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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DANIELLE DEMISON, on behalf of herself, all others similarly situated, and the general public,

Plaintiff,

v.

GSCM VENTURES, INC. d/b/a Pacific Naturals, a Nevada Corporation,

Defendant.

Case No: **'15CV1067 CAB JMA**

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF:

- **CALIFORNIA UNFAIR COMPETITION LAW;**
- **CALIFORNIA FALSE ADVERTISING LAW;**
- **CALIFORNIA CONSUMERS LEGAL REMEDIES ACT;**
- **FEDERAL MAGNUSON-MOSS WARRANTY ACT;**
- **CALIFORNIA SONG-BEVERLY CONSUMER WARRANTY ACT**

DEMAND FOR JURY TRIAL

Plaintiff Danielle Demison ("Plaintiff" or "Ms. Demison"), on behalf of herself, all others similarly situated, and the general public, by and through her undersigned counsel, hereby sues Defendant GSCM VENTURES, INC. d/b/a Pacific Naturals ("Defendant"), and alleges the following upon her own knowledge, or where she lacks personal knowledge, upon information and belief and the investigation of her counsel.

INTRODUCTION

1. Defendant falsely markets an over-the-counter ("OTC") homeopathic aphrodisiac drug product[1] called "Libido For Her" (the "Product") as a "female libido enhancer" purportedly having beneficial health and aphrodisiac properties to increase "Female Sexual Energy," "provid[e] the highest level of sexual desire," and "help[] women with hypoactive sexual desire disorder," despite none of the ingredients in the Product, individually or in combination, providing such benefits.

2. Plaintiff read, believed, and relied upon Defendant's claims when purchasing the Product during the Class Period defined herein, and was damaged as a result.

3. Plaintiff brings this action challenging Defendant's claims relating to Libido for Her on behalf of herself and all others similarly situated under California's Unfair Competition Law ("UCL"), False Advertising Law ("FAL"), Consumer Legal Remedies Act ("CLRA"), and Song-Beverly Consumer Warranty Act. Additionally, Plaintiff is asserting claims under the federal Magnuson-Moss Warranty Act ("MMWA").

4. Plaintiff seeks an order compelling Defendant to (1) cease marketing Libido For Her using the misleading tactics complained of herein, (2) conduct a corrective advertising campaign, (3) restore the amounts by which Defendant has been unjustly enriched, (4) destroy all misleading and deceptive materials, and for (5) damages and punitive damages as allowed by law.

[1] "Any product that bears labeling claims that it will arouse or increase sexual desire, or that it will increase sexual performance, is an aphrodisiac drug product." 21 C.F.R. § 310.528(a) (1989).

JURISDICTION & VENUE

5. The Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), the Class Action Fairness Act ("CAFA"), because the matter in controversy exceeds the sum or value of $5,000,000 exclusive of interest and costs and because more than two-thirds of the members of the class reside in states other than the state in which Defendant is a citizen. This Court also has original jurisdiction under the Magnuson-Moss Warranty Act pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 2310(d)(1)(b). This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

6. Defendant manufactures, markets, and sells the Product from and within California, including from and within this District, to consumers in every state in the United States. Personal jurisdiction is derived from the fact that Defendant is authorized to conduct business in this district; conducts substantial business within this district; maintains significant contacts within this district; has intentionally availed itself of the benefits, laws, and markets of this district through the promotion, marketing, distribution, and sale of the Product in this district; and is therefore subject to personal jurisdiction in this district.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant – an entity with the capacity to sue and be sued in its common name – is subject to this Court's personal jurisdiction under 28 U.S.C. § 1391(c)(2); and because Defendant's contacts would be sufficient to subject it to personal jurisdiction if this district were a separate state under 28 U.S.C. § 1391(d).

PARTIES

8. Plaintiff Danielle Demison is a resident of Bakersfield, California.

9. Defendant GSCM Ventures, Inc. d/b/a Pacific Naturals is a Nevada Corporation that maintains its principal place of business, corporate headquarters, and residence in Burbank, California. Defendant is registered to do business in California as entity number C2675287. Defendant GSCM Ventures, Inc. d/b/a Pacific Naturals is a leading manufacturer, distributor, and marketer of a variety of health and beauty products. Defendant is closely affiliated with, or does business under, a variety of alternate business

names, including but not limited to: GSCM Ventures, Inc.; GSCM Fulfillment; GSCM Collections; Pacific Naturals; Health Buy; Health Buy, LTD; Healthbuy.com; Market Health; Market Health, Inc.; Market Health Affiliate Network; and Natural Products Association.

10. Members of the class reside in California and each of the other 49 states of the United States, with two-thirds or more than two-thirds of the class residing outside the State of California.

FACTUAL ALLEGATIONS

False And Misleading Advertising Of Libido For Her

11. Defendant has manufactured, distributed, marketed, and sold the Libido For Her Product on a nation-wide basis, both online and at retail store locations. Libido For Her is available in a sublingual spray bottle and retails for approximately $30 to $40.

12. Defendant prominently labels its product under the name "Libido For Her" and utilizes a logo consisting of a silhouette outline of a nude female body, implying that the Product's ingredients will help a female user to increase libido despite that the Product fails to increase libido or sexual energy, and is not effective as an aphrodisiac.

13. Defendant claims that the Libido For Her Product increases and renews "Female Sexual Energy," "Temporarily relieves symptoms of low female sexual energy," "Promotes Sexual Vitality," "provid[es] the highest level of sexual desire," "surely enhance[s] [] sexual drive," and "helps women with hypoactive sexual desire disorder." Defendant further touts its Product as a "female desire enhancer" likened to a "wonder product"/"powerful product," "certified to be highly effective," "extremely effective," and "effective with more people."

Libido for Her is becoming more and more popular as women all over the world are keen in buying this special product that was manufactured out of natural plant extracts. As such, if you're having some problems when it comes to increasing your sexual urge, then it would be best for you to know where to buy Libido for Her. This product is available online, and a lot of women are already enjoying the positive effects of this product. It's best that you visit the product's official web site for you to learn more about this item, and the right deals that are being offered by the manufacturers.

Apart from providing the highest level of sexual desire, this product is also being sold at the least price possible. Check out the Libido for Her price, and you will surely enjoy positive effects at a very affordable price. The company can even provide a great deal of discount for those who will be purchasing in larger quantities. Studies show that there's usually trial and error when it comes to using various female libido enhancers, but when you use this item, you will never have to shift to other products ever. Take note that not all female libido enhancers contain the right natural ingredients; in fact, most of the products that are being sold nowadays are made of synthetic ingredients.

