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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 MASON DABISH and BILL BOHR
13 individually and on behalf of all others
14 similarly situated,

15 Plaintiffs,

16 v.

17 MUSCLEPHARM CORP., a Nevada
18 corporation,

19 Defendant.

Case No: **'15CV2848 W JMA**

CLASS ACTION COMPLAINT FOR:

1. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17500, *et seq.*;**
2. **VIOLATION OF CAL. CIV. CODE §§ 1750, *et seq.*;**
3. **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.***
4. **VIOLATION OF 815 ILCS 505/1 *et seq.*;**
5. **BREACH OF EXPRESS WARRANTY; AND**
6. **NEGLIGENT MISREPRESENTATION**

JURY TRIAL DEMANDED

1 Plaintiffs Mason Dabish and Bill Bohr (“Plaintiffs”) individually and on behalf
2 of all others similarly situated, based on the investigation of counsel and their own
3 individual knowledge as to Plaintiffs’ own circumstances, hereby complains against
4 defendant MusclePharm Corp. (“Defendant” or “MusclePharm”) as follows:

5 **I. INTRODUCTION**

6 1. This is a class action brought by Plaintiffs on behalf of all persons in the
7 below-defined putative Class (“Class Members”) who purchased MusclePharm
8 Arnold Schwarzenegger Series Iron Pump Pre-Workout Powder, MusclePharm
9 Arnold Schwarzenegger Series Iron Cre3 Creatine Powder, MusclePharm Creatine
10 Supplement, MusclePharm Arnold Schwarzenegger Series Iron Dream Nighttime
11 Support Powder, and MusclePharm Assault Pre-Workout Powder (collectively
12 referred to as the “Class Products”) formulated, manufactured, distributed, and sold by
13 Defendant.

14 2. Defendant represents itself as a “scientifically-driven, performance-
15 lifestyle sports nutrition company” that produces a number of supplements targeted at
16 athletes who take their health and fitness seriously. Accordingly, Defendant states
17 that it produces a “superior line of sports nutrition products that are safe, free of
18 banned substances, and formulated, tested and certified under the most stringent
19 conditions in the marketplace today.” Yet Defendant operates in a virtually
20 unrestrained industry which allows it to prey on its customers’ ignorance.

21 3. Defendant markets and labels each of the Class Products as containing
22 newly formulated, novel, ingredients that chemically fuse an amino or organic acid
23 with a nitrate to increase its effectiveness. Examples of these nitrate hybrids include
24 Creatine Nitrate, Arginine Nitrate, Leucine Nitrate, Valine Nitrate, and Isoleucine
25 Nitrate (the last three ingredients are blended together by Defendant and collectively
26 known as “BCAA Nitrate Blend”). Defendant advertises and labels that its products
27 that contain these ingredients are safe and provide vast benefits over products that
28 contain their more traditional cousin compounds (*i.e.*, Creatine Monohydrate or raw

1 Arginine, Leucine, Valine, and Isoleucine or Arginine, Leucine, Valine, and
2 Isoleucine peptides).

3 4. The safety of these ingredients, however, has not been established by any
4 scientific measure. Creatine Nitrate and Defendant's other amino acid nitrates (*i.e.*
5 Arginine Nitrate, Leucine Nitrate, Valine Nitrate, and Isoleucine Nitrate) are New
6 Dietary Ingredients, not previously existing in the food supply, and federal law
7 requires that Defendant provides the Food and Drug Administration ("FDA") with
8 adequate evidence that such ingredients do not present a significant or unreasonable
9 risk of illness or injury. Defendant has not provided this information to the FDA, thus
10 the Class Products may not be sold.

11 5. Additionally, Defendant's supplements are also over-marketed, contain
12 statements over-promise, and ultimately under-deliver. Defendant advertises and
13 labels that the Class Products, because of their use of unique and novel ingredients,
14 will increase strength, endurance, muscle mass, and overall performance, does not
15 require a "loading" phase, and/or will be better absorbed by the body. Yet Defendant's
16 own scientific research shows that these "cutting-edge" ingredients do not provide the
17 benefits advertised. Instead, the benefits of these ingredients are, at best, unknown or,
18 alternatively, inferior to their traditional counterparts.

19 6. Simply put, Defendant has not substantiated the Class Products are
20 efficacious or even safe for consumption.

21 **II. JURISDICTION AND VENUE**

22 7. This Court has jurisdiction over the subject matter of this action pursuant
23 to the Class Action Fairness Act, 28 U.S.C. §§1332(d), 1446, and 1453(b). Plaintiffs
24 allege that they and the Class members are citizens of different states from Defendant,
25 and the cumulative amount in controversy for Plaintiffs and the Class exceeds \$5
26 million, exclusive of interest and costs.

1 8. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because
2 many of the acts and transactions giving rise to the violations of law complained of
3 herein occurred in this District, and because Defendant:

4 (a) conducts business itself or through agent(s) in this District, by
5 advertising, marketing, distributing and/or manufacturing its products in this District;
6 and/or

7 (b) is licensed or registered in this District; and/or

8 (c) otherwise has sufficient contacts within this District to justify Defendant
9 being fairly brought into Court in this District.

10 **III. PARTIES**

11 9. Plaintiff Mason Dabish is, and at all times relevant hereto was, a resident
12 and a citizen of California. Plaintiff Dabish purchased Defendant's MusclePharm
13 Assault Pre-Workout Powder on or about June 10, 2015 at a GNC store located in San
14 Diego, California.

15 10. Plaintiff Bill Bohr is, and at all times relevant hereto was, a resident of a
16 citizen of Illinois. Plaintiff Bohr purchased Defendant's MusclePharm Arnold
17 Schwarzenegger Series Iron Cre3 and Iron Pump supplements in November 2015 at a
18 GNC store located in Wilmette, Illinois.

19 11. Plaintiffs each examined the labels on Defendant's MusclePharm
20 supplements before purchasing these products. Plaintiffs relied, in part, on the
21 statements made of the MusclePharm supplements' label when purchasing the
22 product, and believe such statements to be true. Plaintiffs also believed that by
23 marketing, distributing, and selling the Class Products, Defendant had secured
24 necessary regulatory approvals and that the Products were safe for human
25 consumption. Had Plaintiffs known that the Class Products were not safe or that
26 Defendant's marketing and labelling statements were false, they would not have
27 purchased Defendant's products.
28

12. Defendant MusclePharm Corporation is a Nevada Corporation with its headquarters in Denver, Colorado. MusclePharm manufactures, markets, advertises, distributes, and/or sells the Class Products throughout the United States, including California. Defendant is a major player in the sports nutrition industry with over \$177 million in revenue in 2014.

IV. SUBSTANTIVE ALLEGATIONS

A. **The Class Products are Adulterated/Misbranded under Federal Regulations**

13. As noted above, the Class Products contain New Dietary Ingredients – Creatine Nitrate, Arginine Nitrate and Defendant’s BCAA Nitrate Blend. The term "New Dietary Ingredient" means an ingredient contained in, or for use in, a dietary supplement that was not previously marketed in any dietary supplements, in the United States, before October 15, 1994. *See* section 413(d) of the Federal Food, Drug, and Cosmetic Act (the “FDCA”), *codified at* 21 U.S.C. 350b(d). There is no authoritative list of dietary ingredients that were marketed in dietary supplements before October 15, 1994. Therefore, manufacturers and distributors are responsible for determining if an ingredient is a "New Dietary Ingredient.”

