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CENTRAL DIST. OF CALIF.  
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PLEASE  
CONFORM  
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 Bio-Engineered Supplements &  
 11 Nutrition, Inc.

12 UNITED STATES DISTRICT COURT  
 13 CENTRAL DISTRICT OF CALIFORNIA

14 MARTIN CONDE, individually and on  
 behalf of all others similarly situated,

15 Plaintiffs,

16 vs.

17 BIO-ENGINEERED SUPPLEMENTS &  
 18 NUTRITION, INC.; GLANBIA PUBLIC  
 LTD. CO.; and DOES 1-10, Inclusive,

19 Defendants.  
 20  
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No.: **SACV14-00945 DOC (DFMx)**

[Removal from Superior Court of  
 California, County of Orange, Case No.  
 30-2014-00718438-CU-MT-CXC]

**DEFENDANT BIO-ENGINEERED  
 SUPPLEMENTS & NUTRITION,  
 INC.'S NOTICE OF REMOVAL OF  
 ACTION PURSUANT TO 28  
 UNITED STATES CODE SECTIONS  
 1332, 1441 AND 1446**

**[CLASS ACTION FAIRNESS ACT]**

[filed concurrently with the Declaration  
 of Ruth McGuinness]

Compl. Filed: April 23, 2014  
 Trial Date: Not Set

REED SMITH LLP  
 A limited liability partnership formed in the State of Delaware

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**  
 2 **CENTRAL DISTRICT OF CALIFORNIA:**

3 PLEASE TAKE NOTICE that Defendant Bio-Engineered Supplements &  
 4 Nutrition, Inc. ("BSN") hereby removes this action from the Superior Court of  
 5 California, County of Orange, to the United States District Court for the Central  
 6 District of California, pursuant to 28 United States Code Sections 1332, 1441 and  
 7 1446, as amended by the Class Action Fairness Act of 2005 ("CAFA") and as  
 8 authorized by 28 United States Code Section 1453. The removal of this action is  
 9 based on the following:

10  
 11 **FACTUAL AND PROCEDURAL BACKGROUND**

12 1. On April 23, 2014, Plaintiff Martin Conde ("Plaintiff") filed a complaint  
 13 for damages ("Complaint") against BSN and Glanbia Public Ltd. Co. (collectively,  
 14 "Defendants") in the Superior Court of the State of California for the County of  
 15 Orange, entitled *Martin Conde v. Bio-Engineered Supplements & Nutrition, Inc.,*  
 16 *Glanbia Public Ltd. Co., and Does 1-10, inclusive*, Case No. 30-2014-00718438  
 17 (hereinafter, the "State Court Action"). (True and correct copies of the Complaint,  
 18 Summons and Civil Case Cover Sheet are attached hereto as Exhibit 1.)

19 2. The Complaint purports to allege three causes of action for: (1) violation  
 20 of Bus. & Prof. Code §§ 17500 *et seq.*; (2) violation of Bus. & Prof. Code §§ 17200 *et*  
 21 *seq.*; and (3) violation of the Consumer Legal Remedies Act, Cal. Civil Code §§ 1750  
 22 *et seq.* on behalf of Plaintiff and all others similarly situated.

23 3. On May 22, 2014, counsel for BSN accepted service *via* e-mail of a copy  
 24 of the Complaint in the State Court Action. (A true and correct copy of the e-mail  
 25 sent to Plaintiff's counsel accepting service is attached hereto as Exhibit 2.)

26 4. The Complaint was the first pleading, notice, order, or other paper from  
 27 which it could be ascertained that this action is removable.  
 28



1 Code §§ 17200 *et seq.*; and (3) violation of the Consumer Legal Remedies Act, Cal.  
 2 Civil Code §§ 1750 *et seq.*

3 14. Plaintiff purportedly brings this class action on behalf of himself and all  
 4 others similarly situated, and seeks class certification of the following Class:

5 “All persons located within the United States who purchased Nitrix  
 6 during the four years preceding the filing of this complaint through the  
 7 date of final judgment in this action (the ‘Class’).”

8 *Id.*, ¶ 18.

9 15. The Complaint seeks damages and restitution on behalf of Plaintiff and  
 10 each member of the class, an injunction against BSN, pre-judgment and post-  
 11 judgment interest, and attorneys’ fees and costs. *Id.*, Prayer for Relief.

### 12 **STATUTORY REQUIREMENTS - CLASS ACTION FAIRNESS ACT**

13  
 14 16. This Court has jurisdiction over this action. Pursuant to 28 U.S.C.  
 15 Section 1332, as amended by CAFA, a putative “class action” commenced after  
 16 CAFA’s effective date may be removed to the United States District Court embracing  
 17 the state court where the action was filed if (a) any member of the putative class is a  
 18 citizen of a state different from any defendant, (b) there are at least one hundred  
 19 members of the putative class, and (c) the amount in controversy exceeds the sum or  
 20 value of \$5 million, exclusive of interest and costs. 28 U.S.C. § 1332(d). Complete  
 21 diversity among the parties is not required. 28 U.S.C. § 1332(d)(2)(A).

22 17. CAFA is applicable to the State Court Action because the Complaint was  
 23 filed after CAFA’s effective date. *See* Notes to 28 U.S.C. §§ 1332 & 1453 (“The  
 24 amendments made by this Act shall apply to any civil action commenced on or after  
 25 the date of enactment of this Act.” – *i.e.*, February 18, 2005) (citing Pub. L. 109-2, §  
 26 9, 119 Stat 14).

27 18. CAFA defines the term “class action” as, *inter alia*, any case “that is  
 28 removed to a district court of the United States that was originally filed under a State

statute or rule” similar to Rule 23. 28 U.S.C. § 1711(2). The term “class members” is defined as those “persons who fall within the definition of the proposed or certified class in a class action.” 28 U.S.C. § 1711(4).

19. Pursuant to the express language of CAFA, the amount in controversy is determined by aggregating the alleged damages with respect to the claims of the named plaintiff and the claims of the alleged class members. 28 U.S.C. § 1332(d)(6). Pursuant to this provision, Congress substantially changed the scope of federal jurisdiction so as to facilitate and favor removal of purported class actions to federal court. *See* 151 Cong. Rec. H730 (Comments of Mr. Sensenbrenner); S. Rep. No. 10914 at 42 (2005) (“[I]f a federal court is uncertain about whether ‘all matters in controversy’ in a purported class action ‘do not in the aggregate exceed the sum or value of \$5,000,000,’ the court should err in favor of exercising jurisdiction over the case.”).

20. The State Court Action is an alleged “class action” within the meaning of CAFA because the Complaint seeks certification of a putative nationwide class under California Code of Civil Procedure § 382 – *i.e.*, California’s analog to Rule 23 of the Federal Rules of Civil Procedure and a “rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. §§ 1332(d)(1)(B) and 1453(a). BSN denies, however, that this case can be certified as a class action and expressly reserves its rights to oppose any motion for class certification filed in this action.