Choose the best female libido products that are being provided by the company, and you'll surely share the positive results that you've obtained with female friends who are now dealing with certain types of problems. This product effectively works to help you to develop a new level of sexual energy. Of course, if you are currently experiencing sloppiness in bed, your partner will surely be amazed in your new found strength. It does not matter what age level you are currently in, continuous decrease of sexual desire can be felt at any age so you have to promptly find the right remedy.

It's a great thing that this powerful product has been created to help you out. This product is different from other items which are currently being promoted. Various reviews will tell you that women find this homeopathic product extremely effective. It contains the following: all natural ingredients that will surely enhance your sexual drive: Chaste berry, European barberry, Damiana, Black lead, and St. Ignatius's bean. Chaste berry is known to boost the reproductive health of both males and females. European Barberry is a special type of shrub which works as a common natural dye. It can also help treat pains in the female reproductive system.

The damiana shrub contains flowers with the right fragrance that will provide a tonic and aphrodisiac effect that helps in treating dysmenorrheal problems or even amenorrhea. All these active ingredients that are found in Libido for Her play a crucial role in giving you back the sexual desire that you once had. Visit the official web site of the product, and buy your own female desire enhancer.

Libido for Her – Start Using It to Light up Your Relationship

Libido for Her is a product articulately derived from plants to help women with hypoactive sexual desire disorder. The product has been carefully produced in response to 35 to 45% of women who have had problems with their libido. Women who have used the product report its ability to rejuvenate their sex life and rekindle real love.

When people get into relationships, the initial love that made their stay loving, desirable, and enviable starts to doom due to many reasons, some of which they cannot control. For example, menopause, hormone replacement, and moodiness will bring down your sexual desire. You should not allow your relationship to break down due to reasons that can be easily controlled. Consider using Libido for Her to rejuvenate your relationship and further enjoy the following merits.

A lot of time in research was used before the product was certified to be highly effective. The ingredients used to make it are all plant based and therefore natural. For example, Agnus castus, commonly known as the Chaste Berry is used as a major ingredient. In medicine, the plant is used in alleviating reproductive disorders.

Other plants include, False Gromwell which belongs to the Borage family. Ignatia Amara, Berberis vulgaris, Damiana herb and Ignatia amara bean which are strong homeopathic plants. Purified water is also added during processing. Organic alcohol which is 20% v/v is also added to increase the effectiveness of the product. It is these ingredients and ability to avoid the harmful chemicals that has made the product to hold great popularity.

Unlike other medications, this great product is fully natural and therefore effective with more people. It does not cause burning effects, bleeding or moods that are exemplified when you use synthetic derived products. You are therefore assured of using it without fear of getting harmed.

The wonder product works extremely fast and you do not have to wait for long hours before you can enjoy its benefits. In addition, its ability to address moods, impacts of menopause, and low libido from stresses makes it possible for you to enjoy sex irrespective of the situation you are going through. It is therefore a source of love and a strong anchor to support relationship from breaking down.

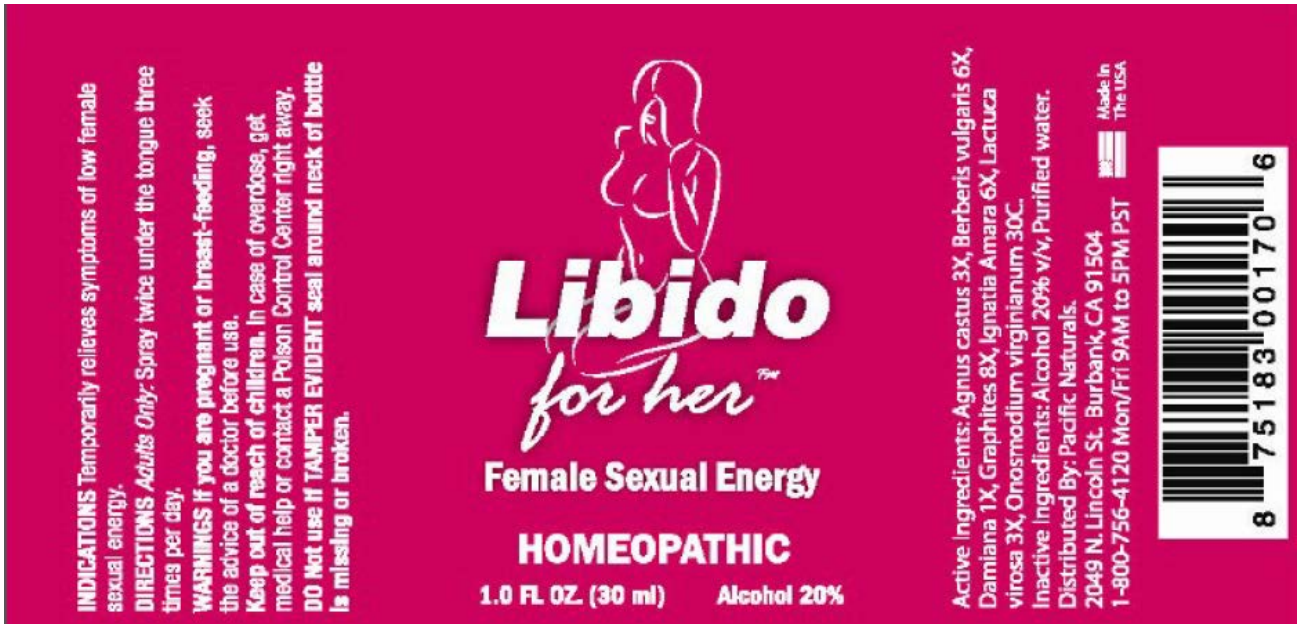
Researchers have continuously evaluated the effects of this product and concluded that it has no side effects because it is derived from natural products. Women who have used this product have further indicated that it is very safe. Do not hold back anymore, get the product from the point of purchase and experience that lovely moment you have always yearned for.

Libido for Her is available at an affordable price for all so that the large number of suffering women can be beneficiaries. Act now by getting the product and consequently avoid having problems with your relationship. Remember to eat a good balanced meal and do enough exercises for better results. With this product, you can be sure that having sex will no longer be a task that you would rather not do.

14. However, there are no reliable scientific studies showing that the Product, or any of its ingredients, are effective at increasing female sexual energy or female libido.

The Composition Of Libido For Her

15. Libido For Her consists of a blend of small amounts of plant extracts added to a solution of water and alcohol. The figure below shows the ingredients in Libido For Her are a blend of homeopathic dilutions including Agnus castus 3X, Berberis vulgaris 6X, Damiana 1X, Graphites 1X, Ignatia amara 6X, Lactuca virosa 3X, and Onosmodium verginianum 30C:



16. Libido For Her, by means of its ingredients, claims to increase "Female Sexual Energy" and suggests to consumers that it is effective as an aphrodisiac drug product.

17. None of the ingredients in Libido For Her, individually or in combination, however, increase female libido or are effective as an aphrodisiac.[2]

[2] "Labeling claims for aphrodisiacs for OTC use are either false, misleading, or unsupported by scientific data . . . . Based on evidence currently available, any OTC drug containing ingredients for use as an aphrodisiac cannot be generally recognized as safe and effective." 21. C.F.R. § 310.528(a) (1989).

Homeopathic Dilutions Are Not Effective At Increasing Libido And Have No Effect On The Human Body

18. Homeopathic medicine has been practiced in the United States since the early 19th century. Homeopathy is a type of complementary and alternative medicine based on two unconventional premises: (1) that substances that may cause illness or symptoms in a healthy person can, in very small doses, treat those symptoms in a person who is unwell ("like cures like"); and (2) that highly diluted preparations retain memory of the original substances.[3] The second premise, sometimes referred to as the "principle of dilution" or "law of minimum dose," posits that the lower the dose of a medication, the greater its effectiveness.[4] However, many homeopathic remedies are so diluted that no molecules of the original substance remain.[5] "[T]he laws of chemistry state that there is a limit to the dilution that can be made without losing the original substance altogether. This limit, which is related to Avogadro's number, corresponds to homeopathic potencies of 12C or 24X (1 part in 10^{24})."[6] A level of 12C dilution is the equivalent to a pinch of salt in both the North and South Atlantic Oceans.[7] A dilution of 200C, common in the homeopathic industry, is a ratio considerably greater than a single atom to all the atoms in the observable universe (which would be 40C).[8] In other words there would need to be 10 to the 320 more

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[3] NATIONAL HEALTH AND MEDICAL RESEARCH COUNCIL, AUSTRALIAN GOVERNMENT, NHMRC INFORMATION PAPER: EVIDENCE ON THE EFFECTIVENESS OF HOMEOPATHY FOR TREATING HEALTH CONDITIONS 7 (2015), *available at* www.nhmrc.gov.au/guidelines-publications/cam02 (last updated March 10, 2015).

[4] NATIONAL CENTER FOR COMPLIMENTARY AND INTEGRATIVE HEALTH, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, HOMEOPATHY: AN INTRODUCTION, *available at* http://nccih.nih.gov/health/homeopathy (last updated April 27, 2015).

[5] *Id.*

[6] STEPHEN BARRETT, M.D., HOMEOPATHY: THE ULTIMATE FAKE, *available at* http://www.quackwatch.com/01QuackeryRelatedTopics/homeo.html (last revised August 23, 2009).

[7] MACK LEMOUSE, HEALTH GUIDANCE, AN INTRODUCTION TO HOMEOPATHIC REMEDIES, *available at* http://www.healthguidance.org/entry/12178/1/An-Introduction-to-Homeopathic-Remedies.html (last visited on May 7, 2015).

[8] *Id.*

universes for there to be even a single molecule of the initial substance to be present in the final preparation.[9] Yet, the more dilute homeopathic remedies are in homeopathy, the more "potent" and deep acting they are considered to be.[10] Such an implausible concept naturally begs the question, if dilution makes a medicine more effective, would not water alone be more effective at curing all ailments, from the common cold to terminal cancer?

19. The potency of the ingredients in Libido For Her range from 1X (Damiana) to 30C (Onosmodium verginianum). A potency scale of IX equates to a ratio of 1:10. A potency scale of 30C, on the other hand, is equivalent to 1 millimeter diluted into a cube of water measuring approximately 106 light years on each side, or a sphere of water measuring approximately 131.1 light years in diameter.[11] Of course, this potency ratio exceeds Avogadro's number, and thus there can be no remnant of Onosmodium verginianum in Libido For Her, even if such an ingredient were an effective aphrodisiac.

20. In any case, there is little evidence to support homeopathy as an effective treatment for any specific condition.[13] In fact, the National Center for Complimentary and Integrative Health ("NIH") of the U.S. Department of Health and Human Services has noted that "[s]everal key concepts of homeopathy are inconsistent with fundamental concepts of chemistry and physics" and cites directly to a 2015 study conducted by the National Health and Medical Research Council in Australia, which refutes the effectiveness of homeopathy.[14]

21. In March 2015, the National Health and Medical Research Council in Australia ("NHMRC"), overseen by the Homeopathy Working Committee established by the NHMRC, concluded that "there are no health conditions for which there is reliable evidence

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[9] *Id.*
[10] *Id.*
[11] *See* http://en.wikipedia.org/wiki/Homeopathic_dilutions#Analogies.
[13] NATIONAL CENTER FOR COMPLIMENTARY AND INTEGRATIVE HEALTH, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, HOMEOPATHY: AN INTRODUCTION, *available at* http://nccih.nih.gov/health/homeopathy (last updated April 27, 2015).
[14] *Id.*

that homeopathy is effective."[15] The NHMRC's conclusion was based on a comprehensive assessment of evidence concerning the effectiveness of homeopathy for treating health conditions, including: an overview of published systematic reviews by an independent contractor; an independent evaluation of information provided by homeopathy interest groups and the public; and consideration of clinical practice guidelines and government reports on homeopathy published in other countries.[16] The assessment of the evidence used standardized, accepted methods for assessing the quality and reliability of evidence for whether or not a therapy is effective for treating health conditions.[17] Studies were only considered by NHMRC if they compared a group of people who were given homeopathic treatment with a similar group of people who were not given homeopathic treatment (controlled studies), also taking into account factors that could bias the results in favor of homeopathy, placebo, or anther treatment.[18] In total, 57 systematic reviews were identified that contained 176 individual studies.[19] Specifically, the NHMRC found :

> There was no reliable evidence from research in humans that homeopathy was effective for treating the range of health conditions considered: no good-quality, well-designed studies with enough participants for a meaningful result reported either that homeopathy caused greater health improvements than placebo, or caused health improvements equal to those of another treatment.
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> For some health conditions, studies reported that homeopathy was not more effective than placebo. For other health conditions, there were poor-quality studies that reported homeopathy was more effective than placebo, or as effective as another treatment. However, based on their limitations, those studies were not reliable for making conclusions about whether homeopathy was effective. For the remaining health conditions it was not possible to

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[15] NATIONAL HEALTH AND MEDICAL RESEARCH COUNCIL, AUSTRALIAN GOVERNMENT, NHMRC INFORMATION PAPER: EVIDENCE ON THE EFFECTIVENESS OF HOMEOPATHY FOR TREATING HEALTH CONDITIONS 6 (2015), *available at* www.nhmrc.gov.au/guidelines-publications/cam02 (last updated March 10, 2015).