14. Under the FDCA, a supplement containing a New Dietary Ingredient may only be only be marketed and sold if it meets one of two requirements:

(1) The dietary supplement contains only dietary ingredients which have been present in the food supply as an article used for food in a form in which the food has not been chemically altered [or]

(2) There is a history of use or other evidence of safety establishing that the dietary ingredient when used under the conditions recommended or suggested in the labeling of the dietary supplement will reasonably be expected to be safe and, at least 75 days before being introduced or delivered for introduction into interstate commerce, the manufacturer or distributor of the dietary ingredient or dietary supplement provides the FDA with information, including any citation to published articles, which is the basis on which the manufacturer or distributor has concluded that a dietary supplement containing such dietary ingredient will reasonably be expected to be safe.

21 U.S.C. § 350b(a). A producer or distributor of a dietary supplement may not rely on “75-Day Premarket Notification” from another manufacturer of a dietary

1 supplement containing the same dietary ingredient. Nonetheless, even if a 75-Day
2 Premarket Notification of New Dietary Ingredient is provided to the FDA, the New
3 Dietary Ingredient must still meet the requirements of 21 U.S.C. § 342(f) – that is the
4 ingredient must be safe for human consumption. If either the 75-Day Premarket
5 Notification is not provided or the New Dietary Ingredient does not satisfy the
6 requirements of 21 U.S.C. § 342(f), the product containing the New Dietary Ingredient
7 is deemed adulterated and has no economic value as it cannot be sold in the United
8 States.

9 15. The directions and labeling on each of the Class Products confirms that
10 they are a dietary supplement. Based on Defendant’s own admission, Creatine
11 Nitrate, Arginine Nitrate, and its BCAA Nitrate Blend are new ingredients that were
12 not in use prior to October 15, 1994. MusclePharm has not provided the FDA with
13 the required 75-Day Premarket Notification showing a history of Creatine Nitrate’s,
14 Arginine Nitrate’s, and its BCAA Nitrate Blend’s harmless use in food
15 products/supplements or any other evidence of safety. This lack of compliance with
16 the FDCA’s clear requirements renders the Class Products adulterated.

17 16. Additionally, there are real concerns regarding the safety of these new
18 ingredients. The patent holder of nitrate hybrids – ThermoLife International, LLC –
19 filed a 75-Day Premarket Notification to the FDA for Creatine Nitrate but not for any
20 of the amino acid nitrates. The 75-Day Premarket Notification for Creatine Nitrate
21 was provided on February 3, 2011. The FDA responded on May 9, 2011 and voiced
22 “significant concerns” about the evidence on which ThermoLife relied when
23 concluding that Creatine Nitrate was safe. The FDA further stated that the product
24 “may be adulterated under 21 U.S.C. 342(f)(1)(B) as a dietary supplement that
25 contains a new dietary ingredient for which there is inadequate information to provide
26 reasonable assurance that such ingredient does not present a significant or
27 unreasonable risk of illness or injury.” There have also been concerns raised
28 regarding the other amino acid nitrates – such as Arginine, Leucine, Valine, and

1 Isoleucine Nitrates – as no safety studies have ever been conducted on this ingredient.

2 17. Here, Defendant has failed to provide any evidence of the safety of its
3 products to the FDA. Accordingly, the Class Products are adulterated. Because
4 adulterated supplements have no economic value and are worthless as a matter of law,
5 purchasers of adulterated supplements are entitled to a restitution refund of the
6 purchase price of the Class Products. Additionally, had Plaintiffs and Class members
7 known the Class Products were not approved as safe by the FDA, they would not have
8 purchased such Products.

9 **B. Defendant's Creatine Nitrate and Arginine Nitrate Claims are**
10 **Misleading and Deceptive**

11 18. Defendant is aware that there is massive competition in the dietary
12 supplement market. In order to stand out, Defendant markets and labels the Class
13 Products as containing novel ingredients, such as “Super Creatine Nitrate,” “Arginine
14 Nitrate,” which is advertised to “increase strength, power and recovery” and “support
15 muscle building & muscle growth.” Thus, Defendant promises and warrants that
16 these products will confer certain benefits. Yet, these ingredients are nothing but
17 modern day snake oil.

18 19. For example, Defendant's Assault pre-workout powder, which was
19 purchased by Plaintiff, conspicuously advertises the benefits of its Creatine Nitrate
20 and Arginine Nitrate on the label of the Product:

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Here, Defendant advertises and warrants that its Assault Pre-Workout Powder contains "advanced ingredients" or its patented "Ion-3 Nitrate Technology" which will increase "strength, endurance, muscle mass, and overall performance." However, there is no support that these advanced ingredients confer such benefits.

20. Similarly, "Creatine Nitrate" is also found in Defendants' Iron Cre3 creatine powder and MusclePharm Creatine supplement. The labels of these products make the similar claims regarding the benefits of the Creatine Nitrate contained in Defendant's product:

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Arnold Iron Cre3 Creatine Powder



The image shows the packaging for Arnold Iron Cre3 Creatine Powder. The top half is black with a silhouette of Arnold Schwarzenegger flexing. Below the silhouette is the text "ARNOLD SCHWARZENEGGER SERIES". To the right, in white text, is "CUTTING-EDGE CREATINE BREAKTHROUGH FEATURING ION-3 NITRATE TECHNOLOGY*" followed by three bullet points: "• INCREASED STRENGTH, POWER, RECOVERY*", "• SUPPORTS MUSCLE BUILDING & MUSCLE GROWTH*", and "• RAPID ABSORPTION OF CREATINE – NO LOADING REQUIRED*". The bottom half is white with "ARNOLD IRON CRE3™" in large black letters, and "“SUPER CREATINE” NITRATE FORMULA" below it. On the right side of the white section, there is a red "NEW!" badge and a red box containing the text "CUTTING-EDGE CREATINE BREAKTHROUGH*" followed by the same three bullet points as above.

ARNOLD IRON CRE3™
“SUPER CREATINE”
NITRATE FORMULA

**CUTTING-EDGE CREATINE
BREAKTHROUGH FEATURING
ION-3 NITRATE TECHNOLOGY***

- INCREASED STRENGTH, POWER, RECOVERY*
- SUPPORTS MUSCLE BUILDING & MUSCLE GROWTH*
- RAPID ABSORPTION OF CREATINE – NO LOADING REQUIRED*

NEW!

**CUTTING-EDGE
CREATINE
BREAKTHROUGH***

- INCREASED STRENGTH,
POWER, RECOVERY*
- SUPPORTS
MUSCLE BUILDING
& MUSCLE GROWTH*
- RAPID ABSORPTION OF
CREATINE – NO LOADING
REQUIRED*

MusclePharm Creatine Supplement



The image is an advertisement for MusclePharm Creatine. On the left, the word "CREATINE" is written vertically in large, bold, black letters. To its right, in smaller black letters, is "PROMOTE STRENGTH, POWER & ENDURANCE". In the center, there is a large, stylized, blue and white graphic of a muscular arm flexing. To the right of this graphic, the MusclePharm logo (MP) is shown in blue, with "MUSCLEPHARM." below it. To the right of the graphic, in large, bold, black letters, is "DEMAND MORE OF YOUR BODY AND YOUR CREATINE." Below this, in smaller black letters, is a paragraph: "MusclePharm® Creatine increases creatine status by enhancing uptake and bioavailability. Clinically-proven Cinnulin® heightens absorption, so our five pure and diverse creatine complexes delivering a range of benefits will launch directly into muscles. MP Creatine increases explosive energy, ATP energy and overall power. For added stamina, strength and lean muscle growth, feed your body the total creatine package." Below the paragraph, in a white box with a black border, is the text: "WARNING: A loading phase is not required or recommended with this product. Do not exceed the recommended daily dose." At the bottom, in bold, black letters, is "RAPIDLY ABSORBED CREATINE COMPLEX" followed by three bullet points: "■ 5 SUPERIOR CREATINE BLENDS*", "■ NO LOADING REQUIRED*", and "■ PHARMACEUTICAL QUALITY*".

CREATINE
PROMOTE STRENGTH, POWER & ENDURANCE

MP
MUSCLEPHARM.

**DEMAND MORE OF YOUR BODY
AND YOUR CREATINE.**

MusclePharm® Creatine increases creatine status by enhancing uptake and bioavailability. Clinically-proven Cinnulin® heightens absorption, so our five pure and diverse creatine complexes delivering a range of benefits will launch directly into muscles. MP Creatine increases explosive energy, ATP energy and overall power. For added stamina, strength and lean muscle growth, feed your body the total creatine package.

WARNING: A loading phase is not required or recommended with this product. Do not exceed the recommended daily dose.

RAPIDLY ABSORBED CREATINE COMPLEX

- 5 SUPERIOR CREATINE BLENDS*
- NO LOADING REQUIRED*
- PHARMACEUTICAL QUALITY*

1 21. Again, Defendant advertises and warrants that its products contain
2 “superior” Creatine which will increase strength, power, and recovery, and overall
3 performance. Additionally, Defendant states that its Creatine does not require a
4 “loading” phase.

5 22. Defendant uses “Creatine Nitrate” because of its name is similar to
6 Creatine Monohydrate (commonly known as “Creatine”) – a popular supplement for
7 those seeking to gain muscle mass and increase strength. Creatine Nitrate, however, is
8 not the same as Creatine Monohydrate and it is unknown if Creatine Nitrate confers
9 any health benefits, let alone a substantial increase over its more common
10 Monohydrate cousin. Nor does any study support the proposition that Creatine Nitrate
11 is more effective than Creatine Monohydrate at lower doses. Indeed, a study
12 commissioned and authored by Defendant, its employees admits there is no scientific
13 basis for Defendant’s Creatine Nitrate claims, but instead recognizes that “...future
14 studies are required to determine the efficacy of CN [Creatine Nitrate], as the
15 combined effects of nitrates and creatine on both longitudinal and acute changes in
16 performance and body composition are currently unknown.”

17 23. The lack of scientific evidence regarding the comparative efficacy of
18 Defendant’s Creatine Nitrate is unsurprising. Defendant’s marketing misrepresents
19 that Creatine Nitrate, “as the world’s first molecularly modified Creatine, is more
20 powerful than ‘regular creatine’. An effective dose is just 1/10th the size of a standard
21 dose of creatine monohydrate.” Such claims are supported solely by one study
22 concluding that Creatine Nitrate is 10 times more water-soluble than Creatine
23 Monohydrate. Yet, the premise that increasing solubility in water equally equates to a
24 more effective form of Creatine is logically flawed and demonstrably false.

25 24. Bioavailability of Creatine is the key to the effectiveness of the
26 compound in the human body, not water solubility. Bioavailability is determined by
27 how much of the compound is absorbed into the blood stream (and ultimately the
28 muscles). Creatine Monohydrate has been found to be completely absorbed by the

1 gastrointestinal tract and the arterial bioavailability of Creatine Monohydrate is
 2 approximately 100%.¹ Because every gram of Creatine Monohydrate ingested is
 3 made completely available to the muscles, it is quite impossible that Creatine Nitrate
 4 is a more efficient delivery vehicle of Creatine.

5 25. Furthermore, while Defendant's products, and their "Super Creatine
 6 Nitrate Formula," may have some Creatine Monohydrate, it does not provide it in the
 7 dosage required for it to be effective. Regular Creatine Monohydrate supplementation
 8 is well known to help increase power and strength, develop muscle mass, and aid in
 9 recovery. There are an abundance of peer-reviewed studies on Creatine Monohydrate
 10 measuring these claims. However, participants in studies that do show increases in
 11 strength, power, recovery, and muscle growth were all given Creatine Monohydrate at
 12 far greater levels than the amount of Creatine Monohydrate in Defendant's products.
 13 Additionally, these benefits only manifested after "loading" Creatine Monohydrate,
 14 that is saturating the muscles with the high doses of Creatine Monohydrate compound
 15 over relatively short time and then dropping down to a lower dosage to "maintain"
 16 Creatine levels in the body.

17 26. For example, a study found that there was an increase in power and
 18 hypertrophy of participants who "loaded" Creatine Monohydrate at 20 grams daily for
 19 5 days, with 5 grams of Creatine Monohydrate as maintenance for the remaining 4
 20 weeks.² Yet, another study found that 20 grams of straight dosing of Creatine

21 ¹ See Chantuin A. *The fate of creatine when administered to man*. J BIOCHEM.
 22 67:29-41, 1926., See also Deldicque L, *et al*, *Kinetics of creatine ingested as a food*
 23 *ingredient*. EUR J APPL PHYSIOL. 102:133-43, 2008; Deldicque L, *et al*, *Kinetics of*
 24 *creatine ingested as a food ingredient*. EUR J APPL PHYSIOL. 102:133-43, 2008. Persky
 25 A, *et al*, *Single- and multiple-dose pharmacokinetics of oral creatine*; J CLIN
 26 PHARMACOL. 43:29-37, 2003; Poortmans J, *et al*, *Effect of short-term creatine*
 27 *supplementation on renal responses in men*. EUR J APPL PHYSIOL. 76:566-67, 1997;
 28 Schedel J, *et al*, *Actual creatine ingestion in human: Consequences on serum creatine*
and creatinine concentrations. LIFE SCIENCES. 65:2463-70, 1999

² See Kilduff LP, *et al*., *Effects of creatine on body composition and strength gains*
after 4 weeks of resistance training in previously nonresistance-trained humans. INT J
 SPORT NUTR EXERC METAB. 2003 Dec; 13(4):504-20.

1 Monohydrate in swimmers showed no increase in performance, body weight or body
2 composition. The authors determined that the lack of a “loading” and “maintenance”
3 phases may have accounted for the lack of results.³ Despite this clear research,
4 Defendant claims that “loading” its products is not required to have the same effects.
5 Additionally, dosing of Creatine Monohydrate at only 2-5 grams per day, as directed
6 by Defendant on the labels of its Assault protein powder, Iron Cre3 protein powder,
7 and MusclePharm Creatine supplement, has no effect on muscle development or
8 growth. In other words, the “Super Creatine Nitrate Formula” in Defendant’s
9 products does not provide any additional benefit to consumers and Defendant has no
10 basis to make such claims.

11 27. Similarly, Defendant also markets that its Iron Pump and Assault Protein
12 Powders have “Arginine Nitrate.” Defendant claims that its “Super Nitric Oxide” or
13 “ION-3 Nitrate Technology,” which contains “Arginine Nitrate” increases strength,
14 endurance, muscle mass, and overall performance and “vascularity” – increasing
15 blood flow to help the delivery nutrients to the muscles. For example, the label on
16 Defendant’s Iron Pump protein powders states that the Arginine Nitrate is engineered
17 and tested to build muscle:

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27 ³ See Silva AJ, *et al.*, *Effect of creatine on swimming velocity, body composition*
28 *and hydrodynamic variables*. J SPORTS MED PHYS FITNESS. 2007 Mar;47(1):58064.

**“SUPER NITRIC OXIDE”
WORLD’S FIRST MOLECULARLY
MODIFIED ARGININE***

- THE PERFECT MUSCLE BUILDING AND PUMP PRE-WORKOUT FORMULA.*
- ENGINEERED TO GIVE MASSIVE PUMPS, MUSCLE FULLNESS, VASCULARITY, AND EXPLOSIVE ENERGY.*
- IRON PUMP™ IS A THROWBACK TO THE DAYS OF DEEP, WELL RESEARCHED, TRIALLED AND TESTED INGREDIENTS PROVEN TO BUILD MUSCLE.*

NEW!

**SUPER N.O.
FORMULA WITH
ARGININE NITRATE***

- SKIN-TEARING PUMPS AND VASCULARITY*
- DELIVERS EXPLOSIVE ENERGY & INTENSITY*
- AMPLIFIES STRENGTH, POWER & LEAN MASS*

**ARNOLD
SCHWARZENEGGER
SERIES**

**ARNOLD
IRON PUMP™**

**PRE-WORKOUT
MUSCLE FORMULA**

28. Defendant specially markets its “Arginine Nitrate” as the “world’s first molecularly modified arginine” and that Arginine Nitrate has some benefit over raw Arginine and/or Arginine peptides found in regularly marketed amino acid or protein supplements. But, again, there is no scientific support for Defendant’s Arginine Nitrate claims. Instead, a recent study commissioned by Defendant and authored by Defendant and its employees suggests otherwise, “[t]hough raw arginine may significantly increase vessel diameter compared to placebo at 30 minutes post-exercise, arginine peptide induced significantly higher percent change values for blood flow volume compared to raw Arginine, placebo and arginine nitrate at specific time points, and therefore may be the best option for increased blood flow.”

29. Simply bonding a nitrate to Creatine or Arginine has no effect on the effectiveness of these ingredients. The same conclusions can also be extend Defendant’s BCAA Nitrate Blend.

30. Defendant’s false and misleading claims contained herein are in violation of 21 C.F.R. § 101.18(b), making the Products misbranded.

1 31. Defendant's deceptive statements violate 21 U.S.C. § 343(a)(1), which
2 deems food (including nutritional supplements) misbranded when the label contains a
3 statement that is "false or misleading in any particular".

4 32. California prohibits the misbranding of food in a way which parallels
5 the FDCA through the "Sherman Law", Health & Saf. Code § 109875 et seq. The
6 Sherman Law provides that food is misbranded "if its labeling is false or
7 misleading in any particular." *Id.*

8 33. The Sherman Law explicitly incorporates by reference "[a]ll food
9 labeling regulations and any amendments to those regulations adopted pursuant to the
10 FDCA," as the food labeling regulations of California Cal. Health & Saf. Code, §
11 110100, subd. (a).

12 34. Illinois has expressly adopted the federal food labeling requirements as
13 its own and indicated that "The Director is authorized to make the regulations
14 promulgated under this Act conform, in so far as practicable, with those promulgated
15 under the Federal Act." Additionally, "[a] federal regulation automatically adopted
16 pursuant to this Act takes effect in this State on the date it becomes effective as a
17 Federal regulation." 410 ILCS 620/21.

18 35. Further, as explained above, Defendants' claims are misleading to
19 consumers in violation of 21 U.S.C. § 343, which states, "A food shall be deemed to
20 be misbranded—False or misleading label [i]f its labeling is false or misleading in any
21 particular."

22 36. The ILCS incorporates the exact language of the FDCA in 410 ILCS
23 620/11 by stating, "A food is misbranded- (a) If its labeling is false or misleading in
24 any particular."

25 37. Also, the Illinois Consumer Fraud and Deceptive Business Practices Act
26 provides protection for consumers when purchasing products, including Defendant's
27 Products, by stating, "Unfair methods of competition and unfair or deceptive acts or
28 practices, including but not limited to the use or employment of any deception fraud,

1 false pretense, false promise, misrepresentation or the concealment, suppression or
 2 omission of any material fact, with intent that others rely upon the concealment,
 3 suppression or omission of such material fact..." 815 ILCS 505/2.

4 38. The introduction of adulterated and/or misbranded food into interstate
 5 commerce is prohibited under the FDCA and all state parallel statutes cited in this
 6 Class Action Complaint.

7 39. Defendant is more than willing to make misleading and deceptive claims
 8 regarding its dietary supplements that are contradicted by its own research. Thus,
 9 when Plaintiffs and other Class members purchase the Class Products, they are not
 10 receiving the Product as promised and labeled. Instead, Plaintiffs and members of the
 11 Class pay a premium for a product that is advertised to deliver a certain level of
 12 performance, derived from the product's alleged novel use of Creatine Nitrate and/or
 13 another amino acid nitrates that the product cannot provide. Had Plaintiffs and other
 14 Class members known the truth regarding the Class Products, they would have paid
 15 less for the Class Products, or not have purchased them at all. Accordingly, Plaintiffs
 16 and other Class members have been, and continue to be, harmed Defendant's
 17 misrepresentations.

18 **V. CLASS ALLEGATIONS**

19 40. Plaintiffs bring this action as a class action pursuant to Federal Rule of
 20 Civil Procedure 23 for the following Class of persons:

21 All persons who, within four (4) years of the filing of this Complaint, in
 22 the United States purchased Defendant's MusclePharm Arnold
 23 Schwarzenegger Series Iron Pump Pre-Workout Powder, MusclePharm
 24 Arnold Schwarzenegger Series Iron Cre3 Creatine Powder, MusclePharm
 Creatine, MusclePharm Arnold Schwarzenegger Series Iron Dream
 Nighttime Support Powder, and MusclePharm Assault Pre-Workout
 Powder for personal or household use.

25 **California Subclass:**

26 All persons who, within four (4) years of the filing of this Complaint,
 27 purchased Defendant's MusclePharm Arnold Schwarzenegger Series Iron
 28 Pump Pre-Workout Powder, MusclePharm Arnold Schwarzenegger
 Series Iron Cre3 Creatine Powder, MusclePharm Creatine, MusclePharm
 Arnold Schwarzenegger Series Iron Dream Nighttime Support Powder,

1 and MusclePharm Assault Pre-Workout Powder from a retailer located in
2 California for personal or household use.

3 **Illinois Subclass:**

4 All persons who, within four (4) years of the filing of this Complaint,
5 purchased Defendant's MusclePharm Arnold Schwarzenegger Series Iron
6 Pump Pre-Workout Powder, MusclePharm Arnold Schwarzenegger
7 Series Iron Cre3 Creatine Powder, MusclePharm Creatine MusclePharm,
8 Arnold Schwarzenegger Series Iron Dream Nighttime Support Powder,
9 and MusclePharm Assault Pre-Workout Powder from a retailer located in
10 Illinois for personal or household use.

11 Excluded from the Class are all legal entities, Defendant herein and any person, firm,
12 trust, corporation, or other entity related to or affiliated with Defendant, as well as any
13 judge, justice or judicial officer presiding over this matter and members of their
14 immediate families and judicial staff.

15 41. Plaintiffs reserve the right to amend the Class definition if further
16 investigation and discovery indicates that the Class definition should be narrowed,
17 expanded, or otherwise modified.

18 42. While the exact number of Class members is unknown to Plaintiffs at this
19 time, and will be ascertained through appropriate discovery, Plaintiffs are informed
20 and believe that there are tens of thousands of members in the proposed Class. The
21 number of individuals who comprise the Class is so numerous that joinder of all such
22 persons is impracticable and the disposition of their claims in a class action, rather
23 than in individual actions, will benefit both the parties and the courts.

24 43. Plaintiffs' claims are typical of the claims of the other members of the
25 Class. All members of the Class have been and/or continue to be similarly affected by
26 Defendant's wrongful conduct as complained of herein, in violation of federal and
27 state law. Plaintiffs are unaware of any interests that conflict with or are antagonistic
28 to the interests of the Class.

44. Plaintiffs will fairly and adequately protect the Class members' interests
and have retained counsel competent and experienced in consumer class action
lawsuits and complex litigation. Plaintiffs and their counsel have the necessary

1 financial resources to adequately and vigorously litigate this class action, and
2 Plaintiffs are aware of their duties and responsibilities to the Class.

3 45. Defendant has acted with respect to the Class in a manner generally
4 applicable to each Class member. Common questions of law and fact exist as to all
5 Class members and predominate over any questions wholly affecting individual Class
6 members. There is a well-defined community of interest in the questions of law and
7 fact involved in the action which affect all Class members. Among the questions of
8 law and fact common to the Class are, *inter alia*:

9 a) Whether Defendant labels, markets and otherwise advertises the
10 Class Products in a deceptive, false, or misleading manner by misstating the
11 benefits of Products' Creatine Nitrate and Arginine Nitrate content;

12 b) Whether the Creatine Nitrate and Arginine Nitrate contained in the
13 Class Products are a new dietary ingredient which has not been present in the
14 food supply as an article used for food in a form in which the food has not been
15 chemically altered;

16 c) Whether Defendant provided the FDA with a proper 75-Day
17 Premarket Notification for Creatine Nitrate and Arginine Nitrate contained in
18 the Class products;

19 d) Whether the Class Products are adulterated supplements;

20 e) Whether Defendant's sale of the Class Products constitutes unfair
21 methods of competition and unfair or deceptive acts or practices in violation of,
22 *inter alia*, CAL. CIV. CODE §§ 1770 *et seq.*, including:

23 (i) Whether Defendant misrepresents the source, sponsorship,
24 approval, or certification of the Class Products;

25 (ii) Whether Defendant misrepresents that the Class Products
26 have benefits which they do not have;

27 (iii) Whether Defendant represents that the Class Products are of
28 a particular standard or quality if it is of another; and

(iv) Whether Defendant advertises the Class Products with intent not to sell them as advertised;

f) Whether Defendant's sale of the Class Products constitutes misleading and deceptive advertising under, *inter alia*, CAL. BUS. & PROF. CODE § 17500.

g) Whether Defendant's sale of the Class Products constitutes "unlawful," "unfair," or "fraudulent" business acts or practices under, *inter alia*, CAL. BUS. & PROF. CODE §§ 17200 *et seq.*, including:

(i) Whether Defendant's sale of the Class Products constitutes "unlawful" or "unfair" business practices by violating the public policies set out in CAL. BUS. & PROF. CODE §§ 1770 *et seq.*, CAL. BUS. & PROF. CODE §§ 17500 and other California and federal statutes and regulations;

(ii) Whether Defendant's sale of the Class Products is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers;

(iii) Whether Defendant's sale of the Class Products constitutes an "unfair" business practice because consumer injury outweighs any countervailing benefits to consumers or competition, and because such injury could not be reasonably avoided by consumers; and

(iv) Whether Defendant's mischaracterization of the Class Products products constitutes a "fraudulent" business practice because members of the public are likely to be deceived;

h) Whether Defendant's mischaracterization of the benefits of the Class Products constitutes Illinois Consumer Fraud and Deceptive Business Practices Act;

i) Whether Defendant's mischaracterization of the benefits of the Class Products constitutes a breach of express warranty;

j) The nature and extent of damages, restitution, equitable remedies,

1 and declaratory and injunctive relief to which Plaintiffs and the Class are
2 entitled; and

3 k) Whether Plaintiffs and the Class should be awarded attorneys' fees
4 and the costs of suit.

5 46. A class action is superior to all other available methods for the fair and
6 efficient adjudication of this controversy since joinder of all members is
7 impracticable. Furthermore, as the damages suffered by individual Class members
8 may be relatively small, the expense and burden of individual litigation make it
9 virtually impossible for Class members to individually redress the wrongs done to
10 them. There will be no difficulty in managing this action as a class action.

11 47. Defendant has acted on grounds generally applicable to the entire Class
12 with respect to the matters complained of herein, thereby making appropriate the relief
13 sought herein with respect to the Class as a whole.

14 **FIRST COUNT**

15 **Violation of CAL. BUS. & PROF. CODE §§ 17500, *et seq.* -** 16 **Untrue, Misleading and Deceptive Advertising** **(On Behalf of the California Sub-Class)**

17 48. Plaintiff Dabish hereby incorporates by reference the allegations
18 contained in the preceding paragraphs of this Complaint.

19 49. At all material times, Defendant engaged in a scheme of offering the
20 Class Products for sale to Plaintiff Dabish and other members of the California Sub-
21 Class by way of, *inter alia*, commercial marketing, and advertising, internet content,
22 product packaging and labelling, and other promotional materials.

23 50. These materials, advertisements and other inducements misrepresented
24 and/or omitted the true contents and benefits of Defendant's products as alleged
25 herein. Said materials, advertisements, and other inducements were directed at
26 consumers in the State of California by Defendant.

27 51. Defendant's advertisements and other inducements come within the
28 definition of advertising as contained in CAL. BUS. PROF. CODE §§ 17500, *et seq.*, in

1 that such promotional materials were intended as inducements to purchase
2 Defendant's products and are statements disseminated by Defendant to Plaintiff
3 Dabish and other members of the California Sub-Class.