21. Citizenship of the Parties. The requisite diversity of citizenship exists under 28 U.S.C. §§ 1332(d)(2) and (7). BSN is, and at all relevant times was, a corporation duly organized and existing under the laws of the State of Delaware with its principal place of business in Boca Raton, Florida. *See Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010) (a corporation’s “principal place of business” for purposes of determining its citizenship for federal diversity jurisdiction is ordinarily its corporate headquarters, or the location where the corporation’s activities are directed,

1 controlled, or coordinated (the corporate “nerve center”)); *see also* Declaration of  
 2 Ruth McGuinness (“McGuinness Decl.”), ¶ 3 and Complaint, ¶ 4. BSN is therefore a  
 3 citizen of the states of Delaware and Florida. 28 U.S.C. § 1332(c)(1). Glanbia Public  
 4 Ltd. Co. is an Irish public limited company with its principal place of business in  
 5 Kilkenny, Ireland and is therefore a citizen of Ireland. *Id.*, ¶ 4 and Complaint, ¶ 5. By  
 6 contrast, Plaintiff is a citizen of the State of California. *See* Complaint, ¶ 3. As such,  
 7 the minimal diversity requirement for CAFA is met – *i.e.*, any class member is a  
 8 citizen of a different state than any defendant. 28 U.S.C. § 1332(d)(2).

9       22. Members of the Putative Class. Based on the allegations of the  
 10 Complaint, Plaintiff is seeking to represent a putative class that consists of more than  
 11 one-hundred (100) members as required by CAFA. *See* 28 U.S.C. § 1332(d). The  
 12 putative class Plaintiff seeks to certify is a class of persons who purchased the Nitrix  
 13 product in the United States during the four years preceding the filing of the  
 14 complaint. Complaint, ¶ 18. According to the Complaint, “Plaintiff believes that the  
 15 total number of Class members is *at least in the tens of thousands.*” Complaint, ¶ 20  
 16 (emphasis added). In addition, based upon Plaintiff’s class definition, BSN’s records  
 17 for sales of the Nitrix products in the United States during the relevant time period  
 18 indicate that the putative class, as alleged by Plaintiff, includes over one hundred  
 19 (100) putative class members. *See* McGuinness Decl., ¶ 7. While BSN denies that  
 20 this case can be certified as a class action and expressly reserves its rights to oppose  
 21 any motion filed for class certification in this action, based on BSN’s investigation  
 22 and the allegations of the Complaint, the putative class that Plaintiff seeks to certify  
 23 certainly meets the CAFA putative class size requirement. *Id.*

24       23. Amount in Controversy. Under 28 U.S.C. § 1332(d), as added by CAFA,  
 25 the amount in controversy in a putative class action is determined by aggregating the  
 26 amount allegedly at issue on behalf of all members of the alleged class. 28 U.S.C. §  
 27 1332(d)(6). However, “if a federal court is uncertain about whether ‘all matters in  
 28 controversy’ in a purported class action ‘do not in the aggregate exceed the sum or



1 value of [the jurisdictional minimum],’ the court should err in favor of exercising  
2 jurisdiction over the case.” S. Rep. 109-14 at 42.

3 24. Here, the Complaint seeks relief of unlimited monetary value, including:  
4 (1) damages; (2) restitution of the monies improperly collected or withheld; (3) a  
5 permanent injunction; (4) reasonable attorneys’ fees; and (5) costs of the suit. *See*  
6 Complaint, Prayer for Relief.

7 25. For purposes of determining whether the jurisdictional minimum has  
8 been met, the amount in controversy is satisfied if “Plaintiff is seeking recovery from  
9 a pot that Defendant has shown *could* exceed \$5 million.” *Lewis v. Verizon*  
10 *Communications, Inc.*, 627 F. 3d 395, 400 (9th Cir. 2010) (“The amount in  
11 controversy is simply an estimate of the total amount in dispute, not a prospective  
12 assessment of defendant’s liability.”) (emphasis added). The party seeking removal  
13 bears the burden of showing, by a preponderance of the evidence, that the amount in  
14 controversy exceeds the statutory amount. *Id.* at 397. “This burden is not daunting, as  
15 courts recognize that under this standard, a removing defendant is *not* obligated to  
16 research, state, and prove the plaintiffs’ claims for damages.” *Heejin Lim v. Helio,*  
17 *LLC*, 2012 WL 359304, at \*2 (C.D. Cal. 2012) (citation omitted) (emphasis added).

18 26. The Complaint alleges that BSN sells a one month supply of the Nitrix  
19 product for \$59.99 and that BSN has “wrongfully taken millions of dollars from  
20 consumers nationwide.” Complaint, ¶ 16. Furthermore, while BSN denies that  
21 Plaintiff or any members of the putative class are entitled to relief in any form or  
22 amount, a review of BSN’s business records regarding sales of the Nitrix product from  
23 May 1, 2010 to May 31, 2014, in conjunction with the Complaint’s allegations of a  
24 putative class and the relief sought, indicates that the aggregate amount-in-controversy  
25 in this action is more than \$5 million, exclusive of interest and costs. *See* Complaint,  
26 ¶¶ 16, 18 and Prayer for Relief; McGuinness Decl., ¶ 8. Indeed, BSN estimates that  
27 there was not less than \$10 million dollars of the Nitrix product sold in the United  
28 States in the last four years. *Id.* Although BSN denies that Plaintiff or any member of

1 the putative class is entitled to recover in any amount and that Plaintiff or any member  
 2 of the putative class is entitled to the relief in the various forms and amounts sought,  
 3 the Complaint's allegations of a putative class and the relief sought put at issue an  
 4 amount-in-controversy that exceeds the CAFA \$5 million threshold.

5  
 6 **THE CAFA EXCEPTIONS DO NOT APPLY**

7 27. Jurisdiction in this case is mandatory, not discretionary, under CAFA  
 8 because it does not meet the standard for discretionary jurisdiction established in 28  
 9 U.S.C. § 1332(d)(3). *See* 28 U.S.C. § 1332(d)(3).

10 28. Although BSN does not bear the burden of showing that CAFA's  
 11 exceptions to jurisdiction do not apply, none of the "home state" or "local  
 12 controversy" exceptions described in 28 U.S.C. §§ 1332(d) are applicable here  
 13 because neither BSN nor Glanbia Public Ltd. Co. is a citizen of the state of California.  
 14 *See* McGuinness Decl., ¶¶ 3-4 and Complaint, ¶¶ 4-5; *see also Serrano v. 180*  
 15 *Connect, Inc.*, 478 F.3d 1018, 1019 (9th Cir. 2007) ("The structure of the statute and  
 16 the long-standing rule on proof of exceptions to removal dictate that the party seeking  
 17 remand bears the burden of proof as to any exception under CAFA."); 28 U.S.C. §  
 18 1332(d)(4)(A) and (B).

19 29. Furthermore, this action does not involve or solely involve (i) a claim  
 20 concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933  
 21 (15 U.S.C. § 78p(f)(3)) and § 28(f)(E) of the Securities Exchange Act of 1934 (15  
 22 U.S.C. § 78bb(f)(5)(E)); (ii) a claim that relates to the internal affairs or governance of  
 23 a corporation or other form of business enterprise and arises under or by virtue of the  
 24 laws of the State in which such corporation or business enterprise is incorporated or  
 25 organized; or (iii) a claim that relates to the rights, duties (including fiduciary duties),  
 26 and obligations relating to or created by or pursuant to any security (as defined under  
 27 § 2(a)(1) of the Securities Act of 1933 (15 U.S.C. § 77b(a)(1) and the regulations  
 28 issued thereunder). 28 U.S.C. §§ 1332(d)(9), 1453(d).



## VENUE

**COMPLIANCE WITH 28 U.S.C. § 1446**

///

1 DATED: June 18, 2014

REED SMITH LLP

2  
3  
4 By /s/ Kathy J. Huang  
Robert D. Phillips, Jr.  
Thomas A. Evans  
5 Kathy J. Huang  
6 Attorneys for Defendant  
Bio-Engineered Supplements & Nutrition,  
7 Inc.  
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REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

# EXHIBIT 1.

# EXHIBIT 1.

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**ELECTRONICALLY FILED**  
 Superior Court of California,  
 County of Orange  
**04/23/2014** at 01:43:21 PM  
 Clerk of the Superior Court  
 By Marlon Hernandez, Deputy Clerk

Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF ORANGE**

MARTIN CONDE, individually and on behalf of  
 all others similarly situated,

Plaintiff,

vs.

BIO-ENGINEERED SUPPLEMENTS &  
 NUTRITION, INC.; GLANBIA PUBLIC LTD.  
 CO.; and DOES 1-10, Inclusive,

Defendants.

Case No.: 30-2014-00718438-CU-MT-CXC

Judge Gail A. Andler

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff MARTIN CONDE ("Plaintiff"), individually and on behalf of all others similarly  
 situated, alleges the following on information and belief:

**I. INTRODUCTION**

1. BIO-ENGINEERED SUPPLEMENTS & NUTRITION, INC. and GLANBIA PUBLIC  
 LTD. CO. (hereinafter collectively referred to as "Defendant") manufactures, markets, and sells  
 "Nitrix" ("the Product") as an "Advanced Strength" "Dietary Supplement" that Defendant advertises  
 as containing Arginine Ethyl Esther. Indeed, Defendant lists Arginine Ethyl Esther as the second  
 ingredient in its "Triple Action Nitric Oxide Matrix" proprietary blend. In reality, a laboratory  
 analysis conducted utilizing state-of-the-art High Pressure Liquid Chromatography (HPLC) protocol  
 shows that the Product contains *no detectable amount* of Arginine Ethyl Esther. The Product therefore

1 cannot provide the results promised, cannot perform as Defendant claims, and does not contain the  
2 active ingredients promised.

3 2. Plaintiff brings this class action lawsuit to enjoin the ongoing deception of tens of  
4 thousands of California and United States consumers by Defendant, and to recover the money taken  
5 by this unlawful practice.

## 6 II. THE PARTIES

### 7 A. Plaintiff.

8 3. Plaintiff is a resident of California and purchased Defendant's Product in 2013.  
9 Plaintiff relied on Defendant's representations regarding the ingredients and efficacy of the Product, as  
10 detailed herein, and but for those representations, Plaintiff would not have purchased or paid as much  
11 for the Product.

### 12 B. Defendant.

13 4. Upon information and belief, Defendant Bio-Engineered Supplements & Nutrition, Inc.  
14 is a Delaware corporation that manufactures, markets, and sells the Product and does business across  
15 the United States.

16 5. Upon information and belief, Defendant Glanbia Public Ltd. Co. is an Irish public  
17 limited company, and the parent company of Defendant Bio-Engineered Supplements & Nutrition,  
18 Inc., that manufactures, markets, and sells the Product and does business across the United States.

19 6. The true names and capacities of the Defendants sued herein as DOES 1 through 10,  
20 inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names.  
21 Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged  
22 herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and  
23 capacities of the DOE Defendants when such identities become known.

24 7. At all relevant times, each and every Defendant was acting as an agent and/or  
25 employee of each of the other Defendants and was acting within the course and/or scope of said  
26 agency and/or employment with the full knowledge and consent of each of the Defendants. Each of  
27 the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each  
28 of the other Defendants (Bio-Engineered Supplements & Nutrition, Inc., Glanbia Public Ltd. Co., and

DOE Defendants will hereafter collectively be referred to as “Defendant”).

### III. JURISDICTION AND VENUE

8. This Court has jurisdiction over all causes of action asserted herein.

9. Venue is proper in this Court because Defendant knowingly engages in activities directed at consumers in this County and conducted wrongful conduct alleged herein against residents of this County.

10. Defendant and other out-of-state participants can be brought before this Court pursuant to California’s “long-arm” jurisdictional statute.

### IV. FACTS

11. Defendant manufactures, markets, and sells “Nitrix” as an “Advanced Strength” “Dietary Supplement” which Defendant advertises as containing Arginine Ethyl Esther, a chemical compound generally associated with vascularity, enhanced muscle building, and improved endurance.

12. Defendant claims that the Arginine Ethyl Ester in its Product, in conjunction with the other ingredients, is designed to support “Nitric Oxide (N.O.) Levels Already within the Normal Range,” “Muscle Fullness,” “Vascularity and Pumps,” “Muscle Strength, Power, Endurance and Work Capacity,” “Blood Flow to Muscle Tissue,” “Lean Muscle, Physical Performance and Recovery,” “Vaso-muscular Volumizing,” “Performance,” and “Recovery.”

13. Defendant specifically lists Arginine Ethyl Esther as part of a three-ingredient blend called, “Triple Action Nitric Oxide Matrix” – thereby indicating that not only are all three ingredients in the product for their alleged effect on nitric oxide, but are also present in the Product in an efficacious amount. In fact, the “Triple Action Nitric Oxide Matrix” is a 3 gram blend with L-Arginine AKG listed before Arginine Ethyl Esther, and L-Citrulline listed after it – thereby indicating all three products in this “Triple Action” blend must be there in an efficacious amount.

14. In reality, Defendant’s Product *contains no detectable amount* of Arginine Ethyl Esther, as confirmed by a recent laboratory analysis utilizing state-of-the-art High Pressure Liquid Chromatography (HPLC) protocol. Thus, not only is Defendant falsely claiming what ingredients are actually present in its Product, but all of Defendant’s claims based on the ingredient’s capabilities are completely false.



15. Defendant's misrepresentations regarding the Product's ingredients, and therefore the efficacy assertions of its Product were designed to, and did, lead Plaintiff and others similarly situated (collectively the "Class") to believe that the Product contained Arginine Ethyl Esther, and thus could cause the workout enhanced capabilities claimed. 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.

16. Defendant sells a *one-month* supply of the Product for approximately \$59.99 based on the preceding false advertising claims. As a result, Defendant has wrongfully taken millions of dollars from consumers nationwide.

17. Plaintiff brings this class action lawsuit to enjoin the ongoing deception of thousands of consumers by Defendant, and to recover the money taken by this unlawful practice.

## V. CLASS ACTION ALLEGATIONS

18. Plaintiff brings this class action for damages and other monetary relief on behalf of the following class:

All persons located within the United States who purchased Nitrix during the four years preceding the filing of this complaint through the date of final judgment in this action (the “Class”).

19. Excluded from the Class are governmental entities, Defendant, any entity in which Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns, and individuals bound by any prior settlement. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter, and any callers who did receive a warning that their calls were recorded.

20. The proposed Class is so numerous that individual joinder of all its members is impracticable. Due to the nature of the trade and commerce involved, Plaintiff believes that the total number of Class members is at least in the tens of thousands and members of the Class are numerous and geographically dispersed across the United States. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery. The disposition of the claims of the Class members in a single class

1 action will provide substantial benefits to all parties and to the Court.

2 21. There is a well-defined community of interest in the questions of law and fact involved  
3 affecting the plaintiff class and these common questions predominate over any questions that may  
4 affect individual Class members. Common questions of fact and law include, but are not limited to,  
5 the following:

- 6 a. Whether Defendant's Product contains *any* amount of Arginine Ethyl Esther;
- 7 b. Whether Defendant's Product contains Arginine Ethyl Esther at the quantity  
8 claimed;
- 9 c. Whether Defendant's Product can provide the results promised;
- 10 d. Whether Defendant's representations regarding the Product were false;
- 11 e. Whether Defendant knew that its representations were false;
- 12 f. Whether Defendant's conduct constitutes a violation of California's false  
13 advertising law (Cal. Bus. & Prof. Code §§ 17500, et seq.);
- 14 g. Whether Defendant's conduct constitutes an unfair, unlawful, and/or fraudulent  
15 business practice in violation of California's unfair competition law (Cal. Bus.  
16 & Prof. Code §§ 17200, et seq.);
- 17 h. Whether Defendant's conduct constitutes a violation of California's Consumer  
18 Legal Remedies Act (Cal. Civ. Code §§ 1750, et seq.);
- 19 h. Whether Plaintiff and Class members are entitled to compensatory damages,  
20 and if so, the nature of such damages;
- 21 i. Whether Plaintiff and Class members are entitled to restitutionary relief; and
- 22 j. Whether Plaintiff and Class members are entitled to injunctive relief.

23 22. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all  
24 members of the Class have been subjected to Defendant's common course of unlawful conduct as  
25 complained of herein and are entitled to the same statutory damages based on Defendant's wrongful  
26 conduct as alleged herein.

27 23. Plaintiff will fairly and adequately represent and protect the interests of the Class.  
28 Plaintiff has retained counsel with substantial experience in handling complex class action litigation.

1 Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class  
2 and have the financial resources to do so.

3 24. A class action is superior to other available methods for the fair and efficient  
4 adjudication of the present controversy. Individual joinder of all members of the class is  
5 impracticable. Even if individual class members had the resources to pursue individual litigation, it  
6 would be unduly burdensome to the courts in which the individual litigation would proceed. The  
7 conduct of this action as a class action conserves the resources of the parties and of the judicial system  
8 and protects the rights of the class members. Furthermore, for many, if not most, a class action is the  
9 only feasible mechanism that allows an opportunity for legal redress and justice.

## 10 VI. CAUSES OF ACTION

### 11 FIRST CAUSE OF ACTION

#### 12 VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW

##### 13 (CAL. BUS. & PROF. CODE §§ 17500, ET SEQ.)

##### 14 (By Plaintiff and on Behalf of the Class Against Defendants)

15 25. Plaintiff incorporates by this reference the allegations contained in the paragraphs  
16 above as if fully set forth herein.

17 26. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury  
18 in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff  
19 purchased the Product in reliance on Defendant's false labeling, ingredient claims, and marketing  
20 claims.

21 27. Defendant has engaged in false advertising as it has disseminated false and/or  
22 misleading labeling and representations about the Product and its ingredients.

23 28. Defendant knew or should have known by exercising reasonable care that its  
24 representations were false and/or misleading. During the Class Period, Defendant engaged in false  
25 advertising in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*, by misrepresenting in its labeling,  
26 advertising, and marketing of the Product to Plaintiff, Class members, and the consuming public, that  
27 its Product contained certain ingredients when it did not.

28 ///

1           29. By disseminating and publishing these statements in connection with the sale of the  
2 Product, Defendant has engaged in and continues to engage in false advertising in violation of Bus. &  
3 Prof. Code §§ 17500, *et seq.*

4           30. As a direct and proximate result of Defendant's conduct, as set forth herein, Defendant  
5 has received ill-gotten gains and/or profits, including but not limited to, money. Therefore, Defendant  
6 has been unjustly enriched. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff requests restitution  
7 and restitutionary disgorgement for all sums obtained in violation of Cal. Bus. & Prof. Code §§ 17500,  
8 *et seq.* Plaintiff seeks injunctive relief, restitution, and restitutionary disgorgement of Defendant's ill-  
9 gotten gains as specifically provided in Cal. Bus. & Prof. Code § 17535.

10           31. Plaintiff and Class members seek to enjoin Defendant from engaging in these wrongful  
11 practices, as alleged herein, in the future. There is no other adequate remedy at law and if an  
12 injunction is not ordered, Plaintiff and the Class will suffer irreparable harm and/or injury.

### 13                                   SECOND CAUSE OF ACTION

#### 14                           UNLAWFUL, FRAUDULENT & UNFAIR BUSINESS PRACTICES

#### 15                                   (CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*)

#### 16                                   (By Plaintiff and on Behalf of the Class Against Defendants)

17           32. Plaintiff incorporates by this reference the allegations contained in the paragraphs  
18 above as if fully set forth herein.

19           33. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered an  
20 injury in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically,  
21 Plaintiff purchased the Product in reliance on Defendant's ingredient claims and efficacy assertions  
22 based thereon. Plaintiff used the Product as directed, but it was not of the standard, quality and grade  
23 advertised.

24           34. Defendant's actions as alleged in this Complaint constitute an unfair or deceptive  
25 business practice within the meaning of California Business and Professions Code §§ 17200, *et seq.*,  
26 the Unfair Competition Law ("UCL"), in that Defendant's actions are unfair, unlawful, and fraudulent,  
27 and because Defendant has made unfair, deceptive, untrue, or misleading statements in advertising  
28

1 media, including the Internet, within the meaning of California Business and Professions Code §§  
2 17200, *et seq.*

3 35. Defendant knew or should have known by exercising reasonable care that its  
4 representations were false and/or misleading. During the Class Period, Defendant engaged in unfair,  
5 unlawful, and fraudulent business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*,  
6 by misrepresenting in its labeling, advertising, and marketing of the Product to Plaintiff, Class  
7 members, and the consuming public that, the Product contained the ingredients claimed and was  
8 effective based thereon.

9 36. Each of the aforementioned representations alleged in this Complaint was false and  
10 misleading because the Product did not contain ingredients Defendant explicitly labeled the Product as  
11 containing.

12 37. Defendant's business practices, as alleged herein, are unfair because they offend  
13 established public policy and/or are immoral, unethical, oppressive, unscrupulous, and/or substantially  
14 injurious to consumers in that consumers are misled by the claims made with respect to the Product as  
15 set forth herein.

16 38. Defendant's business practices, as alleged herein, are unlawful because they violate the  
17 False Advertising Law, as alleged in the preceding section.

18 39. Similarly, Defendant's business practices, as alleged herein, violate provisions of  
19 California's Sherman Food, Drug, and Cosmetic Law ("Sherman Law"), Cal. Health & Safety Code §  
20 109875 *et seq.*<sup>1</sup> The Sherman Law incorporates "[a]ll food labeling regulations and any amendments  
21 to those regulations adopted pursuant to the [FDCA]" as "the food labeling regulations of this state."  
22 *In re Farm Raised Salmon Cases*, 42 Cal. 4th 1077, 1087 (2008); *see also* Cal. Health & Safety Code  
23 § 110100(a). Defendant has violated the Sherman Law in the following respects:

24 ///

25  
26 <sup>1</sup> California's UCL prohibits any "unlawful, unfair or fraudulent business act or practice and unfair,  
27 deceptive, untrue or misleading advertising and any act prohibited by the [FAL]." In essence,  
28 "[s]ection 17200 borrows violations from other laws by making them independently actionable as  
unfair competitive practices ... [and] a practice may be deemed unfair even if not specifically  
proscribed by some other law." *Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.*, 20  
Cal.4th 163, 180 (1999).

- 1 a. Defendant has misbranded the Product in violation of Cal. Health & Safety  
2 Code § 110760: “It is unlawful for any person to manufacture, sell, deliver,  
3 hold, or offer for sale any food that is misbranded.” Under the Sherman Law,  
4 “Any food is misbranded if its labeling is false or misleading in any particular”  
5 (Cal. Health & Safety Code § 110660), or if “... its labeling does not conform  
6 with the requirements for nutrition labeling as set forth in Section 403(q) (21  
7 U.S.C. Sec. 343(q))<sup>2</sup> of the federal act and the regulations adopted pursuant  
8 thereto.” (Cal. Health & Safety Code § 110665.)
- 9 b. Defendant has also violated the Sherman Law by disseminating false  
10 advertising of a food or selling a food that is falsely advertised. (*See* Cal. Health  
11 & Safety Code § 110390 (“It is unlawful for any person to disseminate any  
12 false advertisement of any food . . . . An advertisement is false if it is false or  
13 misleading in any particular.”); Cal. Health & Safety Code § 110395 (“It is  
14 unlawful for any person to manufacture, sell, . . . or offer for sale any food . . .  
15 that is falsely advertised.”); Cal. Health & Safety Code § 110398 (“It is  
16 unlawful for any person to advertise any food . . . that is adulterated or  
17 misbranded.”))
- 18 c. Defendant has also violated several of the food labeling regulations  
19 promulgated by the Food & Drug Administration, which California’s Sherman  
20 Law incorporates, with respect to its Product. Cal. Health & Safety Code §  
21 110100(a). Namely, the label of a dietary supplement that is offered for sale is  
22 required to bear nutrition labeling in compliance with 21 C.F.R. § 101.36. *See*  
23 21 C.F.R. § 101.36(a). Defendant’s label for the Product is therefore required

24 <sup>2</sup> 21 U.S.C. § 343(q)(5)(F) provides, “A dietary supplement product . . . shall comply with the  
25 requirements of subparagraphs (1) and (2) in a manner which is appropriate for the product and which  
26 is specified in regulations of the Secretary which shall provide that—(i) nutrition information shall  
27 first list those dietary ingredients that are present in the product in a significant amount and for which a  
28 recommendation for daily consumption has been established by the Secretary, except that a dietary  
ingredient shall not be required to be listed if it is not present in a significant amount, and shall list any  
other dietary ingredient present and identified as having no such recommendation; (ii) the listing of  
dietary ingredients shall include the quantity of each such ingredient (or of a proprietary blend of such  
ingredients) per serving . . . .” 21 U.S.C. § 343(q)(5)(F)(i)-(ii).



1 to contain information on dietary ingredients that have a Reference Daily Intake  
 2 (RDI) or a Daily Reference Value (DRV) and their subcomponents as well as  
 3 information on dietary ingredients for which RDI's and DRV's have not been  
 4 established ("other dietary ingredients").<sup>3</sup> *Id.* §§ 101.36(b)(2), (b)(3). "The  
 5 quantitative amount by weight per serving of other dietary ingredients shall be  
 6 presented in the same manner as the corresponding information required" for  
 7 information on dietary ingredients that have a RDI or DRV or "shall be  
 8 presented immediately following the name of the other dietary ingredient." *Id.*  
 9 § 101.36(b)(3)(ii). The dietary ingredients that have a RDI or DRV are required  
 10 to be declared on a nutrition label "when they are present in a dietary  
 11 supplement in quantitative amounts by weight that exceed the amount that can  
 12 be declared as zero in nutrition labeling of foods." *Id.* § 101.36(b)(2).  
 13 According to 21 C.F.R. § 101.4(a), "Ingredients required to be declared on the  
 14 label or labeling of a food ... shall be listed by common or usual name **in**  
 15 **descending order of predominance by weight....**" Defendant has failed to  
 16 meet these requirements as it lists Arginine Ethyl Esther second in its three-  
 17 ingredient blend called "Triple Action Nitric Oxide Matrix" - indicating all  
 18 three ingredients are in the Product and that in this 3 gram blend, with L-  
 19 Arginine AKG before Arginine Ethyl Esther and L-Citrulline after it - Arginine  
 20 Ethyl Esther will be the second most predominant ingredient in the blend.  
 21 However, HPLC has revealed there is *no detectable amount* of Arginine Ethyl  
 22 Esther contained in the Product. Therefore, *all* ingredients in the proprietary  
 23 blend are falsely listed in violation of 21 C.F.R. §§ 101.4(a) and 101.36.

24 d. Defendant similarly violated the Sherman Law by failing to test its Product in  
 25 accordance with 21 C.F.R. § 111.70(e) to "ensure the quality of the dietary  
 26 supplement." This requirement must be read in conjunction with 21 C.F.R. §

27 <sup>3</sup> The dietary ingredients that have a RDI or a DRV and are to be declared are total calories, calories  
 28 from fat, total fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrate, dietary fiber, sugars,  
 protein, vitamin A, vitamin C, calcium and iron. 21 C.F.R. § 101.36(b)(2).

111.75(a) which demands that “Before you use a component, you must: (1)(i) Conduct at least one appropriate test or examination to verify the identity of any component that is a dietary ingredient....” Thus, even if ingredients are present in products in small amounts, they are nonetheless dietary ingredients and finished products which must be tested to verify their actual presence. As the HPLC test confirms, there is *no detectable amount* of Arginine Ethyl Esther in the Product and as such, either Defendant completely failed to perform the required tests and is *unaware* of the falsity of its labeling, or Defendant put its Product on the market claiming certain ingredients were present even though test results affirmatively confirmed they were not present in the Product.

- e. Defendant lastly violates the Sherman Law with respect to both 21 C.F.R. § 111.70(e) and 21 C.F.R. § 111.75(a), which are part of the Food & Drug Administration’s Good Manufacturing Practices requirements, by producing, marketing, and selling adulterated products. *See* 21 C.F.R. § 111 *et seq.* A supplement is “adulterated” if “it has been prepared, packed, or held under conditions that do not meet current good manufacturing practice regulations....” 21 U.S.C. § 342(g)(1). Further, if a supplement is adulterated, it is not a proper “dietary supplement” and cannot be labeled as such. Here, Defendant has labeled its Product as a “dietary supplement” thereby mandating that Defendant comport with the good manufacturing practice regulations. Defendant has blatantly and illegally failed to do so and thus, the Product is an adulterated substance according to the FDCA regulations.

40. Defendant’s business practices, as alleged herein, are fraudulent because they are likely to, and did, deceive customers—including Plaintiff and members of the Class—into believing that the Product has characteristics, ingredients, and benefits it does not have.

41. Defendant’s wrongful business practices constituted, and constitute, a continuing course of conduct of unfair competition since Defendant is marketing and selling its Product in a manner likely to deceive the public.

42. As a direct and proximate result of Defendant's wrongful business practices in violation of Business and Professions Code §§ 17200, *et seq.*, Plaintiff and members of the Class have suffered economic injury by losing money as a result of purchasing the Product. Plaintiff and members of the Class would not have purchased or would have paid less for the Product had they known that it was not as represented.

43. Pursuant to Business and Professions Code § 17203, Plaintiff and the Class seek an order of this Court enjoining Defendant from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law, including those set forth in the Complaint. Plaintiff and the Class also seek an order requiring Defendant to make full restitution of all moneys they wrongfully obtained from Plaintiff and the Class.

### **THIRD CAUSE OF ACTION**

### **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

### **(CAL. CIV. CODE §§ 1750, *ET SEQ.*)**

### **(By Plaintiff and on Behalf of the Class Against Defendants)**

44. Plaintiff incorporates by this reference the allegations contained in the paragraphs above as if fully set forth herein.

45. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered an injury in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff purchased the Product in reliance on Defendant's claims about the Product's ingredients, and the efficacy assertions based thereon. Plaintiff used the Product as directed, but it was ineffective because it lacked the ingredient, Arginine Ethyl Esther, advertised by Defendant.

46. Defendant has engaged in and continues to engage in business practices in violation of California Civil Code §§ 1750, *et seq.* (the "Consumers Legal Remedies Act") by making false representations concerning the Product's ingredients and capabilities based thereon. These business practices are misleading and/or likely to mislead consumers and should be enjoined.

47. Defendant has engaged in deceptive acts or practices intended to result in the sale of the Product in violation of Civil Code § 1770. Defendant knew and/or should have known that its representations of fact concerning the ingredients of the Product were material and likely to mislead

1 the public. Defendant affirmatively misrepresented that the Product contained certain ingredients and  
2 benefits which it did not have.

3 48. Defendant's conduct alleged herein violates the Consumers Legal Remedies Act,  
4 including but not limited to, the following provisions: (1) using deceptive representations in  
5 connection with goods or services in violation of Civil Code § 1770(a)(4); (2) representing that goods  
6 or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which  
7 they do not have in violation of Civil Code § 1770(a)(5); and/or (3) advertising goods or services with  
8 intent not to sell them as advertised in violation of Civil Code § 1770(a)(9). As a direct and proximate  
9 result of Defendant's conduct, as set forth herein, Defendant has received ill-gotten gains and/or  
10 profits, including but not limited to, money. Therefore, Defendant has been unjustly enriched.

11 49. There is no other adequate remedy at law, and Plaintiff and Class members will suffer  
12 irreparable harm unless Defendant's conduct is enjoined.

13 50. Plaintiff's counsel mailed to Defendant, by certified mail, return receipt requested, the  
14 written notice required by Civil Code Section 1782(a). A copy of this letter is attached hereto as  
15 Exhibit One.

16 51. The declaration of venue required by Civil Code § 1780(d) is concurrently filed  
17 herewith and is attached hereto as Exhibit Two.

18 52. Defendant's wrongful business practices constituted, and constitute, a continuing  
19 course of conduct in violation of the Consumer Legal Remedies Act since Defendant is still  
20 representing that its Product has ingredients, characteristics, uses, benefits, and abilities which are  
21 false and misleading, and have injured Plaintiff and the Class. Plaintiff and the Class therefore seek  
22 all relief available pursuant to California Civil Code Section 1780(a), including (1) any actual  
23 damages; (2) an order enjoining the methods, acts, or practices; (3) restitution; (4) punitive damages;  
24 and any other relief that the court deems proper.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff and members of the Class request that the Court enter an order or  
27 judgment against Defendants, and each of them as named in the future, as follows:

28 ///

- 1 1. For an order certifying the Class, appointing Plaintiff and his counsel to represent the
- 2 Class, and notice to the Class to be paid by Defendants;
- 3 2. For damages suffered by Plaintiff and Class members;
- 4 3. For restitution to Plaintiff and Class members of all monies wrongfully obtained by
- 5 Defendants;
- 6 4. For an injunction ordering Defendants to cease and desist from engaging in the unfair,
- 7 unlawful, and/or fraudulent practices alleged in the Complaint;
- 8 5. For both pre-judgment and post-judgment interest at the maximum allowable rate on
- 9 any amounts awarded;
- 10 6. For Plaintiff's costs of the proceedings herein;
- 11 7. For reasonable attorneys' fees as allowed by statute; and
- 12 8. For any and all such other and further relief that this Court may deem just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this  
15 lawsuit.

16 Dated: April 23, 2014

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18  
19  
20 By: \_\_\_\_\_

Scott J. Ferrell  
Attorney for Plaintiff and the Class

# EXHIBIT 1



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# NEWPORT TRIAL GROUP

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*A National Litigation Firm*

January 16, 2014

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Bio-Engineered Supplements and Nutrition, Inc.  
1603 Orrington Ave.  
Ste. 1000  
Evanston, IL 60201

*Re: Notification Pursuant to California Civil Code §1782 and UCC Notice  
Requirements*

To whom it may concern:

Please be advised that this demand letter is meant to comply with the requirements of California Civil Code §1782 and similar statutes of other states on behalf of our client and a nationwide class of consumers ("Plaintiffs"). This letter includes a summary of Plaintiffs' claims regarding the practices of Bio-Engineered Supplements and Nutrition, Inc. (hereafter referred to as "Defendant") that Plaintiffs allege are false and misleading and violate the Consumer Legal Remedies Act ("CLRA") and companion statutes in other states.

Defendant manufactures, markets, and sells "Nitrix" (the "Product") as containing Arginine Ethyl Ester. However, a laboratory test conducted via high pressure liquid chromatography (HPLC) protocol revealed that the Product contains no Arginine Ethyl Ester at all, much less at the quantitation limit stated on the Product's label. Indeed, the HPLC protocol revealed there was no detectable amount of Arginine Ethyl Ester contained in the Product.

As such, Defendant's Product has no ability to provide the results promised, cannot perform as Defendant claims, and does not contain the active ingredients promised. Defendant is aware the Product does not contain detectable amounts of the ingredient claimed and that the Product cannot cause the exaggerated results stated, and further, that there exists no proven results. Even knowing the foregoing, Defendant continues to market and sell the Product as before, claiming that the Arginine Ethyl Ester, in conjunction with the other ingredients, can support "Nitric Oxide (N.O.) Levels Already within the Normal Range," "Muscle Fullness," "Vascularity and Pumps," "Muscle Strength, Power, Endurance and Work Capacity," "Blood Flow to Muscle Tissue," "Lean Muscle, Physical Performance and Recovery," "Vaso-muscular Volumizing," "Performance," and "Recovery."

By misrepresenting its Product and its qualities, Defendant has violated California's consumer protection laws and companion statutes in other states. Specifically, in addition to violating Sections 17200 and 17500 et seq. of the California Business and Professions Code and

Bio-Engineered Supplements and Nutrition, Inc.  
January 16, 2014  
Page 2

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various common laws, Defendant has violated the Consumer Legal Remedies Act in at least the following respects:

- a. in violation of Civil Code § 1770(a)(5), Defendant has represented that its products have certain characteristics and/or benefits, when in fact they do not;
- b. in violation of Civil Code § 1770(a)(7), Defendant has represented that its products are of a particular standard, quality, or grade when they are in fact of another; and
- c. in violation of Civil Code § 1770(a)(9), Defendant has advertised its products with the intent not to sell them as advertised.

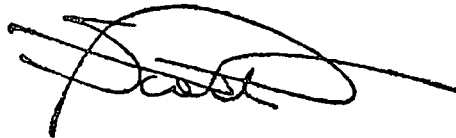
Pursuant to California Civil Code § 1780(a)(2), Plaintiffs request that:

- i. Defendant publicly discloses accurate statements regarding the true quality and ingredients of its Product, Defendant refunds to all customers the amounts that were wrongly charged, within the statutory allowable period for class actions, due to Defendant's improper practices; and
- ii. Defendant halts all unlawful practices described above.

Please advise me if you will accept service of the Complaint in this action in return for a standard extension of time to respond.

Very truly yours,

NEWPORT TRIAL GROUP  
A Professional Corporation



Scott J. Ferrell, Esq.

SJF/ka

# EXHIBIT 2

1 I, Martin Conde, 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 Orange County is a county in which  
8 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   
14 Martin Conde  
15  
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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Scott J. Ferrell, Bar No. 202091 NEWPORT TRIAL GROUP, APC 4100 Newport Place Drive, Ste. 800 Newport Beach, CA 92660 TELEPHONE NO.: (949) 706-6464 FAX NO.: (949) 706-6469 ATTORNEY FOR (Name): Plaintiff		<b>FOR COURT USE ONLY</b>  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of Orange  <b>04/23/2014 at 01:43:21 PM</b> Clerk of the Superior Court By Marlon Hernandez, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 West Santa Ana Blvd. MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Civil Complex Center		
CASE NAME: Conde v. Bio-Engineered Supplements & Nutrition, Inc., et. al.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		30-2014-00718438-CU-MT-CXC  JUDGE: Judge Gail A. Andler DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input checked="" type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties   | d. <input checked="" type="checkbox"/> Large number of witnesses   |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence   | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision   |
3. Remedies sought (check all that apply): a. ☒ monetary    b. ☒ nonmonetary; declaratory or injunctive relief    c. ☐ punitive
4. Number of causes of action (specify): Three
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 23, 2014

Scott J. Ferrell, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES****Auto Tort**

Auto (22)–Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice–Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

**Employment**

Wrongful Termination (36)  
Other Employment (15)

**Contract**

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case–Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

**Real Property**

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

**Unlawful Detainer**

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

**Judicial Review**

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ–Administrative Mandamus  
Writ–Mandamus on Limited Court Case Matter  
Writ–Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal–Labor Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

**Enforcement of Judgment**

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

**Miscellaneous Civil Petition**

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition



SUM-100

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

BIO-ENGINEERED SUPPLEMENTS & NUTRITION, INC.;  
GLANBIA PUBLIC LTD. CO.; and DOES 1-10, Inclusive

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MARTIN CONDE, individually and on behalf of all others similarly  
situated

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Orange

**04/23/2014** at 01:43:21 PM

Clerk of the Superior Court  
By Marlon Hernandez, Deputy Clerk

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court County of Orange

751 West Santa Ana Blvd., Santa Ana, CA 92701

CIVIL COMPLEX CENTER

30-2014-00718438-CU-MT-CXC

Judge Gail A. Andler

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Newport Trial Group, APC 4100 Newport Place, Suite 800, Newport Beach, CA 92660, (949) 706-6464

DATE: 04/23/2014  
(Fecha)

ALAN CARLSON, Clerk of the Court

(Secretario)

, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)). Marlon Hernandez

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☐ by personal delivery on (date):

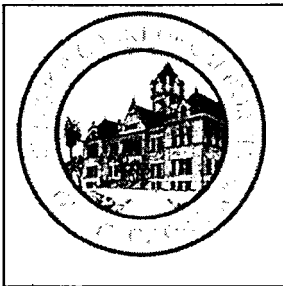


EXHIBIT 2.

EXHIBIT 2.

**Huang, Kathy J.**

---

**From:** Huang, Kathy J.  
**Sent:** Monday, June 09, 2014 11:14 AM  
**To:** Huang, Kathy J.  
**Subject:** FW: BSN/Glanbia

**From:** Scott Ferrell [<mailto:sferrell@trialnewport.com>]  
**Sent:** Wednesday, May 21, 2014 7:32 AM  
**To:** Phillips Jr., Robert D. (Bo)  
**Cc:** Briana Rice  
**Subject:** RE: BSN/Glanbia

Bo:

Confirmed on the service agreement and extension. I have asked Briana Rice of my office to e-mail you the filed copies of the Complaints.

I am going to be traveling internationally from Friday through May 30<sup>th</sup>, but I will have be on the grid. You can call me on my cell whenever its convenient.

Thanks,

**From:** Phillips Jr., Robert D. (Bo) [<mailto:RPhillips@ReedSmith.com>]  
**Sent:** Wednesday, May 21, 2014 7:02 AM  
**To:** Scott Ferrell  
**Subject:** BSN/Glanbia

Scott-

I am authorized to accept service of the two new complaints, effective May 22, subject to a 12 day extension in state court. So the arrangement would be that our removal date, should be decide to remove, would be June 21, and if we stay in state court, a responsive pleading would be due on July 3.

Let's plan to talk when I get back from Cincy on Friday, or if you are getting a jump on the long weekend, we can talk on Tuesday of next week when I will be in LA. I am not sure that we can resolve both of these matters before the 4<sup>th</sup> of July, but we can at least get the facts straight on test data and results and the label issues on the egg protein package. I will be speaking again with the client on Friday and hope to have their data and chronologies in hand by early next week.

Thanks.

-Bo

**Robert D. Phillips, Jr.**  
**(415) 659-5965 (San Francisco)**  
**(213) 457-8311 (Los Angeles)**  
[rphillips@reedsmith.com](mailto:rphillips@reedsmith.com)

[www.reedsmith.com](http://www.reedsmith.com)

**Reed Smith**LLP

101 Second Street  
Suite 1800  
San Francisco, California 94105  
(415) 543-8700  
(415) 391-8269 (fax)

355 South Grand Avenue  
Suite 2900  
Los Angeles, California 90071  
(213) 457-8000  
(213) 457-8080 (fax)

\* \* \*

This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

\* \* \*

To ensure compliance with Treasury Department regulations, we inform you that, unless otherwise indicated in writing, any U.S. Federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or applicable state and local provisions or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Disclaimer Version RS.US.20.10.00

EXHIBIT 3.

EXHIBIT 3.

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER

MAY 23 2014

MINUTE ORDER

DATE: 05/20/2014

TIME: 03:13:00 PM

DEPT: CX101

JUDICIAL OFFICER PRESIDING: Gail A. Andler

CLERK: Mary White

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: 30-2014-00718438-CU-MT-CXC CASE INIT.DATE: 04/23/2014

CASE TITLE: Conde vs. BIO-ENGINEERED SUPPLEMENTS & NUTRITION, INC.

CASE CATEGORY: Civil - Unlimited CASE TYPE: Mass Tort

EVENT ID/DOCUMENT ID: 71956984

EVENT TYPE: Chambers Work

---

APPEARANCES

There are no appearances by any party.

Each party who has not paid the Complex fee of \$ 1000 as required by Government Code section 70616 shall pay the fee to the Clerk of the Court within 10 calendar days from date of this minute order. Failure to pay required fees may result in the dismissal of complaint/cross-complaint or the striking of responsive pleadings and entry of default.

The Case Management Conference is scheduled for 07/15/2014 at 09:00 AM in Department CX101.

The Court finds that this case is exempt from the case disposition time goals imposed by California Rule of Court, rule 3.714 due to exceptional circumstances and estimates that the maximum time required to dispose of this case will exceed twenty-four months due to the following case evaluation factors of California Rules of Court, rules 3.715 and 3.400: Case is Complex.

Plaintiff shall, at least 5 court days before the hearing, file with the Court and serve on all parties of record or known to Plaintiff a brief, objective summary of the case, its procedural status, the contentions of the parties and any special considerations of which the Court should be aware. Other parties who think it necessary may also submit similar summaries three court days prior to the hearing. DO NOT use the Case Management Statement form used for non-complex cases (Judicial Council Form CM-110).

This case is subject to mandatory electronic filing pursuant to Superior Court Rules, County of Orange, Rule 352. Plaintiff shall give notice of the Status Conference and the electronic filing requirement to all parties of record or known to plaintiff, and shall attach a copy of this minute order.

Clerk to give notice to plaintiff and plaintiff to give notice to all other parties.

---

DATE: 05/20/2014

MINUTE ORDER

Page 1

DEPT: CX101

Calendar No.

CASE TITLE: Conde vs. BIO-ENGINEERED  
SUPPLEMENTS & NUTRITION, INC.

CASE NO: 30-2014-00718438-CU-MT-CXC

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CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over age 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on 20-MAY-2014, at Santa Ana, California. ALAN CARLSON /EXECUTIVE OFFICER & CLERK OF THE SUPERIOR COURT, BY: M.WHITE deputy.

NEWPORT TRIAL GROUP  
SCOTT J FERRELL  
RICHARD H HIKIDA  
VICTORIA C KNOWLES  
4100 NEWPROT PLACE DR, STE 800  
NEWPORT BEACH, CA 92660

---

DATE: 05/20/2014  
DEPT: CX101

MINUTE ORDER

Page 2  
Calendar No.

EXHIBIT 3, Page 36



EXHIBIT 4.

EXHIBIT 4.

## Case Summary:

Case Id:	30-2014-00718438-CU-MT-CXC
Case Title:	MARTIN CONDE VS. BIO-ENGINEERED SUPPLEMENTS & NUTRITION, INC.
Case Type:	MASS TORT
Filing Date:	04/23/2014
Category:	CIVIL - UNLIMITED

## Register Of Actions:

ROA	Docket	Filing Date	Filing Party	Document	Select
1	E-FILING TRANSACTION 1162072 RECEIVED ON 04/23/2014 04:38:50 PM.	04/24/2014		NV	
2	COMPLAINT FILED BY CONDE, MARTIN ON 04/23/2014	04/23/2014		19 pages	<input type="checkbox"/>
3	CIVIL CASE COVER SHEET FILED BY CONDE, MARTIN ON 04/23/2014	04/23/2014		2 pages	<input type="checkbox"/>
4	SUMMONS ISSUED AND FILED BY CONDE, MARTIN ON 04/23/2014	04/23/2014		1 pages	<input type="checkbox"/>
5	PAYMENT RECEIVED BY FOR 194 - COMPLAINT OR OTHER 1ST PAPER, 34 - COMPLEX CASE FEE - PLAINTIFF IN THE AMOUNT OF 1,435.00, TRANSACTION NUMBER 11582708 AND RECEIPT NUMBER 11406713.	04/24/2014		1 pages	<input type="checkbox"/>
6	CASE ASSIGNED TO JUDICIAL OFFICER ANDLER, GAIL ON 04/23/2014.	04/23/2014		1 pages	<input type="checkbox"/>
7	DESIGNATED CLASS ACTION ON 04/24/2014.	04/24/2014		NV	
8	CASE MANAGEMENT CONFERENCE SCHEDULED FOR 07/15/2014 AT 09:00:00 AM IN CX101 AT CIVIL COMPLEX CENTER.	05/20/2014		NV	
9	THE CASE MANAGEMENT CONFERENCE IS SCHEDULED FOR 07/15/2014 AT 09:00 AM IN DEPARTMENT CX101.	05/20/2014		NV	
10	MINUTES FINALIZED FOR CHAMBERS WORK 05/20/2014 03:13:00 PM.	05/20/2014		2 pages	<input type="checkbox"/>

## Participants:

Name	Type	Assoc	Start Date	End Date
GLANBIA PUBLIC LTD. CO.	DEFENDANT		04/24/2014	
MARTIN CONDE	PLAINTIFF		04/24/2014	
BIO-ENGINEERED SUPPLEMENTS & NUTRITION	DEFENDANT		04/24/2014	
NEWPORT TRIAL GROUP	ATTORNEY		04/24/2014	

## Hearings:

Description	Date	Time	Department	Judge
CASE MANAGEMENT CONFERENCE	07/15/2014	09:00	CX101	ANDLER

[Print this page](#)

**CONFORM**  
**AND RETURN**

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

**I. (a) PLAINTIFFS** ( Check box if you are representing yourself ☐ )

Martin Conde

**DEFENDANTS** ( Check box if you are representing yourself ☐ )

Bio-Engineered Supplements & Nutrition, Inc.; Glanbia Public Ltd. Co.

**(b) County of Residence of First Listed Plaintiff**

(EXCEPT IN U.S. PLAINTIFF CASES)

**County of Residence of First Listed Defendant**

(IN U.S. PLAINTIFF CASES ONLY)

**(c) Attorneys (Firm Name, Address and Telephone Number)** If you are representing yourself, provide the same information.

NEWPORT TRIAL GROUP / Scott J. Ferrell (196149) / Victoria C. Knowles (277231)  
4100 Newport Place Dr., Suite 800  
Newport Beach, CA 92660  
Tel.: 949.706.6464

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

REED SMITH LLP / Robert D. Phillips (82639) / Kathy J. Huang (240677)  
355 South Grand Ave., Suite 2900  
Los Angeles, CA 90071  
Tel: 213.457.8000

**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)

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

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

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

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

**CLASS ACTION under F.R.Cv.P. 23:** ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT:** \$ over \$5 million

**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 United States Code Sections 1332, 1441 and 1446. This is a putative class action for: (1) violation of Bus. & Prof. Code §§ 17500 et seq.; (2) violation of Bus. & Prof. Code §§ 17200 et seq.; and (3) violation of the Consumer Legal Remedies Act, Cal. Civil Code §§ 1750 et seq.

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

FOR OFFICE USE ONLY:

Case Number:

**SACV14-00945 DOC (DFMx)**

CV-71 (06/14)

CIVIL COVER SHEET

Page 1 of 3

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

**VIII. VENUE:** Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<b>QUESTION A: Was this case removed from state court?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	<b>STATE CASE WAS PENDING IN THE COUNTY OF:</b> <input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo <input checked="" type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino		<b>INITIAL DIVISION IN CACD IS:</b> Western Southern Eastern
<b>QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No  If "no," skip to Question C. If "yes," answer Question B.1, at right.	<b>B.1.</b> Do 50% or more of the defendants who reside in the district reside in Orange Co.?  <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Continue to Question B.2.  <b>B.2.</b> Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)  <i>check one of the boxes to the right</i> →	
<b>QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No  If "no," skip to Question D. If "yes," answer Question C.1, at right.	<b>C.1.</b> Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.?  <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Continue to Question C.2.  <b>C.2.</b> Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)  <i>check one of the boxes to the right</i> →	
<b>QUESTION D: Location of plaintiffs and defendants?</b>  Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)  Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<b>A.</b> Orange County  <input type="checkbox"/> <input type="checkbox"/>	<b>B.</b> Riverside or San Bernardino County  <input type="checkbox"/> <input type="checkbox"/>	<b>C.</b> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County  <input type="checkbox"/> <input type="checkbox"/>
<b>D.1. Is there at least one answer in Column A?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No  If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →	<b>D.2. Is there at least one answer in Column B?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No  If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓		
<b>QUESTION E: Initial Division?</b> Enter the initial division determined by Question A, B, C, or D above: →	<b>INITIAL DIVISION IN CACD</b> SOUTHERN		
<b>QUESTION F: Northern Counties?</b> Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

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

**IX(a). IDENTICAL CASES:** Has this action been previously filed in this court?

☒ NO

☐ YES

If yes, list case number(s): \_\_\_\_\_

**IX(b). RELATED CASES:** Is this case related (as defined below) to any cases previously filed in this court?

☒ NO

☐ YES

If yes, list case number(s): \_\_\_\_\_

**Civil cases are related when they:** (1) arise from the same or a closely related transaction, happening, or event; (2) call for determination of the same or substantially related or similar questions of law and fact; or (3) for other reasons would entail substantial duplication of labor if heard by different judges. That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

**X. SIGNATURE OF ATTORNEY  
(OR SELF-REPRESENTED LITIGANT):**

DATE: June 19, 2014

**Notice to Counsel/Parties:** The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

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))