[16] *Id.* at 5.

[17] *Id.*

[18] *Id.* at 5-6.

[19] *Id.* at 5.

> make any conclusion about whether homeopathy was effective or not, because there was not enough evidence.[20]

22. Homeopathic remedies are not marketed and sold in the United States in the same manner as when they first originated, approximately 200 years ago. When homeopathic drugs first originated, people would typically consult with a licensed homeopathic practitioner, who would compound her or her own homeopathic remedy, or provide a prescription to the patient.[21]

23. Historically, homeopathic drug products have borne little or no labeling for the consumer.[22] Instead, homeopathic remedies were primarily marketed to licensed homeopathic practitioners.[23]

24. There was good reason for this historical practice: Homeopathic drugs are intended to be "'individualized' or tailored to each person – it is not uncommon for different people with the same condition to receive different treatments."[24]

25. Now, however, one-size-fits-all, combination homeopathic remedies are marketed directly to consumers in over-the-counter ("OTC") aisles of major retail stores.[25]

26. "Today the homeopathic drug market has grown to become a multimillion dollar industry in the United States, with a significant increase shown in the importation and domestic marketing of homeopathic drug products."[26]

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[20] *Id.* at 6.

[21] FOOD AND DRUG ADMINISTRATION COMPLIANCE POLICY GUIDE ("CPG") § 400.400: CONDITIONS UNDER WHICH HOMEOPATHIC DUGS MAY BE MARKETED, *available at* http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074360.htm (last revised March 20, 2015).

[22] *Id.*

[23] *Id.*

[24] NATIONAL CENTER FOR COMPLIMENTARY AND INTEGRATIVE HEALTH, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, HOMEOPATHY: AN INTRODUCTION, *available at* http://nccih.nih.gov/health/homeopathy (last updated April 27, 2015).

[25] FOOD AND DRUG ADMINISTRATION COMPLIANCE POLICY GUIDE ("CPG") § 400.400: CONDITIONS UNDER WHICH HOMEOPATHIC DUGS MAY BE MARKETED, *available at* http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074360.htm (last revised March 20, 2015).

27. Health care costs in the United States reached over $2.9 trillion in 2013, with over $271 billion spent on prescription drugs and another $55.9 billion spent on other non-durable medical products including over-the-counter medicines.[27] But unless drug manufacturers disclose the complete truth to consumers, consumers are unable to make informed decisions about where to spend their limited healthcare dollars.

28. Most consumers who purchase homeopathic drugs in the OTC aisles of retail stores are unaware of homeopathic dilution principles, and are merely seeking a natural alternative to prescription or other OTC non-homeopathic (i.e., allopathic) drugs. In fact, "[m]ost consumers have no idea what homeopathy is and may assume that these products are dietary supplements or even conventional drugs."[28]

29. Accordingly, the homeopathic drug industry strives to market its wares as natural, safe, and effective alternatives to prescription and non-homeopathic OTC drugs. But this latter category of drugs, which are all allopathic, have undergone rigorous scrutiny by the FDA and its appointed scientific committees. In contrast, homeopathic drugs undergo no FDA approval of efficacy, safety, or labeling claims.[29]

30. Indeed, the FDA, itself, has publicly stated it is aware of no scientific evidence that homeopathy is effective.[30]

31. Homeopathic drugs must comply with the minimal requirements set forth in the FDA's Compliance Policy Guides, specifically CPG § 400.400.[31] But the FDA has

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[26] *Id.*

[27] NATIONAL HEALTH EXPENDITURES 2013 HIGHLIGHTS, *available at* http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/downloads/highlights.pdf (last visited May 11, 2015).

[28] Testimony of Adriane Fugh-Berman, M.D., *Homeopathic Regulation: Evaluating FDA's Regulatory Framework After a Quarter-Century* (April 20, 2015), *available at* http://www.fda.gov/downloads/Drugs/NewsEvents/UCM443490.pdf (last visited May 11, 2015).

[29] FDA ONLINE LABEL REPOSITORY, U.S. FOOD AND DRUG ADMINISTRATION, *available at* http://labels.fda.gov/ (last visited May 11, 2015).

[30] *Id.*

cautioned that compliance with the CPG, "the HPUS, USP, or NF does not establish that [a homeopathic drug] has been shown by appropriate means to be safe, effective, and not misbranded for its intended use."[32]

32. Moreover, Libido For Her contains **Agnus Castus 3X.** The inclusion of this ingredient is unlawful in that it is not included as an official monograph in the Homeopathic Pharmacopoeia of the United States ("HPUS"). To be compliant with the FDA's Conditions Under Which Homeopathic Drugs May be Marketed, CPG § 400.400, the over the counter homeopathic medicine must only include ingredients that are listed in the HPUS.[33] Because the Product is labeled as "homeopathic," but includes an ingredient that is not listed in the HPUS, the drug is not "homeopathic," and it further misleads consumers into believing they are purchasing a lawful and compliant over-the-counter drug, when in fact, they are not.

Libido For Her Is A Misbranded Drug

33. The labeling described above, including but not limited to "Libido For Her," and "Female Sexual Energy" alone and in context with other labeling claims and packaging graphics, evidence the Product's intended use as an aphrodisiac, to arouse or increase sexual desire or energy, and/or improve sexual performance.

34. Pursuant to Title 21 of the Code of Federal Regulations, Part 310.528 (21 C.F.R. § 310.528) any OTC drug product that is labeled, represented, or promoted for use as an aphrodisiac, like Libido For Her, is regarded as a "new drug" within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act ("FDCA"), located at 21 U.S.C. § 355(p).

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[31] *See* FOOD AND DRUG ADMINISTRATION COMPLIANCE POLICY GUIDE ("CPG") § 400.400: CONDITIONS UNDER WHICH HOMEOPATHIC DUGS MAY BE MARKETED, *available at* http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm074360.htm (last revised March 20, 2015).

[32] *Id.*

[33] *Id.*

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

36. Defendant's Product violates Section 505(a) of the FDCA since the adequacy of the labeled directions for its "aphrodisiac" uses has not been approved by the FDA prior to the Products being marketed to the public (*see* 21 U.S.C. § 355(a)).[34] Accordingly, the Product is misbranded under section 502(f)(1) of the FDCA (located at 21 U.S.C. § 352). The FDA has sent warning letters to manufactures of other aphrodisiac drug products that are similar to the Libido For Her Product. For example, the manufacturer of a product called "Doctor's Lotion" that was a purported "stimulus enhancing" lotion received a warning letter from the FDA on December 14, 2000 notifying it that the product was a misbranded aphrodisiac drug product. A true and correct copy of this warning letter is attached hereto as **Exhibit 1**.

37. California Health and Safety Code, Division 104, Part 5, contains the Sherman, Food, Drug, and Cosmetic Law ("Sherman Law"), located at Cal. Health & Safety Code §§ 109875-111915. The Sherman Law imposes identical requirements to the federal FDCA: "All nonprescription drug regulations and regulations for new drug applications under the FDCA are the regulations of this State." Cal. Health & Safety Code §§ 110110-110111, 110115. The Sherman Law also defines a "drug" as "any article other than food, that is used or intended to affect the structure or any function of the body of human beings or any other animal." Cal. Health & Safety Code § 109925(c).

38. The Sherman Law is explicitly authorized by the FDCA. 21 U.S.C. § 343-1.

39. Plaintiff and members of the Class would not have purchased Libido For Her if it were known to them that the Product is misbranded pursuant to FDA regulations.

[34] In addition to proving effectiveness, the manufacturer of a new drug must also prove the drug's safety, sufficient to meet FDA standards. 21 U.S.C. § 355(d).

RELIANCE AND INJURY

40. Plaintiff Danielle Demison purchased the Libido For Her Product on at least one occasion in or around April of 2011 from a store located on Western Avenue in the City of Los Angeles, California for approximately $30.

41. When purchasing Libido For Her, Ms. Demison and the Class were seeking a product that had the qualities described on the Product's label, namely, a high quality and effective aphrodisiac that enhanced female libido.

42. When deciding to purchase Libido For Her, Plaintiff read and relied on the following deceptive claims contained on the packaging of Libido for Her. These statements were made by Defendant directly on the packaging of Libido For Her at the time Plaintiff purchased Libido for Her:

a. the Product's name, "Libido For Her"

b. "Female Sexual Energy"

c. "Temporarily relieves symptoms of low female sexual energy"

43. Based on these representations, Plaintiff believed Libido For Her had powerful aphrodisiac qualities and would improve her sexual power and performance.

44. Plaintiff believed Libido For Her had the qualities she sought based on these deceptive labeling claims, but the Product was actually unsatisfactory to Plaintiff for the reasons described herein, *i.e.*, the Product did not deliver the purported benefits; there is no evidence the ingredients in Libido For Her could provide the claimed benefits; the active ingredients in Libido For Her were so diluted that even if they did work, there would effectively be little or no active ingredients remaining in the Product; etc.

45. Libido For Her costs more than similar products without misleading labeling, and would have cost less absent the false and misleading statements.

46. Plaintiff paid more for Libido For Her, and would only have been willing to pay less or unwilling to purchase the Product at all, absent the false and misleading labeling complained of herein. Plaintiff would not have purchased Libido For Her absent these claims and advertisements.

47. For these reasons, Libido For Her was worth less than what Plaintiff and the Class paid for it.

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

49. Plaintiff and the Class lost money as a result of Defendant's deceptive claims and practices in that they did not receive what they paid for when purchasing Libido For Her.

50. Plaintiff and the Class altered their position to their detriment and suffered damages in an amount equal to the amount they paid for the Product.

51. The senior officers and directors of Defendant allowed Libido For Her to be sold with full knowledge or reckless disregard that the challenged claims are fraudulent, unlawful, and misleading.

EXCEPTIONS TO THE STATUTE OF LIMITATIONS

52. **Delayed discovery**. Plaintiff is a layperson, lacked the knowledge and experience to understand how the Product's labels were deceptive or false, and information regarding the false or deceptive advertising was solely within Defendant's possession and control. Thus, the delayed discovery exception postpones accrual of the limitations period for all Members of the putative Class.

53. **Fraudulent concealment**. Additionally, or in the alternative, Defendant was both constructively and actually aware that the Product was ineffective for its advertised use. Nevertheless, Defendant continued to sell the Libido For Her Product commencing in at least early 2009. Therefore, at all relevant times Defendant had a duty to inform consumers that the Product was not effective at providing relief for the advertised symptoms, but Defendant knowingly concealed that fact from Members of the putative Class herein. Accordingly, the fraudulent concealment exception tolls the statute of limitations on all claims herein.

54. **Continuing violation**. Additionally, or in the alternative, because Defendant's misrepresentations and deception continues up to the present, the continuing violation exception tolls all applicable statues of limitations for all Members of the putative Class until Defendant's unlawful advertising and labeling is corrected.

CLASS ACTION ALLEGATIONS

55. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff seeks to represent a Class comprised of all persons in the United States (excluding officers, directors, and employees of Defendant) who purchased Libido For Her primarily for personal, family, or household use, and not for resale within the four years prior to the filing of the current Complaint.

56. The Members in the proposed Class are so numerous that individual joinder of all Members is impracticable, and the disposition of the claims of all Class Members in a single action will provide substantial benefits to the parties and Court.

57. Questions of law and fact common to Plaintiff and the Class include:

a. Whether Defendant contributed to, committed, and/or is responsible for the conduct alleged herein;

b. Whether Defendant's conduct constitutes the violations of law alleged herein;

c. Whether Defendant acted willfully, recklessly, negligently, or with gross negligence in the violations of law alleged herein; and

d. Whether Class Members are entitled to compensatory, injunctive, and other equitable relief;

e. The proper amount of reasonable litigation expenses and attorneys' fees.

58. Plaintiff's claims are typical of Class Members' claims in that they are based on the same underlying facts, events, and circumstances relating to Defendant's conduct.

59. Absent Defendant's deceptive claims, Plaintiff and the Class Members would not have purchased Libido For Her.

60. Plaintiff will fairly and adequate represent and protect the interests of the Class, has no interests incompatible with the interests of the Class, and has retained counsel competent and experienced in class action litigation.

61. The Class is sufficiently numerous, as the Class contain at least hundreds of thousands of members who purchased Libido For Her across the United States.

62. Class treatment is superior to other options for resolution of the controversy because the relief sought for each Class Member is small such that, absent representative litigation, it would be infeasible for class members to redress the wrongs done to them.

63. Questions of law and fact common to the Class predominate over any questions affecting only individual Class Members.

64. Defendant has acted on ground applicable to the Class, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

65. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).

FIRST CAUSE OF ACTION

Violations of the Unfair Competition Law, Unlawful Prong
Cal. Bus. & Prof. Code § 17200 *et seq.*

66. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as set forth in full herein.

67. California Business and Professions Code § 17200 prohibits any "unlawful, unfair or fraudulent business act or practice."

68. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendant as alleged herein constitute "unlawful" business acts and practices in that Defendant's conduct violates the False Advertising Law ("FAL"), the Consumer Legal Remedies Act ("CLRA"), and the Magnuson Moss Warranty Act ("MMWA").

69. Defendant's conduct is further "unlawful" because it violates the FDCA and its implementing regulations in the following ways:

a. Defendant's deceptive statements violate 21 U.S.C. §§ 343(a) and 352, which deem a food or drug (including nutritional supplements) misbranded when the label contains a statement that is "false or misleading in any particular";

b. Defendant's deceptive statements violate 21 C.F.R. § 101.14(b)(3)(i), which mandates "substances" in dietary supplements consumed must contribute and retain "nutritive value," as defined under 21 C.F.R. § 101.14(a)(2)(3) when consumed at levels necessary to justify a claim;

c. Defendant's deceptive statements are *per se* false and misleading because the FDA and the National Center for Complimentary and Integrative Health of the U.S. Department of Health and Human Services has ruled there is a lack of adequate data to establish general recognition of the safety and effectiveness of any of the ingredients in Libido For Her, or any other ingredient, for OTC use as an aphrodisiac; and labeling claims for aphrodisiacs for OTC use are "either false, misleading, or unsupported by scientific data." 21 C.F.R. § 310.528(a);

d. Defendant's deceptive statements violate 21 C.F.R § 310.528(b), which mandates that any OTC product that is labeled, represented, or promoted for use as an aphrodisiac, like Libido For Her, is regarded as a "new drug" within the meaning of 21 U.S.C. § 355(p), but Defendant does not have new drug approval for Libido For Her or its labeling, as required under the FDCA and its implementing regulations. Accordingly, Defendant's Product is misbranded under section 502(f)(1) of the FDCA;

e. Defendant's Product violates 21 C.F.R. § 101.93 because the Product's labeling leads reasonable consumers to believe that the Product can treat or cure diseases such as low libido or female hypoactive sexual desire disorder .

f. Defendant's Product also violates the FDCA because, as an unapproved new drug and aphrodisiac, Libido For Her cannot be generally recognized as safe and effective in the absence of a new drug application as set forth in the FDCA and its implementing regulations. 21 C.F.R. § 310.528(a);

g. To be compliant with the FDA's Conditions Under Which Homeopathic drugs May be Marketed, CPG § 400.400, the over the counter homeopathic medicine must only include ingredients that are listed in the HPUS. Because the Product is labeled as "homeopathic," but includes an ingredient that is not listed in the HPUS, the drug is not "homeopathic," and is therefore unlawful.

70. Defendant's conduct is further "unlawful" because it violates the California Sherman Food, Drug, and Cosmetic Law, *see* Cal. Health & Safety Code § 109875-111900, which incorporates the provisions of the FDCA. *See id.* §§ 110110-110115.

71. Defendant profited from its sales of the falsely, deceptively, or unlawfully advertised Product to unwary consumers.

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

SECOND CAUSE OF ACTION

Violations of the Unfair Competition Law, Unfair and Fraudulent Prongs Cal. Bus. & Prof. Code § 17200 *et seq.*

73. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as set forth in full herein.

74. California Business and Professions Code § 17200 prohibits any "unlawful, unfair or fraudulent business act or practice."

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

76. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendant as alleged herein constitute "fraudulent" business acts and practices under the

UCL in that Defendant's claims are false, misleading, and have a tendency to deceive the Class and the general public, as detailed herein.

77. Defendant profited from its sales of the fraudulently, falsely, and deceptively advertised Product to unwary consumers.

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

79. Plaintiff further seeks an order for the disgorgement and restitution of all profit earned from the sale of the Defendant's Product, which were acquired through acts of unlawful, unfair, and/or fraudulent competition by Defendant.

THIRD CAUSE OF ACTION

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

80. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as set forth in full herein.

81. In violation of California Business and Professional Code § 17500 *et seq*., the advertisements, labeling, policies, acts, and practices described herein were designed to, and did, result in the purchase and use of Libido For Her.

82. Defendant knew and/or reasonably should have known that the labels on Defendant's Product were untrue and/or misleading.

83. Defendant profited from its sales of the falsely and deceptively advertised Product to unwary consumers.

84. As a result, Plaintiff, the Class, and the general public are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which Defendant was unjustly enriched.

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FOURTH CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act,

Cal. Civ. Code § 1750, *et seq.*

85. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as set forth in full herein.

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

87. Defendant's false and misleading labeling and other policies, acts, and practices were designed to, and did, induce the purchase and use of Defendant's Product for personal, family, or household purposes by Plaintiff and Class Members, and violated and continue to violate the following sections of the CLRA:

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

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

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

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

88. Defendant profited from its sales of the falsely, deceptively, and unlawfully advertised Product to unwary consumers.

89. As a result, Plaintiff and the Class have suffered irreparable harm and seek actual damages in the amount of the total retail sales price of all Products sold throughout the class period to all Class Members, punitive damages in an amount sufficient to deter and punish, injunctive relief in the form of modified advertising and a corrective advertising plan, and restitution.

90. Pursuant to section 1782 *et seq*. of the CLRA, Plaintiff notified Defendant in writing by certified mail of the particular violations of § 1770 of the Act as to the Product

and demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of its intent to so act. A true and correct copy of this notice letter and accompanying certified mail receipts are attached hereto as **Exhibit 2**.

91. Pursuant to Cal. Civ. Code § 1780(d), Plaintiff has attached her affidavit of venue hereto as **Exhibit 3**.

92. Defendant's wrongful business practices regarding the Product constituted, and constitute, a continuing course of conduct in violation of the CLRA since Defendant is still representing that the Product has characteristics, uses, benefits, and abilities which are false and misleading, and have injured Plaintiff and the Class.

93. Because Defendant failed to implement remedial measures, Plaintiff and the Class seek actual and punitive damages for their CLRA claims.

94. Plaintiff and the Class also seek to recover their attorneys' fees and costs.

FIFTH CAUSE OF ACTION

Violation of the Magnuson-Moss Warranty Act,

15 U.S.C. §§ 2301, *et. seq*.

88. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as set forth in full herein.

89. Plaintiff brings her claim individually and on behalf of the Members of the Class.

90. Plaintiff and the Class assert state law warranty claims arising under the laws of the State of California, as allowed under Section 2310(d) of the MMWA.

91. In addition, Defendant's Product is a consumer product as defined in 15 U.S.C. § 2301(1).

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

93. Defendant is a supplier and warrantor of the Libido For Her Product as defined in 15 U.S.C. §§ 2301(4) and (5).

94. The Libido For Her Product costs more than $25.00. *See* 15 U.S.C. § 2302(e).

95. The amount in controversy for the entire class is greater than $50,000. *See id.*

96. In connection with the sale of the Product, Defendant issued written warranties as defined in 15 U.S.C. § 2301(6), which warranted that the Product offers certain health results, and possessed certain attributes and qualities, as described herein, when in fact, this Product does not provide such results.

97. Defendant's warranties include, *inter alia*,

- "Libido for Her"
- "Female Sexual Energy"
- "Temporarily relieves symptoms of low female sexual energy"

98. By breaching the express written warranties as described herein, Defendant violated the statutory rights of Plaintiff and Class Members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, thereby damaging Plaintiff and other Class Members in the total amount of the retail purchase price.

99. Plaintiff notified Defendant in writing of her claims and that the Plaintiff is acting on behalf of the Class. *See* **Exhibit 2**.

SIXTH CAUSE OF ACTION

Breach of California's Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1790 *et seq.*

100. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as set forth in full herein.

101. The Libido For Her Product is a consumer good because it is for personal, family or household purposes, and was purchased at retail sale by Plaintiff and the Class from Defendant. *See* Cal. Civ. Code §§ 1791, 1792.

102. The Product is intended for human consumption. *See Klein v. Duchess Sandwich Co.*, 14 Cal. 2d 272, 276-84 (1939); *Gottsdanker v. Cutter Labs*, 182 Cal. App. 2d 602, 606-07 (1960).

103. Defendant is a merchant or retailer with respect to the goods sold. Cal. Civ. Code §§ 1792, 1791.1(a).

104. The warranty was breached because the Libido For Her Product was not reasonably fit for ordinary purposes for which such goods are uses, or the Product did not reasonably conform to the promises or affirmations of fact on the container or label. CACI 1230, 1231, 1232, 1233; *see also* Cal. Civ. Code §§ 1792, 1791.1(a).

105. Defendant's breach of warranty caused Plaintiffs and the Class to suffer damage in the amount of the total purchase price of the Libido for Her Product.

106. In addition to compensatory damages, Cal. Civ. Code § 1794, Plaintiff and the Class are entitled to rescission, id. § 1794(b)(1), costs, attorneys' fees and statutory penalties. id. § 1794(c).

PRAYER FOR RELIEF

98. Wherefore, Plaintiff, on behalf of herself, all others similarly situated and the general public, prays for judgment against Defendant as to each and every cause of action, and the following remedies:

a. An Order declaring their action to be a proper class action and appointing undersigned counsel as class counsel;

b. An Order requiring Defendant to bear the cost of class notice;

c. An Order compelling Defendant to conduct a corrective advertising campaign;

d. An Order requiring Defendant to disgorge all monies, revenues, and profits obtained by means of any wrongful act or practice;

e. An Order compelling Defendant to destroy all misleading and deceptive advertising materials and Product labels;

f. An Order requiring Defendant to pay restitution to restore all funds acquired by means of any act or practice declared by the Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, plus pre-and post-judgment interest thereon;

g. An Order requiring Defendant to reimburse Plaintiff and the Class their actual damages, estimated as being in excess of $5 million;

h. An Order requiring Defendant to pay Plaintiff and the Class punitive damages in an amount expressed as a multiplier of actual damages, not to exceed nine times actual damages;

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

j. Any other and further relief that Court deems necessary, just, or proper

JURY DEMAND

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

Dated: May 12, 2015

/s/ *Ronald A. Marron*

LAW OFFICES OF RONALD A. MARRON
RONALD A. MARRON
ron@consumersadvocates.com
651 Arroyo Drive
San Diego, CA 92103
Phone: (619) 696-9006
Fax: (619) 564-6665

Attorney for Plaintiff and the Proposed Class

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

DANIELLE DEMISON, on behalf of herself, all others similarly situated, and the general public

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Law Offices of Ronald A. Marron, APLC
651 Arroyo Drive, San Diego, CA 92103
(619) 696-9006

DEFENDANTS

GSCM VENTURES, INC. d/b/a Pacific Naturals, a Nevada Corporation

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

'15CV1067 CAB JMA

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

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

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	☒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

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

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. 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 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
CAFA: 28 USC 1332(d)(2); Magnuson Moss Warranty Act: 15 USC 2301; Diversity Jurisdiction: 28 USC 1331

Brief description of cause:
Violations of Consumer Protection Statutes

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
05/12/2015

SIGNATURE OF ATTORNEY OF RECORD
/s/ Ronald A. Marron

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

EXHIBIT 1

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

DEC 14 2001

WARNING LETTER

Jose I. Iparraguirre, MD
President
JIIM, L.L.C.
7700 N. Kendall Drive, Suite 604
Miami, Florida 33156

Ref: 01-HFD-312-02

Dear Dr. Iparragirre:

This letter concerns "Doctor's Lotion" marketed by your firm. Based on this product's labeling, it is intended for topical over-the-counter (OTC) use by women as an aphrodisiac to enhance arousal and improve the sexual experience. Thus, "Doctor's Lotion" is a "drug" under section 201(g) of the Federal Food, Drug, and Cosmetic Act (the Act).

The intended uses described above are conveyed through labeling, which includes statements such as, "Doctor's Lotion is the first stimulus enhancing lotion created for women to improve the sexual experience by enhancing arousal. The active ingredients in Doctor's Lotion have shown [sic] to increase the blood flow to the clitoris and surrounding area by gently and safely dilating blood vessels. The increase in blood flow improves the sensation of the nerve endings in the clitoris to enhance arousal and promote orgasm." In addition, you use similar statements in your current Internet promotion for "Doctor's Lotion" along with statements like "...aid[ ] women's sexual satisfaction...," "...aid women experiencing the significant problem of sexual dissatisfaction...," "...improving the quality of intimacy, and enhance their overall sexual experience...," and "...heightens the sensation of a woman's sexual organs...".

The immediate container label for "Doctor's Lotion" identifies "Aminophylline," "Ergoloid Mesylate," "Arginine," and "Isosorbide Dinitrite" as "active ingredients". A flyer distributed with the product identifies "Deionized Water," "Glycerin," "Vitamin E Gel," "Aminophylline," and "L-Arginine" as "active ingredients," while current Internet promotion identifies "Glycerin," "Vitamin E," "Theophylline," and "Arginine" as "active ingredients".

Regardless of the formulation, under Title 21 of the Code of Federal Regulations, Part 310.528 (21 CFR 310.528) (copy enclosed) any OTC drug product that is labeled, represented, or promoted for use as an aphrodisiac, like "Doctor's Lotion," is regarded as a "new drug" within the meaning of Section 201(p) of the Act. These regulations require that such drugs have an approved application under Section 505(b) of the Act before they

can be marketed. Thus, "Doctor's Lotion" violates Section 505(a) of the Act. Further, since the adequacy of the labeled directions for these "aphrodisiac" uses has not been established, this product is misbranded under section 502(f)(1) of the Act.

The violations described above are not meant to be all-inclusive. It is your responsibility to ensure that all drug products manufactured and distributed by your firm comply with the Act. Federal agencies are advised of the issuance of all Warning Letters pertaining to drugs and devices so that they may consider this information when considering the award of contracts.

We request that you take prompt action to correct these violations. Failure to do so may result in regulatory action without further notice. This action may include seizure and/or injunction.

Please notify this office in writing within fifteen (15) working days of receipt of this letter. Your response should describe the specific actions you will take, or have taken, to correct the violations. It should also include an explanation of each step being taken to prevent recurrence of similar violations. If corrective action cannot be completed within fifteen (15) working days, state the reason for the delay and the time within which corrections will be completed. Address your reply to the Food and Drug Administration, Division of Labeling and Nonprescription Drug Compliance, OTC Compliance Team (HFD-312), 7520 Standish Place, Room 168, Rockville, MD 20855, Attention: Vesna V. Stanoyevitch, Compliance Officer. If you have any questions about this letter, you may contact Ms. Stanoyevitch by telephone at 1-301-827-7362.

Sincerely,

Melvin F. Szymanski
Acting Director
Division of Labeling and
Nonprescription Drug Compliance (HFD-310)
Office of Compliance
Center for Drug Evaluation and Research

Enclosure:
21 CFR 310.528

EXHIBIT 2

LAW OFFICES OF
RONALD A. MARRON
A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, CA 92103

Tel: 619.696.9006
Fax: 619.564.6665

March 7, 2014

VIA CERTIFIED MAIL (receipt acknowledgment with signature requested)

Pacific Naturals, LLC
Attn: Legal Department
2049 N. Lincoln St.
Burbank, CA 91504

Pacific Naturals, LLC
Attn: Legal Department
4954 Van Nuys Blvd., Ste. 202
Sherman Oaks, CA 91403

David G. Symons
Agent for Service of Process
Pacific Naturals, LLC
4954 Van Nuys Blvd., Ste. 202
Sherman Oaks, CA 91403

Liddell Laboratories, Inc.
Attn: Legal Department
201 Apple Blvd.
Woodbine, IA 51579

Jesse E. Rettig
Agent for Service of Process
Liddell Laboratories, Inc.
201 Apple Blvd.
Woodbine, IA 51579

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

Dear Sir or Madam,

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

This firm represents Danielle Dennison, who purchased Libido for Women Homeopathic sublingual spray ("Libido for Women" or "Product"), which YOU distribute in California and elsewhere. Ms. Dennison was exposed to and saw YOUR claims about the Product, purchased the Product in reliance on those claims, and suffered injury in fact as a result of YOUR false and misleading advertising.

YOU falsely market YOUR Product by putting false and misleading claims on the labels. For example, YOU advertise on the Product's label and elsewhere, with a line art representation of a nude

female form above the subtitle "Female Sexual Energy," that Libido for Women acts to arouse or increase sexual desire of women, and with statements that Libido for Women "relieves symptoms of low female sexual energy." In fact, Libido for Women has no effect on female "sexual energy" or libido.

The purported active ingredients in Libido for Women are *Agnus Castus 3X, Berberis vulgaris 6X, Damiana 1X, Graphites 8X, Ignatia Amara 6x, Lactusa virosa 3X*, and *Onosmodium viginianum 30C*. YOU claim the purported active ingredients of the Product will alleviate symptoms of low libido, i.e., diminished sexual desire, in women. In fact, even if YOUR Product contains the purportedly active ingredients as listed above, those ingredients are so greatly diluted as to be non-existent in the Product, such that the Product is ineffective for its intended uses. Further, Libido for Women is essentially a solution of water with 20% alcohol, which has no efficacy beyond a placebo. In addition, the Product is falsely labeled as "homeopathic" when all of the ingredients are not in the HPUS.

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

In conclusion, YOUR material misrepresentations are deceiving customers into purchasing YOUR Product under the representation that it provides significant health benefits, when in fact it does not. Additionally, as a result of the foregoing, YOUR Product does not live up to its express and implied warranties as represented on the Product's packaging and labeling, and this breach has caused injury to Ms. Dennison and consumers in the form of the lost purchase price of the Product.

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

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

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

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

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

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

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

(1) The actual damages suffered;

(2) An order enjoining you for such methods, acts or practices;

(3) Restitution of property (when applicable);

(4) Punitive damages;

(5) Any other relief which the court deems proper; and

(6) Court costs and attorneys' fees.

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

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

I look forward to YOU taking corrective action. Thank you for your time and consideration in this matter.

Sincerely,

LAW OFFICES OF RONALD A. MARRON

/s/ Ronald A. Marron
RONALD A. MARRON

Counsel for Danielle Dennison, and all others similarly situated

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Pacific Naturals, LLC
Attn: Legal Department
2049 N. Lincoln St.
Burbank, CA 91504

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Transfer from service label)* 7013 1710 0001 2269 6891

PS Form 3811, July 2013 Domestic Return Receipt

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™

7013 1710 0001 2269 6891

7013 1710 0001 2269 6891

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$ .48
Certified Fee	$3.30
Return Receipt Fee (Endorsement Required)	$2.70
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 6.48

Postmark Here

Pacific Naturals, LLC
Attn: Legal Department
2049 N. Lincoln St.
Burbank, CA 91504

or Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Pacific Naturals, LLC
Attn: Legal Department
2049 N. Lincoln St.
Burbank, CA 91504

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by *(Printed Name)* MIKE ROSS
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Transfer from service label)* 7013 1710 0001 2269 6891

PS Form 3811, July 2013 Domestic Return Receipt

cal

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Pacific Naturals, LLC
Attn: Legal Department
4954 Van Nuys Blvd., Ste. 202
Sherman Oaks, CA 91403

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery
03/10/14

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7013 1710 0001 2269 6907

PS Form 3811, July 2013 Domestic Return Receipt

Carl

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David G. Symons
Agent for Service of Process
Pacific Naturals, LLC
4954 Van Nuys Blvd., Ste. 202
Sherman Oaks, CA 91403

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery 03/12/14

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Transfer from service label)* 7013 1710 0001 2269 6884

PS Form 3811, July 2013 Domestic Return Receipt

EXHIBIT 3

I, Danielle Demison, declare as follows:

1. I am a Plaintiff in this action. I make this affidavit as required by California Civil Code Section 1780(d).

2. The Complaint in this action is filed in a proper place for the trial of this action because Defendant is doing business in this county.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: March 21, 2014

Danielle Demison

DANIELLE DEMISON