4 52. Defendant knew, or in the exercise of reasonable care should have
5 known, that the statements regarding the Class Products were false, misleading, and/or
6 deceptive. Defendant has no evidence to substantiate its Creatine Nitrate and amino
7 acid nitrates labeling claims, as described herein. Actually, Defendant's
8 representations conflicted with its own scientific research. Finally, Defendant did not
9 file the required 75-Day Premarket Notification for the Creatine Nitrate and amino
10 acid nitrates contained in the Class Products, and should have known that it was not
11 entitled to sell these Products in the United States.

12 53. Consumers, including Plaintiff Dabish and members of the California
13 Sub-Class necessarily and reasonably relied on Defendant's statements regarding the
14 contents of its products. The falsity and misleading nature of Defendant's statements
15 could not be discovered based on common knowledge and/or by examining face of the
16 Class Product's labels. Consumers, including Plaintiff Dabish and members of the
17 California Sub-Class, were among the intended targets of Defendant's representations.

18 54. The above acts of Defendant, in disseminating said misleading and
19 deceptive statements throughout the State of California, including to Plaintiff Dabish
20 and members of the California Sub-Class, were and are likely to deceive reasonable
21 consumers by obfuscating the true nature, safety, and approval of the Creatine Nitrate
22 and amino acid nitrates in Defendant's products, and thus are violations of CAL. BUS.
23 PROF. CODE §§ 17500, *et seq.*

24 55. Plaintiff Dabish and California Sub-Class members were harmed and
25 suffered injury as a result of Defendant's violations of the CAL. BUS. PROF. CODE §§
26 17500, *et seq.* Defendant has been unjustly enriched at the expense of Plaintiff Dabish
27 and the members of the California Sub-Class.
28

56. Accordingly, Plaintiff Dabish and members of the California Sub-Class seek injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Adulterated food products cannot legally be manufactured, held, advertised, distributed or sold. Thus, an adulterated supplement has no economic value and is worthless as a matter of law, and purchasers of adulterated supplement are entitled to a restitution refund of the purchase price of the supplement.

SECOND COUNT

Violation of CAL. CIV. CODE §§ 1750, *et seq.* - Consumer Legal Remedies Act (On Behalf of the California Sub-Class)

57. Plaintiff Dabish hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

58. 70. Defendant's supplements are a "good" as defined by California Civil Code section 1761(a).

59. Defendant is a "person" as defined by California Civil Code §1761(c).

60. Plaintiff Dabish and California Sub-Class members are "consumers" within the meaning of California Civil Code section 1761(d) because they purchased the Class Products for personal, family or household use.

61. The sale of the Class Products to Dabish and California Sub-Class members is "transaction" as defined by California Civil Code §1761(e).

62. By labeling the Class Products as providing certain benefits derived from the inclusion of Creatine Nitrate and amino acid nitrates, Defendant violated California Civil Code section 1770(a)(2), (5), (7) and (9), as it misrepresented the standard, quality, sponsorship, approval, and/or certification of its products.

63. By failing to provide the FDA with the required 75-Day Premarket Notification for the Creatine Nitrate and Arginine Nitrate contained in the Class Products needed to lawfully and safely sell the Class Products, Defendant violated

1 California Civil Code section 1770(a)(2), (5), (7) and (9), as it misrepresented the
2 standard, quality, sponsorship, approval, and/or certification of its products.

3 64. As a result of Defendant's conduct, Plaintiff Dabish and California Sub-
4 Class members were harmed and suffered actual damages as a result of Defendant's
5 unfair competition and deceptive acts and practices. Had Defendant disclosed the true
6 nature and/or not falsely represented the Class Products, Plaintiff Dabish and the
7 California Sub-Class would not have been misled into purchasing Defendant's
8 products, or, alternatively, pay significantly less for them.

9 65. Additionally, adulterated supplements cannot legally be manufactured,
10 held, advertised, distributed or sold. Thus, adulterated supplements have no economic
11 value and are worthless as a matter of law, and purchasers of misbranded food are
12 entitled to a refund of the purchase price of the adulterated supplements.

13 66. Plaintiff Dabish, on behalf of himself and all other similarly situated
14 California consumers, and as appropriate, on behalf of the general public of the State
15 of California, seeks injunctive relief prohibiting Defendant continuing these unlawful
16 practices pursuant to California Civil Code § 1782(a)(2).

17 67. Plaintiff Dabish provided Defendant with notice of its alleged violations
18 of the CLRA pursuant to California Civil Code § 1782(a) *via* certified mail,
19 demanding that Defendant correct such violations on July 27, 2015.

20 68. Defendant failed to adequately respond to Plaintiff Dabish's notice
21 within 30 days, Plaintiff Dabish therefore seeks all available damages under the
22 CLRA for all violations complained of herein, including, but not limited to, statutory
23 damages, punitive damages, attorney's fees and cost and any other relief that the
24 Court deems proper.

THIRD COUNT

**Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -
Unlawful Business Acts and Practices
(On Behalf of the California Sub-Class)**

69. Plaintiff Dabish hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

70. The Sherman Law, HEALTH & SAF. CODE §§ 109875 *et seq.*, broadly prohibits the misbranding of any food products. The Sherman Law provides that food is misbranded “if its labeling is false or misleading in any particular.” HEALTH & SAF. CODE § 110660.

71. Defendant is a person within the meaning of HEALTH & SAF. CODE § 109995.

72. Additionally, California has adopted as its own, and as the Sherman Law expressly incorporates, “[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date” as “the food labeling regulations of this state” including, but not limited to, 21 U.S.C. §§ 342 and 350b.

73. The California Civil Code § 1770(a)(2), (5), (7) and (9) also prohibits mislabeling food misrepresenting the standard, quality, sponsorship, approval, and/or certification of food products, as noted in above.

74. The business practices alleged above are unlawful under Business and Professional Code §§ 17500, *et seq.*, California Civil Code §§ 1770(a)(2), (5), (7) and (9) and the Sherman Law, each of which forbids the untrue, fraudulent, deceptive, and/or misleading marketing, advertisement, packaging and labelling of food products and dietary supplements.

75. Additionally, Defendant’s sale of the Class Products violates 21 U.S.C. §§ 342 and 350b which require Defendant to establish the safety of the Creatine Nitrate and amino acid nitrates contained in the Class Products and file a 75-Day

1 Premarket Notification with the FDA. Defendant's failure to do so renders the Class
2 Products adulterated under federal and corresponding state law.

3 76. Plaintiff Dabish and California Sub-Class members were harmed and
4 suffered injury as a result of Defendant's violations of the CAL. BUS. PROF. CODE §§
5 17200, *et seq.* Defendant has been unjustly enriched at the expense of Plaintiff Dabish
6 and the members of the California Sub-Class.

7 77. Accordingly, Plaintiff Dabish and members of the California Sub-Class
8 seek injunctive relief prohibiting Defendant from continuing these wrongful practices,
9 and such other equitable relief, including full restitution of all improper revenues and
10 ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent
11 permitted by law. Adulterated supplements cannot legally be manufactured, held,
12 advertised, distributed or sold. Thus, adulterated supplements have no economic value
13 and are worthless as a matter of law, and purchasers of adulterated supplements are
14 entitled to a restitution refund of the purchase price of the Class Products.

15 **FOURTH COUNT**

16 **Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -**
17 **Unfair Business Acts and Practices**
(On Behalf of the California Sub-Class)

18 78. Plaintiff Dabish hereby incorporates by reference the allegations
19 contained in the preceding paragraphs of this Complaint.

20 79. Plaintiff Dabish and other members of the California Sub-Class who
21 purchased the Class Products suffered a substantial injury by virtue of buying a
22 product that misrepresented the true benefits of the Creatine Nitrate and amino acid
23 nitrates. Had Plaintiff Dabish and members of the California Sub-Class known that
24 Defendant's materials, advertisement and other inducements misrepresented the true
25 benefits of its products, they would not have purchased said products. Additionally,
26 the Class Products are adulterated under federal law, and may not be purchased and
27 sold.

1 80. Defendant's actions alleged herein violate the laws and public policies of
2 California and the United States, as set out preceding paragraphs of this Complaint.

3 81. There is no benefit to consumers or competition by allowing Defendant
4 to sell adulterated supplements and deceptively market, advertise, package and label
5 its products.

6 82. Plaintiff Dabish and California Sub-Class members who purchased the
7 Class Products had no way of reasonably knowing that these products were
8 deceptively marketed, advertised, packaged and labeled, and/or adulterated. Thus,
9 Plaintiff Dabish and California Sub-Class members could not have reasonably
10 avoided the injury they suffered.

11 83. The gravity of the harm suffered by Plaintiff Dabish and California Sub-
12 Class members who purchased the Class Products outweighs any legitimate
13 justification, motive or reason for marketing, advertising, packaging and labeling the
14 adulterated Products in a deceptive and misleading manner. Accordingly, Defendant's
15 actions are immoral, unethical, unscrupulous and offend the established public
16 policies as set out in federal regulations and state law and is substantially injurious to
17 Plaintiff and members of the Class.

18 84. The above acts of Defendant, in disseminating said misleading and
19 deceptive statements throughout the State of California, including Plaintiff Dabish and
20 California Sub-Class members of the Class, were and are likely to deceive reasonable
21 consumers by obfuscating the true nature of the ingredients in Defendant's products,
22 and thus were violations of Business and Professional Code §§ 17500, *et seq.*

23 85. Plaintiff Dabish and California Sub-Class members were harmed and
24 suffered injury as a result of Defendant's violations of the CAL. BUS. PROF. CODE §§
25 17200, *et seq.* Defendant has been unjustly enriched at the expense of Plaintiff Dabish
26 and the members of the California Sub-Class.

27 86. Accordingly, Plaintiff Dabish and members of the California Sub-Class
28 seek injunctive relief prohibiting Defendant from continuing these wrongful practices,

1 and such other equitable relief, including full restitution of all improper revenues and
 2 ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent
 3 permitted by law. Adulterated food products cannot legally be manufactured, held,
 4 advertised, distributed or sold. Thus, adulterated food has no economic value and is
 5 worthless as a matter of law, and purchasers of adulterated food are entitled to a
 6 restitution refund of the purchase price of the Class Products.

7 **FIFTH COUNT**

8 **Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -** 9 **Fraudulent Business Acts and Practices** **(On Behalf of the California Sub-Class)**

10 87. Plaintiff Dabish hereby incorporates by reference the allegations
 11 contained in the preceding paragraphs of this Complaint.

12 88. The acts of Defendant as described above constitute a fraudulent business
 13 practice under Business and Professional Code §§ 17200, *et seq.*

14 89. As more fully described above, Defendant mischaracterizes the benefits
 15 of the Creatine Nitrate and amino acid nitrates in the Class Products. Additionally,
 16 Defendant does not state that the Class Products are adulterated under federal law, and
 17 may not be purchased and sold.

18 90. Defendant's misleading marketing, advertising, packaging, and labeling
 19 are likely to, and do, deceive reasonable consumers. Indeed, Plaintiffs were deceived
 20 about the nutritional benefits of Defendant's products, as Defendant's marketing,
 21 advertising, packaging, and labeling of its products misrepresents the true nature of
 22 the Creatine Nitrate and amino acid nitrates in the Class Products. Said acts are
 23 fraudulent business practice and acts.

24 91. Defendant's misleading and deceptive practices caused Plaintiff Dabish
 25 to purchase Defendant's products and/or pay more than he would have otherwise had
 26 he know the true nature of the contents of the Creatine Nitrate and amino acid nitrates
 27 in the Class Products.

92. Plaintiff Dabish and California Sub-Class members were harmed and suffered injury as a result of Defendant's violations of the CAL. BUS. PROF. CODE §§ 17200, *et seq.* Defendant has been unjustly enriched at the expense of Plaintiff Dabish and the members of the California Sub-Class.

93. Accordingly, Plaintiff Dabish and members of the California Sub-Class seek injunctive relief prohibiting Defendant from continuing these wrongful practices, and such other equitable relief, including full restitution of all improper revenues and ill-gotten profits derived from Defendant's wrongful conduct to the fullest extent permitted by law. Adulterated food products cannot legally be manufactured, held, advertised, distributed or sold. Thus, adulterated food has no economic value and is worthless as a matter of law, and purchasers of adulterated food are entitled to a restitution refund of the purchase price of the Class Products.

SIXTH COUNT

**Violation of the Illinois Consumer Fraud and
Deceptive Business Practices Act
(On Behalf of the Illinois Sub-Class)**

94. Plaintiff Bohr hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

95. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* (“ICFA”) prohibits the use of unfair or deceptive business practices in the conduct of trade or commerce. The ICFA is to be liberally construed to effectuate its purpose.

96. Defendant intended that Plaintiff Bohr and each of the other members of the Illinois Sub-Class would rely upon its deceptive conduct, and a reasonable person would in fact be misled by this deceptive conduct.

97. As a result of the Defendant's use or employment of unfair or deceptive acts or business practices, Plaintiff Bohr and each of the other members of the Illinois Sub-Class have sustained damages in an amount to be proven at trial.

1 98. In addition, Defendant's conduct showed malice, motive, and the reckless
2 disregard of the truth such that an award of punitive damages is appropriate.

3 **SEVENTH COUNT**

4 **Breach of Express Warranty**
5 **(On Behalf of the National Class)**

6 99. Plaintiffs hereby incorporate by reference the allegations contained in the
7 preceding paragraphs of this Complaint.

8 100. 75. Plaintiffs, and each member of the Class, formed a contract with
9 Defendant at the time Plaintiffs and the other Class members purchased the Products.
10 The terms of the contract includes the promises and affirmations of fact made by
11 Defendant on the Products' packaging and through marketing and advertising, as
12 described above. This labeling, marketing and advertising constitute express
13 warranties and became part of the basis of bargain, and are part of the standardized
14 contract between Plaintiffs and the members of the Class and Defendant.

15 101. Plaintiffs and the Class performed all conditions precedent to
16 Defendant's liability under this contract when they purchased the Product.

17 102. Defendant breached express warranties about the Product and its qualities
18 because Defendant's statements about the Product were false and the Products do not
19 conform to Defendant's affirmations and promises described above.

20 103. Plaintiffs and each of the members of the Class would not have
21 purchased the Products had they known the true nature of the Product's protein
22 content and what the Product contained.

23 104. As a result of Defendant's breach of warranty, Plaintiffs and each of the
24 members of the Class have been damaged in the amount of the purchase price of the
25 Product and any consequential damages resulting from the purchases.
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EIGHTH COUNT**Negligent Misrepresentation
(On Behalf of the National Class)**

105. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

106. Defendant has a duty, as a manufacturer, distributor, and retailer of dietary supplements, to comply with the applicable laws governing the production and distribution of dietary supplements.

107. Defendant states on each of the Class Products, that such products are “dietary supplements” and can be possessed, used, and sold as such.

108. Plaintiffs and other members of the Class relied on Defendant’s statement that the Class Products were indeed dietary supplements, which may be sold and possessed in the United States and are safe to be used as such. This reliance was reasonable, as a rational consumer would only purchase products deemed safe for human consumption and approved to be sold as dietary supplements in the United States.

109. However, the Class Products were not dietary supplements approved for use in the United States, but were instead considered misbranded and adulterated under federal law. Accordingly, the Class Products cannot be possessed, sold, or used as dietary supplements.

110. Defendant knew, or with reasonable care should have known, that its products were not dietary supplements approved for use in the United States, but were considered misbranded and adulterated under federal law.

111. As a result of Defendant’s misrepresentation, Plaintiffs and each of the members of the Class have been damaged in the amount of the purchase price of the Product.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class pray for relief and judgment as follows:

1 A. For an order declaring that this action is properly maintained as a class
2 action and appointing Plaintiffs as representatives for the Class, and appointing
3 Plaintiffs' counsel as Class counsel;

4 B. That Defendant bear the costs of any notice sent to the Class;

5 C. For an order awarding Plaintiffs and the members of the Class actual
6 damages, restitution and/or disgorgement;

7 D. For an order requiring Defendant to pay punitive and statutory damages,
8 as allowable by law, to Plaintiffs and the other members of the Classes;

9 E. For an order enjoining Defendant from continuing to engage in the
10 unlawful and unfair business acts and practices as alleged herein;

11 F. For an order awarding Plaintiffs and the members of the Class pre- and
12 post-judgment interest;

13 G. For an order awarding attorneys' fees and costs of suit, including expert
14 witnesses fees as permitted by law; and

15 H. Such other and further relief as this Court may deem just and proper.

16 **VII. JURY TRIAL DEMAND**

17 Plaintiffs demand a trial by jury for all of the claims asserted in this Complaint
18 so triable.

19
20 DATED: December 17, 2015

Respectfully submitted,

21 FINKELSTEIN & KRINSK LLP

22
23 By: /s/ Trenton R. Kashima
Trenton R. Kashima, Esq.

24 Jeffrey R. Krinsk, Esq.
25 Mark L. Knutson, Esq.
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9 Facsimile: 312.878.1342
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14 Telephone: 313.303.3472

15 Attorneys for Plaintiffs
16 and the Putative Classes
17
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28

DECLARATION OF MASON DABISH

1 I, Mason Dabish, declare and state as follows:

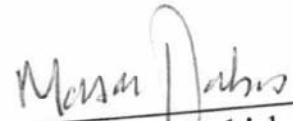
2 1. I am one of the plaintiffs in the above captioned case and specifically a
3 plaintiff alleging a violation of the Consumer Legal Remedies Act.

4 2. The Defendant in this action, MusclePharm Corp., is doing business in San
5 Diego County, California. Namely, Defendant MusclePharm Corp. distributes, sells, or
6 offers its products for sale in San Diego County, California. Indeed, I purchased
7 Defendant's products in San Diego County.

8 3. The transaction which give rise the cause of action under Consumer Legal
9 Remedies Act, as set forth in the attached Complaint, occurred in San Diego County.

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

12 Executed this 17th day of December, 2015, in San Diego, California

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Mason Dabish

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

Mason Dabish and Bill Bohr individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Finkelstein & Krinsk LLP, Trenton R. Kashima, Esq.
550 West C. Street, San Diego, CA 92101 (619) 238-1333

DEFENDANTS

Musclepharm Corp., a Nevada corporation

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'15CV2848 W JMA

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 (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

- | | | | | | |
|--|--|--|--|---|--|
| <input type="checkbox"/> 110 Insurance
<input type="checkbox"/> 120 Marine
<input type="checkbox"/> 130 Miller Act
<input type="checkbox"/> 140 Negotiable Instrument
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment
<input type="checkbox"/> 151 Medicare Act
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits
<input type="checkbox"/> 160 Stockholders' Suits
<input checked="" type="checkbox"/> 190 Other Contract
<input type="checkbox"/> 195 Contract Product Liability
<input type="checkbox"/> 196 Franchise | PERSONAL INJURY
<input type="checkbox"/> 310 Airplane
<input type="checkbox"/> 315 Airplane Product Liability
<input type="checkbox"/> 320 Assault, Libel & Slander
<input type="checkbox"/> 330 Federal Employers' Liability
<input type="checkbox"/> 340 Marine
<input type="checkbox"/> 345 Marine Product Liability
<input type="checkbox"/> 350 Motor Vehicle
<input type="checkbox"/> 355 Motor Vehicle Product Liability
<input type="checkbox"/> 360 Other Personal Injury
<input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY
<input type="checkbox"/> 365 Personal Injury - Product Liability
<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability
<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
<input type="checkbox"/> 370 Other Fraud
<input type="checkbox"/> 371 Truth in Lending
<input type="checkbox"/> 380 Other Personal Property Damage
<input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881
<input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158
<input type="checkbox"/> 423 Withdrawal 28 USC 157
<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input checked="" type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 950 Constitutionality of State Statutes |
| <input type="checkbox"/> 210 Land Condemnation
<input type="checkbox"/> 220 Foreclosure
<input type="checkbox"/> 230 Rent Lease & Ejectment
<input type="checkbox"/> 240 Torts to Land
<input type="checkbox"/> 245 Tort Product Liability
<input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 440 Other Civil Rights
<input type="checkbox"/> 441 Voting
<input type="checkbox"/> 442 Employment
<input type="checkbox"/> 443 Housing/Accommodations
<input type="checkbox"/> 445 Amer. w/Disabilities - Employment
<input type="checkbox"/> 446 Amer. w/Disabilities - Other
<input type="checkbox"/> 448 Education | Habeas Corpus:
<input type="checkbox"/> 463 Alien Detainee
<input type="checkbox"/> 510 Motions to Vacate Sentence
<input type="checkbox"/> 530 General
<input type="checkbox"/> 535 Death Penalty
Other:
<input type="checkbox"/> 540 Mandamus & Other
<input type="checkbox"/> 550 Civil Rights
<input type="checkbox"/> 555 Prison Condition
<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | <input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 720 Labor/Management Relations
<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 751 Family and Medical Leave Act
<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 791 Employee Retirement Income Security Act | <input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 865 RSI (405(g)) | |

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):

28 USC 1332 (d)

Brief description of cause:

Warranty action and various state causes of action.

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
12/17/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE