. Oz declared that, "Thanks to brand new scientific research, I can tell you about a revolutionary fat buster," with the words "No Exercise. No Diet. No Effort" on the screen behind him.

6. In June 2014, Dr. Oz's representations regarding weight loss products, including Garcinia Cambogia, were called into question by the United States Senate's Subcommittee on Consumer Protection, Product Safety, and Insurance, where Dr. Oz was called to testify.

7. When presented with studies refuting the efficacy of Garcinia Cambogia, Dr. Oz testified that he could not be held responsible for what companies say about their products, and that he had toned down some of his language and would publish a list of products he believes can really help people lose weight.

8. With all the hype surrounding this new "miracle" diet pill, many dietary supplement manufacturers, including Defendant, have decided to exploit this opportunity to make money off of unassuming consumers, regardless of the scientific evidence refuting their claims regarding the efficacy of Garcinia Cambogia supplements.

9. Defendant's product offerings, in addition to the Product, comprise a wide array of dietary supplements, including four weight loss/erectile dysfunction supplements that were the subject of a recent recall order and \$40 million judgment based on false efficacy claims made on

these products' packaging and associated advertising. Defendant's CEO and manager are presently incarcerated for failing to comply with this court-ordered recall.

10. As a result of Defendant's deceptive, fraudulent, unfair, and misleading practices, Plaintiff and Class Members have been unfairly deceived into purchasing the Product, which otherwise they would not have purchased or would have purchased only at a substantially lower price.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d)(2) (diversity jurisdiction) and the Class Action Fairness Act, in that (i) there is complete diversity (Plaintiff is a citizen of Florida and Defendant is domiciled and incorporated in Georgia and otherwise maintains its principal place of business in Georgia), (ii) the amount in controversy exceeds \$5,000,000.00 (Five Million Dollars) exclusive of interests and costs, and (iii) there are 100 or more members of the proposed Plaintiff class.

12. Defendant conducts substantial business in Florida, including the sale and distribution of the Product, and has sufficient contacts with Florida or otherwise intentionally avails itself of the laws and markets of Florida, so as to sustain this Court's jurisdiction over Defendant.

13. Venue lies in this District, pursuant to 28 U.S.C. §1391, because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this Judicial District. In addition, Defendant does business and/or transacts business in this Judicial District and is therefore subject to personal jurisdiction in this Judicial District and resides here for venue purposes.

PARTIES

14. Plaintiff, Maria Hostrup, is a resident and citizen of Miami, Miami-Dade County, Florida. Plaintiff purchased the Product on multiple occasions: on or about March 2013 at PureGarciniaCambogia.com; on or about October 2013 at CVS Pharmacy; and on or about January 31, 2014 at Amazon.com.

15. Hi-Tech Pharmaceuticals, Inc. is a Georgia corporation headquartered at 6015-B Unity Drive, Norcross, Gwinnett County, Georgia 30071. Defendant distributes and sells the Product through numerous retailers throughout the State of Florida and the United States, including but not limited to, Amazon.com, CVS Pharmacy, and Vitamin World.

16. Defendant designed, tested, manufactured, marketed, advertised, warranted, and/or sold the Product in Florida and throughout the United States.

17. During the Class period, Plaintiff and Class Members purchased the Product through Defendant's website www.hitechpharma.com and/or one of the many brick and mortar and/or online retailers throughout the State of Florida and the United States. Plaintiff and Class Members suffered an injury in fact caused by the false, fraudulent, unfair, deceptive, and misleading practices set forth in this Complaint.

FACTUAL ALLEGATIONS

18. Defendant, unapologetically and with no remorse, boasts about the efficacy of the Product's main active ingredient, Garcinia Cambogia, despite substantial scientific literature strongly refuting the claims of fat burning, weight loss, and appetite suppression.

19. Under information and belief, Defendant had access to but knowingly and/or recklessly ignored all competent and reliable scientific evidence regarding the Product's main

active ingredient, Garcinia Cambogia.

20. Defendant made false claims regarding the efficacy of Garcinia Cambogia with respect to fat burning, metabolism boosting, weight loss, and appetite suppression.

The Product's False and/or Misleading Labeling and Marketing Claims Regarding Garcinia Cambogia

21. Defendant makes three false and/or misleading claims regarding the Product directly on the Product's label (and copied in marketing on retailer websites):

- a) "Natural Appetite Control";
- b) "Boost Metabolism and Burn Fat"; and
- c) "Promote Weight Loss"



22. All of Defendant's labeling and marketing claims regarding the Product are

presumably predicated on Garcinia Cambogia's high content of hydroxycitric acid (HCA), a compound which has been shown to inhibit the extramitochondrial enzyme adenosine triphosphate (ATP)-citrate-lyase, which in turn might present the potential for the inhibition of fatty acid biosynthesis.

23. As reported in the "Supplement Facts" portion of the Product's labeling, each capsule of the Product contains 750mg of Garcinia Cambogia Extract, standardized to 50% to 60% HCA.

24. Defendant's dosage instructions, set forth on the Product's label under the heading "Suggested Use," are for consumers to ingest 2 capsules of the Product 2 times daily. Thus, in light of the above "Supplement Facts," the total daily dosage of the Product Defendant recommends amounts to 3 grams of Garcinia Cambogia Extract, which represents 1.5 to 1.8 grams of HCA.

***Why Defendant's Labeling and Marketing Claims are
False and/or Misleading Regarding Garcinia Cambogia***

Appetite Suppression

25. Since HCA reportedly promotes weight loss, in part through suppression of hunger, a study was conducted to determine the effects of HCA on appetitive variables. The active treatment group, who ingested 2.4 grams of Garcinia Cambogia (1.2 grams of HCA) per day, did not exhibit better dietary compliance or significant correlations between appetitive variables and energy intake or weight change. This study does not support a satiety effect of HCA.¹

¹ Mattes R, Bormann L. Effects of (-)-hydroxycitric acid on appetitive variables. *Physiol Behav* 2000, 71:87-94.

26. Another study found that two-week supplementation with HCA alone or in combination with medium chain triglycerides did not result in increased satiety compared to placebo, in subjects losing bodyweight.²

27. A similar study was performed to assess the effects of two-week supplementation with HCA alone or combined with medium-chain triglycerides on satiety and energy intake. Two weeks of supplementation with HCA alone or combined with medium chain triglycerides did not result in increased satiety or decreased energy intake compared to placebo in subjects losing bodyweight.³

Increased Metabolism, Fat Burning and Weight Loss

28. As *Garcinia Cambogia* (specifically, HCA) was considered to be a potential anti-obesity agent, a randomized, controlled trial was conducted to evaluate the efficacy of *Garcinia Cambogia* for the loss of body weight and fat mass in overweight human subjects. *Garcinia Cambogia* supplementation, amounting to 1.5 grams of HCA per day, failed to produce weight loss or fat-mass loss beyond that observed with placebo.⁴

29. A study was performed with the objective of determining the effect of HCA on marker substrates of altered metabolism, as well as on respiratory quotient (RQ) and energy

² Kovacs E, Westerterp-Plantenga M, Saris W. The effects of 2-week ingestion of (–)-hydroxycitrate and (–)-hydroxycitrate combined with medium-chain triglycerides on satiety, fat oxidation, energy expenditure and body weight. *Int J Obes Relat Metab Disord* 2001a, 25:1087-94.

³ Kovacs E, Westerterp-Plantenga M, de Vries M, Brouns F, Saris W. Effects of 2-week ingestion of (–)-hydroxycitrate and (–)-hydroxycitrate combined with medium-chain triglycerides on satiety and food intake. *Physiol Behav* 2001b, 74:543-9.

⁴ Heymsfield S, Allison D, Basselli J, Pietrobelli A, Greenfield D, Nunez C. *Garcinia Cambogia* (Hydroxycitric Acid) as a potential antiobesity agent. *J Am Med Assoc* 1998, 280: 1596-1600.

expenditure (EE) in humans, following an overnight fast and during a bout of exercise. The hypothesis was that supplementation with HCA would increase fat oxidation and metabolic rate, reflected by an increase in beta-hydroxybutyrate and EE and/or a decrease in RQ. In a fasted state and following 3 days of 3 grams-per-day HCA treatment, RQ was not significantly lowered, either during rest or during exercise, compared with the placebo treatment. Treatment with HCA did not affect EE, either during rest or during moderately intense exercise. Furthermore, the blood substrates measured did not differ significantly among treatment groups under the fasting conditions of this study. These results did not support the hypothesis that HCA alters the short-term rate of fat oxidation in the fasting state during rest or moderate exercise.⁵

30. A study determined the effects of two-week ingestion of HCA alone or combined with medium-chain triglycerides on fat oxidation, EE, and body weight. Two-week supplementation with HCA alone or in combination with medium chain triglycerides did not result in increased fat oxidation, 24-hour EE, or bodyweight loss compared to placebo, in subjects losing bodyweight.⁶

31. A study was conducted to assess the effects of acute HCA supplementation on substrate metabolism at rest and during exercise in humans. HCA, even when provided in large

⁵ Kriketos A, Thompson H, Greene H, Hill J. (-)-Hydroxycitric acid does not affect energy expenditure and substrate oxidation in adult males in a post-absorptive state. *Int J Obes Relat Metab Disord* 1999, 23:867-73.

⁶ Kovacs E, Westerterp-Plantenga M, Saris W. The effects of 2-week ingestion of (--)hydroxycitrate and (--)hydroxycitrate combined with medium-chain triglycerides on satiety, fat oxidation, energy expenditure and body weight. *Int J Obes Relat Metab Disord* 2001a, 25:1087-94.

quantities, did not increase total fat oxidation in vivo in endurance-trained humans.⁷

32. All of Defendant's claims regarding the Product and its ability to control appetite, boost metabolism, burn fat, and promote weight loss are false and/or misleading.

RELIANCE AND INJURY

33. When purchasing the Product, Plaintiff was seeking a product that had the qualities described in Defendant's advertising, labeling, and marketing.

34. Plaintiff read and relied on the deceptive claims contained therein.

35. Plaintiff believed the Product had the qualities she sought, but the Product was unsatisfactory to Plaintiff for the reasons described herein.

36. Absent the false and misleading labeling and marketing complained of herein, Plaintiff would not have substantially overpaid for the Product but instead would have paid substantially less for the Product or would not have purchased the Product at all.

37. For these reasons, the Product was worth, if anything, significantly less than what Plaintiff paid for it.

38. Instead of receiving a product that had actual and substantiated healthful or other beneficial qualities, the Product Plaintiff received was one that did not provide the claimed benefits.

39. Plaintiff lost money as a result of Defendant's deceptive claims and practices in that she did not receive what she paid for when purchasing the Product.

⁷ van Loon L, van Rooijen J, Niesen B, Verhagen H, Saris W, Wagenmakers A. Effects of acute (-)-hydroxycitrate supplementation on substrate metabolism at rest and during exercise in humans. Am J Clin Nutr 2000, 72:1445-50.

40. Plaintiff altered her position to her detriment and suffered damages in an amount equal to the amount she paid for the Product.

CLASS ACTION ALLEGATIONS

41. Plaintiff brings this class action on behalf of herself and all others similarly situated as Class Members pursuant to Rule 23 of the Federal Rules of Civil Procedure.

42. Plaintiff seeks to represent a “National Class” defined as follows:

All United States residents who purchased Hi-Tech Pharmaceuticals Garcinia Cambogia Extract Capsules, excluding Defendant; Defendant’s officers, directors, and employees; Defendant’s subsidiaries; those who purchased the Product for the purpose of resale; the Judge to whom this case is assigned; and the immediate family of the Judge to whom this case is assigned.

43. Plaintiff seeks to represent a “Florida Subclass” defined as follows:

All Florida residents who purchased Hi-Tech Pharmaceuticals Garcinia Cambogia Extract Capsules, excluding Defendant; Defendant’s officers, directors, and employees; Defendant’s subsidiaries; those who purchased the Product for the purpose of resale; the Judge to whom this case is assigned; and the immediate family of the Judge to whom this case is assigned.

(As used throughout, the general term “Class” refers to the National Class and Florida Subclass, collectively.)

44. Plaintiff is a member of the National Class that she seeks to represent. Plaintiff is a United States resident who purchased the Product.

45. Plaintiff is a member of the Florida Subclass that she seeks to represent. Plaintiff is a Florida resident who purchased the Product.

46. The definition of the Class is narrowly tailored so as to include only identifiable Class Members who can be identified through Defendant’s wholesale and direct sales

information. The Class has no time limit because, as discussed below, the statute of limitations has been tolled by the Defendant's fraudulent concealment of the true nature of the Product purchased by Class Members.

47. The proposed Class is so numerous that the individual joinder of all its members, in this or any action, is impracticable. The exact number and identification of the members of the Class is presently unknown to Plaintiff, but it is believed to comprise hundreds or thousands of Florida residents and many thousands of United States residents, thereby making joinder impractical.

48. Common questions of fact and law exist as to all Class Members and predominate over questions affecting only individual members. These include, but are not limited to, the following:

- a. Whether the Product, when used by consumers in a normal and customary manner and/or in accordance with Defendant's suggested use, works as advertised, marketed, and conveyed to consumers;
- b. Whether, in the course of business, Defendant represented that the Product has characteristics, uses, benefits, or qualities that it does not have when used by consumers in a normal and customary manner and/or in accordance with Defendant's suggested use;
- c. Whether the claims Defendant made and is making regarding the Product are unfair or deceptive; specifically, whether the Product provides fat burning, weight loss and/or appetite suppression properties to the consumer.
- d. Whether Defendant knew at the time the consumer transactions took place that consumers would not receive the promised benefits of the Product that Defendant was claiming they would receive;
- e. Whether Defendant knowingly made misleading statements in connection with consumer transactions that consumers were likely to rely upon to their detriment;

- f. Whether Defendant knew or should have known that the representations and advertisements regarding the Product were unsubstantiated, false, and misleading;
- g. Whether Defendant has breached express warranties in the sale and marketing of the Product;
- h. Whether Defendant has been unjustly enriched by the sale of the Product to the Plaintiff and the Class;
- i. Whether the Plaintiff and the Class Members who purchased the Product suffered monetary damages, and, if so, what is the measure of those damages;
- j. Whether Plaintiff and the Class Members are entitled to an injunction, damages, restitution, equitable relief, and other relief deemed appropriate, and, if so, what are the amount and nature of such relief.

49. Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and all Class Members purchased the Product, which was designed, tested, manufactured, marketed, advertised, warranted, sold, and/or placed in the stream of commerce by Defendant and which could not perform anywhere near as advertised.

50. The factual bases of Defendant's misconduct are common to the Class Members and represent a common thread of deceptive advertising and breaches of warranty resulting in injury to all Class Members. Plaintiff is asserting the same rights, making the same claims, and seeking the same relief for herself and all Class Members. The central question of whether Defendant's representations are accurate and truthful is common to all Class members and predominates over all other questions, legal and factual, in this litigation.

51. Plaintiff is an adequate representative of the proposed Class because she is a Class Member and does not have interests that conflict with those of the other Class Members she seeks to represent. Plaintiff is represented by experienced and able counsel, who have litigated

numerous class-action lawsuits, and Plaintiff's counsel intend to prosecute this action vigorously for the benefit of the proposed Class. Plaintiff and her counsel will fairly and adequately protect the interests of the Class Members.

52. A class action is the superior available method for the efficient adjudication of this litigation because:

- a. The prosecution of separate actions by individual Class Members would create a foreseeable risk of inconsistent or varying adjudications, which would establish incompatible results and standards for Defendant;
- b. Adjudications with respect to individual Class Members would, as a practical matter, be dispositive of the interests of the other Class Members not parties to the individual adjudications or would substantially impair or impede their ability to protect their own separate interests;
- c. Class action treatment will avoid the waste and duplication inherent in potentially thousands of individual actions and conserve the resources of the courts; and
- d. The claims of the individual Class Members are relatively small compared to the burden and expense that would be required to litigate separately their individual claims against Defendant. It would thus be impracticable for Class Members to seek redress individually for Defendant's wrongful conduct. Even if Class Members could afford individual litigation, the court system could not: Individualized litigation creates a potential for inconsistent and/or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

53. A class action for injunctive and equitable relief pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure is also appropriate. Defendant acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole. Defendant's actions are generally applicable

to the Class as a whole, and Plaintiff, on behalf of the Class, seeks the damages and injunctive relief described herein. Moreover, Defendant's systemic policy and practices make declaratory relief with respect to the Class as a whole appropriate.

**ESTOPPEL FROM PLEADING AND TOLLING OF
APPLICABLE STATUTES OF LIMITATIONS**

54. Defendant is estopped from relying on any statutes of limitation or repose by virtue of its acts of fraudulent concealment, which include Defendant's knowing concealment of the Product's scientifically proven inefficacy, while continually marketing the Product as a highly effective appetite suppressant, fat burner, and weight loss supplement.

55. Defendant was and remains under a duty to Plaintiff and the Class to disclose the facts, as alleged herein. The duty to disclose the true facts arises because, as the manufacturer, Defendant is in a superior position to know the true character and quality of its products, and the Plaintiff and Class Members, in the exercise of reasonable diligence, could not have discovered these true facts independently prior to purchasing the Product.

56. The facts concealed and/or not disclosed to Plaintiff and the Class were material facts in that a reasonable person would have considered them important in deciding whether or not to purchase the Product.

57. Defendant intentionally concealed and/or failed to disclose the shortcomings of the Product for the purpose of inducing Plaintiff and Class Members to act thereon.

58. Plaintiff and Class Members justifiably acted upon, or relied upon to their detriment, the concealed and/or non-disclosed material facts, as evidenced by their purchase of the Product. Had they known of the true character and quality of the Product, Plaintiff and Class Members would not have purchased (or would have paid less for) the Product.

59. As a direct and proximate result of Defendant's misconduct, Plaintiff and Class Members have suffered actual damages. Defendant's conduct has been and is malicious, wanton, and/or reckless, and/or shows a reckless indifference to the interests and rights of others.

CAUSES OF ACTION

COUNT I

BREACH OF EXPRESS WARRANTY
(On Behalf of the National Class or, alternatively, the Florida Subclass)

60. Plaintiff, individually, and on behalf of all others similarly situated, adopts and incorporates by reference all allegations contained in paragraphs 1 through 59 as though fully set forth herein.

61. Plaintiff and Class Members each formed a contract with Defendant at the time they purchased the Product. The terms of the contract includes the promises and affirmations of fact made by Defendant on the label of Defendant's Product. Specifically, Defendant's branding, labels, and advertising constitute express warranties and are part of the basis of the bargain and a standard contract between purchasers—including Plaintiff and Class Members—and Defendant.

62. When she purchased the product, Plaintiff relied on these express warranties made by Defendant and the false and misleading claims contained therein.

63. In fact, Defendant failed to disclose the material fact that the Product does not provide weight loss, fat burning, or appetite suppressant properties to the consumer.

64. The Plaintiff and Class Members received a product that did not provide weight loss, fat burning, or appetite suppressant properties.

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

66. Alternatively, privity was established between Plaintiff/Class Members and Defendant/Defendant's agents, because Defendant was substantially if not completely responsible for the direct promotion and marketing of Defendant's Product to Plaintiff and the Class Members, which led to Plaintiff and Class Members' purchases of the Product. By virtue of this direct promotion and marketing, Defendant expressly warranted the Product's attributes and benefits to Plaintiff and Class Members.

67. Defendant breached the terms of the express warranty by failing to provide a product that provided the benefits promised.

68. Plaintiffs relied on Defendant's affirmations of the Product's specific benefits and superior performance as an appetite suppressant, fat burner, and weight loss supplement.

69. As a result of Defendant's breaches of its express warranties, Plaintiff and the Class have been damaged in an amount to be proven at trial.

70. By reason of the foregoing, Plaintiff, on behalf of herself and all others similarly situated, demands judgment against Defendant for damages, including compensatory, incidental and consequential damages (excepting damages for personal injuries) for herself and each Class Member.

71. All conditions precedent with respect to the filing of this claim have been fulfilled. Pursuant to Florida Statutes § 672.607(3)(a), Defendant has been given prior notice of this claim, by written notice sent via certified mail, received on August 25, 2014.

COUNT II

FRAUD BY UNIFORM WRITTEN MISREPRESENTATION AND OMISSION
(On Behalf of the National Class or, alternatively, the Florida Subclass)

72. Plaintiff, individually, and on behalf of all others similarly situated, adopts and incorporates by reference all allegations contained in paragraphs 1 through 59 as though fully set forth herein.

73. Defendant uniformly, and intentionally, willfully, falsely, and knowingly, misrepresented material facts in writing that relate to the character and quality of the Product. Specifically, Defendant intentionally and willfully misrepresented certain benefits and performance characteristics of the Product in various media advertising and point of sale materials disseminated or caused to be disseminated by Defendant.

74. Defendant also made intentional misrepresentations to Class Members who sought to have Defendant honor the warranty. Defendant represented to Class Members, by affirmative misrepresentations and omissions, that the Product provides benefits over and above what could actually be achieved, even though Defendant had no competent, credible, and reliable scientific evidence that is sufficient in quality and quantity, based on standards generally acceptable in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate its claims regarding the superior effectiveness of the Product.

75. Defendant's uniform written misrepresentations were made with the intent that the general public, including Plaintiff and Class, would rely upon them. Defendant's representations were made with knowledge of the falsity of such statements or in reckless disregard of the truth thereof and gave Defendant an unjust advantage and caused a loss to

Plaintiff and Class Members. The Defendant's claims of superior effectiveness are so central to the consumer's selection of the Product that the Defendant knew and intended that consumers would rely on those misrepresentations in determining whether to purchase the Product.

76. In actual and reasonable reliance upon Defendant's misrepresentations, Plaintiff and Class Members purchased the Product for their intended and reasonably foreseeable purposes. Plaintiff and Class Members were unaware of the true facts concerning the effectiveness of the Product, which were concealed from the Plaintiff and the Class Members. If Plaintiff and Class Members had been aware of these concealed facts, Plaintiff and Class members would not have purchased the Product. Plaintiff's and Class Members' reliance on the representations of the Defendant was reasonable.

77. Defendant misrepresented material facts with the intent to defraud Plaintiff and the Class Members. Plaintiff and the Class Members were unaware of the intent of Defendant and relied upon these representations in agreeing to purchase the Product.

78. In actual and reasonable reliance upon Defendant's misrepresentations, Plaintiff and Class Members purchased the Product and did not benefit from the Product as represented, the direct and proximate result of which was injury and harm to Plaintiff and Class Members because:

- a. they would not have purchased the Product if the true facts concerning its effectiveness had been known; and
- b. the Product did not (and cannot) perform as promised.

COUNT III

**VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR
TRADE PRACTICES ACT, FLORIDA STATUTES §§501.201 et seq.
(On Behalf of the Florida Subclass Only)**

79. Plaintiff, individually, and on behalf of all others similarly situated, adopts and incorporates by reference all allegations contained in paragraphs 1 through 59 as though fully set forth herein.

80. This action is brought to secure redress for the unlawful, deceptive, and unfair trade practices perpetrated by Defendant on behalf of Plaintiff and the Florida Subclass.

81. The Florida Deceptive and Unfair Trade Practices Act (FDUTPA), Florida Statutes § 502.201, *et seq.*, was enacted to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition and unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

82. Plaintiff and Florida Subclass Members are “consumers” and the transactions at issue in this complaint constitute “trade or commerce” as defined by Florida Statutes § 501.203 (7) and (8) respectively.

83. Defendant’s actions, as alleged herein, constitute affirmative acts or representations and include unconscionable commercial practices, deception, fraud, false pretense, false promise, and/or misrepresentation. Such actions are unlawful under the FDUTPA.

84. Defendant’s actions, as alleged herein, constitute knowing omissions and are therefore unlawful under the FDUTPA.

85. Plaintiff and the Florida Subclass reasonably and justifiably relied on Defendant's deceptive, unfair, fraudulent misrepresentations, as alleged herein. Prospective consumers, including Plaintiff and the Florida Subclass, were certain to be deceived because Defendant knowingly failed to disclose the source, affiliation, origin, characteristics, ingredients, standards, and/or quality of the Product. Defendant's business practices, in the advertising, marketing, packaging, labeling, and sale of the Product as a unique and superior product, justifying selection—as well as a substantial price premium—over alternative weight loss dietary supplements, are unconscionable, unfair, and deceptive acts or practices in violation of the FDUTPA.

86. As a direct and proximate result of Defendant's unlawful acts and omissions, Plaintiff and the Florida Subclass have suffered an ascertainable loss of money or property, in that they would not have purchased the Product but for Defendant's material omissions and affirmative acts or representations in connection with the marketing, advertising, and sale of the Product.

87. Plaintiff and the Class Members are entitled to compensatory damages, equitable and declaratory relief, costs, and reasonable attorney's fees.

COUNT IV

UNJUST ENRICHMENT

(On Behalf of the National Class or, alternatively, the Florida Subclass)

88. Plaintiff, individually, and on behalf of all others similarly situated, adopts and incorporates by reference all allegations contained in paragraphs 1 through 59 as though fully set forth herein.

89. Plaintiff and Class Members conferred a tangible economic benefit upon Defendant by purchasing the Product. Plaintiff and Class Members would have expected remuneration from Defendant at the time this benefit was conferred had they known that the Product did not perform as promised and was widely criticized by government officials and scientists.

90. As a result of Defendant's deceptive, fraudulent, and misleading packaging, advertising, marketing, and sales of the Product, Defendant was enriched, at the expense of the Plaintiff and each Class Member, through their payment of the Product's purchase price.

91. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from Plaintiff and Class Members in light of the fact that the Product purchased by Plaintiff and Class Members is not as Defendant purports it to be, as set forth more fully above.

92. It would thus be unjust and inequitable for Defendant to retain the benefit without restitution or disgorgement of monies paid to Defendant for the Product, or such other appropriate equitable remedy as appropriate, to the Plaintiff and other Class Members.

COUNT V

INJUNCTIVE RELIEF

(On Behalf of the National Class or, alternatively, the Florida Subclass)

93. Plaintiff, individually, and on behalf of all others similarly situated, adopts and incorporates by reference all allegations contained in paragraphs 1 through 59 as though fully set forth herein.

94. Defendant has refused to act on grounds generally applicable to Plaintiff and Class Members, thereby making final injunctive relief appropriate.

95. Defendant's conduct, as more fully set forth herein, both in the past and through the present day, has demonstrated a willful disregard for proven scientific facts in a clear attempt to sell a product that is not effective or is, at minimum, no more effective than other, less expensive products.

96. Defendant persists in its deceptive and unfair marketing and sales practices concerning the Product, to the detriment of consumers across the country.

97. If Defendant is allowed to continue with these practices, consumers—including Plaintiff and Class Members—will be irreparably harmed in that they do not have a plain, adequate, speedy, or complete remedy at law to address all of the wrongs alleged in this Complaint, unless injunctive relief is granted to stop Defendant's improper conduct concerning its marketing and sale of the Product.

98. Plaintiff and Class Members are therefore entitled to an injunction requiring Defendant to cease and undertake to remedy the effects of its unfair and deceptive practices relating to the marketing and sale of the Product, as alleged herein, including the effects thereof.

99. Plaintiff seeks a Court Order requiring Defendant to do the following:

(a) discontinue advertising, marketing, packaging, and otherwise representing its Product as being superior to conventional products;

(b) undertake an immediate public information campaign to inform the Plaintiff and Class Members of the truth about Defendant's Product and Defendant's prior practices relating thereto; and

(c) correct any erroneous impression the Plaintiff and Class Members may have derived concerning the nature, characteristics, or qualities of the Product, including without limitation, placing corrective advertising and providing written notice to the general public.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Maria Hostrup, individually and on behalf of other members of the Class described in this Complaint, respectfully requests that:

A. the Court certify the Class—the National Class and Florida Subclass—pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), and adjudge Plaintiff and her counsel to be an adequate representative thereof;

B. the Court enter an Order requiring Defendant to pay Plaintiff's and Class Members' economic, monetary, actual damages (including multiple damages) and consequential, compensatory, or statutory damages, whichever is greater; and, awarding Plaintiff and Class Members exemplary damages, to the extent permitted under the laws of each of the states implicated in this action;

C. the Court enter an Order awarding restitution and disgorgement of Defendant's revenues arising from its conduct alleged above, or any other appropriate remedy in equity, to Plaintiff and Class Members;

D. the Court enter an Order awarding injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful practices set forth above and directing Defendant to cease its deceptive and misleading marketing campaign concerning the Product and to disgorge all monies Defendant acquired by means of any act or practice declared by this Court to be wrongful;

E. the Court enter an Order awarding Plaintiff, individually and on behalf of the Class Members, their expenses and costs of suit, including reasonable attorneys' fees and reimbursement of reasonable expenses, to the extent provided by the law;

F. the Court enter an Order awarding to Plaintiff individually and on behalf of the Class Members, pre- and post-judgment interest, to the extent allowable; and

G. for such other and further relief as may be just and proper.

JURY DEMAND

Pursuant to Federal Rules of Civil Procedure 38(b), Plaintiff, Maria Hostrup, hereby demands a trial by jury of all claims in this Class Action Complaint so triable.

DATED: September 8, 2014

Respectfully submitted,

By: /s/Jordan L. Chaikin
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JS 44 (Rev. 12/12)

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 MARIA HOSTRUP, on behalf of herself and all others similarly situated **DEFENDANTS** HI-TECH PHARMACEUTICALS, INC.

(b) County of Residence of First Listed Plaintiff **Miami-Dade** County of Residence of First Listed Defendant **Gwinnett (GA)**
(EXCEPT IN U.S. PLAINTIFF CASES) (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) **PARKER WAICHMAN LLP, 27300 Riverview Center Blvd, Suite 103 Bonita Springs, FL 34134, Ph: (239) 390-1000**

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

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

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) **III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	PTF <input checked="" type="checkbox"/> 1 Citizen of This State	DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<input type="checkbox"/> 2 Citizen of Another State	<input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
		<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

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

V. ORIGIN (Place an "X" in One Box Only)
 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) (See Instructions): 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) (diversity); Fla. Stats. 501.201 et seq. (deceptive & unfair trade practices)
 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 9/8/14 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

JS 44 Reverse (Rev. 12/12)

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: